

## **Introduction:**

The aim of this project is to present a roadmap for the implementation of the Nairobi International Convention on the Removal of Wrecks, 2007 (WRC) into the Egyptian legal system.

The choice of the WRC relies on its unique nature; the Convention is filling legal gaps on the international level about the measures that should be taken following the wreck of a ship in the EEZ of a State; no other convention before dealt with the wreck removal internationally.

In addition, the WRC is tackling both aspects of public environmental law and private law; by balancing between protecting the marine environment and the safe navigation, on one hand, and the right to recover the wreck removal expenses on the other hand.

Therefore, this project is divided into three parts; the first part defines the circumstances in which the WRC was created and the necessity of its creation on the international level. It also presents an overview of the provisions of the Convention.

Secondly, the existing Egyptian legal system governing the wreck removal is analyzed, in order to show the need to improve the law governing the wreck removal in the Egyptian territorial waters by adopting the WRC provisions. Then, the benefits of the WRC implementation will be discussed. This part suggests the way to follow in order to reach the ultimate benefit of the WRC regime.

Finally, in virtue of the Egyptian Constitution provisions, a draft incorporation format is proposed.

## Part I: The Nairobi International Convention on the Removal of wrecks

### 1.1 The development of the Convention

In 1967, the oil tanker *Torrey Canyon* sailing under the Liberian flag, hit a reef outside the territorial waters of the UK. The accident caused a massive spill of crude oil polluting the territorial waters of UK and France. In order to avoid more pollution the UK bombed the tanker<sup>1</sup>. The *Torrey Canyon* was the reason behind the international discussion regarding the right of a Coastal State to intervene in the high seas and take the appropriate measures to protect the marine environment and the navigation. This discussion led to the adoption of a number of international instruments including the International Convention on Civil Liability for Oil Pollution Damage (CLC), International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (FUND Conv.) and the international Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties<sup>2</sup>.

In 1994, during the 73<sup>rd</sup> Session of the IMO Legal Committee, Germany, the Netherlands and the United Kingdom presented an initiative about the importance of uniformity of the wreck removal rules in international waters. The three countries argued that their initiative is in conformity with Article 221 of the United Nations Convention on the Law of the Sea, 1982 (UNCLOS), hence submitted the first draft for the WRC jointly to their initiative.<sup>3</sup>

The Netherlands led the drafting process of the WRC. The drafting process faced a challenge in 1999 because the debate at the IMO Legal Committee showed a divergence in States' opinions; some States were considering the WRC as a public environmental convention, other States were just interested by the private law aspects in the Convention regarding the financial security regime. The WRC was finally adopted in 2007 at a diplomatic conference in Nairobi.<sup>4</sup>

---

<sup>1</sup> Nicholas Gaskell & Craig Forrest, *The Wreck Removal Convention 2007*, Lloyd's Maritime and Commercial Quarterly, 2016, 50.

<sup>2</sup> Norman A. Martinez Gutiérrez, *Limitation of Liability in International Maritime Conventions. IMLI Studies in International Maritime Law*, Routledge, 2011, 167.

<sup>3</sup> Patrick Griggs CBE, Law of Wrecks, in David Joseph Attard et al (eds), *The IMLI Manual on International Maritime Law, Volume II: Shipping Law*, OUP, Oxford, 2016, 502.

<sup>4</sup> Nicholas Gaskell & Craig Forrest, *op. cit.*, 52-55.

## 1.2 The Importance of the WRC

The WRC is the result of a long debate on the international level regarding the creation of a unified regime governing the removal of the wrecks situated outside the territorial sea<sup>5</sup>. During this debate, many questions were discussed regarding; the responsibility of States in removing the wrecks outside their territorial waters, the immediate measures that should be taken and how to recover the wreck removal costs.<sup>6</sup> A series of maritime accidents were the reason why the States, the IMO and the shipping industry were concerned about these questions.

In 1984, the French *Mont Louis* vessel carrying uranium hexafluoride collided with a German ferry and sunk outside the Belgian territorial waters. The question was whether the Belgian authorities have the right to remove the dangerous wreck located outside their territorial waters. Belgium ordered the removal of the wreck despite the absence of the legal ground.<sup>7</sup>

The *Tricolor* was a Norwegian vehicle carrier which collided, in December 2002, with the *Kariba* a Bahamian container ship inside the French EEZ. The *Tricolor* wrecked in the English Channel. Since the ship wreck was located in one of the busiest sea lanes in the world, it collided with two other ships. Consequently, the French Government ordered the wreck removal<sup>8</sup>.

Another big accident happened after the adoption of the WRC and before its entry into force. On January 13<sup>th</sup>, 2012, the *Costa Concordia*, an Italian cruise ship in the Mediterranean carrying 3206 passengers and 1023 crew members, went too close to the coastline of *Isola del Giglio* island and hit the rocks<sup>9</sup>. The result was the loss of 32 lives and a ship with “almost three times

---

<sup>5</sup> International Maritime Organization IMO website, <http://www.imo.org/en/About/conventions/listofconventions/pages/nairobi-international-convention-on-the-removal-of-wrecks.aspx>, in 8/12/2017.

<sup>6</sup> Jhonnie M. Kern, Wreck Removal and the Nairobi Convention – a Movement toward a Unified Framework?, *frontiers of marine science*, 25 February 2016. 1-2, available on the following link <https://www.frontiersin.org/articles/10.3389/fmars.2016.00011/full>

<sup>7</sup> Nicholas Grima, *The Benefits or Otherwise of the Nairobi Convention on Wreck Removal*, Research Project, Faculty of Law, University of Malta, April 2016, 12.

<sup>8</sup> The Marine Insight website, *Worst Maritime Accidents: The Tricolor Cargo Ship Accident*, <https://www.marineinsight.com/maritime-history/worst-maritime-accidents-the-tricolor-cargo-ship-accident/>.

