

Explanatory note

The main reason for concluding international treaties is to promote uniformity and certainty of law. Thereafter, internationally agreed provisions should be applicable to the greatest extent possible.¹ In this respect, the Wreck Removal Convention is a new international instrument concerning uniform international rules and procedures to ensure the prompt and effective removal of wrecks and payment of compensation for the costs involved therein.

The primary aim of the Nairobi Convention on Wreck Removal, 2007 is to clarify rights, duties and responsibilities relating to the elimination of hazards posed by wrecks located beyond the territorial sea. Through this, it will also enhance the uniformity and clarity of international law.² The Convention provides a legal basis for a coastal State on how to act when a wreck lies beyond its territorial sea, threatens the marine or coastal environment, the safety of lives, goods and property at sea, or poses a hazard to the safety of navigation.³ Thus, its ratification by Chile will provide the basis to implement the power to compel shipowners to remove wrecks in the exclusive economic zone (EEZ) and, eventually, in the territorial sea. It will also ensure that in most cases the Chilean authorities will be able to recover their costs from the registered owner through a regime of compulsory insurance and direct action against the insurer.

1. Historical Background

The topic of Wreck Removal has been discussed since 1974, following the wreck of the tanker *Torrey Canyon*. At the time, the Legal Committee of the International Maritime Organization (IMO) undertook the review of all national legislations in order to establish uniform rules for wreck removal operations in international waters.

¹ Howlett, Linda, Nairobi International Convention on the Removal of Wrecks 2007, CMI Yearbook 2007-2008, p. 341.

² De Boer, Jan E., The Nairobi Perspective: Nairobi International Convention on the Removal of Wrecks 2007, CMI Yearbook 2007-2008, p. 336.

³ Forrest, Craig, At last: a convention on the removal of wrecks, The Journal of International Maritime Law, Lawtext Publishing Limited, 2008, p. 394.

Unfortunately, nothing came of this initiative because the Committee was aware that the discussion of the possible jurisdictional scope of a wreck could only take place after the Third Conference on the Law of the Sea.⁴

The question of wreck removal was again raised in July 1993 by Belgium, Germany, Greece, Netherlands and the United Kingdom at the 69th Session of the IMO Legal Committee. In 1994, three of these States submitted an initial draft and the final convention originated from this.⁵

The key components of this draft were:⁶

1. The granting of rights to the coastal State to remove a wreck from its EEZ if it is found to represent a hazard to safe navigation or to the marine environment.
2. Strict liability on the shipowner for the costs of reporting, marking and removing a wreck if required to do so by the coastal State.
3. Compulsory insurance and direct action against insurers, up to the 1996 Convention on Limitation of Liability for Maritime Claims (LLMC) limit, modeled on the equivalent provisions of the 1969 Convention on Civil Liability for Oil Pollution Damage (CLC).

It has to be noted that during the discussions over the Wreck Removal at the IMO Legal Committee the following similarity was identified among the different State legislations relating to wreck removal; most countries follow, more or less, the same pattern, that is to say, when there is a wreck, and where that wreck constitutes a hazard, the onus is upon the owner of the wreck to remove it and, in the event of his failure to do so, the State authorities have power to intervene and undertake the removal themselves. The owner remains liable for the wreck removal expenses and the State can generally reimburse itself by selling the salvaged property.⁷

⁴ Ibid.

⁵ Ibid.

⁶ Shaw, Richard, The Nairobi Wreck Removal Convention, The Journal of International Maritime Law, Lawtext Publishing Limited, 2007, p. 433.

⁷ CMI Study of the law on wreck removal, Comparative Analysis of National Laws Relating to Wreck Removal, CMI Yearbook 1996, p. 209.

Finally, in 2007, the International Wreck Removal Convention was adopted in a diplomatic conference. This Convention, when it comes into effect, will fill a gap in the existing international liability framework by providing the first set of uniform international rules aimed⁸ at clarifying the rights and obligations regarding the identification, reporting, locating and removal of hazardous wrecks internationally and also contains provisions which will assist a State Party in recovering from the shipowner the costs associated with removal of a wreck.

Why incorporate into the Chilean legislation the Wreck Removal Convention, 2007? Primarily, because these wrecks can cause a number of major problems:⁹

- Depending on its location, a wreck may constitute a hazard to navigation, potentially endangering human lives, goods and property at sea;
- Depending on the nature of the cargo, a wreck may have the potential to cause significant damage to the marine environment;
- Regarding the costs involved in the marking and removal of hazardous wrecks; the Convention imposes strict liability on the registered owner of the ship for the costs of locating, marking and removing the wreck. Also the registered owner of any ship registered in, or entering a port or terminal of a State Party to the Convention will be required to maintain insurance to cover liability for such costs, and
- The insurance provisions in the Convention apply to all ships of 300 gross tonnage and above and will require registered owners to maintain insurance to cover their liabilities. The Convention also provides a right for States where a wreck has taken place (Affected State) to recover their losses by providing a right of direct action against registered owner's insurers. These measures should greatly improve the prospects of cost recovery.

