



IMO
INTERNATIONAL MARITIME LAW INSTITUTE
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WRECK REMOVAL ACT OF 2008 NO. ---

**AN ACT TO INCORPORATE THE TERMS OF THE
NAIROBI INTERNATIONAL CONVENTION FOR THE
REMOVAL OF WRECKS 2007**

AND

THE REGULATIONS MADE PURSUANT TO THE ACT

**A LEGISLATION DRAFTING PROJECT SUBMITTED IN PARTIAL
FULFILLMENT OF THE REQUIREMENTS FOR THE AWARD OF
THE DEGREE OF MASTER OF LAWS (LL.M.) AT THE IMO
INTERNATIONAL MARITIME LAW INSTITUTE**

SUBMITTED BY: PETER A. AGBAMINOJA (NIGERIA)

SUPERVISOR: ADRIANA PADOVAN (MISS.)

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Words cannot express my gratitude to my employer, the Nigerian Maritime Administration and Safety Agency for sponsoring me on this program. They (words, I mean) similarly fail to quantify my gratitude to Hajia A.J. Musa my immediate boss for the past seven years. Every good memory I have of my job is inextricably linked to her who has given me opportunities beyond the scope of my modest talents. I will always remember.

While this document serves as an attestation to my drafting abilities, any sign of finesse or coordination should be credited to my supervisor, Ms. Adriana Padovan, who with her unusually focused mind took the draft by the scruff of the neck and beat some rhythm out of it when other contingencies compromised my concentration.

But above all, I glorify you, oh Lord, for sparing my life to see this day, unworthy as I am of your mercy.

LAWS OF THE FEDERATION OF NIGERIA

WRECK REMOVAL REGULATIONS

Commencement: ... of ... 2008

In exercise of the powers conferred upon me by Section 1 of the Merchant Shipping Act 2007 and Section 19 of the Wreck Removal Act 2008, and of all other powers enabling me in that behalf, I, the Minister of Transportation hereby make the following Regulations:

Short Title

1. These regulations may be cited as the Wreck Removal Short Title Regulations 2008.

Commencement

2. These Regulations shall commence on a date to be appointed by the Minister by publication in the official Commencement Gazette.

Interpretation

- 3 In these Regulations, except where the context otherwise requires Meaning of key words

- a. “*Convention*” means the Nairobi International Convention on the Removal of Wrecks 2007.
- b. “Act” means the Wreck Removal Act 2008 L.F.N. 2008
- c. “*Government*” means the Federal Government of Nigeria
- d. “*Organization*” means the International Maritime Organization.
- e. “*Secretary-General*” means the Secretary-General of the Organization.
- f. “*Minister*” means the Minister for Transportation
- g. “*Agency*” means the Nigerian Maritime Administration and Safety Agency (NIMASA)
- h. “Area of Jurisdiction” means the EEZ, the internal waters and the territorial sea of Nigeria.
- i. “*Director General*” means the Director General of the Nigerian Maritime Administration and Safety Agency (NIMASA) as established by Section 11 of the Nigerian Maritime Administration and Safety Agency Act 2007 L.F.N. 2007
- j. “*Registrar of Ships*” means the Registrar of Ships as established under Section 16 (1) of the Merchant Shipping Act 2007 L.F.N. 2007
- k. “*Receiver of Wrecks*” means the Receiver of Wrecks

as established under Section 363 (1) of the Merchant

Shipping Act 2007

L.F.N. 2007

Other words and expressions used in these Regulations have the same meaning as in the Act.

Delegation of Duties

4. Subject to the provisions of the Act and these Regulations, the Minister hereby delegates his duties for the removal of wrecks under the Act to the Receiver of Wrecks.

Delegation of duties to Receiver of Wrecks

Supervisory Authority of the Director General

5. a. In exercising the authority conferred upon him by Section 4 of these Regulations, the Receiver of Wrecks shall act under the supervision of the Director General and shall furnish him regularly and on demand with reports on the discharge of his duties .
- b. Notwithstanding the provisions of sub-section 'a' of this section, the Receiver of Wrecks shall be responsible for the day to day implementation of these Regulations and shall be granted the necessary discretion for the performance of his duties.

Director General to supervise

Interface With Shipowners on Requirements of the Act

6. Within a period not exceeding thirty (30) days after the commencement of these Regulations, the Receiver of Wrecks will submit a proposal for the approval of the Minister on the modalities for the establishment of a platform for regular and efficient interface with representatives of Nigerian Shipowners

Establishment of interface with Nigerian shipowners on the requirement of the Act

on the requirements of Sections 8, 12, 13 and 15 of the Act.

Locating, Determination of Hazard and Marking of Wrecks

7. Upon becoming aware of a wreck in the area of jurisdiction, the Receiver of Wrecks shall:

Preliminary duties of the Receiver of Wrecks

- a. Locate the wreck
- b. Determine the nature of hazard posed by the wreck in accordance with the criteria outlined in Section 9 of the Act
- c. Cause a Marine Notice to be published in the National Gazette and at least 2 National Newspapers warning mariners of the existence, nature and precise location of the wreck
- d. Write a letter to the Secretary General informing him of the nature and precise location of the wreck, and causing a copy of the information to be published by Lloyd's of London
- e. Mark the wreck in accordance with internationally accepted system of buoyage in use in the area where the wreck is located
- f. Inform the Secretary General in writing of the particulars of the marking of the wreck, and causing a copy of the information to be published by Lloyd's of London

Wrecks Located in the EEZ - Communication with State of Ship's Registry

Procedure for
communication where
wreck is located in the
EEZ.

8. (1) In accordance with Sections 9 and 12 (1) of the Act, where the Receiver of Wreck has determined that a wreck in the EEZ constitutes a hazard he shall forward by courier or other means of fast postage, a letter under his signature to the maritime administration of the State of the ship's registry and the registered owner informing them of the exact coordinates of the wreck and the hazard arising therefrom and requesting the registered owner to remove the wreck within the deadline set in accordance with Section 6 (a) of the Act. The owner shall be presumed to have received the notification upon dispatch of the letter to the address obtained from the master/operator's report, or where such report is not available, upon dispatch to the maritime administration of the ship's registry, upon which the deadline shall take effect.

