

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

THE MERCHANT SHIPPING (BAILIWICK OF GUERNSEY) LAW, 2002
(WRECK REMOVAL CONVENTION) ORDINANCE, 2019

The States are asked to decide:-

Whether they are of the opinion to approve the draft Ordinance entitled "The Merchant Shipping (Bailiwick of Guernsey) Law, 2002 (Wreck Removal Convention) Ordinance, 2019", and to direct that the same shall have effect as an Ordinance of the States.

This proposition has been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications in accordance with Rule 4(1) of the Rules of Procedure of the States of Deliberation and their Committees.

EXPLANATORY MEMORANDUM

This Ordinance makes provision in Bailiwick legislation to give effect to the Nairobi International Convention on the Removal of Wrecks 2007 ("the Convention"). Currently, wreck and salvage is dealt with in domestic legislation under the Wreck and Salvage (Vessels and Aircraft) (Bailiwick of Guernsey) Law, 1986 ("the 1986 Law"). Part IX of Schedule 8 to the Merchant Shipping (Bailiwick of Guernsey) Law, 2002 ("the 2002 Law") also makes provision in relation to wreck and salvage; those provisions have not been brought into force thus far. However, to give effect to the Convention, the 2002 Law needs to be amended to insert provision in effectively the same terms as that made in the UK by the Wreck Removal Convention Act 2011. To keep all relevant provisions in the same place, the Policy Letter proposed (and the States approved) commencing Part IX and Schedule 8 at the same time and amending the 1986 Law accordingly.

As such, the Ordinance –

- (i) in respect of the 2002 Law, commences Part IX (apart from two sections relating to lighthouse authorities) and Schedule 8 and inserts a new Part dealing with the Convention,
- (ii) amends the 1986 Law to give effect to the Convention, and
- (iii) makes transitional provision,

in reliance on the powers at s289, s290(1) and 296(2) and 297 of the 2002 Law.

The Merchant Shipping (Bailiwick of Guernsey) Law, 2002 (Wreck Removal Convention) Ordinance, 2019

THE STATES, in pursuance of their Resolution of the 12th January, 2017^a, and in exercise of the powers conferred on them by sections 289, 290, 296 and 297 of the Merchant Shipping (Bailiwick of Guernsey) Law, 2002^b, and all other powers enabling them in that behalf, hereby order:-

Commencement of Part IX of and Schedule 8 to the Merchant Shipping Law.

1. Sections 214 to 242 and section 245 of, and Schedule 8 to, the Merchant Shipping (Bailiwick of Guernsey) Law, 2002 ("the Merchant Shipping Law") shall come into force on the commencement of this Ordinance.

Wreck Removal Convention: amendment of the Merchant Shipping Law.

2. (1) The Merchant Shipping Law is amended as set out below.
- (2) After section 245 insert the Part set out in Schedule 1 to this Ordinance.
- (3) In section 294, in the definition of "tonnage regulations" for "section 19" substitute "section 18".
- (4) After Schedule 11 insert the Schedule set out in Schedule 2 to

^a Article III of Billet d'État No. I of 2017.

^b No. VIII of 2004; amended by No. 1 of 2000, No. XIII of 2010, Vol. XXX, p. 243; and by Order in Council Nos. XV and XXXII of 2003.

this Ordinance.

Amendment of the Wreck and Salvage Law.

3. (1) The Wreck and Salvage (Vessels and Aircraft) (Bailiwick of Guernsey) Law, 1986^c ("**the Wreck and Salvage Law**") is amended as follows.

(2) In the title of the Wreck and Salvage Law, and in section 35(1), for "Vessels" substitute "Historic Wreck".

(3) In Part 1, in the title of that Part for "Vessels" substitute "Aircraft".

(4) For sections 1(1) and (2), substitute —

"(1) The powers of the Receiver under this Law in relation to aircraft are subject to the powers exercisable under the Civil Aviation (Investigation of Air Accidents and Incidents) (Guernsey) Order 1998, and shall only be exercised if the Director of Civil Aviation of the Bailiwick of Guernsey so consents.

