

REPORT NO.

224



PARLIAMENT OF INDIA
RAJYA SABHA

DEPARTMENT-RELATED PARLIAMENTARY STANDING COMMITTEE
ON TRANSPORT, TOURISM AND CULTURE

TWO HUNDRED TWENTY FOURTH REPORT
The Merchant Shipping (Amendment) Bill, 2015

(Presented to the Rajya Sabha on 2.12.2015)
(Laid on the Table of Lok Sabha on 1.12.2015)



Rajya Sabha Secretariat, New Delhi
December 2015/ Agrahayana, 1937 (Saka)

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**COMPOSITION OF THE DEPARTMENT-RELATED PARLIAMENTARY
STANDING COMMITTEE ON TRANSPORT, TOURISM AND CULTURE**

(2015-2016)

(Constituted on 1st September, 2015)

1. Dr. Kanwar Deep Singh - Chairman

RAJYA SABHA

2. Shri Ritabrata Banerjee
3. Dr. K. Chiranjeevi
4. Shri Narendra Kumar Kashyap
5. Shri Avinash Rai Khanna
6. Dr. Prabhakar Kore
7. Shri Kiranmay Nanda
8. Kumari Selja
9. Shri Rajeev Shukla
10. Vacant

LOK SABHA

11. Shri Ram Charitra Nishad
12. Shri Vinod Chavda
13. Shri Rajeshbhai Naranbhai Chudasama
14. Km. Arpita Ghosh
15. Shri Rahul Kaswan
16. Shri P. Kumar
17. Shri Faizal P.P. Mohammed
18. Yogi Aditya Nath
19. Shri Kristappa Nimmala
20. Shri Rajesh Pandey
21. Shri Rajesh Ranjan
22. Shri P. Srinivasa Reddy
23. Shri Ram Kumar Sharma
24. Shri Prathap Simha
25. Shri Dushyant Singh
26. Shri Kunwar Haribansh Singh
27. Shri Rakesh Singh
28. Shri Shatrughan Sinha
29. Shri Dasrath Tirkey
30. Shri Manoj Tiwari
31. Shri K.C. Venugopal

SECRETARIAT

Shri J.G. Negi, Joint Secretary
Shri Swarabji B., Joint Director
Smt. Catherine John L., Assistant Director
Shri T. Kennedy Jesudossan, Committee Officer
Shri P.P. Raumon, Committee Officer

INTRODUCTION

I, the Chairman of the Department-related Parliamentary Standing Committee on Transport, Tourism and Culture, having been authorised by the Committee to present on its behalf, do hereby present this Two Hundred Twenty Fourth Report on The Merchant Shipping (Amendment) Bill, 2015*.

2. In pursuance of rules relating to the Department-related Parliamentary Standing Committees the Hon'ble Chairman, Rajya Sabha referred** the Bill as introduced in the Lok Sabha on the 10th August, 2015, to the Committee on 26th August, 2015 for examination and report within three months.

3. The Committee took oral evidence of the Secretary, Ministry of Shipping and other senior officers in its meeting held on the 16th September, 2015 on various provision of the Bill. The Committee also heard the views of the Indian National Ship-owners' Association (INSA) on 24th September, 2015. The Committee also received written memoranda from M/s. GOL Offshore Private Limited and ICC Shipping Association. After detailed deliberation, the Committee considered the Bill clause by clause on the 16th November, 2015 and adopted the same.

4. The Committee wishes to express its thanks to the Officers of Ministry of Shipping and Directorate General (Shipping) for placing before the Committee the material and information desired in connection with the Merchant Shipping (Amendment) Bill, 2015.

DR. KANWAR DEEP SINGH

Chairman,

*Department-related Parliamentary Standing
Committee on Transport, Tourism and Culture.*

NEW DELHI;
16th November, 2015
25th Kartika, 1937 (Saka)

* Published in Gazette of India Extraordinary Part-II, Section-2, dated 10th August, 2015

**Rajya Sabha Parliamentary Bulletin Part-II No 54545, dated 27th August, 2015

TABLE OF ABBREVIATIONS

CPC	-	Civil Procedure Code
DG (S)	-	Director General (Shipping)
DGLL	-	Directorate General Lighthouse and Lightships
EEZ	-	Exclusive Economic Zone
GT	-	Gross Tonne
ICCSA	-	ICC Shipping Association
IMO	-	International Maritime Organisation
INSA	-	Indian National Shipowners' Association
MoS	-	Ministry of Shipping
P&I Club	-	Protection and Indemnity Club
UNCLOS	-	United Nations Convention on the Law of the Sea

REPORT

The Merchant Shipping (Amendment) Bill, 2015 (Annexure-I) was introduced in Lok Sabha on the 10th August, 2015. The Hon'ble Chairman, Rajya Sabha, on 26th August, 2015, referred the Bill to the Department-related Parliamentary Standing Committee on Transport, Tourism and Culture for examination and report within three months.

2. The Merchant Shipping Act, 1958 was enacted to foster the development and efficient maintenance of an Indian mercantile marine sector in a manner best suited to serve the national interest. International Maritime Organisation (IMO), as the global standard-setting authority for the safety, security and environmental performance of international shipping, creates fair and effective regulatory framework for the shipping industry in the form of Conventions for universal adoption and implementation.

3. The Bill, in its Statement of Objects and Reasons, mentions that India is a member of IMO and as and when Government of India approves to be a party to an International Convention by accession/ratification, the Convention is given effect by suitably incorporating its provisions in the concerned domestic legislation, *i.e.*, the Merchant Shipping Act, 1958. India has already acceded to three International Conventions of the IMO *viz.*, the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (hereafter referred to as Bunker Convention); the Nairobi International Convention on the Removal of Wrecks, 2007 (hereafter referred to as Nairobi Convention); and the International Convention on Salvage, 1989 (hereafter referred to as Salvage Convention).

4. It has further been stated that the accession to Bunker Convention has now been approved and for implementing the Convention, the Merchant Shipping Act, 1958 requires further amendments. The amendment seeks to incorporate the Convention provisions by inserting Part XBA in the Act titled 'Civil Liability for Bunker Oil Pollution Damage'. India is already a party to the Nairobi Convention and Salvage Convention. However, in the light of experiences gained in implementing Part XIII titled "Wreck and Salvage", it was felt necessary to amend the Part XIII to make them progressive and in tune with Nairobi Convention and Salvage Convention.

5. The Committee heard the views of the Secretary, Ministry of Shipping, Director General (Shipping) and other senior officials of the Ministry on the provisions of the Bill on the 16th September, 2015. The Committee also heard the views of the representative of the Indian National Shipowners' Association (INSA) on the 24th September, 2015. Besides INSA, ICC Shipping Association and GOL Salvage Services Ltd. submitted written memoranda to the Committee on different aspects of the above stated Conventions and the amendments proposed to the Merchant Shipping Act, 1958. The Committee also considered the background note and replies to its questions furnished by the Ministry of Shipping.

6. The succeeding paragraphs state the salient features of the three International Conventions as well as the proposed amendments in the Merchant Shipping Act, 1958 to give effect thereto and also the reasons for the proposed amendments.

Bunker Convention

7. The Bunker Convention was adopted to ensure that adequate, prompt and effective compensation is available to persons who suffer damage caused by spills of oil (hydrocarbon mineral oil including lubricating oil), when carried as fuel in ships'

bunkers. This Convention was adopted in 23rd March, 2001 and had come into force from 21st November, 2008. The Convention applies to damage caused on the territory, including the territorial sea, and in exclusive economic zones of States Parties. The Convention provides a separate instrument covering pollution damage only. A key requirement in the Bunker Convention is the need for the registered owner of a vessel to maintain a compulsory insurance cover.

8. Under the provisions of the Merchant Shipping (Amendment) Bill, 2015, the registered owner of a vessel has to maintain compulsory insurance cover which allows claim for compensation for bunker pollution damage to be brought directly against an insurer. Ships of 1000 Gross Tonn and above have to carry a certificate onboard to the effect that it maintains insurance or other financial security, without which these vessels will not be allowed to enter or leave India. The liability cover for bunker pollution damage shall be equal to the limits of liability under the applicable national or international limitation regime, but in all cases, not exceeding an amount calculated in accordance with the Convention on Limitation of Liability for Maritime Claims, 1976.

9. The written reply furnished by the Ministry of Shipping stated that Article 14 of the Bunker Convention stipulates that the Convention shall enter into force one year following the date on which 18 States, including 5 States each with ships whose combined gross tonnage is not less than 1 million, have either signed it without reservation as to ratification, acceptance or approval or have deposited the instruments of ratification, acceptance, approval or accession with the secretary General of the IMO. Accordingly, the Bunker Convention, 2001 came into force only on 21.11.08.

10. The Ministry of Shipping informed the Committee that amendments based on the Bunker Convention were considered necessary in view of the following:

- i. It is difficult to obtain compensation to pollution caused by bunker oil spill/leakage from ships other than tankers. Local Authorities/Government find it difficult to recover costs on preventive measures and cleanup operation on such type of pollution. This problem can be suitably addressed if India becomes party to this Convention and incorporates its provision into the Merchant Shipping Act, 1958.
- ii. In spite of best precautionary efforts, accidents may happen in Indian as well as foreign flag ships. In that scenario, it is vital to have an internationally agreed effective liability compensation regime in place.
- iii. Indian ships having 1000 GT or more, on international trade will be issued with a certificate from the Indian Maritime Administration. This would enable to carry out international trade without approaching other Governments for such certificate, who have acceded to this Convention.
- iv. India would be able to ensure that all foreign flag vessels entering Indian territorial waters or Exclusive Economic Zone are duly covered by insurance as required under the Convention.
- v. The Convention has already been adopted by major Maritime States, therefore, it is binding on Indian Ships involved in worldwide trade, irrespective of whether India is a party to the Convention.
- vi. Indian ships have to carry "Blue Card" issued by insurance companies irrespective of whether India is a party to the Convention or not, if, it is trading in countries that are parties to this Convention. However, vice versa the same is not applicable for foreign ships trading in India. Even if they are carry blue card, pollution in Indian waters will not be under the purview of such insurance as India is not party to this Convention.

11. The following are the salient provisions of the Bill related to Bunker Convention:-

- Applies to all Indian vessels (irrespective of size) anywhere in the world and to all foreign vessels while in Indian Waters;
- Preventive measures and curative measures taken to minimize damage shall also be liable for compensation;
- While owners of all vessels are liable to compensate against bunker oil pollution damage for vessels of 1000 GT and above, the insurer is liable to compensate;
- Liability of owner is exempted if the pollution damage is due to war, act of God, intentional act/omission of third person, negligence/wrongful act of Government/Authority;
- Owner entitled to limit his liability as per Convention for Limitation of Liability for Maritime Claims, which will be determined by the High Court of jurisdiction;
- Claims to be preferred within 3 years from date of damage or 6 years from date of incident;
- Vessels of 1000 GT and above to compulsorily maintain insurance/financial security. DG(S) to issue a certificate to this effect; No such vessel shall enter or leave Indian port without certificate; and
- Rule making powers in respect of form & manner of application to High Court to limit liability, financial securities, form of certificate and conditions of issue, fee for issue of certificate, manner of renewal and renewal fee provided under.

12. Regarding the cost to be incurred due to the amendments proposed to the Merchant Shipping Act, 1958 based on the Bunker Convention, the Ministry has stated that :

- Vessels on International voyages are already complying with the requirement as Convention is already in force, hence no additional cost for such vessels.
- Vessels on the coast of India may have to take additional insurance cover.
- Cost of such insurance is not expected to exceed 1\$ per GT per annum (Rs.66.4 per GT per annum), subject to the condition of the vessels, risk factor, claims history of the company and ships.

13. The Ministry of Shipping, in its written reply to a pointed query of the Committee, stated that United States of America and Japan are the two major maritime nations who are not a party to the Bunker Convention. The United States has enacted the Oil Pollution Act, 1990 that covers all types of oil, from the ship, whether bunkers or cargo. The compensations and the requirement are more stringent than the Bunker Convention and hence, there was no need by USA to adopt the Bunker Convention which came into force at a much later stage in 2008. Similarly, Japan amended the 'Act on Liability for Ship Oil Pollution, 1975' in 2005 to cover bunker pollution damage, before the Bunker Convention came into force internationally in 2008. Since the requirement under the local regulations were more stringent, Japan never felt the need for the Bunker Convention. As regards India, the provision relating to pollution from oil (except bunker oil pollution damage) are there in the Merchant Shipping Act, 1958, but there are no specific legislation for covering the pollution incidents caused by the

bunker oil of the ships and a need was being felt to provide for this. Hence, the proposed Bill is introduced.

14. To the Committee's query regarding the impact of exemptions given to vessels having capacity below 1,000 GT from this Convention, the DG (Shipping) replied:

".....below 1,000 GT, it is the requirement or the obligation on the part of the owner or the operator that he will not be able to escape or get away from. The threshold is only for purposes of a financial security which is mandated in the Convention and that is through the insurance Blue Cards, which is then counter-certified through a compliance certificate which is issued by the Government. But that does not detract from the primary responsibility of the owner or the operator to still ensure that he mitigates and minimizes the pollution damage, compensates for that or removes the wreck, as the case may be, or salvages the vessel".

15. When asked, the representative of Indian National Shipowners' Association (INSA), also agreed that the exemption to the vessels which are 1000 GT and less, since the number of such vessels would be around 500 to 600 only.

16. As regards Clause No. 352 RH, the DG (Shipping) gave his clarification as under:

"...if there is a claim for an immediate damage which converts into a financial liability and, if it is substantive in nature, it has to be claimed within a period of three years. If there is an incident which otherwise is not so significant, but can be related to the original cause of action and more by way of a social cause, for that the Sunset clause is six years. So, it is in terms of graded impact on the environment and ecology".

17. The Ministry, in its written reply clarified in this regard that one may get the compensation, if a claim is made within three years from the date of damage. However, no claim can be made six years after the incident causing the damage. In simple words, if it is perceptible damage for which there is an actionable claim, then the maximum limit is three years. However, if there is an incident which otherwise is not so significant but later on can be related to original cause of action and more by way of social cause, then in such cases the limitation period shall be six years. It is in terms of graded impact on the environment and ecology which may occur immediately on occurrence of the incident or may come out after passage of time.

18. When asked as to the liability that would fall on the Ports after the Bunker Convention is to be implemented, the Secretary, Shipping replied that:

"...as far as major ports are concerned, we have a scheme available in the Ministry where we give 50 per cent subsidy for them to procure equipment for fighting any pollution because of oil spillage. We are promoting that. We are also auditing that, ports comply with this requirement. That is also available to other private ports which handle crude and other oil products. That is the action taken by ports as far as Bunker Convention is concerned."

19. The Committee also made a specific query about the provisions for arbitration in this regard. The DG (Shipping) replied that :

".....arbitration mechanism kicks in when it is not mutually resolved. Usually, we find that arbitration proceedings are largely held in London or in Singapore. This is through a mutual process of acceptance of the arbiter. It is a panel of three arbitrators. One nominated by each, the

second and the third one is mutually agreed upon. There is also an International Arbitration Council which nominates these people”.

20. The Committee took note of the Ministry’s reply that Act of God or *force majeure* is a condition of occurrence of a natural calamity. Such an act needs to be an act which is not foreseen and is beyond the control of the human beings. If the person wants an exemption from the liability, he has to prove that such an act is not caused by him or his employee or agent, but by a third person. Hence, the third person needs to be a totally external person not connected with the owner as employee or agent. As regards the act of God, there are number of case laws which have been well adjudicated and it is now settled by the apex court as to what constitutes an act of God or the *force majeure*. It is very well understood in terms of juristic principles, and there may not be any ambiguity for it during the adjudication proceedings. The Court will decide, if it is an act of third party, in case there is a claim for an exemption from the liability.

21. The Committee observes that the exemption given to the owner if the pollution damage is due to an ‘Act of God’ as given in clause 352 RD, is likely to leave ample scope for litigation and that the owner of a ship can run away from his responsibilities of giving compensation to the pollution damage caused by the ship owned by him. The Committee, therefore, recommends to reconsider this aspect to ensure that the law does not leave any scope for the shipowners to get away from their responsibility of paying compensation.

22. The Committee observes that Ports have ample chances of oil spillage and environment pollutions from the vessels at the time of loading/unloading of cargo. The Committee recommends that latest modern equipments being used at International level may be provided to the Ports for addressing this challenge. The Committee further recommends that for our cash strapped Major Ports, the present subsidy limit of 50% be enhanced substantially for procurement of the modern equipment for fighting any pollution due to oil spillage on a case to case basis.

Nairobi Convention

23. The Nairobi International Convention on the Removal of Wrecks 2007 (Nairobi Convention) provides the legal basis to remove shipwrecks that may have the potential to affect adversely the safety of lives, goods and property at sea, as well as the marine environment. The Convention fills the gap in the existing international legal framework by providing the first set of uniform international rules aimed at ensuring the prompt and effective removal of wrecks located beyond the territorial sea.

24. The Nairobi Convention was adopted by an International Conference held in Kenya in 2007. It has entered into force on 14.4.2015.

25. The Ministry of Shipping informed the Committee during the deliberations that amendments based on Wreck Removal Convention, 2007, is considered necessary, in view of the following:

- i) The existing provision in Part XIII of the Merchant Shipping Act, 1958 relating to wreck removal is not adequate in dealing with increasing amount of wreck in the coast of India.
- ii) The amendments will enable the implementation of Nairobi Convention on the Removal of Wrecks 2007, to which India is already a Party, thereby

bringing in internationally recognized and approved uniform rules for removal of wrecks.

iii) The Convention will provide uniform international rules aimed at ensuring the prompt and effective removal of wrecks located beyond the territorial sea. The Convention includes an optional clause enabling countries to apply certain provisions to their territory, including their territorial sea.

iv) Increasing number of vessels and limited space available in the ports have resulted in increased number of accidents causing wrecks resulting in pollution. Most of the perpetrators go scot-free due to ignorance about the incident or lack of importance given to remedial measures to be adopted.

v) The problems due to wreck are three-fold: first, a wreck may constitute a hazard to navigation, potentially endangering other vessels and their crews; second, wreck has a potential to cause damage to the coastal and marine environment, depending on the nature of the cargo; and third, there is the issue of costs involved in the marking and removal of hazardous wrecks.

vi) The current provisions in the Merchant Shipping Act, 1958 are inadequate in dealing with the increasing number of wrecks in Indian Coast. Therefore, to control this problem and to bring the existing regulation in line with the developments in international shipping, it is vital to make these amendments in the Act.

26. The Ministry, in its written reply furnished to the Committee, stated that Article 18 of the Nairobi Convention stipulates that the Convention shall enter into force twelve months following the date on which 10 states have either signed it without reservation as to ratification, acceptance or approval or have deposited the instruments of ratification, acceptance, approval or accession with the secretary General of the IMO. Accordingly, the Nairobi Convention, 2007 came into force only on 14.04.15 [i.e. this year only]

27. The following are the salient features of the Bill relating to Nairobi Convention provided by the Ministry of Shipping:

- The Bill makes the existing provisions of the Act dealing with wreck [Part XIII] in line with Nairobi Convention;
- The master/operator of ship is statutorily obliged to report wreck incident in Indian Territory to receiver of wrecks (Deputy Conservator of Ports/District Magistrate) and D.G. (Shipping). Indian ship to report wreck incident in foreign territory to D.G. (Shipping).
- D.G. (Shipping) can direct Directorate General Light House and Light Ships, Coast Guard, Port or other authority, for locating & marking wrecks;
- D.G. (Shipping) to inform ship's registry country and in consultation with that country proceed to remove wreck. If the owner does not remove the wreck, receiver of wreck (at the expense of the owner) may remove the wreck;
- Registered owner is liable for the cost of activities related to locating, marking and removal of wreck;
- Registered owner of ship of 300 GT and above to maintain compulsory insurance/financial security. D.G. (Shipping) to issue a certificate to this effect. Contravening ships can be detained; and

- Claim for recovery of costs for locating and marking wreck to be within 3 years from date of determination of hazard and 6 years from date of maritime casualty that resulted in the wreck.

28. As regards the cost to be incurred due to the amendments proposed, based on the Nairobi Convention, the Ministry stated that :

- Vessels on International voyages are already complying with the requirement as Convention is already in force, hence no additional cost for such vessels.
- Vessels on the coast of India may have to take additional insurance cover.
- Cost of such insurance is not expected to exceed 1\$ per GT per annum (Rs.66.4 per GT per annum), subject to the condition of the vessels, risk factor, claims history of the company and ships.
- The P&I cover provided by the IG group of clubs generally includes cover for both Bunker pollution damage and wreck removal.

29. The Ministry of Shipping, in their written submission, has stated that:

United States of America, China and Japan, Italy, Norway, Republic of Korea, and Russian Federation are the major maritime nations which are not party to the Convention. As of now the national legislation of the above countries provide adequate mechanism of direct action against the ship owners in their coastal waters hence there may not be a need for them to be a party to this Convention. However, the Nairobi Wreck Removal Convention has entered into force this year only, *i.e.*, on 14.04.2015. Hence, it is still early stages as most of the countries may still be evaluating the Convention from deciding to become party to the Convention. Moreover, now the Convention extends its scope beyond coastal waters up to Exclusive Economic Zone (EEZ), thus there may be reconsideration by other countries in due course to decide on being a party to this Convention. As regard India, the provisions related to the wreck removal already exist in the Merchant Shipping Act, 1958. However, these are proposed to be updated, as an opportunity to make Indian legislation fully compliant with the Convention.

30. The Committee enquired about the procedure to be followed by the authorities if an incident of wreck happened in the premises of a Major Port, as in the case which occurred in the vicinity of Mumbai Port a few years ago. The DG Shipping, explained that:

“.....if it were to happen in a Port of call, it is the Deputy Conservator of Ports who would then take necessary action as he would be the receiver of wrecks. In case the owner or operator did not discharge in spite of notification and being given adequate notice to do so, then the Deputy Conservator of Port would takeover that asset as a receiver of wreck and then do all that is required to spend money and then lodge the claims. That is why the designation has been given as 'receiver of wrecks'. That is the *suo motu* assumption of responsibility. But, that is a residual responsibility after having failed in convincing the owner or operator to discharge their duty. Correspondingly, beyond the port limit, as I submitted, if it were within the territorial waters, this power is delegated to the District Collector or District Magistrate to do so”.

31. To the Committee's query about the possible reasons why Government owned vessels are exempted, the Secretary, Shipping replied that:

“.....the broad principle is, because Governments, in case of accidents, are funded sufficiently, and if they have to compensate somebody, they would do so. Therefore, most of the equipment in the Government is not insured. That is one aspect. But that is, especially, for military machines because they also partake in war.”

32. In the written reply furnished by the Ministry, it has been stated that the vessels owned or operated by the Government and used for the non commercial service, are exempted from the compulsory insurance, as the broad principle is that the Government in case of accidents are funded sufficiently and if some compensation is to be paid to some person, the Government will be able to pay. Government is a kind of sovereign guarantee in itself. Therefore, most of the equipments in the Government are not insured.

33. In this regard, the Indian National Shipowners' Association, in its written submission, has stated that:

It is found that Warships, other Naval vessels and Government non-commercial vessels are often exempted from the provisions of a Convention since it is presumed that a sovereign Government has adequate funds and resources to meet any eventuality. However, in all cases, even such vessels are advised to be in compliance with all International Conventions, rules and regulations, as far as practically possible and feasible.

34. In response to the Committee's query as to whether these three Conventions are applicable to the fishing and cruise vessels, the Ministry has furnished the reply that, the three Conventions do not make any reference or differentiate its application to the type of vessel. The general principle of application adopted is the gross tonnage of the vessel. The criteria for application of Bunker Convention to a ship are that it should be above 1000 GT. The Nairobi Wreck Removal Convention shall be applicable to ships which are of 300 GT and above. No such limit is mentioned in the Salvage Convention.

35. When asked by the Committee about the advantages of acceding to the Nairobi Convention, the representative of the Indian National Shipowners' Association stated that:

“A lot of old vessels used to keep coming to India, but, now, this is something which will stop happening. Because we do not have these Conventions and we do not have the ability to enforce the law, it becomes easier for me as an imprudent ship owner to bring the old ships, which are not allowed in other regimes.”

36. The Ministry of Shipping, in their written reply, has stated that Nairobi Convention provides a sound legal basis for coastal countries to remove, or have removed, from their coastlines, wrecks which pose a big environment hazard to the safety of navigation or to the marine and coastal lives, or both. It will make ship-owners financially liable and require them to take out insurance or provide other financial security to cover the costs of wreck removal. This Convention also includes an optional Clause enabling States Parties to apply certain provision to their territory, including their territorial sea.

37. The Committee took cognizance of the status of the wrecks already there in the Indian waters, furnished by the Ministry of Shipping (Annexure II). There are a total of 39 wrecks in Indian waters, some of the wrecks are affecting the shipping channels.

The Committee recommends that the Government should chalk out a time bound

action plan to remove the wrecks that are already there in the Indian waters especially those wrecks which are affecting the shipping channels.

Salvage Convention

38. The International Convention on Salvage 1989 (Salvage Convention) replaced the prevalent “no cure, no pay” principle where a salvor is only rewarded for services if the operation is successful. By towing a damaged tanker away from an environmentally sensitive area, salvor prevents major pollution incidents. But the prevalent “no cure, no pay” principle acted as a disincentive for operation, where chances of success were slim. The 1989 Salvage Convention remedied this deficiency by making provision for an enhanced salvage award in preventing or minimizing damage to the environment and by introducing a “special compensation” to be paid to salvors who fail to earn a reward in the normal way.

39. This Convention replaced a Convention on the law of salvage adopted in Brussels in 1910. The 1989 Convention introduced a “special compensation” to be paid to salvors who have failed to earn a reward in the normal way (*i.e.*, by salvaging the ship and cargo). It was adopted on 28.4.1989 and has entered into force from 14.7.1996.

40. The Ministry of Shipping has informed the Committee that amendment based on the International Convention on Salvage, 1989 is considered essential and desirable in view of the following:

- i) The present provision of Part XIII of the Merchant Shipping Act, 1958 is inadequate in dealing with salvage operation as the salvor will only be awarded, if the salvage is successful (no-cure-no-pay principle). Salvage Convention seeks to remedy this deficiency by making provision for an enhanced salvage award taking into account the skill and efforts of the salvors in preventing or minimizing damage to the environment.
- ii) The amendment in the Merchant Shipping Act, 1958 will revise the text with the updated provisions mentioned in the Convention. The amendments would also highlight the significance of article 13 and 14 of the Convention which relates to criteria for payment of award and special compensation to the salvors respectively.
- iii) India is already a signatory to this Convention and has obligation to give full and complete effect to the provision of the Convention. The proposed amendment in the Act would enable the Government to discharge this obligation by including the key parameters of the Convention as substantive part in the Act and also frame detailed procedures under the rule making powers as specified in the Act.

41. The Ministry, in its written reply, stated that Article 29 of the Salvage Convention stipulated that the Convention shall enter into force one year following the date on which 15 States have expressed their consent to be bound by it. For a State which expresses its consent to be bound by this Convention after the conditions for entry into force thereof have been met, such consent shall take effect one year after the date of expression of such consent. Accordingly, the Salvage Convention 1989 came into force only on 14.07.1996.

42. The following are the salient features of the Bill relating to Salvage Convention:

- The Bill makes the existing provisions of the Act dealing with Salvage in [Part XIII] in line with Salvage Convention;
- does not apply to warships, Government non-commercial vessels, fixed or floating platforms or to mobile offshore drilling units when engaged in sea-bed mining;

- the owner of the vessel is obliged to pay the salvor for his services towards saving life, cargo, etc;
- salvage services by Indian Navy/Coast Guard/Port authority also entitled for compensation;
- master of ship is authorized to conclude salvage contract on behalf of owner of vessel and master of ship or owner of ship can conclude salvage contract on behalf of persons and/or cargo on board of vessel;
- lays down duties of salvor, owner and master;
- lays down rights and duties of Central Government in relation to salvage operations;
- lays down rights of salvors to payment for the services rendered by them relating to salvage operations;
- under. S. 402 H (2), Government can make rules prescribing criteria for claiming rewards, the manner of fixing rewards, special compensation, apportionment of rewards amongst salvors etc.;
- disputes relating to claims shall be adjudicated by concerned High Court (where vessel is registered/vessel is situated/cause of action arises); and
- period for claim-within 2 years.

43. On the matter of the costs likely to be incurred due to the amendments proposed based on the Salvage Convention, the Ministry of Shipping stated:

- generally no cost on owner, unless salvage service is required due to the exigency; and
- cost of salvage will vary depending on the value of the property salvaged.

44. The Ministry, in its written reply, informed the Committee that United States of America and Japan are not a party to Bunker Convention; China, Japan, Italy, Norway, Republic of Korea and Russian Federation are not party to the Nairobi Convention; and Japan, Panama and Republic of Korea are the major countries which are not a party to the Salvage Convention.

45. In this regard, in a written submission, the Indian National Shipowners' Association has stated that often USA practices and adopts domestic rules which in most of the cases are far more stringent than some of the international regulations are in operation much prior to similar rules or provisions being adopted by International Maritime Organization and that this could be one of the reasons for USA not to be a signatory to the Nairobi Convention. It has been further stated that USA is also not a signatory to the United Nations Convention on the Law of the Sea (UNCLOS) 1982; the International Convention on Civil Liability for Oil Pollution Damage 1969 (CLC Convention); Bunker Convention 2001; Hong Kong Recycling Convention 2009; Nairobi Wreck Removal Convention 2007; and the Maritime Labour Convention 2006 to list a few.

46. In a written reply, the Ministry of Shipping has stated:

“Japan, Panama and Republic of Korea are few major maritime nations which are not party to the Convention. The prime reason for such maritime countries not becoming a party to the Convention is that their national legislation has already made necessary provisions for salvage and the courts have the sole jurisdiction of awarding the salvage compensation. The Salvage Convention applies to judicial or arbitral proceedings pertaining to salvage. Salvage is generally between private parties and disputes between them are generally decided by

arbitration/judicial process. The local legislation of such countries also provides mechanism for arbitration and compensation for efforts of the salvor irrespective of degree of success. Thus, such countries have not felt the need for adoption of the Convention. As regards India, the provisions related to salvage are already there in the Act. However, these are proposed to be updated, as an opportunity to make Indian legislation fully compliant with the Convention.

47. As regards the reasons for delay in implementing the Salvage Convention, the Ministry of Shipping stated that having met the requirement of tonnage and the number of States, as per the requirement of the stated Convention, it actually came into force internationally after nearly seven years, *i.e.*, on 14.07.1996. India became a party to this Convention on 18.10.1995, as provisions related to the Salvage Convention largely exist in the Merchant Shipping Act ever since 1958 and continued to be part of the Act till date. Indian Parliament in their great wisdom had provided the provisions related to salvage in the Act from 1958 itself, *i.e.*, much before 1989 Salvage Convention came into force. Therefore, the broad provisions on salvage already exist in the present Merchant Shipping Act. However, in the present Bill, the provisions related to the Salvage Convention are being updated, as an opportunity to make Indian legislation fully compliant with the Convention.

48. The Ministry informed the Committee that the significant improvement made by the Salvage Convention 1989 is that it has enabled compensation for unsuccessful salvage efforts, and that the salvors dealing with the salvage operation is free to make a contract with the ship-owner whose ship is being salvaged by it, so as to cover the compensation even if the salvage operation is not fully successful. The Salvage Convention has done away with the old principle of 'No cure No pay'. It encourages the salvors to assist the distressed vessel and even if the salvage may not be totally successful, the salvor is compensated by invoking contract and the special compensation scope clause.

49. In response to the Committee's query regarding the jurisdiction on the disputes of claims in the case of a salvage operation, the Ministry stated that the jurisdiction has been given based on the broad principles as given in the Civil Procedure Code, 1908 with respect to jurisdiction of the Courts. The Ministry further stated that the case may not proceed in more than one Court, as the principle of *res sub judice* will apply. The case may proceed at one location based on the principle that where it is instituted first. The period of limitation shall commence from date of completion of salvage operation.

50. Regarding the financial or other loss caused to the country due to not following these Conventions, the Ministry of Shipping stated, in its written reply furnished to the Committee:

As regards financial or other loss to the country in absence of following these Conventions, it is submitted that Indian ships on international voyage are already complying with the requirements of the Bunker Convention and Nairobi Convention. For salvage operations and also to the extent with respect to the Nairobi Convention, the provisions are already in existence in the Merchant Shipping Act, 1958. As shipping is international in nature, Indian ships trading worldwide had to abide by the requirements of the Conventions. Therefore, Indian ships were issued certificates by other Convention countries at a certain cost. Now, with the above adoption, Indian ships can be issued certificates by the Indian Administration after enactment. Secondly, with the enactment, every ship entering Indian Coastal waters will be required to have

necessary financial guarantee and a certificate bearing a proof of the same. In case of any pollution by way of bunker or ship becoming a wreck, direct action can be initiated against the owners/insurers through the process of Arbitration instead of passing through the lengthy judicial process. Such compulsory carriage of certificate and the provision of direct action will be an indirect method and deterrent thus giving indirect protection to the coastal marine environment. Financial or other loss to the country could occur if the provisions of the Conventions are not brought into force in India as owners of foreign flag vessels will not require to have insurance or financial security to deal with bunker oil spills or wrecks occurring in our waters, leading to environmental damage and consequential loss to the country.

51. The Committee, in its meeting held on the 24th September, 2015 heard the representative of the Indian National Shipowners' Association, who informed the Committee that they are fully satisfied with the Clauses of the Bill and that the Ministry of Shipping had consulted them at the time of drafting of this Bill. The ICC Shipping Association also conveyed their agreement to the Clauses without offering any further suggestion. M/s GOL Offshore Limited gave written suggestions on some of the Clauses of the Bill.

52. The Committee welcomes the Bill which seeks to suitably incorporate the provisions of the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (Bunker Convention); the Nairobi International Convention on the Removal of Wrecks, 2007 (Nairobi Convention); and the International Convention on Salvage, 1989 (Salvage Convention) in the Merchant Shipping Act, 1958.

53. The Committee's observations/recommendations on the Clauses/Sub-Clauses of the Bill have been given in the succeeding paragraphs:-

Sub-Clause 402D (2) & (3)

54. In this Sub Clause, the master of the Ship has been given authority to sign the salvage contracts on behalf of the owner of the vessel.

55. When Committee enquired about the adequacy of the provisions of this Sub-Clause and the chances of any foul play against the interest of the owners, the representative of the Indian National Shipowners' Association replied that:

“...the master of the ship engaging and getting into a salvage contract is quite a normal process. all contracts of insurance or even the certificate of registry, it is not in the name of the owner of the company; it is in the name of the master itself. So, this is something which over a period of time has been a part of our industry. Yes, where there is temptation, there is a chance of something going wrong but, by and large, as an industry we have rarely seen a case where a master has entered into an illegal or untenable salvage contract and thereby alienated the asset. It also serves very useful because sometimes, you may have a vessel which is farther away from you. I could be sitting here in India and an accident or a salvage contract may take place in Brazil. I may be in a situation where financially it may not be viable to actually travel and sign a contract. At such times, the master becomes useful for the purposes of signing the contract.”

56. The Committee observes that the Master of the Ship has been given the authority to execute a salvage contract or any such contracts on behalf of the ship owner. Since the Master of the ship is only an employee of the owner, there might be situations when the owner may not honour the contract signed by the Master of the Ship and the Salvor. Therefore, the Committee feels that a strict provision

should be made in the Bill in order to save the interests of the Master of the Vessel. In view of the availability of sophisticated Information and Communication Technology tools, it is easy to consult the owner of the Vessel by the Master of the Vessel before agreeing to the contract or in case of any contingency.

57. The Committee, therefore, recommends that a new Sub Clause-“in both the cases at (2) and (3), the owner of the vessel or cargo as the case may be, shall not be entitled to challenge the decision of the master/owner of the vessel, if such a decision is taken after sufficient consultation” may be inserted in the Bill.

Sub Clause 402G

58. Sub Clauses under this Clause prescribe the rights and duties of Central Government in case there is a need of salvage operation of a vessel. It includes means to protect its coast line or related interests from pollution or threat of pollution arising out of a maritime casualty or acts relating to such casualty which may result in major harmful consequences, its duties to seek the assistance and to give facilities to salvors.

59. The Committee also feels that within the territorial waters of India, Indian Companies should be given priority for salvage operations. Accordingly, the Committee recommends that the following sub Clause may be added in the Bill:

“The Central Government shall ensure that the salvors of Indian origin are given first right of refusal as against the salvors of foreign origin, for any salvage operations within the territorial waters of India”.

Sub Clause 402 H

60. This Clause ensures the Salvor a right to payment for the services rendered by him relating to salvage operations, provided that now such payment shall be made where there is express and reasonable prohibition from the owner or master of vessel or owner of any other property in danger.

61. Under this Clause, the Central Government may prescribe the criteria for claiming rewards, manner of fixing rewards, the payment of special compensation, the apportionment of payment amongst salvors, the salvage of persons, the payment under the contract, the payment for additional services not covered under the contract and the effect of misconduct of salvors on reward or payment. The salvors shall have right to enforce his maritime lien against the owner or master of vessel or owner of any other property in danger when satisfactory security for his claim, including interest and costs, has not been provided by such person.

62. M/s GOL Offshore Limited has, in their written submission, stated that in the case of owner of the vessel failing to pay the salvors due to bankruptcy, due to absence of proper insurance cover or any other reason, there should be suitable provision for making payment to the salvor who has carried out the salvage operation under the instructions of the Central Government.

63. The Committee recommends that the Government may appropriately look into the absence of such a provision in the Bill, with a view to deal with the cases of owner of the vessel failing to pay the salvors due to bankruptcy, absence of proper insurance cover or any other reasons and to ensure that the salvors get their payment for the salvage operation carried out.

GENERAL RECOMMENDATIONS

64. The Committee observes that there is no provision for grievance redressal mechanism in the Bill. The Committee also observes that there are lots of probabilities of a grievance that can arise at any stage of the salvage operation, wreck removal, etc. The Committee, therefore, recommends that necessary provisions for redressal of grievances should be incorporated suitably, in the Bill.

65. During the time of deliberations on the Bill, the Committee enquired about the inordinate delay in bringing these Conventions particularly as the Bunker Convention which is of the year 2001; the Nairobi Convention is of 2007; and the Salvage Convention is of 1989, for which the Secretary, Shipping replied that:

“There are three Conventions. In two of those, we had become parties because there were certain provisions in existence. This process goes through the MEA and their Legal Treaties Division. They, normally, assess whether our existing legal provisions are adequate for us to agree to a certain Convention. So, out of these three Conventions, they agreed that even at a minimum base level, in respect of two of them, we can become parties and we went ahead and became parties on the basis of the provisions which already existed under the Merchant Shipping Act. 1958. As far as the Bunker Convention is concerned, when we sent this file, their opinion was that unless we first go through the process of getting an approval for the legislation, for the Bill, this may not be accepted. So, the Bunker Convention, for that reason, was also clubbed here.”

66. Further to this, the Ministry of Shipping has furnished a self-contained note showing the reasons for the inordinate delay in finalizing these three International Conventions, to the Committee (Annexure-II). The Ministry has further submitted that the delay, if any, is attributable to the difficulties faced in harmonization of the draft provisions based on the three International Conventions after starting the process in the year 2009 onwards. Further, the fresh approval of the Union Cabinet, consequent upon the change of Union Government was also one of the procedures that was required to be followed by them.

67. The Committee notes that cumbersome procedures, inter-ministerial and pre-legislative consultations led to the delay in bringing the legislation. The Committee feels that confusion, lack of farsightedness, lack of decision making capabilities and indecisiveness at various levels also contributed to this delay. The Committee recommends that in future, the Ministry should ensure that the legislations are processed within the shortest possible time by avoiding the steps which are unnecessary and unwarranted. The Committee has seen that in many situations, the Ministry’s line of action was not clear because of which the action initiated way back in April, 2009 could be accomplished after a gap of more than six years *i.e.*, on the 10th August, 2015.

68. The Committee recommends that necessary amendments as suggested by the Committee, may be brought in the relevant Clauses of the Merchant Shipping (Amendment) Bill, 2015.

69. The Committee, while going through the Merchant Shipping Act, 1958, felt that the statute is quite bulky, with 461 Sections and Sub-sections. The present Bill itself contains more than 50 Clauses. The Committee, therefore, recommends that the Government may consider enacting a new Merchant Shipping Act so that the obsolete Clauses could be removed and new Clauses could be brought in to keep it in tune with time.

RECOMMENDATIONS/OBSERVATIONS OF THE COMMITTEE AT A GLANCE

The Committee observes that the exemption given to the owner if the pollution damage is due to an 'Act of God' as given in clause 352 RD, is likely to leave ample scope for litigation and that the owner of a ship can run away from his responsibilities of giving compensation to the pollution damage caused by the ship owned by him. The Committee, therefore, recommends to reconsider this aspect to ensure that the law does not leave any scope for the shipowners to get away from their responsibility of paying compensation.