(2) Upon failure of the above to elicit the required response from the registered owner, the Receiver of Wrecks shall within a period of 48 hours consult other affected States on the modalities for and possibility for cooperation in the removal of the wreck. He shall thereafter take immediate steps to remove the wreck in accordance with Section 9.

(3) Provided that nothing in this Section shall prejudice the authority of the Receiver of Wrecks to adopt an accelerated procedure for the above purpose, where the nature of the hazard determined so demands.

Wrecks Located in the Internal Waters and Territorial Sea – Communication With The Shipowner

Procedure for
communication where
wreck is located in

9. (1) In accordance with Sections 9 and 12 (2) of the Act,

where the Receiver of Wreck has determined that a wreck in the internal waters and territorial sea constitutes a hazard he shall forward by courier or other means of fast postage, a letter under his signature to the registered owner informing them of the exact coordinates of the wreck and the hazard arising therefrom and requesting the registered owner to remove the wreck within the deadline set in accordance with Section 6 (a) of the Act. The owner shall be presumed to have received the notification upon dispatch of the letter to the registered address obtained from Registrar of Ships, upon which the deadline shall take effect.

(2) Provided that nothing in this Section shall prejudice the authority of the Receiver of Wrecks to adopt an accelerated procedure for the above purpose, where the nature of the hazard determined so demands.

Supervision of Removal

Receiver of Wrecks to supervise removal

10. (1) Where the registered owner indicates an intention to remove the wreck, the Receiver of Wrecks shall forward to him a letter outlining the conditions under which such removal shall be conducted bearing in mind the considerations of safety and protection of the marine environment.

(2) The registered owner shall satisfy the Receiver of Wrecks of his ability to comply with the conditions for the removal as stated in sub-section (1) within a period not less than forty eight (48) hours before the commencement of the removal, failing which the Remover of Wrecks may take steps to effect the removal in accordance with Sections 8 and 9 and thereafter recover the removal costs in accordance with Section 12.

(3) During the removal of the wreck, the Receiver shall supervise proceedings alongside suitably qualified officers of the Maritime Safety Department of the Agency and may intervene in accordance with Section 12(5) of the Act.

Procedure for Removal by Receiver of Wrecks

Procedure for removal

11.(1) If the registered owner does not remove the wreck within the deadline set in accordance with Section 8 (1) (a), the Receiver of Wrecks shall take the following steps to effect the removal of the wreck:

Removal of highly dangerous wrecks

(2) Wrecks Constituting Clear And Immediate Danger

- a. In accordance with the Financial Regulations of Government, the Receiver of Wrecks shall cause to be published Invitations to Tender from salvors or any persons with the competence to effect the removal
- b. Where the total bid amount of the most qualified tender for the removal of the wreck does not exceed the sum of N2,000,000.00, the Receiver of Wrecks may award a contract for the removal of the wreck in accordance with Government's Financial Regulations for the award of contracts
- c. Where the total bid amount of the most qualified tender exceeds the sum of N2,000.00 but does not exceed the sum of N10,000.00, the Board of Directors of the Agency may award the contract for the removal on the recommendation of the Director General
- d. Where the total bid amount of the most qualified tender exceeds the sum of N10,000.00, the Director General shall seek the approval of the Minister for the award of the contract

- e. Where the Receiver of Wrecks awards the contract for the removal in accordance with 'b' above, he shall immediately seek the ratification of the Director General for the contract award

(3) Provided that no payments shall be made for contracts awarded by the Receiver of Wrecks for wreck removal without the ratification of the Director General, such ratification not to be unreasonably withheld bearing in mind the clear and immediate danger posed by the wreck.

Removal of wrecks of
lesser degree of hazard

(4) Wrecks Not Constituting Clear and Immediate Danger

- a. In accordance with the Financial Regulations of Government, the Receiver of Wrecks shall cause to be published Invitations to Tender from salvors or any persons with the competence to effect the removal
- b. The received tenders shall be reviewed by the Tenders Committee of the Board of Directors of the Agency in accordance with Government's Financial Regulations and bearing in mind the Agency's budget for wreck removal
- c. Where the total bid amount of the most qualified tender does not exceed the sum of N10,000.00, the Board of Directors of the Agency may award the contract for the removal on the recommendation of the Director General
- d. Where the total bid amount of the most qualified tender exceeds the sum of N10,000.00, the Director General shall seek the approval of the Minister for the award of the contract

Recovery of Wreck Removal Costs

Recovery of Receiver
of Wreck's costs

12.(1) In accordance with Section 13 (1) of the Act, the Receiver of Wrecks shall recover the costs incurred in locating, marking and removing the wreck by forwarding a demand for payment alongside an invoice of expenses to the registered owner, a copy of which shall also be forwarded to the State of registry of ship.

(2) Where the registered owner does not refund the costs within reasonable time of receipt of the expenses, the Remover of Wrecks shall brief the Director General, who may cause the Agency to institute a claim for the costs against the registered owner and the insurance company, bank or other financial services provider providing financial security for the registered owner's liability in accordance with Section 15 (10) of the Act.

Certificate of Insurance or other Financial Security

Issuance of Certificate
of insurance or other
financial security

13. (1) In accordance with the provisions of Section 15 of the Act, the Director General shall issue a certificate attesting to the compliance by Nigerian and foreign flagged ships registered by States that are not parties to the Convention, of 300 gross tonnage and above with the requirement of compulsory insurance or other financial security. The certificate shall be in the form set out the annex to these Regulations and shall be carried on board the ship and a copy deposited with the Registrar of Ships.

(2) In accordance with the provisions of sub-section 8 of Section 15 of the Act, the Director General may request information from other States and the Organisation on the financial standing of foreign providers of insurance or other security tendered by foreign flagged ships requesting for the

issuance of compulsory Certificate of insurance as provided in sub-section 1 of this section.

(3) In issuing the certificate of insurance or financial security, the Director General shall ensure that the insurance or other financial guarantee tendered by the ship shall be equal to the limit of liability for a vessel of the ship's tonnage in accordance with Article 6 (1)(b) of the Convention on Limitation of Liability for Maritime Claims 1976, as amended at the minimum.

