



IMO



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**INCORPORATION OF THE NAIROBI INTERNATIONAL
CONVENTION ON THE REMOVAL OF WRECKS, 2007 INTO
TURKISH NATIONAL LEGISLATION**

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EXPLANATORY NOTE

1. Problem Definition

According to the International Maritime Organization (IMO), the number of abandoned wrecks is estimated to be around thirteen hundred worldwide. The problems caused by those wrecks are defined in three-fold. First, and depending on its location, a wreck may constitute a hazard to navigation, potentially endangering other vessels and their crews. Secondly, and of equal concern, depending on the nature of the cargo, is the potential for a wreck to cause substantial damage to the marine and coastal environments. Thirdly, in an age where goods and services are becoming increasingly expensive, is the issue of the costs involved in the marking and removal of hazardous wrecks¹.

When the wrecks were outside the territorial waters of a country, the problems caused by wrecks were becoming more severe simply because States were powerless to deal with such wrecks under their existing national laws².

Moreover, changing patterns of shipping, especially the emergence of the one-ship company, which has limited financial power to deal with shipwrecks, brought about the need for an instrument regulating removal of wrecks³. Because, in case of a one-ship company States may be left with a valueless wreck and no prospects of recovery from her owners. The Nairobi International Convention on Removal of Wrecks 2007 (will be referred as the Wreck Removal Convention hereafter) aims to provide solutions to these problems.

¹ See http://www.imo.org/Legal/mainframe.asp?topic_id=1319 (17.12.2009).

²The *Torrey Canyon* oil tanker wreck outside the United Kingdom territorial waters and the *Mont-Louis* shipwreck outside the Belgian territorial waters revealed the necessity of uniform rules regulating wreck removal operations outside territorial waters.

³ See R. Shaw, "The Nairobi Wreck Removal Convention", www.cmi2008athens.gr/sub5.5.pdf (17.12.2009).

2. Historical Background of the Wreck Removal Convention

The idea of drafting a convention on removal of wrecks has a history of more than 36 years. The *Torrey Canyon* oil tanker disaster, which led to many changes in international regulations such as the International Convention on Civil Liability for Oil Pollution Damage (CLC) of 1969 and the International Convention for the Prevention of Pollution from Ships of 1973, was also the reason starting the discussions of a wreck removal convention. In these early discussions in the beginning of the 1970's, it was felt that until there was a more general Convention on the Law of the Sea, it would be premature to even attempt drafting a new convention⁴. After the conclusion of the 1982 United Nations Convention on Law of the Sea (UNCLOS) and also after the work on International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS Convention) and the new Protocol to the Convention on Limitation of Liability for Maritime Claims (LLMC) was completed, the IMO Legal Committee decided to take up the issue again. It was brought to the agenda of the IMO Legal Committee first in October 1993 by Germany, the Netherlands and United Kingdom. At the 70th Session of the IMO Legal Committee in the spring of 1994, the said countries submitted a further paper on the topic which argued that an international treaty on wreck removal was necessary in order to establish uniform rules for wreck removal operations in international waters and that this would be consistent with the powers of coastal States under article 221 of the UNCLOS and would fill the gaps in the existing international law⁵. The said joint submission also included the first draft of the Wreck Removal Convention. The IMO Legal Committee established a formal correspondence group headed by the Netherlands for the draft Wreck Removal Convention and a survey of national laws in relation to wreck removal was conducted. Taking into consideration similar rules found in most domestic laws and different views of all the interested parties a final draft was prepared by the IMO Legal Committee which was adopted by a Diplomatic Conference at Nairobi on 14-18 May 2007. The Wreck Removal Convention will come into force after ratification by at least ten States. This process is predicted to take no less than three to five years.

⁴ J. E. De Boer, "The Nairobi Perspective: Nairobi International Convention on Removal of Wrecks, 2007", CMI Yearbook 2007-2008, p. 377.

⁵ P. Griggs, "Draft Convention", CMI Yearbook 2007-2008, p. 376.

3. Summary of the Provisions of the Wreck Removal Convention

3.1. Main Features and Purpose of the Convention:

The primary aim of the Wreck Removal Convention is to clarify rights, duties and responsibilities relating to the elimination of hazards posed by wrecks located beyond the territorial sea⁶. As it will be explained below, there is also an opt-in procedure which allows States to apply the Convention in their territorial waters. The Wreck Removal Convention will fill a gap in the existing international legal framework, by providing the first set of uniform international rules aimed at ensuring the prompt and effective removal of wrecks located beyond the territorial sea, within the Convention area⁷. The most important features of the Convention are that it brings strict liability for the shipowner as regards to the costs of reporting, marking and removing a wreck together with a compulsory insurance requirement and direct action possibility against insurers up to the limits set by the LLMC. The provisions of the Wreck Removal Convention are drafted carefully in order to balance of the rights of the flag State with those of the affected coastal State.

3.2. Geographical and Legal Scope of the Convention:

In order to define the scope of the Wreck Removal Convention, which allows a State Party to take measures to remove a wreck that is a hazard to navigation or the marine environment, one has to first define the terms ship, wreck, maritime casualty and hazard which are central to the Convention.

The Convention has accepted a wide definition of a ship. Other than fixed structures or floating platforms while actually engaged in exploration, practically all sea going water borne crafts fall within the scope of the Convention. There is no minimum gross tonnage requirement in this respect.

A “wreck” includes a ship, or any part of a ship, or object that has been on board a ship but has become detached, e.g. cargo, that as a consequence of a maritime casualty has sunk or stranded or is adrift. The definition extends to a casualty that may be reasonably expected to become a wreck, provided

⁶ De Boer, pp. 335-336.

⁷ Ibid, p. 334.

salvage services are not already being rendered. A “maritime casualty” has an equally wide definition, being an incident of navigation such as a collision or stranding, but extending to any occurrence on board or even external to the ship, for example an explosion alongside a terminal.

A “hazard” is defined as a danger to navigation or a condition giving rise to harmful consequences to coastlines or other wider coastal interests such as ports or fisheries, tourism, offshore and underwater infrastructure. The health of coastal populations and conservation of both marine and non-marine wildlife are further considerations in determining a hazard within the meaning of the Wreck Removal Convention.

Usage of broad definitions in the Wreck Removal Convention attract some criticism from the shipping industry. It is argued that, due to broad definitions of the Convention, practice will vary from State to State. One State might consider a wreck in its Exclusive Economic Zone (EEZ) as constituting a hazard and intervene, whereas an other State might decide otherwise about a similar incident⁸.

3.2.1 Geographical Scope of the Convention :

Geographical Scope of the Convention is identified as the EEZ of a State Party established in accordance with international law or corresponding maritime zone as defined in Article 1 (1) of the Convention. The Convention applies to all wrecks located in that area and all ships flying the flag of a State Party. The Convention provisions indicate an extension of the rights and duties of the coastal State beyond those specified in the provisions of article 56 of UNCLOS concerning the rights of a coastal State in its EEZ.

After lengthy discussions during the drafting process, a compromise solution was also reached as regards to inclusion of territorial waters in the convention area. Article 3 (2) of the Convention provides the State Parties the possibility to include their territorial seas within the scope of the Convention if they so wish. This mechanism is called the “opt-in” power of the coastal State.

The inclusion of territorial waters in the Convention area was first brought up by the Comité Maritime International (CMI) report in 1996, based on the fact that the majority of wreck removal cases will relate

⁸ See L. Howlett, “Nairobi International Convention on the Removal of Wrecks”, CMI Yearbook 2008-2009, p. 343.

to wrecks within the territorial sea. However, since the rights of coastal States to take measures in the EEZ outside their usual jurisdiction resulted in the appearance in the draft text of carefully worded clauses limiting the freedom of action of the intervening State⁹, many States stand against the application of the Convention in territorial waters and defended their rights to take any action which they considered appropriate in such waters. However, a compromise was reached just before the Nairobi Conference. The position of International Group of P and I Clubs, which agreed to give the letters of financial security for wreck removal expenses but emphasized that their member associations would not give a guarantee for expenses incurred by a coastal State which fell outside the carefully crafted wordings of Articles 2 and 9 played a role in reaching a compromise.

3.2.2 Legal Scope of the Convention :

Since the Wreck Removal Convention aims to be complementary to the existing legal instruments developed for maritime safety and protection of marine environment, the Convention will not apply to any measures taken under the existing regime, including the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties (Intervention Convention), CLC, HNS Convention, International Convention on Civil Liability for Bunker Oil Pollution Damage (Bunkers Convention), International Convention on Salvage (Salvage Convention) and the Convention on the Third Party Liability in the Field of Nuclear Energy or the Vienna Convention on Civil Liability for Nuclear Damage (Nuclear Liability Conventions)¹⁰.

According to Article 4 (2) of the Wreck Removal Convention, the Convention will not apply to warships or other ships owned or operated by States and used only for Government non-commercial purposes, unless relevant State decided otherwise.

Moreover, Article 13 of the Convention imposes a dual time limit within which a claim can be brought. According to the said Article, claims has to be brought within three years from the determination of the hazard and six years from the maritime casualty that resulted in the wreck. The Wreck Removal Convention is not applicable for claims brought after these periods. Thus, the Convention does not apply to the vast majority of existing wrecks.

⁹ R. Shaw, p. 4.

¹⁰ C. Forrest, “At Last: A Convention On the Removal of Wrecks”, JIML , 2008, vol. 14, p. 396.

3.3. Rights and Responsibilities of the Affected Coastal State, Flag State and the Ship Owner Under the Convention :

In case of a shipwreck, the initial responsibility is reporting the location characteristics and condition of the wreck by the Master or the operator of the ship to the Affected State in a precise manner. This report should include information about the nature of any cargo on board with particular reference to any hazardous or noxious substances, the quantity and types of any oil, including bunker and lubricating oils on board¹¹.

After such a reporting, the Affected State¹² has to determine whether the wreck poses a hazard. The Convention sets objective criterias in Article 6 that should be taken into account by the Affected State while assessing the degree of hazard. According to Articles 7 and 8 of the Convention, the Affected State also has a responsibility to locate the wreck, buoy it, and publish its location by appropriate notices to mariners. The costs associated with locating and marking the wreck can be recovered from the owner.

If the Affected State determines the wreck as hazard, it has to inform and consult the flag State of the ship and any other State that is affected by the wreck. According to Article 9 (2), the responsibility to remove a wreck is on the registered owner. The owner is entitled to use the services of any¹³ salvor or other suitable person to remove the wreck. The Affected State may lay down conditions for the removal of the wreck, including setting deadlines for certain stages of the operation. However, conditions set by the Affected State should be limited to the considerations of safety and the protection of the marine environment. The limitations on the powers of an Affected State to intervene were in recognition of the fact that a “salvor in possession” has certain rights with which a State would interfere at its peril¹⁴. Moreover, Article 9 (6) and (7) allow the Affected State to intervene if the wreck removal operations are not commenced or proceeded with after a reasonable time. In cases where immediate action is

¹¹ See Article 5 (2) of the Wreck Removal Convention.

