

**The 2007 Nairobi Convention on the Removal of Wrecks’
(in)appropriate regime for alternative fuel liability and compensation?**

CMI IWG on Decarbonisation - Green Fuels

Discussion Paper dated 6 November 2025¹

I. Introduction

The “Green Fuels” Work Stream of the CMI’s International Working Group on Maritime Decarbonisation has analyzed in its Gothenburg discussion paper 4 June 2024² that there is currently no international civil liability regime in force to deal with incidents involving alternative fuels when being used as fuel, or when carried as cargo. The five types of alternative fuel covered in the discussion paper (namely: LNG, Methanol, Ammonia, Hydrogen and Biofuels) do not seem to fall within the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (“Bunkers Convention”), the International Convention on Civil Liability for Oil Pollution Damage (“CLC”) nor the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 as amended in 2010 (“HNS Convention 2010”), when used as bunkers.³

Since publication of the Gothenburg discussion paper, further discussions took place and in March 2025 the IMO Legal Committee approved the inclusion of a new output on the suitability of the IMO liability and compensation regimes for alternative fuels with a target completion year of 2027. An informal correspondence group has been established that has already started the work. The CMI strongly supports the work of the IMO and is prepared to assist with its expertise. In this respect, the CMI IWG has assessed potential gaps in relation to liability and compensation of the Nairobi International Convention on the Removal of Wrecks, 2007 (the “Nairobi Convention”) in the event of a pollution incident involving alternative fuels.

This paper analyses whether the Nairobi Convention duly regulates the civil liability and compensation following shipping incidents involving alternative fuels. In a first step, it sets out the purpose and scope of the Nairobi Convention, which has been developed to establish a uniform regime for the *removal*⁴ of wrecks that constitute a risk to navigation or the marine

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² <https://comitemaritime.org/wp-content/uploads/2024/07/Gothenburg-discussion-paper-Green-Fuels-1.pdf>

³ The position regarding biofuels and biofuel blends is further considered by the IWG. A separate paper is being prepared in this respect.

⁴ Art. 1 para 7 Nairobi Convention.

environment. Following that it will be shown that alternative fuels (LNG, Methanol, Ammonia, Hydrogen and Biofuels) can create a hazard in terms of the Nairobi Convention, but that the Nairobi Convention is not the appropriate regime in force to deal with liability and compensation after incidents involving alternative fuels.

A table with a schematic overview of the gap analysis is attached as Annex 1.

II. Purpose and Objective Scope of Application of the Nairobi Convention

1. Purpose

In accordance with its preamble, the objective of the Nairobi Convention is to establish a uniform regime aiming at ensuring the prompt and effective removal of wrecks that constitute a risk to navigation or the marine environment, covering the competences of an effective state to take appropriate measures as well as to guarantee the payment of costs derived from the removal of wrecks. The primary aim of the Nairobi Convention is therefore to clarify rights, duties and responsibilities relating to the elimination of hazards posed by wrecks located beyond the territorial sea of a state.⁵ Accordingly, the Nairobi Convention provides in Article 4 that it applies to wrecks in the Convention area, as defined in Article 1 para 1.⁶

The removal of wrecks has different implications. The objective of the Nairobi Convention requires a hazard posed by the wreck. A wreck may constitute a hazard to navigation for other vessels. The nature of the cargo on board and its potential risk to cause substantial damage to the marine and coastal environments is a further concern. The services required for the removal of the wreck have become increasingly expensive, which is an issue for those coastal states involved dealing with the removal of hazardous wrecks. The Nairobi Convention attempts to resolve these and further aspects and to provide the affected States with rights to remove the wreck, determine whether a hazard exists and to cover the costs of aspects of the wreck removal, rather than creating a specific liability regime for damages arising from a pollution incident.⁷

2. Geographical and Material Scope of Application

Whereas prior to the effectiveness of the Nairobi Convention, each coastal state was entitled to take appropriate measures concerning the removal of wrecks within its territory,

⁵ *Michel*, Introductory Note to the Nairobi International Convention on the removal of wrecks [2007], p. 694; *De Boer*, CMI Yearbook 2007-2008, p. 336.

⁶ *Kröger*, DVIS A 103, Rn. 8.