(1A) If an aircraft is wrecked at any place in local waters, the Receiver shall proceed to that place as soon as possible and, for the purpose of assisting the aircraft or saving its cargo or the life of any person on board, may take such action and give such directions to any person including, subject to subsection (2), the commander of the aircraft or master of any

^c Ordres en Conseil Vol. XXIX, p. 390; as amended by Ordres en Conseil Vol. XXXI, p. 278; Vol. XXXVII, p. 199; Vol. XXXVIII, p. 231; Order in Council No. I of 2000; Recueil d'Ordonnances Tome XXVI, p. 182; Tome XXVI, p. 306; Ordinance No. XXXIII of 2003; and No. IX of 2016.

vessel at hand, as he thinks fit.

(2) The Receiver shall not interfere between the commander and crew of an aircraft in relation to the management of the aircraft unless requested to do so by the commander, and shall not interfere between the master and crew of a vessel in relation to the management of the vessel unless requested to do so by the master."

(5) In Part 1, Part 2 and Part 4 (except in sections 1(1) and (2))—

- (a) for "vessel" or "vessels", wherever those expressions occur substitute "aircraft",
- (b) for "a vessel", wherever that expression occurs substitute "an aircraft",
- (c) for "vessels", wherever that expression occurs substitute "aircraft", and
- (d) for "master", wherever that expression occurs substitute "commander".

(6) In section 4(1)(d) for "ports" substitute "place".

(7) In Part 3 -

- (a) in section 15(a) and (b) after "vessel" add "or aircraft",
- (b) in sections 18(1),(2),(4)(a) and (b) and 19(4)(a) for

"vessel, cargo" substitute "vessel, aircraft or cargo".

(8) In sections 24, 30(a) and (b), 31(4) for "vessel, cargo" substitute "vessel, aircraft or cargo".

(9) In section 32 insert the following definitions in the appropriate place -

""**aircraft**" means any description of aircraft and includes part of an aircraft,"

""**commander**" includes any person having command or charge of an aircraft,".

(10) Section 33 is repealed.

Transitional provision and savings.

4. Anything done or having effect as if done in respect of vessels (including wrecked and salvaged vessels) and their cargo under or for the purposes of any provision in Parts 1, 2 or 4 of the Wreck and Salvage Law shall, to the extent that the same is required or authorised to be done under or for the purposes of Parts IX or IXA of the Merchant Shipping Law, have effect as if done under or for the purposes of the equivalent provisions in those Parts of that Law; and anything done or having effect as if done in that respect by the Receiver of Wreck appointed under the Wreck and Salvage Law shall, to the above extent, have effect as if done by a person appointed to be receiver of wreck under the Merchant Shipping Law.

Extent.

5. This Ordinance has effect throughout the Bailiwick of Guernsey.

Citation.

6. This Ordinance may be cited as the Merchant Shipping (Bailiwick of Guernsey) Law, 2002 (Wreck Removal Convention) Ordinance, 2019.

Commencement.

7. This Ordinance shall come into force on the day appointed by regulations made by the States of Guernsey Committee for the Environment & Infrastructure, and different days may be appointed for different provisions and different purposes.

SCHEDULE 1

Section 2(2)

"PART IXA

WRECK REMOVAL CONVENTION

The Wreck Removal Convention.