(4) In the case of a Nigerian flagged ship, the Director General shall only issue the certificate of insurance or financial security to such ship if it is adequately covered by insurance or other financial security provided by a Nigerian company, which has been certified competent to provide the services in accordance with the provisions of the Banks and other Financial Institutions Act of 1991.

L.F.N. 1991

Deployment of Port State Control Officers

(5) The Director General shall direct the Agency's port state control officers to enforce compliance with the compulsory insurance requirement by all ships of 300 gross tonnage and above calling at Nigerian ports.

Compliance with compulsory insurance requirement as condition for registration of Nigerian flagged ships

(6) Nigerian Flagged Ships

(a) Primary registration and renewal of expired registration certificates for vessels of 300 gross tonnage and above by the Registrar of Ships shall be contingent on compliance with the compulsory insurance requirement.

(b) The port state control officers may detain any Nigerian

flagged ship that:

- I. fails to produce the certificate of insurance or other financial security on demand in accordance with sub-section 5 of Section 15 of the Act, or;
- II. produces a certificate that the enforcement officer suspects, on reasonable grounds to be invalid.

(c) Where a port state control officer has detained a Nigerian flagged ship for failure to produce the certificate of insurance or other financial security, the ship shall be released only upon presentation of the certificate and payment of a fine prescribed by these Regulations.

(d) Where a port state control officer has detained a Nigerian flagged ship on suspicion of invalidity of the certificate of insurance, he shall immediately take steps to confirm the authenticity of the certificate by phone or fax to the Registrar of Ships, upon which confirmation the ship shall be discharged without any additional costs.

Issuance of compulsory insurance certificate to foreign flagged ships.

14. (1) Foreign Flagged Ships

(2) In accordance with the provisions of sub-section 3 of Section 15 of the Act, the Director General may on request, issue the Certificate of compulsory insurance to a foreign flagged ship of 300 gross tonnage and above, not being a ship registered by a State party to the Convention, provided that the conditions issued by the Minister for the grant of the certificate have been complied with.

(3) The port state control officer may board foreign flagged

ships, of 300 gross tonnage and above, calling at Nigerian ports and offshore terminals to request for the certificate of insurance or other financial security.

(4) The port state control officer shall in accordance with sub-section 9 of Section 15 of the Act recognize certificates issued and certified under the authority of state parties to the Convention, even where such certificates have been issued to ships flying the flags of non-party States. Where in accordance with sub-section 12 of Section 15 of the Act, a ship is registered by a State or claims to be certified by a State which maintains electronic record of certification, the port state control officer shall take steps to verify such claims with reasonable dispatch.

(5) The port state control officer may detain any foreign flagged ship that:

- a. fails to produce the certificate of insurance or other financial security on demand in accordance with sub-section 5 of Section 15 of the Act, or;
- b. produces a certificate that the enforcement officer suspects, on reasonable grounds to be invalid.

(6) Where a port state control officer has detained a foreign flagged ship for failure to produce the certificate of insurance or other financial security, the ship shall be released only upon presentation of the certificate and the payment of a fine prescribed by these Regulations.

(7) Where a port state control officer has detained a foreign flagged ship on suspicion of invalidity of the certificate of insurance or other financial security, the Director General

shall within 48 hours contact the issuing Authority to confirm the validity of the certificate, upon which confirmation the ship shall be discharged without any additional costs.

Duties of third party in possession of wreck

Third Parties and Wrecks

15. (1) Where any person finds or takes possession of any wreck in the area of jurisdiction, he shall:

- a. if he is the owner of the wreck, give notice to the Receiver of Wrecks, stating that he has found or taken possession of the same, and describing the exact coordinates of the wreck and marks by which the same may be recognized; or
- b. if he is not the owner of the wreck, as soon as possible deliver it to the Receiver of Wrecks.

(2) Where a ship is wrecked, stranded or in distress anywhere in the area of jurisdiction, any cargo or other articles belonging to, or separated from the vessel, which may be washed ashore or otherwise lost or taken from the vessel, shall be delivered to the Receiver of Wrecks.

(3) It shall be an offence for any person whether the owner or not to secrete or keeps possession of any such cargo or article, or refuse to deliver the same to the Receiver of Wrecks or to any person authorized by the Receiver of Wrecks to demand the same.

(4) The Receiver of Wrecks or any authorized person may

Handling removed

take any such cargo or article by force from the person so ^{wrecks} refusing to deliver the same.

Dealing With Wrecks

16. (1) Where the Receiver of Wrecks removes any wreck, he shall, within forty - eight hours

Inform the registered owner and the State of registry of the removal of the wreck.

(2) The owner of any removed wreck in the possession of the Receiver of Wrecks, upon establishing his claim to the same to the satisfaction of the Receiver of Wreck within one year, from the time when the wreck was removed, shall, upon paying the costs of the removal and expenses due, be entitled to have the wreck or the proceeds thereof, delivered up to him.

(3) Where any foreign vessel is wrecked in the area of jurisdiction, or any articles belonging to, or forming part of, any such vessel, or belonging to, or forming part of, the cargo of any such vessel, are found in Nigeria or are brought into any port within Nigeria, the consular officer of the country to which the vessel, or in the case of cargo, to which the owner of the cargo, may have belonged, if authorized by any treaty or arrangement with that country, shall, in the absence of the owner and of the master or other agent of the owner, be deemed to be the agent of ^{Power of immediate} the owner, so far as it relates to the custody and disposal of the ^{sale} vessel or the articles.

Power of Immediate Sale of Removed Wreck

17. (1) The Receiver of Wreck may immediately sell the removed wreck if in his reasonable opinion:

- a. It is under the value of N1,000,000.00
- b. It has sustained so much damage or is so perishable that it cannot with advantage be kept, or
- c. It is not of sufficient value to pay for warehousing

(2) The proceeds of the sale shall after defraying the expenses thereof, be held by the Receiver of Wreck for the same purposes and subject to the same claims, rights and liabilities, as if the wreck had remained unsold for a period of one year, after which, if no claims are made on the proceeds, it shall be remitted to the Consolidated Federation Fund.