¹² According the Article 1 (10), “Affected State” is the State in whose Convention area the wreck is located.

¹³ According to Shaw, the word “any” is used to preserve the independence of the shipowner to choose the most suitable contractor for the job, without being subject to the laws of States reserving salvage operations in their waters to their own salvage contractors. R. Shaw, p. 9.

¹⁴ P. Griggs, “Draft Convention”, CMI Yearbook 2005-2006, p.381.

required the Affected State is entitled to take over the operation at the expense of the registered owner. While taking a decision about the necessity of immediate action and intervention, Affected State needs to take into consideration the general limitations set out in paragraphs 2 and 3 of Article 2, regarding the action of the Affected State¹⁵.

3.4. Exclusion and Limitation of Liability :

According to Article 10 of the Convention, the registered owner is liable for the expenses of locating (Article 7), marking (Article 8) and removing the wreck (Article 9), subject to the usual exclusions from strict liability also to be found in the CLC, HNS, and Bunkers Conventions. Namely, where the maritime casualty that caused the wreck resulted from,

- Act of war, hostile activities or natural phenomenon of an exceptional, inevitable and irresistible character,
- Act or omission of a third party done with the intent to cause damage. In order to benefit from this exclusion clause, the damage is to be “wholly caused” by such an act which is not always very easy to prove for the ship owner.
- The failure of a Government to properly maintain navigational aids, again provided that there is no intervening circumstance or break in causation.

The Convention does not create a specific limitation of liability mechanism for the ship owner. However, Article 10 (2) preserves the right of the ship owner to seek limitation of liability under the applicable national or international regime¹⁶. On the other hand, it should be remembered that many States while ratifying the LLMC, 1976, as amended (the London Protocol with increased limits) specifically exclude the right to limit in respect of wrecks¹⁷.

¹⁵ The measures taken shall be “proportionate to the hazard”, shall not “go beyond what is reasonably necessary”, and “shall not unnecessarily interfere with rights and interests of other states...and of any person concerned.”

¹⁶ As States might not be parties to the LLMC Convention or might have made a reservation as regards to wreck removal, the limitation of liability provision of the Convention criticized by the shipping industry, for bringing strict liability for wreck removal without a corresponding right to limit that liability. See Howlett, p. 344.

¹⁷ Turkey ratified the LLMC Convention without a reservation as regards to wreck removal and the Convention entered into force for Turkey on 01.07.1998.

Article 11 of the Convention, excludes from the liability under the Wreck Removal Convention costs covered by other IMO conventions, such as the CLC, HNS, Bunkers Convention and the Nuclear Liability Conventions. Since, the CLC, HNS and the Nuclear Liability Conventions have their own “stand alone” funds, recovery of wreck removal expenses will not pose problems in case of duplication with one of the said regimes. However, as is the case for the Wreck Removal Convention, liabilities under the Bunkers Convention is also restricted to the ship’s LLMC limitation fund. In the case of a casualty involving claims for bunker pollution and wreck removal, if the shipowner invokes his right to limitation of liability, these claims will have to compete with each other for the limited funds available if the applicable law allows limitation of liability for wreck removal claims¹⁸.

3.5. Compulsory Insurance and Direct Action Against the Insurers :

According to Article 12 of the Convention, the owner of a ship of 300 gross tonnes or more registered in a signatory State must maintain insurance or other acceptable form of financial security to cover liability under the Convention. The amount of the security required shall be the limit of liability of the ship calculated in accordance with Article 6 (1) (b) of the LLMC Convention as amended by the 1996 Protocol. Thus, the liability of the insurer, would not exceed that limit even if the ship is wrecked in a State which has not ratified the LLMC¹⁹.

Each ship is to carry a certificate as evidence of insurance or other financial security in an approved format. A draft of such certificate is included in the only annex to the Convention. Ships not registered in a signatory State may obtain certificates from any other State Party. According to the Convention, each State Party has an obligation to make sure that, ships registered under its flag will not operate without the necessary certificate and that every ship, regardless of being registered in a State Party or not, shall have such a certificate while entering or leaving a port in its territory, or arriving at or leaving an offshore facility in its territorial sea.

Article 12 also provides that any claim arising under the Convention may be brought directly against the insurer or guarantor for the registered owners’ liability. The insurer or the guarantor may invoke the same defences (other than the bankruptcy or winding up of the registered owner) that the registered

¹⁸ Shaw, pp. 10-11.

¹⁹ Ibid, p. 11.

owner would have been entitled to invoke including the limitation of liability. The right to take direct action is particularly important in case of one-ship companies whose single asset might be the wreck, and who therefore might have no funds available to meet their liability under the Convention²⁰.

3.6. Entry Into Force :

The Convention opened for signature from 19 November 2007 until 18 November 2008 and, thereafter, will be open for ratification, accession or acceptance. It will enter into force twelve months following the date on which ten States have either signed it without reservation as to ratification, acceptance or approval or have deposited instruments of ratification, acceptance, approval or accession with the Secretary General. As also stated above, entry into force process of the Wreck Removal Convention is predicted to take no less than three to five years.

4. Current Situation in Turkey

4.1 General Information :

Turkey is surrounded by seas from three sides and has a coastline of 8333 kilometers along the Mediterranean and the Black Sea. Turkish Straits, comprising the Strait of Çanakkale, the Sea of Marmara and the Strait of Istanbul, connect the Black Sea to the Aegean and to the Mediterranean as one of the most strategic and busiest waterways in the world. Turkish Straits have a strategic importance since it is the only sea route of the Black Sea States (Ukraine, Romania, Georgia, Bulgaria and Russia) and the oil rich Central Asian Turkish Republics. Passage and navigation through the Turkish Straits have a significant place in the world marine trade, thus there is always heavy traffic both in the straits and the seas surrounding Turkey.

The Strait of Istanbul, situated in the middle of a very populated and historic city, is a narrow "S-shaped" channel of complex nature with several sharp turns and headlands, which prevents a proper

²⁰ Forrest, p. 405.

look-out, and with changing currents. Such geographical and oceanographic conditions make the navigation, open to international shipping, very difficult and risky²¹.

The density of maritime traffic in Turkish Straits, has increased eleven-fold from around 4,400 ships passing annually in 1936, when Montreux Convention was signed to regulate transit and navigation in the Straits, to an average of 55,000 vessels per year recently²². With 132 vessels transit daily, not including local traffic, the volume of traffic in Turkish Straits is five times heavier than the traffic in the Panama Canal.

During the period from 1953 to 2002, 461 maritime incidents occurred in the Istanbul Strait or in its southern entrance at the Marmara Sea. The majority were collisions and groundings. The number of shipwrecks as of 2000 within the Turkish Straits is 35 (23 of which is in the Istanbul Strait, 3 in the Marmara Sea and 9 in the Çanakkale Strait). The total number of shipwrecks in the waters surrounding Turkey is about 64.

As will be understood also from the above explanation, in Turkey's case, important number of maritime casualties resulting in shipwrecks is happening in the internal or territorial waters of Turkey, due to the heavy traffic and difficult navigational conditions in the Turkish Straits.

4.2. Legislation :

There is no specific law dealing with removal of wrecks in Turkish legislation, other than a provision in the Law on Ports (Law No: 618, Date of Approval: 14/4/1925). Article 7 of the said Law sets the rules on removal of wrecks that are obstructing the maritime traffic in the ports. The scope of application of said provision is very limited, in fact the provision only applies to shipwrecks in the port areas.

According to the said Article, the owners, captains and agencies of ships sunk in a manner hindering the safety of navigation and voyage in ports, are responsible for the removal of the ships and their property, in a short period of time that will be set by the harbour master. The mentioned period of time shall be notified to those responsible either by announcements to be made in newspapers or, via the notary to which they are registered.

²¹ M. Birpınar, G. Talu, G. Su, M. Gulbey, The Effect of Dense Maritime Traffic On The Bosphorus Strait and Marmara Sea Pollution, Istanbul, 2006, p. 2.

²² N. Oral, B. Öztürk, The Turkish Straits, Maritime Safety, Legal and Environmental Aspects, Turkish Marine Research Foundation Publication No. 25, Istanbul, 2006, p. 2.

The above-mentioned period may be extended by the State Ministry in Charge of the Economy if it is deemed necessary or if there exists a legal conflict concerning the ownership of the ship and its property, by an objection to be made by those related to the conflict. The harbour masters are authorized to remove or destroy ships and their property which have not been removed by the owner, captain or agency within the period of time determined. For those ships and property which are not destroyed but removed by the harbour administrations, the ship owners shall be called to pay for the costs of removal and collect the wreck by means of a newspaper announcement. Ships and their property which are not collected and for which the removal costs are not paid within 15 days of the announcement shall be sold by financial officers, upon the application of harbour administrations. Their value shall be confiscated by the treasury. If the market value of the wreck exceeds the cost of removal, the exceeding amount shall be paid to the owners by the treasury, upon their application.

For State owned wrecks and their property, no newspaper announcement is necessary. They shall be removed by harbour administrations and submitted to financial officers. Those which are not in a position to be removed are to be destroyed.

As it will be seen from the above explanation, Article 7 of the Law on Ports does not cover the wrecks which constitute hazard to environment and wrecks outside the port areas. However, the Ministry of Environment and Forestry has a duty of protection of marine environment in coordination with other related institutions²³. In addition, according to the Decree Law on Organization and Duties of the Undersecretariat for Maritime Affairs²⁴, the said Undersecretariat has a duty to take all measures to prevent the deterioration of the maritime environment and sea pollution for fields under the jurisdiction of the Undersecretariat (ports and piers) and adopt measures to ensure the safety of life and property at sea. Coast Guard Command also has similar duties as regards to protection of environment and safety of life and property at sea²⁵ in all maritime areas (internal waters, territorial waters, exclusive economic zones etc.) that are under Turkish sovereignty or jurisdiction and control in accordance with the national and international laws. In fact, the Ministry of Environment and Forestry has delegated

²³ See Article 9 (h) of the Environment Code, Law No: 2872, Date: 11.08.1983.

²⁴ Article 2 (g) of the Decree Law on the Establishment and Duties of the Undersecretariat for Maritime Affairs, No: 491, Date: 10.08.1993.

²⁵ See Article 4 of the Law on Coast Guard Command, Law No: 2692, Date: 09.07.1982.

some of its powers as regards to controls and fines aiming at protection of marine environment to the Undersecretariat of Maritime Affairs, Coast Guard Command and some other related municipalities, with the Ministry of Environment and Forestry Circular No: 2009/13, Dated: 15.05.2009.

Thus, wrecks which are not obstructing the maritime traffic in the ports but are constituting hazard to marine environment and wrecks outside the port areas can still be removed based on the general duties of the Ministry of Environment and Forestry, Undersecretariat for Maritime Affairs and the Coast Guard Command. However, the procedure to be followed for such wreck removal operations is not regulated.