(Para No. 21)

The Committee observes that Ports have ample chances of oil spillage and environment pollutions from the vessels at the time of loading/unloading of cargo. The Committee recommends that latest modern equipments being used at International level may be provided to the Ports for addressing this challenge. The Committee further recommends that for our cash strapped Major Ports, the present subsidy limit of 50% be enhanced substantially for procurement of the modern equipment for fighting any pollution due to oil spillage on a case to case basis.

(Para No. 22)

The Committee recommends that the Government should chalk out a time bound action plan to remove the wrecks that are already there in the Indian waters especially those wrecks which are affecting the shipping channels.

(Para No. 37)

The Committee welcomes the Bill which seeks to suitably incorporate the provisions of the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (Bunker Convention); the Nairobi International Convention on the Removal of Wrecks, 2007 (Nairobi Convention); and the International Convention on Salvage, 1989 (Salvage Convention) in the Merchant Shipping Act, 1958.

(Para No. 52)

Sub-Clause 402D (2) & (3)

The Committee observes that the Master of the Ship has been given the authority to execute a salvage contract or any such contracts on behalf of the ship owner. Since the Master of the ship is only an employee of the owner, there might be situations when the owner may not honour the contract signed by the Master of the Ship and the Salvor. Therefore, the Committee feels that a strict provision should be made in the Bill in order to save the interests of the Master of the Vessel. In view of the availability of sophisticated Information and Communication Technology tools, it is easy to consult the owner of the Vessel by the Master of the Vessel before agreeing to the contract or in case of any contingency.

(Para No. 56)

The Committee, therefore, recommends that a new Sub Clause-"in both the cases at (2) and (3), the owner of the vessel or cargo as the case may be, shall not be entitled to challenge the decision of the master/owner of the vessel, if such a decision is taken after sufficient consultation" may be inserted in the Bill.

(Para No. 57)

Sub Clause 402G

The Committee also feels that within the territorial waters of India, Indian Companies should be given priority for salvage operations. Accordingly, the Committee recommends that the following sub Clause may be added in the Bill:

“The Central Government shall ensure that the salvors of Indian origin are given first right of refusal as against the salvors of foreign origin, for any salvage operations within the territorial waters of India”.

(Para No. 59)

Sub Clause 402 H

The Committee recommends that the Government may appropriately look into the absence of such a provision in the Bill, with a view to deal with the cases of owner of the vessel failing to pay the salvors due to bankruptcy, absence of proper insurance cover or any other reasons and to ensure that the salvors get their payment for the salvage operation carried out.

(Para No. 63)

GENERAL RECOMMENDATIONS

The Committee observes that there is no provision for grievance redressal mechanism in the Bill. The Committee also observes that there are lots of probabilities of a grievance that can arise at any stage of the salvage operation, wreck removal, etc. The Committee, therefore, recommends that necessary provisions for redressal of grievances should be incorporated suitably, in the Bill.

(Para No. 64)

The Committee notes that cumbersome procedures, inter-ministerial and pre-legislative consultations led to the delay in bringing the legislation. The Committee feels that confusion, lack of farsightedness, lack of decision making capabilities and indecisiveness at various levels also contributed to this delay. The Committee recommends that in future, the Ministry should ensure that the legislations are processed within the shortest possible time by avoiding the steps which are unnecessary and unwarranted. The Committee has seen that in many situations, the Ministry's line of action was not clear because of which the action initiated way back in April, 2009 could be accomplished after a gap of more than six years *i.e.*, on the 10th August, 2015.

(Para No. 67)

The Committee recommends that necessary amendments as suggested by the Committee, may be brought in the relevant Clauses of the Merchant Shipping (Amendment) Bill, 2015.

(Para No. 68)

The Committee, while going through the Merchant Shipping Act, 1958, felt that the statute is quite bulky, with 461 Sections and Sub-sections. The present Bill itself contains more than 50 Clauses. The Committee, therefore, recommends that the Government may consider enacting a new Merchant Shipping Act so that the obsolete Clauses could be removed and new Clauses could be brought in to keep it in tune with time.

(Para No. 69)

STATUS OF WRECKS ON THE COAST OF INDIA - 2015

Sr. No.	Name of Port / Coast of India	Type	Name / Identity of wreck	Position of wreck	Date of Incident / Became Wreck	Total number of Wreck	STATUS/ Remarks
1	PARADIP PORT TRUST	Major	Black Rose	20,12.8N 086,38.85E	9/9/2009	1	Hull part deteriorated due to wave action. Wreck embedded into the bottom of the sea. Salvage matter is still pending in Hon'ble High Court of Orissa and Collector & DM, Jagatsingpur.
2	MORMUGAO PORT TRUST	Major	1) MOTHER PEARL M.V. MARINER IV Shipwreck at Vasco Bay	1) 15,25.5N 073,48.8E 2) 15,24.8N 073,49.2E 3) 15,24.2N 073,48.7E	X	3	In posn. Identified wreck. No hazard to navigation. Assessment to get rid of wreck will soon follow, approx. 6 months.
3	NEW MANGALORE PORT TRUST	Major	M.V.DEN DEN	12,53.79N 074,48.67E	23.06.2007	1	Appx 40% of wreck has been removed and remaining work is under progress.
4	CHENNAI PORT TRUST	Major	MV. DECCAN PIONEER	13, 52N 080,19.11E	11/11/1985	1	Wreck does not pose a hazard to navigation in the position. No action has been taken for removal of the wreck.
5	COCHIN PORT TRUST	Major	1) LORD WILLINGDON 2) MARIA S	1) 09,57.59N 076,11.13,04E 2) 09,58.24n 076,10.49.8E	1) 1982. 2) 2007	2	1) No action taken to remove the wreck as it does not pose any danger to surface navigation. 2) Wreck have cut and removed all the portion above the seabed. The remains are sunk in the mud and clear for surface navigation.

6	KOLKATA PORT	Major	MV. BINGO	21,13.49N 088,13.25E	10/12/2013	1	The wreck is in close proximity of navigational channel & Serious impediment to safe shipping. Owner have not made any commitment whatsoever and the wreck continues to in its present position.
7	V.O.CHIDAMBARANAR PORT TRUST (TUTICORIN)	Major	MV. BLUE MARINE-1	08,47.588N 078,13.801E	10/28/2010	1	Wreck removal effort not succeeded, however again been insisted to take immediate action to salvage the barge.
8	JAWAHARLAL NEHRU PORT TRUST	Major	MAHARATTA	18,58.73N 072,56.95E	X	1	Wreck is outside the navigation channel of JNPT and hence does not pose any danger to vessels coming and sailing from JNPT
9	MUMBAI PORT TRUST	Major	24 wrecks in the Jurisdiction of Mumbai Port Trust.				Calling for auction for wreck removal. Next week board meeting. No hazard to navigation. All wrecks identified & in posn.
		1	SAILING CRAFT	18,51.05N 72,42.46E	X	1	
		2	MOONLIGHT GLORY	18,57.05N 072,52.46E	X	1	
		3	CERRY CHANTAK	18,49.54N 72,43.46E	X	1	
		4	MANSCO III	18,58.23N 72,52.34E	X	1	
		5	MIENG HONG 21	18,57.53N 72,52.29E	X	1	

		23	Unknown Wreck	18,52,79N 72,43,55E	X	1	Owner contacted. No response. Wreck identified well marked. Posing danger to Navigation/in the channel. Needs to be removed earliest.
		24	Unknown Wreck	18,50,94N 72,39,96E	X	1	
10	NAGAPATTINUM PORT (CPCL)	Minor	MV. AQUA MARINE	10,49,18N 079,53,08E	12/19/2014	1	Owner advised to forward plan of action for salvage of grounded vessel.
11	TUTICORIN COAST	Coast	MV. SRI KRISHNA-16	18nm NE of Pandian light Tuticorin	5/22/2015	1	
12	BELEKERI PORT	Minor	Barge Timo	Belekeri port limit	11/1/2004	1	
13			Barge Vishwas	Belekeri port limit	10/27/2007	1	

Reply to the queries raised and remained unanswered during the course of recording of oral evidence before the Department Related Parliamentary Standing Committee on 16.09.15.

1. Question: In the presentation it has been shown that Bunker Convention is a Convention of the year 2001, and India to become party after the enactment of the Bill. Why has there been a delay of 14 years?

Answers/submissions: International Convention on Civil Liability for Bunker oil Pollution Damage [Bunker Convention], 2001 was adopted by the International Maritime Organisation [IMO] in 2001. However, it came into force internationally only at the end of the year 2008 i.e. after a gap of nearly eight years, on 21.11.2008. Therefore, there was no delay from 2001 till the end of 2008, as the Convention itself was not in force, and there was no obligation to follow the Convention.

The process for the accession and subsequent amendment to the Merchant Shipping Act, 1958 was initiated in early 2009. The details of step wise process followed for the accession and necessary amendment to the Merchant Shipping Act, 1958 is as mentioned below;

1.	Directorate General of Shipping [DG (S)] sent the proposal to accede to Bunker Convention and to seek in- principle approval of the Cabinet to subsequently introduce amendments to Merchant Shipping Act, 1958.	28.04.2009
2.	The proposal was examined in the Ministry and approval of Hon'ble Minister was obtained to take up the matter before the Union Cabinet.	29.06.2009
3.	The proposal was suitably formulated as a draft Note for Cabinet.	22.09.2009
4.	The draft Cabinet Note circulated for Inter-Ministerial comments.	31.03.2010
5.	The Ministry of External Affairs while conveying their comments suggested that instead of seeking in- principle approval of the Cabinet to subsequently introduce amendments to Merchant Shipping Act, 1958, the amendment to Merchant Shipping Act, 1958 (Bill) should be first passed by the by the Parliament before taking up the proposal for becoming a party to Bunker Convention.	05.05.2010
6.	The Ministry of Shipping sought the inputs of DG (S) on the comments of M/o External Affairs along with the comments received from various other Ministries.	11.08.2010

7.	Inputs of DG (S) were received.	19.08.2010
8.	The Hindi version of the draft Cabinet Note and the draft Bill were referred to the DG (S) for verification of the technical terms used in the translated version.	22.10.2010
9.	DG (S) sent the corrected Hindi version of draft Cabinet Note and the draft Merchant Shipping Amendment Bill.	29.10.2010
10.	The final Note for Cabinet was sent to Prime Minister's Office (PMO). The PMO suggested the Ministry of External Affairs has suggested that the Bill be passed before becoming a party to the Convention the matter may be taken up before a Committee of Secretaries (CoS).	29.11.2010
11.	DG (S) sent their inputs and a Note was prepared for the Committee of Secretaries.	10.01.2011
12.	Committee of Secretaries meeting was held and it was decided that Merchant Shipping Act amendment should precede India becoming party to the convention and a draft amending Bill or Ordinance should be prepared. Secretary, D/o Legal Affairs and Secretary, Legislative Department were asked to assist Ministry of Shipping in drafting the Ordinances.	15.03.2011
13.	The draft Ordinance and a draft proposal for Cabinet seeking approval to introduce an Ordinance on the Bunker Convention and the Nairobi Wreck Removal Convention were prepared.	18.04.2011
14.	The proposal for Ordinance on the Nairobi Convention and the Bunker Convention was approved by Hon'ble Minister.	17.06.2011
15.	The Prime Minister's Office advised that instead of an Ordinance Merchant Shipping (Amendment) Bill be introduced as per normal legislative process.	03.07.2011
16.	The Note for Cabinet on Ordinance was circulated for inter-ministerial comments.	08.11.2011
17.	The Legislative Department prepared the draft Merchant Shipping Amendment Bill instead of an Ordinance.	08.01.2012
18.	Since the Legislative Department had made modifications to the Bill and suggested that the Bill be discussed with the Legislative Department, DG (S) was requested to examine the modified Bill and depute an officer for discussions.	28.02.2012
19.	DG (S) sent their inputs on the modified Bill with further changes.	11.07.2012
20.	The revised Bill was discussed with Ministry of Law.	27.09.2012

21.	The Legislative department sought further clarifications on the proposed Bill.	19.10.2012
22.	Hon'ble Minister for Shipping directed that the Merchant Shipping (Amendment) Bill should also include amending the provision contained in Section 356M regarding enhancement of the oil pollution cess.	04.11.2012
23.	In the course of discussions with Legislative Department the DDG, DG (S) incorporated the provisions of Salvage Convention in the Merchant Shipping (Amendment) Bill.	04.01.2013
24.	The Bill was revised to incorporate provisions of Bunker Convention, Nairobi Convention, Salvage Convention and the amendment of Sec 356 M to enhance oil pollution cess.	18.03.2013
25.	The revised draft Bill was again discussed with Legislative Department.	28.05.2013
26.	The fresh proposal for the Cabinet with the revised Bill containing Bunker Convention, Salvage Convention and increase in oil pollution cess was approved by Hon. Minister for Shipping.	12.12.2013
27.	The revised draft Note for Cabinet Containing Bill for Bunker Convention, Salvage Convention, Nairobi Convention and increase of oil pollution cess was circulated for inter-ministerial comments.	16.12.2013
28.	The D/o Economic Affairs in their comments conveyed that the amount of levy may be brought under the rules instead of quantifying it in the Bill and the financial implication arising in the freight charges as a result of the levy may be reflected in the draft Note for Cabinet.	07.02.2014
29.	Secretary, Legislative Department communicated that pre-legislative consultative policy should be followed for all legislative matters and therefore DG (S) was directed to upload the working draft of revised Merchant Shipping Amendment Bill on the website of DG (S) and seek comments of stakeholders and public.	12.03.2014
30.	Before the Note for Cabinet and Bill could be finalised election was declared and code of conduct came into force.	---
31.	The revised draft Merchant Shipping (Amendment) Bill was loaded in the official website of the Directorate for a period of one month seeking comments of all stakeholders i..e on or before 02.06.2014, as per pre-legislative consultative policy	02.5.2014

	prescribed by the Legislative Department.	
32.	Follow up with the comments received from stakeholders DG (S) held meetings with all stakeholders to discuss their comments on the draft Bill.	09.6.2014
33.	The draft Bill after pre-legislative consultation by DG (S) was finalised.	11.6.2014
34.	The proposal was placed before the Hon'ble Minister of Shipping on the assuming of office of the present Government. It was decided to remove provisions to increase oil/marine pollution cess. This revised note for Cabinet and the revised Bill was circulated for inter-ministerial consultations.	08.08.2014
35.	Comments of various Ministries were received and these comments were consolidated and sent to Legislative Department requesting them to finalise the Bill and convey their concurrence to the proposal with the approval of Hon. Law Minister.	02.01.2015
36.	Legislative Department conveyed their concurrence to the proposal and provided the final Bill with the approval of Hon. Law Minister.	09.02.2015
37.	The final Note for Cabinet and the final Bill was approved by the Hon. Minister	02.03.2015
38.	Official language wing of the Legislative Department was requested for Hindi translation of the Bill.	11.03.2015
39.	Official language wing of the Legislative Department provided the Hindi translation of the Bill.	23.04.2015
40.	The final note for Cabinet and the final Bill (bilingual version) sent to Cabinet Secretariat and PMO.	21.05.2015
41.	Proposal approved by the Union Cabinet.	10.06.2015
42.	DG (S) sent inputs for the draft Statement of Objects and Reasons, Notes on Clauses and Memorandum on Delegated Legislation.	01.07.2015
43.	Draft Statement of Objects and Reasons, Memorandum on Delegated Legislation approved by Hon. Minister and referred to Legislative Department for vetting.	09.7.2015
44.	Statement of Objects and Reasons, Memorandum on Delegated Legislation vetted and finalized by Legislative Department.	24.7.2015
45.	The Merchant Shipping (Amendment) Bill, 2015 introduced in Parliament by Hon'ble Minister of Shipping.	10.08.2015

In light of the above mentioned circumstances, procedures, inter-ministerial consultation, and pre-legislative consultations as well as combination of two more Convention [i.e. Nairobi and Salvage Convention] with the Bunker Convention, it may kindly be observed that the delay, if any is attributable to the difficulties faced in harmonization of the draft provisions based on the three international Convention after starting the process in the year 2009 onwards. Further, the fresh approval of the Union Cabinet, consequent upon the Change of the Union Government is also one procedure which was required to be followed.

2. Question: In the presentation it has been shown that International Convention on Salvage is in force since 14.07.1996 and India is party since 18.10.1995. How do you correlate it? The delay to be explained.

Answer/submission: Salvage Convention was adopted in the year 1989. However, having met the requirement of tonnage and the number of states, as per the requirement of the stated convention, it actually came into force internationally after nearly seven years i.e. on 14.07.1996. India became a party to this Convention on 18.10.1995, as the provisions related to the Salvage Convention largely exist in the Merchant Shipping Act ever since 1958 and continued to be part of the Act till date. Indian law makers [Hon'ble Parliament] in their great wisdom had provided the provisions related to salvage in the Act since from 1958 itself i.e. much before 1989 Salvage Convention came into force. Therefore, the broad provisions on salvage already exist in the present Merchant Shipping Act.

However, the significant improvement made by the Salvage Convention 1989 is that it has enabled compensation for unsuccessful salvage efforts, and the salvor dealing with the salvage operation is free to make a contract with the ship-owner whose ship is being salvaged by it, so as to cover the compensation even if the salvage operation is not fully successful. The salvage convention has done away with the old principle of "No cure No pay ". It encourages the salvors to assist the distressed vessel and even if the salvage may not be totally successful, the Salvor is compensated by invoking contract and the Special compensation scopic clause.

It is submitted that as explained above, the provisions related to salvage are already in existence in the present Merchant Shipping Act. However, the provisions related to the salvage Convention are being updated, as an opportunity to make Indian legislation fully compliant with the Convention. Therefore, it may kindly be concluded that there is no delay in the legislation.

3. Question: Name of any major country which is not a signatory to these three Conventions [like US UK or Germany]. What would be the possible reason for them not signing and we are opting for that Convention?

Answer/submission: United States of America [USA] and Japan are the two major maritime nations who are not a party to the Bunker Convention. The United States has enacted the Oil Pollution Act 1990. The Act covers all types of oil, from the ship, whether bunkers or Cargo. The compensations and the requirement are more stringent than the Bunker Convention and hence there was no need by US to adopt the Bunker Convention which came into force at a much later stage in 2008. Similarly, the Japanese 'Act on Liability for ship oil pollution 1975' was amended in 2005 to cover bunker pollution damage before the bunker convention came into force internationally in 2008, and also the requirement under the local regulations were more stringent, thus Japan never felt the need for the bunker convention. As regards India, the provision related to pollution from oil [except bunker oil pollution damage] are existing in the Merchant Shipping Act, 1958, but there is a need to make specific legislation for covering the pollution incidents caused by the bunker oil of the ships, hence the proposed Bill is introduced.

Nairobi Convention: United States of America [USA], China and Japan, Italy, Norway, Republic of Korea, and Russian Federation are the major maritime nations which are not party to the Convention. As of now the national legislation of the above countries provide adequate mechanism of direct action against the ship owners in their coastal waters hence there may not be a need for them to be a party to this Convention. However, the Nairobi Wreck removal convention has entered into force this year only [i.e. on 14.04.2015]. Hence, it is still early stages as most of the countries may still be evaluating the convention from deciding to become party to the Convention. Moreover, now the Convention extends its scope beyond coastal waters up to Exclusive Economic Zone (EEZ), thus there may be reconsideration by other countries in due course to decide on being a party to this Convention. As regard India, the provisions related to the wreck removal are already existing in the Act. However, these are proposed to be updated, as an opportunity to make Indian legislation fully compliant with the Convention.

Salvage Convention: Japan, Panama, Republic of Korea, are few major maritime nations which are not party to the Convention. The prime reason for such maritime countries not becoming a party to the Convention is that their national legislation has already made necessary provisions for salvage and the courts have the sole jurisdiction of awarding the salvage compensation. The salvage convention applies to judicial or arbitral proceedings pertaining to salvage. Salvage is generally between private parties and disputes between

them are generally decided by arbitration/judicial process. The local legislation of such countries also provides mechanism for Arbitration and compensation for efforts of the salvor irrespective of degree of success, thus such countries have not felt the need for adoption of the convention. As regard India, the provisions related to salvage are already existing in the Act. However, these are proposed to be updated, as an opportunity to make Indian legislation fully compliant with the Convention.

4. Question: Give the list of nations which have signed and the list of the nations which have not signed these three Conventions.

Answer/submission: The list nations which are party to the Bunker Convention is enclosed [Appendix-I]. The list nations which are not party to this Convention is also enclosed [Appendix-II]

The list of nations which are party to the Nairobi wreck removal Convention is enclosed [Appendix-III]. The list nations which are not party to this Convention is also enclosed [Appendix-IV].

The list of nations which are party to the Salvage Convention, 1989 is enclosed [Appendix-V]. The list nations which are not party to this Convention is also enclosed [Appendix-VI].

5. Question: What will be the procedure for recovery in case of wreck [Page No. 6 of the document containing recorded oral evidence]?

Answer/submission: Any claim for costs arising under the new provisions may be brought directly against the insurer or other person who has provided the financial security for the liability of the registered owner of the vessel. Hence even the direct action for claim against the insurers or the person giving the financial security is possible, so as to compensate the damage caused by the incident of a ship becoming a wreck and hazard to safe navigation.

6. Question: Dispute relating to claims shall be adjudicated by concerned High Court [where vessel is registered/vessel is situated/cause of action arise. Clarify the three jurisdiction provided there. Also clarify from which time the claim [i.e. limitation period of within 2 years] will start in case of Salvage Convention [Page No. 6 of the document containing recorded oral evidence].

Answer/submissions: The jurisdiction has been given based on the broad principles as given in the Civil Procedure Code, 1908 w.r.to jurisdiction of the courts. The case may not proceed in more than one court, as the principle of res sub judice will apply. The case may proceed at one location based on the principle that where it is instituted first. The period of limitation shall commence from date of completion of salvage operation.

7. Question: Whether there are statistics about the benefits/positive impacts which have occurred or may occur in future, to the ocean ecology of those countries which are party to these Conventions. Is there a financial or other loss to the country in absence of following these Conventions [Page No. 6 of the document containing recorded oral evidence]?

Answer/submission: No specific statistics is available for benefits/positive impacts which have occurred or may occur in future, to the ocean ecology of those countries which are party to these Conventions. However, the benefits intended from these Conventions, are as follows;

Bunker Convention: This Convention is intended to ensure that adequate, prompt, and effective compensation is available to persons who suffer damage caused by spills of oil, when carried as fuel in ships' bunkers. The Convention applies to damage caused on the territory, including the territorial sea, and in exclusive economic zones of countries which Party to the Convention. A key requirement in the Bunker Convention is the need, for the registered owner of a vessel, to maintain a compulsory insurance cover. Another key provision is the enabling provision for initiating direct action against the insurer, which would

allow a claim for compensation for pollution damage to be brought directly against an insurer.

Nairobi wreck removal Convention: This Convention provides a sound legal basis for coastal countries to remove, or have removed, from their coastlines, wrecks which pose a hazard to the safety of navigation or to the marine and coastal environments, or both. It will make ship-owners financially liable and require them to take out insurance or provide other financial security to cover the costs of wreck removal. It will also provide States with a right of direct action against insurers. This Convention also includes an optional clause enabling States Parties to apply certain provisions to their territory, including their territorial sea.

Salvage Convention: This Convention seeks to remedy the deficiency enshrined in the "no cure, no pay" principle under which a salvor is only rewarded for services, if the salvage operation is successful. Earlier the salvors were paid only if the salvage operation were successful. However, under this Convention the efforts of the salvors to prevent the major pollution incident [for example, by towing a damaged tanker away from an environmentally sensitive area] have been recognized and now he may be rewarded even if he is not able to save the ship or the cargo. This will encourage the salvors to come forwards for saving the environmental damage.

As regards, financial or other loss to the country in absence of following these Conventions, it is submitted that Indian ships on international voyage are already complying with the requirements of the Bunker Convention & Nairobi Conventions. For salvage operations, & also to extent w.r.to the Nairobi Convention, the provisions are already in existence in the Merchant Shipping Act, 1958. As shipping is International in nature, Indian ships trading worldwide had to abide by the requirements of the Conventions, therefore, Indian ships were issued certificates by other convention countries at a certain cost. Now, with above adoption, Indian ships can be issued certificates by the Indian Administration after enactment. Secondly with the enactment, every ship entering Indian Coastal waters will be required to have necessary financial guarantee and a certificate being a proof of the same. In case of any pollution by way of bunker, or ship becoming a wreck direct action can be initiated against the owners / insurers through the process of Arbitration instead of passing through the lengthy judicial process. Such compulsory carriage of certificate and the provision of direct action will be an indirect method and deterrent thus giving indirect protection to the coastal marine environment. Financial or other loss to the country could occur if the provisions of the Conventions are not brought into force in India as owners of foreign flag vessels will not require to have insurance or financial security to deal with bunker oil spills or wrecks occurring in our waters, leading to environmental damage and consequential loss to the country.

**INTERNATIONAL CONVENTION ON CIVIL LIABILITY FOR BUNKER
OIL POLLUTION DAMAGE, 2001(BUNKERS 2001)**

Done at London, 23 March 2001

Entry into force: 21 November 2008

Signature, ratification, acceptance, approval and accession

Article 12

1 This Convention shall be open for signature at the Headquarters of the Organization from 1 October 2001 until 30 September 2002 and shall thereafter remain open for accession.

2 States may express their consent to be bound by this Convention by:

- (a) signature without reservation as to ratification, acceptance or approval;
- (b) signature subject to ratification, acceptance or approval followed by ratification, acceptance or approval; or
- (c) accession

3 Ratification, acceptance, approval or accession shall be effected by deposit of an instrument to that effect with the Secretary-General.

4 Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to this Convention with respect to all existing State Parties, or after the completion of all measures required for the entry into force of the amendment with respect to those State Parties shall be deemed to apply to this Convention as modified by the amendment.

Entry into force

Article 14

1 This Convention shall enter into force one year following the date on which eighteen States, including five States each with ships whose combined gross tonnage is not less than 1 million, have either signed it without reservation as to ratification, acceptance or approval or have deposited instruments of ratification, acceptance, approval or accession with the Secretary-General.

2 For any State which ratifies, accepts, approves or accedes to it after the conditions in paragraph 1 for entry into force have been met, this Convention shall enter into force three months after the date of deposit by such State of the appropriate instrument.

Revision or amendment

Article 16

1 A conference for the purpose of revising or amending this Convention may be convened by the Organization.

2 The Organization shall convene a conference of the States Parties for revising or amending this Convention at the request of not less than one-third of the States Parties.

I.	Signatories
II.	Contracting States
III.	Declarations, Reservations and Statements
IV.	Amendments

I. Signatories

Australia	Subject to ratification
Brazil	Subject to ratification
Canada	Subject to ratification
Denmark ¹	Subject to ratification
Finland ¹	Subject to acceptance
Germany ¹ , Federal Republic of	Subject to ratification
Italy	Subject to ratification
Norway	Subject to ratification
Spain ¹	
Sweden ¹	Subject to ratification
United Kingdom ¹	Subject to ratification

II. Contracting States

	Date of deposit of instrument	Date of entry into force
Albania (accession)	30 April 2010	30 July 2010
Antigua and Barbuda (accession)	19 December 2008	19 March 2009
Austria (accession)	30 January 2013	30 April 2013
Australia (ratification)	16 March 2009	16 June 2009
Azerbaijan (accession)	22 June 2010	22 September 2010
Bahamas (accession) ¹	30 January 2008	21 November 2008
Barbados (accession)	15 October 2009	15 January 2010
Belgium (accession) ¹	11 August 2009	11 November 2009
Belize (accession)	22 August 2011	22 November 2011
Bulgaria (accession) ¹	6 July 2007	21 November 2008
Canada (accession)	2 October 2009	2 January 2010
Czech Republic (accession)	20 December 2012	20 March 2013
China (accession) ^{1,4}	9 December 2008	9 March 2009
Congo (accession)	19 May 2019	19 August 2014
Côte d'Ivoire (accession)	8 July 2013	8 October 2013
Cook Islands (accession)	21 August 2008	21 November 2008
Croatia (accession) ¹	15 December 2006	21 November 2008
Cyprus (accession) ¹	10 January 2005	21 November 2008
Denmark (ratification)	23 July 2008	21 November 2008
Democratic People's Republic of Korea (accession)	17 July 2009	17 October 2009
Egypt (accession) ¹	15 February 2010	15 May 2010
Estonia (accession) ¹	5 October 2006	21 November 2008
Ethiopia (accession)	17 February 2009	17 May 2009
Finland (acceptance) ¹	18 November 2008	18 February 2009
France (accession) ¹	19 October 2010	19 January 2011
Germany* (ratification) ¹	24 April 2007	21 November 2008
Greece* (accession)	22 December 2005	21 November 2008
Hungary (accession)	30 January 2008	21 November 2008
Indonesia (accession)	11 September 2014	11 December 2014
Iran (Islamic Republic of Iran) (accession)	21 November 2011	21 February 2012
Ireland (accession) ¹	23 December 2008	23 March 2009
Italy (ratification)	18 November 2010	18 February 2011

	Date of deposit of instrument	Date of entry into force
Jamaica (accession)	2 May 2003	21 November 2008
Jordan (accession)	24 March 2010	24 June 2010
Kenya (accession)	7 July 2015	7 October 2015
Kiribati (accession)	29 July 2009	29 October 2009
Latvia (accession)	19 April 2005	21 November 2008
Liberia (accession)	21 August 2008	21 November 2008
Lithuania (accession)	14 September 2007	21 November 2008
Luxembourg (accession) ¹	21 November 2005	21 November 2008
Malaysia (accession)	12 November 2008	12 February 2009
Malta (accession) ¹	12 November 2008	12 February 2009
Marshall Islands (accession)	9 May 2008	21 November 2008
Mauritius (accession)	17 July 2013	17 October 2013
Mongolia (accession)	28 September 2011	28 December 2011
Montenegro (accession)	29 November 2011	29 February 2012
Morocco (ratification)	14 April 2010	14 July 2010
Netherlands (accession)	23 December 2010	23 March 2011
New Zealand (accession) ¹	4 April 2014	4 July 2014
Nicaragua (accession)	3 April 2014	3 July 2014
Nigeria (accession)	1 October 2010	1 January 2011
Niue (accession)	18 May 2012	18 August 2012
Norway (ratification) ¹	25 March 2008	21 November 2008
Palau (accession)	28 September 2011	28 December 2011
Panama (accession)	17 February 2009	17 May 2009
Poland (accession) ¹	15 December 2006	21 November 2008
Portugal (accession)	21 July 2015	21 October 2015
Republic of Korea (accession)	28 August 2009	28 November 2009
Romania (accession)	15 June 2009	15 September 2009
Russian Federation (accession)	24 February 2009	24 May 2009
Saint Kitts and Nevis (accession)	21 October 2009	21 January 2010
Saint Vincent and the Grenadines (accession)	26 November 2008	26 February 2009
Samoa (accession)	18 May 2004	21 November 2008
Serbia (accession)	8 July 2010	8 October 2010
Sierra Leone (accession)	21 November 2007	21 November 2008
Singapore (accession) ¹	31 March 2006	21 November 2008
Slovakia (accession) ¹	1 May 2013	1 August 2013
Slovenia (accession)	20 May 2004	21 November 2008
Spain (ratification) ¹	10 December 2003	21 November 2008
Sweden (ratification) ¹	3 June 2013	3 September 2013
Switzerland (accession)	24 September 2013	24 December 2013
Syrian Arab Republic (accession) ¹	24 April 2009	24 July 2009
Togo (accession)	23 April 2012	23 July 2012
Tonga (accession)	18 September 2003	21 November 2008
Tunisia (accession) ¹	5 September 2011	5 December 2011
Turkey (accession)	12 September 2013	12 December 2013
Tuvalu (accession)	12 January 2009	12 April 2009
United Kingdom* (ratification) ^{1, 2, 3}	29 June 2006	21 November 2008
Vanuatu (accession)	20 August 2008	21 November 2008
Vietnam (accession)	18 June 2010	18 September 2010

Number of Contracting States: 80
(the combined merchant fleets of which constitute approximately
91.84% of the gross tonnage of the world's merchant fleet)

¹ For the text of a declaration, reservation or statement, see section III.

² States with Ships whose combined gross tonnage is not less than 1 million.

³ Extended to the Isle of man with effect from 21 November 2008.
Extended to Gibraltar with effect from 28 November 2009.

Extended to Bermuda with effect from 16 January 2009.
Extended to the Cayman Islands with effect from 12 January 2011.
Extended to the British Virgin Islands with effect from 9 September 2013.

- ⁴ Applies to the Macau Special Administrative Region with effect from 9 March 2009.
Applies to the Hong Kong Special Administrative Region with effect from 22 January 2010.
-

List of Nations not party to the Bunker Convention

1.	Algeria
2.	Angola
3.	Argentina
4.	Bahrain
5.	Bangladesh
6.	Benin
7.	Bolivia (Plurinational State of)
8.	Bosnia and Herzegovina
9.	Brazil
10.	Brunei Darussalam
11.	Cambodia
12.	Cameroon
13.	Cabo Verde
14.	Chile
15.	Colombia
16.	Comoros
17.	Costa Rica
18.	Cuba
19.	Democratic Republic of the Congo*
20.	Djibouti
21.	Dominica
22.	Dominican Republic
23.	Ecuador
24.	El Salvador
25.	Equatorial Guinea
26.	Eritrea
27.	Fiji
28.	Gabon
29.	Gambia
30.	Georgia
31.	Ghana
32.	Grenada
33.	Guatemala
34.	Guinea
35.	Guinea-Bissau
36.	Guyana
37.	Haiti
38.	Honduras
39.	Iceland
40.	India
41.	Iraq
42.	Israel
43.	Japan
44.	Kazakhstan
45.	Kuwait
46.	Lebanon
47.	Libya
48.	Madagascar
49.	Malawi
50.	Maldives
51.	Mauritania
52.	Mexico
53.	Monaco
54.	Mozambique

55.	Myanmar
56.	Namibia
57.	Nepal
58.	Oman
59.	Pakistan
60.	Papua New Guinea
61.	Paraguay
62.	Peru
63.	Philippines
64.	Qatar
65.	Republic of Korea
66.	Republic of Moldova
67.	Romania
68.	Saint Lucia
69.	San Marino
70.	Sao Tome and Principe
71.	Saudi Arabia
72.	Senegal
73.	Seychelles
74.	Solomon Islands
75.	Somalia
76.	South Africa
77.	Sri Lanka
78.	Sudan
79.	Suriname
80.	Thailand
81.	The former Yugoslav Republic of Macedonia
82.	Timor-Leste
83.	Trinidad and Tobago
84.	Turkmenistan
85.	Uganda
86.	Ukraine
87.	United Arab Emirates
88.	United Republic of Tanzania
89.	United States of America
90.	Uruguay
91.	Venezuela (Bolivarian Republic of)
92.	Yemen
93.	Zambia
94.	Zimbabwe

**NAIROBI INTERNATIONAL CONVENTION ON THE REMOVAL OF WRECKS, 2007
(NAIROBI WRC 2007)**

Done at Nairobi, 18 May 2007

Entry into force: 14 April 2015

Signature, ratification, acceptance, approval and accession

Article 17

1 This Convention shall be open for signature at the Headquarters of the Organization from 19 November 2007 until 18 November 2008 and shall thereafter remain open for accession.

- (a) States may express their consent to be bound by this Convention by:
- (i) signature without reservation as to ratification, acceptance or approval; or
 - (ii) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or
 - (iii) accession.
- (b) Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.

Article 18

Entry into force

1 This Convention shall enter into force twelve months following the date on which ten States have either signed it without reservation as to ratification, acceptance or approval or have deposited instruments of ratification, acceptance, approval or accession with the Secretary-General.

2 For any State which ratifies, accepts, approves or accedes to this Convention after the conditions in paragraph 1 for entry into force have been met, this Convention shall enter into force three months following the date of deposit by such State of the appropriate instrument, but not before this Convention has entered into force in accordance with paragraph 1.

Denunciation

Article 19

1 This Convention may be denounced by a State Party at any time after the expiry of one year following the date on which this Convention comes into force for that State.

2 Denunciation shall be effected by the deposit of an instrument to that effect with the Secretary-General.

3 A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, following its receipt by the Secretary-General.

Amendment provisions

Article 14

1 At the request of not less than one-third of States Parties, a conference shall be convened by the Organization for the purpose of revising or amending this Convention.

2 Any consent to be bound by this Convention, expressed after the date of entry into force of an amendment to this Convention, shall be deemed to apply to this Convention, as amended.

- I. Signatories
- II. Contracting States
- III. Declarations, Reservations and Statements
- IV. Amendments

I. Signatories

Denmark	“Subject to ratification”	12 November 2008
Estonia	“Subject to ratification”	28 March 2008
France	“Sous réserve de ratification”	24 September 2008
Germany	“Subject to ratification”	17 November 2008
Italy	“Subject to ratification”	23 September 2008
Netherlands	“Subject to approval”	27 October 2008

II. Contracting States

	Date of deposit of instrument	Date of entry into force
Albania (accession) ¹	27 April 2015	27 July 2015
Antigua and Barbuda ¹	9 January 2015	14 April 2015
Bahamas (accession) ¹	5 June 2015	5 September 2015
Bulgaria (accession) ¹	8 February 2012	14 April 2015
Congo (accession)	19 May 2014	14 April 2015
Cook Islands (accession)	22 December 2014	14 April 2015
Cyprus (accession)	22 July 2015	22 October 2015
Denmark (ratification) ¹	14 April 2014	14 April 2015
Germany (ratification)	20 June 2013	14 April 2015
India (accession)	23 March 2011	14 April 2015
Iran (Islamic Republic of) (accession)	19 April 2011	14 April 2015
Kenya (accession) ¹	14 April 2015	14 July 2015
Liberia (accession) ¹	8 January 2015	14 April 2015
Malaysia (accession)	28 November 2013	14 April 2015
Malta (accession) ¹	18 January 2015	18 April 2015
Marshall Islands (accession) ¹	27 October 2014	14 April 2015
Morocco (accession)	13 June 2013	14 April 2015
Nigeria (accession)	23 July 2009	14 April 2015
Niue (accession)	27 April 2015	27 July 2015
Palau (accession)	29 September 2011	14 April 2015
Panama (accession)	18 August 2015	18 November 2015
South Africa (accession)	4 September 2015	4 December 2015
Tonga (accession)	20 March 2015	20 June 2015
Tuvalu	17 February 2015	17 May 2015
United Kingdom (accession) ^{1,2}	30 November 2012	14 April 2015

Number of Contracting States: 25
 (the combined merchant fleets of which constitute approximately
 58.09% of the gross tonnage of the world's merchant fleet)

¹ For the text of a declaration, reservations and statement, see section III.

² The Convention was extended by the United Kingdom to the Isle of Man with effect from 14 April 2015 and to Gibraltar with effect from 16 April 2015.

List of nations not party to the Nairobi Wreck Removal Convention

1.	Algeria
2.	Angola
3.	Argentina
4.	Australia
5.	Austria
6.	Azerbaijan
7.	Bahrain
8.	Bangladesh
9.	Barbados
10.	Belgium
11.	Belize
12.	Benin
13.	Bolivia (Plurinational State of)
14.	Bosnia and Herzegovina
15.	Brazil
16.	Brunei Darussalam
17.	Cambodia
18.	Cameroon
19.	Canada
20.	Cabo Verde
21.	Chile
22.	China
23.	Colombia
24.	Comoros
25.	Costa Rica
26.	Côte d'Ivoire
27.	Croatia
28.	Cuba
29.	Czech Republic
30.	Democratic People's Republic of Korea
31.	Democratic Republic of the Congo*
32.	Djibouti
33.	Dominica
34.	Dominican Republic
35.	Ecuador
36.	Egypt
37.	El Salvador
38.	Equatorial Guinea
39.	Eritrea
40.	Estonia
41.	Ethiopia
42.	Fiji
43.	Finland
44.	France
45.	Gabon
46.	Gambia
47.	Georgia
48.	Ghana
49.	Greece
50.	Grenada
51.	Guatemala
52.	Guinea
53.	Guinea-Bissau
54.	Guyana
55.	Haiti

56.	Honduras
57.	Hungary
58.	Iceland
59.	Indonesia
60.	Iraq
61.	Ireland
62.	Israel
63.	Italy
64.	Jamaica
65.	Japan
66.	Jordan
67.	Kazakhstan
68.	Kiribati
69.	Kuwait
70.	Latvia
71.	Lebanon
72.	Libya
73.	Lithuania
74.	Luxembourg
75.	Madagascar
76.	Malawi
77.	Maldives
78.	Mauritania
79.	Mauritius
80.	Mexico
81.	Monaco
82.	Mongolia
83.	Montenegro
84.	Mozambique
85.	Myanmar
86.	Namibia
87.	Nepal
88.	Netherlands
89.	New Zealand
90.	Nicaragua
91.	Norway
92.	Oman
93.	Pakistan
94.	Papua New Guinea
95.	Paraguay
96.	Peru
97.	Philippines
98.	Poland
99.	Portugal
100.	Qatar
101.	Republic of Korea
102.	Republic of Moldova
103.	Romania
104.	Russian Federation
105.	Saint Kitts and Nevis
106.	Saint Lucia
107.	Saint Vincent and the Grenadines
108.	Samoa
109.	San Marino
110.	Sao Tome and Principe
111.	Saudi Arabia

112.	Senegal
113.	Serbia
114.	Seychelles
115.	Sierra Leone
116.	Singapore
117.	Slovakia
118.	Slovenia
119.	Solomon Islands
120.	Somalia
121.	Spain
122.	Sri Lanka
123.	Sudan
124.	Suriname
125.	Sweden
126.	Switzerland
127.	Syrian Arab Republic
128.	Thailand
129.	The former Yugoslav Republic of Macedonia
130.	Timor-Leste
131.	Togo
132.	Trinidad and Tobago
133.	Tunisia
134.	Turkey
135.	Turkmenistan
136.	Uganda
137.	Ukraine
138.	United Arab Emirates
139.	United Republic of Tanzania
140.	United States of America
141.	Uruguay
142.	Vanuatu
143.	Venezuela (Bolivarian Republic of)
144.	Viet Nam
145.	Yemen
146.	Zambia
147.	Zimbabwe

List of nations Parties to Salvage Convention

INTERNATIONAL CONVENTION ON SALVAGE, 1989 (SALVAGE 1989)

Done at London, 28 April 1989

Entry into force: 14 July 1996

Signature, ratification, acceptance, approval, accession

Article 28

1 This Convention shall be open for signature at the Headquarters of the Organization from 1 July 1989 to 30 June 1990 and shall thereafter remain open for accession.

