DRAFT CONVENTION ON WRECK REMOVAL
Submitted by Germany, the Netherlands and Vanuatu

SUMMARY

Executive summary: This document provides the Legal Committee with background information regarding negotiations on the draft wreck removal convention.

Action to be taken: Paragraph 16

Related documents: LEG 80/11, LEG 80/INF.2, LEG 81/5, LEG 82/5, LEG 82/5/1, LEG 82/11, LEG 83/INF.2

Purpose

1 Work on the draft wreck removal convention (DWRC), and related issues has been ongoing for a considerable period of time. At the eighty-second session of the Legal Committee, the Committee agreed that it would devote more time to the issue of a DWRC to enable a draft treaty to be ready for consideration by a Diplomatic Conference during the 2004-2005 biennium.

The purpose of this document is twofold:

(a) to provide delegations with background information on the results of the negotiations on the subject of wreck removal up until now and

(b) to give these negotiations a new impetus.

Introduction

2 Negotiations on the development of a treaty on wreck removal (and related issues) go back a long way. Document LEG 63/5, presented by the Secretariat at the sixty-third session of the Legal Committee in May 1990, contains historical background information on the genesis of the Legal Committee considering the subject of wreck removal. According to paragraph 3 of document LEG 63/5: “The Legal Committee started considering the subject wreck removal and related issues at its twelfth session” (± 1965).
3 Learned men and distinguished delegates of IMO member states have submitted proposals for draft conventions. And remarkably the issues, main questions or problems which were then addressed are more or less the same issues, main questions or problems which the Legal Committee has presently been addressing:

- the scope of application of the convention, i.e. the areas in respect of which the convention would apply;
- the definition of what constitutes a wreck within the meaning of the convention;
- the definition of hazardous wreck for the purposes of the convention;
- obligations regarding the giving of notifications in respect of wrecks;
- obligations regarding the marking of hazardous wrecks;
- obligations to remove hazardous wrecks;
- liability for the cost of removing hazardous wrecks; and
- civil liability for damage caused by or arising from hazardous wrecks.

4 New issues have been added to the above list, an example being the application of the draft wreck removal convention (DWRC) for the purpose of marine environment protection. Due to the development of international law a number of issues on the list have been codified in international conventions (such as liability conventions).

5 Since the start of the current deliberations on the DWRC however, the Legal Committee has reached agreement on a number of issues: a majority of delegations expressed views of being in favour of proposals of the Correspondence Group (CG) relating to the various issues at hand. These include: - the geographical scope of application of the DWRC (Article II\(^1\): optional application in the territorial sea -by opting in- and its mandatory application in waters beyond the territorial sea), - the types of risk covered by the DWRC being the risks relating to the marine environment, safety and to the coastline (Article I, paragraph 4 or 3 respectively of the proposed DWRC) and - the definition of “the State whose interests are the most directly threatened by the wreck [or casualty]” (Article I, paragraph 8 or 7 respectively of the DWRC).

6 Another remarkable similarity is the procedure which the IMO, c.q. the Legal Committee, in the past and at present, has chosen to deal with the different issues regarding the development of a wreck removal convention: working group(s) (presently a correspondence group), questionnaires and request for information on existing national legislation on wreck removal (and related issues). The Legal Committee has subsequently retained the subject of wreck removal (and related issues) on its work programme and the IMO Assembly and/or Council has taken decisions that the subject matter of wreck removal should figure among the possible future items for a multilateral treaty.

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\(^1\) Reference to Articles as contained in document LEG 82/5/1.
7 Last but not least, we have the similarity of the divided opinions. The arguments of those in favour of a wreck removal convention were/are, *inter alia*, the issue of unification of national law, the necessity to protect the marine environment and other coastal states’ interests from damage arising from a maritime casualty, the fact that considerable work has been done on the subject justifying the continuation of this work and the necessity to bring this work to a successful conclusion. The arguments of those not in favour of a wreck removal convention were/are, *inter alia*, the fact that the majority of wrecks are located within the jurisdiction of States, their removal thus being satisfactorily regulated by national law in many cases, the fact that there is no need for unification of national laws on the subject and the financial difficulties.

The fact that the Third UN Conference on the Law of the Sea had not yet concluded its deliberations is also an argument that was put forward in the years preceding our current deliberations, but this point is clearly one that does not belong in the aforementioned list of similarities: the LOS Convention was adopted in 1982 and entered into force on 16 November 1994.

**The present state of affairs**

8 The delegations submitting this document would like to give the negotiations on the DWRC a new impetus. Negotiations up until now, have been constructive and the development of a DWRC has been steady and encouraging. In addition, considerable work has been done on the subject which, in the view of the sponsoring delegations, justifies the continuation of our work and the necessity to bring this work to a successful conclusion. In the following paragraphs a few facts, in support of the latter statement are highlighted:

**Comité Maritime International (CMI)**

9 At the seventy-fourth session of the Legal Committee, the Comité Maritime International submitted two papers:

- a report of the chairman of the International Sub-Committee recording the results of CMI’s work which had so far been carried out on the subject of wreck removal (document Leg 74/5/2);

- a background document on the status of current international law relating to removal of wrecks (LEG 74/5/2/Add.1).

