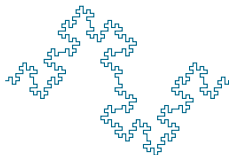


# Wreck Removal

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# WRECK REMOVAL

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# COSTA CONCORDIA

- ▶ Ran aground off the island Giglio on the west coast of Italy.
- ▶ Massive and complicated salvage operation costing approximately £1.2 billion.
- ▶ Who is responsible? What measures can and are to be taken based on such a responsibility? How can the responsibility be enforced?

## SWEDISH LAW AS AN EXAMPLE

- ▶ No uniform regulation in Swedish law. Instead there is piecemeal regulation in different acts and ordinances.
- ▶ Ordinance (2011:658) on the Removal of Wrecks that Obstruct Navigation or Fishing.
- ▶ Act (1986:371) on the Removal of Vessels in Public Ports.
- ▶ Act (1980:424) on Measures against Pollution from Ships / The Water Pollution Act.
- ▶ Act (2003:778) on Protection against Accidents.

## SWEDISH LAW AS AN EXAMPLE

- ▶ Two main categories of wrecks can be derived from the legislation → wrecks that pose danger to navigation & wrecks that threaten the environment.
- ▶ Swedish law is deficient and unclear on wrecks. A way of reforming the system would be to amalgamate the two categories in one framework and thus create a uniform regulation of wrecks.

## THE NAIROBI CONVENTION

- ▶ The Nairobi International Convention on the Removal of Wrecks was the result of a conference held in Nairobi in Kenya in May 2007. As a consequence the convention was named *the Nairobi Convention*.
- ▶ Discussions about a convention on this topic had however been held for over 30 years. It is therefore the convention that has taken the longest time to develop within the IMO.
- ▶ The convention enters into force twelve months following the date on which ten States have become full members of the convention (art. 18.1 WRC). Denmark became the tenth country to ratify the convention on 14 April 2014 and consequently the convention entered into force on 14 April 2015.

## PURPOSES OF THE CONVENTION

- ▶ To harmonise the regulations concerning wreck removal and thereby promoting uniformity in international law.
- ▶ To fill a gap in international law by enabling coastal states to remove wrecks that are situated outside the territorial sea and claim compensation for costs incurred as a result of the removal.
- ▶ It deals with the already mentioned two categories of wrecks. This is reflected in the preamble by the statement that member states are aware of that: "... wrecks, if not removed, may pose a hazard to navigation or to the marine environment...".

# TRICOLOR

- ▶ The sinking of the vehicle carrier Tricolor is a good example of when a wreck poses a threat to navigation.
- ▶ Tricolor sank after a collision in a busy and densely trafficked part of the exclusive economic zone of France. It was at the same time located in the midst of the traffic separation scheme (TSS) in the English channel.
- ▶ The wreck was positioned near the waterline, either slightly above or below, depending on the tide. This turned the wreck into an obstacle and a danger for navigation.



# TRICOLOR

- ▶ Even though the wreck was monitored by French authorities and marked according to international standards with buoys and subsequently even a radar transponder, a ship collided with the wreck the following night.
- ▶ A couple of nights later yet another ship collided with the wreck even though the wreck was monitored and news of it was widely spread.

## SCOPE OF THE CONVENTION

- ▶ Applicable in the convention area → the EEZ or, if the state has no EEZ, an area beyond and adjacent to the territorial sea extending no more than 200 nautical miles from the baselines from which the breadth of the territorial sea is measured (art. 1.1 WRC).
- ▶ *E contrario* not applicable on the high seas, the territorial sea or internal waters.
- ▶ Convention area =  $12 \leq x \leq 200$  NM.
- ▶ States can by an opt-in clause extend the application to wrecks located within the territorial sea and internal waters (art. 3.2 WRC).

## SCOPE OF THE CONVENTION

- ▶ In general the water is deeper in the EEZ compared to the territorial sea and inland waters → wrecks posing a threat to the environment are more likely to fall under the convention if the opt-in clause is not used.
- ▶ If the territorial sea and internal waters are also included the occurrence of wrecks posing danger to navigation may increase given the generally more shallow water depth.
- ▶ Wreckage is most likely to occur close to shore.
- ▶ 13 of the 25 contracting states have used the opt-in clause. This is a problem for the convention's effect in practice given what is stated above.

