A short note on liability for oil pollution from shipwrecks[1]

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[1] The research of this paper was financially supported by Research Grant (Code: G-UC56) of The Hong Kong Polytechnic University

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Abstract

This paper aims to examine a shipowner's liability for pollution damage resulting from the escape or discharge of oil from shipwrecks under international conventions. By giving a detailed analysis of three articles, namely, Articles 10, 11 and 12, of the Wreck Removal Convention, and by comparing the application scope of this Convention to that of other marine pollution liability conventions, the paper comes to the conclusion that, based upon the current text of the Wreck Removal Convention, a shipowner's liability for oil pollution from shipwrecks will still largely rely on existing marine pollution liability conventions, or on other domestic legislations, if any.

Keywords: Oil pollution, wreck, the Wreck Removal Convention, ship.

1. Introduction

In recent years, the number of abandoned wrecks has reportedly increased, as a result of which the potential risk of those wrecks causing oil pollution has become acute. For instance, according to data from the Maritime Law Association of the United States, in 2009 there were over 7,000 sunken vessels littering the coastal waters of the United States, and the amount of oil still in the wrecks of those vessels was roughly the equivalent of 15 spills each the size of the *Exxon Valdez*, which was one of the most expensive oil spills in history, estimated to have cost as much as USD 7 billion. [3] Consequently, there is a great risk of oil escaping from these shipwrecks; and for that reason, oil removal and pollutant recovery is often the top priority in most shipwreck salvage operations, such as in the case of the removal of the *Costa Concordia*. [4]

With the main aim of granting affected states the rights to take reasonable measures when a wreck lying beyond its territorial sea is deemed to constitute a hazard to safe navigation or to *the marine environment*, the Nairobi Convention on the Removal of Wrecks ("the Wreck Removal Convention") was adopted by the International Maritime Organization (IMO) in 2007. This Convention came into force in April 2015.[5] Under the Wreck Removal Convention, a shipwreck must be removed at the shipowner's expense, this being covered by a system of compulsory insurance.

[3] The International Tanker Owner's Pollution Federation Limited (ITOPF) "Cost of Spills" available at http://www.itopf.com/spill-compensation/cost-of-spills/ (visited 26 January 2016).
[4] "Bunker fuel removal is first priority" (2012) Maritime Risk International.
[5] The Convention came into force on 14 April 2015 following the deposit of an instrument of ratification by Denmark on 14 April 2014: http://www.imo.org/MediaCentre/PressBriefings/Pages/Wreck-removal-convention-to-enter-into-force.aspx#.VN1cybcfqrg (visited 26 January 2016).

On an international level, a series of marine pollution liability conventions that have been adopted by the IMO are in place to regulate the shipowner's liability for oil pollution from ships. These include: The International Convention on Civil Liability for Oil Pollution Damage 1992 ("CLC 1992"); the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1992 (together with its 2003 Protocol, "Fund Convention"); the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 (together with its 2010 Protocol, "HNS Convention"); and the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001 ("Bunkers Convention"). The CLC 1992 and Fund Convention are for *pollution damage* caused outside the *ship* by contamination resulting from the escape or discharge of *oil* from ships. "Ship" in the CLC 1992 is limited to ships that are actually carrying oil in bulk as cargo, and "oil" refers only to persistent hydrocarbon mineral oil, such as crude oil, heavy diesel oil and lubricating oil, whether carried on board a ship as cargo or in the bunkers of such a ship.[6] The Bunkers Convention applies to "any seagoing vessel and seaborne craft, of any type whatsoever", as long as the pollution is from *bunker oil*.[7] "Bunker oil" means any hydrocarbon mineral oil, including lubricating oil, and any residues of such oil.[8] Unlike "oil" in the CLC 1992, it is not necessary for "bunker oil" to be persistent.[9] The HNS Convention, as with

[6] CLC 1992 art 1(1) and 1(5).
[7] Bunkers Convention art 1(1).
[8] ibid art 1(5).
[9] Colin de la Rue "Liability for Pollution from Ships' Bunkers" in B Soyer & A Tettenborn (eds) *Pollution at Sea: Law and Practice* (Informa London, 2012) 12.

the CLC 1992, adopts an expansive meaning of "ship", and applies to pollution caused by a list of substances including oil that are of a hazardous and noxious nature.[10]

It is easily seen that both the Wreck Removal Convention and those marine pollution liability conventions are in some way relevant to oil pollution from ships and/or shipwrecks. Therefore, the question naturally arises as to which convention shall apply when shipwrecks have caused or have the potential to cause oil pollution damage. It is important to clarify the scope of application of the Wreck Removal Convention by comparing it to the other marine pollution liability conventions. For this purpose, it is necessary to first start the discussion with a few key matters falling under the Wreck Removal Convention.

