Shipwreck removal liability claims:

Compensation and distribution of the costs

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Preface

My interest in the maritime transport sector is enormous and widely spread over different areas within the field. First, I was focussed on maritime operations and dedicated to become a Maritime Officer. After a period at sea, I wanted to broaden my horizon and started to become more interested in maritime law, P&I insurance and ship-owners' risks and liabilities. The jurisdictional zones, the different liability regimes during the international maritime journey of a ship are complicated. The extensive list of risks and liabilities requires broad and in-depth knowledge of multiple areas within the maritime field. By writing this master dissertation, I will focus on the wreck removal liability regimes and review the liabilities of ship-owners and insurance companies.

During the dissertation, the focus will be on the ship-owner and the insurer vis-à-vis the coastal State. The Dissertation can be split up in four parts: The jurisdictional zones, ship-owner's limitation of liability, coastal States' jurisdiction, and marine insurance.

At the beginning of the academic year, a maritime accident near the Belgian coasts happened between two cargo vessels near the port of Zeebrugge. The Dutch flagged general cargo vessel Flinterstar collided with the Marshall Island flagged LNG tanker Al-Oraiq. The collision led to an abandoned shipwreck near the Belgian coast. The big question is: Who is liable and going to pay for the removal of the shipwreck? The writing of this master dissertation is coming too early to provide the answer on this specific question. But due to the fact that this was the second shipping accident after the major Costa Concordia wreck removal operation in Europe, I decided to write my master dissertation concerning wreck removal liability challenges of ship-owners and insurers. The applicable international regimes and some examples of specific national liability regimes.

I want to personally thank Professor dr. Bernauw for his supervision of my Master dissertation and his shared knowledge and expertise of maritime transport law and transport insurance law, which, I definitely needed to understand the legal concepts of my chosen subject and the writing of my master dissertation. Furthermore, I want to thank all the maritime experts, which I have met during the time that I made the decision to change my career. Their wide field of experience, knowledge and originality inspired me and broaden my view towards maritime claims, legal concepts and marine insurance.

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1 Introduction

1.1 The aim of this dissertation

The aim of this master dissertation is to investigate what the different liabilities and liability limitations are concerning the removal of shipwrecks in the territorial sea and the Exclusive Economic Zone (EEZ). The operation of ships involves a lot of parties, contractual relations between ship-owners, carriers and cargo owners but also non-contractual relations with third parties in case of an accident. The compensation and distribution of the costs for the removal of the shipwreck consists of the non-contractual relationship between the parties that are involved in the accident at sea and the affected coastal State(s) by the accident. The parties involved are the carrier(s), being the ship-owner(s) and or the charterer(s), the cargo owner(s) and the affected coastal State(s). The passage of ships through the territorial sea or the EEZ of a coastal State causes a potential risk, which can be an economic risk or an environmental risk that is regulated by international and national law.

The environmental risk of oil pollution accidents is regulated by international legislation, which has been ratified by most of the coastal States national laws worldwide. The international Convention on the Civil Liability for oil pollution damage and the additional Fund Convention is protecting the financial interest of the coastal States in order to protect and preserve the marine environment. Concerning, the design of ships and shipboard operations, international regulations by means of the International Convention for the Prevention of Pollution by ships, MARPOL is adopted by almost every coastal State in the world. The environment of the coastal state is protected by means of technical and operational regulations concerning ships design and operations. In case things go wrong the liability of ship-owners is regulated on the international level and sometimes nationally, depending on the location of the accident and the type of accident. Besides international conventions, the European Commission also introduced the Erika packages for the inspection of ships in Europe to maintain a basic standard level of ships condition and operation.

Lessons can be learned from developed legislation of international Conventions that are protecting the marine environment in order to establish a unilateral regime for the compensation and distribution for the costs involved in case of a shipwreck in the territorial sea or the EEZ. Coastal States have opted-out limitation of liability possibilities for ship-owners in the Convention on Limitation of Liability for Maritime Claims, specifically for wreck removal claims. This means that the liability for the removal of a shipwreck can be a strict liability regime, which means unlimited presumed liability.
The payment of the costs and the contractual agreement with the wreck removal company to remove the wreck from the seabed must be accomplished by the ship-owner and possibly his P&I liability insurer. In case of a limited liability regime, the coastal State will conclude the contract by means of a public tender to remove the wreck from the seabed. The calculated limitation of liability can be invoked by the ship-owner and must be deposited in a property fund as per LLMC limits as amended by the Protocol. The other possibility is that a national Wreck Act regulates that a separate fund must be set up for the specific removal costs of the wreck. The difference between a strict liability regime and a limited liability regime is that in case of a strict liability regime, the ship-owner and the P&I Club is in control of the wreck removal operation has to bear the complete costs. In case of a limited liability regime, the coastal State is in control of the contract negotiations and makes the decisions on how the wreck is removal against which price.

The three legal concepts concerning shipwreck removal liability are at the moment:

1. Strict presumed liability regime, reservation 18 LLMC convention
2. Limited liability as per international law, the LLMC property fund
3. Separate national limits for the removal costs of the wreck

The first option means that the coastal State used their sovereignty or sovereign rights to protect and preserve the marine environment within its national jurisdiction zones, meaning the zones, where the coastal State has legislative and enforcement rights, the legal concept of territorial sovereignty or sovereign rights. The coastal State, being the legislator of its own territory introduces national law on the liability for the removal of shipwrecks within the territory of the coastal State. The national legislator that has chosen to opt-out limitation of liability rights for the removal of wrecks has two options to deal with wreck removal liability:

3.1. Separate limitation fund, specifically for the removal of the shipwreck
3.2. Strict, unlimited liability for the ship-owner

Due to the very high costs for the removal of the wreck and cargo operation, some coastal States have chosen for an unlimited liability regime against the ship-owner, the Master and or the charterer of the wreck. The strict liability regimes are causing pressure on the insurance costs of ships. It will be hard for insurance associations to make proper risk assessments if liability claims are unpredictable. The general excess of loss reinsurance premium must be paid in order to be covered for excessive risks and claims. It is questionable, if this is an efficient method or system to cover wreck removal costs. The insurability of potential risks of unpredictable, unlimited shipwreck removal claims are increasing due to the fact that more coastal States are choosing for a strict liability regime of unlimited liability. In order to protect the economic interest of the coastal state, the ship-owner and the insurer, the regimes will be evaluated.
The thesis will compare the different choices, which coastal States have made concerning the ratification and adoption of international limitation of liability for maritime claims in combination with national wreck acts posing liability on the ship-owner. The liability regime of the international Nairobi wreck removal convention will be reviewed. Finally, in my conclusion, I will compare wreck removal liability regimes with another specific liability regime for oil pollution damages including the Fund. By analysing the solutions that has partly solved the issue of marine environmental damage, it might be feasible to use these methods again to provide a better solution to the current wreck removal liability systems. The major risk challenges are shipwrecks that are blocking important shipping routes or the access to ports, which is the economic motor of the coastal State and its hinterland. Besides international conventions and national legislation, it is important to analyse the P&I liability insurance system that is providing risk cover for wreck and cargo removal claims.

Collaboration between all parties that are involved is essential. Working together will be required in order to solve the issue of the high costs that are involved when shipwrecks need to be removed. The current issue of expensive wreck and cargo removal operations can be encountered when parties are working together to find the right balance of financing these costs. The efficiency of parties working together will reduce the costs.
1.2 Research questions

The master dissertation is based on the main question in combination with the sub-questions in order to finally conclude the results of combined literature of different national and international regimes to provide an overview of the current situation on wreck removal liability.

1.2.1 Main question:

How can the costs for the removal of shipwrecks that are obstructing the accessibility to ports, the safety of navigation or which are harming the marine environment, be distributed in order to compensate the costs in a balanced way?

1.2.2 Questions in order to answer the main question:

- **Who is obliged to partly or wholly pay the costs for the removal of the shipwreck that is located in the territorial sea or the exclusive economic zone of the coastal State?**

- **What are the major challenges for P&I Clubs in case the risk of shipwreck removal liability claims is strict, presumed and unlimited?**

- **What can be considered as the right balance between the registered owner of the wreck, vis-à-vis all other involved parties for paying the raising, removal and disposal of the wrecked ship?**
1.3 Research methodology

1.3.1 Coastal State Jurisdiction

The United Nations Convention on the Law of the Sea (UNCLOS III) will be used as legal basis in order to describe the areas of coastal State jurisdiction. The so-called zonal management approach, meaning the dividing of the oceans into multiple jurisdiction zones will be evaluated to make clear if the coastal State is allowed to legislate by means of national law the liability regime for the removal of wrecks in the territorial sea and the exclusive economic zone. The explanation of the different jurisdictional areas, where the coastal State has jurisdiction. Meaning the differences between the territorial waters, the continuous zone and the exclusive economic will be discussed. The main part will consist of the difference between the legal concept of territorial sovereignty in the territorial sea and the legal concept of sovereign rights within the Exclusive Economic Zone (EEZ) of the coastal State.

1.3.2 The International Convention on the Limitation of Liability for maritime claims

This part will explain the development of the general limitation of liability convention, which is a limitation of liability system based on the size, the gross tonnage of the vessel. The main part will consist of the Convention on the Limitation of Liability for Maritime Claims, LLMC 1976 as amended by the Protocol in 1996. Furthermore, the report will shortly refer to the more specific limitation of liability regimes. The most interesting specific liability regime is the system is the International Convention on Civil Liability for Oil Pollution Damage (CLC) and the additional relevant Fund Conventions, which will be discussed to finally conclude whether the current wreck removal liability system can be improved, whereby the costs are compensated and distributed by a more balanced system. The main focus will be on the interpretation and reservations, which contracting States of the LLMC convention have made concerning Article 18: Reservations. The combination of the Nairobi wreck removal convention and the possibility for coastal States to opt-out limited liability rights for the specific claims in respect of the removal of the wreck, provides coastal States the option to legislate and enforce a strict liability regime on the ship-owner without options of limitation. The wreck removal operations are getting more complicated and costly, due to modern ships design, size, equipment, cargo, accommodation structures and various types of cargo on board.
1.3.3 International wreck removal law versus national wreck removal law

The Nairobi wreck removal convention uniformed already existing national law that poses a strict liability regime on the registered owner of the wreck to remove the wreck out of the territorial sea or even the exclusive economic zone on the basis of the Law of the Sea convention. Even the sovereign rights of the coastal State in the exclusive economic zone are sufficient to legislate and enforce a strict wreck removal liability regime under certain conditions. Before the adoption of the Nairobi Wreck Removal Convention (WRC) multiple coastal States had already partly or wholly legislated the liability for the removal of shipwrecks by means national Wreck Acts and Environmental Law. Coastal States domestic law concerning wreck removal liability involving different limited and even unlimited, strict liability systems. Some of the coastal States make it possible for ship-owners to use the right of invoking limitation of liability as per the limits of the property fund of the LLMC convention as amended by the protocol for the removal of shipwrecks, while other national jurisdictions are opting out the right to invoke limitation of liability in respect of wreck removal claims. There are examples of coastal States that have chosen for a specific, separate wreck fund to provide the ship-owners with a right to invoke limitation of liability. The separate ‘wreck fund’ principle will be reviewed as one of the options that has been chosen by some coastal States as balanced system, being a compromise of the interests of the coastal State and that of the international ship-owners community. Maritime shipping is a vital link in the global supply chain of many products that provides transport of goods between trading continents. Maritime shipping is crucial factors within the globalised world we live in today.
1.3.4  Marine Insurance: third party liability insurance

Marine insurance consists of property and liability insurance. The property insurance consists of the insurance of hull and machinery and all the equipment on board the vessel. There are different gradations of property insurance policies, named perils and the all risks policy.

Third party liability insurance, the rise of Protection and Indemnity Clubs, P&I Clubs. the occurrence of a mutual liability insurance system. The working of the mutual insurance, P&I Clubs system. The distribution of risks, in particular wreck removal liability risks. The priority of shipwreck removal costs within the mutual liability insurance system of Protection and Indemnity Clubs (P&I Clubs).

1.3.5  Lessons which can be learned from the IOPC Funds system

The International Oil Pollution Compensation Funds (IOPC Funds) provide a financial compensation mechanism for oil pollution damage. The IOPC Funds provide financial compensation for oil pollution damage, resulting from spills of persistent oils from tankers that are exceeding the 1992 CLC limits. Chapter 8 will go deeper into the IOPC funds. This is considered the most important part of this master dissertation. The high priority of persistent oil pollution damage compensation of coastal States after a couple of huge disasters with tankers, which were carrying persistent oil. The International Oil Pollution Compensation Funds are the perfect example of risk distribution in a transparent and fair manner. The compensation funds are a three-tier compensation system that provides financial security of oil pollution damage claims. By looking at this unilateral mechanism it can be possible to develop a comparable multi-tier compensation system for the removal of shipwrecks that are affecting and harming the economy of a port or a port system or damaging the environment, the eco-system of a sensitive area.

1.4  Objectives

At the moment the costs for the removal of a shipwreck are rising. Ships are getting bigger and the operation of removing the cargo and bunker out of the shipwreck is becoming more complicated and difficult. Besides removing the cargo and bunker, the operation of removing the shipwreck is the biggest concern next to the environmental clean-up operation. The risk of insuring shipwreck removal operations is getting higher for P&I Club insurers and commercial market reinsurers. The liability of shipwreck removal operations is not unilaterally regulated by coastal states in an international uniform way. In some national jurisdictions, the limitation of liability of the ship-owner is even unlimited. In other national jurisdiction they chose for a separate 'limited wreck liability', setting the amount of liability for the specific removal operation of the shipwreck from the coastal States’ territorial sea or its EEZ. Due to the fact that the liability risk has increased, the insurance premium will become higher for ship-owners. Against which premium price can an unlimited risk be insured?
It might be necessary to develop a new specific liability regime for the removal of shipwrecks. Inspiration for the development of such a new regime can be taken from the different international oil pollution compensation conventions: The Civil Liability Convention for oil pollution damage, the Fund Convention and the Supplementary Fund Protocol are covering oil pollution damages. The liability regime for the removal of shipwrecks must become a high priority for legislators due to the fact that is of all parties concern.

Wreck removal operations require a specific liability regime dealing with the cost distribution. The three tiers system of oil pollution damage compensation provided for damage caused by persistent oil pollution is based on three international conventions dividing liability amongst the ship-owner and oil receivers. The high costs of removing a shipwreck out of an area that is affecting the economy of a coastal State, the hinterland, the continent or even the world must be protected by means of a comparable multi-tier compensation system. If, the shipwreck is located in the middle of the English Channel, the Suez Canal or the Panama Canal, this will affect the entire trade of goods in the world. The same can be said on a regional level. For example, if a shipwreck is located in the middle of the Western Scheldt Estuary, this will affect the Rhine-Scheldt Delta Port Region, all the ports in this region and their hinterland, which is Europe will be affected. The first tier will be the limitation of liability of the ship-owner and the liability insurer of the ship-owner. The amount of liability will be the amount as stated as property damage under the LLMC convention. The second tier will be a fund covering the costs in case the wreck removal costs are higher than the amount of the first tier of liability.
2 Coastal State Jurisdiction

2.1 Coastal State territorial sovereignty

The United Nations Convention on the Law of the Sea (UNCLOS) is the framework that divides the oceans into different zones of jurisdiction, where under the jurisdiction zones of the coastal State. The jurisdiction zones of the coastal State can be divided into territorial sovereignty and sovereign rights. The territorial sovereignty includes the internal waters, territorial sea, international straits and archipelagic waters. Article 221 of UNCLOS defines that the Coastal State has the right to protect the environment from pollution of a marine accident, like a shipwreck, but article 221 does not stipulate that the effected State may order to remove the wreck in the event that the wreck imposes danger to international navigation within the area of the wreck. The Wreck Removal Convention, which will be discussed later, will fill up this gap.

Article 2(1) of the Law of the Sea Convention (LOSC) provides that:

The sovereignty of a coastal State extends, beyond its land territory and internal waters and, in the case of an archipelagic State, its archipelagic waters, to an adjacent belt of sea, described as the territorial sea.

Access to ports, by means of entering the internal waters of a coastal State fall under the territorial sovereignty of the coastal State. Commercial vessels, which are voluntarily navigating in internal waters, are subjected to the national jurisdiction of the coastal State. The coastal State may regulate the entry of foreign flagged vessels that are entering its internal waters to the port. There is no right of free entry into internal waters and ports of foreign States. The coastal State is having the power to regulate requirements for the entry of foreign vessels into the port. Bilateral treaties regulate rights of entry into ports. Secondly, multilateral treaty provisions, article 2 of the 1923 Geneva Convention and Statute on the International regime of maritime ports provide that:

"Subject to the principle of reciprocity and to the reservation set out in the first paragraph of Article 8, every Contracting State undertakes to grant the vessels of every other contracting State equality of treatment with its own vessels, or those of any other States whatsoever, in the maritime ports situated under its sovereignty or authority, as regards freedom of access to the port, the use of the port, and the full enjoyment of the benefits as regards navigation and commercial operations which it affords to vessels, their cargo and passengers"

In normal situations is can be presumed that most of the ports of coastal States are open to merchant vessels for trading goods or other friendly visits.

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2.2 The legal status of the territorial sea

Tanaka describes the legal status of the territorial sea as follows:

‘The territorial sea is a marine space under territorial sovereignty of the coastal State. The territorial sea is limited, up to a limit not exceeding twelve nautical miles measured from the baseline of the coastal State. The territorial sea comprises the seabed and its subsoil, the adjacent waters and its airspace. The landward limit of the territorial sea is the baseline. At present, some 137 States Parties to the Law of the Sea Convention, LOSC have established a twelve nautical mile territorial sea. The State can exercise complete legislative and enforcement jurisdiction over all matters and all people in an exclusive manner unless international law provides otherwise’.4

The right of innocent passage for foreign vessels restricts the sovereignty over the territorial sea, by the coastal State. ‘The right of innocent passage through the territorial sea is based upon the freedom of navigation as an essential means to accomplish freedom of trade.’5 The passage shall be continuous and expeditious, requires a vessel to proceed with due speed.6

Article 18(2), passage includes stopping and anchoring only in so far as the same are incidental to ordinary navigation or are rendered necessary by force majeure or distress or for the purpose of providing assistance to persons, ships or aircrafts in danger or distress.7 Foreign vessels exercising the right of innocent passage through the territorial sea shall comply with all such laws and regulations and all generally accepted international regulations relating to the prevention of collision at sea in accordance with Article 21(4) and 52(1).8

The most important regulations are probably those in the 1972 Convention on the International Regulations for Preventing Collision at Sea. In case of a collision in foreign territorial waters, with two different foreign flagged ships it will become difficult, due to the three parties involved but in general, in the event of a collision between two vessels, endangering the shipping route in the territorial waters and in all likelihood entailing a danger of environmental pollution, the coastal State has a valid interest in seeing its laws applied.9 With regard to this, it seems also desirable to let the coastal State’s law prevail over the law of the flag, even were the colliding ships fly a common flag and reinforce the territorial connection of the case. The differentiation must be made for the case as a whole, not for certain claims connected within the event.