2 States may express their consent to be bound by this Convention by:

- (a) signature without reservation as to ratification, acceptance or approval; or
- (b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or
- (c) accession.

3 Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.

Entry into force

Article 29

1 This Convention shall enter into force one year after the date on which 15 States have expressed their consent to be bound by it.

2 For a State which expresses its consent to be bound by this Convention after the conditions for entry into force thereof have been met, such consent shall take effect one year after the date of expression of such consent.

- I. Signatories
- II. Contracting States
- III. Declarations, Reservations, Notifications and Statements.

I. Signatories

Canada	Subject to ratification
Denmark	Subject to ratification
Finland	Subject to approval
Germany, Federal Republic of	Subject to ratification
Ireland	Subject to ratification
Italy	Subject to ratification
Mexico	Ad referendum
Netherlands	Subject to acceptance
Nigeria	Subject to ratification
Norway	Subject to ratification
Poland	Subject to ratification
Spain	Ad referendum and with reservations ¹
Sweden	Subject to ratification
Switzerland	Sous réserve de ratification
USSR	[<i>Translation</i>] Subject to subsequent ratification
United Kingdom	Subject to ratification
United States	Subject to ratification

II. Contracting States

	Date of deposit of instrument	Date of entry into force
Albania (accession)	14 June 2006	14 June 2007
Algeria (accession)	26 March 2012	26 March 2013
Australia (accession) ¹	8 January 1997	8 January 1998
Azerbaijan (accession)	12 June 2006	12 June 2007
Brazil (accession)	29 July 2009	29 July 2010
Belgium (accession)	30 June 2004	30 June 2005
Bulgaria (accession) ¹	14 March 2005	14 March 2006
Canada (ratification) ¹	14 November 1994	14 July 1996
China (accession) ^{1, 4}	30 March 1994	14 July 1996
Congo (accession)	7 September 2004	7 September 2005
Croatia (accession) ¹	10 September 1998	10 September 1999
Denmark (ratification)	30 May 1995	14 July 1996
Dominica (accession)	31 August 2001	31 August 2002
Ecuador (accession) ¹	16 February 2005	16 February 2006
Egypt (accession)	14 March 1991	14 July 1996
Estonia (accession)	31 July 2001	31 July 2002
Finland (approval) ¹	12 January 2007	12 January 2008
France (accession) ¹	21 December 2001	21 December 2002
Georgia (accession)	25 August 1995	25 August 1996
Germany (ratification) ¹	8 October 2001	8 October 2002
Greece (accession)	3 June 1996	3 June 1997
Guinea (accession)	2 October 2002	2 October 2003
Guyana (accession)	10 December 1997	10 December 1998
Iceland (accession)	21 March 2002	21 March 2003
India (accession)	18 October 1995	18 October 1996
Iran (Islamic Republic of) (accession) ¹	1 August 1994	14 July 1996
Ireland (ratification) ¹	6 January 1995	14 July 1996
Italy (ratification)	14 July 1995	14 July 1996
Jamaica (accession)	28 November 2013	28 November 2014
Jordan (accession)	3 October 1995	3 October 1996
Kenya (accession)	21 July 1999	21 July 2000
Kiribati (accession)	5 February 2007	5 February 2008
Latvia (accession)	17 March 1999	17 March 2000
Liberia (accession)	18 September 2008	18 September 2009
Lithuania (accession) ¹	15 November 1999	15 November 2000

	Date of deposit of instrument	Date of entry into force
Marshall Islands (accession)	16 October 1995	16 October 1996
Mauritius (accession)	17 December 2002	17 December 2003
Mexico (ratification) ¹	10 October 1991	14 July 1996
Mongolia (accession)	2 September 2015	2 September 2016
Montenegro (accession)	19 April 2012	19 April 2013
Netherlands (acceptance) ^{1,3}	10 December 1997	10 December 1998
New Zealand (accession) ¹	16 October 2002	16 October 2003
Nigeria (ratification)	11 October 1990	14 July 1996
Niue (accession)	27 June 2012	27 June 2013
Norway (ratification) ¹	3 December 1996	3 December 1997
Oman (accession)	14 October 1991	14 July 1996
Palau (accession)	29 September 2011	29 September 2012
Poland (ratification)	16 December 2005	16 December 2006
Romania (accession)	18 May 2001	18 May 2002
Russian Federation (ratification) ¹	25 May 1999	25 May 2000
Saint Kitts and Nevis (accession)	7 October 2004	7 October 2005
Jamaica (accession)	28 November 2013	28 November 2014
Saudi Arabia (accession) ¹	16 December 1991	14 July 1996
Sierra Leone (accession)	26 July 2001	26 July 2002
Slovenia (accession)	23 December 2005	23 December 2006
Spain (ratification) ¹	27 January 2005	27 January 2006
Sweden (ratification) ¹	19 December 1995	19 December 1996
Switzerland (ratification)	12 March 1993	14 July 1996
Syrian Arab Republic (accession)	19 March 2002	19 March 2003
Tonga (accession)	18 September 2003	18 September 2004
Tunisia (accession) ¹	5 May 1999	5 May 2000
Turkey (accession) ¹	27 June 2014	27 June 2015
United Arab Emirates (accession)	4 October 1993	14 July 1996
United Kingdom (ratification) ^{1,2}	29 September 1994	14 July 1996
United States (ratification)	27 March 1992	14 July 1996
Vanuatu (accession)	18 February 1999	18 February 2000
Yemen (accession)	23 September 2008	23 September 2009

Number of Contracting States: 66
(the combined merchant fleets of which constitute approximately
51.31% of the gross tonnage of the world's merchant fleet)

¹ For the text of a reservation or statement, see section III.

² The United Kingdom declared its ratification to be effective from 22 July 1998 in respect of:

Bailiwick of Jersey)		Anguilla)	
Falkland Islands*)		British Antarctic Territory)	
Hong Kong**)	With effect from	British Indian Ocean Territory)	With effect from
Isle of Man)	30 May 1997	British Virgin Islands)	22 July 1998
Montserrat)		Cayman Islands)	
South Georgia and)		Pitcairn, Henderson, Ducie and)	
South Sandwich Islands)		Oeno Islands)	
		St. Helena, Ascension and Tristan)	
		da Cunha***)	
		Turks and Caicos Islands)	

Bailiwick of Guernsey with effect from 14 September 2001.

³ Extended to Bonaire, Sint Eustatius and Saba (the Caribbean part of the Netherlands) with effect from 10 October 2010. For more details on the restructuring of the Netherlands see footnote 4, in section II of SOLAS 1974.

Appendix-VI

List of Nations not party to the Salvage Convention

1.	Angola
2.	Antigua and Barbuda
3.	Argentina
4.	Australia
5.	Bahamas
6.	Bahrain
7.	Bangladesh
8.	Barbados
9.	Belize
10.	Benin
11.	Bolivia (Plurinational State of)
12.	Bosnia and Herzegovina
13.	Brunei Darussalam
14.	Cambodia
15.	Cameroon
16.	Cabo Verde
17.	Chile
18.	Colombia
19.	Comoros
20.	Cook Islands
21.	Costa Rica
22.	Côte d'Ivoire
23.	Cuba
24.	Cyprus
25.	Czech Republic
26.	Democratic People's Republic of Korea
27.	Democratic Republic of the Congo*
28.	Djibouti
29.	Dominican Republic
30.	El Salvador
31.	Equatorial Guinea
32.	Eritrea
33.	Ethiopia
34.	Fiji
35.	Gabon
36.	Gambia
37.	Ghana
38.	Grenada
39.	Guatemala
40.	Guinea-Bissau
41.	Haiti
42.	Honduras
43.	Hungary
44.	Indonesia
45.	Iraq
46.	Israel
47.	Japan
48.	Kazakhstan
49.	Kuwait
50.	Lebanon
51.	Libya
52.	Luxembourg
53.	Madagascar
54.	Malawi

55.	Malaysia
56.	Maldives
57.	Malta
58.	Mauritania
59.	Monaco
60.	Morocco
61.	Mozambique
62.	Myanmar
63.	Namibia
64.	Nepal
65.	Nicaragua
66.	Pakistan
67.	Panama
68.	Papua New Guinea
69.	Paraguay
70.	Peru
71.	Philippines
72.	Portugal
73.	Qatar
74.	Republic of Korea
75.	Republic of Moldova
76.	Saint Lucia
77.	Saint Vincent and the Grenadines
78.	Samoa
79.	San Marino
80.	Sao Tome and Principe
81.	Senegal
82.	Serbia
83.	Seychelles
84.	Singapore
85.	Slovakia
86.	Solomon Islands
87.	Somalia
88.	South Africa
89.	Sri Lanka
90.	Sudan
91.	Suriname
92.	Thailand
93.	The former Yugoslav Republic of Macedonia
94.	Timor-Leste
95.	Togo
96.	Trinidad and Tobago
97.	Turkmenistan
98.	Tuvalu
99.	Uganda
100.	Ukraine
101.	United Republic of Tanzania
102.	Uruguay
103.	Venezuela (Bolivarian Republic of)
104.	Viet Nam
105.	Zambia
106.	Zimbabwe

Supplementary submissions, for further clarity, on questions raised and replied during the course of recording of oral evidence before the Committee on 16.09.15.

1. Question: It is mentioned that liability of owner is exempted if the pollution damage is due to war, act intentional act/omission of third person, negligence/wrongful act of Government/ authority. Give some example of act of God and omission of third party. Who will decide on omission of third party Give some clarity on this aspect [Page No. 5 of document containing recorded oral evidence].

Answer/submissions: As was submitted by the DG Shipping, Gol, during the meeting, act of God or force majeure is a condition of occurrence of a natural calamity. Such an act needs to be an act which is not foreseen and is beyond the control of the human beings. If the person wants an exemption from the liability, he has to prove that such an act is not caused by him or his employee or agent, but by a third person. Hence the third person needs to be a totally external person not connected with the owner as employee or agent. As regards, the act of God, there is a plethora of case laws which has now got very well adjudicated and now has got very well settled by the apex court, as to what constitute an act of God or the force majeure situation. It is very well understood in terms of juristic principles, and there may not be any ambiguity for it during the adjudication proceedings. The court will decide, if it is an act of third party, in case there is a claim for an exemption from the liability.

2. Question: Claims to be preferred within three years from the date of damage or six years from the date of incident. Explain the two limitations given in the Act [Page No. 5 of the document containing recorded oral evidence].

Answer/Submissions: As was submitted by the DG Shipping, Gol, it is further clarified that one may get the compensation if a claim is made within three years from the date of occurrence of damage. However, no claim can be made after six years from the date of incident which has caused the damage. In simple words, it is perceptible damage for which there is an actionable claim, then the maximum limitation is three years. However, if there is an incident which otherwise is not so significant but later on can be related to original cause of action and more by way of social cause, then in such cases the limitation period shall be six years. It is in terms of graded impact on the environment and ecology which may occur immediately on occurrence of the incident or may come out after passage of time.

3. Question: There is mention of compulsory insurance & exemption to vessels owned or operated by the Government and used for the non

commercial service. Explain such exemption to Govt. vessels [Page No. 5 of the document containing recorded oral evidence].

Answer/submission: As was submitted by the Secretary (S), the vessels owned or operated by the Government and used for the non commercial service, are exempted from the compulsory insurance, as the broad principle is that the Government in case of accidents are funded sufficiently and if some compensation is to be paid to some person, the Government will be able to pay. Government is a kind of sovereign guarantee in itself. Therefore most of the equipments in the Government are not insured.

4. Question: When does a Convention come into force i.e. how countries are required to be party to a Convention to put it into force [Page No. 16 of the document containing recorded oral evidence]?

Answer/submissions: There are different criteria which are mentioned in the text of the respective Conventions itself. However, following is the criteria for putting these three Conventions into force;

Bunker Convention: Article 14 of this Convention stipulates that the Convention shall enter into force one year following the date on which 18 states, including 5 states each with ships whose combined gross tonnage is not less than 1 million, have either signed it without reservation as to ratification, acceptance or approval or have deposited the instruments of ratification, acceptance, approval or accession with the secretary General of the IMO. Accordingly the Bunker Convention, 2001 came into force only on 21.11.08

Nairobi Convention: Article 18 of this Convention stipulates that the Convention shall enter into force twelve month following the date on which 10 states have either signed it without reservation as to ratification, acceptance or approval or have deposited the instruments of ratification, acceptance, approval or accession with the secretary General of the IMO. Accordingly the Nairobi Convention, 2007 came into force only on 14.04.15 [i.e. this year only]

Salvage Convention: Article 29 of this Convention stipulates that the Convention shall enter into force one year following the date on which 15 states have expressed their consent to be bound by it. For an state which expresses its consent to be bound by this Convention after the conditions for entry into force thereof have been met, such consent shall take effect one year after the date of expression of such consent. Accordingly the Salvage Convention, 1989 came into force only on 14.07.96.

5. Question: Details of the around 30 wrecks already there in the Indian waters & what is happening to them may be give [Page No. 19 of the document containing recorded oral evidence].

Answer/submissions: The detail about the status of the wrecks already there in the Indian waters, is enclosed [Appendix-VII].

6. Question: Whether these Conventions are applicable to the fishing and cruise vessels?

Answer/submissions: The three conventions as mentioned do not make any reference or differentiate its application to the type of vessel. The general principle of application adopted is the gross tonnage of the vessel. The criteria for application of Bunker Convention to a ship are that it should be above 1000 GT. The Nairobi wreck removal Convention shall be applicable to ships which are of 300 GT and above. No such limit is mentioned in the Salvage Convention.

Comparison of existing and proposed provisions of the Bunker, Nairobi and Salvage Convention vis-a-vis benefits and cost to be incurred.

Name of the Convention	Existing provision	Proposed provisions	Benefits	Cost , if any to
International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 [Bunker Convention]	no Provisions	<p>Enables compensation for pollution damage caused by bunker oil used as fuel in a vessel.</p> <p>Liability of owner for cost incurred in taking preventive measures to minimize the damage.</p> <p>Liability of owner also for any damage caused while taking the preventive measures.</p> <p>Joint and several liability if damage is caused by two vessels</p> <p>[Certain exemptions are provided like war, act of third person].</p> <p>Owner may limit his liability as per LLMC Convention.</p> <p>High Court to determine the limitation of liability and distribution of claims.</p> <p>Claim may be made within three year of occurrence of damage but not later than six years from the incident.</p> <p>Owner of vessels above 1000GT need to maintain compulsory insurance or coverage financial security.</p>	<p>DGS can issue certificates of financial security to Indian ships which is now being issued by foreign entities.</p> <p>Claims can be made for any pollution damage caused by Bunker oil.</p> <p>Claims can be made for efforts to reduce damage.</p> <p>Foreign going Indian ships will be benefitted as DGS can issue compliance certificate.</p> <p>Time period for claims well defined, so will be processed quickly in time bound manner.</p>	<p>Vessel on international voyages are already complying with the requirement as Convention is already in force, hence no additional cost for such vessels.</p> <p>Vessels on the coast of India may have to take additional insurance cover.</p> <p>Cost of such insurance is not expected to exceed 1\$ per GT per annum [66.4 rupees</p>

		<p>A certificate to Indian vessel will be issued by the DGS.</p> <p>Certificate to foreign vessels may be issued on satisfaction that such vessel has insurance or financial security.</p> <p>Claim may directly be made against the insurer or person providing financial security.</p> <p>No vessel to enter or leave any port or place unless it has insurance cover or financial security.</p> <p>Certificate from foreign country who are party to this Convention will be accepted in India.</p> <p>Judgement by Indian court shall be enforceable in country which is a party to Bunker Convention.</p> <p>Power to make rules.</p>	<p>Indian coasts & ports will be protected from bunker pollution and ships not having insurance can be denied entry.</p> <p>Direct action against the insurers is possible, due to which there is no need to go through lengthy process, to recover the expenses.</p>	<p>per GT per annum], subject to the condition of the vessel, risk factor, claims history of the company and ships.</p>
<p>International Convention on Removal of Wrecks, 2007 [Nairobi WRC]</p>	<p>Part XIII Appointment of receiver of wrecks by central govt.</p> <p>Duties of receiver of wreck when a vessel is in</p>	<p>The new provisions will be applicable on wrecks at Indian coasts and up-to EEZ.</p> <p>Duty of master or operator to report the wreck to receiver of wreck and the DGS</p> <p>Duty of master or operator to report the wreck when it is out of India to that country and the DGS</p> <p>Foreign vessel becoming wreck in Indian waters to</p>	<p>Scope extended up-to EEZ i.e. beyond territorial waters, therefore better protection to ports approaches to near offshore and installation.</p> <p>Direct action against the insurers is</p>	<p>Same as above.</p> <p>The P&I cover provided by the IG group of Clubs generally includes cover for both Bunker pollution damage and wreck removal.</p>

	<p>distress [i.e. preserve lives & cargo as far as possible].</p> <p>Use of adjoining land to save lives, cargo or equipment when a vessel is wrecked or stranded or in stress. But damage caused to such place shall be a charge on the vessel, cargo or equipment. Such dispute to be decided by Magistrate.</p> <p>Person /Owner of a wrecked vessel to inform receiver about such wreck.</p> <p>Investigation</p>	<p>inform the DGS about it including its location, type, size, damage caused.</p> <p>Criteria has been specified for determination whether the wreck is a hazard [like type, size, depth of water, traffic density, metrological condition, proximity with tourist spots etc].</p> <p>DGS may direct the location and marking of wreck by receiver, Port authority, DGLL, maritime board, Indian coast Guard.</p> <p>If the wreck is determined to be a hazard, then owner or operator needs to mark it at his own cost till it is removed.</p> <p>Measures to facilitate the removal of the wreck & inform the ship's registry.</p> <p>Registered owner to remove wreck if it constitutes a hazard. Cost of marking and removal of the wreck to be borne by registered owner.</p> <p>Every Indian and foreign vessel of 300GT and above to have compulsory insurance coverage or financial security, otherwise may be detained.</p> <p>Claim for recovery of cost of marking and locating of wreck is three year from date of determination of hazard but not later than six years from the incident.</p>	<p>possible, due to which there is no need to go through lengthy process, to recover the expenses.</p> <p>Vessels of 300 GT and above without insurance coverage can be denied entry into Indian ports</p> <p>Quicker response mechanism to deal with the wrecks resulting in better protection of environment.</p>	
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	<p>by receiver of wreck Notice by receiver of wreck to public at large about a wreck Claim by owner within one year Search warrant when a wreck is concealed.</p>			
<p>International Convention on Salvage, 1989</p>	<p>Salvage payable for saving life, cargo or wreck, based on no cure no pay principle] Govt agencies are also entitled for payment for salvages services</p>	<p>Provide law for judicial or arbitral proceeding relating to salvage. Salvage payable even if there is no cure but efforts made for reduction of hazard or pollution Govt agencies are also entitled for payment for providing the salvages services. Master can enter into a contract for salvage. Intervention by other salvors acceptable if requested by owner.</p>	<p>Encourages salvors to attempt salvage, to minimise environmental damage even if complete success is not possible. Govt can intervene to give direction in salvage operation, to protect the environment.</p>	<p>Generally no cost on owner, unless salvage service is required due to the exigency. Cost of salvage will vary depending on the value of the property saved.</p>

<p>Dispute regarding amount due for providing salvage will be decided by judicial Magistrate or High Court.</p> <p>Power to make rules [for both wreck and Salvage]</p>	<p>Rights and duties of owner, Central Govt and salvors well defined.</p> <p>Central Govt can prescribe criteria for claiming rewards.</p> <p>Right of salvor to enforce maritime lien.</p> <p>Disputes to be decided by High Court.</p> <p>Salvor to make the claim within a period of two years.</p>	<p>salvors and owners of vessels have been clearly specified, so as to minimize disputes pertaining to claims, resulting in easier settlement of disputes.</p>	
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REPORT

The Merchant Shipping (Amendment) Bill, 2015 (Annexure-I) was introduced in Lok Sabha on the 10th August, 2015. The Hon'ble Chairman, Rajya Sabha, on 26th August, 2015, referred the Bill to the Department-related Parliamentary Standing Committee on Transport, Tourism and Culture for examination and report within three months.

2. The Merchant Shipping Act, 1958 was enacted to foster the development and efficient maintenance of an Indian mercantile marine sector in a manner best suited to serve the national interest. International Maritime Organisation (IMO), as the global standard-setting authority for the safety, security and environmental performance of international shipping, creates fair and effective regulatory framework for the shipping industry in the form of Conventions for universal adoption and implementation.

3. The Bill, in its Statement of Objects and Reasons, mentions that India is a member of IMO and as and when Government of India approves to be a party to an International Convention by accession/ratification, the Convention is given effect by suitably incorporating its provisions in the concerned domestic legislation, *i.e.*, the Merchant Shipping Act, 1958. India has already acceded to three International Conventions of the IMO *viz.*, the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (hereafter referred to as Bunker Convention); the Nairobi International Convention on the Removal of Wrecks, 2007 (hereafter referred to as Nairobi Convention); and the International Convention on Salvage, 1989 (hereafter referred to as Salvage Convention).

4. It has further been stated that the accession to Bunker Convention has now been approved and for implementing the Convention, the Merchant Shipping Act, 1958 requires further amendments. The amendment seeks to incorporate the Convention provisions by inserting Part XBA in the Act titled 'Civil Liability for Bunker Oil Pollution Damage'. India is already a party to the Nairobi Convention and Salvage Convention. However, in the light of experiences gained in implementing Part XIII titled "Wreck and Salvage", it was felt necessary to amend the Part XIII to make them progressive and in tune with Nairobi Convention and Salvage Convention.

5. The Committee heard the views of the Secretary, Ministry of Shipping, Director General (Shipping) and other senior officials of the Ministry on the provisions of the Bill on the 16th September, 2015. The Committee also heard the views of the representative of the Indian National Shipowners' Association (INSA) on the 24th September, 2015. Besides INSA, ICC Shipping Association and GOL Salvage Services

Ltd. submitted written memoranda to the Committee on different aspects of the above stated Conventions and the amendments proposed to the Merchant Shipping Act, 1958. The Committee also considered the background note and replies to its questions furnished by the Ministry of Shipping.

6. The succeeding paragraphs state the salient features of the three International Conventions as well as the proposed amendments in the Merchant Shipping Act, 1958 to give effect thereto and also the reasons for the proposed amendments.

Bunker Convention

7. The Bunker Convention was adopted to ensure that adequate, prompt and effective compensation is available to persons who suffer damage caused by spills of oil (hydrocarbon mineral oil including lubricating oil), when carried as fuel in ships' bunkers. This Convention was adopted in 23rd March, 2001 and had come into force from 21st November, 2008. The Convention applies to damage caused on the territory, including the territorial sea, and in exclusive economic zones of States Parties. The Convention provides a separate instrument covering pollution damage only. A key requirement in the Bunker Convention is the need for the registered owner of a vessel to maintain a compulsory insurance cover.

8. Under the provisions of the Merchant Shipping (Amendment) Bill, 2015, the registered owner of a vessel has to maintain compulsory insurance cover which allows claim for compensation for bunker pollution damage to be brought directly against an insurer. Ships of 1000 Gross Tonn and above have to carry a certificate onboard to the effect that it maintains insurance or other financial security, without which these vessels will not be allowed to enter or leave India. The liability cover for bunker pollution damage shall be equal to the limits of liability under the applicable national or international limitation regime, but in all cases, not exceeding an amount calculated in accordance with the Convention on Limitation of Liability for Maritime Claims, 1976.

9. The written reply furnished by the Ministry of Shipping stated that Article 14 of the Bunker Convention stipulates that the Convention shall enter into force one year following the date on which 18 States, including 5 States each with ships whose combined gross tonnage is not less than 1 million, have either signed it without reservation as to ratification, acceptance or approval or have deposited the instruments of ratification, acceptance, approval or accession with the secretary General of the IMO. Accordingly, the Bunker Convention, 2001 came into force only on 21.11.08.

10. The Ministry of Shipping informed the Committee that amendments based on the Bunker Convention were considered necessary in view of the following:

- vii. It is difficult to obtain compensation to pollution caused by bunker oil spill/leakage from ships other than tankers. Local Authorities/Government find it difficult to recover costs on preventive measures and cleanup operation on such type of pollution. This problem can be suitably addressed if India becomes party to this Convention and incorporates its provision into the Merchant Shipping Act, 1958.
- viii. In spite of best precautionary efforts, accidents may happen in Indian as well as foreign flag ships. In that scenario, it is vital to have an internationally agreed effective liability compensation regime in place.
- ix. Indian ships having 1000 GT or more, on international trade will be issued with a certificate from the Indian Maritime Administration. This would enable to carry out international trade without approaching other Governments for such certificate, who have acceded to this Convention.

- x. India would be able to ensure that all foreign flag vessels entering Indian territorial waters or Exclusive Economic Zone are duly covered by insurance as required under the Convention.
- xi. The Convention has already been adopted by major Maritime States, therefore, it is binding on Indian Ships involved in worldwide trade, irrespective of whether India is a party to the Convention.
- xii. Indian ships have to carry “Blue Card” issued by insurance companies irrespective of whether India is a party to the Convention or not, if, it is trading in countries that are parties to this Convention. However, vice versa the same is not applicable for foreign ships trading in India. Even if they are carry blue card, pollution in Indian waters will not be under the purview of such insurance as India is not party to this Convention.

11. The following are the salient provisions of the Bill related to Bunker Convention:-

- Applies to all Indian vessels (irrespective of size) anywhere in the world and to all foreign vessels while in Indian Waters;
- Preventive measures and curative measures taken to minimize damage shall also be liable for compensation;
- While owners of all vessels are liable to compensate against bunker oil pollution damage for vessels of 1000 GT and above, the insurer is liable to compensate;
- Liability of owner is exempted if the pollution damage is due to war, act of God, intentional act/omission of third person, negligence/wrongful act of Government/Authority;
- Owner entitled to limit his liability as per Convention for Limitation of Liability for Maritime Claims, which will be determined by the High Court of jurisdiction;
- Claims to be preferred within 3 years from date of damage or 6 years from date of incident;
- Vessels of 1000 GT and above to compulsorily maintain insurance/financial security. DG(S) to issue a certificate to this effect; No such vessel shall enter or leave Indian port without certificate; and
- Rule making powers in respect of form & manner of application to High Court to limit liability, financial securities, form of certificate and conditions of issue, fee for issue of certificate, manner of renewal and renewal fee provided under.

12. Regarding the cost to be incurred due to the amendments proposed to the Merchant Shipping Act, 1958 based on the Bunker Convention, the Ministry has stated that :

- Vessels on International voyages are already complying with the requirement as Convention is already in force, hence no additional cost for such vessels.
- Vessels on the coast of India may have to take additional insurance cover.
- Cost of such insurance is not expected to exceed 1\$ per GT per annum (Rs.66.4 per GT per annum), subject to the condition of the vessels, risk factor, claims history of the company and ships.

13. The Ministry of Shipping, in its written reply to a pointed query of the Committee, stated that United States of America and Japan are the two major maritime nations who are not a party to the Bunker Convention. The United States has enacted the Oil Pollution Act, 1990 that covers all types of oil, from the ship, whether bunkers or cargo. The compensations and the requirement are more stringent than the Bunker Convention and hence, there was no need by USA to adopt the Bunker Convention which came into force at a much later stage in 2008. Similarly, Japan amended the 'Act on Liability for Ship Oil Pollution, 1975' in 2005 to cover bunker pollution damage, before the Bunker Convention came into force internationally in 2008. Since the requirement under the local regulations were more stringent, Japan never felt the need for the Bunker Convention. As regards India, the provision relating to pollution from oil (except bunker oil pollution damage) are there in the Merchant Shipping Act, 1958, but there are no specific legislation for covering the pollution incidents caused by the bunker oil of the ships and a need was being felt to provide for this. Hence, the proposed Bill is introduced.

14. To the Committee's query regarding the impact of exemptions given to vessels having capacity below 1,000 GT from this Convention, the DG (Shipping) replied:

".....below 1,000 GT, it is the requirement or the obligation on the part of the owner or the operator that he will not be able to escape or get away from. The threshold is only for purposes of a financial security which is mandated in the Convention and that is through the insurance Blue Cards, which is then counter-certified through a compliance certificate which is issued by the Government. But that does not detract from the primary responsibility of the owner or the operator to still ensure that he mitigates and minimizes the pollution damage, compensates for that or removes the wreck, as the case may be, or salvages the vessel".

15. When asked, the representative of Indian National Shipowners' Association (INSA), also agreed that the exemption to the vessels which are 1000 GT and less, since the number of such vessels would be around 500 to 600 only.

16. As regards Clause No. 352 RH, the DG (Shipping) gave his clarification as under:

"...if there is a claim for an immediate damage which converts into a financial liability and, if it is substantive in nature, it has to be claimed within a period of three years. If there is an incident which otherwise is not so significant, but can be related to the original cause of action and more by way of a social cause, for that the Sunset clause is six years. So, it is in terms of graded impact on the environment and ecology".

17. The Ministry, in its written reply clarified in this regard that one may get the compensation, if a claim is made within three years from the date of damage. However, no claim can be made six years after the incident causing the damage. In simple words, if it is perceptible damage for which there is an actionable claim, then the maximum limit is three years. However, if there is an incident which otherwise is not so significant but later on can be related to original cause of action and more by way of social cause, then in such cases the limitation period shall be six years. It is in terms of graded impact on the environment and ecology which may occur immediately on occurrence of the incident or may come out after passage of time.

18. When asked as to the liability that would fall on the Ports after the Bunker Convention is to be implemented, the Secretary, Shipping replied that:

“...as far as major ports are concerned, we have a scheme available in the Ministry where we give 50 per cent subsidy for them to procure equipment for fighting any pollution because of oil spillage. We are promoting that. We are also auditing that, ports comply with this requirement. That is also available to other private ports which handle crude and other oil products. That is the action taken by ports as far as Bunker Convention is concerned.”

19. The Committee also made a specific query about the provisions for arbitration in this regard. The DG (Shipping) replied that :

“.....arbitration mechanism kicks in when it is not mutually resolved. Usually, we find that arbitration proceedings are largely held in London or in Singapore. This is through a mutual process of acceptance of the arbiter. It is a panel of three arbitrators. One nominated by each, the second and the third one is mutually agreed upon. There is also an International Arbitration Council which nominates these people”.

20. The Committee took note of the Ministry’s reply that Act of God or *force majeure* is a condition of occurrence of a natural calamity. Such an act needs to be an act which is not foreseen and is beyond the control of the human beings. If the person wants an exemption from the liability, he has to prove that such an act is not caused by him or his employee or agent, but by a third person. Hence, the third person needs to be a totally external person not connected with the owner as employee or agent. As regards the act of God, there are number of case laws which have been well adjudicated and it is now settled by the apex court as to what constitutes an act of God or the *force majeure*. It is very well understood in terms of juristic principles, and there may not be any ambiguity for it during the adjudication proceedings. The Court will decide, if it is an act of third party, in case there is a claim for an exemption from the liability.

21. The Committee observes that the exemption given to the owner if the pollution damage is due to an ‘Act of God’ as given in clause 352 RD, is likely to leave ample scope for litigation and that the owner of a ship can run away from his responsibilities of giving compensation to the pollution damage caused by the ship owned by him. The Committee, therefore, recommends to reconsider this aspect to ensure that the law does not leave any scope for the shipowners to get away from their responsibility of paying compensation.

22. The Committee observes that Ports have ample chances of oil spillage and environment pollutions from the vessels at the time of loading/unloading of cargo. The Committee recommends that latest modern equipments being used at International level may be provided to the Ports for addressing this challenge. The Committee further recommends that for our cash strapped Major Ports, the present subsidy limit of 50% be enhanced substantially for procurement of the modern equipment for fighting any pollution due to oil spillage on a case to case basis.

Nairobi Convention

23. The Nairobi International Convention on the Removal of Wrecks 2007 (Nairobi Convention) provides the legal basis to remove shipwrecks that may have the potential to affect adversely the safety of lives, goods and property at sea, as well as the marine environment. The Convention fills the gap in the existing international legal framework by providing the first set of uniform international rules aimed at ensuring the prompt and effective removal of wrecks located beyond the territorial sea.

24. The Nairobi Convention was adopted by an International Conference held in Kenya in 2007. It has entered into force on 14.4.2015.

25. The Ministry of Shipping informed the Committee during the deliberations that amendments based on Wreck Removal Convention, 2007, is considered necessary, in view of the following:

vii) The existing provision in Part XIII of the Merchant Shipping Act, 1958 relating to wreck removal is not adequate in dealing with increasing amount of wreck in the coast of India.

viii) The amendments will enable the implementation of Nairobi Convention on the Removal of Wrecks 2007, to which India is already a Party, thereby bringing in internationally recognized and approved uniform rules for removal of wrecks.

ix) The Convention will provide uniform international rules aimed at ensuring the prompt and effective removal of wrecks located beyond the territorial sea. The Convention includes an optional clause enabling countries to apply certain provisions to their territory, including their territorial sea.

x) Increasing number of vessels and limited space available in the ports have resulted in increased number of accidents causing wrecks resulting in pollution. Most of the perpetrators go scot-free due to ignorance about the incident or lack of importance given to remedial measures to be adopted.

xi) The problems due to wreck are three-fold: first, a wreck may constitute a hazard to navigation, potentially endangering other vessels and their crews; second, wreck has a potential to cause damage to the coastal and marine environment, depending on the nature of the cargo; and third, there is the issue of costs involved in the marking and removal of hazardous wrecks.

xii) The current provisions in the Merchant Shipping Act, 1958 are inadequate in dealing with the increasing number of wrecks in Indian Coast. Therefore, to control this problem and to bring the existing regulation in line with the developments in international shipping, it is vital to make these amendments in the Act.

26. The Ministry, in its written reply furnished to the Committee, stated that Article 18 of the Nairobi Convention stipulates that the Convention shall enter into force twelve months following the date on which 10 states have either signed it without reservation as to ratification, acceptance or approval or have deposited the instruments of ratification, acceptance, approval or accession with the secretary General of the IMO. Accordingly, the Nairobi Convention, 2007 came into force only on 14.04.15 [i.e. this year only]

27. The following are the salient features of the Bill relating to Nairobi Convention provided by the Ministry of Shipping:

- The Bill makes the existing provisions of the Act dealing with wreck [Part XIII] in line with Nairobi Convention;
- The master/operator of ship is statutorily obliged to report wreck incident in Indian Territory to receiver of wrecks (Deputy Conservator of Ports/District Magistrate) and D.G. (Shipping). Indian ship to report wreck incident in foreign territory to D.G. (Shipping).
- D.G. (Shipping) can direct Directorate General Light House and Light Ships, Coast Guard, Port or other authority, for locating & marking wrecks;
- D.G. (Shipping) to inform ship's registry country and in consultation with that country proceed to remove wreck. If the owner does not remove the

wreck, receiver of wreck (at the expense of the owner) may remove the wreck;

- Registered owner is liable for the cost of activities related to locating, marking and removal of wreck;
- Registered owner of ship of 300 GT and above to maintain compulsory insurance/financial security. D.G. (Shipping) to issue a certificate to this effect. Contravening ships can be detained; and
- Claim for recovery of costs for locating and marking wreck to be within 3 years from date of determination of hazard and 6 years from date of maritime casualty that resulted in the wreck.

28. As regards the cost to be incurred due to the amendments proposed, based on the Nairobi Convention, the Ministry stated that :

- Vessels on International voyages are already complying with the requirement as Convention is already in force, hence no additional cost for such vessels.
- Vessels on the coast of India may have to take additional insurance cover.
- Cost of such insurance is not expected to exceed 1\$ per GT per annum (Rs.66.4 per GT per annum), subject to the condition of the vessels, risk factor, claims history of the company and ships.
- The P&I cover provided by the IG group of clubs generally includes cover for both Bunker pollution damage and wreck removal.

29. The Ministry of Shipping, in their written submission, has stated that:

United States of America, China and Japan, Italy, Norway, Republic of Korea, and Russian Federation are the major maritime nations which are not party to the Convention. As of now the national legislation of the above countries provide adequate mechanism of direct action against the ship owners in their coastal waters hence there may not be a need for them to be a party to this Convention. However, the Nairobi Wreck Removal Convention has entered into force this year only, *i.e.*, on 14.04.2015. Hence, it is still early stages as most of the countries may still be evaluating the Convention from deciding to become party to the Convention. Moreover, now the Convention extends its scope beyond coastal waters up to Exclusive Economic Zone (EEZ), thus there may be reconsideration by other countries in due course to decide on being a party to this Convention. As regard India, the provisions related to the wreck removal already exist in the Merchant Shipping Act, 1958. However, these are proposed to be updated, as an opportunity to make Indian legislation fully compliant with the Convention.

30. The Committee enquired about the procedure to be followed by the authorities if an incident of wreck happened in the premises of a Major Port, as in the case which occurred in the vicinity of Mumbai Port a few years ago. The DG Shipping, explained that:

“.....if it were to happen in a Port of call, it is the Deputy Conservator of Ports who would then take necessary action as he would be the receiver of wrecks. In case the owner or operator did not discharge in spite of notification and being given adequate notice to do so, then the Deputy Conservator of Port would takeover that asset as a receiver of wreck and then do all that is required to spend money and then lodge the claims. That is why the designation has

been given as 'receiver of wrecks'. That is the *suo motu* assumption of responsibility. But, that is a residual responsibility after having failed in convincing the owner or operator to discharge their duty. Correspondingly, beyond the port limit, as I submitted, if it were within the territorial waters, this power is delegated to the District Collector or District Magistrate to do so”.

31. To the Committee’s query about the possible reasons why Government owned vessels are exempted, the Secretary, Shipping replied that:

“.....the broad principle is, because Governments, in case of accidents, are funded sufficiently, and if they have to compensate somebody, they would do so. Therefore, most of the equipment in the Government is not insured. That is one aspect. But that is, especially, for military machines because they also partake in war.”

32. In the written reply furnished by the Ministry, it has been stated that the vessels owned or operated by the Government and used for the non commercial service, are exempted from the compulsory insurance, as the broad principle is that the Government in case of accidents are funded sufficiently and if some compensation is to be paid to some person, the Government will be able to pay. Government is a kind of sovereign guarantee in itself. Therefore, most of the equipments in the Government are not insured.

33. In this regard, the Indian National Shipowners' Association, in its written submission, has stated that:

It is found that Warships, other Naval vessels and Government non-commercial vessels are often exempted from the provisions of a Convention since it is presumed that a sovereign Government has adequate funds and resources to meet any eventuality. However, in all cases, even such vessels are advised to be in compliance with all International Conventions, rules and regulations, as far as practically possible and feasible.

34. In response to the Committee’s query as to whether these three Conventions are applicable to the fishing and cruise vessels, the Ministry has furnished the reply that, the three Conventions do not make any reference or differentiate its application to the type of vessel. The general principle of application adopted is the gross tonnage of the vessel. The criteria for application of Bunker Convention to a ship are that it should be above 1000 GT. The Nairobi Wreck Removal Convention shall be applicable to ships which are of 300 GT and above. No such limit is mentioned in the Salvage Convention.

35. When asked by the Committee about the advantages of acceding to the Nairobi Convention, the representative of the Indian National Shipowners' Association stated that:

“A lot of old vessels used to keep coming to India, but, now, this is something which will stop happening. Because we do not have these Conventions and we do not have the ability to enforce the law, it becomes easier for me as an imprudent ship owner to bring the old ships, which are not allowed in other regimes.”