4. 3. Benefits of Incorporating the Wreck Removal Convention into the Turkish Domestic Law :

As stated under section 4.1 above, due to the heavy traffic and difficult navigational conditions in the Turkish Straits, most of the maritime casualties resulting in shipwrecks are happening in the internal or territorial waters of Turkey. However, as explained under section 4.2, the scope of the provision (Article 7 of the Law on Ports) dealing with wreck removal is not adequate to cover shipwrecks outside the port areas and shipwrecks that does not obstruct traffic in port areas but constitutes hazard to environment. Thus, adhering to the Wreck Removal Convention and extending its application to the Turkish territorial waters would be very useful to establish a comprehensive and effective wreck removal system in Turkey.

An other advantage of incorporating the Wreck Removal Convention into Turkish Law is emanating from financial reasons. Current Turkish legislation does not require the registered owner to have any compulsory financial security regarding the removal of wrecks. Due to lack of financial means, in many cases wrecks stay in navigable waters for a long period of time and cause hazard to both safety of navigation and environment. Moreover, in cases where the port authorities perform the wreck removal at the expense of the shipowner, port authorities in practice usually end up only recovering a small amount of expenses by selling the removed wreck. Because, in most cases, the value of the wreck is less than the expenses of its removal. Thus, incorporation of Wreck Removal Convention, which brings strict liability for the ship owner subject to very limited exemptions and which requires them to have compulsory insurance or provide other financial security to cover the costs of wreck removal, can solve the financial problems faced during the wreck removal operations. The possibility of direct action

provided to the Affected State against the insurer or security provider, is also another positive aspect of the Wreck Removal Convention. Direct action possibility will enormously facilitate and expedite the wreck removal especially in cases where it is not possible to identify and reach to the registered owner.

It has to be stated in this regard that, Turkey became a party to the International Convention on Limitation of Liability for Maritime Claims, 1976 without any reservations as regards to wreck removal²⁶. Thus, the limits set by the said convention will be applicable for wreck removal expenses.

4.4. Turkey and UNCLOS, References to the UNCLOS in the Wreck Removal Convention:

Turkey is not a Party to the UNCLOS. Although Turkey attended and played an active role by presenting six proposals²⁷ to the Second Committee during the Third United Nations Conference on the Law of the Sea, Turkey did not sign the Convention text and did not become a party. Indeed, Turkey is a persistent objector to particular provisions of the UNCLOS. The main reasons that prevented Turkey from becoming a party to UNCLOS include the provisions regarding to the breadth of the territorial sea and the provisions establishing compulsory and binding dispute settlement procedure for the maritime disputes²⁸.

In Article 15, the Wreck Removal Convention made a reference to Part V of the UNCLOS as regards to the settlement of disputes and stipulated that the provisions of Part V of UNCLOS shall apply mutadis mutandis whether or not the States party to the dispute are also States Parties to the UNCLOS.

²⁶ The Convention is ratified by the Council of Ministers Decision No:8/493, Date: 28.02.1980 and entered into force for Turkey on 01.07.1998. See Official Gazete No: 17075, Date: 04.06.1980.

²⁷ These proposals were about the breadth of the territorial sea, delimitation of territorial sea, delimitation of continental shelf, delimitation of exclusive economic zone, maritime zones of closed and semi-closed seas and islands. See the following documents for proposals given by Turkey: The Third UNCLOS Off.Rec Doc. A/CONF.62/ C.2/L.3, Vol.III, s.118, Doc.A/CONF.62/C.2/L.9, Vol.III, s.118, Doc. A/CONF.62/C.2/L.23, Vol.III, s.201, Doc.A/CONF.62/ C.2/L.34, Vol.III, s.213, Doc. A/CONF.62/C.2/L.56, Vol.III, s.230, Doc.A/CONF.62/C.2/ L.55, Vol.III, s.230, Doc.A/CONF.62/C.2/L90, Vol.V, s.202, A/CONF.62/C.2/L.96, Vol.VII, s. 84.

²⁸ Ş. A. Güneş, “Birleşmiş Milletler Deniz Hukuku Sözleşmesi ve Deniz Çevresinin Korunması (United Nations Convention on Law of the Sea and Protection of the Marine Environment)”, AÜHFHD, Ankara, 2007, s. 13.

Moreover, in Article 1 (1) of the Wreck Removal Convention, the geographical scope of application of the Convention is defined as the EEZ of a State Party or in cases where such a zone is not established, an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured.

Turkey has established an EEZ only in the in Black Sea. The EEZs and continental-shelves in the Aegean and Eastern Mediterranean are not delimited between related States. The Aegean Sea is a semi-enclosed sea which forms part of the Mediterranean Sea with a total surface of maritime area of 101.321 sq nautical miles (187.647 sq kilometers). It is a narrow body of water which does not reach four hundred nautical miles even at its widest point. The Aegean is bordered by the coasts of Greece and Turkey, both adjacently and oppositely. The Aegean Sea includes approximately 3,000 different islands, islets and rocks, mostly under Greek sovereignty and many of which are very close proximity to Turkish mainland. This unique configuration of the Aegean Sea creates complicated delimitation problems which are yet to be settled between Turkey and Greece. Consultations in this regard between Turkey and Greece are still going on. Due to the above mentioned specificities of the Aegean Sea, neither Greece nor Turkey have established maritime jurisdiction zones other than six miles territorial sea. With its unique configuration, the Aegean Sea constitutes a special maritime area that requires special solutions. No where in the whole world a similar sea exists, where many relevant factors need to be taken into account for a just delimitation²⁹. Turkey believes that the issue of delimitation of maritime areas in the Aegean and the Eastern Mediterranean should be addressed jointly by all relevant coastal States. This is necessary to avoid overlapping claims and to observe the rights and interests of all the concerned parties in the region. Declaration of an EEZ or a similar zone in the Aegean Sea without an agreement between related States will create a delimitation dispute similar to that over the continental shelf which has been going on since mid-1970's.

In the light of the above, the wording of the Article 1 (1) of the Wreck Removal Convention, which gives right to States to extend unilaterally the geographical scope of the Convention up to 200 miles in cases where EEZ is not established, is not suitable to the geographical and political realities of the Aegean and Eastern Mediterranean Sea.

²⁹ See D. Bölükbaşı, Turkey and Greece The Aegean Disputes, A Unique Case in International Law, Cavendish Publishing, London, 2004, pp. 89-90.

Indeed, Turkey made a statement³⁰ to the final text of the Wreck Removal Convention due to the above explained situation. The said statement is as follows:

“Turkey, as a country which is a non-party to the United Nations Convention on the Law of the Sea (UNCLOS), 1982, and which is in a clear long standing position not to accept a binding settlement of dispute mechanism especially under a private law convention does not agree with the binding solution reached in Article 15 of the Convention referring the UNCLOS. The references to the UNCLOS in the Wreck Removal Convention do not therefore affect Turkey’s position as a persistent objector to particular provisions of the UNCLOS.

Neither does Turkey agree with the enlargement of the geographical scope of the Convention to 200 nautical miles in the case where the EEZ has not been established”.

In the light of the above explanation, a reservation text regarding to Article 15 and a declaration text regarding to Article 1 (1) of the Wreck Removal Convention will also be drafted as a part of this drafting project. Since the Wreck Removal Convention includes references to UNCLOS, the declaration text will also make it clear that the ratification of Wreck Removal Convention will not effect Turkey’s position vis a vis the UNCLOS.

5. Methodology of Incorporation

Turkish Constitutional and legal procedure regarding to ratification of international treaties will be followed in this drafting project. According to Turkish legislation the executive branch is competent to conclude treaties. However, there is no specific provision in the Turkish Constitution concerning the persons having the authority to negotiate and sign international treaties. Competent authorities to conclude international treaties are identified in the “Act on Conclusion of International Agreements, Their Entry Into Force and Publication and Delegation of Authority to the Council of Ministers for

³⁰ Consideration of a Draft Convention on the Removal of Wrecks, Statement by Turkey, No: LEG/CONF.16/17, Date: 17 May 2007.

Conclusion of Such Agreements” (Act No: 244, Date: 31.05.1963) and “Act on the Conduct and Coordination of International Relations” (Act No: 1173, Date: 05.05.1969). Based on the said Acts, it is accepted that the President of the Republic, Prime Minister, Minister of Foreign Affairs, and persons authorized by the Council of Ministers are competent to conclude an international treaty³¹. For the purposes of this study, the Wreck Removal Convention is considered to be signed by a competent authority.

After signature, international treaties are subject to ratification. According to Article 104/b-6 of the Turkish Constitution, the President has the power to ratify and promulgate international treaties. The President ratifies the treaty through a decree which is also signed by the Council of Ministers and the Prime Minister³².

However, before ratification by the President, for most of the treaties, enactment of a law by the Turkish Grand National Assembly approving the ratification of the treaty is necessary³³. The law concerning the approval of ratification has to be published in the Turkish Official Gazette as for all other laws. After the “approval of the ratification law” is published, the treaty becomes appropriate for ratification by the President of Republic.

As stated above, there are some exceptional treaties that do not necessitate approval of the parliament for ratification. The first condition for this more simple procedure of ratification is that the treaty in question should not bring amendments to Turkish laws. Article 90 of the Turkish Constitution defines the other conditions. According to the said Article, “agreements regulating economic, commercial and technical relations, and covering a period of no more than one year, may be put into effect through promulgation, provided they do not entail any financial commitment by the State, and provided they do not infringe upon the status of individuals or upon the property rights of Turkish citizens abroad. In such cases, these agreements must be brought to the knowledge of the Turkish Grand National Assembly within two months of their promulgation.

³¹ H. Pazarcı, *Uluslararası Hukuk Dersleri (Lectures on International Law)*, Ankara, 2001, p. 148.

³² Gözler, K.; “*Türk Anayasa Hukuku Dersleri (Lectures on Turkish Constitutional Law)*”, Ekin Kitabevi, 2004, p. 247.

³³ Pazarcı, p. 149.

Agreements in connection with the implementation of an international treaty, and economic, commercial, technical, or administrative agreements which are concluded depending on the authorisation as stated in the law shall not require approval of the Turkish Grand National Assembly”.

Since the Wreck Removal Convention is not falling under one of the above exceptions, enactment of a law by the Turkish Grand National Assembly approving the ratification of the said Convention is required. After completion of this process, the Wreck Removal Convention will be ratified by the President and promulgated in the official gazette attached to the President’s decree.

The approval law of the Parliament and the President’s decree are only references of ratification of the relevant treaty. They do not address the content of the treaty other than including the treaty text as an attachment. Although, it is stipulated in the Turkish Constitution that duly ratified international treaties bear the force of law³⁴, in other words, are binding on everyone, for practical reasons, the actual transposition of the provisions of treaties into domestic law is generally realized through enacting a regulation (tüzük) or a by-law (yönetmelik).