‘The event can be internal, meaning within the hull of the vessel, whereby flag State jurisdiction will apply. External events, meaning claims in tort, outside the hull of the vessel will be subjected to coastal State’s jurisdiction.’10

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4 Y. Tanaka 2015, The jurisdictional zone of the territorial sea, the legal status of the territorial sea, p. 84
5 Y. Tanaka 2015, The right of innocent passage, p. 86.
6 Y. Tanaka 2015, p. 87.
7 Y. Tanaka 2015, p. 87.
8 Nordquist, UNCLOS 1982 Commentary, Regulation for the prevention of collision at sea, p. 775.
9 Gahlen, Civil liability for accidents at sea, Conflict of laws, application of coastal State law in territorial waters, p. 385
10 Beitzke, 1960, Questions d’abordage, p. 69.
2.2.1 Innocent passage

Innocent passage, Article 19(1) of the LOSC:

*Passage is innocent as long as it is not prejudicial to the peace, good order or security of the coastal State. Such passage shall take place in conformity with this convention and with other rules of international law.*

The rights of the coastal State concerning innocent passage of vessels

*Articles 21, 22 and 25 of the LOSC provide rights of the coastal State with respect to innocent passage.*¹¹

Article 21(1) stipulates that

1. The coastal State may adopt laws and regulations, in conformity with the provisions of the Convention and other rules of international law, relating to the innocent passage through the territorial sea, in respect of all or any of the following:

   a) The safety of navigation and the regulation of maritime traffic
   b) The protection of navigational aids and facilities and other facilities or installations;
   c) The protection of cables and pipelines;
   d) The conservation of the living resources of the sea;
   e) The prevention of infringement of the fisheries laws and regulations of the coastal State;
   f) The preservation of the environment of the coastal State and the prevention, reduction and control of pollution thereof;
   g) Marine scientific research and hydrographical surveys;
   h) The prevention of infringement of the customs, fiscal, immigration or sanitary laws and regulations of the coastal State.

The legislative jurisdiction of the coastal State, such as national laws and regulations shall not apply to the design, construction, manning or equipment of foreign ships unless they are giving effect to generally accepted international rules or standards pursuant to Article 21(2).¹²

2.3 Coastal State sovereign rights

The sovereign rights of the coastal State include the Contiguous Zone, the Exclusive Economic Zone (EEZ) and the Continental Shelf. The raison d'être of the institution of the EEZ and the continental shelf involves the conservation and management of natural resources. The reason for evaluating this section of the LOSC is that an abandoned wreck within the EEZ might be considered as an object possibly harming the marine environment. For this reason coastal States can have the interpretation that legislation is allowed when considering wreck as an object that harms or possibly can harm the marine environment.

2.3.1 The continuous zone

Starting with the continuous zone, the coastal State may exercise the necessary control to prevent and punish infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea.

Coastal State jurisdiction over the continuous zone:

Article 33(1) provides that:

1. In a zone continuous to its territorial sea, described as the continuous zone, the coastal State may exercise the control necessary to:

   a) Prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea;
   b) Punish infringement of the above laws and regulations committed within its territory or territorial sea.

This means that the coastal State may exercise only enforcement, not legislative, jurisdiction within its contiguous zone. It would follow that relevant laws and regulations of the coastal State are not extended to its contiguous zone; and that infringement of municipal laws of the coastal State within the zone is outside the scope of this provision. Considering that an incoming vessel or passing vessel cannot commit an offence until it crosses the border of the territorial sea. The coastal State has only enforcement jurisdiction in its contiguous zone and, consequently, action of the coastal State may only be taken concerning offences committed within the territory or the territorial sea of the coastal State. In case the contiguous zone is part of a claimed EEZ of the Coastal State, then the coastal State may exercise (limited) legislative and enforcement jurisdiction for limited matters provided by the law of the sea. The legislative jurisdiction of the Coastal State over the contiguous zone for limited purposes is provided by article 33 of the LOSC. In any case it must be remembered that disputes with regard to the exercise by a coastal State of its jurisdiction over the contiguous zone fall within the scope of the compulsory settlement procedure in part XV of the LOSC.

14 LOSC, Article 33(1); H. Caminos, 'Continuous Zone'. In Max Planck Encyclopaedia, paragraph 1.
15 Tanaka 2015, Coastal State jurisdiction over the continuous zone, p. 126.
2.3.2 The Exclusive Economic Zone (EEZ)

"The EEZ is an area beyond and adjacent to the territorial sea, not extending beyond 200 nautical miles from the baseline of the territorial sea."\(^{16}\) Unlike the continental shelf, the coastal State must claim the zone in order to establish an EEZ. The vast majority of coastal States have claimed a 200-mile EEZ. The seaward limit of the EEZ is at a maximum of 200 nautical miles measured from the baseline of the territorial sea. The concept of the EEZ comprises the seabed and its subsoil, the waters superjacent to the seabed as well as the airspace above those waters. With respect to the seabed and its subsoil, Article 56(1) provides that in the Exclusive Economic Zone, EEZ, the coastal State has sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil. The rights of the coastal State with respect to the seabed and subsoil are to be exercised in accordance with provisions governing the continental shelf by virtue of Article 56(3). Article 56(1) further provides that the coastal State has sovereign rights with respect to other activities for the economic exploitation of the zone, such as the production of energy from the water, currents and winds. The EEZ is not the same zone as the territorial sea, unlike internal waters and the territorial sea, the territorial sovereignty of the coastal State does not extend to the EEZ.\(^{17}\)

Article 86 of the LOSC provides that the provisions of Part VII governing the high seas:

![The provisions of this part apply to all parts of the sea that are not included in the exclusive economic zone, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State...](image)

The EEZ is not part of the high seas. The freedoms of the high seas apply to the EEZ in so far as they are not incompatible with Part V of the LOSC governing the EEZ in accordance with Article 58(2). The EEZ is considered as a sui generis zone, a unique independent zone with limited spatial jurisdiction, distinguished from the territorial sea and the high seas.

\(^{16}\) Y. Tanaka 2015, LOSC, Article 55 and 57, p. 127.  
\(^{17}\) Y. Tanaka 2015, LOSC, Sovereign rights over the EEZ, p. 130.
2.3.2.1 Sovereign rights over the EEZ

The sovereign rights of the coastal State are fundamentally limited to economic exploration and exploitation. In this respect, the legal concept of sovereign rights must be seen different than the concept of complete territorial sovereignty, which is all-inclusive unless international law provides otherwise. The coastal State exercises both legislative and enforcement jurisdiction in the EEZ, with respect to matters provided by the law of the sea.\(^{18}\)

**Legislative jurisdiction as been described by Article 73(1):**

The coastal State may, in the exercise of its sovereign rights explore, exploit, conserve and manage the living resources in the exclusive economic zone, take such measures, including boarding inspection, arrest and judicial proceedings, as may be necessary to ensure compliance with the laws and regulations adopted by it in conformity with this Convention.

**Enforcement jurisdiction as been described by Article 73(4):**

In cases of arrest or detention of foreign vessels the coastal State shall promptly notify the flag State, through appropriate channels, of the action taken and of any penalties subsequently imposed.

The Sovereign rights of the coastal State can be applied solely within the EEZ. In this sense, such rights are spatial in nature. The sovereign rights of the coastal State are limited to matters defined by international law. On this point, sovereign rights must be seen apart from territorial sovereignty. However, concerning matters defined by international law, the coastal State may exercise both legislative and enforcement jurisdiction. The sovereign rights of the coastal State are exclusive in the sense that other States cannot engage upon activities in the EEZ without authorization of the coastal State. The right of the coastal State over the EEZ are spatial in the sense that they can be exercised exclusively within the particular space in question regardless of the nationality of persons or vessels. ‘Due to the lack of comprehensiveness of material scope, this jurisdiction should be called a limited spatial jurisdiction.’\(^{19}\) It is clear from Article 56(1)(b)(iii) that in the EEZ, the coastal State has legislative and enforcement jurisdiction among other things, but in particular relevant for wreck removal operations, with regard to the protection and preservation of the marine environment. Further to this legislative and enforcement jurisdiction, Articles 210(1) and 211(5) provide legislative jurisdiction of the coastal State concerning the regulation of dumping and vessel-source pollution. Moreover, Articles 210(2) and 220 contain enforcement jurisdiction of the coastal State with regard to the regulation of dumping and ship-borne pollution. Can a useless abandoned vessel not also being considered as pollution?

\(^{18}\) Y. Tanaka 2015, Sovereign rights over the EEZ, p. 130.
\(^{19}\) Y. Tanaka 2015, Sovereign rights over the EEZ, p. 130
2.4 Ships in distress

What is distress? Four examples:

1. ‘Distress must primarily involve an element of danger to the ship, its cargo and the crew, whereby the master has the risk of losing the ship, its cargo or the crew’; 20

2. ‘Distress can be caused by several elements, by physical elements such as severe weather and heavy seas, but also from lack of fuel, stores and water’; 21

3. ‘The damage to the ship must be of such proportions that destruction or sinking is inevitable and it is reasonably necessary to get access to a place of refuge in order to repair or to be able to continue the voyage’; 22

4. ‘The danger must be unavoidable and urgent and not self-induced by failure to properly navigate the ship, to victual the ship or load sufficient fuel.’ 23

Under customary international law it is a duty to assist a person or ship in distress. On the other hand, there is no specific right under any multilateral treaty forcing a coastal State to grant access to ships in distress. The obligation of a coastal State to grant access to vessels in distress exists but the extend of the rule has changed due to modernisation of vessels and Search and Rescue (SAR) facilities of the coastal State. In order to preserve life, it is no longer necessary to grant a ship access to a port. The persons on board a vessel in distress can be repatriated from the vessel by a helicopter or rescue boat at sea. Where there is a risk to the environment of the coastal State, it is in most cases refused to accept vessels in distress to grant access to the port. So, currently, in case there is no danger to human life on board the vessel in distress, the costal State has no obligation to automatically grant access to a place of refuge. Under customary international law, the right of a foreign vessel in serious distress to enter a safe port of a coastal State is primarily humanitarian rather than economic. It is not an absolute right; therefore coastal States regard their own interest and those of the local people in deciding whether or not to provide access to the port. In modern times, if the risk of a vessel in distress is purely economic, it is mostly refused to enter territorial waters of the coastal State. 25

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20 The Eleabor case (1809) 165 ER 1058.
21 The Diana case 74 US 354 (1868).
22 Kate A Hoff v The King (1931) 3 DLR 15.
23 Merk and Djakimah v the Queen Supreme Court of St Helena Supreme Court Case no. 12, 1991.
24 ACT Shipping (Pte) Ltd above n. 4, 126.
The issue of environmental hazards and economic risks arising from ships in distress requires further attention. In former times ships were smaller in size and their cargoes were not inherently dangerous to the marine environment of coastal States. Nowadays, however, the size of ships has increased tremendously and there is growing concern that the contents of cargoes and fuel can threaten the offshore environment of coastal States. In case of accidents, the economic and health interests of a coastal State’s local community may be seriously damaged or in danger.26

In case of sinking, grounding, capsizing or stranding of a vessel it can also have a huge economic impact on the affected coastal State. When after an accident of for example, a collision, one of the vessels sank and has been left abandoned by its owners; the shipwreck can possibly block the main shipping route towards the port or the main canal to multiple ports. In this example, the shipwreck causes an economic hazard for the affected coastal State(s). It is probably therefore that coastal States are refusing to grant ships in distress access to their port. First, the interest of the coastal State is to protect the environment and secondly, also to protect the economical value of the port. Seaports have a huge impact on the local economy as ‘engine’ for economic growth.27 Sending a ship in distress back to offshore areas, as occurred when France refused to give refuge to the Erika in 1999 can cause huge disasters.28 Likewise, in 2001, several coastal States refused the damaged tanker Castor refuge to safer waters.29 In 2002, Spain ordered the oil tanker Prestige to be towed out to sea away from the Bay of Biscay.30 In order to achieve a sound balance between the humanitarian, security and environmental considerations and also the economic interest of the coastal State, it is desirable to create reception facilities to accommodate ships in distress in territorial waters under coastal State jurisdiction. Secondly, the removal of the shipwreck that is having a negative environmental and or economic impact should be removed by a cooperative, balanced system, whereby the costs are proportionally, pro rata distributed amongst the involved parties. The risk of a vessel passing by or approaching the coastal State through the territorial sea or the economic exclusive zone of the coastal State is a common risk of multiple parties. At the moment, the liability regime and removal costs of wreck removal operations are not internationally and uniform regulated by a Convention.

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28 The European Commission 2002, The Prestige accident: what is the European Commission doing about it?
3 Marine pollution by dumping of wastes and other matter

In order to answer the question from a legal point of view, whether abandoning a vessel and leaving the wreck on the seabed behind is judged as an illegal dumping of waste must be answered by reviewing the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972, and the subsequent protocol from 1996.

The London dumping Convention 1972, Article (III)(3) the definition of the sea:

The jurisdictional area of the convention is within the territorial waters and the EEZ of the coastal State. Article III (3) says: ‘All marine waters other than the internal waters of States’.

This means that the territorial waters and the exclusive economic zone are within the scope of the Convention. The internal waters of the coastal State are not according to this Convention. The legal concept of abandonment is not described as dumping. The London Dumping Convention provides that dumping means:

‘Any deliberate disposal at sea of vessels…’

The ship-owner and the insurer of the vessel consult upon all possible options in case of a sunken, wrecked, stranded and abandoned vessel, before the wreck will be permanently abandoned, first all other options available will be considered, including recycling is thoroughly assessed in accordance with the ‘Specific Guidelines for Assessment of Vessels’.

The 1996 Protocol addresses the concept of abandonment by means of Article 1 Definitions (1.4.1.4):

‘Dumping means: any abandonment or toppling at the site of platforms or other man-made structures at sea, for the sole purpose of deliberate disposal.’

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34 London Convention 1972, Article III(1)(ii)
35 The Control of Transboundary Movement of Hazardous Wastes and Their Disposal, Note II. London Convention 1972
36 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and other matter, Article 1.4.1
This means that a prior dumping permit on a case-by-case basis needs to be issued by the coastal State or the flag State, depending on the territory where the platform or man-made structure at sea is located.\textsuperscript{37} The question is does the legislator mean also an abandoned vessel by a \textit{man-made structure} at sea? Does the definition as provided by the 1996 London Dumping Protocol concerning abandonment of a \textit{man-made structure at sea} also includes the abandonment of floating, self propelled, moveable, man-made vessels? The IMO Secretariat described the concept of \textit{abandonment} as follows:

\textit{‘Abandonment is included under the 1996 Protocol, but solely in conjunction with platforms, i.e. offshore installations at sea’.}\textsuperscript{38}

The conclusion is that the abandonment of ships is solely regulated by a specific regime. The international legal basis for States on the rights and obligations of coastal States and ship-owners concerning shipwrecks and lost cargo at sea, which has the potential to cause or is causing danger to the safety of lives, goods, property and navigation of ships at sea as well as being hazardous for the marine environment is provided by specific international legislation that deals with the removal of shipwrecks. The Nairobi wreck removal Convention\textsuperscript{39} is the international legal framework that deals with the liability concerning the removal of shipwrecks located in the Exclusive Economic Zone (EEZ).

\begin{flushleft}
\textsuperscript{38} UNEP, Open-ended Working Group of the Basel Convention, Note 8, by the IMO Secretariat, III. 1996 Protocol to the London Convention 1972, 11 April 2005
\textsuperscript{39} International Maritime Organisation (IMO), Conventions, Nairobi International Convention on the Removal of Wrecks, entry into force: 14 April 2015
\end{flushleft}
4 The Nairobi Wreck Removal Convention

The effects of the Nairobi wreck removal convention on ship-owner right on limitation of liability for wreck removal claims.

The registered owner of a ship bears strict liability according to the convention but can be exonerated by certain limited defences. The onus to remove the wreck is on the registered owner, but there are also options available for the State affected by the wreck should the registered owner not cooperate or be unable to contact. When dealing with wreck removal from a legal perspective three main questions need to be answered:

1. Who is responsible for the wreck?
2. What measures can and are to be taken based on that responsibility?
3. How can the responsibility be enforced?

The purpose of the Nairobi convention is to harmonize the regulations on wreck removal. The convention is also meant to fill a gap in international law by providing Coastal States with clear mandates of wreck removal when it comes to wrecks situated outside of the territorial sea while at the same time enabling them to claim compensation for the incurred costs as a result of the removal. Without the wreck removal convention, the mandates are unclear when it comes to wrecks located outside the territorial sea. Within the territorial sea however States can apply their national laws on wrecks since the State has full sovereignty in this area. The situation of the exclusive economic zone (EEZ) is unclear. Questionable is if the convention codifies already existing mandates that the States have according to international law or if it creates new mandates for States in the respect of wreck removal orders and liability.

The wreck removal convention focuses on the following two situations:

1. Wreck posing a hazard to navigation
2. Wreck posing hazard to the environment

The Nairobi Wreck Removal Convention is applicable in the Convention area. This is explained in Article 1.1 as being the exclusive economic zone (EEZ) of a State Party, in accordance with the law of the sea convention. If a State has not claimed the exclusive economic zone than the wreck removal convention covers the area beyond and adjacent to the territorial sea of that State not extending more than 200 nautical miles measured from the baseline form which the territorial sea of the coastal State is measured. By itself, the wreck removal convention is not applicable in the territorial sea but the wreck removal convention allows the contracting State to extend the scope of application to its own territory as the territorial sea and possibly its inland waters. Of the 25 States that have ratified the convention 13 have chosen the opt-in-clause extending the scope of application.
The use of the opt-in-clause will furthermore likely result in a shift of balance considering what types of wrecks that will be covered by the convention. The circumstances of the territorial sea area are different than the exclusive economic zone concerning the water depth. The more shallow water in the territorial sea generally poses a higher risk to navigation than the exclusive economic zone. The international uniformity of the wreck removal convention depends on the number of coastal States that make use of the opt-in-clause to apply the wreck removal convention also in their territorial sea.