36. The Ministry of Shipping, in their written reply, has stated that Nairobi Convention provides a sound legal basis for coastal countries to remove, or have removed, from their coastlines, wrecks which pose a big environment hazard to the safety of navigation or to the marine and coastal lives, or both. It will make ship-owners financially liable and require them to take out insurance or provide other financial security to cover the costs of wreck removal. This Convention also includes an optional

Clause enabling States Parties to apply certain provision to their territory, including their territorial sea.

37. The Committee took cognizance of the status of the wrecks already there in the Indian waters, furnished by the Ministry of Shipping (Annexure II). There are a total of 39 wrecks in Indian waters, some of the wrecks are affecting the shipping channels. **The Committee recommends that the Government should chalk out a time bound action plan to remove the wrecks that are already there in the Indian waters especially those wrecks which are affecting the shipping channels.**

Salvage Convention

38. The International Convention on Salvage 1989 (Salvage Convention) replaced the prevalent “no cure, no pay” principle where a salvor is only rewarded for services if the operation is successful. By towing a damaged tanker away from an environmentally sensitive area, salvor prevents major pollution incidents. But the prevalent “no cure, no pay” principle acted as a disincentive for operation, where chances of success were slim. The 1989 Salvage Convention remedied this deficiency by making provision for an enhanced salvage award in preventing or minimizing damage to the environment and by introducing a “special compensation” to be paid to salvors who fail to earn a reward in the normal way.

39. This Convention replaced a Convention on the law of salvage adopted in Brussels in 1910. The 1989 Convention introduced a “special compensation” to be paid to salvors who have failed to earn a reward in the normal way (*i.e.*, by salvaging the ship and cargo). It was adopted in 28.4.1989 and has entered into force from 14.7.1996.

40. The Ministry of Shipping has informed the Committee that amendment based on the International Convention on Salvage, 1989 is considered essential and desirable in view of the following:

- iv) The present provision of Part XIII of the Merchant Shipping Act, 1958 is inadequate in dealing with salvage operation as the salvor will only be awarded, if the salvage is successful (no-cure-no-pay principle). Salvage Convention seeks to remedy this deficiency by making provision for an enhanced salvage award taking into account the skill and efforts of the salvors in preventing or minimizing damage to the environment.
- v) The amendment in the Merchant Shipping Act, 1958 will revise the text with the updated provisions mentioned in the Convention. The amendments would also highlight the significance of article 13 and 14 of the Convention which relates to criteria for payment of award and special compensation to the salvors respectively.
- vi) India is already a signatory to this Convention and has obligation to give full and complete effect to the provision of the Convention. The proposed amendment in the Act would enable the Government to discharge this obligation by including the key parameters of the Convention as substantive part in the Act and also frame detailed procedures under the rule making powers as specified in the Act.

41. The Ministry, in its written reply, stated that Article 29 of the Salvage Convention stipulated that the Convention shall enter into force one year following the date on which 15 States have expressed their consent to be bound by it. For a State which expresses its consent to be bound by this Convention after the conditions for entry into force thereof have been met, such consent shall take effect one year after the date of expression of such consent. Accordingly, the Salvage Convention 1989 came into force only on 14.07.1996.

42. The following are the salient features of the Bill relating to Salvage Convention:
- The Bill makes the existing provisions of the Act dealing with Salvage in [Part XIII] in line with Salvage Convention;
 - does not apply to warships, Government non-commercial vessels, fixed or floating platforms or to mobile offshore drilling units when engaged in sea-bed mining;
 - the owner of the vessel is obliged to pay the salvor for his services towards saving life, cargo, etc;
 - salvage services by Indian Navy/Coast Guard/Port authority also entitled for compensation;
 - master of ship is authorized to conclude salvage contract on behalf of owner of vessel and master of ship or owner of ship can conclude salvage contract on behalf of persons and/or cargo on board of vessel;
 - lays down duties of salvor, owner and master;
 - lays down rights and duties of Central Government in relation to salvage operations;
 - lays down rights of salvors to payment for the services rendered by them relating to salvage operations;
 - under. S. 402 H (2), Government can make rules prescribing criteria for claiming rewards, the manner of fixing rewards, special compensation, apportionment of rewards amongst salvors etc.;
 - disputes relating to claims shall be adjudicated by concerned High Court (where vessel is registered/vessel is situated/cause of action arises); and
 - period for claim-within 2 years.
43. On the matter of the costs likely to be incurred due to the amendments proposed based on the Salvage Convention, the Ministry of Shipping stated:
- generally no cost on owner, unless salvage service is required due to the exigency; and
 - cost of salvage will vary depending on the value of the property salvaged.
44. The Ministry, in its written reply, informed the Committee that United States of America and Japan are not a party to Bunker Convention; China, Japan, Italy, Norway, Republic of Korea and Russian Federation are not party to the Nairobi Convention; and Japan, Panama and Republic of Korea are the major countries which are not a party to the Salvage Convention.
45. In this regard, in a written submission, the Indian National Shipowners' Association has stated that often USA practices and adopts domestic rules which in most of the cases are far more stringent than some of the international regulations are in operation much prior to similar rules or provisions being adopted by International Maritime Organization and that this could be one of the reasons for USA not to be a signatory to the Nairobi Convention. It has been further stated that USA is also not a signatory to the United Nations Convention on the Law of the Sea (UNCLOS)1982; the International Convention on Civil Liability for Oil Pollution Damage 1969 (CLC Convention); Bunker Convention 2001; Hong Kong Recycling Convention 2009; Nairobi Wreck Removal Convention 2007; and the Maritime Labour Convention 2006 to list a few.
46. In a written reply, the Ministry of Shipping has stated:
- “Japan, Panama and Republic of Korea are few major maritime nations which are not party to the Convention. The prime reason for such

maritime countries not becoming a party to the Convention is that their national legislation has already made necessary provisions for salvage and the courts have the sole jurisdiction of awarding the salvage compensation. The Salvage Convention applies to judicial or arbitral proceedings pertaining to salvage. Salvage is generally between private parties and disputes between them are generally decided by arbitration/judicial process. The local legislation of such countries also provides mechanism for arbitration and compensation for efforts of the salvor irrespective of degree of success. Thus, such countries have not felt the need for adoption of the Convention. As regards India, the provisions related to salvage are already there in the Act. However, these are proposed to be updated, as an opportunity to make Indian legislation fully compliant with the Convention.

47. As regards the reasons for delay in implementing the Salvage Convention, the Ministry of Shipping stated that having met the requirement of tonnage and the number of States, as per the requirement of the stated Convention, it actually came into force internationally after nearly seven years, *i.e.*, on 14.07.1996. India became a party to this Convention on 18.10.1995, as provisions related to the Salvage Convention largely exist in the Merchant Shipping Act ever since 1958 and continued to be part of the Act till date. Indian Parliament in their great wisdom had provided the provisions related to salvage in the Act from 1958 itself, *i.e.*, much before 1989 Salvage Convention came into force. Therefore, the broad provisions on salvage already exist in the present Merchant Shipping Act. However, in the present Bill, the provisions related to the Salvage Convention are being updated, as an opportunity to make Indian legislation fully compliant with the Convention.

48. The Ministry informed the Committee that the significant improvement made by the Salvage Convention 1989 is that it has enabled compensation for unsuccessful salvage efforts, and that the salvors dealing with the salvage operation is free to make a contract with the ship-owner whose ship is being salvaged by it, so as to cover the compensation even if the salvage operation is not fully successful. The Salvage Convention has done away with the old principle of 'No cure No pay'. It encourages the salvors to assist the distressed vessel and even if the salvage may not be totally successful, the salvor is compensated by invoking contract and the special compensation scope clause.

49. In response to the Committee's query regarding the jurisdiction on the disputes of claims in the case of a salvage operation, the Ministry stated that the jurisdiction has been given based on the broad principles as given in the Civil Procedure Code, 1908 with respect to jurisdiction of the Courts. The Ministry further stated that the case may not proceed in more than one Court, as the principle of *res sub judice* will apply. The case may proceed at one location based on the principle that where it is instituted first. The period of limitation shall commence from date of completion of salvage operation.

50. Regarding the financial or other loss caused to the country due to not following these Conventions, the Ministry of Shipping stated, in its written reply furnished to the Committee:

As regards financial or other loss to the country in absence of following these Conventions, it is submitted that Indian ships on international voyage are already complying with the requirements of the Bunker Convention and Nairobi Convention. For salvage operations and also to the extent with respect to the Nairobi Convention, the provisions are already in existence in the Merchant Shipping Act, 1958. As shipping is

international in nature, Indian ships trading worldwide had to abide by the requirements of the Conventions. Therefore, Indian ships were issued certificates by other Convention countries at a certain cost. Now, with the above adoption, Indian ships can be issued certificates by the Indian Administration after enactment. Secondly, with the enactment, every ship entering Indian Coastal waters will be required to have necessary financial guarantee and a certificate bearing a proof of the same. In case of any pollution by way of bunker or ship becoming a wreck, direct action can be initiated against the owners/insurers through the process of Arbitration instead of passing through the lengthy judicial process. Such compulsory carriage of certificate and the provision of direct action will be an indirect method and deterrent thus giving indirect protection to the coastal marine environment. Financial or other loss to the country could occur if the provisions of the Conventions are not brought into force in India as owners of foreign flag vessels will not require to have insurance or financial security to deal with bunker oil spills or wrecks occurring in our waters, leading to environmental damage and consequential loss to the country.

51. The Committee, in its meeting held on the 24th September, 2015 heard the representative of the Indian National Shipowners' Association, who informed the Committee that they are fully satisfied with the Clauses of the Bill and that the Ministry of Shipping had consulted them at the time of drafting of this Bill. The ICC Shipping Association also conveyed their agreement to the Clauses without offering any further suggestion. M/s GOL Offshore Limited gave written suggestions on some of the Clauses of the Bill.

52. The Committee welcomes the Bill which seeks to suitably incorporate the provisions of the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (Bunker Convention); the Nairobi International Convention on the Removal of Wrecks, 2007 (Nairobi Convention); and the International Convention on Salvage, 1989 (Salvage Convention) in the Merchant Shipping Act, 1958.

53. The Committee's observations/recommendations on the Clauses/Sub-Clauses of the Bill have been given in the succeeding paragraphs:-

Sub-Clause 402D (2) & (3)

54. In this Sub Clause, the master of the Ship has been given authority to sign the salvage contracts on behalf of the owner of the vessel.

55. When Committee enquired about the adequacy of the provisions of this Sub-Clause and the chances of any foul play against the interest of the owners, the representative of the Indian National Shipowners' Association replied that:

“...the master of the ship engaging and getting into a salvage contract is quite a normal process. all contracts of insurance or even the certificate of registry, it is not in the name of the owner of the company; it is in the name of the master itself. So, this is something which over a period of time has been a part of our industry. Yes, where there is temptation, there is a chance of something going wrong but, by and large, as an industry we have rarely seen a case where a master has entered into an illegal or untenable salvage contract and thereby alienated the asset. It also serves very useful because sometimes, you may have a vessel which is farther away from you. I could be sitting here in India and an accident or a salvage contract may take place in Brazil. I may be in a situation where

financially it may not be viable to actually travel and sign a contract. At such times, the master becomes useful for the purposes of signing the contract.”

56. The Committee observes that the Master of the Ship has been given the authority to execute a salvage contract or any such contracts on behalf of the ship owner. Since the Master of the ship is only an employee of the owner, there might be situations when the owner may not honour the contract signed by the Master of the Ship and the Salvor. Therefore, the Committee feels that a strict provision should be made in the Bill in order to save the interests of the Master of the Vessel. In view of the availability of sophisticated Information and Communication Technology tools, it is easy to consult the owner of the Vessel by the Master of the Vessel before agreeing to the contract or in case of any contingency.

57. The Committee, therefore, recommends that a new Sub Clause-“in both the cases at (2) and (3), the owner of the vessel or cargo as the case may be, shall not be entitled to challenge the decision of the master/owner of the vessel, if such a decision is taken after sufficient consultation” may be inserted in the Bill.

Sub Clause 402G

58. Sub Clauses under this Clause prescribe the rights and duties of Central Government in case there is a need of salvage operation of a vessel. It includes means to protect its coast line or related interests from pollution or threat of pollution arising out of a maritime casualty or acts relating to such casualty which may result in major harmful consequences, its duties to seek the assistance and to give facilities to salvors.

59. The Committee also feels that within the territorial waters of India, Indian Companies should be given priority for salvage operations. Accordingly, the Committee recommends that the following sub Clause may be added in the Bill:

“The Central Government shall ensure that the salvors of Indian origin are given first right of refusal as against the salvors of foreign origin, for any salvage operations within the territorial waters of India”.

Sub Clause 402 H

60. This Clause ensures the Salvor a right to payment for the services rendered by him relating to salvage operations, provided that now such payment shall be made where there is express and reasonable prohibition from the owner or master of vessel or owner of any other property in danger.

61. Under this Clause, the Central Government may prescribe the criteria for claiming rewards, manner of fixing rewards, the payment of special compensation, the apportionment of payment amongst salvors, the salvage of persons, the payment under the contract, the payment for additional services not covered under the contract and the effect of misconduct of salvors on reward or payment. The salvors shall have right to enforce his maritime lien against the owner or master of vessel or owner of any other property in danger when satisfactory security for his claim, including interest and costs, has not been provided by such person.

62. M/s GOL Offshore Limited has, in their written submission, stated that in the case of owner of the vessel failing to pay the salvors due to bankruptcy, due to absence of proper insurance cover or any other reason, there should be suitable provision for making payment to the salvor who has carried out the salvage operation under the instructions of the Central Government.

63. The Committee recommends that the Government may appropriately look into the absence of such a provision in the Bill, with a view to deal with the cases of owner of the vessel failing to pay the salvors due to bankruptcy, absence of

proper insurance cover or any other reasons and to ensure that the salvors get their payment for the salvage operation carried out.

GENERAL RECOMMENDATIONS

64. The Committee observes that there is no provision for grievance redressal mechanism in the Bill. The Committee also observes that there are lots of probabilities of a grievance that can arise at any stage of the salvage operation, wreck removal, etc. The Committee, therefore, recommends that necessary provisions for redressal of grievances should be incorporated suitably, in the Bill.

65. During the time of deliberations on the Bill, the Committee enquired about the inordinate delay in bringing these Conventions particularly as the Bunker Convention which is of the year 2001; the Nairobi Convention is of 2007; and the Salvage Convention is of 1989, for which the Secretary, Shipping replied that:

“There are three Conventions. In two of those, we had become parties because there were certain provisions in existence. This process goes through the MEA and their Legal Treaties Division. They, normally, assess whether our existing legal provisions are adequate for us to agree to a certain Convention. So, out of these three Conventions, they agreed that even at a minimum base level, in respect of two of them, we can become parties and we went ahead and became parties on the basis of the provisions which already existed under the Merchant Shipping Act. 1958. As far as the Bunker Convention is concerned, when we sent this file, their opinion was that unless we first go through the process of getting an approval for the legislation, for the Bill, this may not be accepted. So, the Bunker Convention, for that reason, was also clubbed here.”

66. Further to this, the Ministry of Shipping has furnished a self-contained note showing the reasons for the inordinate delay in finalizing these three International Conventions, to the Committee (Annexure-II). The Ministry has further submitted that the delay, if any, is attributable to the difficulties faced in harmonization of the draft provisions based on the three International Conventions after starting the process in the year 2009 onwards. Further, the fresh approval of the Union Cabinet, consequent upon the change of Union Government was also one of the procedures that was required to be followed by them.

67. The Committee notes that cumbersome procedures, inter-ministerial and pre-legislative consultations led to the delay in bringing the legislation. The Committee feels that confusion, lack of farsightedness, lack of decision making capabilities and indecisiveness at various levels also contributed to this delay. The Committee recommends that in future, the Ministry should ensure that the legislations are processed within the shortest possible time by avoiding the steps which are unnecessary and unwarranted. The Committee has seen that in many situations, the Ministry’s line of action was not clear because of which the action initiated way back in April, 2009 could be accomplished after a gap of more than six years *i.e.*, on the 10th August, 2015.

68. The Committee recommends that necessary amendments as suggested by the Committee, may be brought in the relevant Clauses of the Merchant Shipping (Amendment) Bill, 2015.

69. The Committee, while going through the Merchant Shipping Act, 1958, felt that the statute is quite bulky, with 461 Sections and Sub-sections. The present Bill itself contains more than 50 Clauses. The Committee, therefore, recommends

that the Government may consider enacting a new Merchant Shipping Act so that the obsolete Clauses could be removed and new Clauses could be brought in to keep it in tune with time.

RECOMMENDATIONS/OBSERVATIONS OF THE COMMITTEE AT A GLANCE

The Committee observes that the exemption given to the owner if the pollution damage is due to an 'Act of God' as given in clause 352 RD, is likely to leave ample scope for litigation and that the owner of a ship can run away from his responsibilities of giving compensation to the pollution damage caused by the ship owned by him. The Committee, therefore, recommends to reconsider this aspect to ensure that the law does not leave any scope for the shipowners to get away from their responsibility of paying compensation.

(Para No. 21)

The Committee observes that Ports have ample chances of oil spillage and environment pollutions from the vessels at the time of loading/unloading of cargo. The Committee recommends that latest modern equipments being used at International level may be provided to the Ports for addressing this challenge. The Committee further recommends that for our cash strapped Major Ports, the present subsidy limit of 50% be enhanced substantially for procurement of the modern equipment for fighting any pollution due to oil spillage on a case to case basis.

(Para No. 22)

The Committee recommends that the Government should chalk out a time bound action plan to remove the wrecks that are already there in the Indian waters especially those wrecks which are affecting the shipping channels.

(Para No. 37)

The Committee welcomes the Bill which seeks to suitably incorporate the provisions of the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (Bunker Convention); the Nairobi International Convention on the Removal of Wrecks, 2007 (Nairobi Convention); and the International Convention on Salvage, 1989 (Salvage Convention) in the Merchant Shipping Act, 1958.

(Para No. 52)

Sub-Clause 402D (2) & (3)

The Committee observes that the Master of the Ship has been given the authority to execute a salvage contract or any such contracts on behalf of the ship owner. Since the Master of the ship is only an employee of the owner, there might be situations when the owner may not honour the contract signed by the Master of the Ship and the Salvor. Therefore, the Committee feels that a strict provision

should be made in the Bill in order to save the interests of the Master of the Vessel. In view of the availability of sophisticated Information and Communication Technology tools, it is easy to consult the owner of the Vessel by the Master of the Vessel before agreeing to the contract or in case of any contingency.

(Para No. 56)

The Committee, therefore, recommends that a new Sub Clause-“in both the cases at (2) and (3), the owner of the vessel or cargo as the case may be, shall not be entitled to challenge the decision of the master/owner of the vessel, if such a decision is taken after sufficient consultation” may be inserted in the Bill.

(Para No. 57)

Sub Clause 402G

The Committee also feels that within the territorial waters of India, Indian Companies should be given priority for salvage operations. Accordingly, the Committee recommends that the following sub Clause may be added in the Bill:

“The Central Government shall ensure that the salvors of Indian origin are given first right of refusal as against the salvors of foreign origin, for any salvage operations within the territorial waters of India”.

(Para No. 59)

Sub Clause 402 H

The Committee recommends that the Government may appropriately look into the absence of such a provision in the Bill, with a view to deal with the cases of owner of the vessel failing to pay the salvors due to bankruptcy, absence of proper insurance cover or any other reasons and to ensure that the salvors get their payment for the salvage operation carried out.

(Para No. 63)

GENERAL RECOMMENDATIONS

The Committee observes that there is no provision for grievance redressal mechanism in the Bill. The Committee also observes that there are lots of probabilities of a grievance that can arise at any stage of the salvage operation, wreck removal, etc. The Committee, therefore, recommends that necessary provisions for redressal of grievances should be incorporated suitably, in the Bill.

(Para No. 64)

The Committee notes that cumbersome procedures, inter-ministerial and pre-legislative consultations led to the delay in bringing the legislation. The Committee feels that confusion, lack of farsightedness, lack of decision making capabilities and indecisiveness at various levels also contributed to this delay. The Committee recommends that in future, the Ministry should ensure that the legislations are processed within the shortest possible time by avoiding the steps which are unnecessary and unwarranted. The Committee has seen that in many situations, the Ministry’s line of action was not clear because of which the action initiated way back in April, 2009 could be accomplished after a gap of more than six years *i.e.*, on the 10th August, 2015.

(Para No. 67)

The Committee recommends that necessary amendments as suggested by the Committee, may be brought in the relevant Clauses of the Merchant Shipping (Amendment) Bill, 2015.

(Para No. 68)

The Committee, while going through the Merchant Shipping Act, 1958, felt that the statute is quite bulky, with 461 Sections and Sub-sections. The present Bill itself contains more than 50 Clauses. The Committee, therefore, recommends

that the Government may consider enacting a new Merchant Shipping Act so that the obsolete Clauses could be removed and new Clauses could be brought in to keep it in tune with time.

(Para No. 69)

STATUS OF WRECKS ON THE COAST OF INDIA - 2015

Sr. No.	Name of Port / Coast of India	Type	Name / Identity of wreck	Position of wreck	Date of Incident / Became Wreck	Total number of Wreck	STATUS/ Remarks
1	PARADIP PORT TRUST	Major	Black Rose	20,12.8N 086,38.85E	9/9/2009	1	Hull part deteriorated due to wave action. Wreck embedded into the bottom of the sea . Salvage matter is still pending in Hon'ble High Court of Orissa and Collector & DM, Jagatsingpur.
2	MORMUGAO PORT TRUST	Major	1) MOTHER PEARL 2) M.V. MARINER IV 3) Shipwreck at Vasco Bay	1) 15,25.5N 073,48.8E 2) 15,24.8N 073,49.2E 3) 15,24.2N 073,48.7E	X	3	In posn. Identified wreck. No hazard to navigation. Assessment to get rid of wreck will soon follow, approx. 6 months.
3	NEW MANGALORE PORT TRUST	Major	M.V.DEN DEN	12,53.79N 074,48.67E	23.06.2007	1	Appx 40% of wreck has been removed and remaining work is under progress.
4	CHENNAI PORT TRUST	Major	MV. DECCAN PIONEER	13, 52N 080,19,11E	11/11/1985	1	Wreck does not pose a hazard to navigation in the position. No action has been taken for removal of the wreck.
5	COCHIN PORT TRUST	Major	1) LORD WILLINGDON 2) MARIA S	1) 09,57.59N 076,11.13,04E 2) 09,58.24n 076,10,49,8E	1) 1982. 2) 2007	2	1) No action taken to remove the wreck as it does not pose any danger to surface navigation. 2) Wreck have cut and removed all the portion above the seabed . The remains are sunk in the mud and clear for surface navigation.

6	KOLKATA PORT	Major	MV. BINGO	21,13.49N 088,13.25E	10/12/2013	1	The wreck is in close proximity of navigational channel & Serious impediment to safe shipping. Owner have not made any commitment whatsoever and the wreck continues to in its present position.
7	V.O.CHIDAMBARANAR PORT TRUST (TUTICORIN)	Major	MV. BLUE MARINE-1	08,47.588N 078,13.801E	10/28/2010	1	Wreck removal effort not succeeded, however again been insisted to take immediate action to salvage the barge.
8	JAWAHARLAL NEHRU PORT TRUST	Major	MAHARATTA	18,58.73N 072,56.95E	X	1	Wreck is outside the navigation channel of JNPT and hence does not pose any danger to vessels coming and sailing from JNPT
9	MUMBAI PORT TRUST	Major	24 wrecks in the Jurisdiction of Mumbai Port Trust.				Calling for auction for wreck removal. Next week board meeting. No hazard to navigation. All wrecks identified & in posn.
		1	SAILING CRAFT	18,51.05N 72,42.46E	X	1	
		2	MOONLIGHT GLORY	18,57.05N 072,52.46E	X	1	
		3	CERRY CHANTAK	18,49.54N 72,43.46E	X	1	
		4	MANSCO III	18,58.23N 72,52.34E	X	1	
		5	MIENG HONG 21	18,57.53N 72,52.29E	X	1	

		23	Unknown Wreck	18,52,79N 72,43,55E	X	1	Owner contacted. No response. Wreck identified well marked. Posing danger to Navigation/in the channel. Needs to be removed earliest.
		24	Unknown Wreck	18,50,94N 72,39,96E	X	1	
10	NAGAPATTINUM PORT (CPCL)	Minor	MV. AQUA MARINE	10,49,18N 079,53,08E	12/19/2014	1	Owner advised to forward plan of action for salvage of grounded vessel.
11	TUTICORIN COAST	Coast	MV. SRI KRISHNA-16	18nm NE of Pandian light Tuticorin	5/22/2015	1	
12	BELEKERI PORT	Minor	Barge Timo	Belekeri port limit	11/1/2004	1	
13			Barge Vishwas	Belekeri port limit	10/27/2007	1	

Reply to the queries raised and remained unanswered during the course of recording of oral evidence before the Department Related Parliamentary Standing Committee on 16.09.15.

1. Question: In the presentation it has been shown that Bunker Convention is a Convention of the year 2001, and India to become party after the enactment of the Bill. Why has there been a delay of 14 years?

Answers/submissions: International Convention on Civil Liability for Bunker oil Pollution Damage [Bunker Convention], 2001 was adopted by the International Maritime Organisation [IMO] in 2001. However, it came into force internationally only at the end of the year 2008 i.e. after a gap of nearly eight years, on 21.11.2008. Therefore, there was no delay from 2001 till the end of 2008, as the Convention itself was not in force, and there was no obligation to follow the Convention.

The process for the accession and subsequent amendment to the Merchant Shipping Act, 1958 was initiated in early 2009. The details of step wise process followed for the accession and necessary amendment to the Merchant Shipping Act, 1958 is as mentioned below;

1.	Directorate General of Shipping [DG (S)] sent the proposal to accede to Bunker Convention and to seek in- principle approval of the Cabinet to subsequently introduce amendments to Merchant Shipping Act, 1958.	28.04.2009
2.	The proposal was examined in the Ministry and approval of Hon'ble Minister was obtained to take up the matter before the Union Cabinet.	29.06.2009
3.	The proposal was suitably formulated as a draft Note for Cabinet.	22.09.2009
4.	The draft Cabinet Note circulated for Inter-Ministerial comments.	31.03.2010
5.	The Ministry of External Affairs while conveying their comments suggested that instead of seeking in- principle approval of the Cabinet to subsequently introduce amendments to Merchant Shipping Act, 1958, the amendment to Merchant Shipping Act, 1958 (Bill) should be first passed by the by the Parliament before taking up the proposal for becoming a party to Bunker Convention.	05.05.2010
6.	The Ministry of Shipping sought the inputs of DG (S) on the comments of M/o External Affairs along with the comments received from various other Ministries.	11.08.2010

7.	Inputs of DG (S) were received.	19.08.2010
8.	The Hindi version of the draft Cabinet Note and the draft Bill were referred to the DG (S) for verification of the technical terms used in the translated version.	22.10.2010
9.	DG (S) sent the corrected Hindi version of draft Cabinet Note and the draft Merchant Shipping Amendment Bill.	29.10.2010
10.	The final Note for Cabinet was sent to Prime Minister's Office (PMO). The PMO suggested the Ministry of External Affairs has suggested that the Bill be passed before becoming a party to the Convention the matter may be taken up before a Committee of Secretaries (CoS).	29.11.2010
11.	DG (S) sent their inputs and a Note was prepared for the Committee of Secretaries.	10.01.2011
12.	Committee of Secretaries meeting was held and it was decided that Merchant Shipping Act amendment should precede India becoming party to the convention and a draft amending Bill or Ordinance should be prepared. Secretary, D/o Legal Affairs and Secretary, Legislative Department were asked to assist Ministry of Shipping in drafting the Ordinances.	15.03.2011
13.	The draft Ordinance and a draft proposal for Cabinet seeking approval to introduce an Ordinance on the Bunker Convention and the Nairobi Wreck Removal Convention were prepared.	18.04.2011
14.	The proposal for Ordinance on the Nairobi Convention and the Bunker Convention was approved by Hon'ble Minister.	17.06.2011
15.	The Prime Minister's Office advised that instead of an Ordinance Merchant Shipping (Amendment) Bill be introduced as per normal legislative process.	03.07.2011
16.	The Note for Cabinet on Ordinance was circulated for inter-ministerial comments.	08.11.2011
17.	The Legislative Department prepared the draft Merchant Shipping Amendment Bill instead of an Ordinance.	08.01.2012
18.	Since the Legislative Department had made modifications to the Bill and suggested that the Bill be discussed with the Legislative Department, DG (S) was requested to examine the modified Bill and depute an officer for discussions.	28.02.2012
19.	DG (S) sent their inputs on the modified Bill with further changes.	11.07.2012
20.	The revised Bill was discussed with Ministry of Law.	27.09.2012

21.	The Legislative department sought further clarifications on the proposed Bill.	19.10.2012
22.	Hon'ble Minister for Shipping directed that the Merchant Shipping (Amendment) Bill should also include amending the provision contained in Section 356M regarding enhancement of the oil pollution cess.	04.11.2012
23.	In the course of discussions with Legislative Department the DDG, DG (S) incorporated the provisions of Salvage Convention in the Merchant Shipping (Amendment) Bill.	04.01.2013
24.	The Bill was revised to incorporate provisions of Bunker Convention, Nairobi Convention, Salvage Convention and the amendment of Sec 356 M to enhance oil pollution cess.	18.03.2013
25.	The revised draft Bill was again discussed with Legislative Department.	28.05.2013
26.	The fresh proposal for the Cabinet with the revised Bill containing Bunker Convention, Salvage Convention and increase in oil pollution cess was approved by Hon. Minister for Shipping.	12.12.2013
27.	The revised draft Note for Cabinet Containing Bill for Bunker Convention, Salvage Convention, Nairobi Convention and increase of oil pollution cess was circulated for inter-ministerial comments.	16.12.2013
28.	The D/o Economic Affairs in their comments conveyed that the amount of levy may be brought under the rules instead of quantifying it in the Bill and the financial implication arising in the freight charges as a result of the levy may be reflected in the draft Note for Cabinet.	07.02.2014
29.	Secretary, Legislative Department communicated that pre-legislative consultative policy should be followed for all legislative matters and therefore DG (S) was directed to upload the working draft of revised Merchant Shipping Amendment Bill on the website of DG (S) and seek comments of stakeholders and public.	12.03.2014
30.	Before the Note for Cabinet and Bill could be finalised election was declared and code of conduct came into force.	---
31.	The revised draft Merchant Shipping (Amendment) Bill was loaded in the official website of the Directorate for a period of one month seeking comments of all stakeholders i..e on or before 02.06.2014, as per pre-legislative consultative policy	02.5.2014

	prescribed by the Legislative Department.	
32.	Follow up with the comments received from stakeholders DG (S) held meetings with all stakeholders to discuss their comments on the draft Bill.	09.6.2014
33.	The draft Bill after pre-legislative consultation by DG (S) was finalised.	11.6.2014
34.	The proposal was placed before the Hon'ble Minister of Shipping on the assuming of office of the present Government. It was decided to remove provisions to increase oil/marine pollution cess. This revised note for Cabinet and the revised Bill was circulated for inter-ministerial consultations.	08.08.2014
35.	Comments of various Ministries were received and these comments were consolidated and sent to Legislative Department requesting them to finalise the Bill and convey their concurrence to the proposal with the approval of Hon. Law Minister.	02.01.2015
36.	Legislative Department conveyed their concurrence to the proposal and provided the final Bill with the approval of Hon. Law Minister.	09.02.2015
37.	The final Note for Cabinet and the final Bill was approved by the Hon. Minister	02.03.2015
38.	Official language wing of the Legislative Department was requested for Hindi translation of the Bill.	11.03.2015
39.	Official language wing of the Legislative Department provided the Hindi translation of the Bill.	23.04.2015
40.	The final note for Cabinet and the final Bill (bilingual version) sent to Cabinet Secretariat and PMO.	21.05.2015
41.	Proposal approved by the Union Cabinet.	10.06.2015
42.	DG (S) sent inputs for the draft Statement of Objects and Reasons, Notes on Clauses and Memorandum on Delegated Legislation.	01.07.2015
43.	Draft Statement of Objects and Reasons, Memorandum on Delegated Legislation approved by Hon. Minister and referred to Legislative Department for vetting.	09.7.2015
44.	Statement of Objects and Reasons, Memorandum on Delegated Legislation vetted and finalized by Legislative Department.	24.7.2015
45.	The Merchant Shipping (Amendment) Bill, 2015 introduced in Parliament by Hon'ble Minister of Shipping.	10.08.2015

In light of the above mentioned circumstances, procedures, inter-ministerial consultation, and pre-legislative consultations as well as combination of two more Convention [i.e. Nairobi and Salvage Convention] with the Bunker Convention, it may kindly be observed that the delay, if any is attributable to the difficulties faced in harmonization of the draft provisions based on the three international Convention after starting the process in the year 2009 onwards. Further, the fresh approval of the Union Cabinet, consequent upon the Change of the Union Government is also one procedure which was required to be followed.

2. Question: In the presentation it has been shown that International Convention on Salvage is in force since 14.07.1996 and India is party since 18.10.1995. How do you correlate it? The delay to be explained.

Answer/submission: Salvage Convention was adopted in the year 1989. However, having met the requirement of tonnage and the number of states, as per the requirement of the stated convention, it actually came into force internationally after nearly seven years i.e. on 14.07.1996. India became a party to this Convention on 18.10.1995, as the provisions related to the Salvage Convention largely exist in the Merchant Shipping Act ever since 1958 and continued to be part of the Act till date. Indian law makers [Hon'ble Parliament] in their great wisdom had provided the provisions related to salvage in the Act since from 1958 itself i.e. much before 1989 Salvage Convention came into force. Therefore, the broad provisions on salvage already exist in the present Merchant Shipping Act.

However, the significant improvement made by the Salvage Convention 1989 is that it has enabled compensation for unsuccessful salvage efforts, and the salvor dealing with the salvage operation is free to make a contract with the ship-owner whose ship is being salvaged by it, so as to cover the compensation even if the salvage operation is not fully successful. The salvage convention has done away with the old principle of "No cure No pay ". It encourages the salvors to assist the distressed vessel and even if the salvage may not be totally successful, the Salvor is compensated by invoking contract and the Special compensation scopic clause.

It is submitted that as explained above, the provisions related to salvage are already in existence in the present Merchant Shipping Act. However, the provisions related to the salvage Convention are being updated, as an opportunity to make Indian legislation fully compliant with the Convention. Therefore, it may kindly be concluded that there is no delay in the legislation.

3. Question: Name of any major country which is not a signatory to these three Conventions [like US UK or Germany]. What would be the possible reason for them not signing and we are opting for that Convention?

Answer/submission: United States of America [USA] and Japan are the two major maritime nations who are not a party to the Bunker Convention. The United States has enacted the Oil Pollution Act 1990. The Act covers all types of oil, from the ship, whether bunkers or Cargo. The compensations and the requirement are more stringent than the Bunker Convention and hence there was no need by US to adopt the Bunker Convention which came into force at a much later stage in 2008. Similarly, the Japanese 'Act on Liability for ship oil pollution 1975' was amended in 2005 to cover bunker pollution damage before the bunker convention came into force internationally in 2008, and also the requirement under the local regulations were more stringent, thus Japan never felt the need for the bunker convention. As regards India, the provision related to pollution from oil [except bunker oil pollution damage] are existing in the Merchant Shipping Act, 1958, but there is a need to make specific legislation for covering the pollution incidents caused by the bunker oil of the ships, hence the proposed Bill is introduced.

Nairobi Convention: United States of America [USA], China and Japan, Italy, Norway, Republic of Korea, and Russian Federation are the major maritime nations which are not party to the Convention. As of now the national legislation of the above countries provide adequate mechanism of direct action against the ship owners in their coastal waters hence there may not be a need for them to be a party to this Convention. However, the Nairobi Wreck removal convention has entered into force this year only [i.e. on 14.04.2015]. Hence, it is still early stages as most of the countries may still be evaluating the convention from deciding to become party to the Convention. Moreover, now the Convention extends its scope beyond coastal waters up to Exclusive Economic Zone (EEZ), thus there may be reconsideration by other countries in due course to decide on being a party to this Convention. As regard India, the provisions related to the wreck removal are already existing in the Act. However, these are proposed to be updated, as an opportunity to make Indian legislation fully compliant with the Convention.

Salvage Convention: Japan, Panama, Republic of Korea, are few major maritime nations which are not party to the Convention. The prime reason for such maritime countries not becoming a party to the Convention is that their national legislation has already made necessary provisions for salvage and the courts have the sole jurisdiction of awarding the salvage compensation. The salvage convention applies to judicial or arbitral proceedings pertaining to salvage. Salvage is generally between private parties and disputes between

them are generally decided by arbitration/judicial process. The local legislation of such countries also provides mechanism for Arbitration and compensation for efforts of the salvor irrespective of degree of success, thus such countries have not felt the need for adoption of the convention. As regard India, the provisions related to salvage are already existing in the Act. However, these are proposed to be updated, as an opportunity to make Indian legislation fully compliant with the Convention.

4. Question: Give the list of nations which have signed and the list of the nations which have not signed these three Conventions.

Answer/submission: The list nations which are party to the Bunker Convention is enclosed [Appendix-I]. The list nations which are not party to this Convention is also enclosed [Appendix-II]

The list of nations which are party to the Nairobi wreck removal Convention is enclosed [Appendix-III]. The list nations which are not party to this Convention is also enclosed [Appendix-IV].

The list of nations which are party to the Salvage Convention, 1989 is enclosed [Appendix-V]. The list nations which are not party to this Convention is also enclosed [Appendix-VI].

5. Question: What will be the procedure for recovery in case of wreck [Page No. 6 of the document containing recorded oral evidence]?

Answer/submission: Any claim for costs arising under the new provisions may be brought directly against the insurer or other person who has provided the financial security for the liability of the registered owner of the vessel. Hence even the direct action for claim against the insurers or the person giving the financial security is possible, so as to compensate the damage caused by the incident of a ship becoming a wreck and hazard to safe navigation.

6. Question: Dispute relating to claims shall be adjudicated by concerned High Court [where vessel is registered/vessel is situated/cause of action arise. Clarify the three jurisdiction provided there. Also clarify from which time the claim [i.e. limitation period of within 2 years] will start in case of Salvage Convention [Page No. 6 of the document containing recorded oral evidence].

Answer/submissions: The jurisdiction has been given based on the broad principles as given in the Civil Procedure Code, 1908 w.r.to jurisdiction of the courts. The case may not proceed in more than one court, as the principle of res sub judice will apply. The case may proceed at one location based on the principle that where it is instituted first. The period of limitation shall commence from date of completion of salvage operation.

7. Question: Whether there are statistics about the benefits/positive impacts which have occurred or may occur in future, to the ocean ecology of those countries which are party to these Conventions. Is there a financial or other loss to the country in absence of following these Conventions [Page No. 6 of the document containing recorded oral evidence]?

Answer/submission: No specific statistics is available for benefits/positive impacts which have occurred or may occur in future, to the ocean ecology of those countries which are party to these Conventions. However, the benefits intended from these Conventions, are as follows;

Bunker Convention: This Convention is intended to ensure that adequate, prompt, and effective compensation is available to persons who suffer damage caused by spills of oil, when carried as fuel in ships' bunkers. The Convention applies to damage caused on the territory, including the territorial sea, and in exclusive economic zones of countries which Party to the Convention. A key requirement in the Bunker Convention is the need, for the registered owner of a vessel, to maintain a compulsory insurance cover. Another key provision is the enabling provision for initiating direct action against the insurer, which would

allow a claim for compensation for pollution damage to be brought directly against an insurer.

Nairobi wreck removal Convention: This Convention provides a sound legal basis for coastal countries to remove, or have removed, from their coastlines, wrecks which pose a hazard to the safety of navigation or to the marine and coastal environments, or both. It will make ship-owners financially liable and require them to take out insurance or provide other financial security to cover the costs of wreck removal. It will also provide States with a right of direct action against insurers. This Convention also includes an optional clause enabling States Parties to apply certain provisions to their territory, including their territorial sea.

Salvage Convention: This Convention seeks to remedy the deficiency enshrined in the "no cure, no pay" principle under which a salvor is only rewarded for services, if the salvage operation is successful. Earlier the salvors were paid only if the salvage operation were successful. However, under this Convention the efforts of the salvors to prevent the major pollution incident [for example, by towing a damaged tanker away from an environmentally sensitive area] have been recognized and now he may be rewarded even if he is not able to save the ship or the cargo. This will encourage the salvors to come forwards for saving the environmental damage.