<sup>9</sup> BBC news Europe, *Costa Concordia: What happened* (10 February 2015), <http://www.bbc.com/news/world-europe-16563562>.

*the gross tonnage of the Titanic*” wrecked in front of the Italian shores<sup>10</sup>. Because of *the Costa Concordia*’s size and the fear of an oil leak, its wreck removal was a complex operation that took more than two years to finalize. The operation was described as the most costly wreck removal ever<sup>11</sup>.

The previous mentioned accidents and others brought the States’ attention to the rise of the wreck removal costs, the complexity of the operation, its eventual effects on the navigation and the marine environment. Accordingly, the need for the WRC to be implemented to organize the wreck removal operation and to give the Coastal States a sort of guarantee that the removal costs will be covered. Hence, following the Danish ratification, the WRC entered into force on 14 April 2015<sup>12</sup>.

---

<sup>10</sup> Megan Gold, Remove it or Lose it: Wrecking and Removing in the United States, *Journal of Maritime Law & Commerce*, No. 1 .January, 2015. 75.

<sup>11</sup>The international salvage union website, <http://www.marine-salvage.com/overview/wreck-removal/>.

<sup>12</sup> IMO website, Nairobi International Convention on the Removal of Wrecks, <http://www.imo.org/en/About/conventions/listofconventions/pages/nairobi-international-convention-on-the-removal-of-wrecks.aspx>.

### **1.3 An overview of the Convention**

An overview of the Convention will examine its scope of application; substantially, geographically and temporally. The rights and the obligations of both the States parties and the shipowners under the WRC will be presented. Finally, the direct action regime contained in this Convention will be analyzed.

#### **1.3.1 The Convention's scope of application**

The scope of application of the WRC is determined by Article 3 of the Convention which stipulates that: “except as otherwise provided in this Convention, this Convention shall apply to wrecks in the Convention area”. Accordingly, it is a must to refer to article 1 of the Convention in order to clarify the interpretation of the terms used by the Convention; this article contains many definitions including the definition of “Convention area” and “wreck”.

The interpretation of the term wreck is subject of debate. Therefore, the aim of article 1(4) is not to present a definition for the term wreck but to determine what kind of wreck is covered by the WRC. The article sets a first condition for a wreck to be covered by the convention regime; the wreck should be the result of a maritime casualty. Then, the article enumerates the cases of wrecks falling within the scope of the Convention. It is essential to notice that “any object that is lost at sea from a ship and that is stranded, sunken or adrift at sea” is also considered as a wreck under the Convention<sup>13</sup>.

A complete understanding of the term wreck cannot be done without referring to the other definitions provided by article 1. The definition of “hazard” by paragraph 5 of the same article is necessary to clarify the rest of the conditions that a wreck should fulfill in order to be subject to the WRC. Hence, a wreck may constitute a hazard if it “poses a danger or impediment to

---

<sup>13</sup> Nicholas Gaskell & Craig Forrest, *op. cit.*, 60-61.

navigation; or may reasonably be expected to result in major harmful consequences to the marine environment, or damage to the coastline or related of one or more States”.

Moreover, the geographical zone for the application of the WRC is “the exclusive economic zone of a State Party, established in accordance with international law”, the definition of the Convention area includes the case where a State did claim an EEZ by stating that “if a state has not established such a zone, an area beyond and adjacent to the territorial sea of 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”.<sup>14</sup>

A State may choose to expand the geographical zone of the Convention application, by applying its provisions on wrecks located within its territorial sea.<sup>15</sup> This choice is called the opt-in clause since the States are not automatically obliged to apply the Convention provisions in their territorial sea once they became parties to the Convention. The States have to notify the IMO Secretary-General of their intention to extend the application of the Convention to their territory including the territorial sea.<sup>16</sup>

The entry into force of the Convention was “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”.<sup>17</sup> As was mentioned above, the WRC entered into force on 14 April 2015 following its ratification by Denmark. Nothing in the Convention stipulates that any of its provisions can be applied on wrecks before the date of its entry into force.<sup>18</sup>

---

<sup>14</sup> Article 1 of the WRC.

<sup>15</sup> Article 3 (2) of the WRC.

<sup>16</sup> Jhonnie M. Kern, *op. cit.*, 3.

<sup>17</sup> Article 18 of the WRC.

<sup>18</sup> Nicholas Gaskell & Craig Forrest, *op. cit.*, 75-76.

### 1.3.2 Locating, marking and removal of wrecks

Articles 5 to 9 from the Convention make up what is called “the removal regime”. These articles describe the process of removing the wrecks starting from reporting to removing. The removal operation detailed by the articles puts obligations on both States and shipowners<sup>19</sup>.

The obligation to report is mentioned by article 5 of the Convention. A ship flying a State party flag is required to report to the Affected State when “that ship has been involved in a maritime casualty resulting in a wreck”. The obligation to report lies on the master or the ship operator because reporting in this case needs to be done fast. This obligation to report does not require that the wreck reported constitutes a hazard. Accordingly, in order to determine whether the wreck constitutes a hazard or not by the Affected State using the criteria of article 6, many details were enumerated by article 5(2) to be included in the report.<sup>20</sup>

Subsequently, once the Affected State is informed of the existence of the wreck, it shall be under the obligation to “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”. In case the wreck is considered to constitute a hazard, the Affected State is under the obligation to “establish the precise location of the wreck”, then it shall take all “the reasonable steps” to mark the wreck.<sup>21</sup>

Article 9 of the Convention organizes the removal operation. When the wreck is considered to constitute a hazard, the Affected State shall in the first place inform the “the State of the ship’s registry and the registered owner”. This article is considered to contain the main obligation in the WRC which is that “The registered owner shall remove a wreck determined to constitute a hazard”. The registered owner may contract with any salvor to remove the wreck and not necessarily a national salvor of the Affected State.<sup>22</sup> The Affected State shall set a deadline for the registered owner in order to finalize the wreck removal, otherwise the Affected State will

---

<sup>19</sup> Sarah Fiona Gahlen, *The Wreck Removal Convention in force*, *Journal of International Maritime Law*, March-April 2015, Vol. 21. 104.