According to Article 115 of the Turkish Constitution, the Council of Ministers may issue regulations governing the mode of implementation of laws or designating matters ordered by law, provided that they do not conflict with existing laws and are examined by the Council of State. Regulations are required to be signed by the President of the Republic and promulgated in the same manner as laws. There is also another subsidiary legislation named as by-laws. According to Article 124 of the Turkish Constitution, the Prime Ministry, the ministries and public corporate bodies may issue by-laws with the purpose of ensuring the enforcement of laws and regulations related to their particular fields of operation provided that they are in conformity with such laws and regulations. As by-laws require a more simple procedure, they are frequently used in practice.

For the purpose of effective implementation and enforcement of the Wreck Removal Convention, a by-law will be drafted as a part of this study. As explained above under section 4.2, both the Ministry of Environment, Undersecretariat for Maritime Affairs and the Coast Guard Command have duties as regards to protection of marine environment; the latter two institutions also have duties as regards to safety of navigation. Thus, the by-law to be drafted will be based on the decree ratifying the Wreck Removal Convention, Code on Environment, Decree Law on the Establishment and Duties of the

³⁴ Article 90 of the Constitution of the Republic of Turkey.

Undersecretariat for Maritime Affairs and Law on Coast Guard Command. The duties and competences of these institutions for the purposes of wreck removal operations will be coordinated by the said draft by-law.

During the drafting process, provisions of the “By-Law of the Prime Ministry on Procedures and Principles for Legislation Drafting”³⁵ will also be followed. The said by-law prescribes the procedures and principles of preparing a legal draft and Prime Ministry, Ministries and other Public Institutions are required to prepare the draft laws, draft decree laws, draft regulations and draft by-laws in accordance with the technical procedures set by the said by-law.

³⁵ By Law No: 26083 Date: 17/12/2006.

DRAFT LEGISLATION

PART 1: LAW CONCERNING THE APPROVAL OF THE RATIFICATION OF THE NAIROBI INTERNATIONAL CONVENTION ON THE REMOVAL OF WRECKS, 2007

**LAW CONCERNING THE APPROVAL OF THE RATIFICATION OF THE NAIROBI INTERNATIONAL
CONVENTION ON THE REMOVAL OF WRECKS, 2007**

No:

Date:

**Article 1
Ratification**

- (1) The ratification together with the attached reservation and declaration, and extension of its application to the Turkish territory, including territorial waters of the Nairobi International Convention on the Removal of Wrecks, which was adopted by the International Conference on the Removal of Wrecks in 2007, and signed on behalf of the Republic of Turkey on .../.../2010, has been approved.

**Article 2
Publication**

- (1) This law shall enter into force on the date of its publication.

**Article 3
Enforcement**

- (1) The provisions of this law shall be enforced by the Council of Ministers.

**PART 2: DECREE CONCERNING THE RATIFICATION OF THE NAIROBI INTERNATIONAL
CONVENTION ON THE REMOVAL OF WRECKS, 2007**

**DECREE CONCERNING THE RATIFICATION OF THE NAIROBI INTERNATIONAL CONVENTION
ON THE REMOVAL OF WRECKS, 2007**

Decree No: /.....

Date: .../.../2010

The Nairobi International Convention on the Removal of Wrecks which was adopted by the International Conference on the Removal of Wrecks in 2007, and signed on .../.../2010 on behalf of the Republic of Turkey and approved by the Turkish Grand National Assembly on .../.../2010 is hereby ratified together with the attached reservation and declaration in accordance with Article 3 of the Law No: 244, dated 31.05.1963.

The extension of the application of the Nairobi International Convention on the Removal of Wrecks, in accordance with Article 3 (2), to wrecks located within the Turkish territory, including territorial waters is hereby authorized.

Republic of Turkey

Prime Minister

List of Ministers

**PART 3: TEXT OF THE RESERVATION AND DECLARATION MADE BY THE REPUBLIC OF
TURKEY UPON RATIFICATION OF THE NAIROBI INTERNATIONAL CONVENTION ON THE
REMOVAL OF WRECKS, 2007**

**TEXT OF THE RESERVATION AND DECLARATION MADE BY THE REPUBLIC OF TURKEY UPON
RATIFICATION OF THE NAIROBI INTERNATIONAL CONVENTION ON THE REMOVAL OF
WRECKS, 2007**

A) Text of Reservation:

Turkey, as a country which is not a Party and which is a persistent objector to particular provisions of the 1982 United Nations Convention on the Law of the Sea (UNCLOS), does not accept the binding settlement of dispute mechanism established in the Article 15 of the Nairobi International Convention on the Removal of Wrecks with reference to UNCLOS. Turkey, undertakes to resolve any dispute regarding to interpretation or application of the Convention through negotiations or other means that will be agreed by both Parties such as enquiries, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements and other peaceful means.

B) Text of Declarations:

1. Turkey considers that Article 1 (1) of the International Convention on the Removal of Wrecks, which stipulates enlargement of the geographical scope of the Convention to 200 nautical miles in the case where the EEZ has not been established, is not in conformity with international law and it defines those maritime areas as high seas whereby no country has jurisdiction and sovereign rights according to international law. The Republic of Turkey, however, taking into consideration the objectives of this Convention, reserves its rights deriving from the Convention. Within this context and in accordance with Article 2 (4) of the Convention, the Republic of Turkey hereby declares that in maritime areas where there has been no delimitation agreement between opposite or adjacent coastal States, the exercise of authority or any claim thereof under this Convention by any coastal State Party to this Convention, creates no rights or obligations with regard to delimitation of maritime areas, nor does it create a precedent for the future agreements between those States concerning the delimitation of maritime areas under national jurisdiction.

2. The ratification by Turkey of the Nairobi International Convention on the Removal of Wrecks, which contains references to the 1982 United Nations Convention on the Law of the Sea (UNCLOS), neither prejudices, nor affects Turkey's position vis a vis UNCLOS, as a persistent objector to particular provisions of the aforesaid Convention.

PART 4: LAW AMENDING THE LAW ON PORTS

THE LAW AMENDING THE LAW ON PORTS

No:

Date:

Article 1 Amendment

- (1) Article 7 of the Law on Ports, Law No: 618, Date: 14/4/1925 is hereby repealed.

Article 2 Publication

- (1) This Law shall enter into force on the date of its publication.

Article 3 Enforcement

- (1) The provisions of this Law shall be enforced by the Council of Ministers.

PART 5: BY-LAW ON THE REMOVAL OF WRECKS

BY-LAW ON THE REMOVAL OF WRECKS

No:

Date of Approval:

PART I

General Provisions

Article 1

Purpose

(1) The purpose of this By-Law is, taking into account rights and obligations emanating from international law and the domestic law on ensuring marine safety and protection of marine environment to establish;

- a) the rules and procedures to ensure the prompt and effective removal of wrecks that pose a hazard to navigation and marine environment,
- b) the criteria for determining the hazard posed by wrecks,
- c) the rules governing responsibility and liability for removal of hazardous wrecks and payment of compensation for the costs therein involved,
- d) the rules for the performance of international obligations regarding wreck removal,
- e) the powers, duties and responsibilities of the persons and institutions involved in the removal of hazardous wrecks.

Article 2
Legal Basis

- (1) This By-Law has been issued on the basis of the provisions of the Decree on the Establishment and Duties of the Undersecretariat for Maritime Affairs No: 491, Environment Law No: 2872, Law on Coast Guard Command No: 2692, Port State Control Regulation No: 26120 and the Decree No:.... Concerning the Ratification of the Nairobi International Convention on the Removal of Wrecks, 2007.

Article 3
Scope

- (1) This By-Law shall be applicable,
- (a) within the Turkish territory including Turkish territorial waters.
 - (b) within the exclusive economic zone of Turkey established in accordance with international law,
 - (c) where an exclusive economic zone is not established, in the high sea areas beyond and adjacent to Turkish territorial waters, depending on the decision given in consultation with the Ministry of Foreign Affairs and other relevant public institutions, in accordance with international law and solely for the purposes of wreck removal.
- (2) This By-Law shall not apply to any warship, naval auxiliary or other ship owned or operated by a State and used, for the time being, only on government non-commercial service.
- (3) When this By-Law applies to wrecks within the Turkish territory including Turkish territorial waters,
- (a) Article 10 and article 12 paragraphs 2, 4, 5 of this By-Law shall not be applicable, and
 - (b) Article 11, paragraph 3 shall read as follows:

The registered owner, in accordance with Turkish Law, may contract with any salvor or other person to remove the wreck determined to constitute a hazard on behalf of the owner. The rights of the General Management of Coastal Safety and Salvage Administrations regarding salvage and assistance are reserved. Before such removal commences, the Undersecretariat for Maritime Affairs may lay down conditions for such removal only 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.

(c) This By-Law shall not prejudice the rights and obligations of the Undersecretariat to take measures in relation to wrecks located in Turkish territory, including the territorial sea other than locating, marking and removing them in accordance with this By-Law. In this regard, the provisions of articles 14, 15 and 16 of this By-Law shall not apply to any measures taken other than those referred to in articles 8, 9, 11 and 12 of this By-Law, in relation to wrecks located within Turkish territory, including the territorial sea.

Article 4

Definitions

For the purpose of this By-Law;

- (1) "Ship" means a seagoing vessel of any type whatsoever and includes hydrofoil boats, air-cushion vehicles, submersibles, floating craft and floating platforms, except when such platforms are on location engaged in the exploration, exploitation or production of seabed mineral resources.
- (2) "Maritime casualty" means a collision of ships, stranding or other incident of navigation, or other occurrence on board a ship or external to it, resulting in material damage or imminent threat of material damage to a ship or its cargo.
- (3) "Wreck", following upon a maritime casualty, means:
 - (a) a sunken or stranded ship; or

- (b) any part of a sunken or stranded ship, including any object that is or has been on board such a ship; or
 - (c) any object that is lost at sea from a ship and that is stranded, sunken or adrift at sea; or
 - (d) a ship that is about, or may reasonably be expected, to sink or to strand, where effective measures to assist the ship or any property in danger are not already being taken.

- (4) “Hazard” means any condition or threat that:
 - (a) poses a danger or impediment to navigation; or
 - (b) may reasonably be expected to result in major harmful consequences to the marine environment, or damage to the coastline or related interests of Turkey or other relevant States.

- (5) “Related interests” means the interests of Turkey or other relevant States directly affected or threatened by a wreck, such as:
 - (a) maritime coastal, port and estuarine activities, including fisheries activities, constituting an essential means of livelihood of the persons concerned;
 - (b) tourist attractions and other economic interests of Turkey or other relevant State;
 - (c) the health of the coastal population and the well being of the area concerned, including conservation of marine living resources and of wildlife; and
 - (d) offshore and underwater infrastructure.

- (6) “Removal” means any form of prevention, mitigation or elimination of the hazard created by a wreck. “Remove”, “removed” and “removing” shall be construed accordingly.

- (7) “Registered owner” means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship at the time of the maritime casualty. However, in the case of a ship owned by a State and operated by a company which in that State is registered as the operator of the ship, “registered owner” shall mean such company.