2. Some key matters under the Wreck Removal Convention

2.1. Geographic scope of application

The Wreck Removal Convention limits its geographic application to only the Exclusive Economic Zone (EEZ) of contracting states, or to an equivalent area if the EEZ has not previously been established.[11] In actual fact, the geographic scope of the Wreck Removal Convention was considered at length when it was still under discussion during the drafting process. It was one of the most debated issues. Some states rejected the idea of extending the application scope of the Wreck Removal Convention to their own territorial sea, because they were worried that a wreck removal convention may limit their absolute sovereign rights over territorial seas.[12] So, in order to

[10] The HNS Convention intends to apply where oil pollution damage is caused by the spillage of non-persistent oil cargo: the HNS Convention art 1(5).
[11] The Wreck Removal Convention art 1(1).
[12] IMO LEG/CONF.16/11.

receive wide acceptance, as well as uniformity and certainty of law, the Wreck Removal Convention chose to reach a compromise by limiting its geographic scope to only the EEZ, and adding a so-called "opt-in" clause in Article 3, as follows:

> "A State Party may extend the application of this Convention to wrecks located within its territory, including the territorial sea, subject to article 4, paragraph 4. In that case, it shall notify the Secretary-General accordingly, at the time of expressing its consent to be bound by this Convention or at any time thereafter…"

Lloyd's of London statistics have found that groundings that constitute 45% of the major casualties between 2000 and 2010 have tended to occur closer to the shore, thus not in the EEZ.[13] On the other hand, wreck removal in territorial seas is not a rarely regulated area, as many states already have their own legislations based on sovereign rights and jurisdictions. Research has also shown that the domestic legislations in coastal countries share many similarities.[14] Therefore, adding the "opt-in" clause would not create too many changes in the domestic legislations of coastal states in order to unify the wreck removal regulations in their territorial seas. However, of the 10 countries that have ratified the Wreck Removal Convention, as of 17 April 2014 only Bulgaria and the UK have included their territorial waters under the terms of the convention.[15]

It has been criticized that setting the EEZ as the applicable area of the Wreck Removal Convention "is not particularly logical" considering the limited jurisdiction of the coastal states empowered by

[13] E Craig, "Wreck removal may cost owners dear despite convention coming into force" 17 April 2014 available at http://www.lloydslist.com/ll/sector/regulation/article440329.ece (visited 26 January 2016).
[14] R Shaw, "The Nairobi Wreck Removal Convention" (2009) CMI Yearbook 406.
[15] Craig (n 13)

UNCLOS.[16] Therefore, despite the efforts made to include the "opt-in" clause, as discussed above, the rather geographically restricted scope of the Wreck Removal Convention has garnered negative comments, such as it being "a missed opportunity".[17]

2.2. The definition of "wreck"

In theory, "wreck", under common law, can be classified into "wreccum maris" and "adventurae maris". The term "wreccum maris" means the property cast ashore with the ebb and flow of the tide after a shipwreck; "adventurae maris" usually refers to jetsam, flotsam and ligan, that is, property floating on the sea or sinking to the bottom.[18] "Wreck" is also often linked with another word – "derelict". "Derelict" is more about the subjective status of the shipowners or master and crew. If a ship is abandoned or deserted at sea by her master and crew without any intention on their part of returning to her, she becomes a derelict. It does not include a ship that is temporarily abandoned with the distinct intention of returning to it.[19]

However, it is not easy to identify "wreck" in practice. The identification of "wreck" is considered as a question of fact. Without defining "wreck" in a straightforward way, some legal cases have