As regards, financial or other loss to the country in absence of following these Conventions, it is submitted that Indian ships on international voyage are already complying with the requirements of the Bunker Convention & Nairobi Conventions. For salvage operations, & also to extent w.r.to the Nairobi Convention, the provisions are already in existence in the Merchant Shipping Act, 1958. As shipping is International in nature, Indian ships trading worldwide had to abide by the requirements of the Conventions, therefore, Indian ships were issued certificates by other convention countries at a certain cost. Now, with above adoption, Indian ships can be issued certificates by the Indian Administration after enactment. Secondly with the enactment, every ship entering Indian Coastal waters will be required to have necessary financial guarantee and a certificate being a proof of the same. In case of any pollution by way of bunker, or ship becoming a wreck direct action can be initiated against the owners / insurers through the process of Arbitration instead of passing through the lengthy judicial process. Such compulsory carriage of certificate and the provision of direct action will be an indirect method and deterrent thus giving indirect protection to the coastal marine environment. Financial or other loss to the country could occur if the provisions of the Conventions are not brought into force in India as owners of foreign flag vessels will not require to have insurance or financial security to deal with bunker oil spills or wrecks occurring in our waters, leading to environmental damage and consequential loss to the country.

**INTERNATIONAL CONVENTION ON CIVIL LIABILITY FOR BUNKER
OIL POLLUTION DAMAGE, 2001(BUNKERS 2001)**

Done at London, 23 March 2001

Entry into force: 21 November 2008

Signature, ratification, acceptance, approval and accession

Article 12

1 This Convention shall be open for signature at the Headquarters of the Organization from 1 October 2001 until 30 September 2002 and shall thereafter remain open for accession.

2 States may express their consent to be bound by this Convention by:

- (a) signature without reservation as to ratification, acceptance or approval;
- (b) signature subject to ratification, acceptance or approval followed by ratification, acceptance or approval; or
- (c) accession

3 Ratification, acceptance, approval or accession shall be effected by deposit of an instrument to that effect with the Secretary-General.

4 Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to this Convention with respect to all existing State Parties, or after the completion of all measures required for the entry into force of the amendment with respect to those State Parties shall be deemed to apply to this Convention as modified by the amendment.

Entry into force

Article 14

1 This Convention shall enter into force one year following the date on which eighteen States, including five States each with ships whose combined gross tonnage is not less than 1 million, have either signed it without reservation as to ratification, acceptance or approval or have deposited instruments of ratification, acceptance, approval or accession with the Secretary-General.

2 For any State which ratifies, accepts, approves or accedes to it after the conditions in paragraph 1 for entry into force have been met, this Convention shall enter into force three months after the date of deposit by such State of the appropriate instrument.

Revision or amendment

Article 16

1 A conference for the purpose of revising or amending this Convention may be convened by the Organization.

2 The Organization shall convene a conference of the States Parties for revising or amending this Convention at the request of not less than one-third of the States Parties.

I.	Signatories
II.	Contracting States
III.	Declarations, Reservations and Statements
IV.	Amendments

I. Signatories

Australia	Subject to ratification
Brazil	Subject to ratification
Canada	Subject to ratification
Denmark ¹	Subject to ratification
Finland ¹	Subject to acceptance
Germany ¹ , Federal Republic of	Subject to ratification
Italy	Subject to ratification
Norway	Subject to ratification
Spain ¹	
Sweden ¹	Subject to ratification
United Kingdom ¹	Subject to ratification

II. Contracting States

	Date of deposit of instrument	Date of entry into force
Albania (accession)	30 April 2010	30 July 2010
Antigua and Barbuda (accession)	19 December 2008	19 March 2009
Austria (accession)	30 January 2013	30 April 2013
Australia (ratification)	16 March 2009	16 June 2009
Azerbaijan (accession)	22 June 2010	22 September 2010
Bahamas (accession) ¹	30 January 2008	21 November 2008
Barbados (accession)	15 October 2009	15 January 2010
Belgium (accession) ¹	11 August 2009	11 November 2009
Belize (accession)	22 August 2011	22 November 2011
Bulgaria (accession) ¹	6 July 2007	21 November 2008
Canada (accession)	2 October 2009	2 January 2010
Czech Republic (accession)	20 December 2012	20 March 2013
China (accession) ^{1,4}	9 December 2008	9 March 2009
Congo (accession)	19 May 2019	19 August 2014
Côte d'Ivoire (accession)	8 July 2013	8 October 2013
Cook Islands (accession)	21 August 2008	21 November 2008
Croatia (accession) ¹	15 December 2006	21 November 2008
Cyprus (accession) ¹	10 January 2005	21 November 2008
Denmark (ratification)	23 July 2008	21 November 2008
Democratic People's Republic of Korea (accession)	17 July 2009	17 October 2009
Egypt (accession) ¹	15 February 2010	15 May 2010
Estonia (accession) ¹	5 October 2006	21 November 2008
Ethiopia (accession)	17 February 2009	17 May 2009
Finland (acceptance) ¹	18 November 2008	18 February 2009
France (accession) ¹	19 October 2010	19 January 2011
Germany* (ratification) ¹	24 April 2007	21 November 2008
Greece* (accession)	22 December 2005	21 November 2008
Hungary (accession)	30 January 2008	21 November 2008
Indonesia (accession)	11 September 2014	11 December 2014
Iran (Islamic Republic of Iran) (accession)	21 November 2011	21 February 2012
Ireland (accession) ¹	23 December 2008	23 March 2009
Italy (ratification)	18 November 2010	18 February 2011

	Date of deposit of instrument	Date of entry into force
Jamaica (accession)	2 May 2003	21 November 2008
Jordan (accession)	24 March 2010	24 June 2010
Kenya (accession)	7 July 2015	7 October 2015
Kiribati (accession)	29 July 2009	29 October 2009
Latvia (accession)	19 April 2005	21 November 2008
Liberia (accession)	21 August 2008	21 November 2008
Lithuania (accession)	14 September 2007	21 November 2008
Luxembourg (accession) ¹	21 November 2005	21 November 2008
Malaysia (accession)	12 November 2008	12 February 2009
Malta (accession) ¹	12 November 2008	12 February 2009
Marshall Islands (accession)	9 May 2008	21 November 2008
Mauritius (accession)	17 July 2013	17 October 2013
Mongolia (accession)	28 September 2011	28 December 2011
Montenegro (accession)	29 November 2011	29 February 2012
Morocco (ratification)	14 April 2010	14 July 2010
Netherlands (accession)	23 December 2010	23 March 2011
New Zealand (accession) ¹	4 April 2014	4 July 2014
Nicaragua (accession)	3 April 2014	3 July 2014
Nigeria (accession)	1 October 2010	1 January 2011
Niue (accession)	18 May 2012	18 August 2012
Norway (ratification) ¹	25 March 2008	21 November 2008
Palau (accession)	28 September 2011	28 December 2011
Panama (accession)	17 February 2009	17 May 2009
Poland (accession) ¹	15 December 2006	21 November 2008
Portugal (accession)	21 July 2015	21 October 2015
Republic of Korea (accession)	28 August 2009	28 November 2009
Romania (accession)	15 June 2009	15 September 2009
Russian Federation (accession)	24 February 2009	24 May 2009
Saint Kitts and Nevis (accession)	21 October 2009	21 January 2010
Saint Vincent and the Grenadines (accession)	26 November 2008	26 February 2009
Samoa (accession)	18 May 2004	21 November 2008
Serbia (accession)	8 July 2010	8 October 2010
Sierra Leone (accession)	21 November 2007	21 November 2008
Singapore (accession) ¹	31 March 2006	21 November 2008
Slovakia (accession) ¹	1 May 2013	1 August 2013
Slovenia (accession)	20 May 2004	21 November 2008
Spain (ratification) ¹	10 December 2003	21 November 2008
Sweden (ratification) ¹	3 June 2013	3 September 2013
Switzerland (accession)	24 September 2013	24 December 2013
Syrian Arab Republic (accession) ¹	24 April 2009	24 July 2009
Togo (accession)	23 April 2012	23 July 2012
Tonga (accession)	18 September 2003	21 November 2008
Tunisia (accession) ¹	5 September 2011	5 December 2011
Turkey (accession)	12 September 2013	12 December 2013
Tuvalu (accession)	12 January 2009	12 April 2009
United Kingdom* (ratification) ^{1, 2, 3}	29 June 2006	21 November 2008
Vanuatu (accession)	20 August 2008	21 November 2008
Vietnam (accession)	18 June 2010	18 September 2010

Number of Contracting States: 80
(the combined merchant fleets of which constitute approximately
91.84% of the gross tonnage of the world's merchant fleet)

¹ For the text of a declaration, reservation or statement, see section III.

² States with Ships whose combined gross tonnage is not less than 1 million.

³ Extended to the Isle of man with effect from 21 November 2008.
Extended to Gibraltar with effect from 28 November 2009.

Extended to Bermuda with effect from 16 January 2009.
Extended to the Cayman Islands with effect from 12 January 2011.
Extended to the British Virgin Islands with effect from 9 September 2013.

- ⁴ Applies to the Macau Special Administrative Region with effect from 9 March 2009.
Applies to the Hong Kong Special Administrative Region with effect from 22 January 2010.
-

List of Nations not party to the Bunker Convention

95.	Algeria
96.	Angola
97.	Argentina
98.	Bahrain
99.	Bangladesh
100.	Benin
101.	Bolivia (Plurinational State of)
102.	Bosnia and Herzegovina
103.	Brazil
104.	Brunei Darussalam
105.	Cambodia
106.	Cameroon
107.	Cabo Verde
108.	Chile
109.	Colombia
110.	Comoros
111.	Costa Rica
112.	Cuba
113.	Democratic Republic of the Congo*
114.	Djibouti
115.	Dominica
116.	Dominican Republic
117.	Ecuador
118.	El Salvador
119.	Equatorial Guinea
120.	Eritrea
121.	Fiji
122.	Gabon
123.	Gambia
124.	Georgia
125.	Ghana
126.	Grenada
127.	Guatemala
128.	Guinea
129.	Guinea-Bissau
130.	Guyana
131.	Haiti
132.	Honduras
133.	Iceland
134.	India
135.	Iraq
136.	Israel
137.	Japan
138.	Kazakhstan
139.	Kuwait
140.	Lebanon
141.	Libya
142.	Madagascar
143.	Malawi
144.	Maldives
145.	Mauritania
146.	Mexico
147.	Monaco
148.	Mozambique

149.	Myanmar
150.	Namibia
151.	Nepal
152.	Oman
153.	Pakistan
154.	Papua New Guinea
155.	Paraguay
156.	Peru
157.	Philippines
158.	Qatar
159.	Republic of Korea
160.	Republic of Moldova
161.	Romania
162.	Saint Lucia
163.	San Marino
164.	Sao Tome and Principe
165.	Saudi Arabia
166.	Senegal
167.	Seychelles
168.	Solomon Islands
169.	Somalia
170.	South Africa
171.	Sri Lanka
172.	Sudan
173.	Suriname
174.	Thailand
175.	The former Yugoslav Republic of Macedonia
176.	Timor-Leste
177.	Trinidad and Tobago
178.	Turkmenistan
179.	Uganda
180.	Ukraine
181.	United Arab Emirates
182.	United Republic of Tanzania
183.	United States of America
184.	Uruguay
185.	Venezuela (Bolivarian Republic of)
186.	Yemen
187.	Zambia
188.	Zimbabwe

**NAIROBI INTERNATIONAL CONVENTION ON THE REMOVAL OF WRECKS, 2007
(NAIROBI WRC 2007)**

Done at Nairobi, 18 May 2007

Entry into force: 14 April 2015

Signature, ratification, acceptance, approval and accession

Article 17

1 This Convention shall be open for signature at the Headquarters of the Organization from 19 November 2007 until 18 November 2008 and shall thereafter remain open for accession.

- (a) States may express their consent to be bound by this Convention by:
- (i) signature without reservation as to ratification, acceptance or approval; or
 - (ii) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or
 - (iii) accession.
- (b) Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.

Article 18

Entry into force

1 This Convention shall enter into force twelve months following the date on which ten States have either signed it without reservation as to ratification, acceptance or approval or have deposited instruments of ratification, acceptance, approval or accession with the Secretary-General.

2 For any State which ratifies, accepts, approves or accedes to this Convention after the conditions in paragraph 1 for entry into force have been met, this Convention shall enter into force three months following the date of deposit by such State of the appropriate instrument, but not before this Convention has entered into force in accordance with paragraph 1.

Denunciation

Article 19

1 This Convention may be denounced by a State Party at any time after the expiry of one year following the date on which this Convention comes into force for that State.

2 Denunciation shall be effected by the deposit of an instrument to that effect with the Secretary-General.

3 A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, following its receipt by the Secretary-General.

Amendment provisions

Article 14

1 At the request of not less than one-third of States Parties, a conference shall be convened by the Organization for the purpose of revising or amending this Convention.

2 Any consent to be bound by this Convention, expressed after the date of entry into force of an amendment to this Convention, shall be deemed to apply to this Convention, as amended.

- I. Signatories
- II. Contracting States
- III. Declarations, Reservations and Statements
- IV. Amendments

I. Signatories

Denmark	“Subject to ratification”	12 November 2008
Estonia	“Subject to ratification”	28 March 2008
France	“Sous réserve de ratification”	24 September 2008
Germany	“Subject to ratification”	17 November 2008
Italy	“Subject to ratification”	23 September 2008
Netherlands	“Subject to approval”	27 October 2008

II. Contracting States

	Date of deposit of instrument	Date of entry into force
Albania (accession) ¹	27 April 2015	27 July 2015
Antigua and Barbuda ¹	9 January 2015	14 April 2015
Bahamas (accession) ¹	5 June 2015	5 September 2015
Bulgaria (accession) ¹	8 February 2012	14 April 2015
Congo (accession)	19 May 2014	14 April 2015
Cook Islands (accession)	22 December 2014	14 April 2015
Cyprus (accession)	22 July 2015	22 October 2015
Denmark (ratification) ¹	14 April 2014	14 April 2015
Germany (ratification)	20 June 2013	14 April 2015
India (accession)	23 March 2011	14 April 2015
Iran (Islamic Republic of) (accession)	19 April 2011	14 April 2015
Kenya (accession) ¹	14 April 2015	14 July 2015
Liberia (accession) ¹	8 January 2015	14 April 2015
Malaysia (accession)	28 November 2013	14 April 2015
Malta (accession) ¹	18 January 2015	18 April 2015
Marshall Islands (accession) ¹	27 October 2014	14 April 2015
Morocco (accession)	13 June 2013	14 April 2015
Nigeria (accession)	23 July 2009	14 April 2015
Niue (accession)	27 April 2015	27 July 2015
Palau (accession)	29 September 2011	14 April 2015
Panama (accession)	18 August 2015	18 November 2015
South Africa (accession)	4 September 2015	4 December 2015
Tonga (accession)	20 March 2015	20 June 2015
Tuvalu	17 February 2015	17 May 2015
United Kingdom (accession) ^{1,2}	30 November 2012	14 April 2015

Number of Contracting States: 25
 (the combined merchant fleets of which constitute approximately
 58.09% of the gross tonnage of the world's merchant fleet)

¹ For the text of a declaration, reservations and statement, see section III.

² The Convention was extended by the United Kingdom to the Isle of Man with effect from 14 April 2015 and to Gibraltar with effect from 16 April 2015.

List of nations not party to the Nairobi Wreck Removal Convention

148.	Algeria
149.	Angola
150.	Argentina
151.	Australia
152.	Austria
153.	Azerbaijan
154.	Bahrain
155.	Bangladesh
156.	Barbados
157.	Belgium
158.	Belize
159.	Benin
160.	Bolivia (Plurinational State of)
161.	Bosnia and Herzegovina
162.	Brazil
163.	Brunei Darussalam
164.	Cambodia
165.	Cameroon
166.	Canada
167.	Cabo Verde
168.	Chile
169.	China
170.	Colombia
171.	Comoros
172.	Costa Rica
173.	Côte d'Ivoire
174.	Croatia
175.	Cuba
176.	Czech Republic
177.	Democratic People's Republic of Korea
178.	Democratic Republic of the Congo*
179.	Djibouti
180.	Dominica
181.	Dominican Republic
182.	Ecuador
183.	Egypt
184.	El Salvador
185.	Equatorial Guinea
186.	Eritrea
187.	Estonia
188.	Ethiopia
189.	Fiji
190.	Finland
191.	France
192.	Gabon
193.	Gambia
194.	Georgia
195.	Ghana
196.	Greece
197.	Grenada
198.	Guatemala
199.	Guinea
200.	Guinea-Bissau
201.	Guyana
202.	Haiti

203.	Honduras
204.	Hungary
205.	Iceland
206.	Indonesia
207.	Iraq
208.	Ireland
209.	Israel
210.	Italy
211.	Jamaica
212.	Japan
213.	Jordan
214.	Kazakhstan
215.	Kiribati
216.	Kuwait
217.	Latvia
218.	Lebanon
219.	Libya
220.	Lithuania
221.	Luxembourg
222.	Madagascar
223.	Malawi
224.	Maldives
225.	Mauritania
226.	Mauritius
227.	Mexico
228.	Monaco
229.	Mongolia
230.	Montenegro
231.	Mozambique
232.	Myanmar
233.	Namibia
234.	Nepal
235.	Netherlands
236.	New Zealand
237.	Nicaragua
238.	Norway
239.	Oman
240.	Pakistan
241.	Papua New Guinea
242.	Paraguay
243.	Peru
244.	Philippines
245.	Poland
246.	Portugal
247.	Qatar
248.	Republic of Korea
249.	Republic of Moldova
250.	Romania
251.	Russian Federation
252.	Saint Kitts and Nevis
253.	Saint Lucia
254.	Saint Vincent and the Grenadines
255.	Samoa
256.	San Marino
257.	Sao Tome and Principe
258.	Saudi Arabia

259.	Senegal
260.	Serbia
261.	Seychelles
262.	Sierra Leone
263.	Singapore
264.	Slovakia
265.	Slovenia
266.	Solomon Islands
267.	Somalia
268.	Spain
269.	Sri Lanka
270.	Sudan
271.	Suriname
272.	Sweden
273.	Switzerland
274.	Syrian Arab Republic
275.	Thailand
276.	The former Yugoslav Republic of Macedonia
277.	Timor-Leste
278.	Togo
279.	Trinidad and Tobago
280.	Tunisia
281.	Turkey
282.	Turkmenistan
283.	Uganda
284.	Ukraine
285.	United Arab Emirates
286.	United Republic of Tanzania
287.	United States of America
288.	Uruguay
289.	Vanuatu
290.	Venezuela (Bolivarian Republic of)
291.	Viet Nam
292.	Yemen
293.	Zambia
294.	Zimbabwe

List of nations Parties to Salvage Convention

INTERNATIONAL CONVENTION ON SALVAGE, 1989 (SALVAGE 1989)

Done at London, 28 April 1989

Entry into force: 14 July 1996

Signature, ratification, acceptance, approval, accession

Article 28

1 This Convention shall be open for signature at the Headquarters of the Organization from 1 July 1989 to 30 June 1990 and shall thereafter remain open for accession.

2 States may express their consent to be bound by this Convention by:

- (a) signature without reservation as to ratification, acceptance or approval; or
- (b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or
- (c) accession.

3 Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.

Entry into force

Article 29

1 This Convention shall enter into force one year after the date on which 15 States have expressed their consent to be bound by it.

2 For a State which expresses its consent to be bound by this Convention after the conditions for entry into force thereof have been met, such consent shall take effect one year after the date of expression of such consent.

-
- I. Signatories
 - II. Contracting States
 - III. Declarations, Reservations, Notifications and Statements.

I. Signatories

Canada	Subject to ratification
Denmark	Subject to ratification
Finland	Subject to approval
Germany, Federal Republic of	Subject to ratification
Ireland	Subject to ratification
Italy	Subject to ratification
Mexico	Ad referendum
Netherlands	Subject to acceptance
Nigeria	Subject to ratification
Norway	Subject to ratification
Poland	Subject to ratification
Spain	Ad referendum and with reservations ¹
Sweden	Subject to ratification
Switzerland	Sous réserve de ratification
USSR	[<i>Translation</i>] Subject to subsequent ratification
United Kingdom	Subject to ratification
United States	Subject to ratification

II. Contracting States

	Date of deposit of instrument	Date of entry into force
Albania (accession)	14 June 2006	14 June 2007
Algeria (accession)	26 March 2012	26 March 2013
Australia (accession) ¹	8 January 1997	8 January 1998
Azerbaijan (accession)	12 June 2006	12 June 2007
Brazil (accession)	29 July 2009	29 July 2010
Belgium (accession)	30 June 2004	30 June 2005
Bulgaria (accession) ¹	14 March 2005	14 March 2006
Canada (ratification) ¹	14 November 1994	14 July 1996
China (accession) ^{1, 4}	30 March 1994	14 July 1996
Congo (accession)	7 September 2004	7 September 2005
Croatia (accession) ¹	10 September 1998	10 September 1999
Denmark (ratification)	30 May 1995	14 July 1996
Dominica (accession)	31 August 2001	31 August 2002
Ecuador (accession) ¹	16 February 2005	16 February 2006
Egypt (accession)	14 March 1991	14 July 1996
Estonia (accession)	31 July 2001	31 July 2002
Finland (approval) ¹	12 January 2007	12 January 2008
France (accession) ¹	21 December 2001	21 December 2002
Georgia (accession)	25 August 1995	25 August 1996
Germany (ratification) ¹	8 October 2001	8 October 2002
Greece (accession)	3 June 1996	3 June 1997
Guinea (accession)	2 October 2002	2 October 2003
Guyana (accession)	10 December 1997	10 December 1998
Iceland (accession)	21 March 2002	21 March 2003
India (accession)	18 October 1995	18 October 1996
Iran (Islamic Republic of) (accession) ¹	1 August 1994	14 July 1996
Ireland (ratification) ¹	6 January 1995	14 July 1996
Italy (ratification)	14 July 1995	14 July 1996
Jamaica (accession)	28 November 2013	28 November 2014
Jordan (accession)	3 October 1995	3 October 1996
Kenya (accession)	21 July 1999	21 July 2000
Kiribati (accession)	5 February 2007	5 February 2008
Latvia (accession)	17 March 1999	17 March 2000
Liberia (accession)	18 September 2008	18 September 2009
Lithuania (accession) ¹	15 November 1999	15 November 2000

	Date of deposit of instrument	Date of entry into force
Marshall Islands (accession)	16 October 1995	16 October 1996
Mauritius (accession)	17 December 2002	17 December 2003
Mexico (ratification) ¹	10 October 1991	14 July 1996
Mongolia (accession)	2 September 2015	2 September 2016
Montenegro (accession)	19 April 2012	19 April 2013
Netherlands (acceptance) ^{1,3}	10 December 1997	10 December 1998
New Zealand (accession) ¹	16 October 2002	16 October 2003
Nigeria (ratification)	11 October 1990	14 July 1996
Niue (accession)	27 June 2012	27 June 2013
Norway (ratification) ¹	3 December 1996	3 December 1997
Oman (accession)	14 October 1991	14 July 1996
Palau (accession)	29 September 2011	29 September 2012
Poland (ratification)	16 December 2005	16 December 2006
Romania (accession)	18 May 2001	18 May 2002
Russian Federation (ratification) ¹	25 May 1999	25 May 2000
Saint Kitts and Nevis (accession)	7 October 2004	7 October 2005
Jamaica (accession)	28 November 2013	28 November 2014
Saudi Arabia (accession) ¹	16 December 1991	14 July 1996
Sierra Leone (accession)	26 July 2001	26 July 2002
Slovenia (accession)	23 December 2005	23 December 2006
Spain (ratification) ¹	27 January 2005	27 January 2006
Sweden (ratification) ¹	19 December 1995	19 December 1996
Switzerland (ratification)	12 March 1993	14 July 1996
Syrian Arab Republic (accession)	19 March 2002	19 March 2003
Tonga (accession)	18 September 2003	18 September 2004
Tunisia (accession) ¹	5 May 1999	5 May 2000
Turkey (accession) ¹	27 June 2014	27 June 2015
United Arab Emirates (accession)	4 October 1993	14 July 1996
United Kingdom (ratification) ^{1,2}	29 September 1994	14 July 1996
United States (ratification)	27 March 1992	14 July 1996
Vanuatu (accession)	18 February 1999	18 February 2000
Yemen (accession)	23 September 2008	23 September 2009

Number of Contracting States: 66
(the combined merchant fleets of which constitute approximately
51.31% of the gross tonnage of the world's merchant fleet)

¹ For the text of a reservation or statement, see section III.

² The United Kingdom declared its ratification to be effective from 22 July 1998 in respect of:

Bailiwick of Jersey)		Anguilla)	
Falkland Islands*)		British Antarctic Territory)	
Hong Kong**)	With effect from	British Indian Ocean Territory)	With effect from
Isle of Man)	30 May 1997	British Virgin Islands)	22 July 1998
Montserrat)		Cayman Islands)	
South Georgia and)		Pitcairn, Henderson, Ducie and)	
South Sandwich Islands)		Oeno Islands)	
		St. Helena, Ascension and Tristan)	
		da Cunha***)	
		Turks and Caicos Islands)	

Bailiwick of Guernsey with effect from 14 September 2001.

³ Extended to Bonaire, Sint Eustatius and Saba (the Caribbean part of the Netherlands) with effect from 10 October 2010. For more details on the restructuring of the Netherlands see footnote 4, in section II of SOLAS 1974.

Appendix-VI

List of Nations not party to the Salvage Convention

107.	Angola
108.	Antigua and Barbuda
109.	Argentina
110.	Australia
111.	Bahamas
112.	Bahrain
113.	Bangladesh
114.	Barbados
115.	Belize
116.	Benin
117.	Bolivia (Plurinational State of)
118.	Bosnia and Herzegovina
119.	Brunei Darussalam
120.	Cambodia
121.	Cameroon
122.	Cabo Verde
123.	Chile
124.	Colombia
125.	Comoros
126.	Cook Islands
127.	Costa Rica
128.	Côte d'Ivoire
129.	Cuba
130.	Cyprus
131.	Czech Republic
132.	Democratic People's Republic of Korea
133.	Democratic Republic of the Congo*
134.	Djibouti
135.	Dominican Republic
136.	El Salvador
137.	Equatorial Guinea
138.	Eritrea
139.	Ethiopia
140.	Fiji
141.	Gabon
142.	Gambia
143.	Ghana
144.	Grenada
145.	Guatemala
146.	Guinea-Bissau
147.	Haiti
148.	Honduras
149.	Hungary
150.	Indonesia
151.	Iraq
152.	Israel
153.	Japan
154.	Kazakhstan
155.	Kuwait
156.	Lebanon
157.	Libya
158.	Luxembourg
159.	Madagascar
160.	Malawi

161.	Malaysia
162.	Maldives
163.	Malta
164.	Mauritania
165.	Monaco
166.	Morocco
167.	Mozambique
168.	Myanmar
169.	Namibia
170.	Nepal
171.	Nicaragua
172.	Pakistan
173.	Panama
174.	Papua New Guinea
175.	Paraguay
176.	Peru
177.	Philippines
178.	Portugal
179.	Qatar
180.	Republic of Korea
181.	Republic of Moldova
182.	Saint Lucia
183.	Saint Vincent and the Grenadines
184.	Samoa
185.	San Marino
186.	Sao Tome and Principe
187.	Senegal
188.	Serbia
189.	Seychelles
190.	Singapore
191.	Slovakia
192.	Solomon Islands
193.	Somalia
194.	South Africa
195.	Sri Lanka
196.	Sudan
197.	Suriname
198.	Thailand
199.	The former Yugoslav Republic of Macedonia
200.	Timor-Leste
201.	Togo
202.	Trinidad and Tobago
203.	Turkmenistan
204.	Tuvalu
205.	Uganda
206.	Ukraine
207.	United Republic of Tanzania
208.	Uruguay
209.	Venezuela (Bolivarian Republic of)
210.	Viet Nam
211.	Zambia
212.	Zimbabwe

Supplementary submissions, for further clarity, on questions raised and replied during the course of recording of oral evidence before the Committee on 16.09.15.

1. Question: It is mentioned that liability of owner is exempted if the pollution damage is due to war, act intentional act/omission of third person, negligence/wrongful act of Government/ authority. Give some example of act of God and omission of third party. Who will decide on omission of third party Give some clarity on this aspect [Page No. 5 of document containing recorded oral evidence].

Answer/submissions: As was submitted by the DG Shipping, Gol, during the meeting, act of God or force majeure is a condition of occurrence of a natural calamity. Such an act needs to be an act which is not foreseen and is beyond the control of the human beings. If the person wants an exemption from the liability, he has to prove that such an act is not caused by him or his employee or agent, but by a third person. Hence the third person needs to be a totally external person not connected with the owner as employee or agent. As regards, the act of God, there is a plethora of case laws which has now got very well adjudicated and now has got very well settled by the apex court, as to what constitute an act of God or the force majeure situation. It is very well understood in terms of juristic principles, and there may not be any ambiguity for it during the adjudication proceedings. The court will decide, if it is an act of third party, in case there is a claim for an exemption from the liability.

2. Question: Claims to be preferred within three years from the date of damage or six years from the date of incident. Explain the two limitations given in the Act [Page No. 5 of the document containing recorded oral evidence].

Answer/Submissions: As was submitted by the DG Shipping, Gol, it is further clarified that one may get the compensation if a claim is made within three years from the date of occurrence of damage. However, no claim can be made after six years from the date of incident which has caused the damage. In simple words, it is perceptible damage for which there is an actionable claim, then the maximum limitation is three years. However, if there is an incident which otherwise is not so significant but later on can be related to original cause of action and more by way of social cause, then in such cases the limitation period shall be six years. It is in terms of graded impact on the environment and ecology which may occur immediately on occurrence of the incident or may come out after passage of time.

3. Question: There is mention of compulsory insurance & exemption to vessels owned or operated by the Government and used for the non

commercial service. Explain such exemption to Govt. vessels [Page No. 5 of the document containing recorded oral evidence].

Answer/submission: As was submitted by the Secretary (S), the vessels owned or operated by the Government and used for the non commercial service, are exempted from the compulsory insurance, as the broad principle is that the Government in case of accidents are funded sufficiently and if some compensation is to be paid to some person, the Government will be able to pay. Government is a kind of sovereign guarantee in itself. Therefore most of the equipments in the Government are not insured.

4. Question: When does a Convention come into force i.e. how countries are required to be party to a Convention to put it into force [Page No. 16 of the document containing recorded oral evidence]?

Answer/submissions: There are different criteria which are mentioned in the text of the respective Conventions itself. However, following is the criteria for putting these three Conventions into force;

Bunker Convention: Article 14 of this Convention stipulates that the Convention shall enter into force one year following the date on which 18 states, including 5 states each with ships whose combined gross tonnage is not less than 1 million, have either signed it without reservation as to ratification, acceptance or approval or have deposited the instruments of ratification, acceptance, approval or accession with the secretary General of the IMO. Accordingly the Bunker Convention, 2001 came into force only on 21.11.08

Nairobi Convention: Article 18 of this Convention stipulates that the Convention shall enter into force twelve month following the date on which 10 states have either signed it without reservation as to ratification, acceptance or approval or have deposited the instruments of ratification, acceptance, approval or accession with the secretary General of the IMO. Accordingly the Nairobi Convention, 2007 came into force only on 14.04.15 [i.e. this year only]

Salvage Convention: Article 29 of this Convention stipulates that the Convention shall enter into force one year following the date on which 15 states have expressed their consent to be bound by it. For an state which expresses its consent to be bound by this Convention after the conditions for entry into force thereof have been met, such consent shall take effect one year after the date of expression of such consent. Accordingly the Salvage Convention, 1989 came into force only on 14.07.96.

5. Question: Details of the around 30 wrecks already there in the Indian waters & what is happening to them may be give [Page No. 19 of the document containing recorded oral evidence].

Answer/submissions: The detail about the status of the wrecks already there in the Indian waters, is enclosed [Appendix-VII].

6. Question: Whether these Conventions are applicable to the fishing and cruise vessels?

Answer/submissions: The three conventions as mentioned do not make any reference or differentiate its application to the type of vessel. The general principle of application adopted is the gross tonnage of the vessel. The criteria for application of Bunker Convention to a ship are that it should be above 1000 GT. The Nairobi wreck removal Convention shall be applicable to ships which are of 300 GT and above. No such limit is mentioned in the Salvage Convention.

Comparison of existing and proposed provisions of the Bunker, Nairobi and Salvage Convention vis-a-vis benefits and cost to be incurred.

Name of the Convention	Existing provision	Proposed provisions	Benefits	Cost , if any to
International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 [Bunker Convention]	no Provisions	<p>Enables compensation for pollution damage caused by bunker oil used as fuel in a vessel.</p> <p>Liability of owner for cost incurred in taking preventive measures to minimize the damage.</p> <p>Liability of owner also for any damage caused while taking the preventive measures.</p> <p>Joint and several liability if damage is caused by two vessels</p> <p>[Certain exemptions are provided like war, act of third person].</p> <p>Owner may limit his liability as per LLMC Convention.</p> <p>High Court to determine the limitation of liability and distribution of claims.</p> <p>Claim may be made within three year of occurrence of damage but not later than six years from the incident.</p> <p>Owner of vessels above 1000GT need to maintain compulsory insurance or coverage financial security.</p>	<p>DGS can issue certificates of financial security to Indian ships which is now being issued by foreign entities.</p> <p>Claims can be made for any pollution damage caused by Bunker oil.</p> <p>Claims can be made for efforts to reduce damage.</p> <p>Foreign going Indian ships will be benefitted as DGS can issue compliance certificate.</p> <p>Time period for claims well defined, so will be processed quickly in time bound manner.</p>	<p>Vessel on international voyages are already complying with the requirement as Convention is already in force, hence no additional cost for such vessels.</p> <p>Vessels on the coast of India may have to take additional insurance cover.</p> <p>Cost of such insurance is not expected to exceed 1\$ per GT per annum [66.4 rupees</p>

		<p>A certificate to Indian vessel will be issued by the DGS.</p> <p>Certificate to foreign vessels may be issued on satisfaction that such vessel has insurance or financial security.</p> <p>Claim may directly be made against the insurer or person providing financial security.</p> <p>No vessel to enter or leave any port or place unless it has insurance cover or financial security.</p> <p>Certificate from foreign country who are party to this Convention will be accepted in India.</p> <p>Judgement by Indian court shall be enforceable in country which is a party to Bunker Convention.</p> <p>Power to make rules.</p>	<p>Indian coasts & ports will be protected from bunker pollution and ships not having insurance can be denied entry.</p> <p>Direct action against the insurers is possible, due to which there is no need to go through lengthy process, to recover the expenses.</p>	<p>per GT per annum], subject to the condition of the vessel, risk factor, claims history of the company and ships.</p>
<p>International Convention on Removal of Wrecks, 2007 [Nairobi WRC]</p>	<p>Part XIII Appointment of receiver of wrecks by central govt.</p> <p>Duties of receiver of wreck when a vessel is in</p>	<p>The new provisions will be applicable on wrecks at Indian coasts and up-to EEZ.</p> <p>Duty of master or operator to report the wreck to receiver of wreck and the DGS</p> <p>Duty of master or operator to report the wreck when it is out of India to that country and the DGS</p> <p>Foreign vessel becoming wreck in Indian waters to</p>	<p>Scope extended up-to EEZ i.e. beyond territorial waters, therefore better protection to ports approaches to near offshore and installation.</p> <p>Direct action against the insurers is</p>	<p>Same as above.</p> <p>The P&I cover provided by the IG group of Clubs generally includes cover for both Bunker pollution damage and wreck removal.</p>

	<p>distress [i.e. preserve lives & cargo as far as possible].</p> <p>Use of adjoining land to save lives, cargo or equipment when a vessel is wrecked or stranded or in stress. But damage caused to such place shall be a charge on the vessel, cargo or equipment. Such dispute to be decided by Magistrate.</p> <p>Person /Owner of a wrecked vessel to inform receiver about such wreck.</p> <p>Investigation</p>	<p>inform the DGS about it including its location, type, size, damage caused.</p> <p>Criteria has been specified for determination whether the wreck is a hazard [like type, size, depth of water, traffic density, metrological condition, proximity with tourist spots etc].</p> <p>DGS may direct the location and marking of wreck by receiver, Port authority, DGLL, maritime board, Indian coast Guard.</p> <p>If the wreck is determined to be a hazard, then owner or operator needs to mark it at his own cost till it is removed.</p> <p>Measures to facilitate the removal of the wreck & inform the ship's registry.</p> <p>Registered owner to remove wreck if it constitutes a hazard. Cost of marking and removal of the wreck to be borne by registered owner.</p> <p>Every Indian and foreign vessel of 300GT and above to have compulsory insurance coverage or financial security, otherwise may be detained.</p> <p>Claim for recovery of cost of marking and locating of wreck is three year from date of determination of hazard but not later than six years from the incident.</p>	<p>possible, due to which there is no need to go through lengthy process, to recover the expenses.</p> <p>Vessels of 300 GT and above without insurance coverage can be denied entry into Indian ports</p> <p>Quicker response mechanism to deal with the wrecks resulting in better protection of environment.</p>	
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	<p>by receiver of wreck Notice by receiver of wreck to public at large about a wreck Claim by owner within one year Search warrant when a wreck is concealed.</p>			
<p>International Convention on Salvage, 1989</p>	<p>Salvage payable for saving life, cargo or wreck, based on no cure no pay principle] Govt agencies are also entitled for payment for salvages services</p>	<p>Provide law for judicial or arbitral proceeding relating to salvage. Salvage payable even if there is no cure but efforts made for reduction of hazard or pollution Govt agencies are also entitled for payment for providing the salvages services. Master can enter into a contract for salvage. Intervention by other salvors acceptable if requested by owner.</p>	<p>Encourages salvors to attempt salvage, to minimise environmental damage even if complete success is not possible. Govt can intervene to give direction in salvage operation, to protect the environment.</p>	<p>Generally no cost on owner, unless salvage service is required due to the exigency. Cost of salvage will vary depending on the value of the property saved.</p>

<p>Dispute regarding amount due for providing salvage will be decided by judicial Magistrate or High Court.</p> <p>Power to make rules [for both wreck and Salvage]</p>	<p>Rights and duties of owner, Central Govt and salvors well defined.</p> <p>Central Govt can prescribe criteria for claiming rewards.</p> <p>Right of salvor to enforce maritime lien.</p> <p>Disputes to be decided by High Court.</p> <p>Salvor to make the claim within a period of two years.</p>	<p>salvors and owners of vessels have been clearly specified, so as to minimize disputes pertaining to claims, resulting in easier settlement of disputes.</p>	
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REPORT

The Merchant Shipping (Amendment) Bill, 2015 (Annexure-I) was introduced in Lok Sabha on the 10th August, 2015. The Hon'ble Chairman, Rajya Sabha, on 26th August, 2015, referred the Bill to the Department-related Parliamentary Standing Committee on Transport, Tourism and Culture for examination and report within three months.

2. The Merchant Shipping Act, 1958 was enacted to foster the development and efficient maintenance of an Indian mercantile marine sector in a manner best suited to serve the national interest. International Maritime Organisation (IMO), as the global standard-setting authority for the safety, security and environmental performance of

international shipping, creates fair and effective regulatory framework for the shipping industry in the form of Conventions for universal adoption and implementation.

3. The Bill, in its Statement of Objects and Reasons, mentions that India is a member of IMO and as and when Government of India approves to be a party to an International Convention by accession/ratification, the Convention is given effect by suitably incorporating its provisions in the concerned domestic legislation, *i.e.*, the Merchant Shipping Act, 1958. India has already acceded to three International Conventions of the IMO *viz.*, the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (hereafter referred to as Bunker Convention); the Nairobi International Convention on the Removal of Wrecks, 2007 (hereafter referred to as Nairobi Convention); and the International Convention on Salvage, 1989 (hereafter referred to as Salvage Convention).

4. It has further been stated that the accession to Bunker Convention has now been approved and for implementing the Convention, the Merchant Shipping Act, 1958 requires further amendments. The amendment seeks to incorporate the Convention provisions by inserting Part XBA in the Act titled 'Civil Liability for Bunker Oil Pollution Damage'. India is already a party to the Nairobi Convention and Salvage Convention. However, in the light of experiences gained in implementing Part XIII titled "Wreck and Salvage", it was felt necessary to amend the Part XIII to make them progressive and in tune with Nairobi Convention and Salvage Convention.

5. The Committee heard the views of the Secretary, Ministry of Shipping, Director General (Shipping) and other senior officials of the Ministry on the provisions of the Bill on the 16th September, 2015. The Committee also heard the views of the representative of the Indian National Shipowners' Association (INSA) on the 24th September, 2015. Besides INSA, ICC Shipping Association and GOL Salvage Services Ltd. submitted written memoranda to the Committee on different aspects of the above stated Conventions and the amendments proposed to the Merchant Shipping Act, 1958. The Committee also considered the background note and replies to its questions furnished by the Ministry of Shipping.

6. The succeeding paragraphs state the salient features of the three International Conventions as well as the proposed amendments in the Merchant Shipping Act, 1958 to give effect thereto and also the reasons for the proposed amendments.