245A. (1) In this Part-

- (a) "**accident**" means a collision of ships, stranding, another incident of navigation or another event (whether on board a ship or not) which results in material damage to a ship or its cargo or in an imminent threat of material damage to a ship or its cargo,
- (b) "**Convention Area**" has the meaning given in Article 1 of the Wreck Removal Convention save that the reference to State therein means a Wreck Removal Convention State,
- (c) "**Guernsey's Convention Area**" has the same meaning as "Guernsey waters" as described in section 294(2),
- (d) "**insurer**" means the person providing the wreck removal insurance,
- (e) "**Wreck Removal Convention**" means the Nairobi International Convention on the Removal of Wrecks

2007 done in Nairobi on 18 May 2007,

- (f) "**Wreck Removal Convention State**" means a State or territory which is a party to the Wreck Removal Convention, and for the avoidance of doubt includes Guernsey,
- (g) "**wreck removal insurance**" means a contract of insurance or other security satisfying the requirements of Article 12 of the Wreck Removal Convention,
- (h) "**wreck removal insurance certificate**" means a certificate required by section 245I(2)(b), and
- (i) "**wreck removal notice**" has the meaning given by section 245D.

(2) The text of the Wreck Removal Convention is set out in Schedule 12.

(3) Subject to subsection (1) expressions used in this Part shall be construed in accordance with Article 1 of the Wreck Removal Convention.

(4) References in this Part to ships registered in a State include unregistered ships entitled to fly the flag of that State.

(5) In determining for the purposes of this Part whether a wreck poses a hazard the Board must take into account the matters set out in Article 6 of the Wreck Removal Convention (determination of hazard).

Reporting, marking and removing

Wreck Reports.

245B. (1) Where an accident results in a wreck in a Convention Area, the persons responsible for any Guernsey ship involved in the accident must report the wreck without delay.

(2) If the wreck is in Guernsey's Convention Area, it must be reported to the Board.

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

(4) The following are responsible for a ship-

(a) the master of the ship, and

(b) the operator of the ship.

(5) A report under subsection (1) must include the information mentioned in paragraph (2) of Article 5 of the Wreck Removal Convention (so far as it is known).

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

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

- (8) A person guilty of an offence under this section is liable-
 - (a) on summary conviction, to a fine not exceeding £50,000,
or
 - (b) on conviction on indictment, to a fine.

Locating and marking wrecks.

245C. (1) This section applies where an accident results in a wreck in Guernsey's Convention Area.

(2) The Board must ensure that Guernsey complies with its obligations under Articles 7 and 8 of the Wreck Removal Convention (locating and marking of wrecks).

(3) The Board may, for those purposes, direct any of the following to take specified steps in relation to the wreck if it is within their area -

- (a) a general lighthouse authority,
- (b) a harbour authority.

(4) A direction may require an authority to exercise or not to exercise a power under the following sections within their area -

- (a) section 242 in relation to harbour authorities, and
- (b) section 243 in relation to the general lighthouse authority.

(5) For the purposes of subsections (3) and (4) (and, in a case where a direction is given, section 243), a general lighthouse authority's area includes any area that-

(a) is adjacent to the area specified in relation to the authority under section 193 of the Merchant Shipping Act 1995 as that specification applies in Guernsey by virtue of that section, and

(b) is within Guernsey's Convention Area.

(6) A direction-

(a) must be in writing, or

(b) where it is not reasonably practicable to give it in writing, must be confirmed in writing as soon as reasonably practicable.

(7) An authority to whom a direction is given must comply with it.

Removal by registered owner.

245D. (1) This section applies where-

(a) a ship has been involved in an accident as a result of which it or anything from it has become a wreck in Guernsey's Convention Area, and

- (b) the Board has determined that the wreck poses a hazard.

(2) The Board must take all reasonable steps to give a notice (a "wreck removal notice") requiring the registered owner to comply with the obligations imposed on registered owners by paragraph (2) and (3) of Article 9 of the Wreck Removal Convention (removal of wrecks and production of evidence of insurance).

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

- (a) specify the deadline set under paragraph (6)(a) of that Article for the removal of the wreck, and
- (b) inform the registered owner of the other matters set out in paragraph (6)(b) and (c) of that Article.

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

- (5) A registered owner guilty of the offence is liable-

- (a) on summary conviction, to a fine not exceeding £50,000,
or
- (b) on conviction on indictment, to a fine.

Imposition of conditions about removal.

245E. (1) This section applies if the Board has given a registered owner of the wreck a wreck removal notice.