[16] For a detailed explanation, please refer to C Forrest "At last: a convention on the removal of wrecks" (2008) 14 JIML 397.
[17] G Gauci "The International Convention on the Removal of Wrecks 2007 – a flawed instrument?" (2009) JBL 218, at p.224 says "…it is likely to be too geographically restricted. On the whole, the said Convention, as it stands, may be viewed as a missed opportunity."
[18] N Palmer and E McKendrick, *Interests in Goods* (2nd edn LLP London, 1998), 141. Similar classification can be found in *Halsbury Laws of England* (4th edn Butterworths London, 2008), 402. At the same time, according to *Cargo ex Schiller* (1877) 2 PD 148: "flotsam is when a ship is sunk or otherwise perished, and the goods float on the sea. Jetsam is when the ship is in danger of being sunk, and to lighten the ship the goods are cast into the sea, and afterwards, notwithstanding the ship perish. Ligan is when the goods which are so cast into the sea, and afterwards the ship perishes, and such goods cast are so heaving that they sink to the bottom and the mariners, to the intent to have them again, tie to them a buoy or cork, or such other thing that will not sink, so that they may find them again".
[19] *Cossman v West and British America Assurance Company* (1887) 30 App Cas, 180.

only addressed certain elements or features of "wreck". For example, in a case concerned with P&I cover, one of the preliminary issues to be determined by the London Arbitration tribunal was whether, following upon the casualty, the ship was a "wreck" for insurance recovery.[20] The tribunal supported the owners' argument that the club rule is not really concerned with the meaning of "wreck" in a technical sense, but as to "whether the owners had come under a legal liability to remove them". The Arbitrators held that "the paramount consideration was whether the owners had come under a legal liability. If they had fallen under the liability to raise, remove, destroy, light or mark an entered ship which had founded, grounded or sunk, then prima facie the Club was liable".[21] The Arbitrators did not try to define "wreck"; instead, they gave an explanation on wreck removal liabilities. Detached from the explanation on wreck removal liabilities, it seems that in this case "wreck" was taken to be equivalent to a "founded, grounded or sunk" ship. It was further held in the same case that a ship does not need to be a constructive total loss in either the insurance or the commercial sense of the term in order to be a "wreck".[22]

The Wreck Removal Convention provides a definition of "wreck" in its Article 1(4). According to the definition, "wreck", following upon a maritime casualty, means:

"(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

[20] It was reported in 1988. The detailed report is available at: http://www.lmln.com/insurance-and-finance/p-and-i/article19416.ece?origin=internalSearch .
[21] ibid.
[22] ibid.

(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 strand, where effective measures to assist the ship or any property in danger are not already being taken".[23]

Under this article, to constitute a "wreck" is firstly subject to a time requirement – "following upon a maritime casualty".[24] The phrase "following upon" is associated with the sequence of the event, i.e. a maritime casualty had occurred before a ship became a wreck. However, it does not require a maritime casualty to be the approximate cause of the vessel becoming a wreck, although it is hard to find a ship becoming a wreck without having had *ipso facto* a maritime casualty[25] or being caused by a marine casualty. "Maritime casualty" is defined in the same convention 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".[26] Incidents resulting in or maybe resulting in material damage is the minimum requirement for constituting "wreck" under the Wreck Removal Convention. However, what constitutes "material damage" may be questionable. In addition, this is a rather expansive definition.[27] It covers a sunken or stranded ship, as well as a ship that is reasonably expected to be sunken or stranded. It also covers any object from or on board such a ship; for example, "containers that have fallen overboard, or a rig under tow" is claimed to fall within this definition.[28] In contrast, a stranded ship is not

[23] The Wreck Removal Convention art 1(4).
[24] ibid.
[25] Shaw (n 14) 408.
[26] The Wreck Removal Convention art 1(3).
[27] L Howlett "Nairobi International Convention on the Removal of Wrecks" (2007) CMI Yearbook 2007-2008 342; Gauci (n 17) 207.
[28] Craig (n 13)

necessarily qualified to be a "wreck" in a common law sense.[29] In this regard, it is therefore easier for a ship to become a "wreck" under the Wreck Removal Convention than it is under common law.[30]

3. Liabilities of the owner under Articles 10, 11 and 12 of the Wreck Removal Convention

The Wreck Removal Convention provides rules that are closely related to the liabilities of the shipowner for wreck removal costs and other related pollution damages: Article 10 details the rules for the liability of the owner. Article 11 provides the rules if there is any overlap and conflict between the Wreck Removal Convention and other conventions. In addition, Article 12 includes detailed rules about compulsory insurance or other financial security.