- (8) “Operator of the ship” means the owner of the ship or any other organization or person such as the manager, or the bareboat charterer, who has assumed the responsibility for operation of

- the ship from the owner of the ship and who, on assuming such responsibility, has agreed to take over all duties and responsibilities established under the International Safety Management Code Regulation No: 26468.
- (9) “State of the ship’s registry” means, in relation to a registered ship, the State of registration of the ship and, in relation to an unregistered ship, the State whose flag the ship is entitled to fly.
- (10) “Organization” means the International Maritime Organization.
- (11) “Undersecretariat” means the Undersecretariat for Maritime Affairs.
- (12) “Wreck Removal Convention” means the Nairobi International Convention on the Removal of Wrecks, 2007.
- (13) “Recognized organization” means a body recognized in accordance with the provisions of Regulation on the Selection and Authorization of Classification Societies Acting on Behalf of the flag State for Turkish Flagged Ships.
- (14) “Wreck Removal Insurance Certificate” means the certificate issued to ships by the Undersecretariat or by a recognized organization acting on its behalf, in conformity with the provisions of this By-Law.

Article 5

Powers, duties and responsibilities of relevant public institutions

- (1) For the purposes of implementation of this By-Law, the Undersecretariat has executive powers, duties and responsibilities.
- (2) However, when a wreck poses hazard to the environment, the powers, duties and responsibilities regarding drawing up of emergency response plans, determination of harms to the environment and rehabilitation of areas affected are vested in the Ministry of Environment and Forestry.

- (3) The powers, duties and responsibilities regarding public security and police duties are vested in the Coast Guard Command for the purposes of implementation of this By-Law.

PART II

Reporting, locating and marking of wrecks

Article 6

Reporting wrecks

- (1) When a ship flying the Turkish Flag has been involved in a maritime casualty resulting in a wreck within the maritime areas where an other State is competent for wreck removal purposes in accordance with international law, the master and the operator of that ship shall report to the relevant State without delay.
- (2) When a ship flying the flag of Turkey or of an other State has been involved in a maritime casualty resulting in a wreck within the application area of this By-Law stipulated in article 3 paragraph 1, the master and the operator of that ship shall report to the Undersecretariat without delay.
- (3) To the extent that the reporting obligation under paragraph (1) and (2) has been fulfilled either by the master or the operator of the ship, the other shall not be obliged to report.
- (4) Such reports shall provide the name and the principal place of business of the registered owner and all the relevant information necessary to determine whether the wreck poses a hazard in accordance with Article 7, including:
- (a) the precise location of the wreck;
 - (b) the type, size and construction of the wreck;
 - (c) the nature of the damage to, and the condition of, the wreck;
 - (d) the nature and quantity of the cargo, in particular any hazardous and noxious substances;
- and

(e) the amount and types of oil, including bunker oil and lubricating oil, on board.

Article 7

Determination of hazard

- (1) When determining whether a wreck poses a hazard, the following criterias should be taken into account by the Undersecretariat, where necessary together with the Ministry of Environment:
- (a) the type, size and construction of the wreck;
 - (b) depth of the water in the area;
 - (c) tidal range and currents in the area;
 - (d) particularly sensitive sea areas identified and, as appropriate, designated in accordance with guidelines adopted by the Organization, or a clearly defined area of the exclusive economic zone where special mandatory measures have been adopted.
 - (e) proximity of shipping routes or established traffic lanes;
 - (f) traffic density and frequency;
 - (g) type of traffic;
 - (h) nature and quantity of the wreck's cargo, the amount and types of oil (such as bunker oil and lubricating oil) on board the wreck and, in particular, the damage likely to result should the cargo or oil be released into the marine environment;
 - (i) vulnerability of port facilities;
 - (j) prevailing meteorological and hydrographical conditions;
 - (k) submarine topography of the area;
 - (l) height of the wreck above or below the surface of the water at lowest astronomical tide;
 - (m) acoustic and magnetic profiles of the wreck;
 - (n) proximity of offshore installations, pipelines, telecommunications cables and similar structures; and
 - (o) any other circumstances that might necessitate the removal of the wreck.

Article 8
Locating wrecks

- (1) Upon becoming aware of a wreck within the application area of this By-Law, the Undersecretariat shall use all practicable means, including the good offices of States and organizations, to warn mariners and the States concerned of the nature and location of the wreck as a matter of urgency.
- (2) If the Undersecretariat has reason to believe that a wreck poses a hazard, it shall ensure that all practicable steps are taken to establish the precise location of the wreck.

Article 9
Marking of wrecks

- (1) If the Undersecretariat, where necessary together with the Ministry of Environment, determines that a wreck constitutes a hazard, the Undersecretariat shall ensure that all reasonable steps are taken to mark the wreck.
- (2) In marking the wreck, all practicable steps shall be taken to ensure that the markings conform to the internationally accepted system of buoyage in use in the area where the wreck is located.
- (3) The Undersecretariat shall promulgate the particulars of the marking of the wreck by use of all appropriate means, including the appropriate nautical publications.

PART III
Removal of wrecks

Article 10
Informing and consultations

- (1) If the Undersecretariat, where necessary together with the Ministry of Environment, determines that a wreck constitutes a hazard, the Undersecretariat, upon advice of the Ministry of Foreign Affairs, shall immediately:
 - (a) inform the State of the ship's registry and the registered owner; and
 - (b) proceed to consult the State of the ship's registry and other States affected by the wreck regarding measures to be taken in relation to the wreck.

Article 11
Duty to remove the wreck

- (1) The registered owner shall remove a wreck determined to constitute a hazard.
- (2) When a wreck has been determined to constitute a hazard, the registered owner, or other interested party, shall provide the Undersecretariat with evidence of insurance or other financial security as required by article 16.
- (3) The registered owner may contract with any salvor or other person to remove the wreck determined to constitute a hazard on behalf of the owner.

Article 12
Powers of the Undersecretariat as regards to removal

- (1) Before removal commences, the Undersecretariat where necessary together with the Ministry of Environment, may lay down conditions for such removal 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.
- (2) When the removal referred to in article 11 paragraphs (1) and (3) commenced, the Undersecretariat may intervene in the removal to the extent necessary to ensure that the removal proceeds effectively in a manner that is consistent with considerations of safety and protection of the marine environment.
 - (3) The Undersecretariat shall:
 - (a) set a reasonable deadline within which the registered owner must remove the wreck, taking into account the nature of the hazard determined in accordance with article 7;
 - (b) inform the registered owner in writing of the deadline it has set and specify that, if the registered owner does not remove the wreck within that deadline, it may remove the wreck at the registered owner's expense; and
 - (c) inform the registered owner in writing that it intends to intervene immediately in circumstances where the hazard becomes particularly severe.
 - (4) If the registered owner does not remove the wreck within the deadline set in accordance with paragraph 3 (a), or the registered owner cannot be contacted, the Undersecretariat will remove the wreck by the most practical and expeditious means available, consistent with considerations of safety and protection of the marine environment.
 - (5) In circumstances where immediate action is required and the Undersecretariat has informed the State of the ship's registry and the registered owner accordingly, it will remove the wreck by the most practical and expeditious means available, consistent with considerations of safety and protection of the marine environment.

Article 13

Turkish Flagged Ships involved in maritime casualty resulting in wreck

- (1) When a ship flying Turkish Flag has been involved in a maritime casualty resulting in a wreck within the maritime areas where an other State is competent for wreck removal purposes in accordance with international law, the registered owner of that ship shall be under the obligation to remove the wreck determined to constitute a hazard and provide the competent authority of the relevant State with evidence of insurance or other financial security referred to in article 16.
- (2) In such cases as defined in paragraph (1), where a Turkish Flagged ship becomes a wreck, the Undersecretariat is entitled to give its consent to the competent institution of the relevant State to act in the manner stipulated in Article 12, where required.

PART IV

Costs of removal of wrecks

Article 14

Liability of the owner

- (1) Subject to article 15, the registered owner shall be liable for the costs of locating, marking and removing the wreck under articles 8, 9, 11 and 12, respectively, unless the registered owner proves that the maritime casualty that caused the wreck:
 - (a) resulted from an act of war, hostilities, civil war, insurrection, or a natural phenomenon of an exceptional, inevitable and irresistible character;
 - (b) was wholly caused by an act or omission done with intent to cause damage by a third party;
 - (c) was wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function.

- (2) Nothing in this By-Law shall affect the right of the registered owner to limit liability according to Decree No: 8/495 Concerning the Ratification of the Convention on Limitation of Liability for Maritime Claims, 1976.
- (3) No claim for the costs referred to in paragraph 1 may be made against the registered owner otherwise than in accordance with the provisions of this By-Law and the Wreck Removal Convention to which Turkey is a Party. However, this provision shall not prejudice the rights and obligations in relation to wrecks located in Turkish territory, including the territorial sea, other than locating, marking and removing in accordance with the provisions of this By-Law.
- (4) Nothing in this article shall prejudice any right of recourse against third parties.

Article 15

Exceptions to liability

- (1) The registered owner shall not be liable under this By-Law for the costs mentioned in article 14, paragraph 1 if, and to the extent that, liability for such costs would be in conflict with:
 - (a) the International Convention on Civil Liability for Oil Pollution Damage, 1969, as amended;
 - (b) the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996, as amended;
 - (c) the Convention on Third Party Liability in the Field of Nuclear Energy, 1960, as amended, or the Vienna Convention on Civil Liability for Nuclear Damage, 1963, as amended; or national law governing or prohibiting limitation of liability for nuclear damage; or
 - (d) the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001, as amended;provided that the relevant convention is applicable and in force in Turkey.

- (2) To the extent that measures under this Convention are considered to be salvage under Turkish Law or an international convention to which Turkey is a Party, Turkish Law and provisions of that convention shall apply to questions of the remuneration or compensation payable to salvors to the exclusion of the rules of this By-Law.

Article 16

Compulsory insurance or other financial security

- (1) The registered owner of a ship of 300 gross tonnage and above and flying the flag of Turkey shall maintain insurance or other financial security, such as a guarantee of a bank or similar institution, to cover liability under this By-Law, in an amount equal to the limits of Convention on Limitation of Liability for Maritime Claims, 1976, which is ratified by Turkey by Decree No: 8/495.
- (2) After determining that the requirements of paragraph 1 have been complied with, the Undersecretariat shall issue to each ship of 300 gross tonnage and above, registered to the Turkish Ships Registry or the Turkish International Ship Registry, a certificate attesting that insurance or other financial security is in force, in accordance with the provisions of this By-Law and the Wreck Removal Convention. The Undersecretariat may also issue or certify such a certificate for a ship of 300 gross tonnage and above not registered in a State Party to the Wreck Removal Convention. This compulsory insurance certificate shall be in the form of the model set out in the annex to this By-Law, and shall contain the following particulars:
- (a) name of the ship, distinctive number or letters and port of registry;
 - (b) gross tonnage of the ship;
 - (c) name and principal place of business of the registered owner;
 - (d) IMO ship identification number;
 - (e) type and duration of security;
 - (f) name and principal place of business of insurer or other person giving security and, where appropriate, place of business where the insurance or security is established; and
 - (g) period of validity of the certificate, which shall not be longer than the period of validity of the insurance or other security.