⁷ *Gaskell / Forrest*, The Law of Wreck, Chapter 7, 78.

including the coastal sea without any limitations, with the Nairobi Convention the geographical scope of the States' jurisdiction has been extended to the Exclusive Economic Zone (EEZ) of State Parties.⁸ If a State Party has not established an EEZ, the Nairobi Convention shall apply to an area of 200 nautical miles from the baseline.⁹ The Nairobi Convention clarifies which powers States have concerning wrecks beyond the territorial sea. A State Party may extend the application of the Nairobi Convention to wrecks within its territory, including its coastal sea.¹⁰ Thus the Nairobi Convention mandatorily applies to areas beyond the territorial sea with an opt-in provision for states to apply certain provisions to their territory.¹¹

The Nairobi Convention deals on the one hand with the authority of a State Party to order the removal of wrecks and to enforce the removal oneself and, on the other hand, deals with the liability of a shipowner for the costs to remove the wreck.¹² The rights of a State Party are triggered when a wreck may pose a hazard in the area of the Nairobi Convention.¹³ The requirement of a wreck in the convention area is a condition precedent. The Nairobi Convention does not deal with liability and compensation of other damage suffered by other parties.

3. "Wreck" in terms of the Nairobi Convention

According to Article 1 para 4 of the Nairobi Convention "*wreck*", means:

- (a) a sunken or stranded ship;¹⁴ or
 - (b) any part of a sunken or stranded ship, including any object¹⁵ that is or has been on board such a ship;¹⁶ or
 - (c) any object¹⁷ that is lost at sea from a ship and that is stranded, sunken or adrift at sea;¹⁸
- or

⁸ The EEZ can be in some countries (see the Netherlands) a relatively big area.

⁹ Art. 1 para 1 Nairobi Convention.

¹⁰ Art. 3 para 2 Nairobi Convention. Many state parties have made use of this extension. A helpful overview is given by Skuld in its 2025 insight: <https://www.skuld.com/topics/environment/wreck-removal-convention-2007/insight-nairobi-international-convention-on-the-removal-of-wrecks-wreck-removal-convention-2007/>

¹¹ The opt-in provision was inter alia proposed by Germany and paved the way for the adoption of the Nairobi Convention, see LEG/Conf.16/12, 24 April 2007 and for further background about the negotiations *Gaskell/Forrest*, *The Law of Wreck*, Chapter 7.

¹² *Howlett*, CMI Yearbook 2007-2008, p. 343.

¹³ Art. 2 para 1 Nairobi Convention.

¹⁴ German parliament papers, Bundestagsdrucksache ("BT-Drs") 17/12343, p. 30; *Kröger, Bernd* in DVIS A 103 p. 5 Rn. 9.

¹⁵ Find the definition of "Objects from ships" in *Gaskell/Forrest*; *The Law of Wreck*, Chapter 8.2 (e) (107).

¹⁶ BT-Drs 17/12343, p. 30; *Kröger, Bernd* in DVIS A 103 p. 5 Rn. 9.

¹⁷ See for "Objects and cargo lost at sea" in *Gaskell/Forrest*; *The Law of Wreck*, Chapter 8.2 (f) (108).

¹⁸ BT-Drs 17/12343, p. 30; *Kröger, Bernd* in DVIS A 103 p. 5 Rn. 9.

(d) a ship that is about, or may reasonably be expected, to sink or to strand, where effective measures to assist the ship or any property in danger are not already being taken.¹⁹ Further, only wrecks that follow a maritime casualty are covered by the Convention.²⁰

A “*Maritime casualty*” is defined in Convention as “*a collision of ships, stranding or other incident of navigation, or other occurrence on board a ship or external to it resulting in material damage or imminent threat of material damage to a ship or its cargo*”.