Article 10: Liability rules

Article 10 (1) – "Liability of the owner" – in the Wreck Removal Convention, provides that the registered owners of ships are strictly liable for the costs of locating, marking and removing a wreck.[31] Registered shipowners must prevent, mitigate or eliminate the hazard created by a wreck.[32] It is clear that the registered owner's liability is limited to the costs arising under Articles 7, 8 and 9, i.e. the cost of locating, marking and removing wrecks.[33] Protection of marine

[29] The common meaning of stranded ships includes those that can be re-floated before being sunk or perished. But in the *Cargo ex Schiller* (1877) 2 PD 148, wreck means a ship is sunk or perished.
[30] Gauci (n 17) 741.
[31] The Wreck Removal Convention art 10.
[32] The Wreck Removal Convention art 9(2) and art 1(7). According to Article 1(6) of the Wreck Removal Convention, coastal states should take into consideration such factors as the interests of related fisheries activities, tourist attractions and other economic interests, the health and wellbeing of the coastal population, and offshore and underwater infrastructures, when determining its hazard status.
[33] Forrest (n 16) 403.

environment is explicitly stated as one of the two prime considerations for undertaking any removal action.[34] Therefore, the expenses of any party such as salvors or harbor authorities that have prepaid any salvage or wreck removal services, are entitled to be compensated by the ship's owners.

By contrast, under the marine pollution liability conventions, shipowners are liable for oil pollution damage, cost of preventive measures, and any further loss caused by such preventive measures.[35] Both the cost of measures to prevent or minimize pollution damage and any consequential loss are allowed, subject to a "reasonableness" test. The remedy provided by these marine pollution liability conventions is available not only to public authorities or salvors; it is also available to private victims who suffered loss or incurred cost due to the pollution incident.

Under the Wreck Removal Convention, registered owners can claim exemption from their liability if they can prove that the maritime casualty that caused the wreck resulted from an act of war, a natural phenomenon or another incident of an exceptional, inevitable and irresistible character; or was wholly caused by an act or omission done with intent to cause damage by a third party; or was wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids.[36] Similar liability exemptions can be found in the maritime pollution liability conventions.[37] The only difference is that the Wreck Removal Convention does not allow for contributory negligence, as provided for in the

[34] The Wreck Removal Convention art 9(4)-(8).
[35] CLC 1992 art 1(6) and Bunkers Convention art 1(9).
[36] The Wreck Removal Convention art 10(1).
[37] For instance, The Bunkers Convention, art 3(3).

maritime liability conventions.[38] This means that even if the owners could prove that wreck removal costs resulted wholly or partially from another person's intent or negligence, they may not be exonerated wholly or even partially from their liability.

Under Article 10(2) of the Wreck Removal Convention, the registered owner is entitled to limit his liability under any applicable national or international regime, such as the Convention on Limitation of Liability for Maritime Claims, 1976, as amended (the LLMC).[39] This provision is similar to the one in the Bunkers Convention; however, the uncertainty that may possibly be caused by this kind of limitation regime has largely been criticized by scholars.[40] If shipowners wish to limit their liabilities for oil pollution from wrecks under the Wreck Removal Convention, they need to follow the national or international regime, such as the LLMC, if applicable.[41] In actual fact, though, the LLMC allows contracting states to reserve and to exclude wreck removal from the limitation scope,[42] and out of 54 contracting LLMC states, 13 have made such reservation.[43] Therefore, limitation of wreck removal liability will in most cases rely on domestic law.

