Review on CMI Study of Draft Convention for Wreck Removal

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I. Introduction

Recently it is felt that new legal research is necessary on the status of current international law relating to a coastal State's powers to intervene reasonably in casualty cases, in particular to remove wrecks which consitute a danger to navigation, to the marine environment or to its coastline and related interests, as well as the possibilities of requiring shipowners to pay the costs of removal of the wreck and the above threats.

In view of this, the Executive Committee of Comite' Maritime International(CMI) has already solved to appoint an International Sub-Committee(ISC) to study the rules of wreck removal and to render assistance in connection with the work of the Legal Committee of the International Maritime Organization(IMO) to prepare an international convention on wreck removal in the near future. The purpose of this activity is to put on record the results of the work so far carried out by the ISC in the year 1996. If the Legal Committee of IMO considers it tobe useful, it is planned that the work of CMI would continue. The study which was made by the ISC followed the questionnaire annexed in March 1996, submitted to the Legal Committee of IMO, with hope that it will serve as the basic to prepare an appropriate convention at the Organization. And also a synopsis or collections of the replies to the CMI questionnaire be made available at the Legal Committee's sessions as information document. In the following the main comments to the draft Wreck Removal Convention which so far have been identified are set out article by acticle. Accordingly, this paper has duly re-arranged for easy understanding an up-datedCMI draft convention in accordance with the report made by Mr. Bent Nielsen, chairman of the ISC, and its background paper submitted to IMO. It is felt that this paper would be a useful reference to research for legal structure andinterpretation of the convention itself. And also it is very helpful to regislate adequate national law concerned after fixing the convention in the near future

II. Articles of the Draft Convention and its interpretation

1. Definitions

For the purposes of this Convention:

1.1 "Ship" means a vessel of any type whatsoever operating in the marine environment and includes hydrofoil boats, air-cushion vehicles, submersibles, floating craft, and fixed or floating platforms or mobile offshore drilling units [when such platforms or units are not on location engaged in the exploration or exploitation of sea-bed mineral resources].

Comment:

(a) On the above wordings "[when such platforms · · · sea-bed mineral resources]" are optional text, if adopted, would mean that the Convention would not apply to offshore platforms and drilling units when they were in use, but would apply only if they were involved in a maritime casualty while in transit to or from a drilling site, including transit to a disposal site.

(b) Offshore Units

For offshore units which are on location there will almost invariably be licensing conditions or national legislation which will regulate the duties and obligations in case of a casualty or when the activity is discontinued. If therefore such offshore units were included, there whould be overlapping regimes which seem undesirable.

This was a main reason that offshore units on location are excluded from the appplication of the Salvage Convention 1989 under Art.3 of this Convention. It seems that for the same reason the exclusion shall also be made in the Wreck Removal Convention. This conclusion is also supported by the fact that some offshore units in use on location would not have P&I insurance.

On the other hand, it is considered very imortant to apply the Convention for offshore units not in use, e.g. when in transit to and from a drilling site.

The exclusion of offshore units in use on location would result if the square brackets in line 4 and 5 of art.I(1) are deleted. However it is sugested that the wording of this sentence should be brought more in line with that of Art. 3 of the Salvage Convention and further clarified as follows:

"except if then the casualty occurs such platforms or units are on location engaged in the exploration, exploitation or production of seabed mineral resources"

It has also been noted that even though under the Convention on Limitation of Liability for Maritime Claims(LLMC), 1976 Art. 15.5.b offshore units are excluded, the legislation in some

countries, such as Norway, Netherlands and Denmark, does provide for limitation of liabilty with respect to offshore units.

(c) Small craft

The replies to the CMI questionnaire indicate that in no country the law of wreck removal excludes small craft, it therefore does not seem feasible further to consider such an exclusion from the definition of "ship" which, however, would of course not mean that one could not exclude small ships from the duty to provide the financial security proposed in the draft Wreck Removal Convention Art. IX, Alternative 1.

(d) Aircraft

As noted in (a), one should perhaps consider to include the wrecks of aircraft. The replies to the questionnaire indicated some support of this, however a few replies point out certain hesitations resulting from the fact that the legal regime for aircraft is quite differenct from that of ships, and that this could result in problems, e.g. with respect to limitation and financial security.

1.2. "Wreck" means a sunken or stranded ship, or any part of thereof, including anythings that is or has been on board such a ship.

Comment:

(a) A sunken or stranded ship

Wrecked aircraft can also consitute a hazard like a sunken or stranded ship. Consideration could therefore be given to extending the scope of the Convention to cover such wrecks. This could create dificulties, however, especially in respect of owenr's duties and compulsory insurance.

(b) Pollution

The draft Wreck Removal Convention provides that "wreck" shall include"anything that is or has been on board" a ship. This gives rise to the possibility of a conflict between the Wreck Removal Convention and the various liability regimes which have been agreed for certain cargoes (specifically oil and Hazardous and Noxious Substances) and are proposed for bunkers.

This potential problem stems from the definition of "removal" and "hazard"(in partcular the environment component of that definition).

The definition of "hazards" provides for the applicaton of the Wreck Removal Convention to wrecks which pose or threaten to pose danger to the marine environment or to the coastline or related interests, and the definition of "removal" includes prevention, mitigation and elimination of hazards.

Under the 1992 Civil Liability Convention shipowners are liable for "pollution damage" caused by spills of persistent oil. In addition claims may be made for compensation for preventive measures. It should be noted that the 1992 Civil Liability Convention applies to spills of bunker oil from tankers in ballast.

A draft convention specifically on liability for damage caused by a ship's bunkers was submitted to the last session of the Legal Committee of IMO(LEG 73/12/1). It will be considered at the next session. It would make shipowners liable for any "damage" caused by spills of persistent oil carried in the bunkers of all ship, except those falling within the scope of the 1992 Civil Liability convention. "Damage" includes the costs of preventive measures.

The Hazardous and Noxious Substances Convention will make shipowners liable for "damage" (which is very broadly defined and includes loss or damage by contamination of the environment and the coasts of preventive measures) caused by Hazardous and Noxious Substance cargoes.

Therefore there is a considerable overlapping, but it should be kept in mind that this overlapping is not complete, e.g. the Wreck Removal Convention does not regulate claims for pollution damage by private parties, while however the Wreck Removal Convention does regulate the claim by public authorities for preventive measures and it seems including clean-up and restoration

One may feel that there could well exist such an overlapping as long as claimants could not claim more than one limitation fund and that the problem of potential double limitation may be addressed in a supplemental article in the Wreck Removal Convention (even in the difficult cases where both pollution and the obstruction of a fairway mandates the removal).