2. Procedure of the removal of wrecks under the present Chilean Law.

Although Chile does have legislation that addresses the issue of ship wreckage, such legislation is inadequate for modern requirements regarding the removal of wrecks.

⁸ De Boer, Jan E., op. cit., p. 334.

⁹ www.imo.org (16 January 2010).

The procedure under the Navigation Law is the following:

- a) When within national jurisdictional waters or in navigable rivers and lakes, a ship, aircraft or structure sinks or runs aground, and is considered by the Maritime Authority as a danger or an obstacle for navigation, fishing, environmental preservation or other maritime or coastal activities, such Authority shall request the shipowner or operator to take the appropriate measures to initiate, at their expense, its immediate marking and its removal or raising, within a stipulated time frame;
- b) If the shipowner or operator were not to initiate or finish the operation within the specified date, the vessel and/or cargo will be considered abandoned, whilst those responsible would be fined up to 2,000 pesos oro¹⁰ for each gross registered tonnage of the ship up to a maximum of 50,000 pesos oro. The Maritime Authority will also be entitled to proceed with the removal operation or to sell the ship, aircraft or structure, its cargo and wreckage, through open or private bidding;
- c) If the product of the sale is not sufficient to cover all the expenses of the operation carried out by the Maritime Authority, the shipowner or operator shall be obliged to pay the difference to the State, and
- d) In the event of an emergency, the Maritime Authority is entitled to proceed, at the expense and on behalf of the shipowner of the vessel, aircraft or structure, with the removal, clearance and sanitation of the area.

These procedures, in practice, become futile if the Maritime Authority is faced with a situation where the shipowner cannot be found for any reason or ownership is difficult to ascertain, as is always the case.

3. Procedure of Implementation and Ratification of this Convention under the Chilean legislation

In order to implement the Wreck Removal Convention, 2007 into the Chilean legislation, the following procedure must be followed:

¹⁰ A “peso oro” is an special Chilean unit of measure applicable for maritime penalties. One peso oro is equivalent to 2,500 Chilean pesos (equivalent to \$ 4 USD)

Under Article 32 paragraph 15 of the Chilean Constitution the President of the Republic is in charge of the negotiation and signature of a treaty or international convention. Once the treaty is negotiated, and in order to ratify it, the President needs the approval from the legislative body and shall report to the Congress on the content and scope of the treaty, as well as seeking to confirm reservations or to ask.

The Congress may suggest the formulation of reservations and interpretative declarations to the international treaty, during the process of its approval if they proceed in accordance with the provisions of the treaty itself or in the general rules of international law. The adoption of a treaty will require the appropriate legal quorum, and submitted, as relevant to the formalities of a law.

Once ratified the treaty by the Congress, it is incorporated into domestic law by the President, through the promulgation of a Supreme Decree, which has to be published in the gazette together with the text of the treaty.

Under Chilean law, international treaties or conventions have the same effect as national legislation, and shall be applied by the Courts.

As we have seen, under the Chilean law the implementation of an international treaty into the relative domestic law takes place by virtue of adoption or transformation into the existing national maritime legislation. However, nothing precludes the State from adopting specific legislation in order to implement an international treaty.

4. Analysis of the Convention

Chile is party to the United Nations Convention on the Law of the Sea 1982 (UNCLOS). The provisions of UNCLOS relating to the prevention, reduction and control of pollution of the marine environment from ships strike a balance between the measures which a coastal State can take within its territorial sea and EEZ, and the navigational rights of foreign ships in those zones.¹¹

¹¹ Consultation on the UK Implementation and Ratification of the Nairobi International Convention on the Removal of Wrecks, p. 15. www.dft.gov.uk (16 January 2010).

The Wreck Removal Convention, 2007 is one of a number of international liability conventions that promotes the general rights and duties contained in other maritime conventions concerned with the protection of the marine environment.¹²

The aim of the Wreck Removal Convention, 2007 is to provide for the removal of wrecks and for cost recovery following their removal if they are determined as posing a hazard to navigation or the marine environment and the recovery of costs following their removal. It does this through the following measures:¹³

- requiring the registered owner to remove the wreck;
- making the registered owner strictly liable for the costs of locating, marking and removing the wreck, but subject to the international limitation of liability rules;
- requiring the registered owner of ships of 300 gross tonnage and above to maintain insurance or other financial security to cover their liability, and
- giving the Affected State the right of direct action against the provider of the insurance or other financial security. It should be noted that the Wreck Removal Convention introduces strict liability for the costs of locating, marking and removing the wreck for any ship in the States' Convention Area (not just wrecks of ships of 300 gt and above).

