



IMO



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**TERRITORIAL SEA AND EXCLUSIVE ECONOMIC ZONE (WRECK REMOVAL)  
REGULATIONS, 2021**

**A Legislation Drafting Project submitted in partial fulfilment of the  
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## **Abbreviation**

CLC	International Convention on Civil Liability for Oil Pollution Damage, 1969
CMI	Comité Maritime International
EEZ	Exclusive Economic Zone
GT	Gross Tonnage
HNS	International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea
IMCO	Inter-governmental Maritime Consultative Organization
IMO	International Maritime Organization
LEG	Legal Committee
UNCLOS	United Nations Convention of the Law of the Sea
URT	United Republic of Tanzania
WRC	Wreck Removal Convention
ZMA	Zanzibar Maritime Authority

## EXPLANATORY NOTE

### 1.0 Introduction

The Nairobi International Convention on the Removal of Wrecks, 2007 (WRC) was adopted at the International Conference held from 14<sup>th</sup> to 18<sup>th</sup> May, 2007 in the United Nations Office at Nairobi Kenya (UNON) and entered into force on 14<sup>th</sup> April, 2015.<sup>1</sup> Up until January 2021, 55 countries have ratified the Convention.<sup>2</sup> As a geographical consequence and as a gesture of appreciation to Kenya for hosting the conference, the Convention was named Nairobi Convention.

The WRC provides the legal basis for States Parties to the Convention, to remove shipwrecks that adversely affect the safety of lives and property at sea as well as the marine environment.

Although the incidence of marine casualties has decreased dramatically in recent years, mainly thanks to the work of the International Maritime Organization (IMO) and the unrelenting efforts of the Government to enhance safety in shipping operations, the number of abandoned wrecks is estimated at almost thirteen hundred worldwide. The number might even be greater, and as a result, the problems that the Coastal State and shipping in general face have become more acute, which poses a pressing issue.

When dealing with wreck removal from a legal perspective three main questions need to be answered: Who is responsible for a wreck? what measures can and are about to be taken based on that responsibility? and the last question is how can the responsibility be enforced? The WRC addresses these questions to various extents as will be discussed hereunder.

### 2.0 The development of WRC

The development of WRC took a considerable amount of time. The origin can be traced back to the *Torrey Canyon* disaster which was carrying 119,328 tons of crude oil on board when she struck a rock off the southwest coast of England in 1967 and the legal insufficiencies exposed by it.<sup>3</sup> This was the first time that discussions took place regarding the need for there to be a set of uniform intervention rights for Coastal States beyond their territorial waters. The Legal

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<sup>1</sup> Nairobi International Convention on the Removal of Wrecks (Imo.org 2020).

<<https://www.imo.org/en/About/Conventions/Pages/Nairobi-International-Convention-on-the-Removal-of-Wrecks.aspx>> Accessed 11 January 2021.

<sup>2</sup> <https://wwwcdn.imo.org/localresources/en/About/Conventions/StatusOfConventions/Status%20-%202021.pdf>. Accessed 11 January 2021.

<sup>3</sup> Nicholas Gaskell & Craig Forrest *The Law of Wreck* (first published 2019) 7.

Committee of the Inter-Governmental Maritime Consultative Organization (IMCO, and later IMO) considered the issue of intervention rights for wrecks removal, and added it to its agenda on its twelfth session in 1972 and was included in the long term work programme of the Organization for 1978-1982<sup>4</sup>. Despite this, in the 26<sup>th</sup> session of the Legal Committee in 1976, it became clear that there were too many conflicting priorities between delegations on the necessity for international regulations.<sup>5</sup>

Besides this, the Legal Committee partly knew that such convention and the jurisdictional issues relevant to wrecks could only be discussed after the conclusion of the Third United Nations Conference on the Law of the Sea. Thus, the preparation of the Convention was postponed and would not be given any serious consideration until the 63<sup>rd</sup> session in 1990.<sup>6</sup> As a result, in 1994 at the 73<sup>rd</sup> Session of the IMO Legal Committee, the three nations including Germany, the United Kingdom and the Netherlands urged further action to be taken on the topic of wreck removal.<sup>7</sup> This renewal persistence was instigated by the fact that there was an increasing number of incidents wherein ships had to be removed, while costs could not be recovered. The approximate financial loss garnered by Germany mounted to €6.9 million while the financial loss of the Netherlands amounted to over €7.3 million.<sup>8</sup> Due to these financial losses an international Convention was demanded which would provide for a system for the reimbursement of the costs incurred when removing wrecks. The three nations, (the United Kingdom, Germany and the Netherlands) submitted a paper, pointing out that the existing national laws do not cover the situation where the incidents involving wrecks located outside territorial waters which had caused navigational problems.<sup>9</sup> In 1966, the Comité Maritime International (CMI) submitted a report to the IMO suggesting the creation of a universal wreck removal law.<sup>10</sup> This makes the WRC to be the Convention that has taken the longest time to develop within the framework of the IMO.

Finally, in October 2006 at the 92<sup>nd</sup> Session of the IMO Legal Committee it was decided that despite a few lingering issues the draft was ready for a diplomatic conference in Kenya in 2007<sup>11</sup>. After much deliberation and a special effort by a German correspondence and drafting

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<sup>4</sup> Peter Ehlers and Rainer Lagoni, *Enforcement of International and EU Law in Maritime Affairs* (LIT 2008)150.

<sup>5</sup> *ibid.*

<sup>6</sup> *ibid.*

<sup>7</sup> Patrick Griggs CBE, Law of Wrecks, in David J. Attard et al (eds), *The IMLI Manual on International Maritime Law, Volume II, Shipping Law*, OUP, Oxford, 2016.

<sup>8</sup> Peter and Lagoni, (no.4).

<sup>9</sup> Griggs (no.7).

<sup>10</sup> *ibid.*

<sup>11</sup> Nicholas Gaskell & Craig Forrest (no.3) 370.

group in early 2007, the Legal Committee managed to reach a compromise on the highly contentious territorial sea extension issue.<sup>12</sup>

## 2.1 The purpose of the Convention

The purpose of the WRC is to deal with legal and practicable gaps which arose through various incident, by laying out the duties of a coastal State, flag State and ship owner in removing wrecks, not only in the Exclusive Economic Zone (EEZ), but also by providing the option of extending such duties to a State's territorial waters. These gaps are:

- a. The first gap relates principally to the powers of States in international law to take actions and regulate wrecks beyond their territorial waters. An example of that could be seen in December 2002, when the Bahamas flagged container ship *Kariba* collided with the Norwegian registered car carrier *Tricolor* in the French EEZ approximately 20 nautical miles north of Dunkirk.<sup>13</sup> Due to the collision, *Tricolor* subsequently sank and became a total loss. After this incident, two French and English patrol boats were sent on site to signal the wreck's position and the marking system around the *Tricolor* was totally revised. Fifth light buoy were put in place as well as daily flights over the wreck were implemented by French, Belgian and British to survey the potential pollution incident but despite the efforts, in January 2003, *the Vicky*, a Turkish oil tanker transporting 66,000 tonnes of kerosene, hit the *Tricolor's* wreck. The French authorities ordered for the *Tricolor* to be removed, however, doubts arose as to whether a coastal State had the right to order the removal of a wreck in its EEZ.
- b. The second gap relates to the amount which a coastal State may force a ship owner to pay for the expenses of wreck removal operations, and to maintain compulsory financial security to cover such expenses. The main problem was that over the year's State has had to bear the brunt of the expenses where the ship owner is insolvent. In numerous cases the ship owner would be a single ship company consisting of minimal assets with its main asset being the ship (now valueless), besides any potential hull insurance. A good example is the case of the Belize cargo ship *An Tai* which sank in Port Klang, Malaysia in 1997. The Malaysian authorities were forced to pay out RM 18 million

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<sup>12</sup>ibid.