It should however be pointed out that the Civil Liability Convention and the Hazardous and Noxious Substance Conventions (as the proposed Bunker Convention) contain much negotiated and carefully worded conditions for the rights of public authorities (and others) to claim compensation for pollution, e.g. the exclusion of claims for damage outside the borders of the exclusive economic zone or the restriction of claims for preventive measures to cases where there is a grave and imminent threat.

The inclusion in the Wreck Removal Convention of polluton is therefore likely to cause great controversy and seems to cause considerable risks for the Wreck Removal Convention, in particular for its swift and wide international acceptance.

It may be wise to introduce certain restrictions with respect to cargo (and bunkers), e.g. one could exclude from the definition of "wreck" anything that is or has been onboard, which is covered by any international convention governing liability for damage caused by such substances. This type of exclusion has been provided for in Art. 14 of the Athens Convention.

A more radical approach would be to exclude all pollution by deleting the words "to the marine environment, or the coast line or related interests of one or more states" from the definition of "hazard" and let the definition of "wreck" remain as drafted.

One may also consider a modification of this approach where the pollution remained covered by the intervention rules of the Wreck Removal Convention, and not by its rules about compensation.

(c) cargo, etc., of ship which are not wrecks

The definition of "wreck" covers only cargo, etc., which is or has been on board a sunken or stranded ship.

If one decides to make the convention applicabe to ships which may reasonably be expected to result in a wreck, i.e. delete the square brackets used in the phrase "[ship or] wreck", it seems obvious that a suitable amendment shall be made in Art. 1,2., to include the cargo, etc., of such a ship, whether on board or not.

One may also consider whether cargo, etc., lost from a ship which is not itself a wreck or in danger, should be included. This however seems to be a more far reaching amendment which may require further analysis.

(d) CMI questionnaire

The replies to the CMI questionnaire, item 2.8., indicate that there is much support that cargo and bunkers, whether or not on board a wreck, should be included at least to the extent such goods consititute a danger or impediment to surface navigation.

1.3. "Casualty" means a collision of ships or any other incident of navigation, or other occurrence on board a ship or external to it resulting in, or which may reasonably be expected to result in, a wreck.

Comment:

(a) Wreck

The definition of casualty could be used to extend the scope of the Convention to cover ships which have not yet become wrecks, but which, in the absence of intervention, would probably become wrecks. In order for the scope of the Convention to be extended in this manner, references to ships as well as to wrecks have been added to the relevant provisions of the Convention. However, square brackets are used in the phrase "[ship or] wreck" to indicate that a decision must be taken on whether or not the Convention should apply to ships after a casualty but before they become a wreck.

(b) Degree of Danger

This provision is modelled on the basis of the Intervention Convention, Art. II.1., and UNCLOS, Art. 221,2.

One may however need to consider the reason for excluding the word "stranding" appearing in the said two conventions after · · · "collision of vessels" and more importantly the substitution of the term of the draft Wreck Removal Convention "reasonably be expected to result in" by the concept of "imminent threat" appearing in these two Conventions.

(c) CMI

The ISC favors the alternative solution according to which the Wreck Removal Convention is applicable also to ships which have not yet become wrecks, i.e. to delete the square brackets where the phrase "[ship or]" appears to cover a situation where a ship has created a hazard otherwise than in the consequence of its sinking or stranding.

1.4. "Hazard" means any condition or threat of danger or impediment to surface navigation, to the marine environment, or to the coastline or related interests of one or more States.

1.5. "Related interests" means the interests of any State directly affected or threatened by the casualty, such as:

(a) the health of the coastal pollution and the wellbeing of the areaconcerned, including conservation of living marine resources and ofwildlife;

(b) maritime coastal, port of estuarine activities, inclduing fisheriesactivities, constituting an essential means of livelihood of thepersons concerned;

(c) tourist attractions of the area concerned;

(d) harbour works, basins and navigable waterways; and

(e) offshore or underwater infrastructure of the type referred to inArticle V, subparagraph (n), and other economic interests.

Comment:

The ISC debated at some length the connection between Art. 1,4. and 1,5. with respect to the protected interests.

(a) "Related interests"

It has noted that the term "related interests" in 1,4. only refers to the coast line, not to the marine environment.

(b) Art. 1,5(d) and (e)

Subsections (d) and (e) of 1,5. do not appear in the Intervention convention II,4. and it was questioned if subsection (e) related only to offshore and underwater infrastructure near the coastline. If this is not the case, some redrafting may be required to clarify this.

(c) "Any State"

Further it was felt that it may be useful to clarify why the term "any state" in 1,5. has been chosen instead of the term "coastal state" in the Intervention Convention.

(d) Permanent nuisance

The words "any condition or threat" indicate that "hazards" include also situations where the threat has materialized, e.g. where a wreck affects a tourist attraction or fishery activities. However the word "threatened" in the phrase "state whose interests are the most directly threatened by the wreck" in 1,8., as well as the word "hazard" itself in 1,4., may lead one to conclude that there are some limitations for the application of the Wreck Removal Convention where the threat of danger has materialized and resulted into a permanent nuisance or damage. Possibly a redrafting shoud be made to clarify this.

(e) State

Finally, the question has been raised as what is meant when the Wreck Removal Convention using the words "state" or "states". Is it a state party to the Wreck Removal Convention or any state? This seems to depend on the context in which the word is used. One may therefore perhaps clarify this wherever this term is used in the Wreck Removal Convention.

(f) CMI questionnaire

In the CMI questionnaire opinions have been sought if other hazards than the danger or impediment to surface navigation should be included. The replies indicate substantial support to include the dangers to the marine environment or to the coast line and related interests.

1.6 "Removal" means any form of prevention, mitigation or elemination of hazard proportionate to the hazard.

Comment:

(a) "Proportionate"

The main point of this definition is that the prevention or elimination shall be "proportionate" to the hazard. However, the fact that a removal is "proportionate" to the hazard does not always

mean that it is reasonable. It is therefore suggested to add the words "reasonable and" before proportionate.

(b) CMI questionnaire

The CMI questionnaire invited opinions whether the Wreck Removal Convention should contain an elaborate definition of what constitutes "removal". The replies indicate that there is not unified view on this. Some pointed out that a more elaborate definition could create the risk of excluding some required action that at present would be difficult to imagine. No one proposes a very elaborate definition, however some feel that guidelines (without limitation) could be included, e.g. the Irish Maritime Law Association refers to recent Irish legislation on the subject using the term "raise and remove or otherwise render harmless the wreck".