4.1 Definitions

4.1.1 Convention Area

The Nairobi Convention defines the “Convention Area” as being the EEZ of a State Party. As not every State has an established EEZ, the definition of “Convention Area” is extended to include an area “beyond and adjacent to the territorial sea” but not extending more than 200 nautical miles from the coast.¹⁴

In principle, as long as the wreck is within the Convention Area, the Convention applies. But if the wreck is within the territorial waters, the Convention would not apply unless the State Party has extended the Convention to wrecks within its territorial sea (opt-

¹² Ibid.

¹³ Ibid.

¹⁴ Griggs, Patrick, Wreck Removal Convention 2007, Shipping and Transport International, Volume 7, Number 1, p. 21

in).¹⁵ In this respect, a State, at the time of its ratification, may give notice to the Secretary-General of IMO that the Convention will also apply to wrecks located in the territorial sea of that State.

One curious consequence of the opt-in is that where the wreck is within the EEZ the Convention will only apply if the Affected State and the flag State are both parties to the Convention. However, where the Affected State has opted-in it can apply the terms of the Convention to all wrecks, whatever the status of the flag State.¹⁶

4.1.2 Wreck

The definition of wreck is central in the Convention and it was the subject of endless debate at every legal committee meeting and the result is an expansive, if slightly unwieldy, definition.¹⁷

Article 1 (4) of the Convention defines a “wreck” as anything lost from a ship or vessel following a maritime casualty that may be reasonably expected to sink or to strand. That is to say:

- a sunken or stranded ship; or
- any part of a sunken or stranded ship, including any object that is or has been on board such a ship; or
- any object that is lost at sea from a ship and that is stranded, sunken or adrift at sea; or
- 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. Thus, salvage activity will therefore have the effect of taking the casualty out of the scope of wreck for the purposes of the Convention¹⁸ and the use of the word “effective” is to preserve the right of a State Party to intervene if it is not satisfied that the services of a professional salvor or contractor are achieving the prompt removal of a wreck.¹⁹

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Griggs, Patrick, Wreck Removal: Draft Convention, CMI Yearbook 2005-2006, p. 379.

¹⁸ Forrest, Craig, op. cit., p. 396.

¹⁹, Griggs, Patrick, op. cit. (supra 14), p. 21.

As usual in conventions of this nature, this definition will 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.²⁰

4.1.3. Hazard

The final limiting criterion for the subject matter of the Convention is the requirement that the wreck represents a hazard.²¹ If it is determined to be a hazard, then various rights and obligations arise. If it is not a hazard then the Convention does not apply.²²

Like the term “wreck”, the definition of “hazard” was long debated by the Legal Committee and it was finally defined as ‘any condition or threat that:

- poses a danger or impediment to navigation; or
- 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’.²³

The definition of hazard is extremely broad and covers threats to navigation as well as harmful consequences to the marine environment, coastline or related interests (health of local population, fisheries activities, economic interests including tourist attractions) of the State in whose EEZ the wreck occurs.²⁴

Article 6 sets out the criteria for determining whether a wreck poses a hazard and lists the factors which should be taken into account by an Affected State in determining a hazard.²⁵

²⁰Forrest, Craig, *op. cit.*, pp. 395-396.

²¹ *Ibid.*, p. 396.

²² Griggs, Patrick, *op. cit.*, (supra 14), p. 21.

²³ *Ibid.*

²⁴ Consultation on the UK Implementation and Ratification of the Nairobi International Convention on the Removal of Wrecks, *op.cit.*, p. 21.

²⁵ Griggs, Patrick, *op. cit.*, (supra 14), p. 21.

4.2. Obligation to report wrecks

Article 5 of the Convention establishes an obligation on the master and the operator of a ship which has been involved in an accident resulting in wreck, whether or not that ship is or may become a wreck, to report this to the Affected State. The master or operator of the ship is required to provide it with all the relevant information necessary to determine whether the poses a hazard, including: the precise location of the wreck; its type, size and construction; the nature of the damage to it and its condition; the nature and quantity of the cargo, in particular any hazardous and noxious substances; and the amount and types of oil, including bunker and lubricating oil, on board.²⁶

It is worth noting that the registered owner does not have the obligation to report the wreck. Given that early reporting is essential to avoid a hazard, the obligation is imposed on those most immediately connected with the operation of the ship.