4.1 The responsibility for removing the wreck

The responsibility to remove the wreck rests with the registered owner according to article 9 (2) of the wreck removal convention. The removal is defined in article 1 (7) as: ‘any form of prevention, mitigation or elimination of the hazard created by the wreck’. It is sufficient that the measures being taken prevent, mitigate or eliminate the hazard of the wreck. Considering the expense of a wreck removal operation there might be other more cost-effective measures available that fulfils the demand of preventing, mitigating and eliminating the hazard without the actual removal of the wreck totally from the seabed.

The affected State can however lay down certain conditions for the removal but only to the extend necessary to ensure that the removal proceeds in a manner that is consistent with considerations of safety and protection of the marine environment.

The coastal State should according to article 9. Par. 6 (a) of the wreck removal convention set ‘a reasonable deadline within which the wreck has to be removed.’ The length of the deadline is to be set in accordance with the hazard that the wreck poses to the environment. The affected coastal State should inform the registered owner of the wreck in writing of the deadline and specify that when the owner does not remove the wreck within the time period the affected State may remove it at the registered owner’s expense. In case the registered owner of the wreck is not successful in removing the wreck within the deadline or cannot be contacted, the affected coastal State can according to article 9: par. 7 of the wreck removal convention commence the wreck removal operation by the most practical and expeditious means available.
4.2 The costs of the wreck removal operation

The registered owner is according to article 10.1 of the wreck removal convention liable for the costs incurred for locating, marking and removing of the wreck. An interesting aspect of article 10.1 of the wreck removal convention is however that the liability only seems to encompass costs that the affected State has incurred. The registered owner of the wreck is strictly liable, the wreck removal convention uses a presumed liability regime.

‘Strict liability means the causal link between the liability and the person liable will not be based in the fact that damages or losses are caused due to the act or omission committed by that person. Even if that person had no fault, he would still be liable if strict liability is imposed on him’\(^{40}\)

Strict liability compared to limited liability, in respect of the wreck removal convention being a strict liability regime, the registered owner of the wreck is presumed liable for the removal of the wreck even if his crew had no fault in the collision that led to the vessel at the moment being a wreck. Coastal states that are affected by the wreck will protect the interests of ports and local business activities near the coast by means of a strict liability regime using the opting-out-clause provided by Article 18 of the LLMC convention. The issue is that the collision, whereby the wreck has been involved in has an equal position with the person at fault, which means that it is unreasonable to impose a strict liability regime to all maritime claims. The collision accident is covered by a limited liability regime based on the fact that the parties are equal in force and do not need the extra protection of a strict liability regime.

Imposition of strict liability on the registered owner of the wreck means that the registered owner retains the loss suffered by the registered owner first with the possibility that this loss cannot be recovered. The limitation regime on the other hand means victims of the collision accident cannot always fully recover their losses from the person at fault of the collision accident that led to the wreck claim.

The owner can however be exonerated on three grounds of his strict liability:

1. Act of war, hostilities, civil war, insurrection or natural phenomenon
2. Act or omission done with intent to cause damage by a third party or by the negligence or wrongful act of any Government or other authority responsible for the maintenance of lights or other navigation aids in the exercise of that function.

4.3 The registered owner of the wreck right to invoke limitation of liability

According to article 10.2 of the wreck removal convention nothing in this convention affects the registered owner’s right to limit liability under any applicable national or international regime. The wreck removal convention mentions the Convention on Limitation of Liability for Maritime Claims (LLMC) amended by the protocol of 1996 as global limitation regime. The problem of the LLMC convention is the opt-out clause concerning limitation of liability for wreck removal. May States chose to use the option to use the opt-out clause and this means the registered owner cannot invoke limitation if liability and will not be able to limit his liability in these States.

The wording in Article 10.2 of the wreck removal convention also enables the registered owner to limit liability according to a national system of limitation of liability but in may cases such a system may not exist. On the other hand a situation where a State allows low limits of liability can be envisaged. "an owner should only be allowed to limit according to a national system of limitation if the limit of liability does not fall below the limit stated in the international conventions on the area and first and foremost the LLMC. The problem, which would arise in case the wreck removal convention would directly and only allow limitation of liability as per international LLMC limits is that States are not necessarily parties to the LLMC convention or protocol. Normally the convention should include a balance between strict liability, the defences that the owner can invoke and a possibility to limit liability.

The reference made in article 10.2 of the wreck removal convention are not harmonizing regulations on wreck removal. The main issue is the enormous costs involved in wreck removal operations, which is not solved by the wreck removal convention. The question of the registered owner to limit liability is of great significance and not uniformly answered by the wreck removal convention.

The geographical area of application of the convention is the exclusive economic zone of any State where the State has only limited legislative and enforcement jurisdiction. (The wreck removal convention – a new liability and compensation regime: Wikborg Rein ILO). The owner will be entitled to limit liability pursuant to any applicable limitation of liability regime, including the LLMC as amended by the protocol. Many countries have exercised the option of higher limitation of liability or even unlimited liability for wreck removal claims. The higher limits or the absence of limitation options will apply to the liability imposed on a registered owner under the convention.
5 Limitation of liability for wreck removal claims

5.1 Convention on Limitation of Liability for Maritime Claims, 1976

The liability for the removal of shipwrecks is regulated on the international level by the Convention on Limitation of Liability for Maritime Claims, (LLMC)\textsuperscript{41}. The essence of the LLMC convention is to provide an unbreakable mechanism of limiting liability\textsuperscript{42}. The limitation of liability for wreck removal claims can be found in Chapter II, Article 6, par. 1. (b): The limits of liability for claims other than those mentioned in Article 6, par 1 (a): claims for loss of life or personal injury, and Article 7: passenger claims. The applicable Article 6, par 1. (b) Limits the liability in respect of any other claims, damage to property claims (such as wreck removal claims)\textsuperscript{43}. There are three scenarios where the LLMC limitation of liability do not apply:

1. In case the LLMC Convention is not adopted by the Coastal State, and the wreck is located in the territorial sea or inland waterways of that State;

2. If a contracting State has made reservations; Article 18: the State has the right to make reservations in order to exclude Article 2.1 (d) and (e); the raising and removal of a sunken, wrecked, stranded or abandoned vessel and claims in respect of removing and, or destruction of the cargo on board the vessel;\textsuperscript{44}

3. Loss resulted from negligence, personal act or omission, committed with the intention to cause a loss, being reckless, careless and act with knowledge that the loss would be the result of such act and behaviour will cause unlimited liability and no right to limit liability as per LLMC Convention or Protocol\textsuperscript{45}.

The LLMC compensation amounts of limitation are substantially increased by the 1996 Protocol. Furthermore, the Protocol introduces a "tacit acceptance procedure"\textsuperscript{46}; meaning a silence procedure to increase, update the limits. Traditional procedures to amend the limitation of liability limits would take unnecessarily more time in order to be adopted. The tacit acceptance procedure means that the proposed ‘draft text’ of the amendments with the increased limits will be distributed amongst the contracting States of the Protocol. If none of the contracting States makes use of the opportunity to propose any changes to the amendments of the Protocol, the amendments to the Protocol are considered as adopted by all contracting States without the need for individual ratification and acceptance by the majority of States procedures\textsuperscript{47}.

\textsuperscript{41} United Nations Convention on limitation of liability for maritime claims, (LLMC), 1976
\textsuperscript{42} IMO, Convention on Limitation of Liability for Maritime Claims (LLMC)
\textsuperscript{43} UIO, University of Oslo, The Faculty of Law, Convention on Limitation of Liability for Maritime Claims, 1976
\textsuperscript{44} LLMC Convention, Article 2.1(d) and (e)
\textsuperscript{45} IMO, Convention on Limitation of Liability for Maritime Claims (LLMC)
\textsuperscript{46} IMO, The adoption of the "tacit acceptance" procedure in IMO
\textsuperscript{47} Thomas A. Mensah, Pollution of the Sea – Prevention and Compensation, Part II: Prevention of Marine Pollution: The contribution of IMO, p. 58
LLMC Convention Chapter I. The Right of Limitation

**Article 1. Persons entitled to limit liability:**

1. Ship-owners and salvors, as hereinafter defined, may limit their liability in accordance with the rules of this Convention for claims set out in Article 2.

The relevant claims are maritime claims mentioned in Article 2.1:

(d) Claims in respect of raising, removal, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship” and;

(e) Claims in respect of the removal, destruction or the rendering harmless of the cargo of the ship”.

**Definitions:**

2. The term *ship-owner* shall mean the owner, charterer, manager and operator of a seagoing ship.

When, the term “ship-owner” is used in this thesis, it means exactly the same as described in the LLMC convention article 1.2. as mentioned above.

4. If any claims set out in Article 2 are made against any person for whose act, neglect or default the ship-owner or salver is responsible, such person shall be entitled to avail himself of the limitation of liability provided for in this Convention.

5. In this Convention the liability of a ship-owner shall include liability in an action brought against the vessel herself.

6. An insurer of liability for claims subject to limitation in accordance with the rules of this convention shall be entitled to the benefits of this Convention to the same extent as the assured himself. This statement is required due to the fact that the new Nairobi Wreck Removal Convention provides coastal States with the right of direct action against the insurer.

7. The act of invoking limitation of liability shall not constitute an admission of liability.

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48 Convention on Limitation of Liability for Maritime Claims, LLMC, 1976, as amended
49 LLMC 1976 as amended by the Protocol 1996
50 LLMC 1976 as amended as amended by the Protocol 1996
5.2 The different property fund limits of liability

The different limits of liability under the LLMC 1976 Convention, the Protocol 1996 and the 2012 amendments to the Protocol make the limitation of liability internationally an imbalanced system due to the international character of the maritime sector and the different choices that are made concerning liability regimes. The table hereunder shows the differences in liability limits as per international standards:

The LLMC Convention 1976:

<table>
<thead>
<tr>
<th>Limits of Liability</th>
<th>LLMC 1976</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fixed limit up to 500 GT</td>
<td>167,000 SDR</td>
</tr>
<tr>
<td>501 to 30,000 GT</td>
<td>167 SDR per GT</td>
</tr>
<tr>
<td>30,001 to 70,000 GT</td>
<td>125 SDR per GT</td>
</tr>
<tr>
<td>In excess of 70,000 GT</td>
<td>83 SDR per GT</td>
</tr>
</tbody>
</table>

The LLMC as amended by the Protocol and the latest Protocol amendments:

<table>
<thead>
<tr>
<th>Limits of Liability</th>
<th>Protocol 1996</th>
<th>Protocol amendments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fixed limit up to 2,000 GT</td>
<td>1 million SDR</td>
<td>1,51 million SDR</td>
</tr>
<tr>
<td>2,001 to 30,000 GT</td>
<td>400 SDR per GT</td>
<td>604 SDR per GT</td>
</tr>
<tr>
<td>30,001 to 70,000 GT</td>
<td>300 SDR per GT</td>
<td>453 SDR per GT</td>
</tr>
<tr>
<td>In excess of 70,000 GT</td>
<td>200 SDR per GT</td>
<td>302 SDR per GT</td>
</tr>
</tbody>
</table>

*Note: SDR: Special Drawing Right (16 May 2016: 1 SDR = 1.409490 USD)*

The status of any convention can be analysed on the webpage of the IMO. The schedule on the next page is an assessment, for which data from UNCTAD and the IMO has been used. The overview on the next page illustrates, which important countries have adopted the LLMC Convention, the 1996 Protocol, the 1992 Civil Liability Protocol, the 1992 Fund Protocol and the 2007 Wreck Removal Convention. The three groups that have been reviewed represent the world’s most important maritime and port States. Each table represents, the ten biggest Container Port States, Ship-owning States and Flags of Registration States in the world. It will show, the differences, which different oriented States have made in their choice of liability regime. The adoption of the international limits of liability convention is relevant, or complete or partly refusal of the convention. Did States legislate their own national regime for dealing with liability of ship-owner? Secondly, it compared the status of the ‘general’ limits of liability vis-à-vis the civil liability for oil pollution damage, including the fund protocol. The difference in number of States that have ratified and or adopted these two Convention or only one of the two different limitation of liability conventions.
5.3 Data analysis of the three most important maritime sectors

5.3.1 Top 10 biggest container terminal locations Member States

<table>
<thead>
<tr>
<th>Country</th>
<th>LLMC 1976</th>
<th>LLMC Prot. 96</th>
<th>WRC</th>
<th>CLC Prot. 92</th>
<th>Fund Prot. 92</th>
</tr>
</thead>
<tbody>
<tr>
<td>China</td>
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<tr>
<td>Singapore</td>
<td>✓</td>
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<td>✓</td>
<td>✓</td>
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<tr>
<td>Hong Kong</td>
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<td>✓</td>
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<td>✓</td>
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<tr>
<td>Rep. of Korea</td>
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<td>UAE</td>
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<tr>
<td>The Netherlands</td>
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<td>Malaysia</td>
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<td>Germany</td>
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<td>Belgium</td>
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<tr>
<td>United States</td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Percentage %</strong></td>
<td>30%</td>
<td>50%</td>
<td>30%</td>
<td>90%</td>
<td>80%</td>
</tr>
</tbody>
</table>

5.3.2 Top 10 biggest vessel ownership Member States

<table>
<thead>
<tr>
<th>Country</th>
<th>LLMC 76</th>
<th>LLMC Prot. 96</th>
<th>WRC</th>
<th>CLC Prot. 92</th>
<th>Fund Prot. 92</th>
</tr>
</thead>
<tbody>
<tr>
<td>Greece</td>
<td>✓</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Japan</td>
<td></td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>China</td>
<td></td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Germany</td>
<td></td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Singapore</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Republic of Korea</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hong Kong</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>United States</td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>United Kingdom</td>
<td></td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Norway</td>
<td></td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Percentage %</strong></td>
<td>40%</td>
<td>60%</td>
<td>20%</td>
<td>90%</td>
<td>80%</td>
</tr>
</tbody>
</table>

5.3.3 Top 10 biggest Flags of Registration Member States

<table>
<thead>
<tr>
<th>Country</th>
<th>LLMC 76</th>
<th>LLMC Prot. 96</th>
<th>WRC</th>
<th>CLC Prot. 92</th>
<th>Fund Prot. 92</th>
</tr>
</thead>
<tbody>
<tr>
<td>Panama</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>Liberia</td>
<td>✓</td>
<td>✓</td>
<td></td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>Marshall Islands</td>
<td>✓</td>
<td>✓</td>
<td></td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>Hong Kong</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Singapore</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Malta</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Greece</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bahamas</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>China</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cyprus</td>
<td>✓</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Percentage %</strong></td>
<td>80%</td>
<td>60%</td>
<td>60%</td>
<td>100%</td>
<td>90%</td>
</tr>
</tbody>
</table>

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51 Combination of Data used from UNCTAD, review of maritime transport 2015 and the IMO Status of Conventions 10 May 2016
52 UNCTAD / IMO Status of Conventions 10 May 2016
53 UNCTAD / IMO Status of Conventions 10 May 2016
5.4 The results of the three most important maritime sectors

The 10 biggest Ports, Ship-owning and Flag-registered States compared to the total world's average in percentage of States that have signed, ratified or adopted the LLMC 1976, the Protocol 1996, the CLC 1992, the Fund 1992 and the WRC 2007:

The comparison between the big Container Port States, Ship-owner States and the Flag States is to display, which countries are interested in the regime of a limited liability system on behalf of the ship-owner or prefer an unlimited liability regime.
5.5 The final results

**LLMC 1976 limit of liability for the ship-owner:**

<table>
<thead>
<tr>
<th>Category</th>
<th>Percentage</th>
<th>Opt-out</th>
</tr>
</thead>
<tbody>
<tr>
<td>Container Port States</td>
<td>30%</td>
<td>10% did not opt out article 2(1)(d)</td>
</tr>
<tr>
<td>Ship-owning States</td>
<td>40%</td>
<td>10% did not opt out article 2(1)(d)</td>
</tr>
<tr>
<td>Flag register States</td>
<td>80%, 40%</td>
<td>did not opt out article 2(1)(d)</td>
</tr>
</tbody>
</table>

**LLMC Protocol 1996 limit of liability for the ship-owner:**

<table>
<thead>
<tr>
<th>Category</th>
<th>Percentage</th>
<th>Opt-out</th>
</tr>
</thead>
<tbody>
<tr>
<td>Container Port States</td>
<td>50%</td>
<td>All States opted-out article 2(1)(d)</td>
</tr>
<tr>
<td>Ship-owning States</td>
<td>60%</td>
<td>Only 10% did not opt out article 2(1)(d)</td>
</tr>
<tr>
<td>Flag register States</td>
<td>60%, 30%</td>
<td>Did not opt out article 2(1)(d)</td>
</tr>
</tbody>
</table>

**Nairobi International regime for the removal of wrecks in the EEZ:**

<table>
<thead>
<tr>
<th>Category</th>
<th>Percentage</th>
<th>Ratification</th>
</tr>
</thead>
<tbody>
<tr>
<td>Container Port States</td>
<td>30%</td>
<td>Signed, ratified or adopted</td>
</tr>
<tr>
<td>Ship-owning States</td>
<td>20%</td>
<td>Signed, ratified or adopted</td>
</tr>
<tr>
<td>Flag register States</td>
<td>60%</td>
<td>Signed, ratified or adopted</td>
</tr>
</tbody>
</table>

**Civil liability Convention for oil pollution damage:**

<table>
<thead>
<tr>
<th>Category</th>
<th>Percentage</th>
<th>Ratification</th>
</tr>
</thead>
<tbody>
<tr>
<td>Container Port States</td>
<td>90%</td>
<td>Signed, ratified or adopted</td>
</tr>
<tr>
<td>Ship-owning States</td>
<td>90%</td>
<td>Signed, ratified or adopted</td>
</tr>
<tr>
<td>Flag register States</td>
<td>100%</td>
<td>Signed, ratified or adopted</td>
</tr>
</tbody>
</table>

**Contribution Fund for excessive oil pollution damage:**

<table>
<thead>
<tr>
<th>Category</th>
<th>Percentage</th>
<th>Ratification</th>
</tr>
</thead>
<tbody>
<tr>
<td>Container Port States</td>
<td>80%</td>
<td>Signed, ratified or adopted</td>
</tr>
<tr>
<td>Ship-owning States</td>
<td>80%</td>
<td>Signed, ratified or adopted</td>
</tr>
<tr>
<td>Flag register States</td>
<td>90%</td>
<td>Signed, ratified or adopted</td>
</tr>
</tbody>
</table>
5.6 Intermediate conclusion based on the results of the analysis

The results, which can be concluded from the collected data of UNCTAD\textsuperscript{54} and the IMO\textsuperscript{55} as shown in the overviews of data analysis on the previous pages show that the LLMC Convention or as amended by the Protocol is not an uniform and balanced mechanism to provide an international standard liability regime that is acceptable for all maritime interests. The oil pollution liability regime and the Fund convention is a liability regime specifically for the liability of oil pollution claims is far better working for all interests. It has been established after multiple accidents with tanker vessels. Questionable is if the need of wreck removal liability compensation funds will be enforced due to multiple wreck accidents as with the Costa Concordia? The focus of the general public is on the safety of passengers on board of ships and the protection and preservation of the marine environment, less on the economic consequences of a wreck blocking the accessibility of important navigation routes or ports. Uniformity for the limit of liability for wreck claims and an additional contribution fund will be much more difficult to achieve as for oil pollution claims.