<sup>20</sup> Nicholas Gaskell & Craig Forrest, *op. cit.*, 78-82.

<sup>21</sup> *Ibid.* Articles 7 and 8 of the WRC.

<sup>22</sup> Norman A. Martinez Gutiérrez, *op. cit.*, 171.

remove the wreck on the registered owner expenses and it can intervene in the removal process if it considered that the wreck is becoming more severe.

### **1.3.3 Ownerships' obligations**

The ownerships' obligations are determined by article 11 of the Convention. Under this article "the registered owner shall be liable for the costs of locating, marking and removing the wreck under articles 7, 8 and 9, respectively". The registered owner's liability to bear the costs of locating, marking and removing is strict but not absolute since the article enumerates three grounds that can be used by the registered ownership to be exonerated from liability.<sup>23</sup>

The registered owner can use the defense that the maritime casualty that caused the wreck was the result of an act of war, hostilities, civil war, insurrection, or a natural phenomenon of an exceptional, inevitable and irresistible character. The two other defenses that can be raised are that the maritime casualty was completely caused by an act or omission done with intent to cause damage by a third party; or 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.<sup>24</sup>

### **1.3.4 Limitation of liability**

The registered shipowner can limit its liability "under any applicable national or international regime, such as the Convention on Limitation of Liability for Maritime Claims, 1976, as amended".<sup>25</sup>

Limitation of liability is considered as an exception to the principle that a person who caused damages is liable to compensate it. Limitation of liability means that there is a maximum limit of

---

<sup>23</sup> Nicholas Grima, *op. cit.*, 25.

<sup>24</sup> Article 11 of the WRC.

<sup>25</sup> Article 11(2) of the WRC.



compensation that can be paid by the owner, the aim of this limitation of liability is to encourage the shipping industry.<sup>26</sup>

The WRC does not create a regime for the limitation of liability, it refers to the national law or to the international conventions to which the State is a party; the article mentioned the main convention in this regard which is the Convention on Limitation of Liability for Maritime Claims, 1976, as amended.<sup>27</sup>

It is worth noting that Egypt acceded to the Convention on Limitation of Liability for Maritime Claims, 1976 (LLMC) without making reservation to its provisions, the LLMC Convention is in force in Egypt since 1988. However, Egypt did not ratify the amended Protocol of the LLMC Convention.

### **1.3.5 Compulsory insurance and direct action**

Article 12 of the WRC set the regime of compulsory insurance, “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”. The insurance or the financial security shall cover the liability under this Convention according to the liability limits provided by the national law or the international conventions. However, these liability limits shall not surpass “amount calculated in accordance with article 6(1)(b) of the Convention on Limitation of Liability for Maritime Claims, 1976, as amended”.

Moreover, the State shall issue compulsory insurance certificate to each ship of 300 gross tonnage and above,<sup>28</sup> the Convention contains the certificate form to be issued by the appropriate authority of the State party. It also precised the details that should be listed in the certificate. A State party may delegate the authority of issuing the certificates to an institution or organization.

---

<sup>26</sup> A. H. E. POPP, Q.C, Limitation of Liability in Maritime Law, An Assessment of its viability from a Canadian Perspective, *Journal of Maritime Law and Commerce*, Vol. 24, No. 2, April, 1993, 335., see also the website of the Department of Infrastructure, Regional Development and Cities of the Australian Government, <https://infrastructure.gov.au/maritime/business/liability/limitation.aspx>.

<sup>27</sup> Norman A. Martínez Gutiérrez, *op. cit.*, 174, and Nicholas Gaskell & Craig Forrest, *op. cit.*, 99.

<sup>28</sup> Article 12 (2) of the WRC.

The operation of a ship that is flying a State party flag without carrying the insurance certificate shall not be permitted by the State party.<sup>29</sup>

One of the privileges of the WRC for the State party is that a State or a claimant can directly act against the insurer in order to recover the wreck removal costs.<sup>30</sup> The insurer or the person providing the financial security may raise the defenses which the registered owner would have used. The insurer can limit his liability to the extent of the amount of the insurance or to enjoy the same limitation of liability that the registered owner would be entitled to it under any applicable national or international regime.<sup>31</sup>

### **1.3.6 Exceptions to liability**

According to Article 11 of the Convention: “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”.

---

<sup>29</sup> Article 12 (11) of the WRC.

<sup>30</sup> Article 12 (10) of the WRC.

<sup>31</sup> *Ibid.*

Egypt is only party to the International Convention on Civil Liability for Oil Pollution Damage, 1969, as amended, the Vienna Convention on Civil Liability for Nuclear Damage, 1963, and the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001, as amended.

### **1.3.7 Time-limit**

The Convention sets the period of three years as the time limit to claim any right to recover the wreck removal costs, the three years period starts from the time when the wreck was determined to be a hazard.<sup>32</sup> However, another general time limit is also provided; the affected States cannot in all cases claim the right to recover the wreck removal costs after six years “from the date of the maritime causality”. If the maritime causality is composed from a series of occurrences, the six years’ time limit shall be counted starting from the date of the first occurrence.<sup>33</sup>

### **1.3.8 Dispute settlement**

The dispute settlement mechanism is provided by article 15 of the Convention. Paragraph 1 of the article determines “the negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements or other peaceful means of [the parties] choice” as means to settle any dispute arising between the States parties regarding the application or the interpretation of the Convention.