(c) "Removal"

One should perhaps consider if the use of the word "removal" might be misleading and should be substituted by "elimination" or another similar expression which suggests that actual removal of the wreck in many cases would not be required.

1.7 "Shipowner" means the person or persons registered as the shipowner of the ship, or in the absence of registration, the person or persons owning the ship, at the time of the casualty leading to a wreck. However in the case of a ship owned by a State and operated by a company which in that State is registered as the ship's operator, "shipowner" shall mean such company.

Comment:

This definition which is adopted from Civil Liability Convention is linked to the idea of certfication and channelling of liability, and it is doubtful whether it is directly applicable if Art. XI (evident of financial security) is not adopted.

It could be considered whether this provision should (alternatively) be broadened to include other possible liable persons.

The replies to the CMI questionnaire indicate a broad variety of solutions in national law, such as joint liability for the owner at the time of the casualty and any subsequent owners, in some countries a bareboat charterer would also be liable, others include the operator, some the operator, manager and charterer or the master, or the owner of cargo or other objects (with respect to removal hereof), or the person whose misconduct has caused the damage.

On this background it may be very difficult to obtain any unification of law and one may therefore decide to maintain the definition and leave it to national law which others would be liable for wreck removal in addition to the registered owner at the time of casualty.

1.8 Except as otherwise provided hereinater, "the State whose interests are the most directly threatened by the [ship or] wreck" means the State from whose territory the [ship or] wreck lies the least distance (where distance is measured from the limit of a State's territorial waters). This State may however agree with another State that the other State shall be considered to be the State whose interests are the most directly threatened by the [ship or] wreck for the purposes of the Convention.

Comment:
(a) "The state whose interests are the most directly threatened by the [ship or] wreck"
As mentioned above there seems to be a need for clarification as to whether state means a contracting state and to consider to use a more appropriate word than "threatened".

1.9 "Territorial sea" means the territorial sea as defined in Section 2 of Part II of the United Nations Convention on the Law of the Sea 1982

1.10 "Flag State" means a State whose flag a ship flies and is entitled to fly.

1.11 "Warship" has the same meaning as in Article 29 of the United Nations Convention on the Law of the Sea 1982.

Comment:
(a) "Warship"
The aim of this definition is to extend the application of the Convention to decommissioned warships, Article 29 of UNCLOS defines a warship as a ship belonging to the armed force of a State and commanded and crewed by members of the armed forces, it does not, therefore, extend to decommissioned warships. Consideration should perhaps be given to whether a consequential amendment is required to Article III.

1.12 "Convention" means the International Convention on Wreck Removal 199?.

1.13 "Organization" means the International Maritime Organization.

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

2. Application

2.1 Except as otherwise provided hereinafter, the Convention shall apply to [ships and] wrecks located beyond the territorial sea of States Parties.

2.2 A State Party to the Convention may at any time declare, by means of a notification addressed to the Secretary-General, that [Some or all of the provisions of] the Convention shall apply to [ships or] wrecks within waters over which it excercises sovereignty in accordance with Article 2 of the United Nations Convention on the Law of the Sea 1982. Such a declaration shall specify the areas to which the Convention is to be applied.

2.3 A State Party which has made a declaration under paragraph 2 may withdraw it at any time by means of a notification addressed to the Secretary-General.

Comment:

(a) Limits for geopraphical application

The ISC decided that the international law problems needed to be studied further. Partricia Birnie(United Kingdom) and Jan de boer(Netherlands) undertook to perform this study.

The replies to the CMI questionnaire indicate that in most countries the authorities can under the present rules take any appropriate action outside their territorial sea in pollution cases. Some countries, e.g. Netherlands and Denmark, also take such steps outside their territorial waters if the wreck is a danger to surface navigation. This however seems to be restricted to waters where the authorities maintain marking of fairways or where there is seaborne traffic to and from ports in the country. Other countries, e.g. Germany, consider it impossible to take such steps and have faced difficult legal problems with the elimination of hazardous wrecks located beyond their territorial waters, and the refund of coasts. A convention on wreck removal relating to the waters beyond the territorial waters is therefore felt necessary in these countries.

It is obvious that the very broad application to all waters outside territorial waters creates much controversy, thus the P&I representative on the ISC stated that the industry would resist such a wide scope.

(b) Territorial water

Another question to consider was if the national regimes for wreck removal within the territorial waters may have so many similarities that it may be possible to include these areas within the scope of the Wreck Removal Convention.

The replies to the CMI questionnaire indicate that this may very well be the case. Since the

majority of wreck removal cases will related to wrecks within the territorial sea, it woud be important to obtain widespread international unification of the rules governing such wrecks.
Some unification may be obtained as a result of the system introduced in the draft Wreck Removal Convention under which a state party can decide that the convention is applicabe to its territorial sea, however the unification would be much more complete, if the Wreck Removal Convention by itself was applicabe also to national waters, but permitted a state party to except such waters from its application.
The CMI is studying the voluminous documentation collected by the secretariat of IMO in 1974/75 about the existing national legislation as well as the new information obtained in the replies to the CMI questionnaire. It is hoped that a special paper on this subject can be produced in near fiture.

3. State-owned ships

3.1 The Convention shall not apply to warships or other non-commercial ships owned or operated by a State and entitled, at the time of the casualty, to sovereign immunity under generally recognized principles of international law unless that State decides otherwise.

3.2 Where a State Party decides to apply the Convention to its warships or other ships as described in paragraph 1, it shall notify the Secretary-General thereof specifying the terms and conditions of its application.

Comment:
(a) Decommissioned warship
It should be noted that decommissioned warship lost while under tow presently present rather serious wreck removal problems, however it is realized that such vessels clearly fall outside the definition of warships in Art.29 of UNCLOS and are therefore not excluded under Art. III,1.

4. Reporting and locating [ship and] wrecks

4.1 Each State Party shall required Masters or other persons having charge of ships flying its flag and having knowledge of a casualty to report it without delay to the nearest coastal State in accordance with the requirements developed by the Organization and based on guidelines and general prnciples adopted by the Organization.

Comment:
(a) IMO guidelines

In view of this, the current guidelines are contained in Assembly resolution A. 648(16).

(b) Report about casualty

It is realized that this provision is modelled on the basis of the International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990 (OPRC Convention) Art.4. However, in the context of the Wreck Removal Convention amendments may be required to make it clear that masters of all vessels flying the flag of a contracting state have this duty to report about a casualty, not only the masters of vessels involved in the casualty.