However, it is the registered owner who bears financial liability for any wreck removal. As such, the obligation of the master or operator to report includes giving the name and principal place of business of the registered owner.²⁷

Given the imperative language used in Article 5, it is understood that there is a duty to report the existence of the wreck to all States which could potentially be affected. It is also worth noting that there is no obligation to report the discovery of a wreck, such as abandoned hulk, or a source of pollution arising from a wreck that sunk some time ago.²⁸

4.3. Notification of wreck

Article 7 deals with the means an Affected State is to use upon becoming aware of a wreck. There is an absolute requirement to inform mariners and the States concerned of the location and nature of any wreck. If the wreck poses a hazard, its precise location must be established.

²⁶ Forrest, Craig, *op. cit.*, p. 399.

²⁷ Forrest, Craig, *op. cit.*, p. 399.

²⁸ *Ibid.*

This obligation applies to all wrecks of which the Affected State becomes aware, not only those that might constitute a hazard. The Affected State will therefore be under an obligation to warn of the existence of a wreck even before it has been able to determine whether it constitutes a hazard. If the wreck is determined to be a hazard, the obligation to locate it is heightened, as the Affected State is to take all practicable steps to identify its precise location. That safety of navigation lies at the heart of the Convention is reflected in this early warning obligation, described as a ‘matter of urgency’.²⁹

4.4. Marking of the wreck

Article 8 deals with the steps the Affected State must take to mark a wreck.

If the State determines that the wreck poses a hazard, further obligations are imposed on the State and the registered owner.

The State should mark the wreck in conformity with international standards and promulgate the particulars of the marking.

4.5. Wreck Removal

4.5.1 Preliminary obligations of the Affected State

Once the Affected State has determined that a wreck constitutes a hazard, the central provision of the Convention came into play, that is, the ‘registered owner shall remove a wreck determined to constitute a hazard’.³⁰

Article 9 details the measures that the Affected State must take in ensuring that a wreck that poses a hazard is removed:

- The Affected State must immediately inform the State of the Ship’s registry and the registered owner that the wreck has been determined to be a hazard;
- The State is also required to proceed to consult with the State of the ship’s registry and other States affected by the wreck about measures to be taken (Article 9 [1]);

²⁹ Forrest, Craig, op. cit., p. 401.

³⁰ Forrest, Craig, op. cit., p. 402.

- The Affected State may lay down conditions for removal by a salvor or other person contracted by the registered owner only to the extent necessary to ensure that the manner of removal is consistent with considerations of safety and protection of the marine environment (Article 9 [4]);
- The Affected State may only intervene in a removal by the registered owner or salvor contracted by the registered owner to ensure that the manner of removal is consistent with considerations of safety and protection of the marine environment (Article 9 [5]);
- The Affected State must set a deadline by which the registered owner must remove the wreck. The Affected State must inform the registered owner in writing of the deadline and may specify that the Affected State will remove the wreck at the owner's expense if the deadline is not met (Article 9 [6]);
- If the deadline for removal by the registered owner has expired the Affected State may remove the wreck in a manner consistent with considerations of safety and the marine environment (Article 9 [7]), and
- The Affected State must inform the registered owner that it will intervene in the removal of the wreck if the hazard becomes particularly severe (Article 9 [8]).

Article 9 also imposes a number of obligations on the registered owner:

- The registered owner must remove the wreck within the deadline set by the State (Article 9 [2]);
- The registered owner (or other person e.g. insurer) must provide evidence of insurance (Article 9 [3]).
- The registered owner may contract with any salvor or other person to remove the wreck (Article 9 [4]).

4.6. Exclusions under the opt-in clause.

As mentioned above, under Article 3 of the Convention, a State may opt-in. However, if a State chooses to extend the application of the Wreck Removal Convention to wrecks located in its territory, including territorial sea, then certain parts of the Convention are excluded or amended and will not apply. These are set out in Article 4, Paragraph 4 of

the Convention and most relate to the application of Article 9, which concerns measures to facilitate the removal of the wreck.

The effect of the exclusions and amendments is that within the territory and territorial sea the only Convention obligations under Article 9 on the Affected State are to set a deadline for the removal of the wreck by the registered owner and to inform the registered owner of the deadline. The State may also intervene in the removal of the wreck if the hazard posed by it becomes particularly severe.

The registered owner is required to remove the wreck and must provide the competent authority of the Affected State with evidence of insurance or other financial security (this information may instead be provided by the insurer). In the territorial sea the registered owners' right to contract with any salvor will be subject to the national law of the Affected State.

4.7. Shipowner liability

The Convention clearly makes the registered owner liable for the costs of locating, marking and removing the wreck, as provided for in Articles 7, 8 and 9. This strict liability is, however, not absolute.³¹

This means that liability is not dependent on the claimants proving fault. The fact that a wreck has been determined to pose a hazard is sufficient to establish the shipowners' liability unless the circumstances fall within one of the defences available to the shipowner.