If the dispute is not settled within a specified time frame, the “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, even if the States parties to the WRC are not parties to the United Nations Convention on the Law of the Sea, 1982.<sup>34</sup>

It is worth to mention that Egypt is party to the United Nations Convention on the Law of the Sea, 1982. As for the choice of the dispute settlement method according to Article 287 from this

---

<sup>32</sup> Article 13 of the WRC.

<sup>33</sup> *Ibid*, Jhonnie M. Kern, *op. cit.*, 9.

<sup>34</sup> Article 15 (2) of the WRC.

Convention, Egypt chose the arbitral procedure for the disputes that may arise with other State, except for the disputes contemplated in article 297 of the Convention.<sup>35</sup> Which means that the arbitral procedure will be the dispute settlement mechanism, in case Egypt does not declare when ratifying, accepting, approving or acceding to the WRC, or at any time thereafter, that it chooses another procedure pursuant to Article 287 for the purpose of the settlement of disputes arising out of the WRC.<sup>36</sup>

---

<sup>35</sup> The declaration made by the Arab Republic of Egypt while ratifying the United Nations Convention on the Law of the Sea, 1982, available on the UN website on the following link:

[http://www.un.org/depts/los/convention\\_agreements/convention\\_declarations.htm](http://www.un.org/depts/los/convention_agreements/convention_declarations.htm)

<sup>36</sup> Article 15 (3) of the WRC.

## Part II : Necessity of the WRC

### 2.1 Current Egyptian legal system

The objective of the presentation of the current Egyptian legal system covering the wreck removal is to compare its provisions with the WRC, in order to imagine the benefits of adopting the WRC, in case Egypt chooses to opt-in according to article 3(2) of the Convention.

The wreck removal operations in Egypt are governed by the *law no 79 of the year 1961* regarding “the marine casualties and the marine wreck”,<sup>37</sup> the law contains only two definitions for the “marine casualty” and the “marine wreck”.<sup>38</sup> The law obliges any person who witnessed, or has been informed of a marine causality, or received a distress signal to report the nearest port authority with all the information relating to the place and the time of the casualty.<sup>39</sup> Once informed, the representatives of the port authority shall move to the place of the causality and take all the necessary measures in order to save the persons and the vessel. The ports authority shall initiate an investigation concerning the marine casualty.<sup>40</sup>

Moreover, if the ship sinks or strands inside the Egyptian territorial water, her shipowner is obliged to remove the ship within of three months, otherwise the ports authority shall remove the ship at the expense of her owner.<sup>41</sup> It is worth noting that the period of three months can be considered as a very long period comparing the consequences that a wreck may have on the environment and the navigation.<sup>42</sup>

In case the shipowner fails to pay the removal expenses within three months starting from the demand date made by the ports authority, the ports authority shall sell the ship or the wreck in an auction.<sup>43</sup>

---

<sup>37</sup> Unofficial translation of the law is attached (Annex I)

<sup>38</sup> Article 1 of the Egyptian law no 79 of the year 1961.

<sup>39</sup> Article 2 & 3 of the Egyptian law no 79 of the year 1961.

<sup>40</sup> Article 5 & 8 of the Egyptian law no 79 of the year 1961.

<sup>41</sup> Article 11 of the Egyptian law no 79 of the year 1961.

<sup>42</sup> Under the WRC regime, article 9 puts the obligation on the Affected State to “set a reasonable deadline within which the registered owner must remove the wreck...”

<sup>43</sup> Article 13 of the Egyptian law no 79 of the year 1961.

The law contains some civil penalties regarding the violation of the obligation to report the marine causality;<sup>44</sup> it is to notice that the financial penalties are outdated.

More comments should be made regarding this law; the scope of application of this law is the Egyptian territorial waters and the shores of the Republic, the law was adopted in the 1961 and was not amended, hence, many definitions are absent and the law did not deal with a number of major cases, such as; the case where the sale of the wreck in auction did not satisfy the expenses of its removal paid by the ports authority, and the case where the wreck is located outside the territorial waters of Egypt and having negative effects on marine environment of the Egyptian shores. Finally, it is also important to note that the environmental dimension was not mentioned in the law.

---

<sup>44</sup> Article 16 of the Egyptian law no 79 of the year 1961.

## 2.2 The benefits of adopting the WRC

Many reasons can be invoked in order to incorporate the WRC into the Egyptian legal system, namely:

- (a) The geographical position and the long shores of Egypt, both on the Mediterranean Sea and the Red Sea, and the existence of the Suez Canal, place Egypt in one of the busiest sea routes in the world. Accordingly, there is a need for a regime capable to organize the wreck removal operations in order to maintain a smooth flow of navigation and to protect the marine environment.
- (b) According to the Egyptian Constitution “...Environment protection is a national duty. The State shall take necessary measures to protect and ensure not to harm the environment...”.<sup>45</sup> Protecting the marine environment is always a priority for Egypt especially that the industry of tourism is partially depending on the marine environment particularly in the Red Sea.
- (c) All the above-mentioned marine accidents starting from *Mont louis* to the *Costa Concordia* show that the wreck removal is getting more sophisticated and expensive. Without an insurance obligation, the affected State may be subject to immense financial losses, mainly, when the wreck sale does not cover the removal costs, or in case the wreck causes the blockage of one of its ports.
- (d) From all the privileges of the wreck removal regime under the WRC, a special attention can be made to the compulsory insurance and the direct action, the compulsory insurance in the convention will play double role; on one hand, the obligation for the vessel to hold an insurance certificate may prevent a defective vessels from entering the Egyptian EEZ, as the insurance certificate will not be issued to a defective vessel because the insurers will not have an interest to insure a vessel that may wreck. On the other hand, the

