

The Nairobi International Convention on the Removal of Wrecks, 2007



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Latest updates and how it works

Nairobi International Convention on the Removal of Wrecks, 2007

- Primary aim: **clarify rights, duties and responsibilities** relating to the effective removal of hazardous wrecks beyond the territorial sea;
- How does the Convention work?
 - Scope of application**:
 - geographical areas
 - safety/environment
 - wrecks/ships
- **Criteria** for determining the **hazard** posed by wrecks
- **Limitation of liability/compulsory insurance**
- **History and role of IMO**

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History and background

- **11 January 1971:** the freighter '**Paracas**' (Peru) struck the '**Texaco Caribbean**' (Panama) in the Channel
- The **wreck** of the 'Texaco Caribbean' was subsequently struck twice by other vessels. Both ships also sank and resulted in **loss of life of 51 people** in total.
- This threefold incident draw attention to a wreck as a **potential hazard** and as an object of **liability**



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The Nairobi International Convention on the Removal of Wrecks, 2007:

Navigational and environmental concerns

- safety of navigation;
- marine environment;
- coastline or related interests



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Legal basis for Government Intervention

- **Sovereignty over Territorial Sea;**
- **1969 Intervention Convention** and **1973 Intervention Protocol**: measures to prevent, mitigate or eliminate **grave and imminent** danger from pollution of the sea;
- **1982 United Nations Convention on the Law of the Sea (UNCLOS), Article 221**: provides for a **lower intervention threshold** in case of pollution of the sea;
- **Safety of navigation**: protection of security and vital interests;
- **2007 Nairobi International Convention on the Removal of Wrecks**

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How will the Nairobi Convention work?

- **primary responsibility shipowner** for the removal of a hazardous wreck;
- Shipowner **free to contract with any salvor** or **other person** to remove the hazardous wreck **on behalf of the owner** (subject to conditions)
- **deadline** by State in whose Convention area the wreck is located;
- **State** may **remove** the wreck at the **shipowner's expense**;
- **State** responsible for **determining** whether a **hazard** exists and for the **marking** of the wreck;
- Shipowner **report** and **strictly liable** for the costs of **location, marking and removal**

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Origins and how it works

Geographical application Nairobi Convention

- to wrecks in the **Convention area** (Article 3.1)
- Article 1.1 defines the "Convention area" as the "**exclusive economic zone** of a State Party..., or ...an area beyond and adjacent to the territorial sea of that State ...in accordance with international law and **extending not more than 200 nautical miles** from the baselines from which the breadth of its territorial sea is measured".
- A State Party may, extend the scope of the Convention to its territory, including its territorial sea ("opt-in" clause: Articles 3.2 to 3.4)

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GEOGRAPHICAL AREAS



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Marine environment and coastline or related interests

Article 1(6) defines “**related interests**” as the interests of a coastal State **directly affected or threatened** by a wreck, **such as**:

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

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Criteria for determining the hazard posed by wrecks

Article 6: ...the following **criteria** should be taken into account by the Affected State:

...

- (c) **tidal range** and **currents** in the area;
- (d) **particularly sensitive sea areas (PSSAs)** identified and, as appropriate; designated per IMO guidelines, or a **clearly defined area of the EEZ** where special mandatory measures have been adopted pursuant to **article 211(6) UNCLOS**;
- ...
- (h) **nature and quantity** of the wreck’s **cargo**, the **amount and types of oil** (such as **bunker oil** and **lubricating oil**) on board the wreck and, **in particular**, the **damage likely to result** should the cargo or oil be released **into the marine environment**;
- ...
- (o) **any other circumstances** that might necessitate the removal of the wreck.

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RESPONDING TO MARITIME CASUALTIES IN BRAZIL: LIABILITY AND COST RECOVERY WORKSHOP

To what wrecks or ships does the Nairobi Convention apply ?

- shipwrecks;
- objects from ships at sea;
- drifting ships;
- offshore installations;
- wrecked aircraft?

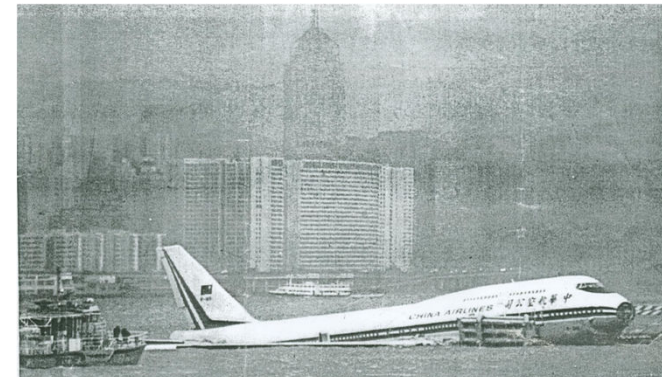


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Boeing drijft in haven van Hong Kong

Een Boeing van China Airlines ligt in de haven van Hong Kong. Het toetsel, met 296 inzittenden, schoof donderdag 190ms een zware storm van de landingsbaan op een kunstmatig eiland het water in. Via noodoproepen konden alle passagiers het vliegtuig ongedeerd verlaten.

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Latest updates and how it works

Nairobi International Convention on the Removal of Wrecks, 2007:

Limitation of liability/compulsory insurance

- **status quo** limitation of liability of the shipowner;
- **1976 or 1996 LLMC** applicable;
- **CLC, HNS Convention and Bunkers Convention** continue to apply to liability issues wreck removal;
- **compulsory insurance**

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Conclusions:

- **Avoid** difficult legal disputes and **lengthy** legal proceedings;
- **Rights, duties and liabilities** clarified;
- Supplement to **CLC, HNS Convention and Bunkers Convention**;
- **Hazard criteria** related also to **marine pollution risks**;
- Entry into force on **14 April 2015**;
- At present the **number of Contracting States is 70**;
- The IMO Legal Committee **urges States to ratify** the Nairobi Convention at earliest possible opportunity
- **UN General Assembly invites all States** to becoming Parties

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