Article 10 sets the usual exceptions to liability such as *force majeure* (war, acts of God, etc.), or act or omission of a third party. The shipowner bears the burden of providing that the maritime casualty was caused wholly by the act of the third person.³²

The liability is limited to the costs arising under Article 7, 8 and 9.³³

³¹ Forrest, Craig, op. cit., p. 403.

³² Ibid.

³³ Forrest, Craig, op. cit., p. 403.

Article 10 recognizes that the registered owner may be entitled to limit his liability by reference to the LLMC, as amended. In this context it is not uncommon to find that States which are party to the LLMC have exercised a reservation in relation to wreck removal expenses³⁴ or that some States might not be parties to the LLMC; Consequently, shipowners have unlimited liability for wreck removal claims.³⁵

Considering that the State of Chile is not party to the LLMC, it is recommendable to include a provision in the instrument of implementation of the Nairobi Convention stating that, shipowners will be liable for the all costs of the removal, ensuring shipowners' unlimited liability for wreck removal claims.

Under the Nairobi Convention, the registered owner will not be liable for the costs of locating, marking and removing the wreck to the extent that liability for such costs would be in conflict with the CLC Convention, the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996, as amended (HNS), the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001, as amended (Bunkers Convention), the Convention on Third Party Liability in the Field of Nuclear Energy, 1960, as amended and the Vienna Convention on Civil Liability for Nuclear Damage, 1963, as amended.(Nuclear Damage Conventions), provided that the relevant convention is applicable and in force for the State that would have had to bear the cost of the wreck removal.

Similarly, where measures undertaken under the Nairobi Convention amount to salvage, under either national law or an international convention, such law or convention will govern the question of remuneration or compensation payable to the salvors.³⁶

³⁴ Griggs, Patrick, *op. cit.*, (supra 14), p. 23.

³⁵ Howlett, Linda, *op. cit.*, p. 342.

³⁶ Forrest, Craig, *op. cit.*, pp. 403-404.

4.8. Compulsory insurance by the Registered Owner

Article 12 of the Wreck Removal Convention requires the registered owner of ships of 300 gt and above to maintain insurance or other financial security. The insurance (or other financial security) must be an amount at least equal to the applicable limit of liability under the LLMC regime, based on the tonnage of the ship concerned.

The registered owner must carry insurance certified by the State of the ships' registry. If the State of the ships' registry is not a party to the Wreck Removal Convention, 2007 then a certificate must be obtained from another State Party.

Under the Wreck Removal Convention, there is no requirement to maintain insurance in respect of ships below 300 gt. However, the shipowner is still strictly liable for removal of the wreck.

4.9. State Certification of Insurance

Article 12 of the Wreck Removal Convention requires all ships of 300 gt and above to carry a State-issued Certificate attesting that insurance or other financial security is in force in accordance with the insurance provisions of the Convention. The State Certificate must always be carried on board any ship of 300 gt and above entering or leaving a port or terminal in a State Party. This applies to all ships, even if they are registered in a State that is not party to the Convention.

In order to ensure that a ship flying the flag of a non party can, for example, enter a State party's port, it may provide an insurance certificate issued by any State Party. In this respect, the Convention provides a safeguard of sorts in explicitly allowing a State Party to request, at any time, 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.³⁷

³⁷ Forrest, Craig, op. cit., p. 404.

4.10. Offences for failure to report a wreck or to maintain insurance or to carry a State Certificate of Insurance

The Wreck Removal Convention does not contain its own free standing provision for imposing penalties. It is therefore for each State Party to determine the offence and the penalty. The recommendation on the part of Chile is the establishment of penalties in case of failure:

- of the master or the operator to report the wreck to the Affected State, and
- to maintain insurance or to carry a State Certificate of Insurance.

The State Certificate will be the means by which States verify that a ship entering its ports or terminals is compliant with the insurance obligations of the Convention.

There should be a power to detain a ship if it attempts to enter or leave a port without the required insurance. A ship with ineffective insurance would not be in compliance with this requirement. The State would actually be failing in its obligations under Article 12 of the Convention if it were to permit a ship to continue its voyage in the knowledge that effective insurance does not exist, even though a (previously issued) State Certificate might be carried on board the ship. Effective insurance is the very basis of the whole Convention.

4.11. Electronic Certificates

Article 12 [13] provides for a State to allow ships not to carry on board or to produce the certificate of insurance when entering or leaving a port in its territory, as long as the State which is responsible for issuing the certificate has notified the IMO that it maintains records in an electronic format, accessible to all States parties, showing that there is a certificate.

4.12. Claimants

Under the Convention, wreck removal claimants will not need to prove fault on the part of the shipowner, and will be able to claim directly against the insurer or provider of financial security.