(3) (a) The Undersecretariat may authorize a recognized organization to issue the certificate referred to in paragraph 2, in accordance with the provisions of the “Regulation on the Selection and Authorization of Classification Societies Acting on Behalf of the Flag State for Turkish Flagged Ships”. Such recognized organization shall inform the Undersecretariat of the issue of each certificate. The completeness and accuracy of such certificates issued by the recognized organisations shall be controlled and guaranteed by the Undersecretariat.

(b) The Undersecretariat shall notify the Secretary-General of IMO of:

(i) the specific responsibilities and conditions of the authority delegated to an recognized organization;

(ii) the withdrawal of such authority; and

(iii) the date from which such authority or withdrawal of such authority takes effect.

An authority delegated shall not take effect prior to three months from the date on which notification to that effect was given to the Secretary-General of IMO.

(c) The recognized organization authorized to issue certificates in accordance with this paragraph shall also have the authority to withdraw these certificates if the conditions under which they have been issued are not maintained. In all cases the recognized organization shall report such withdrawal to the Undersecretariat without delay.

(4) The certificates shall be issued in Turkish and shall include a translation into English.

(5) The certificate shall be carried on board the ship and a copy shall be deposited with the Undersecretariat.

(6) An insurance or other financial security shall not satisfy the requirements of this article if it can cease for reasons other than the expiry of the period of validity of the insurance or security specified in the certificate under paragraph 2 before three months have elapsed from the date on which notice of its termination is given to the Undersecretariat unless the certificate has been surrendered to the Undersecretariat or a new certificate has been issued within the said period. The foregoing provisions shall similarly apply to any modification, which results in the insurance or security no longer satisfying the requirements of this article.

- (7) The Undersecretariat shall, subject to the provisions of this article and having regard to any guidelines adopted by the Organization on the financial responsibility of the registered owners, determine and make public the conditions of issue and validity of the certificate.
- (8) Nothing in this By-Law prevents the Undersecretariat from relying on information obtained from other States or the Organization or other international organizations relating to the financial standing of providers of insurance or financial security for the purposes of this By-Law. However, reliance on such information does not change responsibilities arising from issuing the certificate required by paragraph 2.
- (9) Certificates issued and certified under the authority of an other State Party to the Wreck Removal Convention shall be accepted by Turkey for the purposes of this By-Law and shall be regarded as having the same force as certificates issued by the Undersecretariat, even if issued or certified in respect of a ship not registered in a State Party to the Wreck Removal Convention. However, the Undersecretariat may at any time request consultation with the issuing or certifying authority of the State Party to the Wreck Removal Convention, should it believe that the insurer or guarantor named in the certificate is not financially capable of meeting the obligations imposed by this By-Law and the Wreck Removal Convention.
- (10) Any claim for costs arising under this By-Law may be brought directly against the insurer or other person providing financial security for the registered owner's liability. In such a case the defendant may invoke the defences (other than the bankruptcy or winding up of the registered owner) that the registered owner would have been entitled to invoke, including limitation of liability under any applicable national or international regime. Furthermore, even if the registered owner is not entitled to limit liability, the defendant may limit liability to an amount equal to the amount of the insurance or other financial security required to be maintained in accordance with paragraph 1. Moreover, the defendant may invoke the defence that the maritime casualty was caused by the wilful misconduct of the registered owner, but the defendant shall not invoke any other defence which the defendant might have been entitled to

- invoke in proceedings brought by the registered owner against the defendant. The defendant shall in any event have the right to require the registered owner to be joined in the proceedings.
- (11) Ships entitled to fly Turkish flag to which this article applies, shall not operate at any time unless a certificate has been issued under paragraphs 2 or 13. Such Ships, which are in non-compliance, shall be fettered and forbidden to navigate until compliance with this By-Law is ensured.
- (12) Any ship of 300 gross tonnage and above, no matter wherever registered, shall not be allowed to enter or leave a port in Turkish territory, or arrive at or leave from an offshore facility in Turkish territorial sea, unless an insurance or other security to the extent required by paragraph 1 is in force; except for force majeure to arise out of life saving services. Ships which do not meet this requirement and already entered in Turkish territorial waters or inland waters shall be forthwith expelled or given a maximum of thirty days to ensure compliance with this By-Law. Ships determined to be in non-compliance at the end of this period shall immediately be expelled out of territorial waters.
- (13) If insurance or other financial security is not maintained in respect of a ship owned by a State Party to the Wreck Removal Convention, the provisions of this article relating thereto shall not be applicable to such ship, but the ship shall carry a certificate issued by the appropriate authority of the State of registry, stating that it is owned by that State and that the ship's liability is covered within the limits prescribed in paragraph 1. Such a certificate shall follow as closely as possible the model prescribed by paragraph 2.

Article 17

Time limits

- (1) Rights to recover costs under this By-Law shall be extinguished unless an action is brought hereunder within three years from the date when the hazard has been determined in accordance with this By-Law. However, in no case shall an action be brought after six years from the date of the maritime casualty that resulted in the wreck. Where the maritime casualty

consists of a series of occurrences, the six-year period shall run from the date of the first occurrence.

Article 18
Entry into Force

- (1) This By-Law shall enter into force on the date of its publication.

Article 19
Enforcement

- (1) The provisions of this By-Law shall be enforced by the Undersecretariat for Maritime Affairs.



ANNEX

**CERTIFICATE OF INSURANCE OR OTHER FINANCIAL SECURITY
IN RESPECT OF LIABILITY FOR THE REMOVAL OF WRECKS**

**Issued in accordance with the provisions of article 12
of the Nairobi International Convention on
the Removal of Wrecks, 2007**

Name of Ship:

Gross tonnage :

Distinctive number or letters:

IMO ShipIdentificationNumber:

Port of Registry:

Name and full address of the principal place of business of the registered owner:

This is to certify that there is in force, in respect of the above-named ship, a policy of insurance or other financial security satisfying the requirements of article 12 of the Nairobi International Convention on the Removal of Wrecks, 2007.

Type of Security

Duration of Security

Name and address of the insurer(s) and/or guarantor(s)

Name

Address

.....

This certificate is valid until

Issued or certified by the Government of The Republic of Turkey, Undersecretariat for Maritime Affairs.

PART 6: NAIROBI INTERNATIONAL CONVENTION ON THE REMOVAL OF WRECKS, 2007

INTERNATIONAL MARITIME ORGANIZATION



IMO

INTERNATIONAL CONFERENCE ON THE
REMOVAL OF WRECKS, 2007
Nairobi, 14-18 May 2007
Agenda item 8

LEG/CONF.16/19
23 May 2007
Original: ENGLISH

**ADOPTION OF THE FINAL ACT AND ANY INSTRUMENTS, RECOMMENDATIONS AND
RESOLUTIONS RESULTING FROM THE WORK OF THE CONFERENCE**

NAIROBI INTERNATIONAL CONVENTION ON THE REMOVAL OF WRECKS, 2007

Text adopted by the Conference

Preamble

THE STATES PARTIES TO THE PRESENT CONVENTION,

CONSCIOUS of the fact that wrecks, if not removed, may pose a hazard to navigation or the marine environment,

CONVINCED of the need to adopt uniform international rules and procedures to ensure the prompt and effective removal of wrecks and payment of compensation for the costs therein involved,

NOTING that many wrecks may be located in States' territory, including the territorial sea,

RECOGNIZING the benefits to be gained through uniformity in legal regimes governing responsibility and liability for removal of hazardous wrecks,

BEARING IN MIND the importance of the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982, and of the customary international law of the sea, and the consequent need to implement the present Convention in accordance with such provisions,

HAVE AGREED as follows:

Article 1

Definitions

For the purposes of this Convention:

1 "Convention area" means the exclusive economic zone of a State Party, established in accordance with international law or, if a State Party has not established such a zone, an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured.

2 "Ship" means a seagoing vessel of any type whatsoever and includes hydrofoil boats, air-cushion vehicles, submersibles, floating craft and floating platforms, except when such platforms are on location engaged in the exploration, exploitation or production of seabed mineral resources.

3 "Maritime casualty" means a collision of ships, stranding or other incident of navigation, or other occurrence on board a ship or external to it, resulting in material damage or imminent threat of material damage to a ship or its cargo.

4 "Wreck", following upon a maritime casualty, means:

(a) a sunken or stranded ship; or

(b) any part of a sunken or stranded ship, including any object that is or has been on board such a ship;
or

(c) any object that is lost at sea from a ship and that is stranded, sunken or adrift at sea; or

(d) a ship that is about, or may reasonably be expected, to sink or to strand, where effective measures to assist the ship or any property in danger are not already being taken.

5 “Hazard” means any condition or threat that:

(a) poses a danger or impediment to navigation; or

(b) may reasonably be expected to result in major harmful consequences to the marine environment, or damage to the coastline or related interests of one or more States.

6 “Related interests” means the interests of a coastal State directly affected or threatened by a wreck, such as:

(a) maritime coastal, port and estuarine activities, including fisheries activities, constituting an essential means of livelihood of the persons concerned;

(b) tourist attractions and other economic interests of the area concerned;

(c) the health of the coastal population and the wellbeing of the area concerned, including conservation of marine living resources and of wildlife; and

(d) offshore and underwater infrastructure.

7 “Removal” means any form of prevention, mitigation or elimination of the hazard created by a wreck. “Remove”, “removed” and “removing” shall be construed accordingly.

8 “Registered owner” means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship at the time of the maritime casualty. However, in the case of a ship owned by a State and operated by a company which in that State is registered as the operator of the ship, “registered owner” shall mean such company.

9 “Operator of the ship” means the owner of the ship or any other organization or person such as the manager, or the bareboat charterer, who has assumed the responsibility for operation of the ship from the owner of the ship and who, on assuming such responsibility, has agreed to take over all duties and responsibilities established under the International Safety Management Code, as amended.

10 “Affected State” means the State in whose Convention area the wreck is located.

11 “State of the ship’s registry” means, in relation to a registered ship, the State of registration of the ship and, in relation to an unregistered ship, the State whose flag the ship is entitled to fly.

12 “Organization” means the International Maritime Organization.

13 “Secretary-General” means the Secretary-General of the Organization.

Article 2

Objectives and general principles

1 A State Party may take measures in accordance with this Convention in relation to the removal of a wreck which poses a hazard in the Convention area.

2 Measures taken by the Affected State in accordance with paragraph 1 shall be proportionate to the hazard.

3 Such measures shall not go beyond what is reasonably necessary to remove a wreck which poses a hazard and shall cease as soon as the wreck has been removed; they shall not unnecessarily interfere with the rights and interests of other States including the State of the ship’s registry, and of any person, physical or corporate, concerned.