(2) The Board may impose conditions as to the removal of the wreck in accordance with paragraph (4) of Article 9 of the Wreck Removal Convention.

(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 is guilty of an offence.

(5) A registered owner guilty of the offence is liable-

(a) on summary conviction, to a fine not exceeding £50,000, or

(b) on conviction on indictment, to a fine.

Removal in default.

245F. (1) The Board may remove a wreck in Guernsey's Convention Area in the circumstances set out in paragraph (7) or (8) of Article 9 of the Wreck Removal Convention.

(2) The Board may, instead of exercising the power under subsection (1), direct that the power be exercised by any of the following -

(a) a general lighthouse authority,

(b) a harbour authority.

(3) A direction may be given to an authority only in relation to a wreck within the authority's area.

(4) Section 245C(5) applies for the purposes of determining a general lighthouse authority's area.

(5) A direction -

(a) must be in writing, or

(b) where it is not reasonably practicable to give it in writing, must be confirmed in writing as soon as reasonably practicable.

(6) An authority to whom the direction is given must comply with it.

Liability for costs.

245G. (1) This section applies where -

(a) a ship has been involved in an accident as a result of which it or anything from it has become a wreck in Guernsey's Convention Area, and

- (b) costs have been incurred complying with section 255C or 255F (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 paragraph 1(a), (b) or (c) of Article 10 of the Wreck Removal Convention applies.

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

- (a) an enactment implementing a convention listed in paragraph 1 of Article 11 of the Wreck Removal Convention (exceptions to liability), or
- (b) any other provisions specified by regulations of the Board.

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

(5) This section does not prevent the exercise of the right (if any) to limit liability by virtue of section 194.

Prescription period.

245H. An action to recover costs under section 245G may not be brought after the end of whichever of the following 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 accident which resulted in the wreck.

Insurance

Wreck removal insurance.

245I. (1) This section applies to ships with a gross tonnage of 300 or more.

(2) A ship may not enter or leave a port in Guernsey unless -

- (a) the ship has wreck removal insurance, and
- (b) there is a certificate confirming that it has wreck removal insurance.

(3) For a ship registered in a Wreck Removal Convention State the certificate must be one that has been issued by or under the authority of the government of that State.

(4) For a ship registered in any other State the certificate must be one that has been issued -

- (a) by the Board, or

- (b) by or under the authority of the government of a Wreck Removal Convention State.

(5) For the purposes of subsection (1) the gross tonnage of a ship is to be calculated in the manner prescribed by the tonnage regulations.

Failure to insure.

245J. (1) The master and operator of a ship are each guilty of an offence if-

- (a) the ship enters or leaves a port in contravention of section 245I, or
- (b) anyone attempts to navigate the ship into or out of a port in contravention of that section .

(2) A person guilty of an offence is liable –

- (a) on summary conviction, to a fine not exceeding £50,000, or
- (b) on conviction on indictment, to a fine.

Detention of ships.

245K. A ship may be detained if anyone attempts to navigate it out of a port in contravention of section 245I.

Production of certificates.

245L. (1) This section applies to a ship which is required to have a wreck removal insurance certificate before entering or leaving a port in Guernsey.

(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 -

(a) an officer of Customs and Excise,

(b) an officer of the Board appointed for that purpose,

(c) if the ship is a British ship, a proper officer.

(4) Failure to comply with subsection (2) or (3) is an offence.

(5) A person guilty of the offence is liable on summary conviction to a fine not exceeding level 5 on the uniform scale.

Issue of certificates.

245M. (1) This section applies where the registered owner applies to the Board for a wreck removal insurance certificate in respect of a foreign ship registered in a State other than a Wreck Removal Convention State.

(2) The Board may issue a wreck removal insurance 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 insurer will meet the obligations under that insurance .

Cancellation of certificates.

245N. (1) The Board may make regulations about the cancellation and delivery up of wreck removal insurance certificates issued under section 245M.

(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 not exceeding level 4 on the uniform scale.