The amount of compensation, which can be obtained by the affected Coastal State, depends on the choice of liability regime of the ship-owner, the Flag of Registry of the vessel and the choice of domestic law by the coastal State.

Only, 54,8 per cent of the total world's tonnage is a contracting party of the LLMC convention and

Only 30 per cent of major States, where the biggest container ports are located have adopted the LLMC convention.

The amended LLMC convention, the Protocol, whereby the limits have been increased is not performing much better worldwide: 57,41 per cent of the total world tonnage.

Half of the biggest Container Port States, 50% have adopted the Protocol. Secondly, a huge amount of the important contracting States of the LLMC Convention and, or the Protocol has made use of Article 18: Reservations.

\textsuperscript{54} UNCTAD, Review of Maritime Transport 2015
\textsuperscript{55} IMO, Status of multilateral Conventions and instruments in respect of which the International Maritime Organization or its Secretary-General performs depositary or other functions, 19 April 2016.
5.7 Conclusion: the reservation is causing liability imbalances

The State party uses the possibility provided by Article 18 to specifically reserve the right to exclude limitation of liability and use an opting-out-clause for the limitation of liability for wreck and cargo removal claims. In case the coastal State has made the reservation, the ship-owner is not allowed to invoke limitation of liability for maritime claims for the removal of the sunken, wrecked and abandoned vessels including their cargo as part of the uniform LLMC Convention as amended by the Protocol’s property fund limits. From the results of the analysis it can be concluded that almost all of the member States did use there right to reserve, and opted-out for the specific maritime claim of wreck removal, as being part of the general property fund of the LLMC convention as amended by the protocol:

1. Only 10% of the LLMC 1976 Convention Container member States did not opt-out limitation of liability as being part of the general property fund;

2. 0% of the LLMC Protocol 1996 Container member States did not opt out;

3. Only 10% of both the LLMC 1976 convention and the Protocol 1996 of the Ship-owning member States did not opted out wreck removal claims from the general property fund;

4. Just 40% of the LLMC 1976 Convention Flag registered member States did not opt out their right to exclude wreck removal claims from the property fund; and

5. Only 30% of LLMC Protocol 1996 Flag registered member States did not opt-out wreck removal claims from the general property fund.

The results of the table clearly show that most of the flag registered States are more willing to adopt the LLMC Convention or Protocol in full without reservations, due to the fact that the limitations of liability can be invoked for the interest of their own ship-owners, the so-called ship-owner-friendly States. The States that have less interest of attracting ship-owners to register their vessels in their State, so-called ship-owner-unfriendly States, are the States that are having a bigger interest in port activities. These States are feeling less attracted by the limited liability regime that can be invoked by the ship-owner. In particular for the specific limitation of liability for the removal of wrecks, which can hugely affect their port activities and economy. The three options that are made by coastal States are generally the limited regime for all maritime claims as described by article 2 of the LLMC Convention, or they choose for the intermediate option by making use of their reservation right but legislate domestically by means of a separate, national Wreck Fund to limit liability separately for wreck and cargo removal claims. The third option is the unfriendliness option, to the prejudice of the ship-owner: the unlimited, strict liability regime for the ship-owner. This option is mostly made by a fully port-oriented coastal State not having an important merchant fleet.

56 LLMC 1977 Convention, Article 18 Reservations, opting out Article 2(1)(d) and (e)
6 The Nairobi WRC in combination with the LLMC Convention

6.1 The effects of the reservation clause of the LLMC on the WRC

The majority of important maritime shipping and port countries have chosen not to adopt the LLMC Convention and, or the Protocol. More specifically, most of them only adopted under the circumstances of reserving their right to opt out article 2(1) (d) and (e). Wreck removal claims are an international law issue. The trouble for ship-owners, liability insurers and coastal States start when a vessel sank, wrecked and has been abandoned by its owners. The Nairobi Wreck Removal Convention (WRC) is trying to solve the issue of law conflicts. The weakness of the Nairobi wreck removal convention is the limited liability reference it makes to the LLMC Convention as amended by the protocol. This will ultimately result that the ship-owners do not know the amount of liability within all the different national jurisdiction zones they sail in. The question, which liability regime will be applied in every different jurisdictional zone of coastal States will always apply. An international carrier will carry goods through various jurisdictional zones and will have to deal with different other Flag State jurisdictions which also use the sea as their highway. There are many different domestic law regimes dealing differently with wreck removal liability of the ship-owner. The State can apply a strict, presumed, no-fault liability regime, or a limited liability regime or even a separately limited wreck removal claim regime. When a contracting State has made the reservation as per Article 18 of the LLMC as amended by the protocol, then there is no plead right of invoking international limitation of liability for the specific claims made against the ship-owner for the removal of the wreck. When a coastal State has reserved the right to limit liability for wreck removal claims, the liability ‘will remain strict and prima facie unlimited’ or separately limited by domestic wreck acts. Examples of domestic laws that opted out wreck removal claims from the standard limitation of liability property fund that deals with all types of maritime claims as mentioned by the LLMC convention article 2, in order to legislate liability for the removal of wrecks separately out of their internal, territorial waters and exclusive economic zone are for example; Belgium and the Netherlands.

57 Norman A. Martinez Gutierrez, Limitation of Liability in International Maritime
58 Domestic law: Belgian Wreck Act
59 Domestic law: Dutch Wreck Act
6.2 Relation between the LLMC convention and the WRC convention

The Nairobi wreck removal convention requires the registered ship-owner to maintain compulsory insurance as per LLMC standards. Article 12(10) of the WRC provides that the insurer may limit liability to an amount equal to the amount of insurance or other financial security required by the Convention, even if the registered ship-owner is not entitled to limit his liability. Because States are allowed to make a reservation, Article 18 of the LLMC convention, this will mean that the costs for the removal of the wreck is not part of the LLMC Convention and or Protocol to limit their liability for property claims. The WRC negatively affects the registered ship-owner. The insurer is able to limit his liability according to the Nairobi- WRC, but the registered ship-owner is bound by the right of the contracting State to make reservations, article 18 of the LLMC convention, which of most important coastal States did.\(^{60}\)

The Nairobi WRC can be compared to other specific International Conventions that regulate the liability of the ship-owner. The following examples are mentioned: The International Convention on Civil Liability for Oil Pollution Damage (CLC), specifically for oil pollution damage, the Hague- Visby Rules Convention, specifically for cargo loss or damage, the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS) and finally the specific Athens Convention for the specific liability regime for passenger and luggage loss or damage as amended by the Protocol. The only loss or damage liability of the ship-owner that is not specifically regulated by an international Convention is the removal of wrecks, which no longer represents any value to the ship-owner or insurer\(^{61}\).

The Nairobi WRC refers to the general Convention of Liability for Maritime Claims (LLMC) to set the limits of liability for the ship-owner. The problem is that the LLMC has Article 18 Reservation that provide contracting States with the option to exclude Article 2(1)(d) and (e), which means unlimited or national limitations of liability in the following important counties:

<table>
<thead>
<tr>
<th>Australia</th>
<th>Belgium</th>
<th>China</th>
<th>Cyprus</th>
<th>Estonia</th>
<th>France</th>
<th>Germany</th>
</tr>
</thead>
<tbody>
<tr>
<td>Netherlands</td>
<td>Norway</td>
<td>Japan</td>
<td>UK</td>
<td>Iceland</td>
<td>Lithuania</td>
<td>Ireland</td>
</tr>
<tr>
<td>Singapore</td>
<td>Canada</td>
<td>Croatia</td>
<td>Malta</td>
<td>NZ</td>
<td>Poland</td>
<td>Denmark</td>
</tr>
<tr>
<td>Russia fed.</td>
<td>Spain</td>
<td>Sweden</td>
<td>Turkey</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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\(^{60}\) Norman A. Martinez Gutierrez, Limitation of Liability in International Maritime, Chapter 7.3

Global limitation conventions and the Nairobi Convention

The different options for Limitation of Liability for the ship-owner

The ability of the debtor to limit his liability up to a certain limit is possible in order to not be unlimitedly liable for torts. Global limitation can be applied to contractual as non-contractual tort claims. It is possible that a carrier at first invokes limitation on the basis of unit limitation specifically for the type of claim before the party invokes general global limitations in order to even further limit his liability. Global limitation rules of international law are developed to protect the interest of the internationally oriented ship-owner, while unit limitation is the specific international law to protect the interests of the carrier of the goods, not always the same person as the ship-owner. The carrier can be the party hiring the vessel of the ship-owner as being the charterer fully in control of the vessel. The charterer can limit his liability for certain damages or losses as for example cargo damage or passenger injuries vis-à-vis their contract partner.

The possibility to limit liability is of great importance for the maritime shipping industry, carrying goods overseas because of the high risks that are involved, the so-called perils of the sea. The high value and enormous quantities of goods that are carried by special equipped vessels that undertake the maritime journey can be exposed to enormous risks of damages and losses. For these reasons and interest of the ship-owner and the carrier, different international limitation of liability conventions are developed over the years to protect the ship-owner. The ship-owner is partly protected by these limitations of liability conventions because of his willingness, 'guts' to take the high risk of carrying goods overseas. The convention for the limitation of liability is not wholly regulating all the subject matters. The contracting States have the possibility to reserve certain rights of limitation. The LLMC convention allows contracting States to reserve the rights of limitation for the removal of wrecks within the territorial sea and possible also the exclusive economic zone. The contracting State can deviate from the international uniform LLMC limitation rules by setting a separate limitation limit for the specific removal of wrecks or even set an unlimited liability for the removal of wrecks in their national law to protect the interests of the coastal State, meaning the port and the public that are affected by the wreck.

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62 Cleton, 1994, p. 308-310; Cleton 1998, p. 5-6
63 Zie: Kamerstukken II 1986/87, 19 768, 19 769 en 19 770, nr. 6; Parlementaire Geschiedenis van Boek 8 BW, 1992, p. 662.
64 Welmoed van der Velde, 2006, p. 324.
65 Welmoed van der Velde, 2006, p. 326.
66 Convention on the Limitation of Liability on Maritime Claims, LLMC, Article 18 Reservations, Article 2(1)(d) and (e), wreck and cargo removal claims
67 United Kingdom, United States, China, Belgium
The contracting States of the LLMC\textsuperscript{68} convention as amended by the protocol have the possibility to deviate from the convention and can require by their national law that for the specific removal of the wreck a separate so-called ‘wreck fund’\textsuperscript{69} must be made in order to secure the financial protection of the creditor.\textsuperscript{70} Global limitation is in most cases related to claims of multiple different parties that apply and interpretate international law differently. The first requirement of global limitation is that conflict of laws rules appoints only one legal forum, which is applicable. This requirement is to prevent that different limits are applied. The conflict of laws rules for global limitation should therefore not refer to the lex causae. The right to invoke global limitation of liability is a right that is provided to the ship-owner to prevent the risk of enormous financial liability for tort claims. The other negative side of global limitations is that the options for creditors in order to get compensated are limited. The right balance between ‘being liable’ and the ‘amount of liability’ is a difficult one. First of all, the right of compensation and limitation must be guaranteed by at least the constitution of a fund by the debtor.\textsuperscript{71}

\subsection*{7.1 Conflict of laws rules}

The balance between the rights and duties of the creditor and debtor is a critical one. If conflict of laws rules allocates the law that is beneficial for one of the parties, it will probably be disadvantageous for the other party. The second requirement that global limitation constitutes is the balance between the interests of the debtor and the interests of the creditor, which is hardly possible.\textsuperscript{72}

The LLMC Convention as amended by the protocol

The London’s limitation of liability Convention 1976, is by virtue of the Dutch Constitution, Article 93 in direct effect in the Netherlands. Despite the direct effect of the rules by the constitution, the London’s limitation of liability Convention is included in national Civil Law in the Civil Code 8.\textsuperscript{73}

The main purpose of the London’s limitation of liability Convention of 1976 was to find a compromise between on the one hand, the sum of the constituted fund by the ship-owner as being the debtor and on the other hand, the limitation calculation based on the size of the vessel (gross tonnage). On of the main principles was that the ship-owners could still reasonably insure themselves for the possible risks. On the other hand, the ship-owner or his insurer must sufficiently compensate the creditors for their loss or damage.\textsuperscript{74}

\textsuperscript{68} Convention on the limitation of liability on maritime claims, 1976 as amended by the Protocol, 1996 setting higher limits of liability

\textsuperscript{69} For example the Netherlands made a reservation and introduced a separate ‘wreck fund’, Civil Code 8, article 755(b) limitation of liability for wreck removal claims, wetten.overheid.nl/BWBROO005034/2016-01-01

\textsuperscript{70} Van der Velde, 2006, p. 331.

\textsuperscript{71} Van der Velde, 2006, p. 331.

\textsuperscript{72} Van der Velde, 2006, p. 331.

\textsuperscript{73} Civil Code 8, Title 7 Limitation of liability on maritime claims (LLMC), Articles 750-759.

\textsuperscript{74} Greggs and Williams 1998, p. 3.
The right to invoke limitation of liability is a privilege; the entitled party of limited liability is not required to make use of his privileged right of limitation. The right of limited liability is not an obvious right but must be invoked by the debtor. Besides the debtor having the favourable right to limit his liability in case of excessive claims, it can also be beneficial in case of lower claims because the constitution of a fund will prevent the debtor of his vessel being arrested by the coastal State authorities. The parties that can invoke limitation of liability within a contracting State are the registered owner of the vessel, his servants and employees. The contracting States have the possibility to reserve the right that the right of limited liability is not applicable to servants of non-contracting States and vessels that are not registered in a contracting State of the LLMC convention or protocol. The liability of either a contractual or a non-contractual tort claim can be limited. However, for the removal of wrecks and the related cargo, the contracting State has the possibility to reserve the right of limitation.\(^75\)

Article 18: Reservations of Article 2(1)(d) and (e)\(^77\)

&lsquo;Article 18 of the LLMC 1976 allows States parties to reserve the right to exclude the possibility to limit liability for wreck removal claims which consequently means that liability for wreck removal may be unlimited in certain States.&rsquo;\(^78\)

Contracting States can reserve their rights of ship-owners invoking limitation of liability for the specific removal costs of wrecks and related cargo removal claims by the public authority. By reserving the rights of Article 2(1)(d) and (e), the coastal State excludes the specific wreck- and cargo removal cost as being part of the claims that can be partly or wholly refunded from the property fund. The property fund is specifically designed to cover property claims of damages and losses. The London’s limitation of liability convention and protocol constitutes two possible funds that set limits of liability for claims of:

1. Loss of life or personal injury; and
2. Property claims

\(^75\)W. van der Velde, 2006, p. 348.
\(^76\)Cleton 1998, p. 57-58, uitsluitingen binnen het Londens Beperkingsverdrag.
\(^77\)LLMC, 1976, Article 18 Reservations, 1. ‘Any State may, at the time of signature, ratification, acceptance, approval or accession, or at any time thereafter, reserve the right: (a) to exclude the application of Article 2, paragraph 1(d) and (e).’
\(^78\)Van der Kuil, What’s Wrong with International Law?: Liber Amicorum A.H.A. Soons, p. 88.
7.2 The choice for a strict or a limited liability regime

7.2.1 The Netherlands

For example the Netherlands has reserved their right to exclude wreck removal claims (Article 18 LLMC). The Netherlands has chosen to apply an equally but separate "wreck fund" besides the LLMC property fund through their national law in order to increase liability but it is still a limited liability system specifically for the removal of wrecks, tort claims. The proportional solution to cover the liability of the ship-owner and their own interests of protecting and preserving their coastal marine environment and the nautical accessibility of ports. The wreck fund provides the ability to limit liability for wreck removal claims. The decision to allow limitation is made by the Dutch government itself. The Dutch government had the ability to make the liability for wreck removal claims unlimited. But at that time, 1976, when the LLMC Convention was discussed, the Netherlands Parliament, "the atmosphere was far more pro-shipping industry than today."81

Van der Kuil describes the history of the Netherlands concerning wreck removal claims at the time the LLMC was drafted in 1976:

"It was deemed of importance that a fair share of the removal costs could be recovered and would not have ‘to compete’ with other claims in the property fund but at the same time that the risks for the ship-owner would remain predictable and insurable".83

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79 For example the Netherlands made a reservation and introduced a separate 'wreck fund', Civil Code 8, article 755(b) limitation of liability for wreck removal claims, wetten.overheid.nl/BWBROO05034/2016-01-01
80 Van der Kuil, What’s Wrong with International Law?: Liber Amicorum A.H.A Soons, p. 88.
82 The question which claims shall be paid from the wreck removal fund has been decided in District Court Rotterdam, Judgement of 26 June 2013, S&S 2013, 123 (Wisdom/Riad).
7.2.2 Strict unlimited liability regimes

In other contracting States of the LLMC convention it is even possible that the ship-owner is strictly liable for the removal of the wreck, meaning the ship-owner has to bear the full amount of the removal costs. The strict liability system is far more pro coastal-State instead of the more ship-owner friendly limited liability system of a limited liability system and right for the ship-owner to make use of the national ‘wreck fund’ limitation of liability.