The term “*Ship*” is defined in Article 1 para 2 of the Nairobi Convention as seagoing vessel of any type whatsoever and includes hydrofoil boats, air-cushion vehicles, submersibles, floating craft and floating platforms, except when such platforms are on location engaged in the exploration, exploitation or production of seabed mineral resources. This broad definition enhances coastal States’ powers to intervene following a maritime casualty.²¹

4. Liability and Limitation of Liability

According to Article 10 para 1 of the Nairobi Convention, it is the registered shipowner who is liable for the costs of locating, marking and removing the wreck. The shipowner is required to take out insurance or other financial security to cover liability under the Nairobi Convention. The compulsory insurance cover must be stated in an official certificate issued by the state of registration and kept on board. It covers the strict liability of the registered owner and permits direct action against the insurer or guarantor, with the possibility of invoking limited defenses.²²

Such security must be in an amount equal to the limits of liability under the applicable national or international limitation regime, but shall in all cases not exceed an amount calculated in accordance with the Convention on Limitation of Liability for Maritime Claims, 1976, as amended.²³

The registered owner is, however, not liable for the costs of locating, marking and removing the wreck if this liability for costs would be in conflict with the CLC, HNS Convention 2010, or liability regimes for nuclear damage.²⁴ Furthermore, there is no

¹⁹ BT-Drs 17/12343, p. 30.

²⁰ Art. 1 para 3 Nairobi Convention.

²¹ *Howlett*, CMI Yearbook 2007-2008, p. 343.

²² Art. 12 para 10 Nairobi Convention.

²³ Art. 12 para 1 Nairobi Convention.

²⁴ More specifically: the Convention on Third Party Liability in the Field of Nuclear Energy, 1960, as amended, or the Vienna Convention on Civil Liability for Nuclear Damage, 1963, as amended, or National Law Governing or Prohibiting Limitation of Liability for Nuclear Damage.

liability of the registered owner for those costs and expenses, which are covered by the Bunkers Convention.²⁵ Thus, the Nairobi Convention has only a limited scope of application to such extent that the above listed Conventions do not apply.²⁶

The Nairobi Convention shall furthermore not affect the right of the registered owner to limit its liability under any national or international regime, such as the Convention on Limitation for Maritime Claims, 1976, as amended.²⁷ The status quo is maintained as regards limitation of liability of shipowners.²⁸ The Nairobi Convention does not itself provide for a specific limit of liability, but refers the issue back to national law, which may or may not allow limits for wreck and cargo removal claims, or to any limitation convention, to which that particular state may be a party to.²⁹

5. Types of Fuel Covered

The Nairobi Convention does not mention specific types of fuel which are covered. In accordance with Article 1 para 4 (b and c) Nairobi Convention it, however, includes not only the ship and its parts, but also objects that were or have been on board when the ship is stranded, sunk or drifting, or which is lost at sea and is stranded, sunken or adrift.³⁰

This definition includes cases where a ship has broken into separate parts, and as such each part can still be dealt with as a wreck as if it were a whole.³¹ In addition, it shall ensure that all objects associated with the ship form part of the wreck.³² This is supported further by the definition of “*Hazard*” in Article 1 para 5 of the Nairobi Convention. Hazard is any condition or threat that (a) poses a danger or impediment to navigation or (b) may reasonably be expected to result in major harmful consequences to the marine environment, or damage to the coastline or *related interests*³³ of one or more States.³⁴ Thus, the criteria for determining the hazard do cover the release into the marine environment of cargo or fuel (oil) on board.³⁵ Not covered in terms of “wreck” are those

²⁵ Art. 11 para 1 Nairobi Convention; BT-Drs 17/12343, p. 33; *Rittmeister* in DVIS A 103 p. 40/41 Rn. 25.

²⁶ This is consistent with the characterization in BT-Drs 17/12343, p. 33, regarding Article 11; see also *Gaskell/Forrest*; *The Law of Wreck*, Chapter 7.33.

²⁷ Art. 10 para 2 Nairobi Convention.

²⁸ *De Boer*, CMI Yearbook 2007-2008, p. 339.

²⁹ See also *Brans and Langbroek*, TVR 2016, p. 74-76.

³⁰ See also *Gaskell/Forrest*; *The Law of Wreck*, Chapter 8.2 (c, d, e) (107).

³¹ *Gaskell/Forrest*; *The Law of Wreck*, Chapter 8, (107ff).

³² See also *Gaskell/Forrest*; *The Law of Wreck*, Chapter 8.2 (f) (108).

³³ Art. 1 para 6 Nairobi Convention.

³⁴ See also the very similar definition in the CMI Study of the Law on Wreck Removal in the CMI Yearbook 1996, p. 176 (Article 1 (definitions) Nr. 4).