<sup>13</sup> Jim Austin 'The Tricolor/Kariba/Clary Incident (Professional Mariner-March 2008)'.

<<http://www.professionalmariner.com/March-2008/The-Tricolor-Kariba-Clary-Incident/>> Accessed 11 January 2021.

after the ship owners of the *An Tai* refused the order to remove the ship and its pollutants, leaving the authority with no choice but to remove the wreck itself while never recovering the costs incurred.

The WRC introduces a strict liability regime for wreck removal along with a compulsory insurance regime in order to cover such costs.

## 2.2 The Convention area

The WRC is applicable in what is called the *Convention area*. This is defined in Article 1(1)<sup>14</sup> as:

*“.... The exclusive economic zone of a State Party, established in accordance with international law....”*

If a State has not established an EEZ the WRC will, in accordance with Article 1(1) WRC, apply as:

*“..... 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 baseline from which the breadth of its territorial sea is measured.”*

From the outset the WRC thus covers an area between 12 and 200 nautical miles from the baselines from which the breadth of the territorial sea is measured. This leads to consequences when it comes to what type of wrecks likely to fall under the application of the Convention. The waters in the EEZ are often deep. Consequently, sunken ships are in general more seldom likely to pose a hazard to navigation, since they will be submerged in such a way as to not cause problems of this kind. Instead, it is more likely that the wrecks being covered by the Convention in these cases are wrecks that pose a hazard to the navigation or environment.

The WRC includes, as well an opt-in clause in Article 3(2)<sup>15</sup> allowing a State Party to extend the scope of application to wrecks located within its territorial sea by notifying the Secretary-General of IMO at the time of expressing its consent to be bound by the application or anytime thereafter. The wording used in the article is:

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

<sup>15</sup>ibid 3(2).



*“a State Party may extend the application of this Convention to wrecks located within its territory, including the territorial sea ....”*

This indicates that apart from the territorial sea, also internal waters are included in the definition. As of January, 2020 of the 55 States that have ratified the WRC, 20 have chosen to use the opt-in clause extending the scope of application of the Convention to the territorial sea.<sup>16</sup>

However, when the State made a notification under Article 3 paragraph 2 of the Convention, certain provisions will not apply in its territory, including territorial sea.<sup>17</sup> These provisions are, Article 2(4), whereby the State Party will not be entitled to claim or exercise sovereignty or sovereign rights over any part of the high seas. Article 9 (1), (5), (7), (8), (9), (10) which is about measures to facilitate the removal of wrecks and Article 15 about settlement of disputes.

### **2.3 Structure of WRC**

The first four Articles address the scope, purpose and application of the Convention, this falls under part one of the WRC. The second part, in Articles 5 to 9 addresses the legal rules that enable the coastal State to demand the shipowner to remove a dangerous wreck or to have it removed by the coastal State and be charged the cost. The third part, *to wit* Articles 10 and 11 lay down the legal basis for the liability of the owner for the cost pursuant to the second part. The fourth part addresses the conditions for the compulsory insurance. The WRC seeks to lay down a uniform set of rules with the objective of ensuring prompt and effective removal of wrecks located beyond the territorial sea. In this respect, the WRC reflects current non-Convention practice but with the very significant introduction of compulsory insurance and the right of action directly against the insurer.

#### *2.3.1 Definitions.*

One of the most important definitions is about the term ‘wreck’. According to Article 1(4)<sup>18</sup> of the Convention ‘**wreck**’ includes:

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<sup>16</sup> Albania, Antigua & Barbuda, Bahamas, Belize, Bulgaria, Canada, Croatia, Cyprus, Denmark, Finland, France, Kenya, Liberia, Malta, Marshal Island, Netherlands, Niue, Panama, Sweden and the United Kingdom. IMO, Summary of Status of Conventions as on 11<sup>th</sup> January, 2021. <https://wwwcdn.imo.org/localresources/en/About/Conventions/StatusOfConventions/Status%20-%20202021.pdf>. Accessed 11 January 2021.

<sup>17</sup>Article 4 of the WRC.

<sup>18</sup>*ibid*, 1(4).

*“a sunken or stranded ship; or any object that is lost at sea from a ship and that is stranded, sunken or adrift at sea.”*

In order for the Convention to include the wrecks which are afloat or parts of wrecks adrift, the definition is extended and it includes:

*“a ship that is about, or may reasonably be expected, to sink or strand.”*

However in the continuation of the same clause there is a condition that such vessels are expected to sink shall not be considered a ‘wreck’ if effective measures to assist the ship are being taken.

In defining the ‘wreck’ the term ‘**ship**’ is used, however in the WRC this term means:-

*“a sailing 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.”<sup>19</sup>*

The Convention then defines the ‘**hazard**’ that the wreck represents. In Article 6<sup>20</sup> there is a list of criteria which should be taken into account by the affected state when determining whether a wreck poses a hazard to navigation or to the marine environment. It includes the type, size and construction of the wreck, depth of the water in the area, tidal range and currents in the area, particularly sensitive areas, proximity of shipping routes or established traffic lanes, nature and quantity of the wrecks cargo etc. Only when the affected State determines that the wreck poses a hazard to the safety of navigation and the marine environment can further measures be taken in accordance with the WRC.

The WRC conjoins the term wreck with the occurrence of a *maritime casualty*. According to Article 1(3)<sup>21</sup> of WRC a maritime casualty is:

*“.....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.”*

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<sup>19</sup> *ibid* 1(2).

<sup>20</sup> *ibid* 6.

<sup>21</sup> *ibid* 1(3).

However, the definition is kept so wide that it is hardly possible to imagine a wreck, which has not become such one following a maritime incident.<sup>22</sup> The focus is clearly on the hazard rather than the events which gives rise to the hazard.<sup>23</sup>

### 2.3.2 Exclusions

Generally excluded from the scope of application of the WRC according to article 4(2) WRC are warships and other ships owned or operated by a State and used only on non-government service.<sup>24</sup> When a State Party decides to apply WRC to its warships or other ships as described above, it shall notify the Secretary-General, therefore, specifying the terms and conditions of such application.<sup>25</sup>

### 2.3.3 Wrecks Encompassed by the Convention

There was an endless debate at every IMO Legal Committee meeting about delimiting those wrecks that, if constituting a hazard, should be subject to a wreck removal regime.<sup>26</sup> The fact that the Convention does not clearly state that it deals with a wreck from another State Party suggests that the rights of States not being parties to the WRC are compromised. The United States pointed out the fact that measures that a State can take within the EEZ toward a wreck from another State are limited according to international customary law as reflected in the United Nations Convention on the Law of the Sea (UNCLOS). Article 221(1)<sup>27</sup> in the UNCLOS states that:

*“Coastal States have the right to take and enforce measures beyond the territorial sea provided that they are proportionate to the actual or threatened damage to protect their coastline and other interests enumerated in the article from pollution or threat of pollution following upon a maritime casualty or acts relating to such a casualty, which may reasonably be expected to result in major harmful consequences.”*

The WRC allows a coastal State to take measures toward a wreck that constitutes a hazard to navigation.

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<sup>22</sup> Peter and Lagoni, (no.4) 160.