7.2.3 China Wreck Removal Liability

Wreck removal liability in China84

The PRC (with the exception of Hong Kong SAR) has not ratified the LLMC, but its domestic laws largely follow the limitation regime under the LLMC. The Maritime Code of the PRC (CMC) sets out a list of claims, which are subject to limitation (Article 207) and wreck removal claims are not mentioned in the list. Paragraph 17 of the new judicial interpretation clarifies that “Maritime claims which are subject to limitation under Article 207 of the Maritime Code do not include claims in respect of raising, removal, destruction or rendering harmless a vessel which is sunk, stranded, grounded or abandoned; or claims in respect of removal, destruction or rendering harmless of the cargo on board. In the event that the claims of the liable party in the preceding paragraph are consequent upon ships’ collision, and when the liable party seeks a recovery of such loss against the other colliding vessel, the application of such other colliding vessel to limit her liability for such claims according to the Article 207 of the Maritime Code of PRC shall be supported by the People’s Court”. The owners of the vessel, which “sunk, stranded, grounded, abandoned”, etc. can not limit liability for the wreck removal, destruction and related expenses, but if a recovery action is made against the other colliding vessel for these expenses, the other colliding vessel can limit liability. This has long been an uncertain question in Chinese law and, given the PRC’s rapidly expanding trade and shipping activity, the new judicial interpretation should settle this issue once and for all.

84 Gard News 200, Limitation of liability for maritime claims in China – New judicial interpretation comes into force, 01 NOV 2010
7.2.4  The United Kingdom Wreck Removal Liability

The Merchant Shipping Act

For the removal of wrecks in the United Kingdom by virtue of the domestic law, the merchant shipping act, Chapter VII Liability of Ship-owners and Others, Part IX Salvage and Wreck, Chapter III Supplemental: Removal of wrecks. The power to remove wrecks is provided by Article 252 and 253 to two types of authorities:

1. Harbour and Conservancy Authorities in relation to wrecks (Article 252)

The surplus of the proceeds of a sale of the recovered property shall be held by the authority on trust for the persons entitled thereto. The owner of the property shall be entitled to have it delivered to him on payment of its fair market value.

2. Lighthouse Authorities in relation to wrecks (Article 253)

There is no harbour authority or conservancy authority having power to raise, remove or destroy the vessel; the general lighthouse authority for the place in or near which the vessel is situated shall, if the authority's opinion the vessel is, or is likely to become, an obstruction or danger to navigation or to lifeboats engaged in lifeboat service, have the same powers in relation thereto as the Harbour and Conservancy Authorities are conferred by section 252. If the proceeds of any sale made under section 252 in connection with the exercise of those powers in relation to the vessel are insufficient to reimburse the authority for the full amount of those expenses, the authority may recover the amount of the deficiency from the relevant person, or may recover the full amount of those expenses from the owner of the vessel at the time of the sinking, stranding or abandonment of the vessel.

7.2.5  United States Wreck Removal Liability

In the United States claims for wreck removal costs incurred by the federal government have been judicially held as fully recoverable in accordance with the Rivers and Harbors Act of 1899, the so-called Wreck Act. Under section 15 of the Wreck Act, the United States government can recover the full costs incurred for wreck removal from the ship-owner whose negligence was the cause of the sinking of the vessel and the negligent owner of the wreck can not merely abandon the sunken, wrecked and or stranded vessel without being held liable in personam. The liability of wreck owners in in rem actions coincided with the limited liability under Limitation of Liability Act. The effect of both the Limitation Act and the Wreck Act was to restrict the government to in rem recovery. But the Wyandotte decision opened a wide breach between the Limitation of Liability Act and the Wreck Act. The United States Supreme Court decided to reject the ship-owners’ position and held that the negligent ship-owners should not be protected from personal liability.

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86 Xia Chen, Limitation of Liability for Maritime Claims, US Wreck Law, P. 40 - 42
7.2.6 Liability regime of ship-owners in Belgium

According to the Belgium Maritime Code:

The ship-owner is strictly liable in the sense that no error has to be proven in order to keep the ship-owner fully liable. The Belgian Government decides if the wreck is required to be removed and whether the ship-owner is allowed to invoke limitation of liability or not. The ship-owner is also personally liable for his acts, omissions and obligations (liable in persona). Furthermore, the ship-owner is civil liable for actions of the Master, the crew, the pilot and other employees or people rendering services to the vessel.

Stevens described that Article 13 of the Belgian Wreck Removal Act creates a general, statutory duty of removal. In doing so, however, care must be taken that the ship-owner is not in fact robbed of the possibility to invoke the limitation of liability but the ability to invoke limitation will be precluded:

‘If however the ship owner is forced through legal proceedings to remove the vessel himself (possibly under the threat of a penalty payment), he risks having to pay more than the limitation amount under Article 18, which is contrary to the purposes of the Wreck Removal Act.’

The Belgian Wreck Act and Marine Environmental Protection and Preservation Acts impose a strict liability regime on the registered owner of the wreck. The law requires ship-owners to remove the shipwreck out of the territorial sea or the EEZ under utmost all circumstances without the right to limit their liability.

7.2.7 The Belgian Act to protect the marine environment (WMMM)

Article 75 of the Act that protects the marine environment provides that in case of a possible risk that the wreck and its cargo will harm the marine environment within the territorial sea or the exclusive economic zone, or in case the safe navigation of vessels is in danger, the owner of the wreck is bound to remove the wreck and conclude a contract to remove the wreck with a salvage / wreck removal company. Furthermore, Article 25 provides that a warranty or permit is required in case the owner of the wreck is willing to leave the abandoned wreck at the seabed of the territorial sea or the exclusive economic zone of Belgium. In order to obtain the permit or warranty, an environmental impact assessment is required. The Belgian law is ahead of time concerning the law for the removal of wrecks outside the territorial sea in the exclusive economic zone.

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87 Wrakkenwet België, Hoofdstuk V. Scheepvaartongevallen. Art. 13. ’De eigenaar, kapitein of de schipper van een vaartuig... dwangmaatregel.’
90 WMMM 1999, Wet ter bescherming van het marine milieu en zeeverontreiniging.
91 Maes, Zeeverontreiniging: preventive, bestrijding en aansprakelijkheid, p. 139-142
The system of limited liability or unlimited liability will possibly have a limited effect due to the international character of shipping. The parties have the choice to invoke a limitation fund or to start proceedings in various States in order to limit their liability at the most beneficial Forum State, so-called forum shopping. Nobody would throw his money out of the window if he had the chance to loose less money. The question is who has jurisdiction in the EEZ, does the national law have the right to impose the ship-owner strictly liable for the removal of the wreck or is the law of the flag applicable in the EEZ where the wreck is located? Therefore the sovereign rights as described in the Law of the Sea Convention must be examined.

Questionable is whether national law, a national wreck fund or strict unlimited liability for the removal of a wreck can be applied by the coastal State in a more international environment of the exclusive economic zone (EEZ). In the exclusive economic zone (EEZ), the coastal State has limited sovereignty, so-called sovereign rights. Questionable is if sovereign rights will provide the coastal State with sufficient jurisdiction to apply domestic Acts concerning the removal of the wreck to foreign vessels that are not flying a flag of a State that has signed, adopted and/or ratified the international Nairobi wreck removal convention but is a contracting State of the LLMC convention as amended by the protocol including article 2(1)(d) and (e), the right to invoke limitation of liability for the removal of the wreck.

It can be concluded that the Belgian legislator is protecting the marine environment by a strict liability regime, whereby the registered owner of the wreck is strict liable and has to remove the wreck and bear the full costs without the possibility to limit liability.

Article 75 of the Belgian Act to protect the marine environment by stating that the risk of possible pollution of the marine environment of the territorial sea or the exclusive economic zone or in case the safety of maritime shipping is brought in danger, the register owner of the wreck that is located at the seabed of the territorial sea or the exclusive economic zone needs to remove the wreck together with the cargo and all dangerous goods that can possible harm the marine environment. The wreck can only be left at the seabed if the minister of transport has provided a warranty or permit to leave the wreck at the bottom of the seafloor after an environmental impact assessment has concluded that the wreck will not harm the marine environment.

The only possibility is that the coastal State requires full removal of the wreck, while the ship-owner argues that it does not harm the marine environment and will not cause any danger to navigation of seagoing ships. The definition of harming the marine environment and imposing danger to navigation of ships is a grey area, therefore it is up to the judge to decide on the basis of an environmental impact assessments and specialist reports of maritime traffic coordination experts to decide whether the argument to remove the wreck partly or wholly from the seabed is necessary or not.

92 UNCLOS Article 56.
93 Van Steenderen 2016, Maritieme Ongevallen, www.mainportlawyers.com
94 Belgian Act to protect the marine environment, WMMM, Article 75
7.3 Coastal States jurisdiction in the EEZ concerning wreck removal

'The sovereign rights are limited to the matters defined by international law (limitation ratione materiae).\(^{95}\)

Tanaka states about the sovereign rights of the coastal State that:

'The coastal State may exercises both legislative and enforcement jurisdiction in the EEZ concerning matters defined by international law, the coastal State may exercise both legislative and enforcement jurisdiction about the protection and preservation of the marine environment.\(^{96}\)

'Under Article 56(1)(b) of the LOSC, the coastal State possesses jurisdiction over matters other than the exploration and exploitation of marine natural resources, namely (iii) the protection and preservation of the marine environment.\(^{97}\)

The Law of the Sea, Article 59 provides the 'Basis for the resolution of conflicts regarding the attribution of rights and jurisdiction in the exclusive economic zone:’

'In cases where this convention does not attribute rights or jurisdiction to the coastal State or to other States within the exclusive economic zone, and a conflict arises between the interests of the coastal State and any other State or States, the conflict should be resolved on the basis of equity and in the light of all relevant circumstances, taking into account the respective importance of the interests involved to the parties as well as to the international community as a whole.'

If a wreck is located in the territorial sea or the exclusive economic zone of a coastal State who is a contracting State of the Nairobi wreck removal convention or has provided strict liability for the removal of the wreck by their national law based on the legal basis of the Law of the Sea Convention that provides coastal States jurisdiction of legislative and enforcement rights to protect and preserve the marine environment. If the coastal State has reserved their right to opt-out wreck removal liability from the international LLMC convention as amended by the protocol, the national law of the coastal State can impose strict liability without limitation to the registered owner of the wreck that harms the environment or and imposes danger to navigation of ships.

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\(^{95}\) See Tanaka, Marine spaces under national jurisdiction II: sovereign rights, p. 151.


\(^{97}\) See Tanaka, Jurisdiction of coastal States over the EEZ, p. 132-133.
Opting out the possibility to limit liability as per international LLMC convention will make registered ship-owners unlimitedly liable in the territorial sea and EEZ of other countries if the lex loci delicti or the lex registrationis provides the possibility to invoke limited liability as practised with the Seawheel Rhine case, whereby the owners invoked a limitation of liability property fund in the State of Sweden where only one property fund as per the LLMC Convention is applicable to cover collision damage and wreck removal claims. The provided security is therefore much lower in Sweden than in the Netherlands, where the law requires a separate wreck fund. The decision of the Swedish District Court was accepted and recognized by the Dutch Supreme Court. The exclusion of wreck and cargo removal claims will prevent the coastal State against the registered owner of the wreck for invoking limitation of liability but do not prevent the collision creditor of invoking liability in a more beneficial Court. The problem is that ship-owners can invoke limitation of liability in any State even if their wreck is located in the territorial waters or the exclusive economic zone of another State. The advantage of the fund system is that the money is on the table for the creditors. Sometimes you win: your liability is limited, and sometimes you lose: when you are liable and cannot get full recovery due to the other tortfeasor invoking limitation of liability in a more beneficial State for him.

Van der Kuil described the following about what the drafting of a convention demands:

“a long-term observation, together with well-informed drafters who are educated in the (international) legal system with an eye for historical developments, and politician who are not simply driven by the outcome in individual cases and the misconceptions of the day.”

When both the LLMC Protocol 1996 and the Convention 1976 are in force

In case of a State having both the LLMC Convention and the Protocol in force, meaning that the State has not denounced the LLMC Convention after adoption of the LLMC Protocol means that the judge of that State can apply both the Protocol and the Convention in a court case. If that State is chosen as forum court by the parties to judge the dispute and that State has not denounced the LLMC Convention then the judge will allow the parties that fly the flag of a country that has not adopted the LLMC Protocol, to set up a fund as per limits of the LLMC Convention. This means instead of setting up a fund as per updated, higher limits of liability of the LLMC Protocol the possibility to incur lower liability for a party registered in a LLMC convention State. The rules that allow parties to invoke lower limits of liability at the forum State that has not denounced the LLMC convention are set by the Vienna Convention 1969, Article 30(3) and (4).

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99 Van der Kuil, Conclusion – The way forward, p. 90.
100 Van der Kuil, Limitation of Liability for Maritime Claims and Politics, p. 91.
101 Vienna Convention on the law of treaties: Article 30. (3). ‘When all parties to the earlier treaty are parties also to the later treaty but the earlier treaty is not terminated or suspended in operation under article 59, the earlier treaty applies only to the extend that its provisions are compatible with those of the later treaty.’
7.4 The court having jurisdiction, the competence of the judge

Besides the relevance of uniform general limitation conventions, it is the competence of the judge with respect to the request of the set up of a limitation of liability fund that is of great importance, since the adoption of the LLMC Protocol. It is the competent judge who will decide whether the party is allowed to set up a fund as per LLMC convention or LLMC protocol limits. The three criteria that are relevant are:

1. Different regimes of limitation; LLMC convention or the amended Protocol;
2. The interpretation of the judge of certain rules and regulations;
3. Reservations that exclude the set up of a fund for wreck removal costs

Recognition of a foreign judgement

The judgement of a foreign judgement of limiting liability for maritime claims will be recognised if:

1. The judgement is taken by a competent court by a judge that meets international standards;
2. The judgement of the fund has been reached after due process of law
3. The formation of the fund is not contrary to public policy

The judgement of a foreign judge about the set up of a limitation fund that will affect the public policy of the coastal State requires explanation about the competence of this foreign judge. The issue is that a foreign flagged registered owner of the wreck possibly invokes limitation of liability in a State, where the LLMC Convention is applicable and not the higher limits of the LLMC Protocol. The other possibility is a country that has not reserved the right to exclude wreck removal costs.

The denial of a foreign court ruling by a foreign judge about an invoked limitation fund due to public policy reasons alone is only possible under exceptional circumstances. This does not mean that the court ruling of a foreign judge can be ignored when the outcome is different than in the coastal State where the tort accident happened, based on the statement of contrary to public policy alone. In order to decide if a foreign court decision about an invoked limitation fund can be excluded by the coastal State that has been affected by the tort accident, can only be decided by the evaluation of the inner territorial limitations and the outer territorial limitations of the tort accident.

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Article 30. (4). ‘When the parties to the later treaty do not include all the parties to the earlier one: (a) As between States Parties to both treaties the same rules applies as in paragraph 3; (b) As between a State party to both States are parties governs their mutual rights and obligations.’

102 W. van der Velde 2006, p. 361
104 Strikwerda 2005, p. 58.
The inner and outer territorial criteria means:

- Inner territorial criteria effects of the tort accident: the wreck blocking the main shipping route towards a major port of the State.

- Outer territorial criteria of the tort: The tort itself: the loss of the vessel, which has become a wreck, not fit for purpose of performing sea transport.

The exclusion, denial of a foreign judgement based on the content, the outer territorial criteria is utmost exceptional.

The connectivity of a State with the tort accident, the affects on the local public and ports is important for the coastal State’s judge to decide upon.

The circumstances of the tort case do play an important role when the acceptance of the consequences of a foreign judgement is assessed. The connectivity of the coastal State that is affected by the tort accident will influence the judgement of the tort case. The conclusion is that the limitation of liability fund decision made by a foreign judge of a State that is a contracting State to the same convention as the State affected by the accident cannot be breached or ignored only on the basis of ‘contrary to the public policy’.

The court of the coastal State judging the tort claim is bound by the explanation of the convention terms by the foreign State’s judge, if the debtor invoked his limitation of liability at a foreign judge, complying with the conflict of laws rules. The foreign State, also being a contracting party of the LLMC convention will possibly have a different interpretation of the LLMC rules and different or that State did not use their right to reserve their rights as per Article 18, to make reservations opt-out wreck removal liability claims. The formation of a property fund only to limit liability for all property claims including wreck removal claims is possible. The link, which the Coastal State has with the claim, will determine the recognition of the foreign judgement. If there are no national creditors involved, like the coastal State, the acceptance of the foreign courts’ judgement about the invoked limitation fund will be accepted and approved. It will be a different judgement, in case there are national creditors involved, which will encounter disadvantages by the foreign judgement of a limitation fund. But still, it will be questionable if the local judge will disapprove the judgement of the foreign judge. The mere fact is that a lower limitation of liability outcome by a foreign judge is not sufficient for the local judge to decide to deviate and deny the competence of a foreign courts’ judgement about limitation of liability.

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107 Rossner 2005, p. 43.
The liability for certain maritime torts at sea, which is an international environment, requires international uniform rules. Maritime torts are for example oil spills and collision accidents at sea. These tort claims require international uniform rules. When there are no uniform international rules, in case of for example a collision between a Dutch flagged vessel and a Chinese flagged vessel outside territorial waters on the high sea, conflict rules must provide the applicable national law. Another option can be that the parties may invoke their own preferences and conclude arbitration or proceed to an agreed national court. In case the parties cannot decide, which law will apply or when a coastal State is involved in the maritime tort at sea, international conflict rules will generally refer to the lex loci delicti, the law of the State where the tort event occurred. In order to decide, which law will be applicable on the ship can be difficult due to the mobile characteristics of a ship. The ship moves constantly from one jurisdiction to another jurisdiction and may be additionally outside the jurisdictional zone of any State, on the high seas. The lex loci delicti shall not point out a national law to a maritime tort, which occurred on the high seas.

8.1 The Brussels Convention for collision between vessels 1910

The Brussels Collision Convention is the first treaty that has been designed by the Comité Maritime International (CMI). There was a need for uniform rules in the form of a convention in order to deal with accidents of collision in the international environment of the sea. The need for international uniform rules was due to the fact that there was different legislation applicable that dealt with shared-liability in case of collision accidents at sea. The Brussels Collision Convention provided uniform rules: ‘for the Unification of Certain Rules of Law with respect to Collisions between Vessels.’ In case the treaty is formally and materially applicable to the vessels concerned in the collision, the rules of the treaty apply. Article 12, states that there is no independent requirement of national conflict rules that refer to the Brussels Collision Convention.

‘The provisions of this Convention shall be applied as regards all persons interested when all the vessel concerned in any action belong to States of the High Contracting Parties, and in any other cases for which the national laws provide.’