³⁵ A similar view is expressed in BT-Drs 17/12343, p. 33; see also *Ramming*, RdTW 2014, 129, 134.

things which have been deliberately thrown overboard or dumped at sea where no maritime casualty exists.³⁶

It is noted that the types of oil (such as bunker oil and lubricating oil) on board the wreck are mentioned as specific aspects that need to be reported to determine whether the wreck poses a hazard and are included in that decision.³⁷ The list, however, is not exhaustive.³⁸

It is reasonable to assume that alternative fuels, whether carried on board as cargo or as fuel, will need to be reported as well and will be taken into account to determine whether the wreck poses a hazard.

III. Gap Analysis

1. Scope of Application

The five types of alternative fuel³⁹ could be considered as an ‘object’ within the meaning of the Nairobi Convention. This by itself would, however, not lead to an application of the Nairobi Convention if the alternative fuels pollution is not attributable to a ship which has sunk or stranded after a maritime casualty. The Nairobi Convention focuses on establishing a uniform regime for the removal of wrecks and thus does not apply, and is not intended to apply, to pollution incidents that are not caused or attributable to a wreck in the meaning of the Convention.⁴⁰

The definition “wreck” includes any part of a sunken or stranded ship including any object that is or has been on board such a ship.⁴¹ It is obvious that cases where a ship has broken into separate parts would be covered as if they were a whole and, furthermore, it ensures that those objects associated with the ship such as technical equipment and passenger belongings would be included. With regard to the category of “any object”⁴², it is generally assumed that ‘object’ is to be interpreted broadly, and can be regarded as anything that was at one time on the ship at sea, including cargo and bunkers.⁴³ The focus here was mainly to look at cargo being included in the definition of a wreck which has been on board such a ship. It can be said that the drafting committee of the Nairobi Convention did at that

³⁶ *Gaskell/Forrest*; The Law of Wreck, Chapter 8 (396).

³⁷ Art. 5 para 2 (e) and Art. 6 under h Nairobi Convention.

³⁸ This follows from the word “including” in Art. 5 para 2 Nairobi Convention. Also Dutch Parliamentary papers to the Approval Statute (*Kamerstukken II 2014/15*, 34 057 (R2043), 3, p. 8).

³⁹ LNG, methanol, ammonia, hydrogen, biofuels.

⁴⁰ This can also be inferred from the comments on the origins of the Nairobi Convention (under A. 1. in BT-Drs 17/12343, p. 29) and the objectives and content of the Nairobi Convention (under A. 2. in BT-Drs 17/12343, p. 29); *Lagony* in DVIS A 103 p. 20 Rn. 19.

⁴¹ Art. 1 para 4 (a) (b) Nairobi Convention; BT-Drs 17/12343, p. 30; CMI STUDY OF THE LAW ON WRECK REMOVAL, CMI YEARBOOK 1996, p. 176 (Article 1 (definitions) Nr. 2).

⁴² Art. 1 para 4 (c) Nairobi Convention.

⁴³ *Ramming*, RdTW 2014, 129, 131; *Gaskell/Forrest*; The Law of Wreck, Chapter 10.6.3.

time focus on objects in the form of locks and containers creating a navigational hazard and that these headed in the drafting process within the scope of wreck. No particular focus was laid on liability for bunkers as these are covered by other conventions. The fact that (bunker) oil on board has to be reported specifically and is to be taken into account when determining whether a wreck poses a hazard⁴⁴, does not mean that the scope of the Nairobi Convention is limited to oil only and/or that it would not extend to alternative fuels.

The Nairobi Convention ensures that the shipowners' liability will only be determined in accordance with one particular convention. It is accepted that in the event of a maritime casualty that gives rise to a response, the hazard posed to the environment will usually arise from the oil on board, whether as bunkers or cargo, and for hazardous and noxious substances carried as cargo. There are, however, a number of existing regimes which do address these liabilities, such as the explicitly mentioned CLC 1992 and Fund 1992, the HNS convention 2010, the Bunkers Convention 2001.⁴⁵ These conventions address liabilities arising from pollution caused by substances on board a ship rather than the ship itself. There may occur some overlap to the extent that the removal of the wreck itself might fall within the scope of preventive measures covered by the CLC 1 (see article 1 para 7), the HNS Convention 2010 (see article 1(7)) and the Bunkers Convention 2001 (see article 1 para 7). Thus, the Nairobi Convention ensures that the liability does not arise under both the Nairobi Convention and one of these conventions. In principle, one could therefore state that alternative fuels are not covered by these conventions (with the exception of HNS when alternative fuels are carried as cargo) and therefore there cannot be an overlap with the Nairobi Convention.⁴⁶