<sup>23</sup> Nicholas & Craig (no.3) 394.

<sup>24</sup> Peter and Lagoni, (no.4) 163.

<sup>25</sup> Article 4(3) of the WRC.

<sup>26</sup> Peter and Lagoni, (no.4) 163.

<sup>27</sup> United Nations Convention on the Law of the Sea (Montego Bay 10<sup>th</sup> December, 1982 entered into force 16 November, 1994) UNT 31363 Vol. 1833.

#### 2.3.4 *When and how can State take action*

Article 2(1)<sup>28</sup> of WRC enables a State party to take measures in accordance with the Convention when it comes to wrecks situated within the Convention area that constitute a hazard. The phrasing “[a] State Party *may* take measures” indicates that there is no obligation for a State Party to act but merely a possibility.

When it has been determined that there exists a hazard to navigation, the affected State, as per Article 2(2)<sup>29</sup> of WRC, has the rights to take measures proportional to the hazard. This demand of proportionality is elaborated in Article 2(3)<sup>30</sup> WRC with the phrasing that these measures cannot go further than what is *reasonably necessary* in order to remove the wreck. The measures shall furthermore stop as soon as the wreck has been removed and unnecessarily come into conflict with the rights and interest of the other State whose flag the ship had and the persons, legal or physical, that are affected.

### **2.3.5 Measures to report, locate and mark wreck.**

#### 2.3.5.1 *Reporting Wrecks*

Pursuant to Article 5 of WRC, 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 a ship has been involved in a maritime casualty resulting in wreck. The affected State is defined in Article 1(10)<sup>31</sup> WRC as:

*“that state in which convention area the wreck is located.”*

It is sufficient that either the owner or the operator reports the incident. The operator of the ship is defined in Article 1(9)<sup>32</sup> WRC as:

*“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.”*

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<sup>28</sup> Article 2(1) of the WRC.

<sup>29</sup> *ibid* 2(2).

<sup>30</sup> *ibid* 2(3).

<sup>31</sup> *ibid* 1(10).

<sup>32</sup> *ibid* 1(9).

The report shall include what is stated in Article 5(2) WRC, which includes information concerning the ship's registered owner and what is necessary in order for the affected State to determine if the wreck constitutes a hazard according to the Convention. The reporting requirements in the Article include precise location of the wreck, its type, size and construction and furthermore what kind of damage has occurred and the condition of the wreck.

Information concerning what cargo the ship carries is also relevant and, in particular, if it includes any hazardous and noxious substances as well as information on different oil and lubricating oil on board the ship.

#### *2.3.5.2 Locating and marking wrecks.*

When the affected State becomes aware of a wreck, it shall use all practicable means to warn mariners and the States concerned of the nature and location of the wreck as matter of urgency pursuant to Article 7(1) WRC. Given the wording in article 7(1) WRC it follows indirectly that this is the case regardless of the wreck being considered a hazard in light of the Convention or not. If the State has reason to believe that the wreck poses a hazard it shall ensure that all practicable steps are taken to establish the precise location of the wreck in accordance with Article 7(2) WRC.

The affected State is first informed about the wreck in accordance with Article 5 WRC and thereafter the affected State is obliged to use all the means to urgently warn mariners and other States concerned of the nature and location of the wrecks. Finally, the affected State shall mark the wreck in accordance with an internationally approved wreck system.

When marking a wreck, the affected State shall according to Article 8(2) WRC take all practicable steps to ensure that the markings conform to the internationally accepted system of buoyage in use in the area where the wreck is located.

#### *2.3.5.3 Measures for removal wrecks*

After the affected State has determined that the wreck poses a hazard, after it has marked and located the wreck, it is obliged to report to the country of a ship's flag (the State of the ship's registry) as well as the registered owner that the vessel is a dangerous wreck and proceed to consult the States of the ship's registry and other States which might be affected about the measures to be taken in relation to the wreck removal. Article 9 of the WRC gives the list of measures which need to be taken in removing dangerous wrecks. In this article it is clearly

determined that the owner of the vessel is the person obliged to remove the wreck. The owner can do it with the assistance of salvors.

Apart from that, the affected State can set a reasonable deadline and conditions to the owner in relation to removal operations. Additionally, the affected State must inform the registered owner that if the wreck is not removed within the stipulated time, it may remove the wreck at the registered owner's expense.<sup>33</sup> If the registered owner is not successful in removing the wreck within the deadline set in accordance with article 9(6) (a) of the WRC, or such registered owner cannot be contacted, then the affected State may commence the removal of the wreck by the most practical and expeditious means available, as long as such means used are consistent with considerations of safety and protection of marine environment.<sup>34</sup>

### 2.3.6 *Liability of the owner*

The registered ship-owner has strict liability for the cost of location, marking and removing wreck under Articles 7, 8 and 9 and it is exempt from liability in only a few particular cases.<sup>35</sup> the registered owner will not be liable for maritime casualty when he proves that the wreck resulted from an act of war, was wholly caused by an act or omission done with the intent to cause damage by a third party or was caused by the negligence or other wrongful act of any government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function.<sup>36</sup>

However, WRC does not establish its own system of limitation of liability. Article 10(2) merely provides that nothing in the Convention shall affect the right of the registered owner to limit his liability under any applicable national or international regime, such as the Limitation of Liability for Maritime Claims (LLMC) Convention (as amended).<sup>37</sup>

For those States that are parties to LLMC Convention, and did not make any reservation in relation to Article 2(1) (d) and (e) of the LLMC, the shipowner may be entitled to limit liability in respect of any claim related to wreck removal as per that Convention. And to the States that are not party to the LLMC nor its Protocol, but have enacted national legislation concerning limitation of liability, then the shipowner (if applicable) may limit liability as per that national

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<sup>33</sup> *ibid* 9(6) (a) (b).

<sup>34</sup> *ibid* 9(7).

<sup>35</sup> *ibid* 10(1).

<sup>36</sup> *ibid*.

<sup>37</sup> Norman A. Martinez, *Limitation of Liability in International Maritime Conventions. IMLI Studies in International Maritime Law*, Routledge, UK, 2011, p. 173.

legislation. Tanzania is neither a party to the LLMC Convention nor its Protocol, however, it has national legislations in Tanzania Mainland as well as Tanzania Zanzibar regulating the matters of limitation of liability for maritime claims.

### 2.3.7 *Compulsory Insurance*

The WRC furthermore contains provisions on compulsory insurance. The registered owner of a ship of 300 gross tonnage (gt) and above flying the flag of a State Party is required to have insurance.<sup>38</sup> Other financial securities e.g., bank guarantee, are also allowed. This provision is similar to the compulsory insurance provisions of other international maritime Conventions on liability and compensation (i.e. International Convention on Civil Liability for Oil Pollution Damage 1969 (CLC), International Convention on Civil liability for Bunker Oil Pollution Damage, 2001 (Bunkers Convention) and International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 and its Protocol (HNS Convention)).

The requirement of the strict liability of the ship owner and the ship owner's obligation to carry insurance or other financial security to cover such liability illustrate the strength of the IMO liability regimes, of which WRC is a part. Besides the need for the prompt and effective removal of hazardous wrecks, the States that initially proposed the WRC also wanted to ensure that there were financial resources to do so. As recent disasters have shown, the cost of wreck removal operations have increased dramatically in some instances. Such as the well-known case of the container ship *MV Rena* which ran aground near Tauranga, New Zealand, in 2011. The removal of the cargo and hull of the *MV Rena* cost about US \$650 million.<sup>39</sup> Although, *MV Rena's* case has been recently eclipsed by the famous cruise liner *MV Costa Concordia* which is the most expensive and complicated wreck removal process ever of its kind with its estimated cost believed to exceed \$1.5 billion.<sup>40</sup>

An interesting provision when it comes to the compulsory insurance is Article 12(12)<sup>41</sup> which states:

*“...each State Party shall ensure, under its national law, that insurance or other security is in force in respect of any ship of 300 gross tonnage and*

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<sup>38</sup> Article 12(1) of the WRC.