## DEFINITIONS OF SHIP AND WRECK

- ▶ Broad definition of ship and wreck (art. 1.2 & 4 WRC)
- ▶ A ship is construed as "a seagoing vessel of any type whatsoever". The definition includes an enumeration of different kinds of vessels and also states that floating platforms are not regarded as ships when "on location engaged in the exploration, exploitation or production of seabed mineral resources".
- ▶ A wreck is the result of a maritime casualty, defined in art. 1.3 WRC as "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".

## DEFINITIONS OF SHIP AND WRECK

- ▶ Wreck is defined as:
- ▶ (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.

## MEASURES TO BE TAKEN

- ▶ The master and/or the operator of a ship shall without delay report to the Affected State that the ship has been involved in a maritime casualty resulting in a wreck (art. 5.1 WRC).
- ▶ The Affected State then determines if the wreck poses a hazard in the light of the convention (art. 6 WRC).
- ▶ The Affected State shall locate the wreck (art. 7 WRC) and mark it (art. 8 WRC).
- ▶ The State of the ship's registry and the registered owner shall be informed (art. 9.1.a WRC).

## MEASURES TO BE TAKEN

- ▶ The registered owner shall remove the wreck (art. 9.2 WRC).
- ▶ Removal shall be construed as "any form of prevention, mitigation or elimination of the hazard created by the wreck" (art. 1.7 WRC).
- ▶ The removal process will depend on the geographical circumstances and what kind of wreck.

## MEASURES TO BE TAKEN

- ▶ The registered owner is free to contact a salvor of his or her choice but the Affected State may lay down certain conditions (art. 9.4 and see also art. 9.5 WRC).
- ▶ A reasonable deadline shall be set by the Affected State within which the wreck must be removed (art. 9.6.a WRC). Information about the deadline and that the Affected State may remove the wreck at the registered owner's expense (or that the Affected State intervenes immediately if the hazard becomes particularly severe) shall be given to the registered owner in writing (art. 9.6.b-c WRC).



## MEASURES TO BE TAKEN

- ▶ If the wreck is not removed within the deadline (or if the registered owner cannot be contacted), the Affected State may remove the wreck (art. 9.7 WRC). The Affected State may also remove it immediately if the situation is severe provided that the State of the ship's registry and the registered owner have been informed (art. 9.8 WRC).
- ▶ The owner bears strict liability for costs incurred in all of the above cases according to art. 10.1 WRC, but can be exonerated by the defences listed in the article (e.g. when the incident resulted from an act of war or a natural phenomenon of an exceptional, inevitable and irresistible character).

## LIMITATION AND COMPULSORY INSURANCE

- ▶ The registered owner can limit liability under any applicable national or international regime, i.e. in general the LLMC 1976 (amended by the protocol of 1996) (art. 10.2 WRC).
- ▶ Compulsory insurance for a registered owner of a ship of 300 gross tonnage and above flying the flag of a State Party (art. 12.1 WRC). This will in general be P&I-cover, but a bank guarantee or similar is also possible. The insurance shall cover the limitation amount (but never exceeding the amount in the LLMC).
- ▶ The insurer (or other person providing security) can be claimed directly (art. 12.10 WRC).

## LIMITATION AND COMPULSORY INSURANCE

- ▶ A Member State shall ensure that all ships of 300 gross tonnage and above have insurance or security in line with the convention when entering or leaving port or arriving or leaving an offshore facility in its territorial sea. This is applicable to all ships, i.e. also ships from states that are not members to the convention (art. 12.12 WRC).

## PROS AND CONS

- ▶ A uniform regulation of wrecks.
- ▶ Clearly states the registered owner's responsibility but also enables Coastal States to act in situations where action is needed.
- ▶ Ensures monetary compensation following wreck removal.

## PROS AND CONS

- ▶ Opt-in clause → strange inclusion that inhibits harmonisation (the result of a compromise at the conference).
- ▶ Lack of uniformity when it comes to limitation. Some countries have opted out of the possibility to limit liability concerning wreck removal in the LLMC. There may also be different national regimes in this respect.
- ▶ Some unclear and ambiguous articles (e.g. art. 16 WRC).

## SUMMARY

- ▶ Two categories of wrecks regulated in one framework.
- ▶ The registered owner bears strict liability and shall remove the wreck.
- ▶ If the owner cannot be contacted or does not act in accordance with the convention the Affected State may take action instead.
- ▶ Compulsory insurance ensures monetary compensation for incurred costs following wreck removal. The insurer can be claimed directly.