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108 Art. 3 Rome II
110 International Convention for the unification of certain rules of law to collision between vessels, Brussels, 23 September 1910.
111 The travaux preparatoires of the international convention for the unification of certain rules of law with respect to collision between vessels, 23 September 1910, Comité Maritime International, www.comitemaritime.org
113 Van der Velde, De positive van het zeeschip in het internationaal privaatrecht, De positie van het zeeschip in het international privaatrecht, Toepassingsgebied van het Brussels Aanvaringsverdrag 1910, 2006.
'Provided always that:

1. ‘As regards persons interested who belong to a non-contracting State, the application of the above provisions may be made by each of the contracting States conditional upon reciprocity.’

2. ‘Where all the persons interested belong to the same State as the court trying the case, the provisions of the national law and not of the Convention are applicable.’

If all vessels involved are registered in a contracting State of the Brussels Convention but all persons involved have the nationality of the Forum State, the national law of the Forum State shall be applied including International Private Law instead of the international Brussels Collision Convention regulations.\textsuperscript{115} If the collision concerns a dispute between two ship-owners, then, the nationality of the ship-owners is applicable. The nationality of the cargo owners is not relevant for the application of the Brussels Convention.\textsuperscript{116} Pursuant to Article 12, the national law can provide that the Convention will also apply to a collision whereof the collision convention would otherwise not be applicable.

The law of the forum, the chosen law by the parties will apply, when the vessels that were involved in the collision are registered in a contracting State of the Brussels Collision Convention. The possibility to let the Brussels Collision Convention prevail above the national law is a possibility. Conflict law allows the parties to chose for national law as well as uniform international law. The possibility of a right of choice for unified international law will also be allowed. In European States, the conflict rules of Rome II will describe the law, which will be applicable in case of a non-contractual tort. When the Brussels Collision Convention is formally not applicable or does not fully provide an complete answer to solve the dispute, both parties have the choice of law to apply national law as provided by the conflict rules; Rome II.\textsuperscript{117}

\textsuperscript{114} International Convention for the unification of certain rules of law to collision between vessels, Article 12, Application.
\textsuperscript{115} Art. 12 lid 2 Brussels Aanvaringsverdrag.
\textsuperscript{116} Van der Velde, De positie van het zeeschip in het internationaal privaatrecht, Toepassingsgebied van het Brussels Aanvaringsverdrag 1910, 2006, p. 196.
\textsuperscript{117} Regulation (EC) No 864/2007 of the European Parliament and of the council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II), eur-lex.europa.eu
8.2 Tort liability in the event of a collision

The Brussels Collision Convention is applicable to collision damage caused by or without the vessels have contacted each other. At least one of the vessels must be a sea-going ship. The place where the collision occurred is not relevant for the applicability of the Brussels Collision Convention.\textsuperscript{118} If the collision is due to the neglect of a vessel, the ship-owner of that vessel is liable.\textsuperscript{119} If two or more vessels are liable then the liability will be evenly divided as per degree of fault.\textsuperscript{120} If it is not possible to determine the degree of fault then all vessels are equally liable for all damages. The Brussels Collision Convention is formally not applicable to non-contracting States. Furthermore, the Brussels Collision Convention does not regulate who the collision-creditor and who the collision-debtor is. Finally, the Brussels Collision Convention also does not regulate the limitation of liability, set-up of a liability fund and the rank of a collision claim within maritime liens. The London’s Limitation of Liability Convention (LLMC)\textsuperscript{121} separately regulates the limitation of liability. The handling fees are regulated by the Lisbon Rules. The liability question is answered by the Collision Regulations (COLLREGs).\textsuperscript{122} The national or international regulations regulate the priority order of maritime liens. This can be the International Convention in Maritime Liens and Mortgages, 1993.\textsuperscript{123} For example, Belgian national law is based on the first international Convention for the Unification of Certain Rules Relating to Maritime Liens and Mortgages, 1926.\textsuperscript{124} The national law of the Netherlands is based on the Protocol Concerning Rights in Rem in Inland Navigation Vessels, Chapter III. Liens.\textsuperscript{125} In order to obtain justice, the International Convention for the unification of certain rules relating to Arrest of Sea-going Ships, 1952,\textsuperscript{126} which is both ratified by Belgium and the Netherlands.

\textsuperscript{118} W. van der Velde, De positie van het zeeschip in het internationaal privaatrecht, Toepassingsgebied van het Brussels Aanvaringsverdrag 1910, 2006, p. 198.
\textsuperscript{119} Art. 3 Brussels Aanvaringsverdrag
\textsuperscript{120} Art. 4 Brussels Aanvaringsverdrag
\textsuperscript{121} LLMC 1976, Convention on Limitation of Liability for Maritime Claims, replaced the International Convention Relating to the Limitation of Owners of Seagoing Ships. The LLMC specifies limits for two types of claims, loss of life or personal injury, and property claims.
\textsuperscript{122} COLLREGs 1972, Convention on the International Regulations for Preventing Collisions at Sea, replaced the Collision Regulations of 1960.
\textsuperscript{124} International Convention for the Unification of Certain Rules relating to Maritime Liens and Mortgages, 1926, Belgium ratified in 1930.
\textsuperscript{126} International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-going Ships, Article 1. Maritime Claims: (a) collision damage, (c) salvage, Article 2. 'A ship flying the flag of one of the Contracting States may be arrested in the jurisdiction of any of the Contracting States...'
8.2.1 Collisions within the territorial sea of the coastal State

In case of a collision between vessels within the territorial waters of a coastal State, the lex loci delicti, the local national law of the coastal State where the collision occurred will apply, even if the vessels involved by the collision are registered at different States. Regulation (EG) 864/2007 'Rome II' regulates, which law will be applicable to non-contractual torts.\(^\text{127}\)

8.2.2 Collisions on the high seas

In case of a collision between vessels of different nationality on the high seas, the lex loci delicti cannot be applied. The best possible solution for a collision accident on the high seas between two different nationality vessels is the application of the lex fori.\(^\text{128}\) The objection against 'forum shopping' does not outweigh the benefits of the simplicity of applicability of the lex fori. The reason to choose for the lex fori is due to its simplicity, certainty and unification of law.\(^\text{129}\)

\textit{The application of the lex fori has been accepted in legal scholarship as neutral conflicts rule providing the most pragmatic solution for collisions on the high seas. The lex fori is allowed only when no other law can be rationally applied. Namely, the lex fori is the only logical solution in situations where no other logical and objective connecting factor could be applied.}\(^\text{130}\)

8.2.3 Conflict of laws in case of a collision\(^\text{131}\)

Summarising the different jurisdictions, which can apply 'as per the weight of the authority'\(^\text{132}\) to collisions:

1. \textit{In a collision on the high sea, if the vessels in collision are entitled to fly the same flag, the law of the flag State (lex vexillum) will apply;}
2. \textit{In a collision on the high seas, if the vessels in collision are registered in States Parties to the same convention on collision, the law of that convention will apply;}
3. \textit{In a collision on the high seas, if one or any of the vessels in collision are registered in States that are not parties to a convention on collision, the law of the State of the forum (lex fori) will apply; and}
4. \textit{In a collision that takes place in waters under national jurisdiction of a coastal State, the law of that State (lex loci) will apply, whether that law is the law of a convention on collision or other applicable national law.}\(^\text{133}\)


\(^{128}\) Van der Velde, De positie van het zeeschip in het international privaatrecht, Toepassingsgebied van het Brussels Aanvaringsverdrag 1910, Multiple Court cases in the Netherlands as described in p. 220.

\(^{129}\) Kamerstukken II 1988/89, 21 054, nr. 3, p. 13 MvT.


The International Convention regulating the international uniformity for the Unification of certain Rules concerning Civil Jurisdiction in Matters of Collision.134 ‘The problem was that the convention eliminated forum shopping, and also because it contained no provisions on recognition and enforcement of judgements.’135 ‘The countries of continental Europe have long applied the law of the place where the tortious act occurred’.136 The lex loci delicti is incapable in case there are more nationalities involved in the tort. The applicable legal system must objectively be determined by the so-called proper law approach. The most closely connected legal system of the tort should be applied.137

The convention provides in Article 1 and 2 three forums but not the lex fori:

Article 1:

(1) ‘An action for collision between seagoing vessels, or between seagoing vessels and inland navigation craft, can only be introduced:

(a) Either before the Court where the defendant has his habitual residence or a place of business;
(b) Or before the Court of the place where arrest has been effected of the defendant ship or of any other ship belonging to the defendant which can be lawfully arrested, or where arrest could have been effected and bail or other security has been furnished;
(c) Or before the Court of the place of collision when the collision has occurred within the limits of a port or inland waters’.

(2) ‘It shall be for the plaintiff to decide in which Courts referred to in par. 1 of this article shall be instituted’.

(3) ‘A claimant shall not be allowed to bring a further action against the same defendant on the same facts in another jurisdiction, without discontinuing an action already instituted’.

Article 2:

‘The provisions of Article 1 shall not in any way prejudice the right of the parties to bring an action in respect of a collision before a court they have chosen by agreement or to refer it to arbitration’.

134 CMI, The International Convention on certain rules concerning civil jurisdiction in matters of collisions, 1952, Belgium ratified
8.3 Conflict of laws rules concerning invoking a limitation fund

The uniform rules of the Convention for the limitation of liability on maritime claims, LLMC 1976, is not entirely legislating global limitation of liability issues on the international level. It can be concluded that there are no uniform conflict of laws rules, which can solve the issue in case the uniformity of rules is not provided by the LLMC convention, as being the case with wreck removal claims. Wreck removal claims are settled by national legislation in case the State has used Article 18, Reservations using the opting-out-clause. In case there is no uniform convention applicable to set out the rules of liability for the wreck removal claim, the Rome II European regulation will rule, which national law will be applicable in case of a tort accident in European member State’s territorial waters or EEZ. The main rule for wrecks in the territorial sea designates the lex loci delicti as applicable law. In case of a vessel at the high seas outside territorial waters, the lex registrationis, the law of the flag State will apply. The other option is a valid choice of law, a secondary connection with a State or the consequence of exception.138

8.4 Conflict of laws rules concerning wreck and cargo removal claims

In territorial waters, and possible also in the exclusive economic zone the lex loci delicti will be applicable for the liability of the removal of the wreck and the cargo. In case of some national jurisdictions this will lead to unlimited strict liability of the debtor. In other States as for example, The Netherlands, if the debtor wants to invoke his limitation of liability right, the debtor must set up a separate fund, called the ‘wreck fund’ for the specific removal costs of the wreck and the cargo. The national law includes the ‘wreck fund’ besides the general LLMC property fund for the partly or wholly refund of property losses and damages to others. In some LLMC contracting States, the formation of a fund is mandatory in order to secure payment of the loss or damage of the creditor(s).

The sovereign rights concept of law means that the coastal State can enforce national legislation in order to protect and preserve the marine environment within the EEZ. If the wreck is not harming the marine environment and must be removed for the fact that it is posing a danger to navigation139, it is of the common good to remove the wreck and must be financed pro rata by both the registered owner and the coastal State. This means that the registered owner must have the ability to invoke limitation of liability for the removal of the wreck in the EEZ but the limitation must be reasonable and sufficient to cover part of the removal of the wreck.

139 The Nairobi International Convention on the Removal of Wrecks, Article 1. Definitions, lid 5. ‘Hazard means any condition or threat that poses a danger or impediment to navigation; or...’
Article 59 of the law of sea convention provides as follows:

‘In cases where the LOSC does not attribute rights or jurisdiction to the coastal State or to other States within the exclusive economic zone, and a conflict arises between the interests of the coastal State and any other State or States, the conflict should be resolved on the bases of equity and in the light of all the relevant circumstances, taking into account the respective importance of the interests involved to the parties as well as to the international community as a whole’.\(^{140}\)

Conflict of laws rules in the EEZ

The right of limitation is applicable to the liability itself and the limitation of liability; it must be a right balance between the debtor and the creditor. In case the lex registrationis would apply, the law of the flag is applicable. In case the vessel is registered in a ‘cheap flag State’ where the limitation of liability is low, the chance to recover wreck removal claims are small for the affected coastal State. This means that the authorities affected by the wreck, which have to deal with the removal of the wreck in the EEZ are depending on the flag of registration of the wreck.

8.5 **The right balance between debtor and creditor**

The requirements of conflict of laws rules must provide a right balance between the interests of the debtor and the creditor. The application of the lex registrationis to limit liability for the removal of wreck and cargo claims will negatively affect the coastal State in some cases. The same statement can be made if the debtor, the registered owner of the vessel does not obtain his right to limit his liability as per international uniform standards and is negatively bound by the applicable national law of strict liability without the right of limitation.

The conflict of laws rules should take the following into account:

- The right balance between the debtor and the creditor;
- The importance of maritime international shipping;
- The importance of the general public’s interest

8.6 The application of the lex fori as alternative for collision tort liability claims

The balance between the debtor and the creditor will depend on the Forum State in case the lex fori would apply. The negative side of the lex fori is the possibility of forum shopping. Before an accident occurs, the parties involved do not know, which law will be applied meaning, which international limitations of liability are applicable. The higher limitations or even unlimited liability of the registered owner of the vessel or low refund possibilities for the affected coastal State. In case of the lex fori, the creditor protected by the mandatory formation of the fund, but the debtor is able to set up the fund in a State of choice. The choice of law of the forum is compensated by the fact that the debtor is able to set up the fund in a State of his choice. The ship-owner made the choice to become possibly exposed to foreign laws, other then the law of his residence or the flag of his vessels. The ship-owner must therefore accept foreign court decisions. The maritime shipping business is an international world, which has to deal with international- and different national laws.

8.7 European Regulations of non-contractual obligations

The European conflict of laws rules (Rome II) provide that the most closely connected law is applicable.

According to European Regulation (EC) No 864/2007 of the European Parliament on the law applicable to non-contractual obligations (Rome II) provides that the law with the closest connection to the non-contractual tort obligation prevails.\(^{141}\) This will prevent that the applicability of unjustified lex registration is possible in case of a tort claim, wreck removal costs on the high seas or the exclusive economic zone. The law with the closest link of the tort claim can be the lex loci delicti of the coastal State that has to deal with the negative effects of the wreck. In case the lex loci delicti is the Dutch national law concerning wreck removal claims, the ship-owner is still able to limit his liability for the removal of the wreck but has to set up a separate wreck fund for the specific wreck removal claim. In order to apply, the law having the closest connection with the tort can be difficult. Furthermore, the balance rule is not always answered equally for the debtor and the creditor\(^{142}\) in case the closest connected law is applicable. For example, unlimited liability for the removal of a wreck is not a balanced international system in all cases for the interests of both parties.

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\(^{141}\) Regulation (EC) No 864/2007, The law applicable to non-contractual obligations (Rome II), Chapter II. Torts/Delicts. Article 4(3). *Where it is clear from all circumstances of the case that the tort/delict is manifestly more closely connected with a country other than that indicated in paragraph 1 or 2, the law of that other country shall apply. A manifestly closer connection with another country might be based in particular on a pre-existing relationship between the parties, such as a contract, that is closely connected with the tort/delict in question.*

\(^{142}\) Van der Velde 2006, Conflictregels voor global limitation, p. 486.
9 Marine insurance

9.1 Different types of marine insurance

Marine insurance can be divided into property and liability insurance. Property insurance covers the hull and machinery of the vessel, the machinery and equipment in order to operate the vessel. The cargo is insured as property by the cargo owner or by the ship operator on behalf of the cargo owner. The ship-owner will insure himself against any third party liability of possible loss or damage of cargo by means of liability insurance. The sea carrier is in most cases not the owner of the cargo and is by international law, the Hague-Visby Rules\textsuperscript{143} only liable for damage and loss that is not mentioned specifically by this convention. Secondly, in case the carrier is liable, the carrier's liability will be limited.\textsuperscript{144} Liability insurance, so-called Protection and Indemnity (P&I) insurance is covering liability claims against the ship-owner or charterer. The P&I Club covers contractual and extra-contractual, tortious claims. The P&I Clubs are independent, non-profit making mutual insurance associations, providing cover for its members. The ship-owners and charterers are the members of the Club which mutually cover each other's third party liabilities claims relating to the use and operation of ships. All 13 P&I Clubs are part of the International Group of Protection and Indemnity Clubs to mutually cover excessive claims. The international Group is an unincorporated association of 13 individual P&I Clubs. The Clubs are managing the International Group together. The 13 International Group Clubs provide liability cover for approximately 90% of the world’s ocean-going tonnage.\textsuperscript{145}

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{143} The Hague Visby Rules – The Hague Rules as Amended by the Brussels Protocol 1968, Article IV, www.jus.uio.no/Im/sea.carriage.hague.visby.rules.1968/doc.html
\item \textsuperscript{144} HVR, Article IV (5)(a)
\item \textsuperscript{145} International Group of Protection & Indemnity Clubs, www.igpandi.org/about
\end{itemize}
\end{footnotesize}
9.2 Property insurance: Hull insurance – The Hull policy

Norwegian and German hull conditions include removal of the wreck of the other vessel as a collision liability. English and Swedish conditions do not.\textsuperscript{146} The Institute Time Clauses (ITC Hull) policy is the most widely used version of the English conditions\textsuperscript{147}, which will be compared with the Norwegian Marine Insurance Plan. RDC: collision cover and FFO: contact damage to third party property. If the casualty is a salvage situation then it is the H&M insurer who is liable, while if the casualty turns out to be or to become a wreck, it is the P&I Club who is liable for the cost of wreck removal.

So, in case the property insurer also abandons title of the wreck, who will own the abandoned object? The liability and responsibility for wreck removal orders is transferred back to the assured ship-owner. The possible wreck removal liability of the ship-owner is covered by the P&I insurer\textsuperscript{148}. The vessel will not be abandoned to the entire world; it will remain having an owner. The Latin expression, \textit{res nullius} will not apply to the wreck\textsuperscript{149}. The concept of abandonment is applicable to the property insurance policy concluded between the assured, the property owner and the insurer. The insured property can be the vessel's hull and machinery and/or the cargo. The property insurer will accept the abandonment of the property right by the assured ship-owner and pays out the insured or market value of the fully repaired vessel as agreed in the insurance policy contract. The insurer can abandon the property rights, ownership again after fulfilment of the compensation to the assured ship-owner. The insurer will abandon the wreck, otherwise the property insurer will be held liable to remove the wreck and possible bear all costs. The coastal State authorities have the power to force removal of the wreck within the territorial sea and the Exclusive Economic Zone. After, the property insurer has abandoned the vessel or wreck, the insurer will be unable to claim compensation of the sold wreck or remaining's of the wreck that has been removed by the ship-owner or salver.

When does a ship become a (ship) wreck for the insurer?