Handling unclaimed wreck

Unclaimed Wreck

18. (1) Where no owner establishes a claim to any wreck which has been found in the area of jurisdiction, removed by the Receiver of Wrecks, and has been in his possession for one year, the Receiver of Wrecks shall sell such wreck.

(2) The Receiver of Wrecks shall pay the proceeds of the sale into the Consolidated Revenue Fund after deducting the expenses of sale and fees payable.

(3) Upon delivery of the wreck or payment of the proceeds of the sale according to the provisions of sub-section 2 of this section, the Receiver of Wrecks shall be discharged from all liability in respect thereof.

Offences

Offences

19. In addition to the offences established by section 18 of the

Act, contravention of the following sections of these Regulations are hereby declared to be offences and shall be punishable as follows:

- a) sections 12 (4) (b) and 13 (5) is liable on conviction to a fine of not less than N1,000,000.00 and not more than N2,000,000.00 against the registered owner or the operator of the ship, whichever of them is deemed to be liable.
- b) section 14 (1) and (3) and is liable on conviction to a fine of not less than N500,000.00 and not more than N1,000,000.00 against the registered owner or not less than N100,000.00 and not more than N200,000.00 against any other person.

MADE at Abuja this ... of ... 2008

Minister of Transportation

WRECK REMOVAL ACT 2008

An Act to domesticate the terms of the Nairobi International Convention for the Removal of Wrecks 2007 and to repeal Part XXVI of the Merchant Shipping Act 2007.

WHEREAS at an International Maritime Organization Diplomatic Conference convened in Nairobi on the 16th May 2007 the Nairobi International Convention on the Removal of Wrecks was adopted;

AND WHEREAS at the said Conference, it was unanimously agreed among delegates that urgent steps shall be taken by their respective Governments to implement the provisions of the Convention;

WHEREAS it is expedient that the said Convention as set out in the schedule to this Act (in this Act referred to as “the Convention”) should, subject to the provisions of this Act, be given the force of law;

AND WHEREAS the proper implementation of this Act requires the repeal of Part XXVI of the Merchant Shipping Act 2007;

BE IT ENACTED by the National Assembly of the Federal Republic of Nigeria, in this present Assembly, and by the authority of the same, as follows:

PART I – SHORT TITLE AND GENERAL PRINCIPLES

Short title

1. This Act may be cited as the Wreck Removal Act 2008 Short Title

Commencement

2. This Act shall commence on a date to be appointed by the Commencement

President by publication in the official Gazette

Incorporation

3. As from the commencement of this Act, the Convention shall have the force of law in Nigeria

Incorporation

Interpretation

4. In this Act, except where the context otherwise requires

Meaning of key words

“*EEZ*” means the Exclusive Economic Zone of the Federal Republic of Nigeria as defined by the Exclusive Economic Zone Act 1978.

Cap 116 Laws of Federation of Nigeria 1990

“Area of Jurisdiction” means the EEZ, the internal waters and the territorial sea of Nigeria.

“*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.

“*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.

“*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.

“*Convention*” means the Nairobi International Convention on the Removal of Wrecks 2007.

“*Affected State*” means the State Party in whose EEZ (or a corresponding maritime zone as defined under the Convention) the wreck is located

“*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 Nigeria.

“*Related interests*” means the interests of Nigeria 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.

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

“*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.

“*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.

“*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.

“State Party” means any State that has signed, ratified, acceded or by any other means expressed an intention to be bound by the provisions of the Convention.

“*Organization*” means the International Maritime Organization.

“*Secretary-General*” means the Secretary-General of the

Organization.

“*Minister*” means the Minister for Transportation

“*Director General*” means the Director General of the Nigerian Maritime Administration and Safety Agency (NIMASA)

“*Registrar of Ships*” means the Registrar of Ships as established under Section 16 (1) of the Merchant Shipping Act 2007

Objectives and General Principles

5. Subject to the provisions of this Act, the Minister may take measures in relation to the removal of a wreck which poses a hazard in the Area of Jurisdiction, provided that:

Objectives and
General Principles

- a) Such measures shall be proportionate to the hazard.
- b) 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.
- c) Such measures shall not and shall not be construed as equating a claim of sovereignty or sovereign rights over any part of the high seas.
- d) The Minister shall in implementing this Act, endeavour to cooperate with such other states as might be affected by a maritime casualty resulting in a wreck.

Scope of Application

6. This Act shall apply to wrecks in the Area of Jurisdiction.

Scope of the Act

Exclusions

7. (1) This Act 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.

Exceptions to applicability of the Act

(2) This Act shall not apply to any warship or other ship owned or operated by the Government of Nigeria or any other State and used, for the time being, only on Government non-commercial service, unless the Government of Nigeria or that State decides otherwise in accordance with the provisions of Article 4 of the Convention.

PART II – DEALING WITH WRECKS

Reporting Wrecks

8. (1) The Minister shall require the master and the operator of a ship flying the Nigerian flag to report to the Affected State without delay when that ship has been involved in a maritime casualty resulting in a wreck. All ships involved in maritime casualty in the area of jurisdiction shall report to the Minister without delay. To the extent that the reporting obligation under this section has been fulfilled either by the master or the operator of the ship, the other shall not be obliged to report.

Master or Operator of Nigerian flagged ships to report wrecks to affected state

(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 or the Minister to determine whether the wreck poses a hazard in accordance with Section 9, 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.

Determination of Hazard

9. When determining whether a wreck poses a hazard, the following criteria should be taken into account by the Minister:

Criteria for
determining
hazard

- 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.

Locating Wrecks

10. (1) Upon becoming aware of a wreck, the Minister 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.

Minister to issue warning on nature and location of wrecks

(2) If the Minister has reason to believe that a wreck poses a hazard, he shall ensure that all practicable steps are taken to establish the precise location of the wreck.

Marking of Wrecks

11. (1) If the Minister determines that a wreck constitutes a hazard, he shall ensure that all reasonable steps are taken to mark the wreck.