4.13. Direct action against the insurer

The Wreck Removal Convention, 2007 provides the Affected State or States with a right of direct action against the insurer or any other person providing financial security for the registered owner's liability for pollution damage. This entitles a claimant to bring his claim directly against the shipowners' insurer.

This right to take action directly against the insurer is particularly important given the existence of many one-ship companies whose single asset might be the wreck, and who therefore might have no funds available to meet their liability under the Convention.³⁸

The right of direct action ensures that the insurer or provider of financial security cannot rely on the 'pay to be paid' insurance clause. Indeed, most P&I clubs, usually cover the shipowners' wreck removal liability on the "pay to be paid" principle, by which the P&I club only indemnifies the shipowner for costs already incurred in relation to the wreck.³⁹

Direct action is therefore a mechanism that will help claims to be settled more quickly particularly if the shipowner is insolvent, legally inaccessible, or otherwise unable to make payments.

4.14. Time limits for a claim

Claims under the Convention are subject to a legal time limit.

Article 13 provides that rights of compensation are extinguished unless actions is brought within 3 years of the "hazard" being determined or a maximum of 6 years from the date of the maritime casualty which gave rise to the wreck.⁴⁰

5. Conclusions

Maritime authorities in many States, including Chile, have been faced with difficult legal problems concerning the removal of hazardous wrecks located beyond their

³⁸Forrest, Craig, *op. cit.*, p. 405.

³⁹ *Ibid.*

⁴⁰ Griggs, Patrick, *op. cit.*, p. 23.

territorial waters. In most of the cases, costs incurred by the State during the removal operations have to be recovered from the parties concerned by the usual legal means and as a result, the State is repeatedly engaged in lengthy, and sometimes unsuccessful, legal proceedings to recover costs.⁴¹ Indeed, a valueless wreck will not yield sale proceeds equal to the costs of its removal. Since most ships are owned by a one-ship company, the prospects of a coastal State recovering the expenses it has incurred in removing a wreck through legal action are very poor in the absence of insurance provisions.⁴²

The Convention aims to provide the legal basis for States to be able to act when a wreck lies beyond its territorial sea and threatens the marine environment, the safety of lives, goods and property at sea, or poses a hazard to the safety of navigation. It would also provide the powers to have a wreck removed at the shipowners' expense, while at the same time ensuring that shipowners are able to cover this possible expense through a system of compulsory insurance.

Therefore, and considering the above mentioned, the State of Chile has decided to adopt the Nairobi Convention, for which a draft Supreme Decree promulgating this Convention is enclosed. Through this Supreme Decree, the Maritime Authority is authorized to establish the necessary standards for its implementation at national level. This entity is in charge of watching over the safety of navigation and the protection of life at sea by controlling the compliance of the national and international provisions regarding these issues.

A draft resolution is also enclosed in this project through which the administrative guidelines are established by the Chilean Maritime Authority regarding the procedures as to effectively implement the wreck removal regulations set in the Nairobi Convention.

⁴¹ De Boer, Jan E., op. cit., p. 340.

⁴² Shaw, Richard, The Nairobi Wreck Removal Convention, CMI Yearbook 2009, p. 402.

Finally, and in order to have an harmonized legislation, the draft resolution repeals the existing procedure concerning removal of wrecks under the Chilean law and replaced it with the new standards and procedures implemented through it.

SUPREME DECREE

That promulgates the Nairobi International Convention on the Removal of Wrecks, 2007.

N°.....- Santiago,....., 2010.-

WHEREAS, Article 32, N° 15, and Article 54, N° 1), subsection 1 of the Political Constitution of the Republic of Chile.

Considering,

That on 18 May 2007, the Nairobi Convention on the Removal of Wrecks, 2007 was adopted by the International Conference on the Removal of Wrecks, 2007, held in the city of Nairobi.

That the Constitutional Court, by sentence ____ - 2010, of _____, 2010, stated that the Nairobi Convention on the Removal of Wrecks, 2007, submitted to its control, is given constitutional status.

That the Nairobi Convention on the Removal of Wrecks, 2007 was approved by the National Congress, as stated in the Official Note N° _____, _____, 2010, issued by the Honorable Senate.

That the ratification instrument of this Convention was deposited with the Secretary-General of the International Maritime Organization on _____, 2010.

It is decreed that:

Article 1: The Nairobi Convention on the Removal of Wrecks, adopted on 18 May 2007, in Nairobi, by the International Conference on the Removal of Wrecks, 2007 shall be promulgated according to the text included in the annex to this Supreme Decree.

Article 2: The Directorate General of the Maritime Territory and Merchant Marine of Chile shall be assigned as the authority responsible for implementing the Nairobi International Convention on the Removal of Wrecks, 2007.

Article 3: The Supreme Decree shall be published in the Official Gazette and shall enter into force on the day following its publication.