---

<sup>45</sup> Article 46 of the Egyptian Constitution.

compulsory insurance will compensate the wreck removal costs. In addition, the direct action option will allow the State to act directly against the insurer, instead of chasing the registered shipowner in order to satisfy the wreck removal costs.<sup>46</sup>

- (e) The reporting obligation of any marine casualty resulting a wreck by the master of a ship sailing under the flag of a State party to the WRC, will create a sort of reporting network about the wrecks' locations, consequently, being part of this network in the Mediterranean and the Red Sea will allow Egypt to better ensure that its maritime routes are safe for navigation.
- (f) The main benefit of the WRC is that it will grant Egypt powers to act in its EEZ in order to remove the hazardous wrecks and recover the expenses of the removal. Such powers cannot be exercised under the regime of UNCLOS. Furthermore, If Egypt chooses to opt-in and extends the application of the Convention to its territorial waters; it may be a good opportunity to make a necessary update of its current law governing the wreck removal, and to address the modern challenges in the maritime sector.

For all the above-mentioned reasons, and because this Convention is the first to find a solution to the dilemma of the recovery of the wreck costs, in case the shipowner goes insolvent or disappear after the wreck of the ship, it is recommended for Egypt to ratify the WRC, and to benefit from the opt-in option, in order to extend the application of the WRC to its territorial waters. Therefore, the experience of other States which ratified the WRC and opted in shall be presented.

---

<sup>46</sup> Neil Beadle, It'll never happen here, why adopt the Nairobi Convention on the Removal of Wrecks, Semaphore, newsletter of the maritime law association of Australia and New Zealand, July 2015, 1, available on the association website on the following link : [http://www.mlaanz.org/Uploads/Newsletter\\_July\\_2015/MLAANZJuly2015-NeilBeadle.pdf](http://www.mlaanz.org/Uploads/Newsletter_July_2015/MLAANZJuly2015-NeilBeadle.pdf)



## 2.3 The recommended methodology for implementation

### 2.3.1 States' experiences

Since the WRC contains many obligations on the State party and the shipowner, the simple ratification of the Convention will not be sufficient in order to properly implement its provisions, especially when the State party chooses to opt-in. Consequently, the States parties need to take further steps to incorporate the WRC provisions in their national laws. Hence, it may seem essential in this sub-part to examine the position of two States parties to the WRC, the methodology they followed in order to incorporate the WRC in their national laws. The UK and Malta ratified the WRC and chose to extend the application of the Convention to their territorial waters.

In 2008, the Department for Transport in the UK published a consultation regarding a bill to ratify and implement the WRC, the consultation document contained several questions that can be answered by individuals or organizations, the questions concerned the option to opt-in and the utility of issuing an electronic insurance certification. In addition, the document explained the legal system for wreck removal in UK, the maritime accidents that occurred, the benefits of adopting the WRC, and the project to insert new sections into the Merchant Shipping Act 1995 in order to implement the Convention.<sup>47</sup> After the deliberations in the parliament, the WRC Act received the royal assent in 2011.<sup>48</sup>

The new sections inserted in the Merchant Shipping Act (255A to 225U) clarify how the WRC is implemented in the UK, particularly when it comes to the issue of the insurance certificate by the Secretary of the State, the case where the ship is not carrying the required insurance certificate and the consequences of the violation of the wrecks report obligation.<sup>49</sup>

---

<sup>47</sup> The consultation document is available on the UK department for transport website <http://webarchive.nationalarchives.gov.uk/+http://www.dft.gov.uk/consultations/archive/2008/removalofwrecks2007/>

<sup>48</sup> The debates regarding the passage of the WRC Bill in the UK parliament can be consulted on the parliament website <https://services.parliament.uk/bills/2010-12/wreckremovalconvention/stages.html>

<sup>49</sup> The WRC Act 2011 is available on <https://www.legislation.gov.uk/ukpga/2011/8/contents>

The implementation of the WRC in the UK laws was considered to be successful, because the amendment of the Merchant Shipping Act fills in the lacunas that can be caused when a State party chooses to extend the application of the WRC to its territorial water without providing specific provisions.<sup>50</sup>

Another illustration of the implementation of the WRC can be found in the Maltese laws. Malta adopted a subsidiary legislation aiming to implement the provisions of the Convention; an overview of this subsidiary legislation will show that a special attention was brought to the provisions regarding the application scope of the Convention, the authority responsible of issuing the insurance certificate and the imposition of penalties in the case of non-compliance with the regulation.<sup>51</sup>

Consequently, it is possible to conclude that a proper implementation of the WRC cannot be done without adopting regulations that can assist in the interpretation of its general provisions.

---

<sup>50</sup> Patrick Griggs, *The Wreck Removal Convention 2007 (WRC 2007) – Legislative Traps*, *Shipping & Transport International*, Vol. 10, No. 4, 2015, 10-13.

<sup>51</sup> The subsidiary legislation regarding the implementation of the WRC in Malta is available on the website <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=12298&l=1>

### 2.3.2 The procedures

According to Article 151 of the Egyptian Constitution “The President of the Republic shall represent the State in its foreign relations and conclude treaties and ratify them after the approval of the House of Representatives. Such treaties shall acquire the force of law following their publication in accordance with the provisions of the Constitution”

The Ministry of Transport in Egypt is the competent organ of studying the benefits of adopting the WRC in Egypt, the above-mentioned published consultation made by the Transport Department in the UK can be taken as an example. Then, and according to the results of the consultation, the Ministry of Transport can prepare the project of law aiming to incorporate the WRC into the laws of Egypt. The project of law shall be discussed inside the government, before presenting it to the Parliament, in order to obtain its approval.