Bunker Convention

7. The Bunker Convention was adopted to ensure that adequate, prompt and effective compensation is available to persons who suffer damage caused by spills of oil (hydrocarbon mineral oil including lubricating oil), when carried as fuel in ships' bunkers. This Convention was adopted in 23rd March, 2001 and had come into force from 21st November, 2008. The Convention applies to damage caused on the territory, including the territorial sea, and in exclusive economic zones of States Parties. The Convention provides a separate instrument covering pollution damage only. A key requirement in the Bunker Convention is the need for the registered owner of a vessel to maintain a compulsory insurance cover.

8. Under the provisions of the Merchant Shipping (Amendment) Bill, 2015, the registered owner of a vessel has to maintain compulsory insurance cover which allows claim for compensation for bunker pollution damage to be brought directly against an insurer. Ships of 1000 Gross Tonn and above have to carry a certificate onboard to the effect that it maintains insurance or other financial security, without which these vessels will not be allowed to enter or leave India. The liability cover for bunker pollution damage shall be equal to the limits of liability under the applicable national or

international limitation regime, but in all cases, not exceeding an amount calculated in accordance with the Convention on Limitation of Liability for Maritime Claims, 1976.

9. The written reply furnished by the Ministry of Shipping stated that Article 14 of the Bunker Convention stipulates that the Convention shall enter into force one year following the date on which 18 States, including 5 States each with ships whose combined gross tonnage is not less than 1 million, have either signed it without reservation as to ratification, acceptance or approval or have deposited the instruments of ratification, acceptance, approval or accession with the secretary General of the IMO. Accordingly, the Bunker Convention, 2001 came into force only on 21.11.08.

10. The Ministry of Shipping informed the Committee that amendments based on the Bunker Convention were considered necessary in view of the following:

- xiii. It is difficult to obtain compensation to pollution caused by bunker oil spill/leakage from ships other than tankers. Local Authorities/Government find it difficult to recover costs on preventive measures and cleanup operation on such type of pollution. This problem can be suitably addressed if India becomes party to this Convention and incorporates its provision into the Merchant Shipping Act, 1958.
- xiv. In spite of best precautionary efforts, accidents may happen in Indian as well as foreign flag ships. In that scenario, it is vital to have an internationally agreed effective liability compensation regime in place.
- xv. Indian ships having 1000 GT or more, on international trade will be issued with a certificate from the Indian Maritime Administration. This would enable to carry out international trade without approaching other Governments for such certificate, who have acceded to this Convention.
- xvi. India would be able to ensure that all foreign flag vessels entering Indian territorial waters or Exclusive Economic Zone are duly covered by insurance as required under the Convention.
- xvii. The Convention has already been adopted by major Maritime States, therefore, it is binding on Indian Ships involved in worldwide trade, irrespective of whether India is a party to the Convention.
- xviii. Indian ships have to carry "Blue Card" issued by insurance companies irrespective of whether India is a party to the Convention or not, if, it is trading in countries that are parties to this Convention. However, vice versa the same is not applicable for foreign ships trading in India. Even if they are carry blue card, pollution in Indian waters will not be under the purview of such insurance as India is not party to this Convention.

11. The following are the salient provisions of the Bill related to Bunker Convention:-

- Applies to all Indian vessels (irrespective of size) anywhere in the world and to all foreign vessels while in Indian Waters;
- Preventive measures and curative measures taken to minimize damage shall also be liable for compensation;
- While owners of all vessels are liable to compensate against bunker oil pollution damage for vessels of 1000 GT and above, the insurer is liable to compensate;
- Liability of owner is exempted if the pollution damage is due to war, act of God, intentional act/omission of third person, negligence/wrongful act of Government/Authority;

- Owner entitled to limit his liability as per Convention for Limitation of Liability for Maritime Claims, which will be determined by the High Court of jurisdiction;
- Claims to be preferred within 3 years from date of damage or 6 years from date of incident;
- Vessels of 1000 GT and above to compulsorily maintain insurance/financial security. DG(S) to issue a certificate to this effect; No such vessel shall enter or leave Indian port without certificate; and
- Rule making powers in respect of form & manner of application to High Court to limit liability, financial securities, form of certificate and conditions of issue, fee for issue of certificate, manner of renewal and renewal fee provided under.

12. Regarding the cost to be incurred due to the amendments proposed to the Merchant Shipping Act, 1958 based on the Bunker Convention, the Ministry has stated that :

- Vessels on International voyages are already complying with the requirement as Convention is already in force, hence no additional cost for such vessels.
- Vessels on the coast of India may have to take additional insurance cover.
- Cost of such insurance is not expected to exceed 1\$ per GT per annum (Rs.66.4 per GT per annum), subject to the condition of the vessels, risk factor, claims history of the company and ships.

13. The Ministry of Shipping, in its written reply to a pointed query of the Committee, stated that United States of America and Japan are the two major maritime nations who are not a party to the Bunker Convention. The United States has enacted the Oil Pollution Act, 1990 that covers all types of oil, from the ship, whether bunkers or cargo. The compensations and the requirement are more stringent than the Bunker Convention and hence, there was no need by USA to adopt the Bunker Convention which came into force at a much later stage in 2008. Similarly, Japan amended the 'Act on Liability for Ship Oil Pollution, 1975' in 2005 to cover bunker pollution damage, before the Bunker Convention came into force internationally in 2008. Since the requirement under the local regulations were more stringent, Japan never felt the need for the Bunker Convention. As regards India, the provision relating to pollution from oil (except bunker oil pollution damage) are there in the Merchant Shipping Act, 1958, but there are no specific legislation for covering the pollution incidents caused by the bunker oil of the ships and a need was being felt to provide for this. Hence, the proposed Bill is introduced.

14. To the Committee's query regarding the impact of exemptions given to vessels having capacity below 1,000 GT from this Convention, the DG (Shipping) replied:

“.....below 1,000 GT, it is the requirement or the obligation on the part of the owner or the operator that he will not be able to escape or get away from. The threshold is only for purposes of a financial security which is mandated in the Convention and that is through the insurance Blue Cards, which is then counter-certified through a compliance certificate which is issued by the Government. But that does not detract from the primary responsibility of the owner or the operator to still ensure that he mitigates and minimizes the pollution damage, compensates for that or removes the wreck, as the case may be, or saves the vessel”.

15. When asked, the representative of Indian National Shipowners' Association (INSA), also agreed that the exemption to the vessels which are 1000 GT and less, since the number of such vessels would be around 500 to 600 only.

16. As regards Clause No. 352 RH, the DG (Shipping) gave his clarification as under:

“...if there is a claim for an immediate damage which converts into a financial liability and, if it is substantive in nature, it has to be claimed within a period of three years. If there is an incident which otherwise is not so significant, but can be related to the original cause of action and more by way of a social cause, for that the Sunset clause is six years. So, it is in terms of graded impact on the environment and ecology”.

17. The Ministry, in its written reply clarified in this regard that one may get the compensation, if a claim is made within three years from the date of damage. However, no claim can be made six years after the incident causing the damage. In simple words, if it is perceptible damage for which there is an actionable claim, then the maximum limit is three years. However, if there is an incident which otherwise is not so significant but later on can be related to original cause of action and more by way of social cause, then in such cases the limitation period shall be six years. It is in terms of graded impact on the environment and ecology which may occur immediately on occurrence of the incident or may come out after passage of time.

18. When asked as to the liability that would fall on the Ports after the Bunker Convention is to be implemented, the Secretary, Shipping replied that:

“...as far as major ports are concerned, we have a scheme available in the Ministry where we give 50 per cent subsidy for them to procure equipment for fighting any pollution because of oil spillage. We are promoting that. We are also auditing that, ports comply with this requirement. That is also available to other private ports which handle crude and other oil products. That is the action taken by ports as far as Bunker Convention is concerned.”

19. The Committee also made a specific query about the provisions for arbitration in this regard. The DG (Shipping) replied that :

“.....arbitration mechanism kicks in when it is not mutually resolved. Usually, we find that arbitration proceedings are largely held in London or in Singapore. This is through a mutual process of acceptance of the arbiter. It is a panel of three arbitrators. One nominated by each, the second and the third one is mutually agreed upon. There is also an International Arbitration Council which nominates these people”.

20. The Committee took note of the Ministry's reply that Act of God or *force majeure* is a condition of occurrence of a natural calamity. Such an act needs to be an act which is not foreseen and is beyond the control of the human beings. If the person wants an exemption from the liability, he has to prove that such an act is not caused by him or his employee or agent, but by a third person. Hence, the third person needs to be a totally external person not connected with the owner as employee or agent. As regards the act of God, there are number of case laws which have been well adjudicated and it is now settled by the apex court as to what constitutes an act of God or the *force majeure*. It is very well understood in terms of juristic principles, and there may not be any ambiguity for it during the adjudication proceedings. The Court will decide, if it is an act of third party, in case there is a claim for an exemption from the liability.

21. The Committee observes that the exemption given to the owner if the pollution damage is due to an 'Act of God' as given in clause 352 RD, is likely to leave ample scope for litigation and that the owner of a ship can run away from his responsibilities of giving compensation to the pollution damage caused by the ship owned by him. The Committee, therefore, recommends to reconsider this aspect to ensure that the law does not leave any scope for the shipowners to get away from their responsibility of paying compensation.

22. The Committee observes that Ports have ample chances of oil spillage and environment pollutions from the vessels at the time of loading/unloading of cargo. The Committee recommends that latest modern equipments being used at International level may be provided to the Ports for addressing this challenge. The Committee further recommends that for our cash strapped Major Ports, the present subsidy limit of 50% be enhanced substantially for procurement of the modern equipment for fighting any pollution due to oil spillage on a case to case basis.

Nairobi Convention

23. The Nairobi International Convention on the Removal of Wrecks 2007 (Nairobi Convention) provides the legal basis to remove shipwrecks that may have the potential to affect adversely the safety of lives, goods and property at sea, as well as the marine environment. The Convention fills the gap in the existing international legal framework by providing the first set of uniform international rules aimed at ensuring the prompt and effective removal of wrecks located beyond the territorial sea.

24. The Nairobi Convention was adopted by an International Conference held in Kenya in 2007. It has entered into force on 14.4.2015.

25. The Ministry of Shipping informed the Committee during the deliberations that amendments based on Wreck Removal Convention, 2007, is considered necessary, in view of the following:

xiii) The existing provision in Part XIII of the Merchant Shipping Act, 1958 relating to wreck removal is not adequate in dealing with increasing amount of wreck in the coast of India.

xiv) The amendments will enable the implementation of Nairobi Convention on the Removal of Wrecks 2007, to which India is already a Party, thereby bringing in internationally recognized and approved uniform rules for removal of wrecks.

xv) The Convention will provide uniform international rules aimed at ensuring the prompt and effective removal of wrecks located beyond the territorial sea. The Convention includes an optional clause enabling countries to apply certain provisions to their territory, including their territorial sea.

xvi) Increasing number of vessels and limited space available in the ports have resulted in increased number of accidents causing wrecks resulting in pollution. Most of the perpetrators go scot-free due to ignorance about the incident or lack of importance given to remedial measures to be adopted.

xvii) The problems due to wreck are three-fold: first, a wreck may constitute a hazard to navigation, potentially endangering other vessels and their crews; second, wreck has a potential to cause damage to the coastal and marine environment, depending on the nature of the cargo; and third, there is the issue of costs involved in the marking and removal of hazardous wrecks.

xviii) The current provisions in the Merchant Shipping Act, 1958 are inadequate in dealing with the increasing number of wrecks in Indian Coast. Therefore, to control this problem and to bring the existing regulation in line

with the developments in international shipping, it is vital to make these amendments in the Act.

26. The Ministry, in its written reply furnished to the Committee, stated that Article 18 of the Nairobi Convention stipulates that the Convention shall enter into force twelve months following the date on which 10 states have either signed it without reservation as to ratification, acceptance or approval or have deposited the instruments of ratification, acceptance, approval or accession with the secretary General of the IMO. Accordingly, the Nairobi Convention, 2007 came into force only on 14.04.15 [i.e. this year only]

27. The following are the salient features of the Bill relating to Nairobi Convention provided by the Ministry of Shipping:

- The Bill makes the existing provisions of the Act dealing with wreck [Part XIII] in line with Nairobi Convention;
- The master/operator of ship is statutorily obliged to report wreck incident in Indian Territory to receiver of wrecks (Deputy Conservator of Ports/District Magistrate) and D.G. (Shipping). Indian ship to report wreck incident in foreign territory to D.G. (Shipping).
- D.G. (Shipping) can direct Directorate General Light House and Light Ships, Coast Guard, Port or other authority, for locating & marking wrecks;
- D.G. (Shipping) to inform ship's registry country and in consultation with that country proceed to remove wreck. If the owner does not remove the wreck, receiver of wreck (at the expense of the owner) may remove the wreck;
- Registered owner is liable for the cost of activities related to locating, marking and removal of wreck;
- Registered owner of ship of 300 GT and above to maintain compulsory insurance/financial security. D.G. (Shipping) to issue a certificate to this effect. Contravening ships can be detained; and
- Claim for recovery of costs for locating and marking wreck to be within 3 years from date of determination of hazard and 6 years from date of maritime casualty that resulted in the wreck.

28. As regards the cost to be incurred due to the amendments proposed, based on the Nairobi Convention, the Ministry stated that :

- Vessels on International voyages are already complying with the requirement as Convention is already in force, hence no additional cost for such vessels.
- Vessels on the coast of India may have to take additional insurance cover.
- Cost of such insurance is not expected to exceed 1\$ per GT per annum (Rs.66.4 per GT per annum), subject to the condition of the vessels, risk factor, claims history of the company and ships.
- The P&I cover provided by the IG group of clubs generally includes cover for both Bunker pollution damage and wreck removal.

29. The Ministry of Shipping, in their written submission, has stated that:
United States of America, China and Japan, Italy, Norway, Republic of Korea, and Russian Federation are the major maritime nations which are not party to the Convention. As of now the national legislation of the above countries

provide adequate mechanism of direct action against the ship owners in their coastal waters hence there may not be a need for them to be a party to this Convention. However, the Nairobi Wreck Removal Convention has entered into force this year only, *i.e.*, on 14.04.2015. Hence, it is still early stages as most of the countries may still be evaluating the Convention from deciding to become party to the Convention. Moreover, now the Convention extends its scope beyond coastal waters up to Exclusive Economic Zone (EEZ), thus there may be reconsideration by other countries in due course to decide on being a party to this Convention. As regard India, the provisions related to the wreck removal already exist in the Merchant Shipping Act, 1958. However, these are proposed to be updated, as an opportunity to make Indian legislation fully compliant with the Convention.

30. The Committee enquired about the procedure to be followed by the authorities if an incident of wreck happened in the premises of a Major Port, as in the case which occurred in the vicinity of Mumbai Port a few years ago. The DG Shipping, explained that:

“.....if it were to happen in a Port of call, it is the Deputy Conservator of Ports who would then take necessary action as he would be the receiver of wrecks. In case the owner or operator did not discharge in spite of notification and being given adequate notice to do so, then the Deputy Conservator of Port would takeover that asset as a receiver of wreck and then do all that is required to spend money and then lodge the claims. That is why the designation has been given as 'receiver of wrecks'. That is the *suo motu* assumption of responsibility. But, that is a residual responsibility after having failed in convincing the owner or operator to discharge their duty. Correspondingly, beyond the port limit, as I submitted, if it were within the territorial waters, this power is delegated to the District Collector or District Magistrate to do so”.

31. To the Committee's query about the possible reasons why Government owned vessels are exempted, the Secretary, Shipping replied that:

“.....the broad principle is, because Governments, in case of accidents, are funded sufficiently, and if they have to compensate somebody, they would do so. Therefore, most of the equipment in the Government is not insured. That is one aspect. But that is, especially, for military machines because they also partake in war.”

32. In the written reply furnished by the Ministry, it has been stated that the vessels owned or operated by the Government and used for the non commercial service, are exempted from the compulsory insurance, as the broad principle is that the Government in case of accidents are funded sufficiently and if some compensation is to be paid to some person, the Government will be able to pay. Government is a kind of sovereign guarantee in itself. Therefore, most of the equipments in the Government are not insured.

33. In this regard, the Indian National Shipowners' Association, in its written submission, has stated that:

It is found that Warships, other Naval vessels and Government non-commercial vessels are often exempted from the provisions of a Convention since it is presumed that a sovereign Government has adequate funds and resources to meet any eventuality. However, in all cases, even such vessels

are advised to be in compliance with all International Conventions, rules and regulations, as far as practically possible and feasible.

34. In response to the Committee's query as to whether these three Conventions are applicable to the fishing and cruise vessels, the Ministry has furnished the reply that, the three Conventions do not make any reference or differentiate its application to the type of vessel. The general principle of application adopted is the gross tonnage of the vessel. The criteria for application of Bunker Convention to a ship are that it should be above 1000 GT. The Nairobi Wreck Removal Convention shall be applicable to ships which are of 300 GT and above. No such limit is mentioned in the Salvage Convention.

35. When asked by the Committee about the advantages of acceding to the Nairobi Convention, the representative of the Indian National Shipowners' Association stated that:

“A lot of old vessels used to keep coming to India, but, now, this is something which will stop happening. Because we do not have these Conventions and we do not have the ability to enforce the law, it becomes easier for me as an imprudent ship owner to bring the old ships, which are not allowed in other regimes.”

36. The Ministry of Shipping, in their written reply, has stated that Nairobi Convention provides a sound legal basis for coastal countries to remove, or have removed, from their coastlines, wrecks which pose a big environment hazard to the safety of navigation or to the marine and coastal lives, or both. It will make ship-owners financially liable and require them to take out insurance or provide other financial security to cover the costs of wreck removal. This Convention also includes an optional Clause enabling States Parties to apply certain provision to their territory, including their territorial sea.

37. The Committee took cognizance of the status of the wrecks already there in the Indian waters, furnished by the Ministry of Shipping (Annexure II). There are a total of 39 wrecks in Indian waters, some of the wrecks are affecting the shipping channels. **The Committee recommends that the Government should chalk out a time bound action plan to remove the wrecks that are already there in the Indian waters especially those wrecks which are affecting the shipping channels.**

Salvage Convention

38. The International Convention on Salvage 1989 (Salvage Convention) replaced the prevalent “no cure, no pay” principle where a salvor is only rewarded for services if the operation is successful. By towing a damaged tanker away from an environmentally sensitive area, salvor prevents major pollution incidents. But the prevalent “no cure, no pay” principle acted as a disincentive for operation, where chances of success were slim. The 1989 Salvage Convention remedied this deficiency by making provision for an enhanced salvage award in preventing or minimizing damage to the environment and by introducing a “special compensation” to be paid to salvors who fail to earn a reward in the normal way.

39. This Convention replaced a Convention on the law of salvage adopted in Brussels in 1910. The 1989 Convention introduced a “special compensation” to be paid to salvors who have failed to earn a reward in the normal way (*i.e.*, by salvaging the ship and cargo). It was adopted in 28.4.1989 and has entered into force from 14.7.1996.

40. The Ministry of Shipping has informed the Committee that amendment based on the International Convention on Salvage, 1989 is considered essential and desirable in view of the following:

- vii) The present provision of Part XIII of the Merchant Shipping Act, 1958 is inadequate in dealing with salvage operation as the salvor will only be awarded, if the salvage is successful (no-cure-no-pay principle). Salvage Convention seeks to remedy this deficiency by making provision for an enhanced salvage award taking into account the skill and efforts of the salvors in preventing or minimizing damage to the environment.
- viii) The amendment in the Merchant Shipping Act, 1958 will revise the text with the updated provisions mentioned in the Convention. The amendments would also highlight the significance of article 13 and 14 of the Convention which relates to criteria for payment of award and special compensation to the salvors respectively.
- ix) India is already a signatory to this Convention and has obligation to give full and complete effect to the provision of the Convention. The proposed amendment in the Act would enable the Government to discharge this obligation by including the key parameters of the Convention as substantive part in the Act and also frame detailed procedures under the rule making powers as specified in the Act.

41. The Ministry, in its written reply, stated that Article 29 of the Salvage Convention stipulated that the Convention shall enter into force one year following the date on which 15 States have expressed their consent to be bound by it. For a State which expresses its consent to be bound by this Convention after the conditions for entry into force thereof have been met, such consent shall take effect one year after the date of expression of such consent. Accordingly, the Salvage Convention 1989 came into force only on 14.07.1996.

42. The following are the salient features of the Bill relating to Salvage Convention:

- The Bill makes the existing provisions of the Act dealing with Salvage in [Part XIII] in line with Salvage Convention;
- does not apply to warships, Government non-commercial vessels, fixed or floating platforms or to mobile offshore drilling units when engaged in sea-bed mining;
- the owner of the vessel is obliged to pay the salvor for his services towards saving life, cargo, etc;
- salvage services by Indian Navy/Coast Guard/Port authority also entitled for compensation;
- master of ship is authorized to conclude salvage contract on behalf of owner of vessel and master of ship or owner of ship can conclude salvage contract on behalf of persons and/or cargo on board of vessel;
- lays down duties of salvor, owner and master;
- lays down rights and duties of Central Government in relation to salvage operations;
- lays down rights of salvors to payment for the services rendered by them relating to salvage operations;
- under. S. 402 H (2), Government can make rules prescribing criteria for claiming rewards, the manner of fixing rewards, special compensation, apportionment of rewards amongst salvors etc.;
- disputes relating to claims shall be adjudicated by concerned High Court (where vessel is registered/vessel is situated/cause of action arises); and
- period for claim-within 2 years.

43. On the matter of the costs likely to be incurred due to the amendments proposed based on the Salvage Convention, the Ministry of Shipping stated:

- generally no cost on owner, unless salvage service is required due to the exigency; and
- cost of salvage will vary depending on the value of the property salvaged.

44. The Ministry, in its written reply, informed the Committee that United States of America and Japan are not a party to Bunker Convention; China, Japan, Italy, Norway, Republic of Korea and Russian Federation are not party to the Nairobi Convention; and Japan, Panama and Republic of Korea are the major countries which are not a party to the Salvage Convention.

45. In this regard, in a written submission, the Indian National Shipowners' Association has stated that often USA practices and adopts domestic rules which in most of the cases are far more stringent than some of the international regulations are in operation much prior to similar rules or provisions being adopted by International Maritime Organization and that this could be one of the reasons for USA not to be a signatory to the Nairobi Convention. It has been further stated that USA is also not a signatory to the United Nations Convention on the Law of the Sea (UNCLOS) 1982; the International Convention on Civil Liability for Oil Pollution Damage 1969 (CLC Convention); Bunker Convention 2001; Hong Kong Recycling Convention 2009; Nairobi Wreck Removal Convention 2007; and the Maritime Labour Convention 2006 to list a few.

46. In a written reply, the Ministry of Shipping has stated:

“Japan, Panama and Republic of Korea are few major maritime nations which are not party to the Convention. The prime reason for such maritime countries not becoming a party to the Convention is that their national legislation has already made necessary provisions for salvage and the courts have the sole jurisdiction of awarding the salvage compensation. The Salvage Convention applies to judicial or arbitral proceedings pertaining to salvage. Salvage is generally between private parties and disputes between them are generally decided by arbitration/judicial process. The local legislation of such countries also provides mechanism for arbitration and compensation for efforts of the salvor irrespective of degree of success. Thus, such countries have not felt the need for adoption of the Convention. As regards India, the provisions related to salvage are already there in the Act. However, these are proposed to be updated, as an opportunity to make Indian legislation fully compliant with the Convention.

47. As regards the reasons for delay in implementing the Salvage Convention, the Ministry of Shipping stated that having met the requirement of tonnage and the number of States, as per the requirement of the stated Convention, it actually came into force internationally after nearly seven years, *i.e.*, on 14.07.1996. India became a party to this Convention on 18.10.1995, as provisions related to the Salvage Convention largely exist in the Merchant Shipping Act ever since 1958 and continued to be part of the Act till date. Indian Parliament in their great wisdom had provided the provisions related to salvage in the Act from 1958 itself, *i.e.*, much before 1989 Salvage Convention came into force. Therefore, the broad provisions on salvage already exist in the present Merchant Shipping Act. However, in the present Bill, the provisions related to the Salvage Convention are being updated, as an opportunity to make Indian legislation fully compliant with the Convention.

48. The Ministry informed the Committee that the significant improvement made by the Salvage Convention 1989 is that it has enabled compensation for unsuccessful salvage efforts, and that the salvors dealing with the salvage operation is free to make a contract with the ship-owner whose ship is being salvaged by it, so as to cover the compensation even if the salvage operation is not fully successful. The Salvage Convention has done away with the old principle of 'No cure No pay'. It encourages the salvors to assist the distressed vessel and even if the salvage may not be totally successful, the salvor is compensated by invoking contract and the special compensation scope clause.

49. In response to the Committee's query regarding the jurisdiction on the disputes of claims in the case of a salvage operation, the Ministry stated that the jurisdiction has been given based on the broad principles as given in the Civil Procedure Code, 1908 with respect to jurisdiction of the Courts. The Ministry further stated that the case may not proceed in more than one Court, as the principle of *res sub judice* will apply. The case may proceed at one location based on the principle that where it is instituted first. The period of limitation shall commence from date of completion of salvage operation.

50. Regarding the financial or other loss caused to the country due to not following these Conventions, the Ministry of Shipping stated, in its written reply furnished to the Committee:

As regards financial or other loss to the country in absence of following these Conventions, it is submitted that Indian ships on international voyage are already complying with the requirements of the Bunker Convention and Nairobi Convention. For salvage operations and also to the extent with respect to the Nairobi Convention, the provisions are already in existence in the Merchant Shipping Act, 1958. As shipping is international in nature, Indian ships trading worldwide had to abide by the requirements of the Conventions. Therefore, Indian ships were issued certificates by other Convention countries at a certain cost. Now, with the above adoption, Indian ships can be issued certificates by the Indian Administration after enactment. Secondly, with the enactment, every ship entering Indian Coastal waters will be required to have necessary financial guarantee and a certificate bearing a proof of the same. In case of any pollution by way of bunker or ship becoming a wreck, direct action can be initiated against the owners/insurers through the process of Arbitration instead of passing through the lengthy judicial process. Such compulsory carriage of certificate and the provision of direct action will be an indirect method and deterrent thus giving indirect protection to the coastal marine environment. Financial or other loss to the country could occur if the provisions of the Conventions are not brought into force in India as owners of foreign flag vessels will not require to have insurance or financial security to deal with bunker oil spills or wrecks occurring in our waters, leading to environmental damage and consequential loss to the country.

51. The Committee, in its meeting held on the 24th September, 2015 heard the representative of the Indian National Shipowners' Association, who informed the Committee that they are fully satisfied with the Clauses of the Bill and that the Ministry of Shipping had consulted them at the time of drafting of this Bill. The ICC Shipping Association also conveyed their agreement to the Clauses without offering any further suggestion. M/s GOL Offshore Limited gave written suggestions on some of the Clauses of the Bill.

52. The Committee welcomes the Bill which seeks to suitably incorporate the provisions of the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (Bunker Convention); the Nairobi International Convention on the Removal of Wrecks, 2007 (Nairobi Convention); and the International Convention on Salvage, 1989 (Salvage Convention) in the Merchant Shipping Act, 1958.

53. The Committee's observations/recommendations on the Clauses/Sub-Clauses of the Bill have been given in the succeeding paragraphs:-

Sub-Clause 402D (2) & (3)

54. In this Sub Clause, the master of the Ship has been given authority to sign the salvage contracts on behalf of the owner of the vessel.

55. When Committee enquired about the adequacy of the provisions of this Sub-Clause and the chances of any foul play against the interest of the owners, the representative of the Indian National Shipowners' Association replied that:

“...the master of the ship engaging and getting into a salvage contract is quite a normal process. all contracts of insurance or even the certificate of registry, it is not in the name of the owner of the company; it is in the name of the master itself. So, this is something which over a period of time has been a part of our industry. Yes, where there is temptation, there is a chance of something going wrong but, by and large, as an industry we have rarely seen a case where a master has entered into an illegal or untenable salvage contract and thereby alienated the asset. It also serves very useful because sometimes, you may have a vessel which is farther away from you. I could be sitting here in India and an accident or a salvage contract may take place in Brazil. I may be in a situation where financially it may not be viable to actually travel and sign a contract. At such times, the master becomes useful for the purposes of signing the contract.”

56. The Committee observes that the Master of the Ship has been given the authority to execute a salvage contract or any such contracts on behalf of the ship owner. Since the Master of the ship is only an employee of the owner, there might be situations when the owner may not honour the contract signed by the Master of the Ship and the Salvor. Therefore, the Committee feels that a strict provision should be made in the Bill in order to save the interests of the Master of the Vessel. In view of the availability of sophisticated Information and Communication Technology tools, it is easy to consult the owner of the Vessel by the Master of the Vessel before agreeing to the contract or in case of any contingency.

57. The Committee, therefore, recommends that a new Sub Clause-“in both the cases at (2) and (3), the owner of the vessel or cargo as the case may be, shall not be entitled to challenge the decision of the master/owner of the vessel, if such a decision is taken after sufficient consultation” may be inserted in the Bill.

Sub Clause 402G

58. Sub Clauses under this Clause prescribe the rights and duties of Central Government in case there is a need of salvage operation of a vessel. It includes means to protect its coast line or related interests from pollution or threat of pollution arising out of a maritime casualty or acts relating to such casualty which may result in major harmful consequences, its duties to seek the assistance and to give facilities to salvors.

59. The Committee also feels that within the territorial waters of India, Indian Companies should be given priority for salvage operations. Accordingly, the Committee recommends that the following sub Clause may be added in the Bill:

“The Central Government shall ensure that the salvors of Indian origin are given first right of refusal as against the salvors of foreign origin, for any salvage operations within the territorial waters of India”.

Sub Clause 402 H

60. This Clause ensures the Salvor a right to payment for the services rendered by him relating to salvage operations, provided that now such payment shall be made where there is express and reasonable prohibition from the owner or master of vessel or owner of any other property in danger.

61. Under this Clause, the Central Government may prescribe the criteria for claiming rewards, manner of fixing rewards, the payment of special compensation, the apportionment of payment amongst salvors, the salvage of persons, the payment under the contract, the payment for additional services not covered under the contract and the effect of misconduct of salvors on reward or payment. The salvors shall have right to enforce his maritime lien against the owner or master of vessel or owner of any other property in danger when satisfactory security for his claim, including interest and costs, has not been provided by such person.

62. M/s GOL Offshore Limited has, in their written submission, stated that in the case of owner of the vessel failing to pay the salvors due to bankruptcy, due to absence of proper insurance cover or any other reason, there should be suitable provision for making payment to the salvor who has carried out the salvage operation under the instructions of the Central Government.

63. The Committee recommends that the Government may appropriately look into the absence of such a provision in the Bill, with a view to deal with the cases of owner of the vessel failing to pay the salvors due to bankruptcy, absence of proper insurance cover or any other reasons and to ensure that the salvors get their payment for the salvage operation carried out.

GENERAL RECOMMENDATIONS

64. The Committee observes that there is no provision for grievance redressal mechanism in the Bill. The Committee also observes that there are lots of probabilities of a grievance that can arise at any stage of the salvage operation, wreck removal, etc. The Committee, therefore, recommends that necessary provisions for redressal of grievances should be incorporated suitably, in the Bill.

65. During the time of deliberations on the Bill, the Committee enquired about the inordinate delay in bringing these Conventions particularly as the Bunker Convention which is of the year 2001; the Nairobi Convention is of 2007; and the Salvage Convention is of 1989, for which the Secretary, Shipping replied that:

“There are three Conventions. In two of those, we had become parties because there were certain provisions in existence. This process goes through the MEA and their Legal Treaties Division. They, normally, assess whether our existing legal provisions are adequate for us to agree to a certain Convention. So, out of these three Conventions, they agreed that even at a minimum base level, in respect of two of them, we can become parties and we went ahead and became parties on the basis of the provisions which already existed under the Merchant Shipping Act. 1958. As far as the Bunker Convention is concerned, when we sent this file, their opinion was that unless we first go through the process of getting an approval for the legislation, for the Bill, this may not be accepted. So, the Bunker Convention, for that reason, was also clubbed here.”

66. Further to this, the Ministry of Shipping has furnished a self-contained note showing the reasons for the inordinate delay in finalizing these three International Conventions, to the Committee (Annexure-II). The Ministry has further submitted that the delay, if any, is attributable to the difficulties faced in harmonization of the draft provisions based on the three International Conventions after starting the process in the year 2009 onwards. Further, the fresh approval of the Union Cabinet, consequent upon the change of Union Government was also one of the procedures that was required to be followed by them.

67. The Committee notes that cumbersome procedures, inter-ministerial and pre-legislative consultations led to the delay in bringing the legislation. The Committee feels that confusion, lack of farsightedness, lack of decision making capabilities and indecisiveness at various levels also contributed to this delay. The Committee recommends that in future, the Ministry should ensure that the legislations are processed within the shortest possible time by avoiding the steps which are unnecessary and unwarranted. The Committee has seen that in many situations, the Ministry's line of action was not clear because of which the action initiated way back in April, 2009 could be accomplished after a gap of more than six years *i.e.*, on the 10th August, 2015.

68. The Committee recommends that necessary amendments as suggested by the Committee, may be brought in the relevant Clauses of the Merchant Shipping (Amendment) Bill, 2015.

69. The Committee, while going through the Merchant Shipping Act, 1958, felt that the statute is quite bulky, with 461 Sections and Sub-sections. The present Bill itself contains more than 50 Clauses. The Committee, therefore, recommends that the Government may consider enacting a new Merchant Shipping Act so that the obsolete Clauses could be removed and new Clauses could be brought in to keep it in tune with time.

RECOMMENDATIONS/OBSERVATIONS OF THE COMMITTEE AT A GLANCE

The Committee observes that the exemption given to the owner if the pollution damage is due to an 'Act of God' as given in clause 352 RD, is likely to leave ample scope for litigation and that the owner of a ship can run away from his responsibilities of giving compensation to the pollution damage caused by the ship owned by him. The Committee, therefore, recommends to reconsider this aspect to ensure that the law does not leave any scope for the shipowners to get away from their responsibility of paying compensation.

(Para No. 21)

The Committee observes that Ports have ample chances of oil spillage and environment pollutions from the vessels at the time of loading/unloading of cargo. The Committee recommends that latest modern equipments being used at International level may be provided to the Ports for addressing this challenge. The Committee further recommends that for our cash strapped Major Ports, the present subsidy limit of 50% be enhanced substantially for procurement of the modern equipment for fighting any pollution due to oil spillage on a case to case basis.

(Para No. 22)

The Committee recommends that the Government should chalk out a time bound action plan to remove the wrecks that are already there in the Indian waters especially those wrecks which are affecting the shipping channels.

(Para No. 37)

The Committee welcomes the Bill which seeks to suitably incorporate the provisions of the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (Bunker Convention); the Nairobi International Convention on the Removal of Wrecks, 2007 (Nairobi Convention); and the International Convention on Salvage, 1989 (Salvage Convention) in the Merchant Shipping Act, 1958.

(Para No. 52)

Sub-Clause 402D (2) & (3)

The Committee observes that the Master of the Ship has been given the authority to execute a salvage contract or any such contracts on behalf of the ship owner. Since the Master of the ship is only an employee of the owner, there might be situations when the owner may not honour the contract signed by the Master of the Ship and the Salvor. Therefore, the Committee feels that a strict provision should be made in the Bill in order to save the interests of the Master of the Vessel. In view of the availability of sophisticated Information and Communication Technology tools, it is easy to consult the owner of the Vessel by the Master of the Vessel before agreeing to the contract or in case of any contingency.

(Para No. 56)

The Committee, therefore, recommends that a new Sub Clause-“in both the cases at (2) and (3), the owner of the vessel or cargo as the case may be, shall not be entitled to challenge the decision of the master/owner of the vessel, if such a decision is taken after sufficient consultation” may be inserted in the Bill.

(Para No. 57)

Sub Clause 402G

The Committee also feels that within the territorial waters of India, Indian Companies should be given priority for salvage operations. Accordingly, the Committee recommends that the following sub Clause may be added in the Bill:

“The Central Government shall ensure that the salvors of Indian origin are given first right of refusal as against the salvors of foreign origin, for any salvage operations within the territorial waters of India”.

(Para No. 59)

Sub Clause 402 H

The Committee recommends that the Government may appropriately look into the absence of such a provision in the Bill, with a view to deal with the cases of owner of the vessel failing to pay the salvors due to bankruptcy, absence of proper insurance cover or any other reasons and to ensure that the salvors get their payment for the salvage operation carried out.

(Para No. 63)

GENERAL RECOMMENDATIONS

The Committee observes that there is no provision for grievance redressal mechanism in the Bill. The Committee also observes that there are lots of probabilities of a grievance that can arise at any stage of the salvage operation, wreck removal, etc. The Committee, therefore, recommends that necessary provisions for redressal of grievances should be incorporated suitably, in the Bill.

(Para No. 64)

The Committee notes that cumbersome procedures, inter-ministerial and pre-legislative consultations led to the delay in bringing the legislation. The Committee feels that confusion, lack of farsightedness, lack of decision making capabilities and indecisiveness at various levels also contributed to this delay. The Committee recommends that in future, the Ministry should ensure that the legislations are processed within the shortest possible time by avoiding the steps which are unnecessary and unwarranted. The Committee has seen that in many situations, the Ministry's line of action was not clear because of which the action initiated way back in April, 2009 could be accomplished after a gap of more than six years *i.e.*, on the 10th August, 2015.

(Para No. 67)

The Committee recommends that necessary amendments as suggested by the Committee, may be brought in the relevant Clauses of the Merchant Shipping (Amendment) Bill, 2015.

(Para No. 68)

The Committee, while going through the Merchant Shipping Act, 1958, felt that the statute is quite bulky, with 461 Sections and Sub-sections. The present Bill itself contains more than 50 Clauses. The Committee, therefore, recommends that the Government may consider enacting a new Merchant Shipping Act so that the obsolete Clauses could be removed and new Clauses could be brought in to keep it in tune with time.

(Para No. 69)

AS INTRODUCED IN LOK
SABHA

Bill No. 227 of 2015

THE MERCHANT SHIPPING (AMENDMENT) BILL, 2015

A

BIL

L

*further to amend the Merchant Shipping
Act, 1958*

BE it enacted by Parliament in the Sixty-sixth Year of the Republic of India as follows:—

Short title
and com-
mencement.

44 of 1958.

1. (1) This Act may be called the Merchant Shipping
(Amendment) Act, 2015.

Amendment
of section 3.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

5 **2.** In section 3 of the Merchant Shipping Act, 1958 (hereinafter referred to as the principal Act),—

(a) after clause 14, the following clause shall be inserted,
namely:—

‘(14A) “gross tonnage” and “net tonnage” shall mean respectively the gross tonnage and the net tonnage of a ship as determined in accordance with
10 the provisions of the International Convention on Tonnage Measurement of Ships, 1969;’;

(b) clause (58) shall be omitted.

Insertion of new Part XBA.

3. After Part XB of the principal Act, the following Part shall be inserted, namely:—

‘PART
XBA

Application of this Part.

CIVIL LIABILITY FOR BUNKER OIL POLLUTION DAMAGE

352RA. This Part applies to—

(a) pollution damage caused due to escape or discharge of bunker oil by every Indian vessel wherever it is and every foreign vessel while it is—

(i) within the territory including territorial sea of India; and

(ii) at a port or a place in India or within the territorial waters of India or any marine areas adjacent thereto over which India has, or may hereafter have, exclusive jurisdiction in regard to control of marine pollution under the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 or any other law for the time being in force;

Definitions.

(b) preventive measures, wherever taken, to prevent or minimise such damage:

Provided that this Part shall not apply to warships, naval auxiliary or other vessels owned or operated by the Government and used, for the time being, only on Government non-commercial service:

Provided further that the Bunker Convention shall not apply to pollution damage as defined in clause (f) of section 352H relating to Civil Liability Convention, whether or not compensation is payable in respect of it under that Convention.

352RB. In this Part, unless the context otherwise requires,—

(a) “Bunker Convention” means the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001, as amended from time to time;

(b) “bunker oil” means any hydrocarbon mineral oil, including lubricating oil, used or intended to be used for the operation or propulsion of a ship, and any residues of such oil;

(c) “Civil Liability Convention” means the International Convention on Civil Liability for Oil Pollution Damage, 1992, as amended from time to time;

(d) “incident” means any occurrence, or series of occurrences having the same origin which causes pollution damage or creates a grave and imminent threat of causing such damage;

(e) “person” means any individual or partnership or any public or private body, whether corporate or not, including a State or any of its constituent sub-divisions;

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escape or discharge of bunker oil from the ship, wherever such escape or discharge may occur:

Provided that compensation for impairment of the environment other than loss or profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken; 5
and

(ii) the costs of preventive measures and further loss or damage caused by such preventive measures;

(g) "preventive measures" means any reasonable measures 10
taken by any person after the occurrence of incident to prevent or minimise the pollution damage;

80 of 1976.