ANNEX 1

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.⁴³

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.

⁴³ Refer to the International Management Code for the Safe Operation of Ships and for Pollution Prevention, adopted by the Assembly of the International Maritime Organization by resolution A.741 (18), as amended.

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 Organization⁴⁴, 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;

⁴⁴ Refer to the revised Guidelines for the Identification and Designation of Particularly Sensitive Sea Areas, adopted by the Assembly of the International Maritime Organization by resolution A.982(24), as amended.

- (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 defenses (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 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.

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 2

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.
-

D.G.T.M .Y M.M. UNCLASSIFIED N° VRS.

ESTABLISHES RULES FOR THE
IMPLEMENTATION OF THE NAIROBI
INTERNATIONAL CONVENTION ON THE
REMOVAL OF WRECKS, 2007 WITHIN THE
REPUBLIC OF CHILE

VALPARAISO, _____, 2010.

WHEREAS, articles 2, 5 and 97 of Decree-Law N°2.222 of 1978, Navigation Law; articles 1, 3 and 4 of Statutory Decree N° 292, establishing the Organic Law of the Directorate General of Maritime Territory and Merchant Marine; and article 3 of Supreme Decree N° XXX, promulgating the Nairobi International Convention on the Removal of Wrecks, 2007.

CONSIDERING:

That the mission of the International Maritime Organization is summarized in the following statement: "Safe, secure and efficient shipping on clean oceans".

That Chile is a Member of the International Maritime Organization since 1972, and has been, since then, permanently participating and working towards the organization's motto: to achieve "safe, secure and efficient shipping on clean oceans".

That according to article 5 of Decree-Law N° 2.222 of 1978, Navigation Law, the Maritime Authority is the Directorate General of Maritime Territory and Merchant Marine, and as such, shall enforce and control the compliance of this Law, the international conventions and the legal and statutory rules related to its functions, the preservation of the marine environment and navigation within waters under national jurisdiction.

That article 3 a) of Statutory Decree N°292 which approves the Organic Law of the Directorate General of Maritime Territory and Merchant Marine states that the Directorate General of Maritime Territory and Merchant Marine is responsible for the safe navigation and the protection of life at sea, by controlling the compliance of national and international regulations on these issues.

That according to article 97 of Decree-Law 2.222, Navigation Law, the Maritime Authority is responsible for monitoring the compliance of all legal and statutory rules, as well as all administrative resolutions in force or that must be implemented in waters of national jurisdiction.

That the Supreme Decree N° _____ published in the Official Gazette on _____ 2010, establishes that the Maritime Authority is responsible for the implementation of the Nairobi International Convention on the Removal of Wrecks, 2007 in Chile.

IT IS HEREBY BEING RESOLVED TO:

1.- APPROVE the standards and procedures included in Schedules “1” and “2” in this resolution so as to implement the Nairobi Convention on the Removal of Wrecks, 2007 at national level.

2.- Articles 132 to 141 inclusive of the Decree-Law 2.222, Navigation Law regarding the removal of wrecks, are hereby repealed and shall be replaced with what is stated in this resolution and its annexes.

TAKE NOTE, COMMUNICATE AND PUBLISH in the Maritime Information Bulletin of the Directorate General of the Maritime Territory and Merchant Marine, so that the information contained herein may be known and complied with.

ENRIQUE LARRAÑAGA
VICE ADMIRAL
DIRECTOR GENERAL

SCHEDULE 1

Article 1

Definitions

For the purposes of this Resolution:

1. “Affected Area” means the territorial sea and the exclusive economic zone of the Republic of Chile, hereinafter referred to as the State, where the wreck is located.
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. “Chilean Ship[s]” means any ship[s] that is registered under the Chilean flag.
4. “Foreign Ship[s]” means any ship[s] that is registered under a foreign flag.
5. “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.
6. “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.
7. “Hazard” means any condition or threat that:
 - (a) poses a danger or impediment to navigation; or
 - (e) 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.
8. “Related interests” means the interests of the 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.
9. “Removal” means any form of prevention, mitigation or elimination of the hazard created by a wreck. The words “remove”, “removed” and “removing” shall be construed accordingly.
 10. “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.
 11. “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.
 12. “Maritime Authority” means the General Director, Maritime Governors and Captains of the Port as described in article 2c) of the Navigation Law of the Republic of Chile.
 13. “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.
 14. “Organization” means the International Maritime Organization.
 15. “Secretary-General” means the Secretary-General of the Organization.
 16. “Convention” means the Nairobi International Convention on the Removal of Wrecks, 2007 promulgated in the Supreme Decree N° _____.
 17. “SHOA” means the Hydrographic and Oceanographic Service of the Chilean Navy.