[38] CLC 1992 art 3(3) and Bunkers Convention art 3(4). For example, Article 3(3) of CLC 1992 provides that "if the owners proves that the pollution damage resulted wholly or partially either from an act or omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person, the owner may be exonerated wholly or partially from his liability to such person". An almost identical provision can be found in Article 3(4) of the Bunkers Convention. But there is no similar provision in the Wreck Removal Convention.
[39] The Wreck Removal Convention art 10(2).
[40] For example, Zhu commented on the limitation rule in the Bunkers Convention as being an "unsatisfactory outcome of the limitation regime". In L Zhu, *Compulsory insurance and compensation for bunker oil pollution damage* (Springer Berlin; New York, 2007), 162-164.
[41] The Wreck Removal Convention art 10(2). With regard to limitation of liability, the Wreck Removal Convention follows the pattern adopted by the Bunkers Convention.
[42] Article 18(1)(a) of the LLMC provides that "any State may, at the time of signature, ratification, acceptance, approval or accession, or at any time thereafter, reserve the right to exclude the application of Article 2 paragraphs 1(d) and (e)." Article 2(1)(e) of the LLMC concerns the limitation of liability of claims in respect of the removal destruction or rendering harmless of the cargo of the ship.
[43] Craig (n 13)

Article 11: Exception to liability

As far as liability of the registered owner is concerned, Article 11 of the Wreck Removal Convention tries to delineate the various applications between the Wreck Removal Convention and other conventions and national applicable laws, including: 1) the CLC 1969 and its 1992 Protocol; 2) the HNS Convention; 3) the Convention on Third Party Liability in the Field of Nuclear Energy, 1960, as amended, or the Vienna Convention on Civil Liability for Nuclear Damage, 1963, as amended; or national law governing or prohibiting limitation of liability for nuclear damage; 4) the Bunkers Convention; and 5) national salvage laws or an applicable international convention.

The overlaps and conflicts between the Wreck Removal Convention and those marine pollution liability conventions were actually noticed at the drafting stage of the Wreck Removal Convention, and Article 11 in the Wreck Removal Convention is to avoid any possible conflicts and overlaps. According to Article 11 of the Wreck Removal Convention, the Wreck Removal Convention will give way to those marine pollution liability conventions if there are conflicts or overlaps between them.

Article 12: Compulsory insurance or other security

Under Article 12, the registered owner is required to maintain insurance or other financial security to cover their liabilities under Article 12(1) of the Wreck Removal Convention.[44] Any claim for costs arising under the Convention may be brought directly against the insurer or other person

[44] The Wreck Removal Convention art 12(1).

providing financial security for the registered owner's liability.[45] This compulsory insurance and the option of direct action against the insurer under Article 12(10) of the Wreck Removal Convention will be a valuable approach for claimants who want to recover their removal costs.

A similar approach is already adopted in marine pollution liability conventions. The CLC 1992 requires owners carrying more than 2,000 tons of oil in bulk as cargo to maintain insurance or other financial security.[46] Under the Bunkers Convention, the compulsory insurance requirement is imposed on the registered owner of a ship having a gross tonnage greater than 1,000.[47] Under the Wreck Removal Convention, the threshold for compulsory insurance is 300 gross tonnage.[48] Apparently then, the Wreck Removal Convention has a lower tonnage threshold for ships to take out compulsory insurance than existing marine pollution liability conventions. Therefore, the Wreck Removal Convention mandates more ships to maintain insurance to cover the potential liabilities arising from shipwrecks. It may perhaps be concluded, then, that the Wreck Removal Convention has tried to distinguish itself from other maritime pollution liability conventions. Therefore, there are situations, especially for small ships, where only the insurance requirements under the Wreck Removal Convention shall be applicable.

Plain as the meaning is of these provisions, insurance practice may nevertheless complicate identification of the liable party for any liability associated with wrecks. After marine casualties that are severe enough to render a ship into a wreck, the ship might be claimed to be a total loss,

[45] ibid art 12(10).
[46] CLC 1992 art 7.
[47] Bunkers Convention art 7(1).
[48] The Wreck Removal Convention art 12(1).