Once approved by the parliament, the President of the Republic shall ratify the Convention, which means that the President will approve the accession of Egypt to the WRC. Consequently, The Minister of Foreign Affairs will issue a decision in order to publish the Presidential decision approving the Convention in the Official Journal, this decision will precise the date of entry into force of the Convention in Egypt.

Since the WRC contains a number of obligations on the State party and the shipowner, the decision of President of the Republic, after the Parliament’s approval, will consist a provision allowing the Minister of Transport, as he is the competent minister, to issue decisions regulating the application of the Convention by Egypt.

The decision of President of the Republic will also take into consideration the existing of some provisions in the Egyptian laws regulating the wreck removal,<sup>52</sup> hence, the decision will amend these provisions, by stipulating that the WRC will replace the old provisions regarding the wreck removal, without touching the rest of the law as it concerns the marine casualties.

---

<sup>52</sup> The law no 79 of the year 1961 regarding “the marine casualties and the marine wreck”.

Finally, a proposed format in order to incorporate the WRC into the laws of Egypt shall be prepared. The format will reflect the substantial and the procedural way suggested to implement the Convention's provisions.

### **Part III: Proposed Incorporation Format**

#### **3.1 Ratification of the International Convention**

The Official Journal No ... date ....

**Decision of the President of the Arab Republic of Egypt**

No ... for the year ...

**Regarding the approval of the accession of the Arab Republic of Egypt**

**to the Nairobi International Convention**

**on the Removal of Wrecks, 2007**

The President of the Republic

- Pursuant to article 151 of the Constitution;
- After the approval of the Council of Ministers;

**Decides:**

#### **Article 1**

Approve the accession of the Arab Republic of Egypt to the Nairobi International Convention on the Removal of Wrecks, 2007, subject to reservation.

#### **Article 2**

The provisions of the Nairobi International Convention on the Removal of Wrecks, 2007 shall replace the provisions concerning the removal of wrecks stipulated in the law no. 79 for the year 1961 regarding the marine casualties and the marine wreck.

#### **Article 3**

The Minister of Transport shall be granted the powers to give effect to the provisions of the Convention.

Issued in the Presidency of the Republic

The date

**The president of the Republic**

---

**The Council of Deputies approved this decision during its session held in (the date)**

**NAIROBI INTERNATIONAL CONVENTION  
ON THE REMOVAL OF WRECKS, 2007**

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 .....  
 (Place)

On .....  
 (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.

**The Official Journal No ... date ....**

**Decision of the Minister of Foreign Affairs**

**No... Date...**

The Minister of Foreign Affairs

- Pursuant to the President of the Republic decision no..... date ..... regarding the approval of the accession of the Arab Republic of Egypt to the Nairobi International Convention on the Removal of Wrecks, 2007, and;
- The ratification of the President of the Republic (date);

**Decides:**

**Sole article**

The Nairobi International Convention on the Removal of Wrecks, 2007, shall be published in the Official Journal, and shall enter into force starting from (date).

Issued on (date)

Minister of Foreign Affairs

### **3.2 Ministerial decision aiming to implement the WRC**

**The Minister of Transport**

**Ministerial Decision no... date...**

**Regarding the application of the Nairobi International Convention  
on the Removal of Wrecks, 2007 by the Arab Republic of Egypt**

**The Minister of Transport,**

- Pursuant to the Presidential decision no.... date.... regarding the approval of the accession of the Arab Republic of Egypt to the Nairobi International Convention on the Removal of Wrecks, 2007

**Decides:**

#### **Article 1:**

Subject to the provisions of this decision, the Convention and any amendments thereto, shall, unless otherwise provided in this decision apply to all Egyptian ships wherever they may be and to all other ships while they are in Egyptian waters as determined by the Convention.

#### **Article 2:**

- 1- In this decision, unless the context otherwise Interpretation requires
  - "competent authority" means the Egyptian Authority for Maritime Safety and in relation to other State parties means the national maritime administration maintained by those States;
  - "Convention" means the Nairobi International Convention on the Removal of Wrecks, signed in Nairobi on 18 May 2007, including any amendment or Protocol related thereto as may from time to time be ratified, acceded to or accepted by the Government of Egypt and other instruments, standards and specifications of a mandatory nature related thereto adopted or developed by the International Maritime Organization;

- "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;
- "the Minister" means the Minister of Transport and includes any person acting under his authority;
- "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 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;
- "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;  
 Provided that, 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;
- "territorial waters" shall have the same meaning as is assigned to it in Decree of the President of the Arab Republic of Egypt No. 27 (1990) Concerning the baselines of the maritime areas of the Arab Republic of Egypt, 9 January 1990.

- 2- Unless the context so requires, words and expressions used in this decision shall have the same meaning assigned to them in the Convention.
- 3- Any reference in this decision to an International Convention or its related protocol or code shall include reference to any amendments to such convention, protocol or code accepted by the Government of the Arab republic of Egypt.

### **Article 3:**

- 1- Where an accident results in a wreck in a Convention area, the operator or the master of any ship involved in the accident must report the wreck without delay to the nearest port authority.

- 2- The abovementioned report shall include the information mentioned in Article 5 paragraph 2 of the Convention.

**Article 4:**

- 1- This decision shall apply where
  - (a) a ship has been involved in an accident as a result of which it or anything from it has become a wreck in the Convention area; and
  - (b) the competent authority has determined that the wreck poses a hazard.
- 2- The competent authority must take all reasonable steps to give a notice (a “wreck removal notice”) requiring the registered owner to comply with the obligations imposed on registered owners by article 9 paragraph 2 and 3 of the Convention.
- 3- The notice must be in writing and must :
  - (a) Specify the deadline set under article 9 paragraph 6 (a) of the Convention for the removal of the wreck; and
  - (b) Inform the registered owner of the other matters set out in article 9 paragraph 6 (b) and 6 (c) of the Convention.