It seems also appropriate to consider and to clarify if the "nearest coastal state" to which report shall be made, is a state party or any coastal state.

4.2 When a report of a casualty involving shipowner's ship has been made under paragraph 1, the shipowner or his agents shall promptly, and certainly within 24 hours, make a report to the flag State, the competent authorities at the first point on the coast with which they can communicate or the Organization.

Comment:

(a) Duty to report

It is felt that the shipowner' obligation to report shoud not be conditional upon a report having been made under paragraph 1, rather the shipowner should have an independent duty immediately to report when he learns about the casualty.

(b) "Agents"

The terms "the shipowner or his agents shall · · · report" is not clear with resepect to which type of agents shall have this duty. It would hardly be appropriate to put such a duty on a usual port agent of the ship. It is believed that what is meant is a manager or operator of the ship. However, in view of the fact that penal sanctions are imposed for the failure to report, it seems important clearly to define who is the responsible party. This would hardly be achieved by referring e.g. to operator or manager, and perhaps therefore it would be preferable only to use the expression shipowner(being the registered owner). If one feels that this, in particular in cases of bareboat charter, is unsatisfactory, one could consider to include also the master of the ship.

(c) Contents of report

Finally, one may consider to provide for certain basic points which shall be covered in the shipowner' report, e.g. details of the vessel, its cargo and bunkers, details of owners and their insurers, time and position of the occurrence, details of the occurrence and the vessel's condition,

as well as any measures taken to salve the ship or prevent damage emanating from the ship or its cargo.

4.3 State Parties to the Convention undertake to adopt in their national legislation sanctions for failure to give prompt notification in accordance with the Convention.

4.4 Upon obtaining knowledge of a wreck or casualty a State Party shall use all practicable urgent means, including the good offices of States and organizations, to warn mariners and the coastal States concerned of the nature and location of the hazard.

4.5 If a State Party has reasonable cause to believe that a hazard posed by a [ship or wreck] exists in the vicinity of its coastline, it shall take all reasonable steps to establish the precise location of the [ship or] wreck.

5. Determination of hazard

When a [ship or] wreck beyond the territorial sea of States Parties has been reported or located in accorance with Article IV, the State whose interests are the most directly threatened by the [ship or] wreck shall be responsible for determining whether a hazard exists, taking into account the following criteria, as appropriate, without regard to the order in which they are presented below:

(a) size, type and construction of the [ship or] wreck;
(b) depth of the water over the [ship or] wreck;
(c) tidal range and currents in the area;
(d) particularly sensitive sea areas identified according to guidelinesadopted by the Organization, or established in accordance withArticle 211, paragraph 6, of the United Nations Convention on theLaw 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 ship's cargo, the amount and types of oil (such as fuel oil and lubricating oil) on board the ship and, inparticular, the damage likely to result should be cargo or oil bereleased into the marine environment;
(i) vulnerability of port facilities:
(j) prevailing meteorological and hydrographic conditions;
(k) submarine topography of the area;
(l) height of the wreck above or below the surface of the water atlowest astronomical tide;

(m) acoustic and magnetic profiles of the wreck;
(n) proximity of offshore installations, pipelines, telecommunicationscables and similar structures; and
(o) any other circumstances that necessitate the removal of a [ship or]wreck.

Comment:
(a) Re. 5.(d)
There are many other particularly sensitive sea areas, including areas within the territorial sea, which it would be very natural to keep in mind when determining if a hazard exists. It is therefore suggested to add the following at the end of the paragraph:
"or established under any other relevant international instrument."
This point will be further considered together with other issues of international law by the CMI working group referred to above.

(b) Re. 5.(o)
It is realized that the list of the criteria to be taken into account must be open-ended and that this is made clear in clause (o) which says that regard shall also be taken to "any other circumstances that necessitate the removal".
However, the clause as presently worded says much more, i.e. that removal shall be necessary. This may cause confusion.
Firstly, it seems to lead to circular reasoning. Secondly, it would be required to mark many wrecks which it is unnecessary to remove. Since it is a condition for marking that there is a "hazard", one should not make it a condition to determine what is a "hazard" that it necessitates removal.
One may therefore consider to delete the requirement of the necessity to remove from (o), e.g. to word the provision:
"any other relevant circumstances.'
However, where the authority requires the wreck to be removed, it seems appropriate expressly to provide that this must be necessary. It is therefore suggested that art.VII. dealing with removal should be redrafted to reflect this.

(c) Suggested new provision as art. V(2)
It seems obvious that the state which determines that a hazard exists should have a duty to inform the shipowner. Since this decision may have very serious consequences, it seems necessary that it is made in writing and perhaps also appropriate that the grounds for the decision should be stated. It is therefore suggested to add a new art. V(2) of the following wording;

"Having determined that a hazard exists, the state shall advise the shipowner in writing of its ruling, including if appropriate that the owner shall remove the wreck. The ruling shall state the grounds for the determination."

6. Marking of wrecks

6.1 If a wreck is determined to constitute a hazard, that wreck shall be marked by the State whose interests are the most directly threatened by the wreck.

6.2 In marking the wreck, all practicable steps shall be taken to ensure that the markings conform with any internationally accepted system of buoyage in use in the area where the wreck is located.

6.3 The particular of any wreck marking shall be promulgated to mariners.

Comment:
(a) No comment prepared on the above the marking of wrecks at this stage.

7. Rights and obligations to remove hazardous [ships and] wrecks

7.1 [The shipowners shall undertake the removal of a ship determined to constitute a hazard following a casualty.]

Comment:
(a) It is understood that this provision related to a situation wherethe ship is in distress, but has not yet become a wreck. As mentioned it is felt that also such a situation shall be covered under the Wreck Removal Convention, and therefore that the square brackets should be deleted as well as the square brackets in the term "[ship or]" where it appears in the draft.
It may be clarified that the shipowner shall receive a notice from the authority that his ship constitutes a hazard and that this hazard necessitates removal.
The paragraph could therefore be redrafted as follows:
"On being notified that a ship has been determined to consititute a hazard which necessitates removal, the shipowner shall undertake this removal."

7.2 The shipowner shall undertake the removal of a wreck determined to constitute a hazard. The shipowner, or another interested party, shall first provide the competent authority of the State whose interests are the most directly threatened by the wreck with the financial security required

by Article XI and a salvage plan for the removal of the wreck.