2. Liability and Limitation

Under the Nairobi Convention, a shipowner is obliged to remove a wreck determined to constitute a hazard, and hence alternative fuels originating from the ship when these qualify such wreck.⁴⁷ But the removal of alternative fuels may be impossible, or may not actually solve the problem as some alternative fuels involve specific hazards and could cause damage beyond pollution.

The Nairobi Convention clearly states that the liability of the registered owner (only) applies in respect of costs of "*locating, marking and removing the wreck*"⁴⁸. These are

⁴⁴ Art. 5 para 2 (e) and Art. 6 (h) of the Nairobi Convention.

⁴⁵ Art. 11 para 1 Nairobi Convention.

⁴⁶ *Gaskell/Forrest*; *The Law of Wreck*, Chapter 7.33.

⁴⁷ Art. 9 para 2 Nairobi Convention.

⁴⁸ Art. 10 para 1 Nairobi Convention; BT-Drs 17/12343, p. 33.

typically claims for reimbursement of expenses, but not claims for compensation for damages arising from a pollution incident⁴⁹. Thus, those costs and expenses incurred for the removal of alternative fuels released as a consequence of a hazard caused by a wreck would be covered, i.e. all measures which the effected state determines as the most practical and expedient means to protect the marine environment. There can, however, be no compensation for physical loss or damage to persons or property or financial losses arising from the pollution incident be claimed under the Nairobi Convention, no matter whether the pollution incident results from alternative fuels, oil or other hazardous or noxious substances. These losses can, however, be substantial looking e.g. losses relating to industries such as fishing or tourism.

Consequently, the liability in the Nairobi Convention is more limited than that of the CLC 1992 and the Bunkers Convention 2001, because it seeks only to recover the costs of aspects of wreck removal by the effected states, rather than creating a specific liability regime for damages arising from a pollution incident.⁵⁰

IV. Summary and conclusions

In summary it can be concluded that alternative fuels (LNG, methanol, ammonia, hydrogen, and biofuels) can create a hazard to the marine environment in terms of the Nairobi Convention, but the Nairobi Convention would not apply, if they are not released to the marine environment from a wreck following a maritime casualty in the meaning of the Convention. The limited scope of application, the objective and the purpose of the Nairobi Convention to extend the States' powers beyond the territorial seas and establish that the registered owner of a ship is liable for the costs of locating, marking and removing the wreck do neither assist to provide compensation for physical loss or damage to persons or property nor for financial losses arising from a pollution incident. This has not been the primary aim of the Nairobi Convention and it follows that the Nairobi Convention does not complete all gaps in the liability and compensation system following shipping incidents involving alternative fuels.

⁴⁹ Similarly, the Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage only applies to environmental damage, defined in article 2 as “*damage to protected species and natural habitats, which is any damage that has significant adverse effects on reaching or maintaining the favorable conservation status of such habitats or species*” and water damage, defined as “*any damage that significantly adversely affects:*” (i) *the ecological, chemical or quantitative status or the ecological potential, as defined in Directive 2000/60/EC, of the waters concerned, with the exception of adverse effects where Article 4(7) of that Directive applies; or (ii) the environmental status of the marine waters concerned, as defined in Directive 2008/56/EC, in so far as particular aspects of the environmental status of the marine environment are not already addressed through Directive 2000/60/EC;*”

⁵⁰ Gaskell/Forrest; The Law of Wreck, Chapter 7.4 (b) (78).

