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Agenda item 8

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**REVIEW OF THE STATUS OF CONVENTIONS AND OTHER TREATY INSTRUMENTS
EMANATING FROM THE LEGAL COMMITTEE**

Nairobi International Convention on the Removal of Wrecks, 2007

Submitted by the International Group of P&I Associations (P&I Clubs)

SUMMARY

Executive summary: This document invites the Legal Committee to consider and comment on the scope of application of the Nairobi International Convention on the Removal of Wrecks, 2007 (WRC) and the provision in article 3.2 that allows a State Party to extend the Convention within its territory, including the territorial sea. If a State Party does not extend the Convention to its territory, including the territorial sea, it will be unable to rely on WRC certificates for incidents occurring outside the Convention area defined in article 1.1, and the Affected State will not be able to bring direct action claims against the insurer pursuant to article 12 of the Convention.

Strategic direction: 2

High-level action: 2.0.1

Planned output: 2.0.1.5

Action to be taken: Paragraph 10

Related documents: LEG 101/8 and LEG 101/8/1

Introduction

1 At the ninety-second session of the Legal Committee, the International Group of P&I Associations (P&I Clubs) outlined its position on insurance cover and certification in relation to the scope of application and the compulsory insurance provision in the then draft convention text.

2 Several Member States shared and acknowledged the concerns expressed by the P&I Clubs at the time. This, to some extent, is reflected in the recitals to the WRC, which describe the objectives of the Diplomatic Conference* in such terms that the conference should adopt uniform international rules and procedures to ensure the prompt and effective removal of wrecks and payment of compensation for any costs incurred, and which also noted that many wrecks may be located in States' territory, including the territorial sea. P&I Clubs has observed that since the WRC's adoption in 2007, nine States have acceded to it, but only two States have notified the depository that the application of the Convention area will include the territory and the territorial sea.

Scope of application

3 The 2007 Diplomatic Conference adopted a Convention that applies in geographical scope to the EEZ. The "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" (articles 1.1 and 3.1). However, a State Party may extend the scope of the Convention to its own territory, including its territorial sea (articles 3.2 to 3.4). When a State Party has made a notification under article 3, paragraph 2, the Convention area of the Affected State shall include the territory, including the territorial sea, of that State Party (article 3.3). As most wrecks occur in territorial waters, the Convention will have limited effect in States Parties which do not extend the scope of application to the territory and territorial sea. The territorial sea normally extends 12 nautical miles from the coastal baseline.

4 The WRC will enter into force for contracting States 12 months following the tenth accession or ratification. States that have not extended the Convention area to their territory and territorial sea will not be entitled to apply the provisions on shipowner's liability in respect of locating, marking and removing a hazard in accordance with the Convention, and the compulsory insurance provisions in article 12 will not apply to hazards and wrecks that occur outside the Convention area. This inability to apply the liability provisions inherent in the WRC could disadvantage an Affected State if it has inadequate liability provisions in national law in respect of locating, marking and removing hazards or wrecks.

Compulsory insurance – article 12

5 The compulsory insurance provisions in article 12 apply in respect of insurance cover for a liability arising under the Convention. The P&I Clubs notes that article 12.10 provides that any claim for costs arising under the Convention may be brought directly against the insurer (or other provider of financial security). It follows, therefore, that if an incident gives rise to a liability that is not covered by the Convention it cannot result in a claim brought under the Convention either against the shipowner or the shipowner's insurer, and an Affected State that has not extended the Convention to its territory and territorial sea cannot avail itself of that direct action provision.

6 Importantly, the liability provisions in articles 7, 8 and 9 engage only when the incident occurs in the Convention area. In other words, States Parties that apply the WRC in waters subject to their jurisdiction will be entitled to access the shipowner's insurance for the shipowner's Convention liabilities. States that apply the Convention only in the EEZ or equivalent zone will not be able to rely on the compulsory insurance provisions in article 12 for incidents that occur in their territorial waters.

* The Nairobi International Convention on the Removal of Wrecks was adopted by a five-day Diplomatic Conference held from 14 to 18 May, 2007 at the United Nations Office at Nairobi (UNON).

Blue Cards

7 The P&I Clubs issue "Blue Cards" in respect of international regimes only. They do not issue Blue Cards for national liability legislation. If an Affected State brings a claim for an incident occurring in the territory or territorial seas against insurers, they must extend the scope of the Convention to their territory and territorial sea. WRC certificates are issued only in reliance on Blue Cards issued by insurers, and claims can only be brought under the WRC certificate if those claims are subject to the Convention. Claims subject only to the jurisdiction of national legislation cannot be brought under WRC certificates and there can be no reliance on the compulsory insurance provisions in article 12.

Conclusion

8 While the opt-in provision in article 3.2 provides that a State Party may extend the WRC to its territory and territorial sea, it is not compelled to do so. However, for the reasons set out above, if States Parties do not extend the scope of the Convention to the territory and territorial sea by virtue of the opt-in provision, WRC Blue Cards and certificates cannot be relied upon in incidents occurring outside the Convention area and claimants will not be able to bring direct action claims against the insurer pursuant to article 12 of the Convention.

9 In order to promote the objectives of the Diplomatic Conference and uniformity in the application of international conventions, the P&I Clubs would respectfully urge any State acceding to the WRC to notify IMO that it will apply the Convention in the territory and territorial sea, in accordance with article 3.2. Moreover, States that have acceded to the WRC but have not notified IMO of the intention to apply the Convention in their territory and territorial sea are urged to do so before the Convention enters into force.

Action requested of the Committee

10 The Legal Committee is invited to comment and decide on the issues raised in this paper and take action as it deems appropriate.