<sup>39</sup> Nicholas and Craig (no.3) 491.

<sup>40</sup> *ibid.*

<sup>41</sup> Article 12(12) of the WRC.

*above, wherever registered, entering or leaving port in its territory, or arriving at or leaving from an offshore facility in territorial sea”*

The wording in this provision makes it clear that even ships registered in non-State Parties to the Convention are obliged to maintain insurance or other financial security.

Upon determination that such insurance or financial security is in place, the State Party shall issue certificate of insurance<sup>42</sup> or financial security to all ships that are included in their ship registry. The State Party is to ensure that no ships included in their registry operate without such a certificate. Ships registered in a State that is not party to the Convention may acquire certificates from any other State Party. In addition, any claim for costs arising under this Convention may be brought directly against the insurer. In other words, the affected State and any other party that may have a claim under this Convention could recover, at least some of their cost, from the insurers.<sup>43</sup>

### 2.3.8 *Time limits*

A claim for costs incurred as a result of measures taken in accordance with the WRC according to Article 13<sup>44</sup> shall be:-

*“.....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.”*

This provision, probably infers when the affected State has determined the wreck constitutes a hazard to navigation.<sup>45</sup> These time limits seem to exclude the possibility of applying the Convention on most of the already existing wrecks, instead the WRC focuses on future wrecks.

### 2.3.9 *Settlement of Disputes*

For disputes between States in relation to interpretation or application of the WRC, the States in dispute have to resolve their dispute *in the first instance through negotiation, enquiry,*

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<sup>42</sup> *ibid* 12(2).

<sup>43</sup> *ibid* 12(10).

<sup>44</sup> *ibid* 13.

<sup>45</sup> *ibid* 8(1).



*mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements or other peaceful means of their choice.*<sup>46</sup>

If the dispute is not resolved within a reasonable time not exceeding twelve months after one State Party has notified another that a dispute exist between them *the provisions relating to the settlement of disputes set out in Part XV of the UNCLOS shall apply whether or not the parties to the dispute are States Parties to the UNCLOS.*<sup>47</sup>

### **3.0 Nairobi International Convention on the Removal of Wrecks, 2007. Reasons for adoption and implementation into the laws of Tanzania.**

The United Republic of Tanzania is a united sovereign republic of two former independent sovereign States; the Republic of Tanganyika and the People’s Republic of Zanzibar. They united on 26<sup>th</sup> April 1964 to form the United Republic of Tanzania (URT).<sup>48</sup> Zanzibar has its own executive, legislature and judiciary to cater for non-union matters while Tanzania Mainland has been considered within the United Republic and the executive as well as the legislature of the URT care for its non-union matters. Article 4(3) of the URT Constitution categorizes affairs into union matters, which are contained in the First Schedule of the said Constitution, and non-union matters which are all other matters not so listed on the schedule. Things like foreign affairs, constitution, defence, taxes etc. are under union matters while marine environment, fisheries, shipping etc. are not under union. This means that Zanzibar has competence to legislate on non-union matters. Furthermore, according to the structure of the Union, Zanzibar is not a sovereign State outside the Union. Hence, it is the URT who is the member of IMO and who has the power to adopt, ratify and accede to any IMO Convention and not Zanzibar.<sup>49</sup>

According to article 2(1) of the URT Constitution, the territory of URT consists of the whole area of the Tanzania Mainland and the whole area Zanzibar and includes territorial waters.<sup>50</sup> It is worthy to note that although maritime matters are not union matters, the waters of the United

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<sup>46</sup> *ibid*, 15(1).

<sup>47</sup> *ibid*, 15(2).

<sup>48</sup> Article 34 and 102 provide that Tanzania is a one State and which is a United Sovereign Republic comprising two parts, Tanzania Mainland and Tanzania Zanzibar. There are two Governments, Union and the Revolutionary Government of Zanzibar. The former deals with all union matters which are listed in the first Schedule and all matters which concern the Mainland, while the latter covers Zanzibar.

<sup>49</sup> Article 34 of the United Republic of Tanzania Constitution.

<sup>50</sup>Article 1 of the Constitution of the United Republic of Tanzania (1977) as amended in 2005 provides that “Tanzania is one State and is a United Sovereign Republic.” Article 2(1) also states: “The territory of the United Republic consists of the whole of the area of Mainland Tanzania and the whole of the area of Tanzania Zanzibar, and includes the territorial waters”.

Republic have no internal boundary between Zanzibar and Tanzania Mainland. Even though Territorial Sea and Exclusive Economic Zone Act<sup>51</sup> also applies to Zanzibar, some of the matters within the EEZ, such as mining, fishing and protection and preservation of the marine environment are not union matters. Thus, Zanzibar has Exclusive jurisdiction to deal with these matters but it has neither territorial sea nor Exclusive Economic Zone (EEZ) of its own. The territorial sea and EEZ are the same for the whole URT.

Nevertheless, the only Act which is applicable to Tanzania Mainland and Tanzania Zanzibar concerning maritime issues is the above mentioned Act (Territorial Sea and Exclusive Economic Zone Act) and section 19 of the Act, gives power to the Minister responsible for Foreign Affairs to make regulations generally for carrying into effect the provisions of the Act under the following matters:-

- (a) Any activity relating to the exploration or exploitation of the Zone;
- (b) Any activity relating to the economic exploration or exploitation of the Zone;
- (c) The authorization, control and regulation of scientific research in the Zone;
- (d) The safety and protection of structures or devices in the Zone;
- (e) **The preservation of marine environment of the United Republic and the prevention and control of pollution thereto;**
- (f) The regulation of the conduct of any person in or upon the Zone;
- (g) The conservation measures to protect the living resources of the sea.<sup>52</sup>

Bearing in mind that the Territorial Sea and EEZ Act apply to the whole URT and taking into consideration that section 19 gives power to the Minister of Foreign Affairs to make regulations, any regulation made thereto, will as well apply to the whole URT since the Act *ab initio* applied to both parts of the Union.

In particular, section 19(e) gives the Minister the power to make regulations on preservation of marine environment. Wrecks endanger the marine environment, it is from the foregoing that the said provision empowers the Minister to make regulations on preservation of marine environment thereto.

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<sup>51</sup> Territorial Sea and Exclusive Economic Zone Act, 1989 Cap 238 R.E 2002 as amended by Act No. 17 of 2009.

<sup>52</sup> *ibid*, Section 19.

### **3.1 Maritime Governance in Tanzania Mainland.**

The Government of the United Republic of Tanzania through the Tanzania Shipping Agencies Act<sup>53</sup> regulates matters of maritime administration, marine environment, safety and security and maritime transport services at seaport and inland waterways in Tanzania Mainland.

The Tanzania Shipping Agencies Act, establishes the Tanzania Shipping Agencies Corporation (TASAC) with the mandate to carry out functions and exercising powers to enhance the benefits of maritime transport in Tanzania Mainland.<sup>54</sup> The TASAC commenced its operation on 23<sup>rd</sup> February, 2018 to replace the former URT body responsible for maritime administration known as the Surface and Marine Transport Regulatory Authority (SUMATRA).