**Article 5:**

- 1- This decision shall apply if:
  - (a) a ship has been involved in an accident as a result of which it or anything from it has become a wreck in the Convention area, and
  - (b) costs have been incurred by the competent authority.
- 2- The person who incurred the costs is entitled to recover them from the ship’s registered owner unless the owner proves that an exception set out in article 10 paragraph 1 (a), (b) or (c) of the Convention applies.
- 3- The registered owner is not liable for costs under this decision if or to the extent that liability would conflict with a convention listed in article 11 paragraph 1 of the Convention, and to which the Arab Republic of Egypt is party.



- 4- Where the registered owner of each of two or more ships is liable for costs under this decision, but the costs for which each is liable cannot be reasonably separated, the registered owner shall be jointly liable for the total costs.
- 5- This decision does not prevent the exercise of the right, if any, to limit liability.

**Article 6:**

An action to recover costs under article 5 of this decision may not be brought after the end of whichever of the following ends earlier:

- (a) the period of three years beginning with the date on which a wreck removal notice was given in respect of the wreck; and
- (b) the period of six years beginning with the date of the accident which resulted in the wreck.

**Article 7:**

A Ship of a gross tonnage of 300 or more shall not enter or leave a port in Egypt, and neither shall any Egyptian ship enter any port of any State unless such ship is in possession of an insurance cover evidenced by the certificate referred to under article 8 of this decision.

**Article 8:**

The competent authority for the purpose of issuing the certificate attesting that an insurance cover or other financial security is in force, as referred to in the Convention, in respect of ships registered in Egypt shall be the Egyptian Authority for Maritime Safety who shall determine the conditions of issue and validity of such certificate, and, in respect of ships registered in a State not party to the Convention shall be the said the head of the Egyptian Authority for Maritime Safety who shall have such powers as aforesaid, or the appropriate authority of a State Party to the Convention.

**Article 9:**

Where the competent authority is satisfied on the application for such a certificate as is mentioned in article 8 of this decision in respect of an Egyptian ship or ship registered in any country that is not a State party that there will be in force throughout the period for which the certificate is to be issued a contract of insurance or other financial security satisfying the requirements of the Convention, the competent authority may issue such certificate.

**Article 10:**

It shall be the duty of the registered owner of the ship to ensure that the ship is in compliance with the provisions of this decision. Any person who fails to observe the provisions of this decision, shall be liable to pay a penalty determined by the Egyptian Authority for Maritime Safety. The penalty shall not exceed 20 000 EGP.

## **Annex I**

*Unofficial Translation*

**The Official Journal no 153 date 10 July 1961**

**Law no 79 for the year 1961**

**Regarding the maritime casualties and the maritime wreck**

In the name of the nation

The President of the Republic

The Nation Council decided the following law, and it is promulgated:

### **Article 1:**

“maritime causality” shall mean the crash of a ship or her run aground, or her existence in a danger status, and “maritime wreck” shall mean anything found on the shores of the Republic, or its territorial waters, left from the rest of the ship or its cargo.

### **Article 2:**

Any person who witnessed, knew the occurrence of a maritime casualty, or received a distress signal, shall immediately report to the administration of the nearest port or to the local authority. The report should contain all the information that the person knew regarding the place and the time of the occurrence of the maritime casualty and its type.

The local authority which received the report shall report it to the administration of the nearest port.

### **Article 3:**

Any person, who witnesses the occurrence of the maritime casualty in the Republic shores or its territorial waters, shall present the assistance, save the threatened lives, save anything in the ship, and prevent any robbery until the public authorities take her responsibility.

**Article 4:**

The employee, who received the abovementioned report in article 2, shall report it to the ports authority. The ports authority shall report the customs authority, the shipowner, his representative or his consulate.

**Article 5:**

Once came to their knowledge the occurrence of the maritime casualty in their “circle of competence”, the Ports authority representatives, shall move to the place of the maritime casualty. They shall take all the necessary measures to save the lives, they can appoint any person in order to assist and take all the what it seem to them necessary to preserve the ship and anything on her board. The Ports authority representatives cannot intervene between the shipmaster and his crew regarding the administration of the ship unless the shipmaster asked from their interference.

**Article 6:**

The Ports and lighthouses authority representatives, in order to save the lives and to preserve the ship, can do the following :

- (a) Order the use, if it seems necessary, of the nearest means of transport to the place of the casualty.
- (b) Use of force to prevent robbery or riot.
- (c) Arrest any person who attempts to steal, cause riot, or prevent the preservation of the ship and the lives on her board .write the appropriate record and transfer the person to the public prosecutor.
- (d) Inspect any place, including the ships, in case there is a proof that something belongs to the wreck ship exists.

**Article 7:**

The master of the wrecked ship shall present to the authority of ports and lighthouses a report, within 24 hours right after he reaches the shore. He shall attach to the report all the ship documents, and the documents concerned all what exists on her board, in order to prepare the appropriate record preserving the rights of the interested owners.

**Article 8:**

The authority of ports and lighthouses shall open an investigation regarding the casualty, and shall investigate anyone after taking the oath. The investigation shall include the following:

- (a) The name and the description of the ship
- (b) The name of the shipmaster and the shipowner
- (c) The names of the cargo-owners
- (d) The quantity of the cargo and its type, quantity of the ship reserves and its type
- (e) The loading ports and the ports of destination of the ship
- (f) The casualty circumstances
- (g) The assistance and save services rendered
- (h) In general, all what can be beneficial to the investigation

A record should be done from one original and three copies, a copy shall be safeguarded at the investigation port, the original and the rest of the copies shall be sent to the general administration of the ports and the lighthouses authority in the territory where the casualty occurred. The authority shall send a copy to the customs authority.<sup>53</sup>

**Article 9:**

If there is a suspicion that the occurrence of the casualty was intentional, the authority of ports and lighthouses shall arrest the shipmaster and the involved persons and transfer them to the public prosecutor.