Third parties' rights against insurers.

245O. (1) This section applies where-

- (a) a ship has been involved in an accident as a result of which it or anything from it has become a wreck in Guernsey's Convention Area,
- (b) at the time of the accident 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 section 245G may recover them from the insurer.

(3) It is a defence for the insurer to prove that the accident 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 (including section 245H).

(5) The insurer may limit liability in respect of claims to the same extent as the registered owner liability by virtue of section 194 (or would be able to limit liability by virtue of that section if it were not for paragraph 3 of Part II of Schedule 7).

(6) But an insurer may limit liability whether or not the accident was caused by an act or omission mentioned in Article 4 of the Wreck Removal Convention set out in Part I of Schedule 7.

(7) The Loi par rapport aux Tierces Parties (Droits contre Assureurs), 1936 does not apply in relation to any wreck removal insurance to which a wreck removal insurance certificate relates.

Electronic certificates.

245P. (1) The Board may give notice for the purpose set out in paragraph 13 of Article 12 of the Wreck Removal Convention (electronic insurance certificates, &c.), and this section applies if the Board has given, or proposes to give, such notice.

(2) The Board may by regulations make such amendments to this Part as the Board thinks necessary or expedient for giving effect to the notice.

Supplemental

Government ships.

245Q. (1) This Part does not apply in relation to warships or ships for the time being used by a State for non-commercial purposes only unless specified in a notice under paragraph 3 of Article 4 of the Wreck Removal Convention.

(2) Section 245J does not apply to a ship (an "exempt ship") that is owned by a Wreck Removal Convention State.

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

(a) that the ship is owned by that State, and

(b) that any liability under section 245G will be met up to the limits prescribed by paragraph 1 of Article 12 of the Wreck Removal Convention (compulsory insurance).

(4) Section 245L (2) to (5) applies to such a certificate.

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

(6) In proceedings against a Wreck Removal Convention State for recovery of costs under section 245G a State shall be treated as having submitted to the jurisdiction of the court in which the proceedings are brought, but this does not authorise execution against the property of a State.

Saving.

245R. Nothing in this Part affects any claim, or the enforcement of any claim, a person incurring any liability under this Part may have against any other person in respect of that liability.

Power to amend.

245S. The Board may by regulations amend this Part to reflect any amendment of the Wreck Removal Convention."

SCHEDULE 2

Section 2(4)

"SCHEDULE 12 WRECKS CONVENTION

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 to adopt uniform international rules and procedures to ensure the prompt and effective removal of wrecks and payment of compensation for the costs therein involved,

Noting that many wrecks may be located in States' territory, including the territorial sea,

Recognizing the benefits to be gained through uniformity in legal regimes governing responsibility and liability for removal of hazardous wrecks,

Bearing in mind the importance of the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982, and of the customary international law of the sea, and the consequent need to implement the present Convention in accordance with such provisions.

Have agreed as follows:

ARTICLE 1

Definitions

For the purposes of this Convention:

1. "Convention area" means the exclusive economic zone of a State Party, established in accordance with international law or, if a State Party has not established such a zone, an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured.

2. "Ship" means a seagoing vessel of any type whatsoever and includes hydrofoil boats, air-cushion vehicles, submersibles, floating craft and floating platforms, except when such platforms are on location engaged in the exploration, exploitation or production of seabed mineral resources.

3. "Maritime casualty" means a collision of ships, stranding or other incident of navigation, or other occurrence on board a ship or external to it, resulting in material damage or imminent threat of material damage to a ship or its cargo.

4. "Wreck", following upon a maritime casualty, means:

- (a) a sunken or stranded ship; or
- (b) any part of a sunken or stranded ship, including any object that is or has been on board such a ship; or
- (c) any object that is lost at sea from a ship and that is stranded, sunken or adrift at sea; or

- (d) a ship that is about, or may reasonably be expected, to sink or to strand, where effective measures to assist the ship or any property in danger are not already being taken.