ANNEX I

GAP ANALYSIS ON THE APPLICATION OF THE NAIROBI INTERNATIONAL CONVENTION ON THE REMOVAL OF WRECKS, 2007 TO ALTERNATIVE FUELS

	Nairobi Wreck Removal Convention (the “Convention”)	Alternative fuels (gap analysis)
Purpose	In accordance with its preamble, the objective of the Convention is to establish a uniform regime for the removal of wrecks that constitute a risk to navigation or the marine environment, the competences of an affected state to take measures as well as to guarantee the payment of the costs derived from said removal.	The Convention focuses on establishing a uniform regime for the removal of wrecks and therefore does not apply and is not intended to apply to pollution incidents that do not include a wreck
Objective scope of application	<p>In accordance with article 4, the Convention applies to wrecks in the Convention area.</p> <p>In accordance with Article 1.4 of the Convention: “Wreck”, following upon a maritime casualty, means: (a) a sunken or stranded ship; or (b) any part of a sunken or stranded ship, including any object that is or has been on board such a ship; or (c) any object that is lost at sea from a ship and that is stranded, sunken or adrift at sea; or (d) a ship that is about, or may reasonably be expected, to sink or to strand, where effective measures to assist the ship or any property in danger are not already being taken.</p> <p>Further, only wrecks that follow a maritime casualty are covered by the Convention. A “Maritime casualty” is defined</p>	<p>Although alternative fuels could be considered an “object” within the meaning of the Convention, the Convention will apply only when the ship has sunken or stranded after a maritime casualty, or the object was lost at sea.</p> <p>When a ship is regarded as sunken or stranded is not defined in the Convention. This will be a matter of evidence.</p> <p>The Convention does not clarify the difference and overlap between wreck removal and salvage.</p> <p>The question when state interference is justified will need to be answered on the basis of all circumstances of the specific matter.</p>

	<p>in Convention as “a collision of ships, stranding or other incident of navigation, or other occurrence on board a ship or external to it resulting in material damage or imminent threat of material damage to a ship or its cargo”.</p> <p>Finally, the maritime casualty needs to involve a “ship, which is defined in article 1.2.”. The Convention defines ship as seagoing vessel of any type whatsoever” and, in a non-exhaustive list of examples, includes “hydrofoil boats, air-cushion vehicles, submersibles, floating craft and floating platforms, except when such platforms are on location engaged in the exploration, exploitation or production of seabed mineral resources”.</p> <p>To the extent that the measures qualify as salvage, questions regarding the salvors’ remuneration or compensation are to be answered under the applicable salvage regime.</p>	
<p>Geographical scope of application</p>	<p>In accordance with article 1.1., the geographical scope of application of the Convention is limited to the Exclusive Economic Zone of the States Parties established in accordance with international law. If a State Party has not established an EEZ, it shall apply to an area of 200 nautical miles from the baseline.</p> <p>Pursuant to article 3.2., a State Party may extend the application of this Convention to wrecks within its territory, including the territorial sea.</p>	<p>The Convention limits its geographical application to the exclusive economic zone (EEZ) of the States Parties, or up to 200 nautical miles if no EEZ has been declared. This excludes incidents on the high seas. Furthermore, the application of the Convention to the territorial sea is an opt in provision.</p> <p>Incidents involving alternative fuels will inevitably also arise in territorial waters given that STS operations and barge to ship bunkering tend to occur in territorial waters and these will not</p>

		be caught by the Convention unless the relevant State Party has opted in pursuant to article 3(2) of the Convention.
Material scope of application	<p>Pursuant to article 2.1, the rights of State Parties under the Convention are triggered when a wreck may pose a hazard in the Convention area.</p> <p>These rights are triggered in relation to the removal⁵¹ of a wreck the costs of which are ultimately borne by the registered owner and/or its insurers under article 10 and 12⁵².</p>	<p>All incidents involving alternative fuels which do not involve a wreck will not be covered by the Convention.</p> <p>Incidents can occur in a wide variety of ways and forms which do not involve a wreck within the meaning of the Convention (i.e., pollution incidents during STS operations, resulting from collisions which do not result in the relevant vessel becoming sunken or stranded).</p> <p>In any event, the Convention would only apply to the “removal” of the alternative fuels which would include all measures which the affected State determines as the most practical and expeditious means to protect the marine environment, but will not cover compensation for physical loss or damage to persons or property or financial losses arising from the pollution incident. Experience tells us that these losses can be substantial (i.e. losses relating to industries such as fishing or tourism)</p>

⁵¹ In accordance with article 1.7 of the Convention, “Removal” means “any form of prevention, mitigation or elimination of the hazard created by a wreck. “Remove”, “removed” and “removing” shall be construed accordingly.”