Minister to ensure wreck is marked

(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 Minister shall promulgate the particulars of the marking of the wreck by use of all appropriate means, including the appropriate nautical publications.

Removal of Wrecks

12. (1) If the Minister determines that a wreck located in the EEZ constitutes a hazard, he shall immediately:

Measures to facilitate the removal of wrecks

- 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) With regards to a wreck located in the internal waters or the territorial sea, the Minister shall immediately inform the registered owner that the wreck has been determined to constitute a hazard

(3) The registered owner shall remove a wreck determined to constitute a hazard.

(4) When a wreck has been determined to constitute a hazard, the registered owner, or other interested party, shall provide the Minister with evidence of insurance or other financial security as required by article

(5) 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 Minister 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.

(6) Where the wreck is located in the EEZ and the removal referred to in paragraphs 2 and 4 has commenced, the Minister 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.

(7) The Minister 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 section 9;
- b) inform the registered owner in writing of the deadline and specify that, if the registered owner does not remove the wreck within that deadline, he may remove the wreck at the registered owner's expense; and
- c) inform the registered owner in writing that he intends to intervene immediately in circumstances where the hazard becomes particularly severe.

(8) If the registered owner does not remove the wreck within the deadline set in accordance with sub-section 6 or the registered owner cannot be contacted, the Minister may remove the wreck by the most practical and expeditious means available, consistent with considerations of safety and protection of the marine environment.

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

(10) The Minister shall take appropriate measures to ensure that registered owners of Nigerian ships comply with sub-sections 2 and 3.

(11) The information referred to in this article shall be provided by the Minister to the registered owner identified in the reports referred to in sub-section 2 of Section 8.

PART III - LIABILITY FOR REMOVAL AND COMPULSORY INSURANCE

Liability of the Owner

13. (1) Subject to section 14, the registered owner shall be liable for the costs of locating, marking and removing the wreck under sections 10, 11 and 12, respectively, unless the registered owner proves that the maritime casualty that caused the wreck:

Liability of owner
for cost of
location, marking
and removal of
wrecks

- 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 Act shall affect the right of the registered owner to limit his liability under Section 363 of the Merchant Shipping Act, 1990.

LFN 1990

(3) No claim for the costs referred to in sub-section 1 may be made against the registered owner otherwise than in accordance with the provisions of this Act.

(4) Nothing in this section shall prejudice any right of recourse against third parties.

Exceptions to Liability

14. (1) The registered owner shall not be liable under this Act for the costs mentioned in sub-section 1 of section 13 if, and to the extent that, liability for such costs would be in conflict with:

Exceptions to liability of owner for costs of location, marking and removal of wrecks

- 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 Act are considered to be salvage under Nigerian law, such law shall apply to questions of the remuneration or compensation payable to salvors to the exclusion of the rules of this Act.

Compulsory Insurance or other Financial Security

Owner to maintain insurance or other forms of financial security to cover liability under the Act
LFN 1990

15. (1) The registered owner of a Nigerian flagged ship of 300 gross tonnage and above 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 Act in an amount equal to the limits of liability under Section 363 of the Merchant Shipping Act, 1990.

(2) A certificate attesting that insurance or other financial security is in force in accordance with the provisions of this Act shall be issued to each Nigerian flagged ship of 300 gross tonnage and above by the Minister after determining that the requirements of sub-section 1 have been complied with. This compulsory insurance certificate shall be in the form of the model set out in the annex to this Act, 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) The Minister may issue the Certificate of compulsory insurance in the above form to foreign flagged ships of 300 gross tonnage and above where such ships are not registered by State

Issuance of certificate to foreign flagged ships

parties to the Convention.

(4) Pursuant to the section, the Minister may authorize the Director General to issue the certificate referred to in sub-sections 2 and 3.

Delegation of authority to issue certificate

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

Certificate to be carried on board the ship

(6) An insurance or other financial security shall not satisfy the requirements of this section 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 sub-section 2 before three months have elapsed from the date on which notice of its termination is given to the Director General unless the certificate has been surrendered to the Director General 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 section.

(7) The Minister shall, subject to the provisions of this section 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 Act shall be construed as preventing the Minister 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 Act. In such cases, the Minister is not by reason of reliance on such information relieved of responsibility as issuing authority of the certificate required by sub-section 2.

Minister to liaise with other States or the Organization

(9) Certificates issued and certified under the authority of other State Parties to the Convention shall be accepted by the Minister for the purposes of this Act and shall be regarded as having the same force as certificates issued or certified by the Minister, even if issued or certified in respect of a ship not registered in a State Party. The Minister may, if he deems necessary at any time request consultation with the issuing or certifying State over the financial capability of the insurer or guarantor named in the certificate to meet the obligations imposed by this Act.

Validity of certificates issued under the authority of other states

(10) The Minister may bring any claim for costs arising under this Act 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 sub-section 1. Moreover, the defendant may invoke the defence that the maritime casualty was caused by the willful 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.

Authority of Minister to bring claim against insurer or provider of security

(11) The Minister shall not permit any ship entitled to fly the Nigerian flag to which this section applies to operate at any time unless a certificate has been issued under paragraph 2 of Section 15.

Ships not to operate without certificate of insurance or other financial security

(12) Subject to the provisions of this section, the Minister shall ensure, under Nigerian law, that insurance or other security to the extent required by article 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. Such vessels shall be required to tender the Certificate of Insurance or other financial security issued by a State party to the Convention, except where the Ship is registered in or claims to be certified by a State, which has notified the Secretary General that it maintains records in an electronic format accessible to all States Parties to the Convention in accordance with Article 12(13) of the Convention such claims being subject to verification by the Minister.

(13) If insurance or other financial security is not maintained in respect of a ship owned by the Government of Nigeria or any of its Agencies, the provisions of this article relating thereto shall not be applicable to such ship, but the ship shall carry a certificate issued by the Minister, stating that it is owned by the Government of Nigeria or any of its Agencies and that the ship's liability is covered within the limits prescribed in section 1. Such a certificate shall follow as closely as possible the model prescribed by paragraph 2.