5. "Hazard" means any condition or threat that:

- (a) poses a danger or impediment to navigation; or
- (b) may reasonably be expected to result in major harmful consequences to the marine environment, or damage to the coastline or related interests of one or more States.

6. "Related interests" means the interests of a coastal State directly affected or threatened by a wreck, such as:

- (a) maritime coastal, port and estuarine activities, including fisheries activities, constituting an essential means of livelihood of the persons concerned;
- (b) tourist attractions and other economic interests of the area concerned;
- (c) the health of the coastal population and the wellbeing of the area concerned, including conservation of marine living resources and of wildlife; and
- (d) offshore and underwater infrastructure.

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

8. "Registered owner" means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship at the time of the maritime casualty. However, in the case of a ship owned by a State and operated by a company which in that State is registered as the operator of the ship, "registered owner" shall mean such company.

9. "Operator of the ship" means the owner of the ship or any other organization or person such as the manager, or the bareboat charterer, who has assumed the responsibility for operation of the ship from the owner of the ship and who, on assuming such responsibility, has agreed to take over all duties and responsibilities established under the International Safety Management Code, as amended.

10. "Affected State" means the State in whose Convention area the wreck is located.

11. "State of the ship's registry" means, in relation to a registered ship, the State of registration of the ship and, in relation to an unregistered ship, the State whose flag the ship is entitled to fly.

12. "Organization" means the International Maritime Organization.

13. "Secretary-General" means the Secretary-General of the Organization.

ARTICLE 2

Objectives and general principles

1. A State Party may take measures in accordance with this Convention in relation to the removal of a wreck which poses a hazard in the Convention area.

2. Measures taken by the Affected State in accordance with paragraph 1 shall be proportionate to the hazard.

3. Such measures shall not go beyond what is reasonably necessary to remove a wreck which poses a hazard and shall cease as soon as the wreck has been removed; they shall not unnecessarily interfere with the rights and interests of other States including the State of the ship's registry, and of any person, physical or corporate, concerned.

4. The application of this Convention within the Convention area shall not entitle a State Party to claim or exercise sovereignty or sovereign rights over any part of the high seas.

5. States Parties shall endeavour to co-operate when the effects of a maritime casualty resulting in a wreck involve a State other than the Affected State.

ARTICLE 3

Scope of application

1. Except as otherwise provided in this Convention, this Convention shall apply to wrecks in the Convention area.

2. A State Party may extend the application of this Convention to wrecks

located within its territory, including the territorial sea, subject to article 4, paragraph 4. In that case, it shall notify the Secretary-General accordingly, at the time of expressing its consent to be bound by this Convention or at any time thereafter. When a State Party has made a notification to apply this Convention to wrecks located within its territory, including the territorial sea, this is without prejudice to the rights and obligations of that State to take measures in relation to wrecks located in its territory, including the territorial sea, other than locating, marking and removing them in accordance with this Convention. The provisions of articles 10, 11 and 12 of this Convention shall not apply to any measures so taken other than those referred to in articles 7, 8 and 9 of this Convention.

3. When a State Party has made a notification under paragraph 2, the "Convention area" of the Affected State shall include the territory, including the territorial sea, of that State Party.

4. A notification made under paragraph 2 above shall take effect for that State Party, if made before entry into force of this Convention for that State Party, upon entry into force. If notification is made after entry into force of this Convention for that State Party, it shall take effect six months after its receipt by the Secretary-General.

5. A State Party that has made a notification under paragraph 2 may withdraw it at any time by means of a notification of withdrawal to the Secretary-General. Such notification of withdrawal shall take effect six months after its receipt by the Secretary-General, unless the notification specifies a later date.

ARTICLE 4

Exclusions

1. This Convention shall not apply to measures taken under the International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969, as amended, or the Protocol relating to Intervention on the High Seas in Cases of Pollution by Substances other than Oil, 1973, as amended.

2. This Convention shall not apply to any warship or other ship owned or operated by a State and used, for the time being, only on Government non-commercial service, unless that State decides otherwise.