(h) "registered owner" means the person or persons registered as the owner of the ship or, in the absence of registration, the person 15
or persons owning such ship:

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Provided that in the case of a ship owned by a State and operated by a company which in that State is registered as ship's operator, "registered owner" means such company;

(i) "ship" means any seagoing vessel and sea borne craft of any type whatsoever;

5 (j) "ship owner" means the owner including the registered owner, bareboat charterer, manager and operator of the ship;

(k) "State of the ship's registry" means, in relation to a registered ship, the State of registration of the ship and, in relation to an unregistered ship, the State flag that ship is entitled to fly;

10 (l) "vessel" includes ship.

352RC. (1) Save as otherwise provided in section 352RD,—

(a) where pollution damage is caused due to discharge or escape of bunker oil on board or originating from a vessel, the owner of the vessel shall be liable—

(i) for any pollution damage caused outside the vessel by
15 contamination resulting from the discharge or escape;

(ii) for the cost of any reasonable measures taken for the purpose of preventing or minimising any pollution damage so caused or likely to be caused; and

(iii) for any damage caused by any such preventive measures so taken:

20 Provided that where an incident consists of a series of occurrences having the same origin, the liability shall attach to the owner at the time of the first of such occurrences and where more than one person is liable, their liability shall be joint and several;

(b) where there arises a grave and imminent threat of damage
25 outside a vessel, the owner of the vessel shall be liable for the cost of any measures reasonably taken to prevent or minimise any such damage.

(2) Where any incident involving two or more vessels occurs resulting in pollution damage, the owners of all vessels involved in such incident shall, unless the damage is reasonably separable, be jointly and severally liable for such damage.

30 (3) With respect to ships owned by the Government or the Government of any country and used for commercial purposes, the Government or the Government of each of such country shall be liable for pollution damage under this part.

352RD. (1) No liability for pollution damage shall be incurred by the owner of a vessel under this Part, if he proves that such damage,—

35 (a) resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or

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with an intent to cause such damage by any person other than an employee or agent of the owner; or

(c) was wholly caused by the negligence or other wrongful act of the

40 Government or other authority responsible for maintenance of lights or other navigational aids in the exercise of such function.

(2) If the owner of a vessel proves that the pollution damage resulted wholly or partially either from an act or omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person, then, he shall be

45 wholly or partially exonerated from his liability to such person.

Liability for bunker oil pollution.

352RE. The owner of the vessel shall be entitled to limit his liability under this Part, in respect of any one or more incident, in accordance with the provisions of Part XA:

Provided that the owner shall not be entitled to limit his liability if it is proved that the incident causing pollution damage occurred as a result of his personal act or

Exemption from liability.

Right of owner to limitation of liability.

omission, committed or made with an intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

Determina-
tion of
limitation of
liability.

352RF. (1) Where the owner of a vessel has or is alleged to have incurred a liability under section 352RC, he may make an application to the High Court for determination of limitation of his liability in accordance with the provisions contained in Part XA in such form and manner as may be prescribed.

Consolidation
of claims and
distribution of
amount.

(2) After receiving the application under sub-section (1), the High Court shall determine the amount of owner's liability in accordance with the provisions contained in Part XA and direct him to deposit such amount with the High Court.

Extinguish-
ment of right
to claim.

352RG. The High Court shall consolidate all claims against the owner of the

vessel who has deposited the amount under section 352RF or his insurer and shall distribute the amount rateably amongst the claimants in accordance with the provisions of Part XA.

Maintenance
of compul-
sory
insurance or
other
financial
security.

352RH. The right to claim compensation in respect of an incident under this Part

shall extinguish if such claim is not made within a period of three years from the date of occurrence of damage:

Provided that in no case, such claim may be made after six years from the date of incident which caused such damage:

Provided further that where such incident consists of a series of occurrences,

the period of six years shall run from the date of the first of such occurrence.

352R-I. (1) Every registered owner of a vessel with more than one thousand gross tonnage shall, for the purpose of covering his liability for pollution damage under this Part, be required to maintain compulsory insurance coverage or such other financial security, as may be prescribed, for an amount equivalent to his liability as determined in accordance with the provisions of Part XA.

Issue of
certificate.

(2) Any claim for compensation for pollution damage may be brought directly against the insurer or other person providing financial security for the registered owner's liability for pollution damage and in such a case, the insurer or such person may invoke defences (other than bankruptcy or winding up of the owner) which the owner would have been entitled to invoke, including limitation of liability pursuant to section 352RF:

Provided that where the owner is not entitled to limitation of liability under section 352 RF, the insurer or such person may limit

liability to an amount equal to the amount of the insurance or other financial security required to be maintained under subsection (1):
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invoke the defence that the pollution damage resulted from the wilful misconduct of the owner but shall not invoke any other defence which such insurer or person might have been entitled to invoke in proceedings brought by the owner against such insurer or person:

Provided also that the insurer or such person shall have the right to require the ⁴⁰ owner to be joined in such proceedings.

352RJ. (1) In respect of every vessel which maintains insurance or other financial security under section 352R-I, the Director General shall issue a certificate in such form, containing such particulars and subject to such conditions, as may be prescribed.

(2) On an application made by the owner or agent of any foreign vessel, the ⁴⁵ Director General may issue a certificate in respect of such foreign vessel on production of satisfactory evidence of maintenance of insurance or other financial security as required under section 352R-I.

(3) Every certificate under sub-sections (1) and (2) may be issued on payment of such ⁵⁰ fee as may be prescribed.

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rovided further that the insurer or such person may

(4) Every certificate issued under sub-sections (1) and (2) shall be renewed after its expiry in such manner and on payment of such fee as may be prescribed.

5 352RK. (1) No vessel shall enter or leave or attempt to enter or leave any port or place to which this Part applies, unless it carries on board a certificate issued under section 352RJ.

10 (2) Any certificate issued by a competent authority in any country outside India to a ship registered in that country or any certificate issued by a competent authority of any country which is a contracting party to the Bunker Convention to any ship wherever registered, shall be accepted at any port or place in India as if it were issued under this Act.

15 (3) No Port Officer shall permit inward entry or outward clearance to any vessel to which sub-section (1) applies unless the master of the vessel produces the certificate referred to in sub-section (1).

20 352RL. Nothing contained in this Part shall prejudice the right of recourse that the owner of the vessel may have against any other person in respect of his liability.

25 352RM. (1) Any decision given by a court under sub-section (2) of section 352 RF shall be recognised in the country where the cause of action has arisen, except where—

(a) the judgment was obtained by fraud; or

30 (b) the owner or the insurer or the person providing financial security who is a party to the proceedings was not given reasonable notice and a fair opportunity to present his case.

(2) A judgment recognised under sub-section (1) shall be enforceable in each of the affected country as soon as the procedures required in that country have been complied with:

35 Provided that such procedure shall not permit the merits of the case to be reopened.

352RN. (1) The Central Government may make rules to carry out the purposes of this Part.

40 (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the form and manner of making application under sub-section (1) of section 352 RF;

(b) the other financial securities under sub-section (1) of section 352R-I; (c) the form of the certificate, the particulars it may contain and the conditions subject to which it may be issued under sub-section (1) of section 352RJ;

(d) the fee for issue of certificate under sub-section (3) of section 352RJ; (e) the manner of renewal of certificate and the fees under sub-section (4) of section 352RJ.’

4. For section 390 of the principal Act, the following sections shall be substituted, namely:—

390. This Part shall apply to the wrecks located within the territory of India including the territorial sea or any marine areas adjacent thereto over which India has, or may hereafter have, exclusive jurisdiction

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Ban on entering or leaving port without certificate.

Right of recourse.

Recognition and enforcements of decision of court.

Power to make rules.

Substitution of new sections 390, 390A, 390B, 390C, 390D, 390E, 390F, 390G, 390H and 390-I for section 390.

Application of this Part to wrecks.

Provided that this Part shall not apply to,—

(a) any measures taken under the International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969, as amended from time to time;

Definitions.

(b) any warship or other ship owned or operated by the Government for non-commercial service.

390A. In this Part, unless the context otherwise requires,—

(a) “authority” means the Director General or any person authorised by him; (b) “affected country” means the country in whose Convention area the wreck is located;

(c) “coasts” include the coasts of creeks and tidal waters;

(d) “Convention” means the Nairobi Convention on the Removal of Wrecks, 2007, as amended from time to time;

(e) “Convention area” means the exclusive economic zone of a State Party established in accordance with the international law or, if a State Party has not established such zone, an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than two hundred nautical miles from the baselines from which the breadth of its territorial sea is measured;

(f) “hazard” means any condition or threat that—

(i) poses a danger or impediment to navigation; or

(ii) may reasonably be expected to result in major harmful consequences to the marine environment, or damage to the coastline or related interests of India or any other country;

(g) “maritime casualty” means 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;

(h) “operator of the ship” means the owner of the ship or any other organisation or person including the manager or the bareboat charterer who has assumed the responsibility for operation of the ship from the owner of the ship and who, on assuming such responsibility, has agreed to take over all duties and responsibilities established under the International Safety Management Code, as amended from time to time;

(i) “receiver of wreck” means the person appointed as such under section 391;

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gistered as the owner 35
of the ship or, in the absence of registration, the person or
persons owning the ship at the time of the maritime casualty:

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Provided that in the case of a ship owned by a State and
operated by a company which in that State is registered as the
operator of the ship, registered owner shall mean such company;

(k) “related interests”, in relation to the interests of India
directly affected or threatened by a wreck, means—

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(i) maritime coastal, port and estuarine activities, including
fisheries activities, constituting an essential means of
livelihood of the persons concerned;

(ii) tourist attractions and other economic interests
of the areas concerned;

(iii) the health of the coastal population and the well
being of the area concerned, including conservation of marine
living resources and of wildlife; and

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(iv) offshore and underwater infrastructure;

(l) "removal" means any form of prevention, mitigation or elimination of the hazard created by a wreck, and the expressions "remove", "removed" and "removing" shall be construed accordingly;

5 (m) "ship" means a 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;

(n) "State of the ship's registry" means, in relation to a registered ship, the State of registration of the ship and, in relation to an unregistered ship, the State, whose flag the ship is entitled to fly;

10 (o) "wreck", in relation to a maritime casualty, includes— (i) a sunken or stranded ship;

or

(ii) any part of a sunken or stranded ship, including any object or goods or cargo that is or has been on board such a ship; or

15 (iii) any object or goods or cargo that is lost at sea from a ship and that is stranded, sunken or adrift at sea; or

(iv) a ship that is in distress or 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;

20 (v) a vessel abandoned without hope or intention of recovery.

Explanation.—For the purpose of this sub-clause, any question as to whether the measures adopted to assist the ship or any property in danger are effectively being taken or not shall be decided by the Director General.

25 390B. (1) When any Indian ship, has been involved in a maritime casualty resulting in a wreck in any area to which this Part applies, the master and the operator of the ship shall, without any delay, report such incident to the receiver of wreck and the office of the Director General.

30 (2) When an Indian Ship has been involved in a maritime casualty resulting in a wreck in a Convention area of any country, the master and the operator of that ship shall, without any delay, report such incident to the affected country in such manner as may be required by that country and shall also report such incident to the Director General.

(3) When any ship other than Indian ship has been involved in a maritime casualty resulting in a wreck in any area to which this Part applies, the master and the operator of the ship shall, without any delay, report such incident to the receiver of

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tions (1) and (3) shall provide the name and the principal place of
business of the owner or the operator of the ship and all relevant
information necessary for the receiver of wreck or the Director
General to determine whether the wreck poses a hazard as per the
provisions of section 390C or not,
40 including the following information,

namely:— (a) the precise
location of the wreck;

(b) the type, size and construction of the wreck;

(c) the nature of the damage to, and the condition of, the
wreck;

(d) the nature and quantity of the cargo, in particular any
hazardous and
45 noxious substances; and

(e) the amount and types of oil, including bunker oil and
lubricating oil, on board.

(5) The Director General may, if he considers necessary, direct
the receiver of wreck or any other person or authority to give report
on details of the wreck.

Duty to
report
wrecks.

Determina-
tion of
hazard.

390C. For determining whether a wreck poses a hazard, the following criteria shall be taken into account, namely:—

(a) the type, size and construction of the wreck; (b) depth of the water in the area;

(c) tidal range and currents in the area;

(d) proximity to protected areas including coral reefs and other areas as notified by the Government;

(e) particularly sensitive sea areas identified and, as appropriate, designated in accordance with guidelines adopted by the International Maritime Organisation, or a clearly defined area of the exclusive economic zone where special mandatory measures have been adopted in accordance with requirements of the United Nations Convention on the Law of the Sea, 1982;

(f) proximity of shipping routes or established traffic lanes; (g) traffic density and frequency;

(h) type of traffic;

(i) nature and quantity of the wreck's cargo, the amount and types of oil (such as bunker oil and lubricating oil) on board the wreck and, in particular, the damage likely to result if the cargo or oil is released into the marine environment;

(j) vulnerability of port facilities;

(k) prevailing meteorological and hydrographical conditions;

(l) submarine topography of the area;

(m) height of the wreck above or below the surface of the water at lowest astronomical tide;

(n) acoustic and magnetic profiles of the wreck;

(o) proximity of offshore installations, pipelines, telecommunication cables and similar structures;

(p) proximity of tourist spots and heritage locations; and

(q) any other circumstances that might necessitate the removal of the wreck.

Locating and
marking of
wrecks.

Measures to
facilitate the
removal of
wrecks.

390D. (1) The Director General may, if he considers necessary, give directions to a receiver of wreck or any other person or authority including the Director General of Light House or the Port Authority or a Maritime Board or Indian Coast Guard, as the case may, within their respective jurisdiction to locate and mark the wreck.

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ck at his or
its own cost in such manner as may be prescribed and to maintain such marking
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wreck is removed.

(3) The cost for locating and marking the ship shall be borne by or
recovered from the registered owner.

390E. (1) When it is determined that the wreck constitutes a hazard, the
receiver of wreck shall inform the fact to the Director General who shall—
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(a) at once, inform the Government of the State of the ship's
registry and the registered owner of the ship; and

(b) proceed to consult the Government of the State of the ship's
registry and other countries affected by the wreck regarding
measures to be taken in relation to
such wreck.

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(2) The registered owner of the ship or, as the case may be, the operator of the ship shall remove such wreck which has been determined to constitute a hazard:

Provided that where any dispute arises as to whether the wreck constitutes a hazard or not, the decision of the Director General to whom such dispute may be referred shall be final and binding on all parties.

(3) When a wreck has been determined to constitute a hazard, the registered owner of the ship or any interested person shall provide the Director General or the receiver of wreck or any person or authority so authorised with the evidence of insurance or other financial security maintained by him in accordance with the provisions of section 390G.

(4) The receiver of wreck shall, having regard to the nature of the hazard, set such time limit as may be prescribed for the owner of the ship or its operator to remove the wreck.

(5) If the owner of the ship or its operator or agent does not remove the wreck within the time set under sub-section (4), the receiver of wreck may, at the expense of such owner or operators, remove the wreck by the most practical and expeditious means available, consistent with considerations of safety and protection of the marine environment and the wreck or any sale proceeds derived from such wreck shall become the property of the Central Government.

(6) In circumstances where immediate action is required and the receiver of wreck has informed the owner of the ship or the operator accordingly, he may, at the expense of such owner or operator, remove the wreck by the most practical and expeditious means available, consistent with considerations of safety and protection of the marine environment.

390F. (1) The registered owner shall be liable for the costs of locating, marking and removing the wreck under this Part unless he proves that the maritime casualty which 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; or

(b) was wholly caused by act or omission done with an 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.

(2) Nothing contained in this Part shall affect the right of the registered owner to limit his liability in accordance with the provisions of section 352B.

(3) Nothing contained in this Part shall prejudice any right of recourse available to the registered owner against third parties.

390G. (1) Every registered owner of an Indian ship of three hundred gross

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45 n Indian ship of three hundred $\frac{1}{2}$ gross tonnages and above, while it is
in the area to which this Part applies, shall
maintain insurance coverage or other financial security to cover his
liability under the Convention and shall carry on board a certificate
attesting that such insurance or other financial security is in force in
accordance with the provisions of the Convention.

(3) The certificate referred to in sub-section (2) shall, in case
the ship is— (a) an Indian ship, be issued by the
Authority;
50 (b) registered in a Convention country other than India, be
issued by or under the authority of the Government of that
country; and

Liability of
owner.

Maintenance
of insurance
or other
financial
security.

(c) registered in a country which is not a Convention country, be a certificate issued or certified by the appropriate authority authorised by any Convention country.

(4) Any ship found contravening the provisions of sub-section (2) shall be liable to be detained by the Authority.

(5) Any claim for costs arising under this Part may be brought directly against the insurer or other person providing financial security for the registered owner's liability and in such a case, the insurer or such person may invoke defences (other than bankruptcy or winding up of the registered owner) which the registered owner would have been entitled to invoke, including limitation of liability as provided under section 352B:

Provided that where the registered owner is not entitled to limitation of liability under section 352B, the insurer or such person may limit liability to an amount equal to the amount of the insurance or other financial security required to be maintained under sub-section (1):

Provided further that the insurer or such person may invoke the defence that the maritime casualty resulted from the wilful misconduct of the registered owner but shall not invoke any other defence which such insurer or person might have been entitled to invoke in proceedings brought by the registered owner against such insurer or person:

Provided also that the insurer or such person shall have the right to require the registered owner to be joined in such proceedings.

390H. (1) The registered owner shall not be liable under this Part for meeting the costs referred to in section 390F if, and to the extent that, liability for such costs is in conflict with—

- (a) any other Part or provisions of this Act;
- (b) the provisions of the Civil Liability for Nuclear Damage Act, 2010; or
- (c) any other applicable or binding international legal instrument which

India adopts.

(2) Where measures are taken under this Part, to the extent such measures are construed to be salvage under the provisions of section 402, the provisions of said section 402 shall apply for the purposes of remuneration or compensation payable to salvors.

Explanation.— For the removal of doubts, it is hereby clarified that the provisions of this section shall be construed harmoniously with the provisions of the Indian Ports Act, 1908 and in case of any ambiguity or conflict thereof, the provisions of said Indian Ports Act, 1908 shall prevail.

390-I. Any claim for recovery of costs for locating and marking of the ship under sub-section (2) of section 390D shall be made within a period of three years from the date of determination of the hazard:

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Exception to
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Extinguish-
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Amendment
of section
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Amendment
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395.

Amendment
of section
396.

section (I),
for the
words
“such local
limits”, the
words
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7. In section 396 of the principal Act, for the words “within the local limits”, the words “within the limits” shall be substituted.

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8. In section 398 of the principal Act, for clause (a), the following clause shall be substituted, namely:—	Amendment of section 398.
“ <i>(a)</i> it poses a hazard within the meaning of clause (f) of section 390A;”	Amendment of section 399.
9. In section 399 of the principal Act, in sub-section (2), for the words “are found on or near the coasts of India”, the words “are found in any area to which this Part applies” shall be substituted.	Amendment of section 400. Substitution
10. In section 400 of the principal Act, in clauses (b) and (d), for the words “on or near the coasts of India”, the words “in any area to which this Part applies” shall be substituted.	
11. For section 402 of the principal Act, the following sections shall be substituted, namely:—	of new sections 402, 402A, 402B, 402C, 402D, 402E, 402F, 402G, 402H, 402-I and 402J for section 402.
‘402. This Part shall apply to a judicial or arbitral proceedings relating to salvage operations in respect of a vessel or any other property which are instituted in India:	Application 30
Provided that this Part shall not apply to the fixed or floating platforms or to mobile offshore drilling units when such platforms or units are on location engaged in the exploration, exploitation or production of seabed mineral resources:	
Provided further that this Part shall also not apply to warships or other non- commercial vessels owned or operated by the Government which are entitled, at the time of salvage operations, to sovereign immunity.	
402A. In this Part, unless the context otherwise requires,—	
20 (a) “damage to the environment” means substantial physical damage to human health or to marine life of resources in coastal or inland waters or areas adjacent thereto, caused by pollution, contamination, fire, explosion or similar major incidents;	
25 (b) “payment” means any reward, remuneration or compensation due under the Salvage Convention;	
(c) “property” means any property not permanently and intentionally attached to the shoreline and includes freight at risk;	
(d) “Salvage Convention” means International Convention on Salvage, 1989 as amended from time to time;	

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estruction or rendering² a vessel harmless which is sunk,
wrecked, stranded or abandoned including anything that is
or has been on board such vessel;

of this part to
salvage.

(i) the removal, destruction or rendering the cargo of a
vessel harm- less; and

(iii) the measures taken to avert or minimise loss to a
vessel or its cargo or both;

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(f) “salvor” means any person rendering services in direct
connection with salvage operation;

Definitions.

(g) “vessel” means any ship or craft, or any structure capable of navigation.

Salvage payable for saving life, cargo or wreck.

402B. (1) Where services are rendered—

(a) wholly or in part within the territorial waters of India in saving life from any vessel, or elsewhere, in saving life from a vessel registered in India; or

(b) in assisting a vessel or saving the cargo or equipment of a vessel

which is wrecked, stranded or in distress at any place to which this Part applies as specified in section 390; or

(c) by any person other than the receiver of wreck in saving any wreck, there shall be payable to the salvor by the owner of the vessel, cargo, equipment or wreck, a reasonable sum for salvage having regard to all the circumstances of the case.

Salvage operations controlled by Government or port and public authorities.

Salvage contracts.

(2) Salvage in respect of the preservation of life when payable by the owner of the vessel shall be payable in priority to all other claims for salvage.

402C. Where salvage services are rendered by or on behalf of the Government or by a vessel of the Indian Navy or of the Coast Guard or the commander or crew of any such vessel or the port authorities or a public authority, as the case may be, it shall be entitled to salvage and shall have the same rights and remedies in respect of those services as any other salvor.

Annulment and modification of contracts.

402D. (1) Subject to the provisions of sections 402E and 402F, this Part shall apply to any salvage operations save to the extent a contract otherwise provides expressly or by implication.

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(2) The master shall have the authority to conclude contracts for salvage operations on behalf of the owner of the vessel.

(3) The master or the owner of the vessel shall have the authority to conclude such contracts on behalf of the owner of the property on board the vessel.

Duties of salvor and of owner and master.

402E. A contract or any terms thereof may be annulled or modified if,—

(a) the contract has been entered into under undue influence or the influence of danger and its terms are inequitable; or

(b) the payment under the contract is excessive and disproportionate to the services actually rendered.

402F. (1) The salvor shall have the following duties towards the owner of the

vessel or other property in danger, namely:—

(a) to carry out the salvage operations with due care;

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(age to the environment during salvage operations;

(c) to seek assistance from other salvors including port authorities or ³⁵ public authorities when circumstances so require; and

(d) to accept the intervention of other salvors when reasonably requested to do so by the owner or master of the vessel or other property in danger:

Provided that if it is found that such a request was unreasonable, it shall not prejudice the amount of reward of such salvor.
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(2) The owner and master of the vessel or the owner of other property in danger shall have the following duties to the salvor, namely:-

(a) to co-operate fully with the salvor during the course of the salvage operations;

(b) to exercise due care to prevent or minimise damage to the environment during salvage operations;

(c) when the vessel or other property has been brought to a place of safety, to accept redelivery when reasonably requested by the salvor to do so; and

5 (d) to provide satisfactory security for the claim, including interest and costs of the salvor for salvage operations, at the request of the salvor.

10 402G. (1) The Central Government shall take such measures, as may be prescribed, to protect its coastline or related interests from pollution or threat of pollution arising out of a maritime casualty or acts relating to such casualty which may result in major harmful consequences.

(2) The Central Government shall give such directions as it deems fit to the concerned ship owner or the master or the salvor or a port authority or a public authority or any other person in relation to salvage operations.

15 (3) The Central Government shall, for the purposes of efficient and effective salvage operations, saving life or property in danger and preventing damage to the environment, seek cooperation from the concerned ship owner or the master or the salvor or a port authority or a public authority or any other person, to give assistance to vessels in need, to admit to ports of vessels in distress or in need of assistance and to give facilities to salvors.

20 402H. (1) A salvor shall have a right to payment for the services rendered by him relating to salvage operations:

Provided that no such payment shall be made where there is express and reasonable prohibition from the owner or master of vessel or owner of any other property in danger.

25 (2) The Central Government may prescribe the criteria for claiming rewards, the manner of fixing rewards, the payment of special compensation, the apportionment of payment amongst salvors, the salvage of persons, the payment under the contract, the payment for additional services not covered under the contract and the effect of misconduct of salvors on reward or payment.

30 (3) The salvor shall have right to enforce his maritime lien against the owner or master of vessel or owner of any other property in danger when satisfactory security for his claim, including interest and costs, has not been provided by such person.

402-I. (1) A dispute relating to claims under this Part shall be determined upon application made by either of the disputing parties to the concerned High Court.

35 (2) Where there is any dispute as to the persons who are entitled to the salvage amount under this section, the High Court shall decide the dispute and if there are more persons than one entitled to such

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f, among such persons.

(3) The costs of and incidental to all proceedings before the High Court under

40 this section shall be in the discretion of the High Court and the High Court shall have full power to determine by whom or out of what property and to what extent such costs are to be paid and to give all necessary directions for the purpose aforesaid.

(4) The High Court may, by interim order, direct that the salvor shall be paid such amount as may appear to it to be fair and just, upon such terms, including terms as to
45 security, as may appear to it to be necessary, fair and just, according to the circumstances of each case:

Rights and duties of Central Government in relation to salvage operations.

Provided that where any interim payment is made, the security provided under clause (d) of sub-section (2) of section 402E shall be reduced accordingly.

Rights of salvors.

Adjudication of disputes.

Extinguish-
ment of
claims.

402J. (1) Any action relating to payment under this Part shall extinguish if such claim is not made within a period of two years.

(2) For the purposes of this section, the period of limitation shall commence from the date of completion of salvage operation.’.

Amendment
of section
404.

12. In section 404 of the principal Act, in sub-section (2), after clause (g), the following 5

clauses shall be inserted, namely:—

“(h) the manner of marking wreck under sub-section (2) of section 390D; (i) the time limit for removing wreck under sub-section (4) of section 390E; (j) the other financial security under sub-section (1) of section 390G;

(k) the measures to be taken to protect the coastline related interests from 10
pollution or threat of pollution under sub-section (1) of section 402G;

(l) any other matter for which rule is required to be made for the implementation of the Nairobi Convention on the Removal of Wrecks, 2007 or the Salvage Convention.”.

STATEMENT OF OBJECTS AND REASONS

The Merchant Shipping Act, 1958 was enacted to foster the development and to ensure the efficient maintenance of an Indian mercantile marine sector in a manner best suited to serve the national interest. International Maritime Organisation (IMO), as the global standard-setting authority for the safety, security and environmental performance of international shipping, creates fair and effective regulatory framework for the shipping industry in the form of Conventions for universal adoption and implementation.

2. The International Convention on Civil Liability for Bunker Oil Pollution Damage

2001 (Bunker Convention) ensures that adequate, prompt, and effective compensation is available to persons who suffer damage caused by spills of oil, when carried as fuel in ships' bunkers. The Convention applies to damage caused on the territory, including the territorial sea, and in exclusive economic zones of States Parties. The Convention provides a separate instrument covering pollution damage only.

3. The Nairobi International Convention on the Removal of Wrecks 2007 (Nairobi Convention) provides the legal basis to remove shipwrecks that may have the potential to affect adversely the safety of lives, goods and property at sea, as well as the marine environment. The Convention fills the gap in the existing international legal framework by providing the first set of uniform international rules aimed at ensuring the prompt and effective removal of wrecks located beyond the territorial sea.

4. The International Convention on Salvage (Salvage Convention) 1989 replaced the prevalent "no cure, no pay" principle where a salvor is only rewarded for services if the operation is successful. By towing a damaged tanker away from an environmentally sensitive area, salvor prevents major pollution incidents. But the prevalent "no cure, no pay" principle acted as a disincentive for operation, where chances of success were slim. The 1989 Salvage Convention remedied this deficiency by making provision for an enhanced salvage award in preventing or minimising damage to the environment and by introducing a "special compensation" to be paid to salvors who fail to earn a reward in the normal way.

5. India is a member of IMO and as and when Government of India approves to be a party to an International Convention by accession/ratification, the Convention is given effect by suitably incorporating its provisions in our domestic legislation. The accession to Bunker Convention 2001 is now approved and, for implementing the Convention, the Merchant Shipping Act 1958 requires further amendments. The amendments incorporate the Convention provisions by inserting Part XBA in the Act titled "Civil Liability for Bunker Oil Pollution Damage" India is already a party to the Nairobi Convention and Salvage Convention. However, in the light of experiences gained in implementing

Part XIII titled "Wreck and Salvage", it was felt necessary to amend the Part XIII to make them progressive and in tune with Nairobi Convention and Salvage Convention.

6. Under the provisions of the Merchant Shipping (Amendment) Bill, 2015, the registered owner of a vessel has to maintain compulsory insurance cover which allows claim for compensation for bunker pollution damage to be brought directly against an insurer. Ships of 1000 GT and above has to carry a certificate onboard to the effect that it maintains insurance or other financial security, without which these vessels will not be allowed to enter or leave India. The liability cover for bunker pollution damage shall be equal to the limits of liability under the applicable national or international limitation regime, but in all cases, not exceeding an amount calculated in accordance with the Convention on Limitation of Liability for Maritime Claims, 1976.

7. The amendments shall also facilitate more purposeful approach towards removal of wrecks and salvage, protect Indian waters from the wreck hazards and introduce internationally recognised and approved rules for removal of wrecks. Private and public

entities will be encouraged to participate in salvage operations on account of adequate remuneration for services rendered specially to protect the environment or minimise its damage. Salvage services provided for saving life, cargo or wreck will be paid on priority to other claims for salvage. Salvage services provided by the Government shall also be entitled to rights and remedies as those of any other salvor. The Bill provides for duties of the salvor, owner and master of a vessel. It also provides for rights and duties of the Central Government in cases of maritime casualty in protecting its environment and coastline and to pass directions with regard to salvage operations.

8. The Bill seeks to achieve the above objectives.

NEW DELHI;
NITIN GADKARI.

The 24th July
2015.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 3 of the Bill seeks to insert a new Part XBA in the Merchant Shipping Act, 1958 relating to Civil Liability for Bunker Oil Pollution Damage. The proposed section 352RN of the said Part XBA confers power upon the Central Government to make rules for carrying out the provisions of the Bill. The matters in respect of which rules may be made are— (a) the form and manner of making application under sub-section (1) of section 352 RF; (b) the other financial securities under sub-section (1) of section 352R-I; (c) the form of the certificate, the particulars it may contain and the conditions subject to which it may be issued under sub-section (1) of section 352RJ; (d) the fee for issue of certificate under sub-section (3) of section 352RJ; (e) the manner of renewal of certificate and the fees under sub-section (4) of section 352RJ.

Clause 12 of the Bill seeks to amend sub-section (2) of section 404 relating to power to make rules respecting wreck and salvage so as to insert clauses (h) to (l) therein, to provide rule making powers in respect of—(a) the manner of making wreck under sub-section (2) of section 390D; (b) the time limit for removing wreck under sub-section (4) of section 390E; (c) the other financial security under sub-section (1) of section 390G; (d) the measures to be taken to protect the coastline related interests from pollution or threat of pollution under sub-section (1) of section 402G; and (e) any other matter for which rules are required to be made for the implementation of the Nairobi Convention on the Removal of Wrecks, 2007 or the Salvage Convention.

The rules made by the Central Government shall be laid, as soon as may be after they are made before each House of Parliament.

The matters in respect of which the rules may be made are generally matters of procedure and administrative details and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

ANNEXUR

E

EXTRACTS FROM THE MERCHANT SHIPPING ACT,

1958 (44 OF 1958)

Definitions.

* * * * *

3. In this Act, unless the context otherwise requires,—

* * * * *

* (58) "wreck" includes the following when found in the sea or in tidal water or on the shores thereof—

(a) goods which have been cast into the sea and then sink and remain under water;

(b) goods which have been cast or fall into the sea and remain floating on the surface;

(c) goods which are sunk in the sea, but are attached to a floating object in order that they may be found again;

(d) goods which are thrown away or abandoned; and

(e) a vessel abandoned without hope or intention of recovery;

Definition of "coasts".

Receivers of wreck.

* * * * *

* PART XIII

WRECK AND SALVAGE

Wrec
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Procedure to be observed by persons finding wreck.

390. In this Part, the word "coasts" includes the coasts of creeks and tidal rivers.

Investigation of certain matters in respect of vessels wrecked, etc.

391. (1) The Central Government may, by notification in the Official Gazette, appoint any person to be a receiver of wreck (in this Part referred to as receiver of wreck) to receive and take possession of wreck and to perform such duties connected therewith as are hereinafter mentioned, within such local limits as may be specified in the notification.

* * * * *

395. Any person finding and taking possession of any wreck with in any local limits for which there is a receiver of wreck, or bringing within such limits any wreck which has been found and taken possession of elsewhere, shall, as soon as practicable—

(owner thereof, give the receiver of wreck notice in writing of the finding
a thereof and of the marks by which such wreck is distinguished;
)
(b) if he be not the owner of such wreck, deliver the same to the receiver of
wreck.

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396. Whenever any vessel is wrecked, stranded or in distress as
aforesaid, the receiver of wreck within the local limits of whose jurisdiction
the vessel is wrecked, stranded or in distress may conduct an investigation
into all or any of the following matters, that is to say,—

(a) the name and description of the vessel;
b
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(b) the names of the master and of the
owners; (c) the names of the owners of
t
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the cargo;

(d) the ports from and to which the vessel was bound;

(e) the occasion of the wrecking, stranding, or distress of the vessel; (f) the services rendered; and

(g) such other matters or circumstances relating to the vessel, the cargo or the equipment, as the receiver thinks necessary.

* * * * *

Immediate sale of wreck by receiver in certain cases.

398. A receiver of wreck may at any time sell any wreck in his custody if, in his opinion,—

(a) it is under the value of five hundred rupees; or

(b) it is so much damaged or of so perishable a nature that it cannot with advantage be kept; or

(c) it is not of sufficient value for warehousing,

and the proceeds of the sale shall, after defraying the expenses thereof, be held by the receiver for the same purposes and subject to the same claims, rights and liabilities as if the wreck had remained unsold.

Claims of owners to wreck.

399.(1) * * * *

* (2) Where any articles belonging to or forming part of a vessel other than an Indian vessel which has been wrecked or belonging to and forming part of the cargo of such vessel, are found on or near the coasts of India or are brought into any port in India, the consular officer of the country in which the vessel is registered or, in the case of cargo, the country to which the owners of the cargo may have belonged shall, in the absence of the owner and of the master or other agent of the owner, be deemed to be the agent of the owner, with respect to the custody and disposal of the articles.

Prohibition of certain acts in respect of wreck.

* * * *

400. No person shall—

* * * *

* (b) impede or hinder or attempt in any way to impede or hinder the saving of any vessel stranded or in danger of being stranded or otherwise in distress on or near the coasts of India or of any part of the cargo or equipment of the vessel, or of any wreck; or

* * * *

* (d) wrongfully carry away or remove any part of a vessel stranded or in danger of being stranded or otherwise in distress, on or near the coasts of India, or any part of the cargo or equipment of the vessel or any wreck.

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* SALVAGE

402. (1) Where services are rendered—

(a) wholly or in part within the territorial waters of India in saving life from any vessel, or elsewhere in saving life from a vessel registered in India; or

(b) in assisting a vessel or saving the cargo or equipment of a vessel which is wrecked, stranded or in distress at any place on or near the coasts of India; or

Salvage payable for saving life, cargo or wreck.

(c) by any person other than the receiver of wreck in saving any wreck,

there shall be payable to the salvor by the owner of the vessel, cargo, equipment or wreck, a reasonable sum for salvage having regard to all the circumstances of the case.

(2) Salvage in respect of the preservation of life when payable by the owner of the vessel shall be payable in priority to all other claims for salvage.

(3) Where salvage services are rendered by or on behalf of the Government or by a vessel of the Indian Navy or of the Coast Guard or the commander or crew of any such vessel, the Government, the commander or the crew, as the case may be, shall be entitled to salvage and shall have the same rights and remedies in respect of those services as any other salvor.

30 of 1978.

Explanation.—"Coast Guard" means the Coast Guard constituted under section 3 of the Coast Guard Act, 1978.

(4) Any dispute arising concerning the amount due under this section shall be determined upon application made by either of the disputing parties—

(a) to a Judicial Magistrate of the first class or a Metropolitan Magistrate, as the case may be, where the amount claimed does not exceed ten thousand rupees; or

(b) to the High Court, where the amount claimed exceeds ten thousand rupees.

(5) Where there is any dispute as to the persons who are entitled to the salvage amount under this section, the Judicial Magistrate of the first class or the Metropolitan Magistrate or the High Court, as the case may be, shall decide the dispute and if there are more persons than one entitled to such amount, such magistrate or the High Court shall apportion the amount thereof among such persons.

(6) The costs of and incidental to all proceedings before a Judicial Magistrate of the first class or a Metropolitan Magistrate or the High Court under this section shall be in the discretion of such Magistrate or the High Court, and such Magistrate or the High Court shall have full power to determine by whom or out of what property and to what extent such costs are to be paid and to give all necessary directions for the purpose aforesaid.

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further to amend the Merchant Shipping
Act, 1958

*(Shri Nitin Gadkari, Minister of
20 Shipping)*

GMGIPMRND—1980LS(S3)—03-08-2015.

STATUS OF WRECKS ON THE COAST OF INDIA - 2015

Sr. No.	Name of Port / Coast of India	Type	Name / Identity of wreck	Position of wreck	Date of Incident / Became Wreck	Total number of Wreck	STATUS/ Remarks
1	PARADIP PORT TRUST	Major	Black Rose	20,12.8N 086,38.85E	9/9/2009	1	Hull part deteriorated due to wave action. Wreck embedded into the bottom of the sea . Salvage matter is still pending in Hon'ble High Court of Orissa and Collector & DM, Jagatsingpur.
2	MORMUGAO PORT TRUST	Major	1) MOTHER PEARL 2) M.V. MARINER IV 3) Shipwreck at Vasco Bay	1) 15,25.5N 073,48.8E 2) 15,24.8N 073,49.2E 3) 15,24.2N 073,48.7E	X	3	In posn. Identified wreck. No hazard to navigation. Assessment to get rid of wreck will soon follow, approx. 6 months.
3	NEW MANGALORE PORT TRUST	Major	M.V.DEN DEN	12,53.79N 074,48.67E	23.06.2007	1	Appx 40% of wreck has been removed and remaining work is under progress.
4	CHENNAI PORT TRUST	Major	MV. DECCAN PIONEER	13, 52N 080,19.11E	11/11/1985	1	Wreck does not pose a hazard to navigation in the position. No action has been taken for removal of the wreck.
5	COCHIN PORT TRUST	Major	1) LORD WILLINGDON 2) MARIA S	1) 09,57.59N 076,11.13.04E 2) 09,58.24n 076,10.49.8E	1) 1982. 2) 2007	2	1) No action taken to remove the wreck as it does not pose any danger to surface navigation. 2) Wreck have cut and removed all the portion above the seabed . The remains are sunk in the mud and clear for surface navigation.

6	KOLKATA PORT	Major	MV. BINGO	21,13.49N 088,13.25E	10/12/2013	1	The wreck is in close proximity of navigational channel & Serious impediment to safe shipping. Owner have not made any commitment whatsoever and the wreck continues to in its present position.																								
								7	V.O.CHIDAMBARANAR PORT TRUST (TUTICORIN)	Major	MV. BLUE MARINE-1	08,47.588N 078,13.801E	10/28/2010	1	Wreck removal effort not succeeded, however again been insisted to take immediate action to salvage the barge.																
																8	JAWAHARLAL NEHRU PORT TRUST	Major	MAHARATTA	18,58.73N 072,56.95E	X	1	Wreck is outside the navigation channel of JNPT and hence does not pose any danger to vessels coming and sailing from JNPT								
																								9	MUMBAI PORT TRUST	Major	24 wrecks in the Jurisdiction of Mumbai Port Trust.	18,51.05N 72,42.46E	X	1	Calling for auction for wreck removal. Next week board meeting. No hazard to navigation. All wrecks identified & in posn.
2	MOONLIGHT GLORY	18,49.54N 72,43.46E	X	1																											
3	CERRY CHANTAK	18,58.23N 72,52.34E	X	1																											
4	MANSCO III	18,57.53N 72,52.29E	X	1																											
5	MIENG HONG 21		X	1																											

		23	Unknown Wreck	18,52,79N 72,43,55E	X	1	Owner contacted. No response. Wreck identified well marked. Posing danger to Navigation/in the channel. Needs to be removed earliest.
		24	Unknown Wreck	18,50,94N 72,39,96E	X	1	
10	NAGAPATTINUM PORT (CPCL)	Minor	MV. AQUA MARINE	10,49,18N 079,53,08E	12/19/2014	1	Owner advised to forward plan of action for salvage of grounded vessel.
11	TUTICORIN COAST	Coast	MV. SRI KRISHNA-16	18nm NE of Pandian light Tuticorin	5/22/2015	1	
12	BELEKERI PORT	Minor	Barge Timo	Belekeri port limit	11/1/2004	1	
13			Barge Vishwas	Belekeri port limit	10/27/2007	1	

Reply to the queries raised and remained unanswered during the course of recording of oral evidence before the Department Related Parliamentary Standing Committee on 16.09.15.