4 The application of this Convention within the Convention area shall not entitle a State Party to claim or exercise sovereignty or sovereign rights over any part of the high seas.

5 States Parties shall endeavour to co-operate when the effects of a maritime casualty resulting in a wreck involve a State other than the Affected State.

Article 3

Scope of application

1 Except as otherwise provided in this Convention, this Convention shall apply to wrecks in the Convention area.

2 A State Party may extend the application of this Convention to wrecks located within its territory, including the territorial sea, subject to article 4, paragraph 4. In that case, it shall notify the Secretary-General accordingly, at the time of expressing its consent to be bound by this Convention or at any time thereafter. When a State Party has made a notification to apply this Convention to wrecks located within its territory, including the territorial sea, this is without prejudice to the rights and obligations of that State to take measures in relation to wrecks located in its territory, including the territorial sea, other than locating, marking and removing them in accordance with this Convention. The provisions of articles 10, 11 and 12 of this Convention shall not apply to any measures so taken other than those referred to in articles 7, 8 and 9 of this Convention.

3 When a State Party has made a notification under paragraph 2, the “Convention area” of the Affected State shall include the territory, including the territorial sea, of that State Party.

4 A notification made under paragraph 2 above shall take effect for that State Party, if made before entry into force of this Convention for that State Party, upon entry into force. If notification is made after entry into force of this Convention for that State Party, it shall take effect six months after its receipt by the Secretary-General.

5 A State Party that has made a notification under paragraph 2 may withdraw it at any time by means of a notification of withdrawal to the Secretary-General. Such notification of withdrawal shall take effect six months after its receipt by the Secretary-General, unless the notification specifies a later date.

Article 4

Exclusions

1 This Convention shall not apply to measures taken under the International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969, as amended, or the Protocol relating to Intervention on the High Seas in Cases of Pollution by Substances other than Oil, 1973, as amended.

2 This Convention shall not apply to any warship or other ship owned or operated by a State and used, for the time being, only on Government non-commercial service, unless that State decides otherwise.

3 Where a State Party decides to apply this Convention to its warships or other ships as described in paragraph 2, it shall notify the Secretary-General, thereof, specifying the terms and conditions of such application.

4 (a) When a State Party has made a notification under article 3, paragraph 2, the following provisions of this Convention shall not apply in its territory, including the territorial sea:

(i) Article 2, paragraph 4;

(ii) Article 9, paragraphs 1, 5, 7, 8, 9 and 10; and

(iii) Article 15.

(b) Article 9, paragraph 4, insofar as it applies to the territory, including the territorial sea of a State Party, shall read:

Subject to the national law of the Affected State, the registered owner may contract with any salvor or other person to remove the wreck determined to constitute a hazard on behalf of the owner. Before such removal commences, the Affected State may lay down conditions for such removal only 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.

Article 5

Reporting wrecks

1 A State Party shall require the master and the operator of a ship flying its flag to report to the Affected State without delay when that ship has been involved in a maritime casualty resulting in a wreck. To the extent that the reporting obligation under this article has been fulfilled either by the master or the operator of the ship, the other shall not be obliged to report.

2 Such reports shall provide the name and the principal place of business of the registered owner and all the relevant information necessary for the Affected State to determine whether the wreck poses a hazard in accordance with article 6, including:

- (a) the precise location of the wreck;
- (b) the type, size and construction of the wreck;
- (c) the nature of the damage to, and the condition of, the wreck;
- (d) the nature and quantity of the cargo, in particular any hazardous and noxious substances; and
- (e) the amount and types of oil, including bunker oil and lubricating oil, on board.

Article 6

Determination of hazard

When determining whether a wreck poses a hazard, the following criteria should be taken into account by the Affected State:

- (a) the type, size and construction of the wreck;
- (b) depth of the water in the area;
- (c) tidal range and currents in the area;
- (d) particularly sensitive sea areas identified and, as appropriate, designated in

accordance with guidelines adopted by the Organization, or a clearly defined area of the exclusive economic zone where special mandatory measures have been adopted pursuant to article 211, paragraph 6, of the United Nations Convention on the Law of the Sea, 1982;

(e) proximity of shipping routes or established traffic lanes;

(f) traffic density and frequency;

(g) type of traffic;

(h) nature and quantity of the wreck's cargo, the amount and types of oil (such as bunker oil and lubricating oil) on board the wreck and, in particular, the damage likely to result should the cargo or oil be released into the marine environment;

(i) vulnerability of port facilities;

(j) prevailing meteorological and hydrographical conditions;

(k) submarine topography of the area;

(l) height of the wreck above or below the surface of the water at lowest astronomical tide;

(m) acoustic and magnetic profiles of the wreck;

(n) proximity of offshore installations, pipelines, telecommunications cables and similar structures; and

(o) any other circumstances that might necessitate the removal of the wreck.

Article 7

Locating wrecks

1 Upon becoming aware of a wreck, the Affected State shall use all practicable means, including the good offices of States and organizations, to warn mariners and the States concerned of the nature and location of the wreck as a matter of urgency.

2 If the Affected State has reason to believe that a wreck poses a hazard, it shall ensure that all practicable steps are taken to establish the precise location of the wreck.

Article 8

Marking of wrecks

1 If the Affected State determines that a wreck constitutes a hazard, that State shall ensure that all reasonable steps are taken to mark the wreck.

2 In marking the wreck, all practicable steps shall be taken to ensure that the markings conform to the internationally accepted system of buoyage in use in the area where the wreck is located.

3 The Affected State shall promulgate the particulars of the marking of the wreck by use of all appropriate means, including the appropriate nautical publications.

Article 9

Measures to facilitate the removal of wrecks

1 If the Affected State determines that a wreck constitutes a hazard, that State shall immediately:

(a) inform the State of the ship's registry and the registered owner; and

(b) proceed to consult the State of the ship's registry and other States affected by the wreck regarding measures to be taken in relation to the wreck.

2 The registered owner shall remove a wreck determined to constitute a hazard.

3 When a wreck has been determined to constitute a hazard, the registered owner, or other interested party, shall provide the competent authority of the Affected State with evidence of insurance or other financial security as required by article 12.

4 The registered owner may contract with any salvor or other person to remove the wreck determined to constitute a hazard on behalf of the owner. Before such removal commences, the Affected State may lay down conditions for such removal only 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.

5 When the removal referred to in paragraphs 2 and 4 has commenced, the Affected State may intervene in the removal only to the extent necessary to ensure that the removal proceeds effectively in a manner that is consistent with considerations of safety and protection of the marine environment.

6 The Affected State shall:

(a) set a reasonable deadline within which the registered owner must remove the wreck, taking into account the nature of the hazard determined in accordance with article 6;

(b) inform the registered owner in writing of the deadline it has set and specify that, if the registered owner does not remove the wreck within that deadline, it may remove the wreck at the registered owner's expense; and

(c) inform the registered owner in writing that it intends to intervene immediately in circumstances where the hazard becomes particularly severe.

7 If the registered owner does not remove the wreck within the deadline set in accordance with paragraph 6(a), or the registered owner cannot be contacted, the Affected State may remove the wreck by the most practical and expeditious means available, consistent with considerations of safety and protection of the marine environment.

8 In circumstances where immediate action is required and the Affected State has informed the State of the ship's registry and the registered owner accordingly, it may remove the wreck by the most practical and expeditious means available, consistent with considerations of safety and protection of the marine environment.

9 States Parties shall take appropriate measures under their national law to ensure that their registered owners comply with paragraphs 2 and 3.

10 States Parties give their consent to the Affected State to act under paragraphs 4 to 8, where required.

11 The information referred to in this article shall be provided by the Affected State to the registered owner identified in the reports referred to in article 5, paragraph 2.

Article 10

Liability of the owner

1 Subject to article 11, the registered owner shall be liable for the costs of locating, marking and removing the wreck under articles 7, 8 and 9, respectively, unless the registered owner proves that the maritime casualty that caused the wreck:

(a) resulted from an act of war, hostilities, civil war, insurrection, or a natural phenomenon of an exceptional, inevitable and irresistible character;

(b) was wholly caused by an act or omission done with intent to cause damage by a third party; or

(c) was wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function.

2 Nothing in this Convention shall affect the right of the registered owner to limit liability under any applicable national or international regime, such as the Convention on Limitation of Liability for Maritime Claims, 1976, as amended.

3 No claim for the costs referred to in paragraph 1 may be made against the registered owner otherwise than in accordance with the provisions of this Convention. This is without prejudice to the rights and obligations of a State Party that has made a notification under article 3, paragraph 2, in relation to wrecks located in its territory, including the territorial sea, other than locating, marking and removing in accordance with this Convention.

4 Nothing in this article shall prejudice any right of recourse against third parties.

Article 11

Exceptions to liability

1 The registered owner shall not be liable under this Convention for the costs mentioned in article 10, paragraph 1 if, and to the extent that, liability for such costs would be in conflict with:

(a) the International Convention on Civil Liability for Oil Pollution Damage, 1969, as amended;

(b) the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996, as amended;

(c) the Convention on Third Party Liability in the Field of Nuclear Energy, 1960, as amended, or the Vienna Convention on Civil Liability for Nuclear Damage, 1963, as amended; or national law governing or prohibiting limitation of liability for nuclear damage; or

(d) the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001, as amended;

provided that the relevant convention is applicable and in force.

2 To the extent that measures under this Convention are considered to be salvage under applicable national law or an international convention, such law or convention shall apply to questions of the remuneration or compensation payable to salvors to the exclusion of the rules of this Convention.

Article 12

Compulsory insurance or other financial security

1 The registered owner of a ship of 300 gross tonnage and above and flying the flag of a State Party shall be required to maintain insurance or other financial security, such as a guarantee of a bank or similar institution, to cover liability under this Convention in an amount equal to the limits of liability under the applicable national or international limitation regime, but in all cases not exceeding an amount calculated in accordance with article 6(1)(b) of the Convention on Limitation of Liability for Maritime Claims, 1976, as amended.

2 A certificate attesting that insurance or other financial security is in force in accordance with the provisions of this Convention shall be issued to each ship of 300 gross tonnage and above by the appropriate authority of the State of the ship's registry after determining that the requirements of paragraph 1 have been complied with. With respect to a ship registered in a State Party, such certificate shall be issued or certified by the appropriate authority of the State of the ship's registry; with respect to a ship not registered in a State Party it may be issued or certified by the appropriate authority of any State Party. This compulsory insurance certificate shall be in the form of the model set out in the annex to this Convention, and shall contain the following particulars:

- (a) name of the ship, distinctive number or letters and port of registry;
- (b) gross tonnage of the ship;
- (c) name and principal place of business of the registered owner;
- (d) IMO ship identification number;
- (e) type and duration of security;
- (f) name and principal place of business of insurer or other person giving security and, where appropriate, place of business where the insurance or security is established; and
- (g) period of validity of the certificate, which shall not be longer than the period of validity of the insurance or other security.