Minister to issue certificate to Government owned ships

Time Limits

16. Rights to recover costs under this Act 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

Time bar against institution of action under the

Act. However, in no case shall an action be brought after six years Act
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.

PART IV – OFFENCES AND MISCELLANEOUS PROVISIONS

Offences

17. (1) The registered owner of a vessel commits an offence if he
contravenes:

Offences under
the Act

- a) section 12 (6) and is liable on conviction to a fine of not less than N500,000.00 and not more than N1,000,000.00.
- b) section 15 (1) and is liable on conviction to a fine of not less than N1,000,000.00 and not more than N2,000,000.00.
- c) section 15 (5) and is liable on conviction to a fine of not less than N100,000.00 and not more than N200,000.00.

(2) The master of a vessel commits an offence if he contravenes section 8(1) and shall be liable to a fine of not less than N150,000.00 and not more than N300,000.00

(3) The operator of a vessel commits an offence if he contravenes section 8(1) and shall be liable to a fine of not less than N250,000.00 and not more than N500,000.00

Regulations

18. The Minister shall, in accordance with this Act and as practicable after the commencement of this Act make regulations for the purposes of the implementation of this

Minister to make
Regulations

Act.

Repeal

- 19.** Part XXVI of the Merchant Shipping Act 2007 is hereby repealed.
- Repeal of Part
XXVI Merchant
Shipping Act
2007

Amendment of Schedule

- 20.** The Minister may by regulation amend the schedule to reflect any amendment to the Convention to which the Government of the Federal Republic of Nigeria has not objected as provided for in the Convention
- Authority of
Minister to amend
schedule

Duration of the Act

- 21.** This Act shall continue in force until a day to be appointed by the President by publication in a gazette following the termination of the Convention or denunciation thereof by the Government of the Federal Republic of Nigeria, and no longer.
- Duration

I CERTIFY IN ACCORDANCE WITH SECTION 2 (1) OF THE ACTS
AUTHENTICATION ACT, CAP. 4, LAWS OF THE FEDERATION OF NIGERIA
1990, THAT THIS IS A TRUE COPY OF THE BILL THAT PASSED THROUGH
BOTH HOUSES OF THE NATIONAL ASSEMBLY

CLERK TO THE NATIONAL ASSEMBLY

... DAY OF ... 2008

SCHEDULE TO THE WRECK REMOVAL BILL 2007

SHORT TITLE OF THE BILL	LONG TITLE OF THE BILL	SUMMARY OF THE CONTENTS OF THE BILL	DATE PASSED BY THE SENATE	DATE PASSED BY THE HOUSE OF REPRESENTATIVES
WRECK REMOVAL BILL 2007	AN ACT TO DOMESTICATE THE TERMS OF THE NAIROBI INTERNATIONAL CONVENTION FOR THE REMOVAL OF WRECKS 2007	THE BILL INCORPORATES THE NAIROBI INTERNATIONAL CONVENTION FOR THE REMOVAL OF WRECKS 2007 INTO NIGERIAN LAW AND REPEALS PART XXVI OF THE MERCHANT SHIPPING ACT 2007	6 TH JUNE 2008	23 RD JULY 2008

I certify that this bill has been carefully compared by me with the decision reached by the National Assembly and found to be true and correct decision of the Houses and is in accordance with the provisions of the Acts Authentication Act Cap 4, Laws of Federation of Nigeria 1990

.....
Clerk to the National Assembly
 ... DAY OF ... 2008

I ASSENT

.....
President of the Federal Republic of Nigeria
 ... Day of ... 2008

The Federal Ministry of Transportation

Office of The Honourable Minister
Bukar Dipcharima House
Central Business District, Abuja
Nigeria.

TELEPHONE:

FAX:

... of ... 2008

The Secretary General
International Maritime Organization
7 Albert Embankment
London.

Dear Secretary General,

**NOTIFICATION IN ACCORDANCE WITH ARTICLE 3 (2) OF THE NAIROBI
INTERNATIONAL CONVENTION ON THE REMOVAL OF WRECKS 2007**

Further to the above heading, I have the honour of informing you that His Excellency, President of the Federal Republic of Nigeria today assented to the Wreck Removal Act of Nigeria 2008, whereby Nigeria has extended the application of the provisions of the Nairobi International Convention on the Removal of Wrecks 2007 to the wrecks located in her territorial sea and internal waters.

You will recall that Nigeria ratified the Convention on the ... of ... 2008. A copy of the Wreck Removal Act 2008 is hereby attached for your records.

Remain assured of my greatest regards,

.....
Honourable Minister

NIGERIAN MARITIME ADMINISTRATION AND SAFETY AGENCY
CERTIFICATE OF INSURANCE OR OTHER FINANCIAL SECURITY
IN RESPECT OF LIABILITY FOR THE REMOVAL OF WRECKS

Issued in accordance with the provisions of Section 15 of the Wreck Removal Act 2008

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 Section 15 of the Removal of Wrecks Act 2008.

Type of Security :

Duration of Security:

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

Name:

Address:

.....

This certificate is valid until :

The present certificate is issued under the authority of the Federal Government of Nigeria by the Nigerian Maritime Administration and Safety Agency (NIMASA)

Issued at: LAGOS NIGERIA

On the day of 200....

.....
DIRECTOR GENERAL

WRECK REMOVAL REGULATIONS 2008

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WRECK REMOVAL ACT 2008

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WRECK REMOVAL ACT 2008

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**AN ACT TO DOMESTICATE THE NAIROBI INTERNATIONAL
CONFERENCE ON WRECK REMOVAL INTO NIGERIAN MUNICIPAL LAWS**

INTRODUCTORY NOTE

Background

Before the Nairobi International Convention on the Removal of Wrecks was adopted in May 2007, there was no previous international convention on the subject. The task of wreck removal was usually left to Protection and Indemnity Clubs, who insured the owners' liability for wreck removal. During this time, individual states were responsible for ensuring the removal of wrecks and derelicts within their internal waters and territorial sea in line with provisions of their domestic laws, which usually imposed liability for such removals on the shipowners.