and shipowners could abandon the ship to its insurer, usually the ship's hull underwriters, if there is any.[49] By choosing to accept the abandonment, the hull underwriter will undertake the property rights and liabilities attached to it[50] retrospectively to the moment of the casualty that gave the right to abandon,[51] although it is rare for underwriters to accept abandonment for fear of any potential liabilities. Accepting abandonment denotes a transfer of property rights; although it does not help in solving the question as to whether the property is a ship or a wreck. At the same time, the shipowners are released from all liabilities attached to the ship. By accepting the abandonment, the hull underwriter[52] will step into the shoes of the registered owner and become liable for any liability, costs and expenses associated with the abandoned ship, which may also include the wreck removal costs. The P&I club that is mostly involved in the wreck removal cost liability claims, when being directly sued by the claimant, may bring recourse action against the registered owner, or the hull underwriters who have accepted the abandonment. *Barraclough v Brown*[53] is an example showing the effect of accepting abandonment in relation to wreck removal costs. In this case the owner of a ship that sank within the jurisdiction of the plaintiffs, the river navigation authority, abandoned the vessel to the underwriters. For destroying and removing the wreck the plaintiffs incurred a high cost, which they claimed from the shipowner under statutory enactments for recovery of such expenses from "the owner". It was held that "owner" in the statute meant the owner at the time when expenses were incurred. In this case, the shipowner was not liable because they had abandoned the ship to the underwriters, and the underwriters had accepted it. But if such

[49] Shipowners are not necessarily forced to issue the notice of abandonment in all cases. But they need to elect to abandon, even where notice is not required. For more details, please see J Gilman and R Merkin *Arnould's Law of Marine Insurance and Average* (Sweet & Maxwell London, 2008) 1442-1553.
[50] K Mukherjee "Liabilities of ports in respect of marine pollution and related matters" in D R Thomas (ed) *Liability regimes in contemporary maritime law* (Informa London, 2007) 68.
[51] Gilman and Merkin (n 49) 1471.
[52] Palmer and McKendrick (n 18) 169.
[53] [1897] AC 615.

abandonment has not been accepted by the underwriter, the shipowner will still be liable for the wreck removal expenses.

4. The applicable convention: a marine pollution liability convention or the Wreck Removal Convention?

The International Oil Pollution Compensation Fund (IOPC Fund), which is established to provide a second-tier compensation for tanker oil pollution, allows recovering for oil pollution damage from wrecks, particularly expenses incurred for extracting oil from wrecked tankers, as long as it is reasonably incurred.[54] Also, there might be oil pollution incidents where neither the Wreck Removal Convention nor other marine pollution liability conventions govern. Since the Wreck Removal Convention has come into force, it is therefore important to clarify the applicability issues concerning oil pollution liability under these two regimes.

A preliminary and intuitive perception is that the Wreck Removal Convention applies to a *wreck*, whereas the pollution liability conventions apply to a *ship*. However, sometimes it may not be that easy to differentiate between ship and wreck, since in practice, except for historic wrecks, it is hard to decide from what exact point in time a ship in distress becomes a wreck. The identification of "ship" is not a plain and straight-forward matter either, as it is really a question of fact. In the *Merchants Marine Insurance Co Ltd v North of England P&I Association*, L.J. Scrutton, when answering whether a crane mounted on a pontoon was a ship, used the analogy that "one might possibly take the position of the gentleman who dealt with the elephant by saying he could not define an elephant, but he knew what it was when he saw one."[55] Courts normally consider the

[54] See Gauci (n 17).
[55] *Merchant Insurance Co Ltd v North of England P&I Association* (1926) 26 Lloyd's Law Report 203.

"sea-going" requirement and navigation capabilities of the subject when holding that it is a ship.[56] Also, with the necessity of unifying maritime law, many international conventions have come up with various definitions of "ship". In the regime of pollution liability conventions, one common component of "ship" is "seagoing ship or seaborne craft".[57] This clearly excludes any inland water going ship.[58] The Wreck Removal Convention also adopts a similar definition.[59] It is therefore not hard to infer that the phrase "sea-going" excludes ships that are not capable of seaborne navigation. Strictly in accordance with the interpretation of conventional definitions, ships shall also possess navigation ability. Wrecks that have lost their navigation ability should therefore no longer be admitted as ships in this sense. However, it is interesting to note that, when there is a threat of pollution, the existing marine pollution liability conventions for pollution from ships also allow claims for both wreck removal costs and further damage caused by shipowners. This is true because, for example, according to the rules of P&I clubs, the cost of extracting oil from a wreck is likely to be reimbursed by P&I clubs as an oil pollution expense of an entered ship.[60] In addition, the above mentioned IOPC Fund also, in some cases, allows for recovery of the costs of oil pollution damage from wrecks, as long as the expenses are reasonably incurred.[61] Therefore, it is very likely that, for the cost of wreck removal operations, there would be overlaps between marine pollution liability conventions and the Wreck Removal Convention, since the costs defined in Articles 7, 8 and 9 of the Wreck Removal Convention may also be indemnified as "preventive