Comment:
(a) It is suggested that the first sentence of this paragraph should be recorded along the same lines as paragraph 1 as follows:
"On being notified that the wreck has been determined to consititute a hazard which necessitates the removal, the shipowner shall undertake this removal."
It is further suggested to delete the word "salvage" in the last line, since not all wreck removal operations have the nature of a salvage.
One may finally consider to add at the end of the paragraph:
"The plan shall be approved by the aurhorities."

7.3 The shipowner may contract with any salvor or other person to perform the operation on the shipowner's behalf. When such operations have been commenced by the shipowner or private salvors, the State whose interests are the most directly threatened by the [ship or] wreck shall intervene in such operations only to the extent necessary to ensure that the removal operations proceed as expeditiously as possible consistent with safety and environmental considerations.

Comment:
(a) One may consider to substitute "shall" in line 4 by "may", the addition of "but" after "operations" in line 5 and "and effectively" after "expeditiously" in line 6.

7.4 The State whose interests are the most directly threatened by the [ship or] wreck may:
(a) taking into account the hazard determined under Article V, set areasonable deadline within which the shipowner must undertake theremoval of the [ship or] wreck;

(b) inform the shipowner in writing of the deadline it has set and that,if the shipowner does not undertake the removal of the [ship or]wreck within that deadline, that State can undertake the removal atthe shipowner's expense; and

(c) When the hazard is particularly severe, inform the shipowner that it intends to intervene immediately.

Comment:
(a) Possible new paragraph (4):
Very often the effectiveness and success of a wreck removal operation will be much dependant

upon co-operation of state parties, in particular port authorities in coastal states. For the same reasons the Salvage Convention 1989, Art.11 contains a co-operation clause, on the basis of which it is proposed to consider drafting a co-operation clause to be inserted as a new art.VII(4) in the Wreck Removal Convention. for easy reference the Salvage Convention Art.11 is quoted:

"Co-operation

A State Party shall, whenever regulating or deciding upon matters relating to salvage operations such as admittance to ports of vessels in distress or the provisions of facilities to salvors, take into account the need for co-operation between salvors, after interested parties and public authorities in order to ensure the efficient and successful performance of salvage operations for the purpose of saving life or property in danger as well as preventing damage to the environment in general."

7.5 If the shipowner does not undertake the removal of the [ship or] wreck within the deadline set under paragraph 4 and it has been determined to consititute a hazard in accordance with Article V, or the State whose interests are the most directly threatened by the [ship or] wreck considers that immediate action is required., that State may undertake the removal or marking of the [ship or] wreck by the most practical and expeditious means available, consistent with considerations of safety and protection of the marine environment and related interests.

Comment:

(a) No comment on the above at this stage.

7.6 Without prejudice to Article VIII, a State which has undertaken the removal of a wreck in accordance with the provisions of this Article is empowered to sell any property so recovered in order to recover the costs of removal. Any surplus from the proceeds of sale shall be paid to the shipowner [and to any other persons entitled to it]. However, no payment shall be made to a shipowner having declared abandonment of the [ship or] wreck.

Comment:

(a) The replies to the CMI questionnaire show that the national rules about abandonment of ships differ to a considerable extent. It is therefore felt that the last sentence of pargraph 7(6) may lead to many discussions and that it is likely that one may eventually give up trying to obtain the very limited unification which would follow from this rule.

It is therefore suggested to delete this sentence, thereby leaving it to national legislation to decide what effect an abandonment shall have in such a case.

7.7 The State is not liable for damage resulting from the removal of the wreck.

Comment:

(a) The CMI questionnaire as well as the discussions in the ISC also revealed that the national rules and principles governing state liability for damage vary very much. In some countries there would be no liability, in others it is considered obvious that the state should have the same liability in such a case as a private enterprise. Also with respect to this rule it is therefore suggested to leave the matter to national law and delete this rule from the draft.

(b) Possible new VII(7):

During the discussions in the ISC and indeed also in same replies to the CMI questionnaire it is suggested that the Wreck Removal Convention should contain guidelines and rules with respect to recoverable costs of a state organized removal.

CMI has thoroughly studied a similar subject with respect to claims for pollution damage, and at its International Conference, 1993, adopted a set of guidelines on oil pollution.

It is obvious that the computation of costs for oil pollution damage is often much more complicated than for wreck removal expenses, where there would normally not be claims for economic loss which has been dealt with in details in the oil pollution guidelines. Another difference is that there would often be plenty of time to plan a wreck removal, while combat of oil pollution is urgent.

However, the rules in Part III of the guidelines relating to preventive measures, clean-up and restoration may be of considerable application also with resepct to the costs of a wreck removal.

A first provisional draft based upon these rules, but relating to wreck removal which could be adopted as guidelines in the Wreck Removal Convention or in the convention itself, is the following:

"Where the state undertakes the removal at the shipowner's expense, the computation of the costs recoverable by the state shall be fixed i.e. based upon the following guidelines:

a. The cost of wreck removal is recoverable insofar as both the wreck removal mesurers themselves and the costs thereof were reasonable in the particular circumstances.
b. In general compensation is payable where the wreck removal measures taken or the equipment used were likely on the basis of an objective technical appraisal at the time any relevant decisions were taken, to be successful in the avoiding or minimizing pollution damage. Compensation is not to be refused by reason only that wreck removal measure proved ineffective or mobilized equipment proves not to be required. A claim should however be refused if the steps taken could not be justified on an objective technical appraisal, in the circumstances existing at the relevant time, of the likelihood of the measures succeeding, or mobilized equipment being required.
c. Where a govenment agency or other public body takes an active operational role in wreck

removal measures, compensation may be claimed for an appropriate proportion of normal salaries paid to their employees engaged in performing the measures during the time of such performance, and such a claim will not be rejected on the sole ground that the salaries concerned would have been payable by the claimant in any event.

d. Where any plant or equipment owned by any government agency or other public body is reasonably used for the purpose of wreck removal measurers, the state party may claim reasonable charges for the period of the use, and any reasonabe costs incurred to clean or repair the plant or equipment after its use; provided always that the aggregate of such charges and/or costs should not exceed the acquistion cost or value of the plant or equipment concerned.

e. compensation paid in accordance with sub-paragraphs c. or d. is to be limitd to expenses which relate closely to the period where the wreck removal measure were taken and is not to include remote overhead charges.

f. Where material or equipment is reasonably purchased for the purpose of a wreck removal measure by a government agency or other public body, compensation is payabe for the cost of acquisitition, but subject always to a deduction for the residual value of such equipment or material after completion of the measures."