3. Where a State Party decides to apply this Convention to its warships or other ships as described in paragraph 2, it shall notify the Secretary-General, thereof, specifying the terms and conditions of such application.

4. 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:

- (a) Article 2, paragraph 4;
- (b) Article 9, paragraphs 1, 5, 7, 8, 9 and 10; and
- (c) Article 15.
- (d) 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

1. When determining whether a wreck poses a hazard, the following criteria should be taken into account by the Affected State:

- (a) the type, size and construction of the wreck;
- (b) depth of the water in the area;
- (c) tidal range and currents in the area;
- (d) particularly sensitive sea areas identified and, as appropriate, designated in accordance with guidelines adopted by the Organization, or a clearly defined area of the exclusive economic zone where special mandatory measures have been adopted pursuant to article 211, paragraph 6, of the United Nations Convention on the Law of the Sea, 1982;
- (e) proximity of shipping routes or established traffic lanes;
- (f) traffic density and frequency;
- (g) type of traffic;

- (h) nature and quantity of the wreck's cargo, the amount and types of oil (such as bunker oil and lubricating oil) on board the wreck and, in particular, the damage likely to result should the cargo or oil be released into the marine environment;
- (i) vulnerability of port facilities;
- (j) prevailing meteorological and hydrographical conditions;
- (k) submarine topography of the area;
- (l) height of the wreck above or below the surface of the water at lowest astronomical tide;
- m) acoustic and magnetic profiles of the wreck;
- (n) proximity of offshore installations, pipelines, telecommunications cables and similar structures; and
- (o) any other circumstances that might necessitate the removal of 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) from 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 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.

- (a) 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.
 - (iv) 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.
 - (v) 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 certificate has been surrendered to these authorities or a new certificate has been issued within the said period. The foregoing provisions shall similarly apply to any modification, which results in the insurance or security no longer satisfying the requirements of this article.

7. The State of the ship's registry shall, subject to the provisions of this article and having regard to any guidelines adopted by the Organization on the financial responsibility of the registered owners, determine the conditions of issue and validity of the certificate

8. Nothing in this Convention shall be construed as preventing a State Party from relying on information obtained from other States or the Organization or other international organizations relating to the financial standing of providers of insurance or financial security for the purposes of this Convention. In such cases, the State Party relying on such information is not relieved of its responsibility as a State issuing the certificate required by paragraph 2.

9. Certificates issued and certified under the authority of a State Party shall be accepted by other States Parties for the purposes of this Convention and shall be regarded by other States Parties as having the same force as certificates

issued or certified by them, even if issued or certified in respect of a ship not registered in a State Party. A State Party may at any time request consultation with the issuing or certifying State should it believe that the insurer or guarantor named in the certificate is not financially capable of meeting the obligations imposed by this Convention.

10. Any claim for costs arising under this Convention may be brought directly against the insurer or other person providing financial security for the registered owner's liability. In such a case the defendant may invoke the defences (other than the bankruptcy or winding up of the registered owner) that the registered owner would have been entitled to invoke, including limitation of liability under any applicable national or international regime. Furthermore, even if the registered owner is not entitled to limit liability, the defendant may limit liability to an amount equal to the amount of the insurance or other financial security required to be maintained in accordance with paragraph 1. Moreover, the defendant may invoke the defence that the maritime casualty was caused by the wilful misconduct of the registered owner, but the defendant shall not invoke any other defence which the defendant might have been entitled to invoke in proceedings brought by the registered owner against the defendant. The defendant shall in any event have the right to require the registered owner to be joined in the proceedings.

11. A State Party shall not permit any ship entitled to fly its flag to which this article applies to operate at any time unless a certificate has been issued under paragraphs 2 or 14.

12. Subject to the provisions of this article, each State Party shall ensure, under its national law, that insurance or other security to the extent required by paragraph 1 is in force in respect of any ship of 300 gross tonnage and above, wherever registered, entering or leaving a port in its territory, or arriving at or

leaving from an offshore facility in its territorial sea.

