

WRECK REMOVAL CONVENTION 2007

Effect within the Territorial Sea

I. Summary

1. The geographical scope of the Wreck Removal Convention ('WRC') is the 'Convention area', defined as the EEZ or equivalent area, adjacent to and beyond the territorial sea up to 200 miles from the coast. A State Party may give notification to extend the Convention inwards, to apply to wrecks in its territory and territorial sea ('TTS').
2. When such a notification is given the TTS is included in the Convention area, but the WRC applies differently inside and outside the TTS: whilst some of its provisions apply irrespective of the location of the wreck, others do not apply inside the TTS, or apply only with modified effect. The essence of these differences is that, in relation to a wreck constituting a hazard inside the TTS, the Affected State ('AS') has greater freedom of action with respect to measures to remove it.
3. The WRC also provides that notification of extension inwards is without prejudice to the rights of the State to take measures with respect to wrecks in the TTS other than locating, marking or removing them.
4. States extending the WRC inwards therefore need to consider whether their national legislation should not only implement the Convention but also contain other provisions with respect to wrecks in the TTS. This may involve reviewing existing national laws to identify provisions which are, or are not, compatible with the WRC.
5. One question which has arisen is whether States are free to adopt national rules enabling them to take measures against shipowners for removal of wrecks which do not constitute a hazard. For reasons explained below it appears clear that there is no such freedom in States which have extended the WRC inwards.
6. The precise effect of the WRC in the TTS, and the scope it leaves for other national rules relating to wreck removal, are not immediately obvious from the text – an analysis is needed of provisions which cross-refer to others and amend their effect in the TTS. To assist such an analysis the effect is set out below of the relevant WRC rules outside the TTS, and consideration is then given to the modified manner in which they apply inside the TTS.

II. Effect of the WRC outside the territorial sea

A. General principles

7. A State Party may take measures in accordance with the Convention in relation to the removal of a wreck which poses a hazard in the Convention area.¹ Such measures must be in accordance both with the general principles of the Convention (in Article 2) and with more specific rules relating to locating, marking and removal of wrecks (in Articles 7, 8 and 9 respectively).
8. The relevant general principles are that –
 - (1) the right of a State Party to take measures under the Convention arises where the wreck poses a hazard;²
 - (2) measures taken by the Affected State ('AS') shall be proportionate to the hazard;³ and
 - (3) such measures –
 - a) shall not go beyond what is reasonably necessary to remove the wreck,
 - b) shall cease as soon as the wreck has been removed, and
 - c) shall not unnecessarily interfere with the rights of any party concerned.⁴

B. Rules relating specifically to wreck removal

9. The main specific rules are in Article 9 and provide that –
 - (1) the AS shall inform the owner and flag state, and consult the flag state;
 - (2) the owner shall remove the wreck;
 - (3) the owner shall furnish evidence of financial security;
 - (4) the owner may contract with any salvor or other person; the AS has only limited power to lay down conditions;
 - (5) the AS has only limited power to intervene in the removal;
 - (6) the AS shall set a deadline for removal;

¹ Art 2(1).

² Art 2(1).

³ Art 2(2).

⁴ Art 2(3).

- (7) the AS may remove the wreck if the owner does not do so within the deadline, or if he cannot be contacted;
- (8) the AS may remove the wreck if immediate action is required, and if it has informed the flag state and owner;
- (9) States Parties will ensure that their registered owners comply with (2) and (3) above;
- (10) States Parties consent to the AS acting under (4)-(8) above.⁵

C. Liability of the owner and insurer

- 10. The owner is liable for the costs of locating, marking and removing a wreck under Articles 7, 8 and 9 respectively, save in excluded cases (e.g. war risks). No claim for such costs may be made against him otherwise than in accordance with the Convention.⁶
- 11. The owner is not liable under the WRC for costs which fall under other international regimes, such as CLC or the Bunkers Convention.⁷
- 12. Financial security is required to cover liabilities under the Convention, and only costs arising under the Convention may be claimed directly from the insurer.⁸

III. Effect of the WRC inside the TTS

A. Provisions applying when WRC is extended inwards

- 13. When a State Party gives notification to extend the Convention inwards the following provisions apply:
 - (1) The notification is without prejudice to the rights of the State to take measures in relation to such wrecks “other than locating, marking and removing them in accordance with this Convention”.⁹
 - (2) Arts 10, 11 and 12 shall not apply to any such measures other than those referred to in Arts 7, 8 and 9.¹⁰
 - (3) The extension is subject to Art. 4(4).¹¹ This provides that in the TTS –

⁵ Art 9(1)-(10).

⁶ Art 10(1) and (3).

⁷ Art 11.

⁸ Art 12(1) and (10).

⁹ Art. 3(2).

¹⁰ Art. 3(2).

¹¹ Art. 3(2).

a) the following provisions shall not apply:

- (i) Art 2(4);¹²
- (ii) Art 9(1),(5), (7), (8), (9) and (10);¹³ and
- (iii) Art 15;¹⁴

b) Art 9(4) takes effect 'subject to the national law of the Affected State'.¹⁵

(4) The "Convention area" shall include the TTS.¹⁶

B. Effect of provisions with respect to wrecks in the TTS

14. The effect of the above provisions with respect to a wreck in the TTS appears to be as follows:

(1) The AS may take measures (or require measures to be taken) other than locating, marking or removing the wreck.

It is not clear what other measures, if any, the draftsman may have had in mind. The text was drafted mainly to address the concern of States that in principle wished to fetter as little as possible their discretionary law-making powers – it did not necessarily reflect any specific intention to prescribe other measures.