7.8 Removal shall take place in accordance with guidelines adopted by the Organization.

8. Financial liability for locating marking and removing [ship and] wreck

8.1 The shipowner shall pay compensation in respect of the cost of locating the [ship or] wreck under Article IV, of marking the wreck under Article VI, of removing the [ship or] wreck under Article VII, and of any techinical advice and other services rendered; unless the shipowner proves that the casualty:

(a) resulted from an act of war, hostilities, civil war, insurrection or anatural phenomenon of an exceptional, inevitable and irresistiblecharacter;

(b) was wholly caused by an act or omission done with intent to causedamage by a third party; or

(c) was wholly caused by the negligence or other wrongful act of anyGovernment or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function.

Comment:
(a) No comments on the above 8.1. at this stage

8.2 The shipowner shall be entitled to limit liability in accordance with the applicable international convention [or, as appropriate, the applicable national law].

Comment:
(a) It is noted that this clause, as it is now drafted, does not provide any limitation of liability for wreck removal which does not exist by virtue of other rules.
It is felt that a deletion of the sentence within the square brackets would change this inasmuch as this would mean that a state party which had limitation rules in its national law, but was not a party to an international convention in this field, e.g. the U.S.A., could not apply these national limitation rules. This would be highly controversial, and therefore it is suggested to keep this provision, i.e. delete the square brackets.
The replies to the CMI questionnaire as well as the discussion in the ISC indicate that further studies and considertions may be warranted with respect to the question whether the Wreck Removal Convention should contain something more about the shipowner's right on limitation than the mere reference to existing limitation schemes.
This is particularly the case if it is decided to maintain the rules in the draft Wreck Removal Convention, art. IX, about evidence of financial security, because at least the insurer or other guarantor must have some limit as it is very unlikely that insurers or guarantors would undertake an entirely unlimited obligation. It may also be found reasonabe that the shipowners who shall carry the extra expense and burden of a system of financial security had the same rights of limitation as their guarantors.
On the other hand, however, it may be very difficult to obtain international acceptance that one should provide for any rules of limitation of shipowner's liability outside the International Convention on the Limitation of Liability for Maritime Claims, the Civil Liability Convention and Hazardous and Noxious Substance Convention. A possible solution which will be of some assistance for those who favour to provide for positive rules of limitation, would perhaps be to include a rule in the Wreck Removal Convention that a state party which is also a party of the International Convention on the Limitation of Liability for Maritime Claims 1976, shall not make use of the possibilities to reserve the right to exclude claims for wreck removal from limitation in Art. 18 in the International Convention on the Limitation of Liability for Maritime Claims 1976.

8.3 Nothing in this Article shall prejudice any right of recourse against third parties.

9. Time-bar

Rights of compensation under the Convention shall be extinguished unless an action is brought thereunder within three years from the date when the hazard occurred.

Comment:

(a) For the above time-bar, Civil Libility Convention (CLC) provides for a three-year time-bar. However, a two-year time-bar is traditional for salvage and collision claims, which are perhaps more analogous to wreck removal claims.

(b) The replies to the CMI questionnaire indicate that the present position with respect to time-barring of owner's obligation to remove the wreck, alternatively to pay the costs for the removal, varies considerably. For example, Sweden has a 2 year time-bar from the casualty while Ireland has probably no time-barring, even not under the general rule of limitation of time because a wreck may be considered as a continuing nuisance so that a new cause of action (for which a time-limit will run) would arise day by day. U.S.A has pointed out that although there is no explicit time-limit, it is conceivable that an unreasonabe delay in prosecuting the claim could bar recovery under the Doctrine of Laches. Supposedly, an unreasonable delay on the part of the authorities may have the same effect under similar rules in many other countries.

The shipping industry no doubt has a rather strong need for clear rules on time-barring. It is difficult to live for many years with an unresolved potential liability. Further it should be noted that the P&I clubs normally only provide cover for the shipowner's wreck removal liablities in 3 years after casualty.

On the other hand it is pointed out that a state party (under the Wreck Removal Convention) will know about the existence of a wreck immediately after casualty. The state parties should therefore in all but a very limited number of extreme cases be able to analyse and decide if there is a hazard necessitating removal within a rather short period of time.

On this background it is felt that the Wreck Removal Convention should provide for a short time limit commencing at the date of the casualty after which all obligations of the shipowner under the Wreck Removal Convention are time-barred. This time-l.imit should be fixed in such a way that there will be reasonable time for the authorities to investigate and consider if the wreck is a hazard that necessitate removal, to issue an order for wreck removal to the shipowner, to let the shipowner have a reasonable time (as appropriate) to arrange and effect the removal, to let the authorities thereafter have reasonable time to arrange and effect the removal themselves, should the shipowner fail to undertake the removal and to process and lodge the claim for costs aginst the shipowner.

It is felt that 2 years from the date of the casualty should give ample time for this and it is pointed out that this would bring the Wreck Removal Convention rule in line with other claims frequently arising out of a casualty for salvage and collision under the appropriate international conventions.

10. Jurisdiction

10.1 Actions for compensation under the Convention may only be brought in the courts of the State whose interests are most directly threatened by the [ship or] wreck.

10.2 Each State Party shall ensure that its courts possess the necessary jurisdiction to entertain such actions for compensation.

Comment:
(a) The jurisdiction issue is closely connected to the issue of financial security. If it should be decided not to provide for financial security in the Wreck Removal Convention, there are strong arguments for allowing a state to sue a shipowner in other jurisdictions, e.g. his domicile and where theshipowner's assets (other ships) can be attached.

11. Evidence of financial security

For resonable fixing on the above article, two alternativesare suggested by CMI as below:

Comment:
(a) Evidence of financial security
The Committee will need to consider article XI in connection with the wider deliberations on compulsory insurance as soon as possible.

Alternative 1;
[11.1.1 The shipowner of a ship flying the flag of a State Party and of over [10/24] metres in lenght shall be required to maintain insurance, or other financial security such as a bank guarantee, to cover liability under the Convention.

Comment:
(a) Over [10/24] metres in length
As to length of ship over 10 or 24 metres which is to be decided by the Organization,

requirement for compulsory insurance could perhaps instead be applied to any ship of 300 gross tons and above. (Article 15(2)(b) of the 1976 LLMC Convention allows States to regulate the limitation of liability of the owners of ships of less than 300 gross tons under national law)..