### **3.2 Maritime Governance in Tanzania Zanzibar.**

The Revolutionary Government of Zanzibar under Act No. 3 of 2009<sup>55</sup> established a special maritime administration to cater for the maritime governance needs of Tanzania Zanzibar. The administration is known as Zanzibar Maritime Authority (ZMA). ZMA came into force on 30<sup>th</sup> March 2009 through the Zanzibar Maritime Authority Act No. 3 of 2009. Thus, ZMA is responsible to administer the implementation and enforcement of the Maritime Transport Act.<sup>56</sup>

### **3.3 Benefit of incorporating and implementing Nairobi International Convention on the Removal of Wrecks, 2007.**

As stated above, when it comes to international Conventions, the Government of the United Republic of Tanzania is the one which has a mandate to deal with international Conventions on behalf of Tanzania Mainland and Tanzania Zanzibar. There is no justification for URT not ratifying the WRC. It is time now for the Convention to be ratified and eventually be part of the laws of Tanzania. By ratifying WRC in the URT, the State will benefit in the following ways:-

- (a) The ratification of the WRC will help the URT to honour its commitments that have made for ratification of the Conventions. Generally, ratification of WRC will affirm

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<sup>53</sup> The Tanzania Shipping Agencies Act, No. 14 of 2017.

<sup>54</sup> *ibid*, Section 4(1).

<sup>55</sup> Zanzibar Maritime Authority Act No. 3, 2009.

<sup>56</sup> The Maritime Transport Act, No. 5 of 2006.

Tanzania's deeper commitment to the realization for the safety of navigation and environment protection.

- (b) The main benefit of the WRC is that it will grant the URT powers to act in its EEZ in order to remove the hazardous wrecks and recover the expenses of the removal. Such powers cannot be exercised under the regime of UNCLOS. By acceding to the convention with the extension of the application to its territory including territorial sea, the URT will have full mandate to regulate and protect its territorial sea and EEZ against any wrecks situated within its territory.
- (c) The reporting obligation of any marine casualty resulting a wreck by the master of a ship sailing under the flag of a State Party to the WRC, will create a sort of reporting network about the wrecks locations and will prevent maritime casualties in the URT, as early warning is an essential element on wreck removal.
- (d) The overall aim of the WRC is to allow the competent authorities of State Parties to have unrestricted rights to remove dangerous wrecks without engagement of the registered ship owner. This will enable Tanzania to ensure that hazardous wrecks do not endanger other vessels and their crew and the surrounding marine and coastal environment.
- (e) The URT will have the power to recover from the legal owner of the wreck any expenses incurred by the Government in connection with locating, removing or destroying wrecks. This will help the government not to incur any unnecessary expenses when it comes to maritime casualties.

#### **4.0 Procedures for incorporation and implementation of the Nairobi International Convention on the removal of wrecks, 2007 in the United Republic of Tanzania.**

##### **4.1 Incorporation and Implementation**

The global and regional instruments are not self-executing in URT. The ratification process is done by the Union Parliament of Tanzania.<sup>57</sup> Different committee at the Government level takes time to analyse an agreement and make some recommendations before submitting it to the Cabinet for a decision that it should be forwarded to Parliament for ratification. However, before the agreement submitted to the Parliament, first discussed by a Parliamentary Standing Committee under whose mandate it falls. After ratification, the Convention becomes legally

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<sup>57</sup>Article 63(3) (e) of the United Republic of Tanzania Constitution.

binding in URT and the principle of *pacta sunt servanda* applies. Since the URT is not a party to the WRC, the State must first accede to the Convention in accordance with Article 17<sup>58</sup>. In addition, as provided by the “opt-in” clause under paragraph 2 of Article 3, the WRC will be extended to the territory of the URT which includes the territorial sea. Accordingly, the Secretary-General of the IMO should be notified at the time of ratification of accession. Therefore, the instrument of accession will be accompanied by the declaration stating that URT will apply the Convention to wrecks located within its territory, including its territorial sea as per paragraph 2 of Article 3 of WRC. The instrument of accession and declaration are herein attached as Annex 1.

In the URT the ratified instrument can either be enacting pieces of legislation known as Implementing Act or by mainstreaming the requirements of such instrument in a piece of legislation without specifically mentioning it.

Bearing in mind that the Territorial Sea and Exclusive Economic Zone Act designated the Minister of Foreign Affairs to make regulations. The Minister after consultation with the Ministers responsible for the administration of the relevant laws applicable in the Tanzania Mainland and Tanzania Zanzibar, make regulations generally for implementing the Wreck Removal Convention.<sup>59</sup> Within the said Regulations, the Minister will declare that the Regulations shall also apply to Tanzania Zanzibar.<sup>60</sup> The Regulations are herein attached as Annex 2.

Article 10(2) of the WRC stipulates that nothing in the WRC shall affect the right of the registered owner to limit his liability under any applicable national or international regime, such as LLMC Convention. This implies that the LLMC Convention’s provisions can be used by the shipowner to limit his liability with respect to wreck removal costs, provided that such claims have not been excluded from the scope of application of the LLMC Convention by means of reservation.

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<sup>58</sup>Article 17 of the WRC.

<sup>59</sup> Section 19 of the Territorial Sea and Exclusive Economic Zone Act.

<sup>60</sup>Article 64(4) of the URT Constitution empowers the union Parliament to legislate for union matters concerning Tanzania Mainland. It is expressly provide under Article 64(4) that “[n]o law enacted by Parliament in relation to any matter shall apply to Tanzania Zanzibar save in accordance with the following provisions- (a) it is expressly stated in the law that it shall apply to Tanzania Mainland as well as to Tanzania Zanzibar or is repealing, amending, modifying, or replacing a law which is in operation in Tanzania Zanzibar; (b) that law is repealing, modifying, amending or replacing a law which was previously in force in Tanzania Zanzibar as well as Tanzania Mainland in accordance with the Acts of Union of Tanganyika and Zanzibar, 1964, or in accordance with a law which expressly stated that it would apply to Mainland Tanzania as well as Tanzania Zanzibar, or (c) the law relates to the Union Matters.”

It has been noted that the United Republic of Tanzania is neither a State Party to the 1976 LLMC Convention nor its Protocol of 1996. However, the State has national legislations in Tanzania Mainland as well as Tanzania Zanzibar regulating the matters of limitation of liability for maritime claims. Starting with Tanzania Mainland, Section 347 of the Merchant Shipping Act<sup>61</sup> of Tanzania provide as:-

- 347. (1) Subject to the provisions of sections 348 and 249, the following claims shall be subject to limitation of liability regardless of the basis of liability, namely-*
- (a) Claims in respect of loss of life or personal injury or loss of or damage to property (including damage to harbour works, basis and waterways and aids to navigation), occurring on board or in direct connection with the operation of the ship or with salvage operations, and consequential loss resulting therefrom;*
  - (b) Claims in respect of loss resulting from delay in the carriage by sea of cargo, passenger or their luggage;*
  - (c) Claims in respect of other loss resulting from infringement of rights other than contractual rights occurring in direct connection with the operation of the ship or salvage operations;*
  - (d) Claims in respect of the raising, removal, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship;*
  - (e) Claims in respect of the removal, destruction or the rendering harmless of the cargo of the ship;*
  - (f) Claims of a person other than the person liable in respect of measures taken in order to avert or minimise loss for which the person liable may limit his liability in accordance with this Part, and further loss caused by such measures.*
- (2) The claims referred to in subsection (1) shall be subject to limitation of liability even if brought by way of recourse or for indemnity under a contract or otherwise.*
- (3) The claims referred to in paragraph (d), (e) and (f) of subsection (1) shall not be subject to limitation to the extent that they relate to remuneration under a contract with the person liable. (Emphasis added).*

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<sup>61</sup> Merchant Shipping Act, No. 21 of 2003, section 347(1), (2) & (3).