With regards to the Exclusive Economic Zone (EEZ), states exercised some limited jurisdiction for the removal of wrecks as defined by the UN Convention on the Law of the Sea (UNCLOS). Consequent upon this, there was a great lacuna in the law with

regards to state responsibility for wrecks that were not within the limits of the internal waters and territorial sea of individual states.

Contemporary Challenges of Maritime Wreck Removal

The principles of wreck removal have undergone a paradigm shift in recent years with heightening concern for the long term integrity of the earth's environment and ecological balance. According to the President of the International Salvage Union (ISU), Hans van Rooij: "Times have changed and the main motivation for wreck removal today is often concern for the environment, rather than any threat to safety of navigation."¹

Due to the persistent efforts of the IMO and state parties to adopt various safety conventions, there has been a noticeable decline in the rate of ship accidents in recent years. Nevertheless, the number of identified maritime wrecks has steadily increased, perhaps owing to improved underwater detection technology.

The world received a rude awakening to the potential threat of maritime wrecks on the 25 August 1984 when the *Mont Louis*, a French flagged roro cargo and container carrier collided with the ferry *Olau Britannia* about 12 miles off Ostend, Belgium while she was on a voyage from La Havre, France to Riga, U.S.S.R. She sank almost immediately.

This was hardly momentous to a preoccupied world until news filtered in that among the cargo in the *Mont Louis*'s holds were 30 industrial packages consisting of cylinders each containing 12 tonnes of Uranium Hexafluoride enriched to less than 1% (in its pristine condition, Uranium Hexafluoride is a low-radioactive solid that *reacts with water* to form the highly corrosive and toxic gas/liquid hydrogen fluoride).²

A multinational salvage team thereafter set to work but such was the adverse weather condition that the stern of the wreck was not removed until the 29th September 1984, while the last of the cylinders of Uranium was recovered on the 4th October 1984, some having been found on the beach of De Haan, Belgium. Thankfully, earth's marine

¹ Press Release of the International Salvage Union dated the 29th May 2007.

² Reported in "A shipwreck sends a warning", Time Magazine, Monday September 10th 1984

environment lived to fight another day as the cylinders withstood the adverse conditions without leakage.

Since then, there have been alarming reports that several military vessels sunk during the first and second world wars are at the last stages of the integrity of their hulls, in which are trapped various corrosive substances that can cause serious damage to marine life and the environment. It is therefore clear that the ancient practice of merely marking wrecks to protect ocean navigation would no longer suffice.

In conclusion, it should be emphasized that even though the Nairobi Convention has undertaken a long journey to come into being, the relevance of the concept has stood the test of time and is indeed even more portentous today. The first overtures by the IMO Legal Committee set the ball rolling in 1974. Twenty years later, the first draft Convention was presented by Germany, Netherlands and the UK in 1994. Another 13 years elapsed before the final text of the convention was adopted in May 2007, thus bringing the total gestation period of the Convention to 33 years.

The Convention was been adopted in the year 2007 when global awareness for the dangers of environmental degradation and mindless dumping of noxious substances into waters and environment of the earth has reached an unprecedented level. No further evidence of this abounds than the fact that the Nobel Peace Prize for 2007 was awarded to ex American Vice President Al Gore and the U.N.'s Intergovernmental Panel on Climate Change for their work on global warming and its connection with man's activities.

Critical Provisions of the Convention at a Glance

The Convention extends the authority of participating States to call for the removal of a wreck or any wreckage from a ship, to the EEZ of that State whenever there is a danger or impediment to navigation or a threat that may reasonably be expected to result in major harmful consequences to the marine environment or 'related interests' of those States. The State may also exercise the option of removing the wreck at its own cost and seeking reimbursement of expenses from the registered owner of the vessel.

Essentially the success of the Conventions turns on the implementation of its requirement that all vessels registered in member states and of 300 gross tonnage and above be required to maintain insurance or other financial security to cover liability under the Convention. This will go a long way towards alleviating the principal challenge of wreck removal, which is the availability of funds to enable the registered owner undertake the exercise. The Convention gives participating States, without prejudice to their existing laws, the option to extend its provisions, which include the maintenance of compulsory insurance and a right of direct action against the insurer, to its own territorial waters.

A summary of the key provisions is hereunder presented:

Article 1 (Definitions)

This clarifies the meaning of important words and phrases like “Convention area”, “wreck”, “hazard”, “related interests” (derived from Article II(4) of the 1969 Intervention Convention), “Operator of the ship” and “Affected State.”

Article 2 (Objectives and General principles)

This Article extends the rights of the affected coastal state into the EEZ. Note that it requires measures taken to be proportionate to the determined hazard (similar to Art V of 1969 Intervention Convention).

Article 3 (Scope of Application) and Article 4 (Exclusions)

Article 3 contains the “opt-in” provision enabling states to apply the Convention to wrecks in their territorial and inland waters. This provision is very important to Nigeria as it is proposed that the Convention will apply to Nigeria’s internal waters and territorial seas. The detailed wordings in Article 4.4 are necessary to ensure that a state which seeks the benefit of the financial provisions in Article 12 must comply with restrictions on its freedom of action imposed by Article 9.

Articles 5,6,7,and 8 (Reporting, Determination of hazard, Locating and Marking)

These are straightforward administrative provisions.

Article 9 (Measures to facilitate removal of wrecks)

This is a very important article, which to some extent limits the freedom of action of the coastal state, but only so far as necessary to ensure that the owner can have the opportunity of taking appropriate action. Note that by the provisions of paragraph 10, the flag state consents to the actions of the affected state in accordance with this Article.

Article 10 (Liability of the owner)

This Article imposes strict liability for the costs of locating, marking and removing wreck subject to limited exceptions similar to CLC.

Article 12 (Compulsory insurance)

Based on equivalent principles of CLC, HNS, and Bunkers Conventions, the Convention requires party states to ensure the maintenance of insurance or financial security to cover liability under the Convention. It will be noted that paragraph 1 creates a threshold of 300 gross tons (c.f. 500 in ISM) for a vessel to be required to maintain this insurance or financial security and the amount is pegged at the 1976 LLMC limit as amended (i.e. 1996 Protocol).