13. Notwithstanding the provisions of paragraph 5, a State Party may notify the Secretary-General that, for the purposes of paragraph 12, ships are not required to carry on board or to produce the certificate required by paragraph 2, when entering or leaving a port in its territory, or arriving at or leaving from an offshore facility in its territorial sea, provided that the State Party which issues the certificate required by paragraph 2 has notified the Secretary-General that it maintains records in an electronic format, accessible to all States Parties, attesting the existence of the certificate and enabling States Parties to discharge their obligations under paragraph 12.

14. If insurance or other financial security is not maintained in respect of a ship owned by a State Party, the provisions of this article relating thereto shall not be applicable to such ship, but the ship shall carry a certificate issued by the appropriate authority of the State of registry, stating that it is owned by that State and that the ship's liability is covered within the limits prescribed in paragraph 1. Such a certificate shall follow as closely as possible the model prescribed by paragraph 2.

ARTICLE 13

Time limits

Rights to recover costs under this Convention shall be extinguished unless an action is brought hereunder within three years from the date when the hazard has been determined in accordance with this Convention. However, in no case shall an action be brought after six years from the date of the maritime casualty that resulted in the wreck. Where the maritime casualty consists of a series of occurrences, the six-

year period shall run from the date of the first occurrence.

ARTICLE 14

Amendment provisions

1. At the request of not less than one-third of States Parties, a conference shall be convened by the Organization for the purpose of revising or amending this Convention.

2. Any consent to be bound by this Convention, expressed after the date of entry into force of an amendment to this Convention, shall be deemed to apply to this Convention, as amended.

ARTICLE 15

Settlement of disputes

1. Where a dispute arises between two or more States Parties regarding the interpretation or application of this Convention, they shall seek to resolve their dispute, in the first instance, through negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements or other peaceful means of their choice.

2. If no settlement is possible within a reasonable period of time not exceeding twelve months after one State Party has notified another that a dispute exists between them, the provisions relating to the settlement of disputes set out in Part XV of the United Nations Convention on the Law of the Sea, 1982, shall apply *mutatis mutandis*, whether or not the States party to the dispute are also States

Parties to the United Nations Convention on the Law of the Sea, 1982.

3. Any procedure chosen by a State Party to this Convention and to the United Nations Convention on the Law of the Sea, 1982, pursuant to Article 287 of the latter, shall apply to the settlement of disputes under this article, unless that State Party, when ratifying, accepting, approving or acceding to this Convention, or at any time thereafter, chooses another procedure pursuant to Article 287 for the purpose of the settlement of disputes arising out of this Convention.

4. A State Party to this Convention which is not a Party to the United Nations Convention on the Law of the Sea, 1982, when ratifying, accepting, approving or acceding to this Convention or at any time thereafter shall be free to choose, by means of a written declaration, one or more of the means set out in Article 287, paragraph 1, of the United Nations Convention on the Law of the Sea, 1982, for the purpose of settlement of disputes under this Article. Article 287 shall apply to such a declaration, as well as to any dispute to which such State is party, which is not covered by a declaration in force. For the purpose of conciliation and arbitration, in accordance with Annexes V and VII of the United Nations Convention on the Law of the Sea, 1982, such State shall be entitled to nominate conciliators and arbitrators to be included in the lists referred to in Annex V, Article 2, and Annex VII, Article 2, for the settlement of disputes arising out of this Convention.

5. A declaration made under paragraphs 3 and 4 shall be deposited with the Secretary-General, who shall transmit copies thereof to the States Parties.

ARTICLE 16

Relationship to other conventions and international agreements

Nothing in this Convention shall prejudice the rights and obligations of any State under the United Nations Convention on the Law of the Sea, 1982, and under the customary international law of the sea.

ARTICLE 17

Signature, ratification, acceptance, approval and accession

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.

ARTICLE 21

Languages

The Convention is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.