



**The 92<sup>nd</sup> session of the IMO Legal Committee**  
**Draft Wreck Removal Convention**

The main topic on the agenda of the 92<sup>nd</sup> session of the IMO Legal Committee, held in Paris from 16-20 October, was the draft Wreck Removal Convention (DWRC). This was the last time for the Committee to consider the DWRC before it is discussed and finalised at the Diplomatic Conference which is to take place between 14 -18/5/07.

The latest draft was considered in plenary and, given the added time allotted to this agenda item, the Committee was able to consider all of the draft articles.

*(a) Terrorism*

The IG submitted a paper, with the ICS, in relation to the liability of the registered owner and the insurer for acts of terrorism, which has been raised on many occasions, proposing a blanket defence for both the owner and the insurer for such liabilities.

Whilst some delegations expressed their support for this proposal, other delegations did not, with one delegation expressing a willingness to explore other potential solutions, without elaborating on what these other solutions are that might be acceptable to States and workable in practice. Nonetheless, although the Committee decided to retain the current text and reject the IG/ICS proposal, this intervention expressing a willingness to explore other potential solutions offers a basis for continuing the discussions with States. It is clear that the solution that has been agreed on the terrorism issue in respect of the Athens Convention is not appropriate for the DWRC although elements of it could be. However any proposal that is developed between now and the Diplomatic Conference will need to be taken up by friendly key States, if there is to be any chance of resolving this issue in the text of the DWRC itself.

*(b) Extension of the DWRC to the Territorial Sea*

Despite the concerns that were raised in relation to liabilities under the Convention arising from acts of terrorism, the priority item for States was the discussion on the application of the Convention to the territorial sea. The geographical scope of the current DWRC extends only to the EEZ and does not cover the territorial sea. A group of delegations opposed application to the

territorial sea on the basis that such a mandatory wholesale application of the Convention was incompatible with their sovereign rights under the international law of the sea as codified in UNCLOS. Other states proposed either extending the scope of the Convention to the territorial sea (mandatory application) or as an alternative an 'opt in' whereby states could decide to extend its application to the territorial sea (non-mandatory application), on the basis that most wrecks are situated in the territorial sea and such States wished to make use of the liability and insurance provisions of the Convention in such wreck removal cases. There was little support for the mandatory application proposal.

The existing text, Article 13(2), simply permits a State to apply the insurance provisions of the Convention to waters subject to its jurisdiction, which means that a State may seek to apply the compulsory insurance, direct action and certification provisions to its own domestic wreck removal liability regime which may differ from the Convention liability regime. The IG made clear to delegates in plenary, and to the informal working group that had been established to discuss the issue and in the margins, that Clubs would not be in a position to issue 'blue cards' (if they agreed to do so in the first place) for liability regimes that might differ from the Convention regime. As a result States would not then be in a position to issue the certificates called for under the Convention. A number of states fully understood and supported the IG's position.

The Committee failed to make progress on this issue during the session.

After an extensive debate the Committee agreed to retain the existing Article 13(2) but partly at least due to the IG's intervention, to retain the 'opt in' proposal. It was agreed that a correspondence group should consider the territorial sea issue (but not the terrorism issue) between now and the Diplomatic Conference.