Article 2
Objectives and general principles

1. The Maritime Authority may take measures in relation to the removal of a wreck which poses a hazard in the Affected Area.
2. Measures taken by the Maritime Authority 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 Ships' Registry, and of any person, physical or corporate, concerned.

Article 3
Scope of application

This Resolution shall apply to wrecks located in the Affected Area.

Article 4
Reporting wrecks

1. The master or operator of a ship shall be required to report to the Maritime Authority without delay when that ship has been involved in a maritime casualty resulting in a wreck within the Affected Area.
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 Maritime Authority 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;
 - (e) the amount and types of oil, including bunker oil and lubricating oil, on board.

Article 5

Locating wrecks

1. Upon becoming aware of a wreck, the Maritime Authority shall use all practicable means to warn mariners and interested States, as a matter of urgency, the nature and location of the wreck.
2. If the Maritime Authority 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 6

Marking of wrecks

1. If the Maritime Authority determines that a wreck constitutes a hazard, it should 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 Maritime Authority shall take all the necessary measures to immediately make public the particulars of a wreck and shall also advise SHOA to ensure that all nautical publications are likewise updated.

Article 7

Measures to facilitate the removal of wrecks

1. The registered owner shall be obliged to remove a wreck, determined to constitute a hazard, within the deadline set by the Maritime Authority in accordance with Paragraph 4 of this Article.
2. When a wreck has been determined to constitute a hazard, the registered owner, or other interested party, shall provide the Maritime Authority with evidence of insurance or other financial security as required by article 12 of the Convention.
3. The registered owner may contract with any salvor or other person to remove the wreck, determined to constitute a hazard, on behalf of the owner. Before such removal commences, the Maritime Authority 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.

4. The Maritime Authority shall:

- (a) set a reasonable deadline within which the registered owner must remove the wreck;
- (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 owners' expense; and
- (c) inform the registered owner in writing that it intends to intervene immediately in circumstances where the hazard becomes particularly severe.

Article 8

Liability of the owner

1. Notwithstanding Article 10.2 of the Convention, the registered owner shall not be able to limit his liability for the costs of locating, marking and removing the wreck under articles 5, 6 and 7, respectively, unless the registered owner proves that the maritime casualty that caused the wreck:

- (d) resulted from an act of war, hostilities, civil war, insurrection, or a natural phenomenon of an exceptional, inevitable and irresistible character;
- (e) was wholly caused by an act or omission done with intent to cause damage by a third party; or
- (f) 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.

Article 9

Compulsory insurance or other financial security

Any Chilean Ship or Foreign Ship navigating within the Affected Area shall be required to maintain a compulsory insurance or other financial security to cover the wreck removal liability, in accordance with Article 12 of the Convention.

Article 10

Issue of the Certificate

1. The Maritime Authority shall issue a certificate attesting that insurance or other financial security is in force in accordance with article 12 of the Convention to each Chilean Ship determining that the requirements of paragraph 1 have been complied with. This compulsory insurance certificate shall be in the form of the model set out in the annex to this Resolution, 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.
2. The Maritime Authority may issue a Certificate of compulsory insurance in the above form to Foreign Ships of 300 gross tonnage and above where such ships are not registered by States party to the Convention. In this case, the registered owner of the ship may apply for a certificate to be issued by the Maritime Authority. The application must be made in a form, including the information and documents, as specified by the Maritime Authority.

3. The Maritime Authority will verify all the information provided by the applicant and if it is satisfied that the applicant is maintaining insurance or other financial security it will issue to the applicant an insurance certificate for the ship; or
4. If the Maritime Authority is not so satisfied, it will refuse to issue an insurance certificate for the ship.
5. The certificate shall be carried on board the ship and a copy shall be deposited with the Maritime Authority.

Article 11

Penalties for the failure by the master or operator to report a wreck or to maintain insurance or to carry a State Certificate of Insurance.

1. In the case of the master or the operator's failure to report a wreck as required under article 5 of this Law, the master or the operator shall be fined by the Maritime Authority _____ pesos oro.
2. The Maritime Authority is entitled to restrict the entrance to national ports, or navigation through its interior waters, of any ship that fails to provide a State Certificate as required in Article 9 of this Resolution.
3. When the ship is at a national port or in interior waters and has failed to comply with the obligation required in Article 9 of this Resolution, the Maritime Authority has the right to detain the ship until such Certificate of Insurance is produced.

Article 12

Entry into force

This Resolution will be published in the Official Gazette and will enter into force the next day after publication.

SCHEDULE 2

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 Director General of the Maritime Territory and Merchant Marine

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 Republic of Chile by the Director General of the Maritime Territory and Merchant Marine.

At

(Place)

On

(Date)

(Signature and Title of issuing or certifying official)