3 (a) A State Party may authorize either an institution or an organization recognized by it to issue the certificate referred to in paragraph 2. Such institution or organization shall inform that State of the issue of each certificate. In all cases, the State Party shall fully guarantee the completeness and accuracy of the certificate so issued and shall undertake to ensure the necessary arrangements to satisfy this obligation.

(b) A State Party shall notify the Secretary-General of:

- (i) the specific responsibilities and conditions of the authority delegated to an institution or organization recognized by it;
- (ii) the withdrawal of such authority; and
- (iii) the date from which such authority or withdrawal of such authority takes effect.

An authority delegated shall not take effect prior to three months from the date on which notification to that effect was given to the Secretary-General.

(c) The institution or organization authorized to issue certificates in accordance with this paragraph shall, as a minimum, be authorized to withdraw these certificates if the conditions under which they have been issued are not maintained. In all cases the institution or organization shall report such withdrawal to the State on whose behalf the certificate was issued.

4 The certificate shall be in the official language or languages of the issuing State. If the language used is not English, French or Spanish, the text shall include a translation into one of these languages and, where the State so decides, the official language(s) of the State may be omitted.

5 The certificate shall be carried on board the ship and a copy shall be deposited with the authorities who keep the record of the ship's registry or, if the ship is not registered in a State Party, with the authorities issuing or certifying the certificate.

6 An insurance or other financial security shall not satisfy the requirements of this article if it can cease for reasons other than the expiry of the period of validity of the insurance or security specified in the certificate under paragraph 2 before three months have elapsed from the date on which notice of its termination is given to the authorities referred to in paragraph 5 unless the certificate has been surrendered to these authorities or a new certificate has been issued within the said period. The foregoing provisions shall similarly apply to any modification, which results in the insurance or security no longer satisfying the requirements of this article.

7 The State of the ship's registry shall, subject to the provisions of this article and having regard to any guidelines adopted by the Organization on the financial responsibility of the registered owners, determine the conditions of issue and validity of the certificate.

8 Nothing in this Convention shall be construed as preventing a State Party from relying on information obtained from other States or the Organization or other international organizations relating to the financial standing of providers of insurance or financial security for the purposes of this Convention. In such cases, the State Party relying on such information is not relieved of its responsibility as a State issuing the certificate required by paragraph 2.

9 Certificates issued and certified under the authority of a State Party shall be accepted by other States Parties for the purposes of this Convention and shall be regarded by other States Parties as having the same force as certificates issued or certified by them, even if issued or certified in respect of a ship not registered in a State Party. A State Party may at any time request consultation with the issuing or certifying State should it believe that the insurer or guarantor named in the certificate is not financially capable of meeting the obligations imposed by this Convention.

10 Any claim for costs arising under this Convention may be brought directly against the insurer or other person providing financial security for the registered owner's liability. In such a case the defendant may invoke the defences (other than the bankruptcy or winding up of the registered owner) that the registered owner would have been entitled to invoke, including limitation of liability under any applicable national or international regime. Furthermore, even if the registered owner is not entitled to limit liability, the defendant may limit liability to an amount equal to the amount of the insurance or other financial security required to be maintained in accordance with paragraph 1. Moreover, the defendant may invoke the defence that the maritime casualty was caused by the wilful misconduct of the registered owner, but the defendant shall not invoke any other defence which the defendant might have been entitled to invoke in proceedings brought by the registered owner against the defendant. The defendant shall in any event have the right to require the registered owner to be joined in the proceedings.

11 A State Party shall not permit any ship entitled to fly its flag to which this article applies to operate at any time unless a certificate has been issued under paragraphs 2 or 14.

12 Subject to the provisions of this article, each State Party shall ensure, under its national law, that insurance or other security to the extent required by paragraph 1 is in force in respect of any ship of 300 gross tonnage and above, wherever registered, entering or leaving a port in its territory, or arriving at or leaving from an offshore facility in its territorial sea.

13 Notwithstanding the provisions of paragraph 5, a State Party may notify the Secretary-General that, for the purposes of paragraph 12, ships are not required to carry on board or to produce the certificate required by paragraph 2, when entering or leaving a port in its territory, or arriving at or leaving from an offshore facility in its territorial sea, provided that the State Party which issues the certificate required by paragraph 2 has notified the Secretary-General that it maintains records in an electronic format, accessible to all States Parties, attesting the existence of the certificate and enabling States Parties to discharge their obligations under paragraph 12.

14 If insurance or other financial security is not maintained in respect of a ship owned by a State Party, the provisions of this article relating thereto shall not be applicable to such ship, but the ship shall carry a certificate issued by the appropriate authority of the State of registry, stating that it is owned by that

State and that the ship's liability is covered within the limits prescribed in paragraph 1. Such a certificate shall follow as closely as possible the model prescribed by paragraph 2.

Article 13

Time limits

Rights to recover costs under this Convention shall be extinguished unless an action is brought hereunder within three years from the date when the hazard has been determined in accordance with this Convention. However, in no case shall an action be brought after six years from the date of the maritime casualty that resulted in the wreck. Where the maritime casualty consists of a series of occurrences, the six-year period shall run from the date of the first occurrence.

Article 14

Amendment provisions

1 At the request of not less than one-third of States Parties, a conference shall be convened by the Organization for the purpose of revising or amending this Convention.

2 Any consent to be bound by this Convention, expressed after the date of entry into force of an amendment to this Convention, shall be deemed to apply to this Convention, as amended.

Article 15

Settlement of disputes

1 Where a dispute arises between two or more States Parties regarding the interpretation or application of this Convention, they shall seek to resolve their dispute, in the first instance, through negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements or other peaceful means of their choice.

2 If no settlement is possible within a reasonable period of time not exceeding twelve months after one State Party has notified another that a dispute exists between them, the provisions relating to the settlement of disputes set out in Part XV of the United Nations Convention on the Law of the Sea, 1982, shall apply *mutatis mutandis*, whether or not the States party to the dispute are also States Parties to the United Nations Convention on the Law of the Sea, 1982.

3 Any procedure chosen by a State Party to this Convention and to the United Nations Convention on the Law of the Sea, 1982, pursuant to Article 287 of the latter, shall apply to the settlement of disputes under this article, unless that State Party, when ratifying, accepting, approving or acceding to this Convention, or at any time thereafter, chooses another procedure pursuant to Article 287 for the purpose of the settlement of disputes arising out of this Convention.

4 A State Party to this Convention which is not a Party to the United Nations Convention on the Law of the Sea, 1982, when ratifying, accepting, approving or acceding to this Convention or at any time thereafter shall be free to choose, by means of a written declaration, one or more of the means set out in Article 287, paragraph 1, of the United Nations Convention on the Law of the Sea, 1982, for the purpose of settlement of disputes under this Article. Article 287 shall apply to such a declaration, as well as to any dispute to which such State is party, which is not covered by a declaration in force. For the purpose of conciliation and arbitration, in accordance with Annexes V and VII of the United Nations Convention on the Law of the Sea, 1982, such State shall be entitled to nominate conciliators and arbitrators to be included in the lists referred to in Annex V, Article 2, and Annex VII, Article 2, for the settlement of disputes arising out of this Convention.

5 A declaration made under paragraphs 3 and 4 shall be deposited with the Secretary-General, who shall transmit copies thereof to the States Parties.

Article 16

Relationship to other conventions and international agreements

Nothing in this Convention shall prejudice the rights and obligations of any State under the United Nations Convention on the Law of the Sea, 1982, and under the customary international law of the sea.

Article 17

Signature, ratification, acceptance, approval and accession

1 This Convention shall be open for signature at the Headquarters of the Organization from 19 November 2007 until 18 November 2008 and shall thereafter remain open for accession.

(a) States may express their consent to be bound by this Convention by:

(i) signature without reservation as to ratification, acceptance or approval; or

(ii) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or

(iii) accession.

(b) Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.

Article 18

Entry into force

1 This Convention shall enter into force twelve months following the date on which ten States have either signed it without reservation as to ratification, acceptance or approval or have deposited instruments of ratification, acceptance, approval or accession with the Secretary-General.

2 For any State which ratifies, accepts, approves or accedes to this Convention after the conditions in paragraph 1 for entry into force have been met, this Convention shall enter into force three months following the date of deposit by such State of the appropriate instrument, but not before this Convention has entered into force in accordance with paragraph 1.

Article 19

Denunciation

1 This Convention may be denounced by a State Party at any time after the expiry of one year following the date on which this Convention comes into force for that State.

2 Denunciation shall be effected by the deposit of an instrument to that effect with the Secretary-General.

3 A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, following its receipt by the Secretary-General.

Article 20

Depositary

1 This Convention shall be deposited with the Secretary General.

2 The Secretary-General shall:

(a) inform all States which have signed or acceded to this Convention of:

(i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;

(ii) the date of entry into force of this Convention;

(iii) the deposit of any instrument of denunciation of this Convention, together with the date of the deposit and the date on which the denunciation takes effect; and

(iv) other declarations and notifications received pursuant to this Convention;

(b) transmit certified true copies of this Convention to all States that have signed or acceded to this Convention.

3 As soon as this Convention enters into force, a certified true copy of the text shall be transmitted by the Secretary-General to the Secretary-General of the United Nations, for registration and publication in accordance with Article 102 of the Charter of the United Nations.

Article 21

Languages

This Convention is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

DONE IN NAIROBI this eighteenth day of May two thousand and seven.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments for that purpose, have signed this Convention.

ANNEX

CERTIFICATE OF INSURANCE OR OTHER FINANCIAL SECURITY

IN RESPECT OF LIABILITY FOR THE REMOVAL OF WRECKS

Issued in accordance with the provisions of article 12 of the Nairobi International Convention on the
Removal of Wrecks, 2007

Name of Ship:

Gross tonnage:

Distinctive number or letters :

IMO Ship Identification Number:

Port of Registry:

Name and full address of the principal place of business of the registered owner :

This is to certify that there is in force, in respect of the above-named ship, a policy of insurance or other financial security satisfying the requirements of article 12 of the Nairobi International Convention on the Removal of Wrecks, 2007.

Type of Security

Duration of Security

Name and address of the insurer(s) and/or guarantor(s)

Name

Address

.....

This certificate is valid until

Issued or certified by the Government of

.....

(Full designation of the State)

OR

The following text should be used when a State Party avails itself of article 12, paragraph 3:

The present certificate is issued under the authority of the Government of

(full designation of the State) by (name of institution or organization)

At On

(Place) (Date)

.....

(Signature and Title of issuing or certifying official)

Explanatory Notes:

1 If desired, the designation of the State may include a reference to the competent public authority of the country where the Certificate is issued.

2 If the total amount of security has been furnished by more than one source, the amount of each of them should be indicated.

3 If security is furnished in several forms, these should be enumerated.

4 The entry "Duration of Security" must stipulate the date on which such security takes effect.

5 The entry "Address" of the insurer(s) and/or guarantor(s) must indicate the principal place of business of the insurer(s) and/or guarantor(s). If appropriate, the place of business where the insurance or other security is established shall be indicated.