The ship is becoming a shipwreck or wreck for the insurer, when the ship had an accident, whereby it has become an actual total loss (ATL), or a constructive total loss (CTL). Constructive total loss means that the costs of repairing the ship are exceeding the value of ship at the moment of the accident. According to the Norwegian Marine Insurance Plan, a Hull and Machinery (H&M) insurance policy, a vessel is considered as constructive total loss (CTL) in case the cost of repair exceeds 80 per cent of the insurable value of the ship. The vessel is no longer a vessel anymore and will be classified, as wreck. From now on the object is no longer called the ship but the wreck. This is the moment the hull insurer accept the total loss and the owner will abandon the vessel. The wreck is now the

\textsuperscript{146} Gard Insight 178, 2005 01 May 2005
\textsuperscript{147} Gard insight 178
\textsuperscript{148} Gard, Wreck removal – The insurers' standpoint, insight 161, 2001
\textsuperscript{149} S. Hodges, Cases and Materials on Marine Insurance Law, Blane Steamships Ltd v Minister of Transport 1951, 2 Lloyd's Rep 155, CA
9.3 Hull and Machinery Policies

Concerning property insurance of the hull and machinery there is the English policy and the French and Norwegian policy that will be compared concerning collisions, total loss cases and wreck removal liability. First of all, what is the insurable value of the property under the Nordic Marine Insurance Plan: Clause 2-2. Insurable value\textsuperscript{150}: “The insurable value is the full value of the interest at the inception of the insurance”. If the insurable value is fixed to a lower amount it is called the agreed insurable value\textsuperscript{151}. The vessel can be under-insured; in that case the insurer will only compensate a portion of the loss corresponding to the agreed insured value\textsuperscript{152}. The hull insurer is not obliged to provide security in case of third party claims\textsuperscript{153}.

The Nordic Marine insurance covers the following objects:\textsuperscript{154}

1. The ship
2. Equipment on board and spare parts for the ship and its equipment
3. Bunkers and other oils needed to operate the ship

The property insurer will not cover liability for removal of the wreck of the insured ship and for the obstruction of traffic created by the insured ship\textsuperscript{155}.

When is a damage or loss called a total loss case? According to The Nordic Marine Insurance Plan of 2013\textsuperscript{156}: “The assured may claim compensation for a total loss if the ship is lost without being any prospect of it being recovered or if the ship is so badly damaged that it cannot be repaired”.

Condemnation, abandonment: Clause 11-3. Condemnation\textsuperscript{157}: “The assured may claim compensation for a total loss if the conditions for condemnation of the ship are met”. The conditions of abandonment or condemnation are met when the costs of repairing the ship are higher than 80% of the insurable value. The condemnation or abandonment request is based on the market value of the vessel at the moment of the incident\textsuperscript{158}.

Physical loss, damage to hull and machinery insurance is provided by commercial insurance companies.

Cargo insurance and other third party liability insurance is usually provided by the mutual system of ship-owners joining an independent, non-for-profit mutual insurance association, called a Protection and Indemnity Club (P&I) Club\textsuperscript{159}. The P&I insurance cover are described by the Rules of the Club. The relevant P&I

\textsuperscript{150} The Nordic Marine Insurance Plan of 2013, Clause 2-2. Insurable value
\textsuperscript{151} Clause 2-3. Agreed insurable value
\textsuperscript{152} Clause 2-4. Under-insurance
\textsuperscript{153} Clause 5-12. Provision of security
\textsuperscript{154} The Nordic Marine Insurance Plan of 2013, Clause 10-1. Objects insured
\textsuperscript{155} The Nordic Marine Insurance Plan 2013, Clause 13-1. Scope of liability of the insurer (i).
\textsuperscript{156} The Nordic Marine Insurance Plan of 2013, Clause 11-1. Total loss
\textsuperscript{157} The Nordic Marine Insurance Plan of 2013, Clause 11-3. Condemnation
\textsuperscript{158} The Nordic Plan, Clause 11-3. Condemnation
\textsuperscript{159} The challenges and implications of removing shipwrecks in the 21st century
Club Rules are the rules concerning Collision liabilities and Wreck liabilities\textsuperscript{160}. The collision liabilities in combination with the English hull policy requires the ship’s hull underwriter to pay only three-fourths of the liability of the insured vessel in respect of loss or damage to the other vessel and her cargo, involved in the collision\textsuperscript{161}. The P&I Club covers the remaining one-fourth of the damage or loss. In most cases, the P&I Club will have the biggest part of the claim for loss or damage (25%). Several commercial hull and machinery insurers usually underwrite the remaining 75% by means of coinsurance, all underwriters are covering part of the loss or damage caused by the collision.

The English Institute Time Clauses (ITC Hull) policy excludes the liability of the hull underwriters by means of the Running Down Clause. The Running Down Clause furthermore excludes the wreck removal liabilities. The damage, which the vessel causes to the shore, port structures, the cargo inside the vessel, the persons on board the vessel, possible loss of life and personal injury are all excluded of the hull underwriters. The P&I Club insures all these third party liabilities. The Hull policy also excludes the wreck removal costs and any other vessel damage or loss involved in the collision\textsuperscript{162}. The German and Scandinavian types of hull policy accept part of the liability caused to other fixed or floating objects other than the vessel itself. The liability is limited by the hull policy. The P&I Club can cover excessive claims.

\textsuperscript{160} UK P&I Club, Introductory guide to P&I cover, Introduction
\textsuperscript{161} UK P&I Club, Introductory guide to P&I cover, Collision Liabilities
\textsuperscript{162} UK P&I Club, Other risks excluded from the Running Down Clause
9.4 Liability insurance: The International Group of P&I Clubs (Annex 1)

The complete liability insurance cover program provided by the mutual P&I Club system can be found in Annex 1.

The International Group of P&I Clubs consists of three functioning groups:

1. The Group Constitution
2. The International Group Agreement
3. The Pooling Agreement

9.4.1 The Group Constitution

The three core objectives of the Group are consisting of the operation of the claims pooling arrangement between the individual Clubs for claims in excess of the individual club limit of USD 10 million for 2016. Excessive claims above the first tier limit of 10 million USD are mutually covered by the collective reinsurance of pooled liabilities by the Group. Secondly, the Group collaborates by providing each other with expertise and views on special matters, ship-owners’ liabilities and the insurance of such liabilities. Thirdly, the International Group represents the International P&I Group Clubs during meetings with States, regulators, IGO’s, NGO’s and international ship-owner and marine insurance associations.

9.4.2 The International Group Agreement: Internal competition within the Group

The Group agreement regulates on which terms an individual club can accept entries from ship-owners. It is possible for ship-owners, as members of the individual clubs to move their insurance from one club to another, the freedom of movement. The agreement specifies the quoting of club call rates on their members. The individual clubs share information about ships or ship-owners in order to easily calculate membership rates. The different quotation factors, processes and setting of release calls, for vessels moving to another club or to a commercial insurer are taken into account by the agreement. Also, the agreement specifies the sanctions in case of failure to follow the agreed terms by the international group clubs. Finally, the Average Expense Ratio (AER), a measure of what it costs to operate a mutual liability insurance company, must be disclosed in the annual financial statement of the individual Clubs. The AER was introduced in 1998 in order to compare the administrative costs of the mutual P&I Clubs. The Clubs are obliged due to the EU Competition Directive to report their 5-year AER.

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163 International Group of Protection and Indemnity Clubs, Group Agreements
164 International Group Agreement 2013 (5)
The Average Expense Ratios (AER) of all fourteen P&I Clubs was 12.42% in the year of 2015.\textsuperscript{166}

The formula to calculate the Average Expense Ratio (AER) is:

\[
\frac{\text{Operating Costs}}{\text{Premium Income} + \text{Investment Income}} \times 100 \quad \text{\textsuperscript{167}}
\]

The mutual cooperation of the International Group of P&I Clubs is essential to cover all liability claims. The International Group Agreement is the foundation of the International Group of P&I Clubs.\textsuperscript{168}

9.4.3 The Pooling Agreement

The International Group of P&I Clubs is cooperation between individual P&I Clubs. Besides cooperation there is of course, also competition between the P&I clubs for claims up to a level of 10 million US dollar for the benefit of shipowners insured by group clubs. The pooling agreement provides a mechanism for individual group clubs to pool their larger risks. The pooling system provides cover for claims above 10 million US dollar, which is the limit of the individual group club. The pooling agreement specifies, which type of claims can be pooled. Furthermore, the pooling agreement specifies, which claims are excluded from pooling. Claims are calculated, contribution basis, arrangement of collective reinsurance purchase and allocation of reinsurance, pooling and reinsurance arrangements.

9.4.4 The pooling arrangement

The pooling arrangement of the international group of P&I Clubs requires that participating insurers first insure the risk (P&I Clubs) then reinsure it to the pool (International Group - Hydra) rather than passing risk directly to the pool. It is generally more efficient to purchase reinsurance on a collective basis. It is a unique system, whereby one pool of thousands of members agrees on a multilateral reinsurance contract. The pooling arrangement of the International Group of P&I Clubs does not have their own fund, the claims are covered ad-hoc based on calls from the individual Clubs. Several insurers underwrite the risk, each covering a part of the risk agreed by them with the broker as intermediary between the pool and the reinsurers.\textsuperscript{169} The International Group of P&I Clubs itself is a not-for-profit organisation but the purchase of reinsurance, in order to cover large claims in the general excess layers is of commercial reinsurers.\textsuperscript{170}

\begin{itemize}
  \item \textsuperscript{166} Tysers, Average Expense Ratios (AER), p. 12
  \item \textsuperscript{167} International Group Agreement 2013, Schedule 3 Average Expense Ratio
  \item \textsuperscript{168} International Group of P&I Clubs, Group Agreements, International Group Agreement (IGA)
  \item \textsuperscript{169} Ernst & Young, study on co(re)insurance, pooling arrangement, p. 50
  \item \textsuperscript{170} Ernst & Young, study on co(re)insurance, type of organization, p. 57
\end{itemize}
9.4.5 P&I Club premium

The members of the P&I Club are the ship-owners. Each member should pay premium according to his claim record. The collected club’ premium can be divided into different categories. The spending of premium can be divided in four cost categories:\textsuperscript{171}

1. Burning layer claims
2. Abatement layer claims
3. International Group Pool claims
4. Reinsurance costs

The clubs’ premium income is invested and will generally cover the administrative costs of the club.

9.4.6 Burning layer claims

This is the first layer of claims within the individual Club’s retention, which consist of burning layer claims and abatement layer claims. The burning layer claims are covering the first part of claims up to 2.5 million US dollar (policy year 2016/17). These claims are the members’ individual operational claims. The burning layer claims are part of the members’ individual experience record. The record consists of the previous six years plus the current year. The calculation of a member’s premium is based on the individual member’s claims record for claims below 2.5 million US dollar\textsuperscript{172}. In this period of time, the member, being the ship-owner must pay for his own claims up to 3 million US dollar. The mutual system of P&I insurance states that each member pays contributions to a level that reflects his own cost and risk. The on-going operational burning layer claims are furthermore effected by changes in the ship-owners’ fleet, trading, manning, deductibles, risks cover and applicable legislation (ships register), etc. The P&I Club will forecast the expected costs of claims in the near future on specific type of ships based on the club’s statistics. The inflation is also a factor to take into account. Finally, not all claims are yet taken into account but have already occurred or will happen during the policy year\textsuperscript{173}.

\textsuperscript{172} The Swedish Club, Protection & Indemnity Insurance 2016/2017, 11 December 2015
\textsuperscript{173} J. Reily, Underwriting methodology, Burning layer claims
9.4.7 Abatement layer claims

The second layer of claims is actually, the second layer within the individual club retention, which are claims of the individual club members up to the limit where the International Group Pool layer starts. The second layer is the abatement layer claims, club member claims, between 2.5 million US dollar up to 10 million US dollar (policy year 2016/17). All members of the club mutually cover this section of claims. The first and second layers are the two layers of the individual club retention, which are the limits covered by the individual club members on a mutual basis. It is up to the individual P&I Club to cover claims and purchase reinsurance up to the limit of 10 million US dollar (2016/17 policy year). The claims, which fall under the second layer of claims within the Individual Club Retention, are not occurring very frequent but random. Second layer claims can happen to all members and therefore, do not relate to specific type and size of vessels, all members contribute mutually for these types of claims. Due to the fact that every member can have a claim of this size, the claim is shared mutually within the group instead of being recognised as individual claim of the club member’s own record within the first layer of the club. Actually, the mutual system of P&I Clubs starts at the second layer. The costs of these claims are shared mutually within the P&I Club, according to a fair formula. The fair formula is a combination of the tonnage and premium calculated for each ship. The out coming figure combines tonnage and contributed premium to the club as one.

9.4.8 International Group Pool layer claims: Coinsurance

The third layer of US dollar 70 million is covering claims between 10 million US dollar and 80 million US dollar (policy year 2016/17), and is called the Pool retention. The third layer is the layer of coinsurance, whereby the individual Clubs provide coinsurance for excessive claims as a group. The International Group of Protection & Indemnity Clubs is sharing excessive claims of individual P&I Club members: the pooling agreement. The International Group is governed by a constitution. All of its members take part in the pooling agreement. The contribution of each P&I Club is based on a complex formula, which is a combination of the total tonnage, premium collection and loss record of the P&I Club. The 70 million USD layer covered by the international group is split in two: the Lower Pool retention and the Upper Pool retention. The lower pool covers claims that start at 10 million USD up to 45 million USD. The Upper Pool layer covers claims that start at 45 million up to 80 million USD. The co-insured coverage of claims is partly reinsured through the International group’s captive insurance company, Hydra. These types of claims are very random and only occur averagely twice a year.

174 UK P&I Club, Circular, 1/16 February 2016
175 The Swedish Club, Protection & Indemnity Insurance 2016/2017, Retention
176 J. Reily, The Standard Club, Abatement layer claims
177 J. Reily, The Standard Club, Overview, Underwriting methodology, June 2015
Within the second layer of the individual clubs, members contribute for each other’s claim within the club. In the third layer, all thirteen international group clubs contribute for the costs of excessive claims within the third layer of claims. Over a certain period of time, each P&I Club should pay back the claims that are covered by the pool. The calculation of club’s contribution is based on a formula, taking into account the club’s total tonnage, premium, claims record and loss record compared to the other international group clubs. The third layer claims costs can be divided in claims cover and the reinsurance costs of Hydra. All the costs are passed on to the club’s members. Comparable to the second layer, abatement costs, the third layer contribution of members is a combination of the tonnage and premium of each ship. At the end, the costs are spread over several policy years, each club should pay an amount of contribution to the international group comparable to the amount of what it takes out of the third layer international group cover.

The international group itself covers the lower pool claims from 10 million US dollar up to a limit of 30 million US dollar. Lower pool, excessive claims, between 30 million USD and 45 million USD are reinsured by Hydra alone. The claims in excess of 45 million USD but lower than 80 million USD are for 92,5% reinsured by Hydra and 7,5% must be paid by the individual club itself.

9.4.9 General excess of loss (GXL): Reinsurance (see Annex 1)

What is excess of loss (XL) reinsurance?

The reinsurers are independently liable for part of the defined amount of any marine claims that are within the predefined market reinsurance layer in excess of the pre-determined level. The recovery of claims can only be made if the loss or damage to the insurer, being the International Group through its captive insurance company Hydra, is exceeding the retention limits. The retention limits are the first three layers, being the individual club’s retention, the international group’s retention and pooling retention via Hydra. The insurer (The group – Hydra) will aggregate the claims it has suffered to determine when the retention has been breached and a recovery from the reinsurers can be made. Captive reinsurance company Hydra divides the purchase of GXL reinsurance into three separate layers. It is divided in order to offer continuous and sufficient cover to the members of the P&I Clubs. The pool members are reinsuring the risks into the pool and indemnify, accept retrocession out of the pool, if faith hits one of them. Hydra, being the captive reinsurance company of the international group, owned by the members, arranges the reinsurance collectively. The control of underwriting and selection of reinsurers is performed by Hydra, in a collective way instead of by the individual P&I Clubs or even the members themselves.

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180 J. Reily, The Standard Club, IG Pool layer claims
181 J. Reily, The Standard Club, IG pool claims
182 Japan P&I Club, IG Pool and Reinsurance Programme for 2016/17 Policy year
183 Ernst & Young, Study on co(re)insurance, pools and on ad-hoc co(re)insurance agreements on the subscription market, Glossary of Insurance Terms, Excess of loss reinsurance (XL) p. V
The arrangements of the International Group with the individual P&I Clubs and the P&I Clubs with its members are a pure claims sharing agreement on different levels. The members’ contribution depends, partly on their own claims’ record but also on other pool claims of other members within the pool\textsuperscript{184}.

The fourth layer of claims is covered by co/reinsurance contracts purchased from multiple commercial reinsurance companies through, for example Lloyd’s insurance market. The fourth layer can be divided into four co/reinsurance layers. Different co/reinsurers underwrite the four different layers. The first layer is partly reinsured by captive reinsurance company Hydra. Hydra is partly reinsuring the first layer of 500 million US dollar, starting at 80 million US dollar up to a limit of 580 million US dollar. The second layer of 500 million USD is starting at 580 million USD up to 1,08 billion USD. The third layer has doubled to 1 billion USD and covers the risk from 1,08 billion USD up to 2,08 billion USD. The final, fourth overspill reinsurance layer of 1 billion USD starts from 2,1 billion USD dollar up to 3,1 billion USD.\textsuperscript{185}

The collective and self-owned captive reinsurance company Hydra buys market reinsurance on behalf of the international group of P&I Clubs and is one of the co-reinsurers between 80 million USD and 580 million dollar. The reinsurance costs are calculated per gross tonnage (gt) and apply to all members of clubs within the international group. The reinsurance costs of ships differ per type of vessel. The distinction is made between four types of vessels, namely: dirty tankers, clean tankers, passenger ships and all other ship, including dry cargo ships. The mutual system is based on long-term fairness. The reinsurance costs are based on long-term statistics, due to the fact that the occurrence of these types of claims is limited. The different types of ships bear different risks\textsuperscript{186}.

In order to register a ship at a flag State you need to proof that the vessel is properly insured for tortuous, non-contractual liabilities towards third parties. The compulsory liability insurance certificates:

\textsuperscript{184} Ernst & Young, Study on co(re)insurance, Mul
\textsuperscript{185} Japan P&I Club, IG Pool and Reinsurance Programme for 2016/17 Policy year
\textsuperscript{186} J. Reily, The Standard Club, Reinsurance costs
10 Conclusion

Who is obliged to partly or wholly pay the costs for the removal of the shipwreck that is located in the territorial sea or the exclusive economic zone of the coastal State?