In the report main comments are given to the articles of the draft WRC. In the background document the following conclusions are drawn:

“Wreck removal in the territorial sea: although UNCLOS does not explicitly confer on coastal States in its articles on the territorial sea the right of wreck removal, as they have sovereignty over their internal waters and territorial sea and are required not to hamper innocent passage in the latter and can adopt laws regulating the safety and pollution prevention therein, and this represents a codification of customary international law, widely evidenced by State practice, the coastal State has the right to remove wrecks in this area. States’ practice in exercise of this right diverges, however.”
Wreck removal beyond the territorial sea: here the legal position is less clear as the above survey of coastal State and flag State right in the variety of jurisdictional zones established by UNCLOS indicates. Although States have rights in International Law to protect their security and vital interests the scope of the principle concerned has not been clearly defined. Hence the provisions of UNCLOS Article 221, and the Intervention Convention. However, neither the UNCLOS provisions, as reflected in customary law, nor related conventions prohibit or clearly approve removal of wrecks from these areas for purposes of ensuring safety of navigation. There is no bar to conclusion of a convention on wreck removal in areas beyond the territorial sea to confer clearly on coastal States the right to undertake such removal, on relevant terms and conditions, for purposes of ensuring safety of navigation or protecting the marine environment generally, including coastlines and related interest. However, such a convention would have to be compatible with UNCLOS and its provisions concerning the various responsibilities of the States concerned. As new specific rights would in effect be created it would be desirable that any convention should attract wide consensus 3.

At the seventy-fifth session of the Legal Committee, the CMI submitted document LEG 75/6/2 which contains a comparative analysis of the domestic legislation relating to wreck removal in a number of different States. The analysis is aimed at identifying major similarities and differences between the various laws with a view to assessing the feasibility of extending the scope of application of the proposed draft WRC to the territorial waters of States party. Extension of the scope of application of the draft WRC is aimed at the unification of national laws on the subject and bringing about consistency in the legal treatment of wrecks whether those wrecks are situated on the high seas or in the territorial waters of any State party. In chapter (C) of the CMI study the following is stated: “It is apparent that the law relating to wreck removal in different countries has developed to differing degrees of sophistication. Subject to ……………., it appears that the law in the various different countries follows more or less the same pattern. In each case it is, broadly, consistent with the regime in the proposed International Removal Convention”.

Work in the Correspondence group (CG)

The Correspondence Group was established at the seventy-fourth session of the Legal Committee with the following terms of reference:

“Identify and, where appropriate, develop options for dealing with the following issues:

1. scope of application: (a) geographical (b) safety/environmental (c) wrecks/ships
2. relationship between public international law and private law provisions
3. avoiding overlapping with the 1969 Intervention Convention
4. relationship with other conventions.”

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2 Emphasis added.
3 LEG 74/5/2/Add.1 page 5.
4 LEG 75/6/2, paragraph (A) 2.
5 LEG 75/6/2, paragraphs (A) 2.
6 LEG 74/13, paragraphs 44-46.
Since its establishment the Correspondence Group has worked intersessionally on the development of a draft WRC. The Correspondence Group has resolved many substantial issues and on the basis of reports of the Group the Legal Committee was informed of the progress being made. A large number of delegations (Member States) and observer delegations (NGOs) have participated in the Correspondence Group and their constructive comments and participation has resulted in the present draft of the WRC as contained in document LEG 82/5.

Deliberations and conclusions of the Legal Committee

As from the seventy-fourth session of the Legal Committee (October 1996), the item of wreck removal has been present on the agenda of the Legal Committee. Proceedings have taken the form of exchanging views on the basis of issues raised both by the Legal Committee and by the Correspondence Group. Where appropriate, the Legal Committee took decisions on these issues and/or instructed the Correspondence Group to study the question at hand further. On some of the issues agreement was reached (cf. paragraph 5 above). Outstanding issues for further consideration by the Legal Committee include the definition of wreck, the consistency with the provisions of UNCLOS and the financial provisions (e.g. financial liability for locating, marking and removing wrecks) of the DWRC.

Up until its eighty-first session in March 2000, the Legal Committee has instructed the Correspondence Group to continue its work, taking into account the comments made at the sessions, and to report back to the Committee at its next session. At its eighty-second session, the Legal Committee took the following decision regarding the further development of a draft WRC:

• to devote more time to the agenda item on draft convention on wreck removal in the Committee to enable a draft convention to be ready for consideration by a Diplomatic Conference during the 2004-2005 biennium;

• to suspend the work of the Correspondence Group until certain fundamental issues, such as financial security, had been considered by the Committee; and

• to request representatives of the International Group of P&I Clubs and of the insurance and other sectors of the shipping industry, as appropriate, to submit a document to the Committee’s next session on the availability and features of an adequate insurance cover with respect to the removal of wrecks.

Last but not least it is worth mentioning that there is broad support for the continuation of the work on the wreck removal convention in the IMO Council which, at its meeting held in November 2000, “supported the work of the Legal Committee with regard to the wreck removal convention and requested the Committee to aim at a Diplomatic Conference in the 2004-2005 biennium.”

Action requested of the Legal Committee

The Legal Committee is invited to take note of the information contained in this document and to comment as it deems appropriate with a view to moving forward in its negotiations on a draft Wreck removal Convention.

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7 C 85/D, paragraph 5.2 (iv)