**Article 10:**

The authority of ports and lighthouses may salve the ship and what is on her board, based on a written request from the shipmaster of her owner according to the agreed conditions, without prejudice to the right of authority to recover the expenses spent in order to assist.

---

<sup>53</sup> Means the territory of Egypt or the territory of Syria, as between 1958 and 1961 Egypt and Syria where one State called the United Arab Republic.

**Article 11:**

If the ship sink or run aground inside the territorial waters, her owner has the obligation to remove it within the period of three months from her sunk or ran aground. Failure to comply with this obligation, the authority, without giving any notice, shall remove the ship by its own or with the expertise assistance, on the expenses of the shipowner or the owner of a right in the ship.

**Article 12:**

If a ship sink, run aground, or has been left abandoned inside the territorial waters, and the authority of ports and lighthouses considered her to be a hazard to the navigation, the authority shall notice her owner or master about the obligation to afloat the ship or remove it within a period determined by the authority. Failure to comply with the obligation, the authority shall remove the ship by its own or with the expertise assistance, on the expenses of the shipowner or the owner of a right in the ship.

**Article 13:**

If the authority could not satisfy the expenses according to articles 10, 11, 12, within 3 months, starting from the date of the demand made by the authority in order to recover the expenses, the authority shall sell the ship or what was saved from its wreck or both of them in a public auction, after publishing about the sale in one of the local journals.

**Article 14:**

The Minister of Defence shall issue the decisions regarding the procedures to be followed concerning wrecks in the two territories.

**Article 15:**

Shall be punished with a temporary hard labour for period of 3 to 5 years, any person, who transfer to a foreign waters, any run aground ship, or abandoned, or part of it, or its annexes, or who transfer a wreck located inside the territorial waters in order to smuggle it or to avoid the application of the provisions of this law.

**Article 16:**

Shall be punished with a fine not exceeding 50 Pounds or 500 Lira:

- (a) Who violated the provisions of article 2 or article 3
- (b) Who attempts to or goes on board a wrecked ship or run aground ship or a ship in danger status without her shipmaster permission
- (c) Who attempts to or restrain or prevent the salvage of any ship aground or exposed to the danger of being aground
- (d) Who make the wreck disappear or take off the marks indicating the wreck
- (e) Who violated any of the ministerial decisions issued in order to apply this law

**Article 17**

Shall be abolished the decision of the High Commissioner no 166 ... issued in the 3<sup>rd</sup> of July 1941 regarding the maritime casualties and the decision no 98 issued in 30<sup>th</sup> April 1941 regarding the maritime wreck, amended by the decision no165 issued in the first of July 1943 and the decision no 1372 issued in 13<sup>th</sup> April 1922 regarding the search...

**Article 18:**

This law shall be published in the Official journal.

Issued in the Republic Presidency on 5 July 1961

Gamal Abd El Nasser

## Bibliography

### Books

1. Baughen, Simon, *Shipping Law*, Routledge, 6<sup>th</sup> Edition, 2015.
2. Martinez Gutiérrez, Norman A., *Limitation of Liability in International Maritime Conventions*, IMLI Studies in International Maritime Law, Routledge, 2011.

### Chapters in Books

- Patrick Griggs CBE, Law of Wrecks, in David Joseph Attard et al (eds), *The IMLI Manual on International Maritime Law*, Volume II: Shipping Law, OUP, Oxford, 2016

### Articles

1. Beadle, Neil, “It’ll never happen here, why adopt the Nairobi Convention on the Removal of Wrecks”, Semaphore, Newsletter of the Maritime Law Association of Australia and New Zealand, July 2015.
2. Gahlen, Sarah Fiona, “The Wreck Removal Convention in force”, Journal of International Maritime Law, March-April 2015, Vol. 21.
3. Gaskell, Nicholas & Forrest, Craig, “The Wreck Removal Convention 2007”, Lloyd’s Maritime and Commercial, Quarterly 2016.
4. Gold, Megan, “Remove it or Lose it: Wrecking and Removing in the United States”, Journal of Maritime Law & Commerce, No. 1 January, 2015.
5. Griggs, Patrick, “The Wreck Removal Convention 2007 (WRC 2007) – Legislative Traps”, Shipping & Transport International, Vol. 10, No. 4, 2015.
6. Grima, Nicholas, “The Benefits or Otherwise of the Nairobi Convention on Wreck Removal”, Research Project, Faculty of Law, University of Malta, April 2016, 12.
7. Kern. Jhonnie M., “Wreck Removal and the Nairobi Convention – a Movement toward a Unified Framework?”, frontiers of marine science, 25 February 2016.
8. Q.C, A. H. E. POPP, “Limitation of Liability in Maritime Law, An Assessment of its viability from a Canadian Perspective”, Journal of Maritime Law & Commerce, Vol. 24, No. 2, April, 1993.
9. Zhu, Ling, “Probing Compulsory Insurance for Maritime Liability”, Journal of Maritime Law & Commerce, Vol. 45, No.1, January, 2014.



## **Websites**

1. The website of the Department of Infrastructure, Regional Development and Cities of the Australian Government.
2. International Maritime Organization IMO website.
3. The Marine Insight website.
4. BBC news Europe website.
5. The International Salvage Union website.
6. IMO website.
7. UN website.
8. The UK Department for Transport website.
9. The UK Parliament website.
10. The UK Legislation website.
11. The website of the Ministry for Justice Culture and Local Government of the Maltese Government.