11.1.2 Without prejudice to the generality of Article II, paragraph 2, State Parties may apply the relevant provisions of the present article to waters under their jurisdiction.

11.1.3 A certificate attesting that insurance or other financial security is in force in accordance with the provisions of the Convention shall be issued to each ship of over [10/24] metres in length. It shall be issued or certified by the appropriate authority of the flag State after determining that the requireements of paragraph 1 of this acticle have been complied with. This certificate shall be in the form of the annexed model and shall contain the following particulars:

(a) identity of the ship and the flag State;
(b) name and principal palce of busienss of shipowner;
(c) type of security;
(d) name and principle place of business of insurer or other persongiving security and where appropriate, place of business where theinsurance or security established;
(e) period of validity of the certificate which shall not be longer than the period of vilidity of the insurance or other security.

11.1.4 The certificate shall be in the official language or languages of the issuing state. If the language used is neither English nor French, the text shall include a translation into one of these languages.

11.1.5 The certificate shall be carried on board the ship and a copy shall be held by the issuing authority

11.1.6 A certificate of insurance or other financial security shall not satisfy the requirements of this Article if it may become invalid for reasons other than the expiry of the stated period of validity before three months have elapsed from the date on which notice of its termination is given to the issuing authority, unless the certificate has been surrendered to that authority 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.

11.1.7 The flag State shall, subject to the provisions of this Article, determine the conditions of issue and validity of the certificate.

11.1.8 Certificates issued and certified under the authority of a State Party shall be accepted by other States Parties for the purposes of the Convention and shall be regarded by other States Parties as having the same force as certificates issued and certified by them. A State Party may at any time request consultation with the flag State should it believe that the insurer or guarantor named in the certificate is not financially capable of meeting the obligations imposed by the Convention.

11.1.9 Any claim for liability arising under the Convention may be brought directly against the insurer or other person providing financial security for the shipowner' liability. However, the defendant may, even if the shipowner is not entitled to limit liability, invoke the limit of liability prescribed in Article VIII, paragraph 2. The defendant may further invoke the defences (other than the bankruptcy or winding up of the shipowner) which the shipowner would have been entitled to invoke. Furthermore, the defendant may invoke the defence that the casualty was caused by the wilful misconduct of the shipowner himself, but the defendant shall not invoke any other defence which the defendant might have been entitled to invoke in proceedings brought by shipowner against the defendant. The defendant shall in any event have the right to require the shipowner to be joined in the proceedings.

11.1.10 A State Party shall not permit any ship entitled to fly its flag for which a certificate is required under paragraph 1 to trade or operate unless a certificate has been issued under paragraph 3 or 12..

11.1.11 Subejct to the provisions of this Article, each Sate Party shall ensure, under its national legislation that insurance or other security to the extent required by paragraph 1 is in force in respect of any ship, irrespective of flag, entering or leaving a port in its territory, or arriving at or leaving an offshore terminal in its territorial sea.

11.1.12 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 which shall instead carry a certificate issued by the appropriate authority of the flag State stating that it is owned by that State and that its liability is covered within the limit prescribed in Article VIII, paragraph 2. Such a certificate shall follow as closely as practicable the model prescribed in paragraph 3 of this article.]

Comment:
(a) alternative 1:

The proposal that shipowners shall be required to maintain financial security to cover liability under the Wreck Removal Convention is no doubt controversial.

It is strongly opposed to by the P&I Clubs whose representative in the ISC, Charles Mawdsley, has summarized the Clubs' views as follows:

He set out the clubs' reviews on the proposal that there should be compulsory insurance for the liabilities on shipowners under the draft convention:

(1) The clubs do not think that wreck removal is such as serious and special problem that it requires shipowners to carry compulsory insurance against which claims by third parties can be made. Why should governments, who will be the claimants in the case of most wreck removals, be in a better position than claimants in death or injury claims involving passengers or seamen?

(2) The draft Wreck Removal Convention provides that the shipowner shall be entitled to limit his liability in accordance with the applicable international convention, which in most cases will be the Limitation Convention, although of course any state may exclude wreck removal claims from the list of claims subject to limitation.

This possibility makes it even more complicated to implement a compulsory insurance scheme in respect of wreck removal. However, if the claims are subject to limitation the club sees no reason to put one type of claimant, namely local authorities, in a more favourable position than others by allowing them direct action against the insurer, particularly where all claims are subject to one fund and can be reduced pro rata to that fund. If the claims are not subject to limitation how can the clubs be expected to provide unlimited cover subject to direct action?

(3) Wreck removal liabilities are covered by far more insurers than liability for oil pollution from tankers, which is the only other liability at the moment subject to compulsory insurance (The Civil Liability Convention). It will therefore be more difficult for governments to assess the strength of the various insurance companies covering wreck removal cover than it is for them to assess the strength of the insurance companies covering oil pollution from tankers.

(4) The clubs are not convinced that this scheme could be adequately enforced. Ships which are wrecked will not necessarily have called at any port in the country affected and therefore may well turn out not to have compulsory insurances.

(5) The whole issue of compulsory insurance for all third party claims is to be considered by the legal committee any way and it seems inappropriate for it to be considered separately in respect of wreck removal.

(6) The clubs consider that the solution is for port state control to check that the ship has adequate cover by viewing the certificate of entry.

These views have been supported by some members of the ISC, including the Norwegian members.

On the other hand, the replies to the CMI questionnaire do not show the same strong opposition from many national maritime law associations.

Thus the question "Should the convention in your opinion contain a rule about financial security" was replied to in the affirmative by the maritime law associations of Portugal, Canada, Germany, Argentine, Ireland, Italy, Sweden and Indonesia, while there was a rather strong opposition from associations of Unitd Kingdom, Denmark, Netherlands and Norway (in the ISC), others have not formed any opinion at this time. Among the supporters, some, e.g. Ireland, seem to favour Alternative 2, not Alternative 1.

It must be stressed that these replies only represent the initial views from these national associations, the subject is very likely to be much debated, in particular at the planned sessions dealing with wreck removal during the International Conference of the CMI in last June, 1997. It is not unusual within the CMI that after such further debates national associations change their position, and any conclusions one may draw from the replies to the questionnare should therefore not necessarily be considered final.

A few comments have been made with respect to the drafting of Alternative 1:

(a) Article X(1)

The proposed minimum size is considered by many to be too low many would prefer the alternative minimum size of 300 gross tons as above mentioned 11.1.1 Comment (a).