[56] *Ex parte Ferguson* (1871) LR 6 QB 291.
[57] According to Art 1(1) of CLC 92, ship means "any sea-going vessel and any seaborne craft of any type whatsoever constructed or adopted for the carriage of oil in bulk as cargo". Similarly, ship in the Bunkers Convention means "any seagoing vessel and seaborne craft, of any type whatsoever".
[58] *R v Goodwin* [2006] 1 Lloyd's Rep 432.
[59] The Wreck Removal Convention art 1(2). Initially, there was no restriction of "seagoing" in the Draft WRC. See CONF\LEG\16\3 art 1(2).
[60] North of England P&I Association Limited *An introduction to P&I insurance and loss prevention* (2nd edn North of England P&I Association Limited Newcastle, 2012) 167.
[61] See *Dolly* in Martinique waters in 1999, *The Braer*, *the Erika* and *the Prestige*.

measures" or "clean-up costs" under the marine pollution liability conventions.[62] The term "preventive measures" generally means any reasonable measures taken by any person after an *incident* has occurred to prevent or minimize pollution damage.[63] Marine pollution liability conventions cover oil pollution from oil cargo and bunker oil. It is arguable that if removing a shipwreck is the reasonable measure taken after an incident has occurred, and that the purpose of doing so is to prevent or minimize pollution damage, then the cost incurred shall have fallen within the liability scope of the marine pollution liability conventions. This argument would be further supported if the definition of "incident" in marine pollution liability conventions can be satisfied. "Incident" means any occurrence or series of occurrences having the same origin.[64] Given that, as long as the incident that caused a ship to become a wreck has the same origin as the incident that caused pollution from the ship, then the measures taken to prevent or minimize pollution damage can arguably fall within marine pollution liability conventions. This perhaps justifies why marine pollution liability conventions setting out civil liabilities for a ship can be extended to liabilities for a wreck. However, it also has to be noted that the above mentioned two incidents may occur in two different contexts – in other words, it is possible that an incident causing pollution damage does not necessarily eventually cause the ship to become a wreck; rather, another marine casualty may occur later that causes this same ship to become a wreck, but without causing any pollution damage. In this latter case it might be difficult to apply the marine pollution liability conventions to covering the wreck removal costs.

[62] Gauci (n 17) 218; J E De Bore "The Nairobi Perspective: Nairobi International Convention on the Removal of Wrecks 2007" (2008) CMI Yearbook 2007-2008 339.
[63] For example, Bunkers Convention, art 1(7).
[64] CLC 92 and Bunkers Convention art 1(8).

In addition, it must be noted that there are some geographic areas where the marine pollution liability conventions function while the Wreck Removal Convention does not. The geographic scope of the marine pollution liability conventions for oil pollution follows the same pattern.[65] These conventions apply: 1) to pollution damage caused in both the territorial sea and the EEZ of contracting states, or within 200 nautical miles from the baselines if the EEZ is not established; and 2) to preventive measures, wherever taken, to prevent or minimize such damage; and in light of the spirit of encouraging preventive measures, there is not even a geographic restriction for such. In contrast, as discussed above, the Wreck Removal Convention is only applicable to the EEZ of the contracting states, unless otherwise extended.

5. Conclusion

Two facets of the goal of the Wreck Removal Convention are to protect navigational safety and to protect the marine environment. Extracting oil from the wreck is usually part of the salvage operations.[66] Loss of control of wrecked ships containing oil is a great threat to the environment that should not be overlooked. It is clear that the Wreck Removal Convention has clarified the shipowners' liability for locating, marking and removing wrecks; the shipowner's liability for oil pollution from shipwrecks will most likely still rely on the marine pollution liability conventions and domestic legislations, where applicable.

[65] See CLC 1992 art 3, and Bunkers Convention art 2.

[66] In the removal operation of cruise vessel *Costa Concordia*, assignments aims at preventing pollution during the first quarter included the major contract to remove oils from tanks. A similar example regarding tankers is the *Phoenix* (2011), where the salvage operation began with removal of its bunkers and other pollutants, since the ship was on her ballast voyage to India.