The payment and the amount of the costs for the raising, removal or destruction of the sunken, wrecked or abandoned vessel will depend on the party, who has to conclude the contract with a wreck removal company. The registered owner of the wreck is according to multiple coastal States jurisdiction strictly liable for the raising, removal and disposal of the wreck to a designated place by the authorities. The second option is a limited liability regime whereby the owner can legally abandon his vessel and invoke his right on limitation of liability. In case of a strict liability regime the registered owner, in cooperation with his P&I Club has to remove the wreck as per the requirements of the coastal State. The registered owner in cooperation with the P&I Club will conclude a contract with a competent wreck removal company. In the other situation whereby the national law of the coastal State allows limitation of liability for the removal of the wreck, the public authority will deal with the abandoned wreck removal operation. In most cases by means of a public tender notice for the raising, removal and disposal of the wreck in case the registered owner of the wreck has obtained his right to invoke limitation of liability. The amount of liability in case of a limited liability regime is the amount of the wreck fund or the property fund. The applicable fund depends on the place and jurisdiction of the zone and of which coastal State the wreck is located.

Coastal State jurisdiction to legislate and enforce wreck removal liability can indirectly be found in the United Nations Convention for the Law of the Sea. Distinction must be made between internal waters, territorial waters and the exclusive economic zone. In the internal waters and the territorial sea, the coastal State has full sovereignty, legislative and enforcement jurisdiction. In the exclusive economic zone, the coastal State has sovereign rights, limited spatial jurisdiction. Article 56(1)(b)(iii) of the Law of the Sea makes clear that the coastal State has legislative and enforcement jurisdiction with regard to the protection and preservation of the marine environment in the EEZ. It will be very hard to proof that a wreck located in the territorial sea or the exclusive economic zone will not harm the marine environment. Therefore, this can be considered as the legal basis whereupon coastal States can legislate wreck removal law in their national law. The coastal State Belgium for example already implemented national wreck removal law in their national law to protect the marine environment against obstructing wrecks that cause harm or potential harm to the marine environment in the territorial sea as well as in the exclusive economic zone before the Nairobi wreck removal convention. More on the international level, the Nairobi International Convention on the Removal of Wrecks that entered into force: 14 April 2015 is providing a uniform international legal basis for the removal of wrecks in the exclusive economic zone and possibly also in the territorial sea of the coastal State after making use of the optional clause.
The choice of the coastal States to obtain a strict liability or a limited liability regime is not regulated by the Nairobi wreck removal convention. The possibility to limit liability for the removal of wrecks is left open by the Nairobi wreck removal convention. The limits of liability are regulated by the Convention on Limitation of Liability for Maritime Claims. The coastal State decides upon the applicability of the possibility for the registered ship-owner on limitation of liability for maritime claims by signing, adopting and or ratifying the LLMC convention as amended by the protocol in full without reservations, which means including Article 2(1)(d) and (e):

*Claims in respect of the raising, removal, destruction or the rendering of harmless of a ship, which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship including the cargo.*

But, article 18 provides contracting States the possibility to make the following reservation:

*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 claims in respect of raising, removal, destruction or the rendering of harmless of a ship, which is sunk, wrecked, stranded or abandoned including anything that is or has been on board the ship including the cargo.*

The reservation will decide the applicable liability regime vis-à-vis the registered owner of the wreck. The three possible regimes of liability for the registered wreck owner are:

1. Presumed, strict liability regime;
2. Limited liability regime in combination with a separate wreck fund; or
3. Limited liability regime as per international LLMC property fund limits.

The amount of the fund will depend, whether the coastal State has signed, adopted and or ratified the LLMC convention or the amended Protocol. The Protocol has substantially increased the limits of liability. Furthermore, the amount can be updated by a tacit acceptance procedure. The registered owner of the wreck located in the internal waters, territorial sea or the exclusive economic zone is obliged to pay the wreck removal liability amount as set by the law of the coastal State. In case another accident as for example a collision with a third party is the cause of the wrecked, stranded and abandoned vessel, the wreck owner has possibilities to partly or wholly recover the wreck removal costs. The amount, which can be recovered from other debtors that might have been the cause of the wreckage of the ship due to a collision, depends on the place of the accident, the flag of registry and location of business of the other vessel involved.
The problem is that recourse actions by the creditor against the debtor of the collision accident are sometimes related to another jurisdiction than the jurisdiction of the coastal State demanding the removal of the wreck.

*An action for collision between seagoing vessels, or between seagoing vessels and inland navigation craft, can only be introduced:*

1. *Either before the Court where the defendant has his habitual residence or a place of business;*

2. *Or before the Court of the place where arrest has been effected of the defendant ship or of any other ship belonging to the defendant which can be lawfully arrested, or where arrest could have been effected and bail or other security has been furnished;*

3. *Or before the Court of the place of collision when the collision has occurred within the limits of a port or inland waters.*

1. The first option of a Court where the defendant has his habitual residence or a place of business can be a place where the liability for the removal of wrecks is part of the general LLMC convention property fund. This limitation of liability of the property fund can be much lower than in the coastal State that ordered the removal of the wreck. Therefore, the amount of recourse can possibly be less than the incurred strict or limited wreck removal liability by the registered wreck owner vis-à-vis the affected coastal State having jurisdiction. For example, if the debtor is registered in a State that only ratified the LLMC 1976 Convention without reservations, the limited amount of liability will be the property fund limit to cover all property losses including the loss of the vessel and the removal of the wreck. In this situation the formal ship-owner, being the owner of the wreck is hit by the los of the vessel and the costs for the removal of the wreck. The concept of faith hitting you twice still exists today.

2. The second option of a Court where the arrest has been affected of the defendant ship or of any other ship belonging to the defendant will also cause uncertainties for the registered wreck owner, the plaintiff. The place of the arrest will again not always incur the same limits of liability on the defendant of the collision as the limited or strict liability regime that applied in the coastal State on the removal of the wreck.

3. The third option is the most beneficial and fair option for the registered wreck owner because a Court in the same place as where the claim for the removal of the wreck is executed will judge the liability concerning the collision accident that led to the sinking of the vessel. The collision liability case will be judged under the same conditions as the wreck removal proceedings. The wreck removal costs can be recovered if the defendant has been convicted liable for the collision that led to the sinking of the other vessel. This is system is the fairest system for the hit ship-owner in order to get compensated by the tortfeasor.
What are the major challenges for P&I Clubs in case the risk of shipwreck removal liability claims is strict, presumed and unlimited?

The reinsurance costs of the International Group of Protection and Indemnity Clubs (IGP&I) is the major challenge of the coming years to cover liability risks in excess of 80 million US dollar. The international group of P&I Clubs reinsures liability risks in excess of 80 million US dollar. These risks are reinsured at multiple co-insurers all insuring parts of the risk. The reinsurance premium asked by commercial market insurers depends on the insurance climate, the willingness to cover risks against a certain premium price. After a major accident the market price of reinsurance will increase.

The problem of wreck removal liability claims is that these types of claims are unpredictable and can happen every time of the day. The costs in case it goes wrong are enormous. The Costa Concordia reached the third excess layer of underlying, which means that the commercial insurance market is suffering losses from the claim. This causes an enormous increase of reinsurance premiums for the specific type of passenger vessels. The problem is that tomorrow one of the biggest container vessels carrying more than 19,000 TEU, more than 400 metres in length can sink in the middle of the English Channel blocking all inbound and outbound traffic from and towards European ports. The major challenges for P&I Clubs are that on the one hand people will say that the risks have decreased due to the developments of technology like GPS, Radar, ARPA, ECDIS and other navigation systems. But on the other hand the risks in case things go wrong have hugely decreased. The service of maritime shipping was forced to become more efficient due to increased fuel prices, lower profit margins, globalisation, increased competition, labour costs etc., which resulted in lowering the operational costs per ton, package or unit of cargo. The manoeuvrability of these enormous modern ships in narrow, draught ports and channels is highly complex and required professionalism and expertise.

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<td>USD 3,7791</td>
<td><strong>USD 3,1493</strong></td>
<td><strong>USD 1,3992</strong></td>
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What can be considered as the right balance between the registered owner of the wreck, vis-à-vis all other involved parties for paying the raising, removal and disposal of the wrecked ship?

The comparison between the international oil pollution compensation funds system of liability versus the international wreck removal liability system.

The international oil pollution funds exist of the first tier of ship-owner liability and two additional funds contributed by persistent oil receivers that receive more than 150,000 tonnes of persistent oil in ports or terminals in a Member State, after carriage by sea per calendar year. The contribution per ton of contributing oil was 0.0029061 pound over calendar year 2014/15. Compared to the reinsurance costs of a dirty oil tanker being 0.4537 USD per gross tonnage. If we compare the reinsurance costs of a dirty oil tanker with a size of 45 000 gross tonnage (GT) with a cargo capacity of 45 000 tons, and this tanker delivers one full load of cargo every two weeks to the same terminal located in a Member State of the IOPC fund. This means a delivery of 26 full cargo loads during one calendar year. The total amount of received persistent oil will be 1.170.000 tons. The total contribution to the fund will be 3400 Pond sterling, (4900 USD). The reinsurance premium for that particular vessel will be 29.551,50 USD. Meaning that the reinsurance of the vessel is six times more expensive than the contribution to the international oil pollution fund. The International P&I Club corporately arranges reinsurance on behalf of all members for claims in excess of 80 million USD. The ship-owner's strict liability for oil pollution damage of a dirty-oil tanker of this size is: 29.750.000 SDR. The trend developments of reinsurance costs can be observed as highly increasing after a major accident like the Costa Concordia has occurred. In 2011, just before the accident of the Costa Concordia, the reinsurance costs of passenger vessels for possible claims in access of USD 60 million was USD 1.3992 per GT, which rapidly increased after the accident up to USD 3,7791 per GT for claims in excess of USD 70 million, for this policy year, 2016/17 the reinsurance premium has slightly decreased to a reinsurance rate of 3,5073 USD per GT.

The ship-owner is a service provider who will exploit his vessel including his services, equipment, expertise and all required operational requirements in order to exploit the vessel. The charterer is the party hiring the vessel in order to organise sea carriage of the cargo from port A to port B, on behalf of the cargo owner. The charterer is the user of the vessel but not in operational control of the vessel in case of a voyage or a time charter. The cargo owner is paying the transport price for the services of the intermediate charterer and ultimately also the charter price for the hire of the vessel of the ship-owner. The charterer is a department at the cargo owner or an intermediary, also possibly a freight forwarder. The coastal State is protecting the interests and the general safety of the general public, the local economy and the marine environment. The coastal State is responsible for the accessibility of ports by sea, inland waterways, rivers, locks and canals etc. The passenger is on board of passenger ships, the reason that these vessels are sailing. The cruise business is fully depending on cruising passengers in order to be profitable.
The international maritime nations, the coastal States, the ship-owners, the ports and the trading community needs to find a right balance between operational costs of maritime shipping, which is highly subjected to scale enlargement to lower the operation costs but thereby increasing the risk of excessive liability claims if things ultimately go wrong. It is a choice, which needs to be made on the international level between low operational costs, ultra efficient vessels and a newly developed risk distribution system or the chos of continuing with the current system and waiting till it goes wrong causing huge wreck removal claims for the ship-owner and the P&I insurance market. The insurance costs, a fixed operational cost will further increase and lead ultimately to higher operational costs for the whole maritime shipping sector.

10.1 Final conclusion

How can the costs for the removal of shipwrecks that are obstructing the accessibility to ports, the safety of navigation or which are harming the marine environment, be distributed in order to compensate the costs in a balanced way?

The strict liability regime of ship-owners for oil pollution damage in combination with the fund and optional supplementary fund is a balanced system to cover large marine accidents. This system is completely different compared to the strict liability regime for the removal of sunken, wrecked and abandoned vessels including their cargo. The major difference is that the receivers of persistent oil are contributing to the oil pollution compensation fund, which will cover the second and also possibly the third tier of oil pollution damage claims. The first shore-side receiver of the persistent oil that has been shipped overseas contributes to the oil pollution funds. The paid contribution per received ton of persistent oil is far less than the reinsurance premium that ship-owners are paying for the reinsurance of excessive claims exceeding 80 million USD.

All parties, companies, shippers, traders, carriers, ship-owners, coastal States and other persons want to pay as less money as possible for the carriage of goods overseas. The question is do we want to contribute to a compensation system comparable as to the international oil pollution compensation funds in case things go wrong with ships and their cargo on board? The oil receivers are paying contribution for the possible oil pollution at sea, but are container terminals, dry bulk terminals, other cargo receivers and passengers also willing to contribute to the removal of wrecks that are obstructing the navigational route of vessels and harming the marine environment? And, secondly who and how much must be contributed? Must the receiver of a container contribute? Must the steel mil that receives iron ore contribute? Must the car terminal contribute? Must the passenger that goes on a cruise holiday contribute? The balanced system must be a system that equally shares liability pro rata over all involved parties that are involved in the shipment of the cargo by sea.
Finally, I used financial data of the 20 biggest wreck removal contracts of 21st Century that have been concluded by the International Group of P&I Clubs. The table can be found in annex 2, p. 80. In the table, I combined the financial data of 16 wreck removal cases with the set limits of liability as per latest LLMC protocol amendments. The data, which I combined in the table is the tonnage liability amount for each particular wreck and the actual costs of the wreck removal operation. I could not find all the required data for all 20 wreck removal contracts but I calculated and compared the total costs with the limited liability amount for 16 wreck removal operations. The LLMC Protocol Property fund should not have been sufficient in none of the cases to cover the full wreck removal costs. In 31% of the wreck removal cases, the costs would have been covered by more than 50% by the property fund. In 38 per cent of the cases the property fund covered between 30 and 50 per cent of the costs. The wreck removal cases that were inadequately covered by the fund, meaning below 30 per cent of the wreck removal costs should have been covered by the property fund in 31 per cent. The complete review of all the costs can be found in Annex 2.

The property fund limitation of liability limits calculated as per amendments:

| Ship not exceeding 2 000 units of gross tonnage (gt) | 1 510 000 SDR * |
| Ship between 2 000 and 30 000 units of gt | 1 510 000 SDR plus 604 SDR for each additional gt (18 422 000 SDR) |
| Ship between 30 000 and 70 000 units of gt | 18 422 000 SDR plus 453 SDR for each additional gt (36 542 000 SDR) |
| Ship 70 000 units of gross tonnage or over | 36 542 000 SDR plus 302 SDR for each additional gt |
| Ship 140 000 units of gt (example) | 57 682 000 SDR |

| % of total wreck removal costs covered by the property fund | % of the all wreck removal cases |
| ≥ 50% and above | 31% |
| ≥ 30% but < 50% | 38% |
| < 30% | 31% |
11 Recommendations

Both the limited liability and the strict ‘unlimited’ liability regimes for the removal of wrecks are not a balanced and equal concept of sharing wreck removal liability. The limited liability fund as per latest update of the LLMC Convention, the amendments to the Protocol 1996 are not sufficient to cover at least more than 50 percent of the costs in more than 50 percent of the cases. I recommend that the right balance between ship-owner liability and other parties involved in the transportation of goods, partly or wholly by sea must be shared equally to the extend related to the transport. The amount of liability for the ship-owner is hard to calculate, the wreck removal operational cost depend on the type, amount and quantity of cargo on board, the location of the wreck and the depth of the water. At least, the average amount of the costs must be insurable for the ship-owner against a reasonable premium. The major insurance cost problem is the additional high reinsurance premium for general excess claims, which is highly influenced by the risk factor, which wreck removal costs generally have. As we all have seen after the sinking and wreck removal operation of the Costa Concordia, the reinsurance costs immensely raised.
11.1 Finally, contributing to the complete costs of wreck removal:

At the beginning the maximum liability must not exceed the International Group of P&I Clubs’ retention limit of USD 80 million. Any liability claim above 80 million is called a general excess claim for which the International Group is reinsured on the commercial insurance market. The reinsurance premium, which have to be paid are much higher and in addition of the general P&I Club calls, which the ship-owners, the members of the individual P&I Club have to pay. The operational costs of the ship-owner will be lower, if the limit of liability for wreck removal operations is set at 80 million. The risk will be more predictable for the liability insurer and the ship-owner will have to pay a lesser amount of additional reinsurance premium. But, who has to pay the additional costs for the removal of the wreck operation, if the ship-owner can limit his liability? The International Wreck Removal Compensation Fund being a fund system comparable to the International Oil Pollution Compensation Funds. Receivers of more than 150,000 tons of persistent oil every calendar year, which are located in a Member State of the fund convention, contribute for every ton of persistent oil they receive a contribution to the fund. The Member States of the International Oil Pollution Fund can call upon the fund in case it suffers from oil pollution damage. The fund system is a so-called public insurance system. Who will be the contributor in case of a comparable system for the removal of wrecks? The cargo receiver or the passenger must pay the contribution. The cargo receiver must pay the cargo contribution after the cargo has been declared. In case of passenger transport, the cruise operator must levy a fee within the contract of carriage on every passenger before every start of a cruise voyage. In case of an accident at sea and the sunken, wrecked and abandoned vessel, the wreck is ordered to be removed as per international regulations of the Nairobi Wreck Removal Convention. The coastal State in cooperation with the International Group of P&I Clubs and the registered owner of the wreck need to organise and conclude a wreck removal contract and finance the contract by means of the first tier ship-owner wreck fund, the second tier wreck removal compensation fund and finally a third general excess reinsurance option for exceptional cases exceeding USD 500 million.
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Boek II. Zeevaart en Binnenvaart

Titel II. Eigenaar en bemanning van zeeschepen.
Afdeling I. Aansprakelijkheid van scheepseigenaars.
Afdeling II. Beperking van aansprakelijkheid

Wet Houdende goedkeuring en uitvoering van diverse International Akten inzake zeevaart.
Hoofdstuk V. Scheepvaartongevallen.
11 APRIL 1989

Wet ter bescherming van het mariene milieu en ter organisatie van de mariene ruimtelijke planning in de zeegebieden onder de rechtsbevoegdheid van België.
20 JANUARI 1999

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Burgerlijk Wetboek Boek 8. Verkeersmiddelen en Vervoer

Titel 6. Ongevallen
Afdeling 6. Aansprakelijkheid voor de kosten van het lokaliseren, markeren en opruimen van een wrak
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<tr>
<th>Year</th>
<th>Vessel name</th>
<th>Wreck removal cost</th>
<th>GT size (MT)</th>
<th>Type of vessel</th>
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