Section 352 of the same Act<sup>62</sup> provide the following limits of liability:-

#### **Claims for loss of life or personal injury**

<b>Limits of liability</b>	<b>Tonnage</b>
333,000 SDRs	Ships of less than 500 tons
500 SDRs per ton	From 501 to 3,000 tons
333 SDRs per ton	From 3,001 to 30,000 tons
250 SDRs per ton	From 30,001 to 70,000 tons
167 SDRs per ton	70,000 tons and above

#### **Limits of liability for any other claims**

<b>Limits of liability</b>	<b>Tonnage</b>
167,000 SDRs	Ships of less than 500 tons
167 SDRs per ton	From 501 to 30,000 tons
125 SDRs per ton	From 30,001 to 70,000 tons
83 SDRs per ton	70,000 tons and above

The above provision clearly stipulates that the shipowner will not be able to limit his liability with respect to the costs incurred for the removal of wrecks under contract. On the other hand (Tanzania Zanzibar) section 418 of the Marine Transport Act<sup>63</sup> provides:

*418. (1) Subject to sections 419 and 420 of this Act, the following claims shall be subject to limitation of liability regardless of the basis of liability:-*

- (g) Claims in respect of loss of life or personal injury or loss of or damage to property, including damage to harbour works, basis and waterways and aids to navigation, occurring on board or in direct connection with the operation of the ship or with salvage operations, and consequential loss resulting there from;*
- (h) Claims in respect of loss resulting from delay in the carriage by sea of cargo, passenger or their luggage;*
- (i) Claims in respect of other loss resulting from infringement of rights other than contractual rights, occurring in direct connection with the operation of the ship or salvage operations;*

<sup>62</sup> *ibid*, section 352(a) and (b).

<sup>63</sup> Marine Transport Act, No. 5 of 2006, section 418(1) (2).

- (j) *Claims in respect of the raising, removal, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship;*
- (k) *Claims in respect of the removal, destruction or the rendering harmless of the cargo of the ship;*
- (l) *Claims of a person other than the person liable in respect of measures taken in order to avert or minimise loss for which the person liable may limit his liability in accordance with this Part, and further loss caused by such measures.*
- (2) *The claims referred to in subsection (1) of this section shall be subject to limitation of liability even if brought by way of recourse or for indemnity under a contract or otherwise, but the claims referred to in paragraph (d), (e) and (f) of subsection (1) of this section shall not be subject to limitation to the extent that they relate to remuneration under a contract with the person liable. (Emphasis added).*

Furthermore, section 423 of the same Act<sup>64</sup> provide for the limitation calculations which are illustrated hereunder:-

**Claims for loss of life or personal injury**

<b>Limits of liability</b>	<b>Tonnage</b>
166,667 SDRs	Ships of less than 300 tons
333,000 SDRs	From 301 to 500 tons
500 SDRs per ton	From 501 to 3,000 tons
333 SDRs per ton	From 3,001 to 30,000 tons
250 SDRs per ton	From 30,001 to 70,000 tons
167 SDRs per ton	70,000 tons and above

**Limits of liability for any other claims**

<b>Limits of liability</b>	<b>Tonnage</b>
83,333 SDRs	Ships of less than 300 tons
167,000 SDRs	From 301 to 500 tons
167 SDRs per ton	From 501 to 30,000 tons
125 SDRs per ton	From 30,001 to 70,000 tons
83 SDRs per ton	70,000 tons and above

<sup>64</sup> *ibid*, section 423(a) & (b).



The same provision in the Merchant Shipping Act of Tanzania Mainland repeated in the Maritime Transport Act of Zanzibar, thus the ship owner will not be able to limit liability and that he will be strictly liable when it comes to claims of wreck removal.

#### **4.2 Contents and structure of the Regulations**

The Regulations are divided into five parts. The detailed structure is explained hereunder:-

*Part I* provides for the preliminary provisions which include short title and commencement, interpretation of words invariably used and the application of the Regulations.

*Part II* sets out the provisions relating to reporting, marking and removing of wrecks. It explains the procedure when the wreck has been located and then sets out the measures for removing the wreck.

*Part III* creates the provisions dealing with the liability for wreck removal. It explains the liability for cost upon removal of wrecks and the period to recover cost.

*Part IV* deals with the issue of wreck removal insurance, issuing of certificates and third parties rights against insurers.

*Part V* is about miscellaneous provisions which make provisions for government ships

**Annex 1:**

**INSTRUMENT OF ACCESSION BY THE UNITED REPUBLIC OF TANZANIA TO THE NAIROBI INTERNATIONAL CONVENTION ON THE REMOVAL OF WRECKS, 2007.**

**To be deposited with the Secretary General of the IMO**

INSTRUMENT OF ACCESSION

**WHEREAS** the Nairobi International Convention on the Removal of Wrecks, 2007 was adopted in Nairobi on 18<sup>th</sup> May, 2007 by the Diplomatic Conference.

**AND WHEREAS** the United Republic of Tanzania, being a State entitled to become a party to the said Convention by virtue of Article 17 thereof,

**NOW THEREFORE** the Government of the United Republic of Tanzania having considered and approved the said Convention, hereby formally declares its accession to the Nairobi International Convention on the Removal of Wrecks, 2007.

**IN WITNESS WHEREOF**, I Hon. Samia Suluhu Hassan, President of the United Republic of Tanzania have signed this Instrument of Accession and affixed the official seal.

DONE at Dodoma, this .... Day of ..... two thousand and twenty one.

(Seal)

(Signature)

[President]

DECLARATION

I, Hon. Samia Suluhu Hassan, President of the United Republic of Tanzania

**HEREBY DECLARE** that the Government of the United Republic of Tanzania makes the following declaration in relation to Article 3 paragraph 2 of the Nairobi International Convention on the Removal of Wrecks, 2007 adopted in Nairobi on 18th May, 2007:

That, having considered the Convention hereby notifies the Secretary-General of its intention to extend the application of the Convention to wrecks located within its territories, including the territorial sea.

**IN WITNESS WHEREOF**, I have hereunto set my hand and seal

DONE at Dodoma, this .... Day of ..... two thousand and twenty one.

(Seal)

(Signature)

[President]

**Annex 2.**

**TERRITORIAL SEA AND EXCLUSIVE ECONOMIC ZONE  
(WRECK REMOVAL) REGULATIONS, 2021**

**PART I**

**PRELIMINARY PROVISIONS**

<i>Regulation</i>	<i>Title</i>
1.	Short title and commencement
2.	Interpretation
3.	Application

**PART II**

**REPORT, MARKING AND REMOVING**

4.	Wreck reports
5.	Locating and marking wrecks
6.	Removal by registered owner
7.	Conditions about removal
8.	Removal in default

**PART III**

**LIABILITY FOR WRECK REMOVAL**

9.	Liability for cost
10.	Limitation Period

**PAR IV**

**INSURANCE**

11.	Wreck Removal Insurance
12.	Failure to insure
13.	Production of certificate
14.	Issue of certificates
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16.	Third party rights against insurers
17.	Electronic certificates.