One possible example of such measures would be disposal of a wreck by way of sale. The WRC does not give this power, but it is to be found in the laws of some states: in the UK such a power of sale exists and is preserved by the Wreck Removal Convention Act 2011.¹⁷

Another possible example would be national laws imposing liability on the owner for the costs of surveying a wreck or monitoring its condition.

(2) The provisions of the WRC concerning the liability of the owner and insurer do not apply to any such measures, and any liability in respect of them can therefore arise only under national law. It is only in relation to locating, marking or removing a wreck that the owner and insurer bear any liability under the WRC.¹⁸

¹² Art 2(4) provides that the WRC shall not entitle a State Party to claim or exercise sovereign rights over the high seas.

¹³ See para 9 above for a summary of these provisions.

¹⁴ Art 15 concerns settlement of disputes between States.

¹⁵ The AS therefore retains the right to legislate for the competent authorities to lay down conditions for a wreck removal operation, including conditions which restrict the owner's freedom of contract.

¹⁶ Art. 3(3).

¹⁷ See Gaskell and Forrest, *The Wreck Removal Convention 2007* (2016) LMCLQ 49, pp.113-4.

¹⁸ Art 3(2).

- (3) The AS may remove (or order removal of) a wreck without having to observe certain obligations, conditions or restrictions on its powers which would apply outside the TTS. In particular, in respect of a wreck inside the TTS –
- a) The AS is not bound to inform the owner and flag state, or to consult the flag state;¹⁹
 - b) It is free to intervene in an operation undertaken by the owner;²⁰
 - c) Its power to take its own measures to remove the wreck is not restricted to cases where the owner cannot be contacted, or fails to remove the wreck within a set deadline, or where the circumstances are urgent;²¹
 - d) The owner's freedom to contract with any salvor or other person is subject to the national law of the AS (which may empower the competent authorities to impose conditions, including conditions requiring the employment of a designated contractor).²²
- (4) Nevertheless States Parties to the WRC do accept some constraints on the measures they may take with respect to all wrecks, whether inside or outside the TTS. In particular the general principles in Article 2(1)-(3) apply in both cases.

Gaskell and Forrest have pointed out that WRC Art 4(4) provides for Art 2(4) not to apply in the TTS, but that it makes no similar provision with respect to other paragraphs in Article 2.²³ As they observe, this must lead to the conclusion that the other paragraphs of Article 2 were intended to remain applicable in the TTS, including notably Art 2(2) and (3). This means that, wherever the wreck is located, measures taken by the AS must be proportionate to the hazard;²⁴ and such measures must neither go beyond what is reasonably necessary to remove a wreck which poses a hazard, nor unnecessarily interfere with the rights of any party concerned.²⁵

15. The provisions applying to the TTS were designed as a compromise between two objects recited in the Preamble to the Convention: to adopt uniform international rules (as needed for a system of financial security) whilst reserving the freedom of States to exercise sovereign rights in the TTS, as recognised by international law. The WRC does not in any way alter those rights, but it does constitute an agreement to exercise them in a uniform manner, in certain respects. To the extent that this involves accepting a

¹⁹ Art. 4(4)(a)(ii) and Art. 9(1).

²⁰ Art. 4(4)(a)(ii) and Art. 9(5).

²¹ Art. 4(4)(a)(ii) and Art. 9(7) and (8).

²² Art. 4(4)(b) and Art. 9(4).

²³ See (2016) LMCLQ 49, at p. 110.

²⁴ Art. 2(2).

²⁵ Art. 2(3).

degree of constraint, States which do not wish to do so are free not to extend the Convention inwards or, having done so, to reverse that decision.

C. Wrecks which do not constitute a hazard

16. WRC Art 2(1) provides that a State Party may take measures in accordance with the Convention in relation to the removal of a wreck “which poses a hazard in the Convention area.”²⁶ The reasoning of Gaskell and Forrest, referred to above in relation to Art 2(2) and (3), must likewise apply to Art 2(1): as it is not excluded from the TTS by Art 4(4), it must apply to all wrecks in the Convention area, and the right of a State Party to take measures in relation to the removal of a wreck under the Convention arises only if it poses a hazard.
17. The same conclusion must follow from the text of the paragraphs of Article 9 which remain applicable in the TTS (i.e. those not excluded or amended by Article 4(4)). It is clear that each of these paragraphs – (2), (3) and (6) – applies only to a wreck which has been determined to constitute a hazard. In particular, Art 9(2) provides that the owner “shall remove a wreck determined to constitute a hazard”, with the clear implication that he has no such obligation where this determination has not been made.
18. Arguably the WRC is open to the interpretation that it does not prevent States from taking measures, outside the scope of the Convention, to remove such a wreck at their own expense. However it is clear from Article 10(3) that the WRC provides an exclusive basis for wreck removal orders or recovery claims against the owner, and that any measures against him in relation to a wreck which has not been determined to be a hazard would be contrary to the Convention.
19. Any liability of the owner under national laws in relation to such a wreck can relate only to measures other than locating, marking or removing the wreck.

IV. Conclusion

20. Where a State Party has extended the WRC inwards it clearly has greater powers under the Convention in relation to wrecks in the TTS than in relation to those outside it; however it is also clear that any measures it takes to order removal of a wreck in the Convention area, or to recover costs of removal from the owner or insurer, must be in accordance with the Convention. There is no scope for it to legislate for such measures on some other basis outside the Convention.

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²⁶ Art 6 lists a number of criteria to be taken into account by the AS when determining whether a wreck poses a hazard. Cases can be envisaged where a wreck would not satisfy these criteria: for example, where it is easily avoided by maritime traffic and poses no other hazard; or where it is stranded in a location where it is claimed to impair visual amenity but does not constitute any hazard that might necessitate its removal.