(b) Article XII(2)

This clause which does not appear in the Civil Liability Convention is understood to mean that state parties are given the right to request that ships flying the flag of a non-party party must have evidence of financial security if they trafficate the waters of a state party.

It is felt that a much more eleborate drafting would be necessary clearly to provide for this right and the conditions, under which is can be exercised.

Alternative 2:

[11.2.1 In accordance with the international rules and standards adopted throught the Organization, the shipowner shall be required to maintain insurance, or other financial security such as a bank guarantee, to cover liability for damage under the Convention. Proof of insurance or other security shall be carried on board the ship.]

(a) Alternative 2

This Alternative seems to be more acceptable to the P&I clubs, however it has been pointed out that the wording might be misunderstood, and that some redrafting is required.

In some of the replies to the CMI questionnaire it is emphasized that the majority of all ships do have P&I insurance which covers liability for wreck removal, and doubted if it is worthwhile to introduce the system of compulsory P&I insurance as proposed in Alternative 2.

12. Settlement of disputes

Any dispute between State Parties shall be settled according to the provisions of Part XV of the United Nations Convention on the Law of the Sea 1982.

Comment:

(a) No comments on the above mentioned at this stage

13. Signature, ratification acceptance, approval and accession

13.1. The Convention shall be open for signature at the Headquarters of the Organization from [· · ·] to [· · ·] and shall thereafter remain open for accession.

13.2 States may express their consent to be bound by the Convention by:

(a) signature without reservation as to ratification acceptance orapproval; or

(b) signature subject to ratification acceptance or approval, followed by ratifcation, acceptance or approval; or

(c) acession.

13.3 Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General of the Organization.

Comment:

(a) No comments on the above mentioned at this stage.

14. Entry into force

14.1 The Convention shall enter into force [· · ·] months after the date or which not less than [· · ·] States have expressed their consent to be bound by it.

14.2 For a State which expresses its consent to be bound by the Convention after the conditions for entry into force thereof have been met, such consent shall take effect one year after the date of expression of such consent.

14.3 The Convention shall apply only to a wreck resulting from a casualty occurring after the date of entry into force of the Convention for the State whose interests are most directly threatened by that wreck.

Comment:
(a) No comments on the above mentioned at this stage.

15. Denunciation

15.1 The Convention may be denounced by any State Party at any time after the expiry of one year from the date on which the Convention enters into force for that State.

15.2 Denunciation shall be effected by the deposit of any instrument of denunciation with the Secretary-General.

15.3 A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after its receipt by the Secretary-General.

Comment:
(a) No comments on the above mentioned at this stage.

16. Depositary

16.1 The Convention shall be deposited with the Secretary-General.

16.2 The Secretary-General shall:
(a) inform all States which have signed the Convention or acceded thereto, and all members of the Organization, of:
(i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the datethereof;
(ii) the date of entry into force of the Convention
(iii) the deposit of any instrument of denunciation of the Convention together with the date on

which it was received and the dateon which the denunciation takes effect; and

(iv) any declaration made under the Convention; and

(b) transmit certified true copies of the Convention to all State which have signed the Convention or acceded thereto.

16.3 As soon as the Convention enters into force, a certified true copy thereof shall be transmittted by the Depositary to the Secretary-General of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

Comment:

(a) No comment on the above mentioned at this stage.

17. Languages

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

In witness whereof the undersigned, being duly authorized by their respective Governments for that purpose, have signed the Convention.

III. Conclusion

No specific convention exists yet concerning removal of wrecks whether they are located in the terrtorial sea or beyond, nor does the United Nations Convention on the Law of the Sea (UNCLOS) 1982, specifically refer to wrecks. It, however, does contain a number of relevant provisions conferring certain powers on coastal States, which enable such States to remove wrecks which contribute a serious threat to the safety of ships navigating in the territorial sea or to the marine environment therein, and specifically recognises in Part XII on Protection and Preservation of the Marine environment, the obligtion of all States to protect and preserve the marine environment from all sources of pollution. It is now generally regarded as representing the customary international law on these aspects. But UNCLOS does not define wreck and certain aspects of the relevant provisions are not without ambiguity.

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.
Meanwhile, it is less clear that legal position of wreck removal beyond the territorial sea shows several varieties of jurisdictional zones established by UNCLOS. 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.
Eventually, 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.
Such a convention, however, would have to be compatible with UNCLOS and its provisions concerning the various responsibilities of the States concerned. New specific right, therefore, would be created in effect, and it would be desirable that new convention should attract wide consensus and for reasons outlined.
Accordingly, IMO's Legal Committee is presently engaged in the subject of Wreck Removal. The basis is a Draft International Convention on Wreck Removal prepared by the delegations of Germany, the Netherlands and the United Kingdom. The task of CMI Sub-Committee is to study the rules of Wreck Removal and to render assistance in connection with the work of the Legal Committee. The ISC has already prepared their complete report with description of alternatives in charge of Mr. Bent Nielsen. The report, however, pointed out several articles and its wordings to clarify for unique convention available For further reasonable consensus from experienced expert of maritime field, this paper can be used as a reference.
In addition, all related articles and conventions such as article 221 of UNCLOS, and the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties 1969, as amended by the Protocol of 1973 thereto, and International Convention on Salvage 1989, and article 8 of, and Protocol I to International Convention for the Prevention of Polllution from Ships 1973, as amended by the Protocol of 1978 thereto, and CLC 1969, as amended by the Protocol of 1992 thereto, and HNS Convention 1990, and LLMC Convention 1976, and OPRC Convention 1990 should bear in mind to study for clarification.
It is our duty to make the new convention timely and clearly so that every state should have positive and broad investigation with regard to all legal information fully suggested on the above study of the draft convention by the ISC, who has always adhered to principle of unification and harmonization of the CMI.

References

1. International Convention Relating to Intervention on the High Sea in Cases of Oil Pollution Casualties 1969, and its Protocol of 1973.
2. International Convention on Civil Liability for Oil Pollution Damage, 1969, its Protocol of 1992
3. International Convention for the Prevention of Pollution from Ships1973, and its Protocol of 1978
4. Convention on Limitation of Liability for Maritime Claims, 1976
5. United Nations Convention on the Law of the Sea, 1982
6. International Convention on Salvage, 1989
7. Internaional Convention on Liability and Compensation for Damage inConnection with the Carriage of Hazardous and Noxious Substancesby Sea, 1990
8. International Convention on Oil Pollution Preparedness, Response andCo-operation, 1990
9. CMI's Yearbook 1996, Antwerp I Document for the Centenary Conference, Scandinavian University Press