**PART V**

**MISCELLANEOUS PROVISIONS**

18.	Government ships
19.	Savings

*First Schedule*

TERRITORIAL SEA AND EXCLUSIVE ECONOMIC ZONE ACT,  
1989

**REGULATIONS**

[Made under section 19]

TERRITORIAL SEA AND EXCLUSIVE ECONOMIC ZONE (WRECK  
REMOVAL) REGULATIONS, 2021

**CONTENTS**

**PART I**

PRELIMINARY PROVISIONS

Short title and  
commencement

1. (1) These Regulations may be cited as the Territorial Sea and Exclusive Economic Zone (Wreck Removal) Regulations, 2021 and shall come into operation on the day of publication.

(2) These Regulations shall extend to Zanzibar.

Interpretation.

2. In these Regulations, unless the context otherwise requires –

“affected State” means the State in whose Convention area the wreck is located and includes Tanzania when a wreck is located in Tanzania Convention area;

“Article” is a reference to an Article of the Wreck Removal Convention;

“Agency” means the Tanzania Shipping Agencies Corporation established under section 4(1) of Tanzania Shipping Agencies Act No. 14 of 2017;

“Convention area” has the meaning given in Article 1(1) of the Wrecks Convention, and in the case of Tanzania, means the United Republic Convention Area;

“Court” means any Court in the United Republic, of competent jurisdiction;

“damage” includes loss;

“Dollar” means the currency of the United States of America;

“foreign ship” means a ship which is not registered under the Marine Transport Act No.5 of 2006 or Merchant Shipping Act, 2003 of Tanzania;

“Government” means the Government of the United Republic;

“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;

“maritime casualty” means a collision of ships, a stranding, another incident of navigation or another event, whether on board ship or not, resulting in material damage, or an imminent threat of material damage, to a ship or its cargo;

“master”, includes every person, except a pilot, having command or charge of a ship, or sea aircraft;

“Minister”, means the Minister responsible for Foreign Affairs;

“notice”, means a notice in writing;

“operator”, in relation to a ship, means the owner of the ship or any other organisation 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;

“Registrar” means the Registrar appointed under section 31 of the Tanzania Shipping Agencies Act or the Registrar appointed under section 8 of the Marine Transport Act No.5 of 2006;

“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, but 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;

“related interests” means the interests of Tanzania, or of a coastal State when directly affected or threatened by a wreck, such as-

- a. maritime coastal, port and estuarine activities, including fisheries activities, constituting an essential means of the persons concerned;
- b. tourist attractions and other economic interest 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 and “remove”, “removed” and “removing” shall be construed accordingly;

“ship” includes every description of vessel used in navigation;

“Shilling” means the currency of the United Republic of Tanzania;

“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;

“wreck” following upon an accident, means -

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

“United Republic” for the purpose of these Regulations, means the United Republic of Tanzania;

“United Republic Convention area” means the Exclusive Economic Zone and the Territorial sea of the United Republic of Tanzania;

“United Republic Ship” means a Tanzania ship registered or licensed under the Merchant Shipping Act, 2003 of Tanzania and Tanzania Zanzibar ship registered under the Zanzibar Maritime Transport Act, No. 5 of 2006;

“Wrecks Removal Convention” means the Nairobi International Convention on the Removal of Wrecks, 2007 done in Nairobi on 18 May 2007;

“Wreck Convention State” means a State party to the Wrecks Convention;

“wreck removal insurance” means a contract of insurance or other financial security satisfying the requirements of Article 12, and “insurer” means the person providing the insurance or other security;

Application.

**3.** (1) Unless otherwise expressly provided these Regulations shall apply to –

- (a) Any United Republic ship;
- (b) Any other ship within the United Republic or United Republic Convention area.

(2) These Regulations shall not apply to-

- (a) Any warship;
- (b) Any other ship or sea aircraft belonging to or under the control of the United Republic Government or Revolutionary Government

of Zanzibar while employed otherwise for profit or reward in the service of the Government.

## **PART II REPORT, MARKING AND REMOVING**

Wrecks reports.

**4.** (1) Where a maritime casualty results in a Convention area, the person responsible for any United Republic ship involved in the maritime casualty must report the wreck without delay.

(2) If the wreck is within the United Republic Convention area, it must be reported to the Registrar.

(3) If the wreck is in the Convention area of another State, it must be reported to the government of that State.

(4) The followings are responsible for a ship-

- (a) the master of the ship; and
- (b) the operator of the ship.

(5) A report under sub-regulation (1) shall include (so far it is known)-

- (a) the name and the principal place of business of the registered owner;
- (b) all other relevant information necessary for the affected State to determine whether the wreck poses a hazard, including-
  - (i) the precise location of the wreck;
  - (ii) the type, size and construction of the wreck;
  - (iii) the nature of the damage to, and the condition of the wreck;
  - (iv) the nature and quantity of the cargo, in particular any hazardous and noxious substances; and
  - (v) the amount and types of oil, including bunker oil and lubricating oil, on board.

(6) If one of the persons responsible for a ship makes a report under sub-regulation (1), the others are no longer under a duty to make a report.

(7) Failure to comply with reporting requirements is an offence.

(8) A person guilty of an offence under this regulation is liable-

- (a) on summary conviction to a fine of not less than equivalent in Tanzania shillings of the United States Dollars fifty thousand; or
- (b) on conviction on indictment, to a fine.

Locating and marking wrecks.

**5.** Where the Registrar receives a report under regulation 4(1) or pursuant to Article 5 he must-

- (a) determine, in accordance with the criteria set out in Article 6, whether the wreck poses a hazard for the purpose of regulation 4(5)(b);
- (b) use all practical to warn mariners and the States concerned of the nature and location of the wreck, in the manner and to the extent provided for in Article 7; and



- (c) where he has determined that the wreck constitutes a hazard, take all reasonable steps to mark the wreck in the manner and to the extent required under Article 8.

Removal by registered owner.

6.(1) Where, pursuant to regulation 5(a) the Registrar has determined that the wreck poses a hazard he shall-

- (a) inform the State of the ship's registry and the registered owner; and
- (b) 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) Notwithstanding sub-regulation (1), the Registrar must take all reasonable steps to give notice ("a wreck removal notice") requiring the registered owner to comply with the obligations imposed on registered owners by Article 9(2) and (3) of the Wrecks Convention (removal of wrecks and production of insurance).

(3) The notice must be in writing and must-

- (a) specify the deadline set under Article 9(6)(a) for the removal of the wrecks; and
- (b) inform the registered owner of the matters set out in paragraph 6(b) and (c) of that same Article.

(4) A registered owner who fails, without reasonable excuse to comply with a notice by the specified deadline commits an offence.

(5) A registered owner guilty of an offence under sub-regulation (4) is liable-

- (a) on summary conviction to a fine of not less than equivalent in Tanzania shillings of the United States Dollars fifty thousand; or
- (b) on conviction on indictment, to a fine.

Conditions about removal.

7. (1) These Regulation applies if the Registrar has given a registered owner a wreck removal notice.

(2) The Registrar may impose conditions as to the removal of the wreck in accordance with Article 9(4).

(3) A condition is imposed by giving notice of it to the registered owner.

(4) A registered owner who fails, without reasonable excuse, to comply with a condition commits an offence.