⁵² Save in cases where the maritime casualty that caused the wreck: “(a) resulted from an act of war, hostilities, civil war, insurrection, or a natural phenomenon of an exceptional, inevitable and irresistible character; (b) was wholly caused by an act or omission done with intent to cause damage by a third party; or (c) was wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function”.

Liability	Pursuant to art. 10 and 11, the registered owner shall be liable for the costs of locating, marking and removing the wreck, with some exceptions, including overlap with the CLC, HNS, Bunker Pollution Convention, and regimes on nuclear damage.	Article 10.1. of the Convention makes it clear that the liability of the registered owner only applies in respect of costs of <i>“locating, marking and removing the wreck”</i> which seem to be all claims for reimbursement of expenses and not claims in damages arising from a pollution incident involving alternative fuels.
Overlap with maritime pollution liability conventions.	<p>Under article 11.1 of the Convention, the registered owner is not liable for the costs of locating, marking and removing the wreck under articles 7,8 and 9 if that liability for costs would be in conflict with the CLC/Fund Convention, the HNS Convention, the Bunker Convention and the Convention on Third Party Liability in the Field of Nuclear Energy 1960 (as amended), or the Vienna Convention on Civil Liability for Nuclear Damage 1963, as amended, or national law governing or prohibiting limitation of liability for nuclear damage.</p> <p>This means that the Convention only applies to the extent that the above-mentioned conventions do not.</p>	If the Bunkers Convention does not apply to alternative fuels, then the cost set out in article 10 of the Convention, with the limitations mentioned below, would apply to alternative fuels because there would be no conflict with the other international conventions mentioned in article 11.1, always provided the other provisions of the Convention are fulfilled, i.e. the ship is deemed sunken or stranded.
Type of fuel covered	In accordance with article 1.4, the Convention applies to Wreck resulting from a marine casualty, which includes not only the ship and its parts, but also objects found on board when the ship is stranded, sunk or drifting. This definition	The Convention is likely to apply to alternative fuels on board vessels to the extent that these are deemed hazards within the meaning of the Convention, but only when an object is deemed a wreck.

	<p>includes bunkers on board vessels whether traditional or alternative fuels.</p> <p>Further, under article 1.5 “Hazard” is defined as “any condition or threat that (a) poses a danger or impediment to navigation; or (b) may reasonably be expected to result in major harmful consequences to the marine environment, or damage to the coastline or related interests of one or more States”</p>	<p>Given the wide scope of the term ‘hazard’, an alternative fuel spill will in most cases qualify as a hazard.</p>
Compulsory insurance	<p>Article 12 of the Convention requires all vessels ≥300 GT to have insurance or financial security to cover liability for the costs of locating, marking and removing wrecks, in accordance with the limits of the 1976 LLMC Convention, as amended.</p> <p>The insurance must be stated on an official certificate issued by the State of registration and kept on board. It covers the strict liability of the registered owner and allows direct action against the insurer or guarantor, with the possibility of invoking limited defences.</p> <p>Finally, article 12.1 affords parties with direct action rights against the insurer or person providing financial security.</p>	<p>Compulsory insurance and direct action rights apply in relation to “costs arising under this Convention” and therefore crucially are not triggered in relation to other losses described above, such as compensation for physical loss or damage to persons or property or financial losses arising from the pollution incident</p>
Limitation of liability	<p>Art. 10.2 provides that nothing in the Convention shall affect the right of the registered owner to limit liability under any applicable national or international regime, such as the 1976/96 Limitation Convention (as amended).</p>	<p>The Convention includes no specific limitation regime. Therefore, whether a party would be entitled to limit for removal costs of alternative fuels will depend on national law.</p>

	<p>In other words, the Convention provides no specific limit of liability but instead refers the issue back to national law (which may or may not allow limits for wreck and cargo removal claims), or any limitation convention to which a State may be party.</p>	<p>In this regard, it is worth noting that the LLMC 1976/96 includes a provision in Article 18 which allows states to exclude the application of Article 2, paragraphs 1(d) and (e) of the Convention, which refer to claims (i) in respect of the 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 (ii) (e) claims in respect of the removal, destruction or the rendering harmless of the cargo of the ship.</p> <p>Therefore in at least some countries arguably there would be no limitation of liability for removal of alternative fuels.</p>
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