Article 13 (Time limits)

This Article imposes a time limitation of 3 years from determination of hazard or 6 years from date of maritime casualty that resulted in the wreck on right to recover costs or bring action under the convention.

Nigeria: Is there an urgent Need for the Domestication of the Wreck Removal Convention?

Part XXVI of the Nigerian Merchant Shipping Act 2007 contains provisions on the matter of wrecks. Some of the provisions on the nature of hazard constituted by wrecks and the definition of technical words are worded very closely to the Nairobi Convention 2007. In my view the major differences between the existing Nigerian law on removal of wrecks and the Convention are:

- The Nigerian Merchant Shipping Act only covers wrecks located in Nigeria's territorial sea;
- The Nigerian Merchant Shipping Act does not provide for the requirement of compulsory insurance for Nigerian flagged vessels and vessels calling at Nigerian ports.

For this reason, the view is that there is a lacuna that will be filled by this draft legislation in the area of removal of wrecks in the EEZ, compulsory insurance and other matters arising herein.

It is hoped that the domestication of this Convention and the adoption of the equal legal framework provided therein for the process of wreck removal in Nigeria's internal waters will redress the problem of wrecks which has been a long standing one in Nigeria's territorial waters.

Statistics on Wrecks in Nigerian Waters

Presently, there is no data on the quantum or location of wrecks in Nigeria's EEZ but available data on the territorial waters indicates that they indeed represent a major challenge. The Government of Nigeria has not been oblivious of the risks posed by wrecks in the territorial waters and in October 1988 and November 1993, committees were set up to examine the problem and attempts made to remove the wrecks but the Government has been impeded by the huge funding required to do so.

A recent survey of wreck sites in the Lagos area commissioned by the Nigerian Maritime Administration and Safety Agency came up with the following conclusions:

- One hundred and nine wrecks are located at sixty-two (62) wreck sites within the Lagos Ports Area alone.

- About twenty-one (21) of the wreck sites are either fully or partially submerged.
- Only about three (3) of the wreck sites were marked with marker buoys.
- Three portions of the Lagos Ports Area were identified as areas of high wreck concentration namely Badagry Creek Bay, Snake Island Bay and Kirikiri Channel
- Preliminary estimate of the cost of removal of all the wrecks in Lagos Ports Area alone is in excess of Forty Million U.S. Dollars (USD 40 million).

As a responsible State holding a position of leadership in the continent of Africa, Nigeria has always endeavored to live up to its international responsibilities. Domesticating and implementing the Nairobi Convention should not be an exception. In the light of this, it is proposed that Nigeria's interest would be better served by adopting the 'opt- in' clause in Article 3 (2), which permits States the choice of adopting the Convention for wreck removal in their territorial waters. Accordingly, a notification from Nigeria's Minister of Transport to the Secretary General of the IMO is attached.

On a more domestic level, the Convention could not have come at a more relevant time as Nigeria is grappling with the challenges of implementing its Coastal and Inland Waters (Cabotage) Act 2003, which creates a right of first refusal for Nigerian shipping companies in opportunities arising from the coastal trade. Against the reality of serious funding constraints, Nigeria has been exploring alternative opportunities for securing and financing indigenous shipping. Recently, the tide of expert opinion in this regards has swung in the direction of strong insurance backing as a likely mechanism for securing employment for Nigerian owned vessels.

In the light of the earlier submission that the key provision of the Convention is the compulsory insurance requirement, it is believed that building on the pedestal of current exploratory talks with the Nigerian Insurance Industry on creating new windows of financing for indigenous shipping should greatly ease the task of implementing the compulsory insurance requirement.

The Process of Domestication of International Conventions in Nigeria

The position of Nigerian law on the application of international Conventions or treaties is laid down by the Constitution of the Federal Republic of Nigeria of 1999, which states clearly in Section 12 (1) that:

“No treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly.”

For the avoidance of doubt, Section 12 (2) further states:

“The National Assembly may make laws for the Federation or any part thereof with respect to matters not included in the Exclusive Legislative List for the purpose of implementing a treaty.”

The implication of this is that until a separate law is passed by both houses of the Nigerian National Assembly, an international treaty shall remain invalid and unenforceable in Nigerian courts. With regards to Maritime Conventions, the Merchant Shipping Act 2007 reposes general responsibility on the Minister of Transportation through Section 1 (1) which states that “Subject to the provision of this Act, the Minister shall have the general superintendence of the matters to which this Act relates.”

Consequent upon the aforementioned, the proper process of domestication of maritime treaties in Nigeria is through the presentation of a draft bill by the Federal Ministry of Transport in conjunction with the Ministry of Justice for the consideration of both houses of the National Assembly. It is usual for the National Assembly to graciously, upon passage of the bill, grant the Minister powers to make Regulations or Guidelines for the implementation of the law.

Upon the passage of the bill by both houses of the National Assembly, it is taken for Presidential assent after which it is published in the National Gazette, whereupon it becomes law recognized and enforceable in Nigerian courts.

Method of Presentation

This draft is designed to reflect, as closely as possible, the reality of lawmaking in Nigeria. Therefore this project is composed of the draft Act and the draft Regulations along with models of Attestation by the Clerk of the National Assembly and Presidential Assent. Also included is a notification from the Minister of Transport to the Secretary General of IMO and the compulsory insurance or other financial security certificate.

The Act is simply the domestication of the Nairobi Convention and as expected, the focus has been on non-derogation from the core principles of the Convention. In drafting the Regulations however, close attention is paid to the practical issues that exert significant influence on performance of government functions such as the duties of “port state control officers” in the implementation of the Act and most importantly the approval process for wreck removal contracts.

In coming into force, this Act and Regulations will repeal Part XXVI of the Merchant Shipping Act on wreck removal in order to avoid unnecessary duplication of laws. The import of this is that this Act and Regulations will assume the position of the primary law on wreck removal in Nigeria. For this reason, the Regulations are designed to be as simple yet self sustaining as possible under the circumstances. The goal is to ensure that the civil servants charged with implementing the law would be able to perform their functions effectively by mere perusal of the Regulations without having to cross-refer to the Act.