(5) Subject to sub-regulation (6), conditions under this section may only be imposed before removal commences and 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) When the removal of a wreck has commenced, the Registrar may only impose conditions if these are 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) A registered owner guilty of an offence under sub-regulation (4) is liable-

- (a) on summary conviction to a fine of not less than equivalent in Tanzania shillings of the United States Dollars fifty thousand;  
or
- (b) on conviction on indictment, to a fine.

Removal in default.

**8.** (1) The Registrar may remove a wreck in the United Republic Convention area in the circumstances set out in Article 9(7) or (8).

### **PART III LIABILITY FOR WRECK REMOVAL**

Liability for Costs.

**9.** (1) This Part applies where-

- (a) a ship has been involved in a maritime casualty resulting of which it or anything from it has become a wreck in the United Republic Convention area and;
- (b) costs have been incurred complying with regulation 5 to 8 (locating and marking and removal of wrecks).

(2) The person who incurred the costs is entitled to recover them from the ship's registered owner unless the owner proves that an exception set out in Article 10(1) (a), (b) or (c) applies.

(3) The registered owner is not liable for costs under this regulation if or to the extent that liability would conflict with-

- (a) a convention listed in Article 11(1), provided that the relevant convention is applicable and is in force in the United Republic of Tanzania;
- (b) any enactment implementing such a convention; or
- (c) any Regulations which the Minister may make for such purpose.

(4) Where the registered owner of each of two or more ships is liable for costs under these regulations but the costs for which each is liable cannot be reasonably be separated, the registered owners shall be jointly liable for the total costs.

(5) These Regulations do not prevent the exercise of the right (if any) to limit liability where such a limitation is permitted by any enactment or by virtue of any applicable international convention or measure (such as the International Convention on the Limitation of Liability for Maritime Claims, 1976, as amended).

(6) Nothing in these Regulations shall prejudice any right of recourse against third parties.

Limitation period.

**10.** (1) An action to recover costs under regulation 9 may not be brought after the end of whichever of the followings ends earlier;

- (a) the period of 3 years beginning with the date on which a wreck removal notice was given in respect of the wreck; and
- (b) the period of 6 years beginning with the date of the maritime casualty which resulted in the wreck.

## PART IV INSURANCE

Wreck removal insurance.

- 11.** (1) This Part apply to ships of gross tonnage 300 or more.
- (2) A United Republic ship may not leave a port, including the port of Zanzibar, unless —
- (a) the ship has wreck removal insurance; and
  - (b) the Registrar has certified that it has wreck removal insurance
- (3) A foreign ship may not enter or leave the port of Tanzania Mainland and Tanzania Zanzibar unless-
- (a) the ship has wreck removal insurance; and
  - (b) there is a certificate confirming that it has wreck removal insurance.
- (4) For a foreign ship registered in a foreign Wrecks Convention State the certificate must be one that has been issued by or under the authority of the government of that State.
- (5) For a foreign ship registered in any other State the certificate must be one that has been issued —
- (a) by the Registrar; or
  - (b) by or under the authority of the government of a Wrecks Convention State.
- (6) In this Part, and unless the Minister, by order, provides otherwise, the gross tonnage of a ship shall be calculated in accordance with the regulations set out in Annex 1 of the International Convention on Tonnage Measurement of Ships, 1969.

Failure to Insure.

- 12.** (1) The master and operator of a ship each commit an offence if-
- (a) the ship enters or leaves the port of Tanzania Mainland and Tanzania Zanzibar in contravention of section 11; or
  - (b) any person attempts to navigate the ship into or out of the port in contravention of that section.
- (2) A person guilty of an offence under subsection (1) is liable-
- (a) on summary conviction to a fine of not less than equivalent in Tanzania shillings of the United States Dollars fifty thousand; or
  - (b) on conviction on indictment, to a fine.
- (3) If a ship attempts to leave any port in Tanzania Mainland or Tanzania Zanzibar in contravention of regulation 11 the ship may be detained.

Production of Certificates.

- 13.** (1) These Regulations apply to a ship which is required to have a wreck removal insurance certificate before entering or leaving any port.

(2) The master of the ship must ensure that the certificate is carried on board.

(3) The master of the ship must, on request, produce the certificate to the port officer or any officer from the Tanzania Shipping Agency.

Issue of Certificates.

**14.** (1) These Regulations apply where registered owner applies to the Registrar for a wreck removal insurance certificate in respect of-

- (a) the United Republic ship;
- (b) a foreign ship registered in a State other than a Wrecks Convention State.

(2) In relation to the United Republic ship, the Registrar must issue the certificate if satisfied-

- (a) that the ship has wreck removal insurance in place for the period to which the certificate will relate, and
- (b) that the obligations of the person providing the wreck removal insurance will be met.

(3) In relation to a foreign ship registered in a State other than a Wrecks Convention State, the Registrar may issue certificate if satisfied of the matters in sub-regulation (2) (a) and (b).

(4) The Registrar must maintain a record of any certificate issued under this regulation and make the record available for public inspection.

Cancellation of certificates.

**15.** (1) The Minister may make Regulations about the cancellation and delivery up of wreck removal insurance certificates issued under regulation 14.

(2) A person who fails to deliver up a certificate in accordance with the Regulations is guilty of an offence.

(3) A person guilty of the offence is liable on summary conviction to a fine of not less than equivalent in Tanzania shillings of the United States Dollars fifty thousand or on conviction on indictment, to a fine.

Third party rights against insurers.

**16.** (1) These Regulations apply where –

- (a) a ship has been involved in a maritime casualty as a result of which it or anything from it has become a wreck in the United Republic Convention area,
- (b) at the time of the maritime casualty the ship had wreck removal insurance, and
- (c) there is a wreck removal insurance certificate in relation to the insurance.

(2) A person who is entitled to recover costs from the ship's registered owner under regulation 9 may recover them from the insurer.

(3) It is a defence for the insurer to prove that the maritime casualty was caused by the wilful misconduct of the ship's registered owner.

(4) The insurer may also rely on any defences available to the registered owner under Article 12(10) (including Regulation 10).

(5)The insurer may limit liability in respect of claims made under this section to the same extent as the registered owner may limit liability and may do so whether or not the maritime casualty resulted from any act or omission of the registered owner.

Electronic  
Certificates.

**17.** (1) The Registrar shall obtain the Minister’s prior approval before he gives notice under Article 12 (13) (electronic insurance certificate etc.).

(2) The Minister may make regulations for the purpose of implementing Article 12(13) and such regulations may make such amendments to this Part as he thinks necessary or expedient.

## **PART V MISCELLANEOUS PROVISIONS**

Government ships.

**18.** (1) Regulation 12 does not apply to a ship (and “exempt ship”) that is owned by a Wrecks Convention State.

(2) An exempt ship must have a certificate issued by the government of the State concerned stating-

- (a) that the ship is owned by that State, and
- (b) that any liability under regulation 9 shall be met up to the limits prescribed by Article 12 (compulsory insurance).

(3) Regulations 12 (2) and (3) apply to such certificate.

(4) Where a ship is owned by a State and operated by a company that is registered in that State as operator of the ship, references in this Regulations to the registered owner are references to that company.

Savings.

**19.** Nothing in this Regulations affects any claim, or the enforcement of any claim, a person incurring any liability under this Regulations may have against any other person in respect of that liability.

**FIRST SCHEDULE**  
**(Made under rule 14(2))**

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

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 and effective date of security .....

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

Name .....

Address .....

.....

This certificate is valid until .....

Issued or certified by the Government of the United Republic of Tanzania.....

**DODOMA,**

**This ..... day of .....2021**

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**Minister of Foreign  
Affairs**