1. Question: In the presentation it has been shown that Bunker Convention is a Convention of the year 2001, and India to become party after the enactment of the Bill. Why has there been a delay of 14 years?

Answers/submissions: International Convention on Civil Liability for Bunker oil Pollution Damage [Bunker Convention], 2001 was adopted by the International Maritime Organisation [IMO] in 2001. However, it came into force internationally only at the end of the year 2008 i.e. after a gap of nearly eight years, on 21.11.2008. Therefore, there was no delay from 2001 till the end of 2008, as the Convention itself was not in force, and there was no obligation to follow the Convention.

The process for the accession and subsequent amendment to the Merchant Shipping Act, 1958 was initiated in early 2009. The details of step wise process followed for the accession and necessary amendment to the Merchant Shipping Act, 1958 is as mentioned below;

1.	Directorate General of Shipping [DG (S)] sent the proposal to accede to Bunker Convention and to seek in- principle approval of the Cabinet to subsequently introduce amendments to Merchant Shipping Act, 1958.	28.04.2009
2.	The proposal was examined in the Ministry and approval of Hon'ble Minister was obtained to take up the matter before the Union Cabinet.	29.06.2009
3.	The proposal was suitably formulated as a draft Note for Cabinet.	22.09.2009
4.	The draft Cabinet Note circulated for Inter-Ministerial comments.	31.03.2010
5.	The Ministry of External Affairs while conveying their comments suggested that instead of seeking in- principle approval of the Cabinet to subsequently introduce amendments to Merchant Shipping Act, 1958, the amendment to Merchant Shipping Act, 1958 (Bill) should be first passed by the by the Parliament before taking up the proposal for becoming a party to Bunker Convention.	05.05.2010
6.	The Ministry of Shipping sought the inputs of DG (S) on the comments of M/o External Affairs along with the comments received from various other Ministries.	11.08.2010

7.	Inputs of DG (S) were received. 20	19.08.2010
8.	The Hindi version of the draft Cabinet Note and the draft Bill were referred to the DG (S) for verification of the technical terms used in the translated version.	22.10.2010
9.	DG (S) sent the corrected Hindi version of draft Cabinet Note and the draft Merchant Shipping Amendment Bill.	29.10.2010
10.	The final Note for Cabinet was sent to Prime Minister's Office (PMO). The PMO suggested the Ministry of External Affairs has suggested that the Bill be passed before becoming a party to the Convention the matter may be taken up before a Committee of Secretaries (CoS).	29.11.2010
11.	DG (S) sent their inputs and a Note was prepared for the Committee of Secretaries.	10.01.2011
12.	Committee of Secretaries meeting was held and it was decided that Merchant Shipping Act amendment should precede India becoming party to the convention and a draft amending Bill or Ordinance should be prepared. Secretary, D/o Legal Affairs and Secretary, Legislative Department were asked to assist Ministry of Shipping in drafting the Ordinances.	15.03.2011
13.	The draft Ordinance and a draft proposal for Cabinet seeking approval to introduce an Ordinance on the Bunker Convention and the Nairobi Wreck Removal Convention were prepared.	18.04.2011
14.	The proposal for Ordinance on the Nairobi Convention and the Bunker Convention was approved by Hon'ble Minister.	17.06.2011
15.	The Prime Minister's Office advised that instead of an Ordinance Merchant Shipping (Amendment) Bill be introduced as per normal legislative process.	03.07.2011
16.	The Note for Cabinet on Ordinance was circulated for inter-ministerial comments.	08.11.2011
17.	The Legislative Department prepared the draft Merchant Shipping Amendment Bill instead of an Ordinance.	08.01.2012
18.	Since the Legislative Department had made modifications to the Bill and suggested that the Bill be discussed with the Legislative Department, DG (S) was requested to examine the modified Bill and depute an officer for discussions.	28.02.2012
19.	DG (S) sent their inputs on the modified Bill with further changes.	11.07.2012
20.	The revised Bill was discussed with Ministry of Law.	27.09.2012

21.	The Legislative department sought further clarifications on the proposed Bill.	19.10.2012
22.	Hon'ble Minister for Shipping directed that the Merchant Shipping (Amendment) Bill should also include amending the provision contained in Section 356M regarding enhancement of the oil pollution cess.	04.11.2012
23.	In the course of discussions with Legislative Department the DDG, DG (S) incorporated the provisions of Salvage Convention in the Merchant Shipping (Amendment) Bill.	04.01.2013
24.	The Bill was revised to incorporate provisions of Bunker Convention, Nairobi Convention, Salvage Convention and the amendment of Sec 356 M to enhance oil pollution cess.	18.03.2013
25.	The revised draft Bill was again discussed with Legislative Department.	28.05.2013
26.	The fresh proposal for the Cabinet with the revised Bill containing Bunker Convention, Salvage Convention and increase in oil pollution cess was approved by Hon. Minister for Shipping.	12.12.2013
27.	The revised draft Note for Cabinet Containing Bill for Bunker Convention, Salvage Convention, Nairobi Convention and increase of oil pollution cess was circulated for inter-ministerial comments.	16.12.2013
28.	The D/o Economic Affairs in their comments conveyed that the amount of levy may be brought under the rules instead of quantifying it in the Bill and the financial implication arising in the freight charges as a result of the levy may be reflected in the draft Note for Cabinet.	07.02.2014
29.	Secretary, Legislative Department communicated that pre-legislative consultative policy should be followed for all legislative matters and therefore DG (S) was directed to upload the working draft of revised Merchant Shipping Amendment Bill on the website of DG (S) and seek comments of stakeholders and public.	12.03.2014
30.	Before the Note for Cabinet and Bill could be finalised election was declared and code of conduct came into force.	---
31.	The revised draft Merchant Shipping (Amendment) Bill was loaded in the official website of the Directorate for a period of one month seeking comments of all stakeholders i.e on or before 02.06.2014, as per pre-legislative consultative policy	02.5.2014

	prescribed by the Legislative Department.	
32.	Follow up with the comments received from stakeholders DG (S) held meetings with all stakeholders to discuss their comments on the draft Bill.	09.6.2014
33.	The draft Bill after pre-legislative consultation by DG (S) was finalised.	11.6.2014
34.	The proposal was placed before the Hon'ble Minister of Shipping on the assuming of office of the present Government. It was decided to remove provisions to increase oil/marine pollution cess. This revised note for Cabinet and the revised Bill was circulated for inter-ministerial consultations.	08.08.2014
35.	Comments of various Ministries were received and these comments were consolidated and sent to Legislative Department requesting them to finalise the Bill and convey their concurrence to the proposal with the approval of Hon. Law Minister.	02.01.2015
36.	Legislative Department conveyed their concurrence to the proposal and provided the final Bill with the approval of Hon. Law Minister.	09.02.2015
37.	The final Note for Cabinet and the final Bill was approved by the Hon. Minister	02.03.2015
38.	Official language wing of the Legislative Department was requested for Hindi translation of the Bill.	11.03.2015
39.	Official language wing of the Legislative Department provided the Hindi translation of the Bill.	23.04.2015
40.	The final note for Cabinet and the final Bill (bilingual version) sent to Cabinet Secretariat and PMO.	21.05.2015
41.	Proposal approved by the Union Cabinet.	10.06.2015
42.	DG (S) sent inputs for the draft Statement of Objects and Reasons, Notes on Clauses and Memorandum on Delegated Legislation.	01.07.2015
43.	Draft Statement of Objects and Reasons, Memorandum on Delegated Legislation approved by Hon. Minister and referred to Legislative Department for vetting.	09.7.2015
44.	Statement of Objects and Reasons, Memorandum on Delegated Legislation vetted and finalized by Legislative Department.	24.7.2015
45.	The Merchant Shipping (Amendment) Bill, 2015 introduced in Parliament by Hon'ble Minister of Shipping.	10.08.2015

In light of the above mentioned²⁰ circumstances, procedures, inter-ministerial consultation, and pre-legislative consultations as well as combination of two more Convention [i.e. Nairobi and Salvage Convention] with the Bunker Convention, it may kindly be observed that the delay, if any is attributable to the difficulties faced in harmonization of the draft provisions based on the three international Convention after starting the process in the year 2009 onwards. Further, the fresh approval of the Union Cabinet, consequent upon the Change of the Union Government is also one procedure which was required to be followed.

2. Question: In the presentation it has been shown that International Convention on Salvage is in force since 14.07.1996 and India is party since 18.10.1995. How do you correlate it? The delay to be explained.

Answer/submission: Salvage Convention was adopted in the year 1989. However, having met the requirement of tonnage and the number of states, as per the requirement of the stated convention, it actually came into force internationally after nearly seven years i.e. on 14.07.1996. India became a party to this Convention on 18.10.1995, as the provisions related to the Salvage Convention largely exist in the Merchant Shipping Act ever since 1958 and continued to be part of the Act till date. Indian law makers [Hon'ble Parliament] in their great wisdom had provided the provisions related to salvage in the Act since from 1958 itself i.e. much before 1989 Salvage Convention came into force. Therefore, the broad provisions on salvage already exist in the present Merchant Shipping Act.

However, the significant improvement made by the Salvage Convention 1989 is that it has enabled compensation for unsuccessful salvage efforts, and the salvor dealing with the salvage operation is free to make a contract with the ship-owner whose ship is being salvaged by it, so as to cover the compensation even if the salvage operation is not fully successful. The salvage convention has done away with the old principle of "No cure No pay ". It encourages the salvors to assist the distressed vessel and even if the salvage may not be totally successful, the Salvor is compensated by invoking contract and the Special compensation scopic clause.

It is submitted that as explained above, the provisions related to salvage are already in existence in the present Merchant Shipping Act. However, the provisions related to the salvage Convention are being updated, as an opportunity to make Indian legislation fully compliant with the Convention. Therefore, it may kindly be concluded that there is no delay in the legislation.

3. Question: Name of any major country which is not a signatory to these three Conventions [like²⁰ US UK or Germany]. What would be the possible reason for them not signing and we are opting for that Convention?

Answer/submission: United States of America [USA] and Japan are the two major maritime nations who are not a party to the Bunker Convention. The United States has enacted the Oil Pollution Act 1990. The Act covers all types of oil, from the ship, whether bunkers or Cargo. The compensations and the requirement are more stringent than the Bunker Convention and hence there was no need by US to adopt the Bunker Convention which came into force at a much later stage in 2008. Similarly, the Japanese 'Act on Liability for ship oil pollution 1975' was amended in 2005 to cover bunker pollution damage before the bunker convention came into force internationally in 2008, and also the requirement under the local regulations were more stringent, thus Japan never felt the need for the bunker convention. As regards India, the provision related to pollution from oil [except bunker oil pollution damage] are existing in the Merchant Shipping Act, 1958, but there is a need to make specific legislation for covering the pollution incidents caused by the bunker oil of the ships, hence the proposed Bill is introduced.

Nairobi Convention: United States of America [USA], China and Japan, Italy, Norway, Republic of Korea, and Russian Federation are the major maritime nations which are not party to the Convention. As of now the national legislation of the above countries provide adequate mechanism of direct action against the ship owners in their coastal waters hence there may not be a need for them to be a party to this Convention. However, the Nairobi Wreck removal convention has entered into force this year only [i.e. on 14.04.2015]. Hence, it is still early stages as most of the countries may still be evaluating the convention from deciding to become party to the Convention. Moreover, now the Convention extends its scope beyond coastal waters up to Exclusive Economic Zone (EEZ), thus there may be reconsideration by other countries in due course to decide on being a party to this Convention. As regard India, the provisions related to the wreck removal are already existing in the Act. However, these are proposed to be updated, as an opportunity to make Indian legislation fully compliant with the Convention.

Salvage Convention: Japan, Panama, Republic of Korea, are few major maritime nations which are not party to the Convention. The prime reason for such maritime countries not becoming a party to the Convention is that their national legislation has already made necessary provisions for salvage and the courts have the sole jurisdiction of awarding the salvage compensation. The salvage convention applies to judicial or arbitral proceedings pertaining to salvage. Salvage is generally between private parties and disputes between

them are generally decided by arbitration/judicial process. The local legislation of such countries also provides mechanism for Arbitration and compensation for efforts of the salvor irrespective of degree of success, thus such countries have not felt the need for adoption of the convention. As regard India, the provisions related to salvage are already existing in the Act. However, these are proposed to be updated, as an opportunity to make Indian legislation fully compliant with the Convention.

4. Question: Give the list of nations which have signed and the list of the nations which have not signed these three Conventions.

Answer/submission: The list nations which are party to the Bunker Convention is enclosed [Appendix-I]. The list nations which are not party to this Convention is also enclosed [Appendix-II]

The list of nations which are party to the Nairobi wreck removal Convention is enclosed [Appendix-III]. The list nations which are not party to this Convention is also enclosed [Appendix-IV].

The list of nations which are party to the Salvage Convention, 1989 is enclosed [Appendix-V]. The list nations which are not party to this Convention is also enclosed [Appendix-VI].

5. Question: What will be the procedure for recovery in case of wreck [Page No. 6 of the document containing recorded oral evidence]?

Answer/submission: Any claim for costs arising under the new provisions may be brought directly against the insurer or other person who has provided the financial security for the liability of the registered owner of the vessel. Hence even the direct action for claim against the insurers or the person giving the financial security is possible, so as to compensate the damage caused by the incident of a ship becoming a wreck and hazard to safe navigation.

6. Question: Dispute relating to claims shall be adjudicated by concerned High Court [where vessel is registered/vessel is situated/cause of action arise. Clarify the three jurisdiction provided there. Also clarify from which time the claim [i.e. limitation period of within 2 years] will start in case of Salvage Convention [Page No. 6 of the document containing recorded oral evidence].

Answer/submissions: The jurisdiction has been given based on the broad principles as given in the Civil Procedure Code, 1908 w.r.to jurisdiction of the courts. The case may not proceed in more than one court, as the principle of res sub judice will apply. The case may proceed at one location based on the principle that where it is instituted first. The period of limitation shall commence from date of completion of salvage operation.

7. Question: Whether there are statistics about the benefits/positive impacts which have occurred or may occur in future, to the ocean ecology of those countries which are party to these Conventions. Is there a financial or other loss to the country in absence of following these Conventions [Page No. 6 of the document containing recorded oral evidence]?

Answer/submission: No specific statistics is available for benefits/positive impacts which have occurred or may occur in future, to the ocean ecology of those countries which are party to these Conventions. However, the benefits intended from these Conventions, are as follows;

Bunker Convention: This Convention is intended to ensure that adequate, prompt, and effective compensation is available to persons who suffer damage caused by spills of oil, when carried as fuel in ships' bunkers. The Convention applies to damage caused on the territory, including the territorial sea, and in exclusive economic zones of countries which Party to the Convention. A key requirement in the Bunker Convention is the need, for the registered owner of a vessel, to maintain a compulsory insurance cover. Another key provision is the enabling provision for initiating direct action against the insurer, which would

allow a claim for compensation for pollution damage to be brought directly against an insurer.

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Nairobi wreck removal Convention: This Convention provides a sound legal basis for coastal countries to remove, or have removed, from their coastlines, wrecks which pose a hazard to the safety of navigation or to the marine and coastal environments, or both. It will make ship-owners financially liable and require them to take out insurance or provide other financial security to cover the costs of wreck removal. It will also provide States with a right of direct action against insurers. This Convention also includes an optional clause enabling States Parties to apply certain provisions to their territory, including their territorial sea.

Salvage Convention: This Convention seeks to remedy the deficiency enshrined in the "no cure, no pay" principle under which a salvor is only rewarded for services, if the salvage operation is successful. Earlier the salvors were paid only if the salvage operation were successful. However, under this Convention the efforts of the salvors to prevent the major pollution incident [for example, by towing a damaged tanker away from an environmentally sensitive area] have been recognized and now he may be rewarded even if he is not able to save the ship or the cargo. This will encourage the salvors to come forwards for saving the environmental damage.

As regards, financial or other loss to the country in absence of following these Conventions, it is submitted that Indian ships on international voyage are already complying with the requirements of the Bunker Convention & Nairobi Conventions. For salvage operations, & also to extent w.r.to the Nairobi Convention, the provisions are already in existence in the Merchant Shipping Act, 1958. As shipping is International in nature, Indian ships trading worldwide had to abide by the requirements of the Conventions, therefore, Indian ships were issued certificates by other convention countries at a certain cost. Now, with above adoption, Indian ships can be issued certificates by the Indian Administration after enactment. Secondly with the enactment, every ship entering Indian Coastal waters will be required to have necessary financial guarantee and a certificate being a proof of the same. In case of any pollution by way of bunker, or ship becoming a wreck direct action can be initiated against the owners / insurers through the process of Arbitration instead of passing through the lengthy judicial process. Such compulsory carriage of certificate and the provision of direct action will be an indirect method and deterrent thus giving indirect protection to the coastal marine environment. Financial or other loss to the country could occur if the provisions of the Conventions are not brought into force in India as owners of foreign flag vessels will not require to have insurance or financial security to deal with bunker oil spills or wrecks occurring in our waters, leading to environmental damage and consequential loss to the country.

**INTERNATIONAL CONVENTION ON CIVIL LIABILITY FOR BUNKER
OIL POLLUTION DAMAGE, 2001(BUNKERS 2001)**

Done at London, 23 March 2001

Entry into force: 21 November 2008

Signature, ratification, acceptance, approval and accession

Article 12

1 This Convention shall be open for signature at the Headquarters of the Organization from 1 October 2001 until 30 September 2002 and shall thereafter remain open for accession.

2 States may express their consent to be bound by this Convention by:

- (a) signature without reservation as to ratification, acceptance or approval;
- (b) signature subject to ratification, acceptance or approval followed by ratification, acceptance or approval; or
- (c) accession

3 Ratification, acceptance, approval or accession shall be effected by deposit of an instrument to that effect with the Secretary-General.

4 Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to this Convention with respect to all existing State Parties, or after the completion of all measures required for the entry into force of the amendment with respect to those State Parties shall be deemed to apply to this Convention as modified by the amendment.

Entry into force

Article 14

1 This Convention shall enter into force one year following the date on which eighteen States, including five States each with ships whose combined gross tonnage is not less than 1 million, have either signed it without reservation as to ratification, acceptance or approval or have deposited instruments of ratification, acceptance, approval or accession with the Secretary-General.

2 For any State which ratifies, accepts, approves or accedes to it after the conditions in paragraph 1 for entry into force have been met, this Convention shall enter into force three months after the date of deposit by such State of the appropriate instrument.

Revision or amendment

Article 16

1 A conference for the purpose of revising or amending this Convention may be convened by the Organization.

2 The Organization shall convene a conference of the States Parties for revising or amending this Convention at the request of not less than one-third of the States Parties.

I.	Signatories
II.	Contracting States
III.	Declarations, Reservations and Statements
IV.	Amendments

I. Signatories

Australia	Subject to ratification
Brazil	Subject to ratification
Canada	Subject to ratification
Denmark ¹	Subject to ratification
Finland ¹	Subject to acceptance
Germany ¹ , Federal Republic of	Subject to ratification
Italy	Subject to ratification
Norway	Subject to ratification
Spain ¹	
Sweden ¹	Subject to ratification
United Kingdom ¹	Subject to ratification

II. Contracting States

	Date of deposit of instrument	Date of entry into force
Albania (accession)	30 April 2010	30 July 2010
Antigua and Barbuda (accession)	19 December 2008	19 March 2009
Austria (accession)	30 January 2013	30 April 2013
Australia (ratification)	16 March 2009	16 June 2009
Azerbaijan (accession)	22 June 2010	22 September 2010
Bahamas (accession) ¹	30 January 2008	21 November 2008
Barbados (accession)	15 October 2009	15 January 2010
Belgium (accession) ¹	11 August 2009	11 November 2009
Belize (accession)	22 August 2011	22 November 2011
Bulgaria (accession) ¹	6 July 2007	21 November 2008
Canada (accession)	2 October 2009	2 January 2010
Czech Republic (accession)	20 December 2012	20 March 2013
China (accession) ^{1,4}	9 December 2008	9 March 2009
Congo (accession)	19 May 2019	19 August 2014
Côte d'Ivoire (accession)	8 July 2013	8 October 2013
Cook Islands (accession)	21 August 2008	21 November 2008
Croatia (accession) ¹	15 December 2006	21 November 2008
Cyprus (accession) ¹	10 January 2005	21 November 2008
Denmark (ratification)	23 July 2008	21 November 2008
Democratic People's Republic of Korea (accession)	17 July 2009	17 October 2009
Egypt (accession) ¹	15 February 2010	15 May 2010
Estonia (accession) ¹	5 October 2006	21 November 2008
Ethiopia (accession)	17 February 2009	17 May 2009
Finland (acceptance) ¹	18 November 2008	18 February 2009
France (accession) ¹	19 October 2010	19 January 2011
Germany* (ratification) ¹	24 April 2007	21 November 2008
Greece* (accession)	22 December 2005	21 November 2008
Hungary (accession)	30 January 2008	21 November 2008
Indonesia (accession)	11 September 2014	11 December 2014
Iran (Islamic Republic of Iran) (accession)	21 November 2011	21 February 2012
Ireland (accession) ¹	23 December 2008	23 March 2009
Italy (ratification)	18 November 2010	18 February 2011

	Date of deposit of instrument	Date of entry into force
Jamaica (accession)	2 May 2003	21 November 2008
Jordan (accession)	24 March 2010	24 June 2010
Kenya (accession)	7 July 2015	7 October 2015
Kiribati (accession)	29 July 2009	29 October 2009
Latvia (accession)	19 April 2005	21 November 2008
Liberia (accession)	21 August 2008	21 November 2008
Lithuania (accession)	14 September 2007	21 November 2008
Luxembourg (accession) ¹	21 November 2005	21 November 2008
Malaysia (accession)	12 November 2008	12 February 2009
Malta (accession) ¹	12 November 2008	12 February 2009
Marshall Islands (accession)	9 May 2008	21 November 2008
Mauritius (accession)	17 July 2013	17 October 2013
Mongolia (accession)	28 September 2011	28 December 2011
Montenegro (accession)	29 November 2011	29 February 2012
Morocco (ratification)	14 April 2010	14 July 2010
Netherlands (accession)	23 December 2010	23 March 2011
New Zealand (accession) ¹	4 April 2014	4 July 2014
Nicaragua (accession)	3 April 2014	3 July 2014
Nigeria (accession)	1 October 2010	1 January 2011
Niue (accession)	18 May 2012	18 August 2012
Norway (ratification) ¹	25 March 2008	21 November 2008
Palau (accession)	28 September 2011	28 December 2011
Panama (accession)	17 February 2009	17 May 2009
Poland (accession) ¹	15 December 2006	21 November 2008
Portugal (accession)	21 July 2015	21 October 2015
Republic of Korea (accession)	28 August 2009	28 November 2009
Romania (accession)	15 June 2009	15 September 2009
Russian Federation (accession)	24 February 2009	24 May 2009
Saint Kitts and Nevis (accession)	21 October 2009	21 January 2010
Saint Vincent and the Grenadines (accession)	26 November 2008	26 February 2009
Samoa (accession)	18 May 2004	21 November 2008
Serbia (accession)	8 July 2010	8 October 2010
Sierra Leone (accession)	21 November 2007	21 November 2008
Singapore (accession) ¹	31 March 2006	21 November 2008
Slovakia (accession) ¹	1 May 2013	1 August 2013
Slovenia (accession)	20 May 2004	21 November 2008
Spain (ratification) ¹	10 December 2003	21 November 2008
Sweden (ratification) ¹	3 June 2013	3 September 2013
Switzerland (accession)	24 September 2013	24 December 2013
Syrian Arab Republic (accession) ¹	24 April 2009	24 July 2009
Togo (accession)	23 April 2012	23 July 2012
Tonga (accession)	18 September 2003	21 November 2008
Tunisia (accession) ¹	5 September 2011	5 December 2011
Turkey (accession)	12 September 2013	12 December 2013
Tuvalu (accession)	12 January 2009	12 April 2009
United Kingdom* (ratification) ^{1, 2, 3}	29 June 2006	21 November 2008
Vanuatu (accession)	20 August 2008	21 November 2008
Vietnam (accession)	18 June 2010	18 September 2010

Number of Contracting States: 80
(the combined merchant fleets of which constitute approximately
91.84% of the gross tonnage of the world's merchant fleet)

¹ For the text of a declaration, reservation or statement, see section III.

² States with Ships whose combined gross tonnage is not less than 1 million.

³ Extended to the Isle of man with effect from 21 November 2008.
Extended to Gibraltar with effect from 28 November 2009.

Extended to Bermuda with effect from 16 January 2009.
Extended to the Cayman Islands with effect from 12 January 2011.
Extended to the British Virgin Islands with effect from 9 September 2013.

- ⁴ Applies to the Macau Special Administrative Region with effect from 9 March 2009.
Applies to the Hong Kong Special Administrative Region with effect from 22 January 2010.
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List of Nations not party to the Bunker Convention

189.	Algeria
190.	Angola
191.	Argentina
192.	Bahrain
193.	Bangladesh
194.	Benin
195.	Bolivia (Plurinational State of)
196.	Bosnia and Herzegovina
197.	Brazil
198.	Brunei Darussalam
199.	Cambodia
200.	Cameroon
201.	Cabo Verde
202.	Chile
203.	Colombia
204.	Comoros
205.	Costa Rica
206.	Cuba
207.	Democratic Republic of the Congo*
208.	Djibouti
209.	Dominica
210.	Dominican Republic
211.	Ecuador
212.	El Salvador
213.	Equatorial Guinea
214.	Eritrea
215.	Fiji
216.	Gabon
217.	Gambia
218.	Georgia
219.	Ghana
220.	Grenada
221.	Guatemala
222.	Guinea
223.	Guinea-Bissau
224.	Guyana
225.	Haiti
226.	Honduras
227.	Iceland
228.	India
229.	Iraq
230.	Israel
231.	Japan
232.	Kazakhstan
233.	Kuwait
234.	Lebanon
235.	Libya
236.	Madagascar
237.	Malawi
238.	Maldives
239.	Mauritania
240.	Mexico
241.	Monaco
242.	Mozambique

243.	Myanmar
244.	Namibia
245.	Nepal
246.	Oman
247.	Pakistan
248.	Papua New Guinea
249.	Paraguay
250.	Peru
251.	Philippines
252.	Qatar
253.	Republic of Korea
254.	Republic of Moldova
255.	Romania
256.	Saint Lucia
257.	San Marino
258.	Sao Tome and Principe
259.	Saudi Arabia
260.	Senegal
261.	Seychelles
262.	Solomon Islands
263.	Somalia
264.	South Africa
265.	Sri Lanka
266.	Sudan
267.	Suriname
268.	Thailand
269.	The former Yugoslav Republic of Macedonia
270.	Timor-Leste
271.	Trinidad and Tobago
272.	Turkmenistan
273.	Uganda
274.	Ukraine
275.	United Arab Emirates
276.	United Republic of Tanzania
277.	United States of America
278.	Uruguay
279.	Venezuela (Bolivarian Republic of)
280.	Yemen
281.	Zambia
282.	Zimbabwe

**NAIROBI INTERNATIONAL CONVENTION ON THE REMOVAL OF WRECKS, 2007
(NAIROBI WRC 2007)**

Done at Nairobi, 18 May 2007

Entry into force: 14 April 2015

Signature, ratification, acceptance, approval and accession

Article 17

1 This Convention shall be open for signature at the Headquarters of the Organization from 19 November 2007 until 18 November 2008 and shall thereafter remain open for accession.

- (a) States may express their consent to be bound by this Convention by:
- (i) signature without reservation as to ratification, acceptance or approval; or
 - (ii) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or
 - (iii) accession.
- (b) Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.

Article 18

Entry into force

1 This Convention shall enter into force twelve months following the date on which ten States have either signed it without reservation as to ratification, acceptance or approval or have deposited instruments of ratification, acceptance, approval or accession with the Secretary-General.

2 For any State which ratifies, accepts, approves or accedes to this Convention after the conditions in paragraph 1 for entry into force have been met, this Convention shall enter into force three months following the date of deposit by such State of the appropriate instrument, but not before this Convention has entered into force in accordance with paragraph 1.

Denunciation

Article 19

1 This Convention may be denounced by a State Party at any time after the expiry of one year following the date on which this Convention comes into force for that State.

2 Denunciation shall be effected by the deposit of an instrument to that effect with the Secretary-General.

3 A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, following its receipt by the Secretary-General.

Amendment provisions

Article 14

1 At the request of not less than one-third of States Parties, a conference shall be convened by the Organization for the purpose of revising or amending this Convention.

2 Any consent to be bound by this Convention, expressed after the date of entry into force of an amendment to this Convention, shall be deemed to apply to this Convention, as amended.

- I. Signatories
- II. Contracting States
- III. Declarations, Reservations and Statements
- IV. Amendments

I. Signatories

Denmark	“Subject to ratification”	12 November 2008
Estonia	“Subject to ratification”	28 March 2008
France	“Sous réserve de ratification”	24 September 2008
Germany	“Subject to ratification”	17 November 2008
Italy	“Subject to ratification”	23 September 2008
Netherlands	“Subject to approval”	27 October 2008

II. Contracting States

	Date of deposit of instrument	Date of entry into force
Albania (accession) ¹	27 April 2015	27 July 2015
Antigua and Barbuda ¹	9 January 2015	14 April 2015
Bahamas (accession) ¹	5 June 2015	5 September 2015
Bulgaria (accession) ¹	8 February 2012	14 April 2015
Congo (accession)	19 May 2014	14 April 2015
Cook Islands (accession)	22 December 2014	14 April 2015
Cyprus (accession)	22 July 2015	22 October 2015
Denmark (ratification) ¹	14 April 2014	14 April 2015
Germany (ratification)	20 June 2013	14 April 2015
India (accession)	23 March 2011	14 April 2015
Iran (Islamic Republic of) (accession)	19 April 2011	14 April 2015
Kenya (accession) ¹	14 April 2015	14 July 2015
Liberia (accession) ¹	8 January 2015	14 April 2015
Malaysia (accession)	28 November 2013	14 April 2015
Malta (accession) ¹	18 January 2015	18 April 2015
Marshall Islands (accession) ¹	27 October 2014	14 April 2015
Morocco (accession)	13 June 2013	14 April 2015
Nigeria (accession)	23 July 2009	14 April 2015
Niue (accession)	27 April 2015	27 July 2015
Palau (accession)	29 September 2011	14 April 2015
Panama (accession)	18 August 2015	18 November 2015
South Africa (accession)	4 September 2015	4 December 2015
Tonga (accession)	20 March 2015	20 June 2015
Tuvalu	17 February 2015	17 May 2015
United Kingdom (accession) ^{1,2}	30 November 2012	14 April 2015

Number of Contracting States: 25
(the combined merchant fleets of which constitute approximately 58.09% of the gross tonnage of the world's merchant fleet)

¹ For the text of a declaration, reservations and statement, see section III.

² The Convention was extended by the United Kingdom to the Isle of Man with effect from 14 April 2015 and to Gibraltar with effect from 16 April 2015.

List of nations not party to the Nairobi Wreck Removal Convention

295.	Algeria
296.	Angola
297.	Argentina
298.	Australia
299.	Austria
300.	Azerbaijan
301.	Bahrain
302.	Bangladesh
303.	Barbados
304.	Belgium
305.	Belize
306.	Benin
307.	Bolivia (Plurinational State of)
308.	Bosnia and Herzegovina
309.	Brazil
310.	Brunei Darussalam
311.	Cambodia
312.	Cameroon
313.	Canada
314.	Cabo Verde
315.	Chile
316.	China
317.	Colombia
318.	Comoros
319.	Costa Rica
320.	Côte d'Ivoire
321.	Croatia
322.	Cuba
323.	Czech Republic
324.	Democratic People's Republic of Korea
325.	Democratic Republic of the Congo*
326.	Djibouti
327.	Dominica
328.	Dominican Republic
329.	Ecuador
330.	Egypt
331.	El Salvador
332.	Equatorial Guinea
333.	Eritrea
334.	Estonia
335.	Ethiopia
336.	Fiji
337.	Finland
338.	France
339.	Gabon
340.	Gambia
341.	Georgia
342.	Ghana
343.	Greece
344.	Grenada
345.	Guatemala
346.	Guinea
347.	Guinea-Bissau
348.	Guyana
349.	Haiti

350.	Honduras
351.	Hungary
352.	Iceland
353.	Indonesia
354.	Iraq
355.	Ireland
356.	Israel
357.	Italy
358.	Jamaica
359.	Japan
360.	Jordan
361.	Kazakhstan
362.	Kiribati
363.	Kuwait
364.	Latvia
365.	Lebanon
366.	Libya
367.	Lithuania
368.	Luxembourg
369.	Madagascar
370.	Malawi
371.	Maldives
372.	Mauritania
373.	Mauritius
374.	Mexico
375.	Monaco
376.	Mongolia
377.	Montenegro
378.	Mozambique
379.	Myanmar
380.	Namibia
381.	Nepal
382.	Netherlands
383.	New Zealand
384.	Nicaragua
385.	Norway
386.	Oman
387.	Pakistan
388.	Papua New Guinea
389.	Paraguay
390.	Peru
391.	Philippines
392.	Poland
393.	Portugal
394.	Qatar
395.	Republic of Korea
396.	Republic of Moldova
397.	Romania
398.	Russian Federation
399.	Saint Kitts and Nevis
400.	Saint Lucia
401.	Saint Vincent and the Grenadines
402.	Samoa
403.	San Marino
404.	Sao Tome and Principe
405.	Saudi Arabia

406.	Senegal
407.	Serbia
408.	Seychelles
409.	Sierra Leone
410.	Singapore
411.	Slovakia
412.	Slovenia
413.	Solomon Islands
414.	Somalia
415.	Spain
416.	Sri Lanka
417.	Sudan
418.	Suriname
419.	Sweden
420.	Switzerland
421.	Syrian Arab Republic
422.	Thailand
423.	The former Yugoslav Republic of Macedonia
424.	Timor-Leste
425.	Togo
426.	Trinidad and Tobago
427.	Tunisia
428.	Turkey
429.	Turkmenistan
430.	Uganda
431.	Ukraine
432.	United Arab Emirates
433.	United Republic of Tanzania
434.	United States of America
435.	Uruguay
436.	Vanuatu
437.	Venezuela (Bolivarian Republic of)
438.	Viet Nam
439.	Yemen
440.	Zambia
441.	Zimbabwe

List of nations Parties to Salvage Convention

INTERNATIONAL CONVENTION ON SALVAGE, 1989 (SALVAGE 1989)

Done at London, 28 April 1989

Entry into force: 14 July 1996

Signature, ratification, acceptance, approval, accession

Article 28

1 This Convention shall be open for signature at the Headquarters of the Organization from 1 July 1989 to 30 June 1990 and shall thereafter remain open for accession.

2 States may express their consent to be bound by this Convention by:

- (a) signature without reservation as to ratification, acceptance or approval; or
- (b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or
- (c) accession.

3 Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.

Entry into force

Article 29

1 This Convention shall enter into force one year after the date on which 15 States have expressed their consent to be bound by it.

2 For a State which expresses its consent to be bound by this Convention after the conditions for entry into force thereof have been met, such consent shall take effect one year after the date of expression of such consent.

-
- I. Signatories
 - II. Contracting States
 - III. Declarations, Reservations, Notifications and Statements.

I. Signatories

Canada	Subject to ratification
Denmark	Subject to ratification
Finland	Subject to approval
Germany, Federal Republic of	Subject to ratification
Ireland	Subject to ratification
Italy	Subject to ratification
Mexico	Ad referendum
Netherlands	Subject to acceptance
Nigeria	Subject to ratification
Norway	Subject to ratification
Poland	Subject to ratification
Spain	Ad referendum and with reservations ¹
Sweden	Subject to ratification
Switzerland	Sous réserve de ratification
USSR	[<i>Translation</i>] Subject to subsequent ratification
United Kingdom	Subject to ratification
United States	Subject to ratification

II. Contracting States

	Date of deposit of instrument	Date of entry into force
Albania (accession)	14 June 2006	14 June 2007
Algeria (accession)	26 March 2012	26 March 2013
Australia (accession) ¹	8 January 1997	8 January 1998
Azerbaijan (accession)	12 June 2006	12 June 2007
Brazil (accession)	29 July 2009	29 July 2010
Belgium (accession)	30 June 2004	30 June 2005
Bulgaria (accession) ¹	14 March 2005	14 March 2006
Canada (ratification) ¹	14 November 1994	14 July 1996
China (accession) ^{1, 4}	30 March 1994	14 July 1996
Congo (accession)	7 September 2004	7 September 2005
Croatia (accession) ¹	10 September 1998	10 September 1999
Denmark (ratification)	30 May 1995	14 July 1996
Dominica (accession)	31 August 2001	31 August 2002
Ecuador (accession) ¹	16 February 2005	16 February 2006
Egypt (accession)	14 March 1991	14 July 1996
Estonia (accession)	31 July 2001	31 July 2002
Finland (approval) ¹	12 January 2007	12 January 2008
France (accession) ¹	21 December 2001	21 December 2002
Georgia (accession)	25 August 1995	25 August 1996
Germany (ratification) ¹	8 October 2001	8 October 2002
Greece (accession)	3 June 1996	3 June 1997
Guinea (accession)	2 October 2002	2 October 2003
Guyana (accession)	10 December 1997	10 December 1998
Iceland (accession)	21 March 2002	21 March 2003
India (accession)	18 October 1995	18 October 1996
Iran (Islamic Republic of) (accession) ¹	1 August 1994	14 July 1996
Ireland (ratification) ¹	6 January 1995	14 July 1996
Italy (ratification)	14 July 1995	14 July 1996
Jamaica (accession)	28 November 2013	28 November 2014
Jordan (accession)	3 October 1995	3 October 1996
Kenya (accession)	21 July 1999	21 July 2000
Kiribati (accession)	5 February 2007	5 February 2008
Latvia (accession)	17 March 1999	17 March 2000
Liberia (accession)	18 September 2008	18 September 2009
Lithuania (accession) ¹	15 November 1999	15 November 2000

	Date of deposit of instrument	Date of entry into force
Marshall Islands (accession)	16 October 1995	16 October 1996
Mauritius (accession)	17 December 2002	17 December 2003
Mexico (ratification) ¹	10 October 1991	14 July 1996
Mongolia (accession)	2 September 2015	2 September 2016
Montenegro (accession)	19 April 2012	19 April 2013
Netherlands (acceptance) ^{1,3}	10 December 1997	10 December 1998
New Zealand (accession) ¹	16 October 2002	16 October 2003
Nigeria (ratification)	11 October 1990	14 July 1996
Niue (accession)	27 June 2012	27 June 2013
Norway (ratification) ¹	3 December 1996	3 December 1997
Oman (accession)	14 October 1991	14 July 1996
Palau (accession)	29 September 2011	29 September 2012
Poland (ratification)	16 December 2005	16 December 2006
Romania (accession)	18 May 2001	18 May 2002
Russian Federation (ratification) ¹	25 May 1999	25 May 2000
Saint Kitts and Nevis (accession)	7 October 2004	7 October 2005
Jamaica (accession)	28 November 2013	28 November 2014
Saudi Arabia (accession) ¹	16 December 1991	14 July 1996
Sierra Leone (accession)	26 July 2001	26 July 2002
Slovenia (accession)	23 December 2005	23 December 2006
Spain (ratification) ¹	27 January 2005	27 January 2006
Sweden (ratification) ¹	19 December 1995	19 December 1996
Switzerland (ratification)	12 March 1993	14 July 1996
Syrian Arab Republic (accession)	19 March 2002	19 March 2003
Tonga (accession)	18 September 2003	18 September 2004
Tunisia (accession) ¹	5 May 1999	5 May 2000
Turkey (accession) ¹	27 June 2014	27 June 2015
United Arab Emirates (accession)	4 October 1993	14 July 1996
United Kingdom (ratification) ^{1,2}	29 September 1994	14 July 1996
United States (ratification)	27 March 1992	14 July 1996
Vanuatu (accession)	18 February 1999	18 February 2000
Yemen (accession)	23 September 2008	23 September 2009

Number of Contracting States: 66
(the combined merchant fleets of which constitute approximately
51.31% of the gross tonnage of the world's merchant fleet)

¹ For the text of a reservation or statement, see section III.

² The United Kingdom declared its ratification to be effective from 22 July 1998 in respect of:

Bailiwick of Jersey)		Anguilla)	
Falkland Islands*)		British Antarctic Territory)	
Hong Kong**)	With effect from	British Indian Ocean Territory)	With effect from
Isle of Man)	30 May 1997	British Virgin Islands)	22 July 1998
Montserrat)		Cayman Islands)	
South Georgia and)		Pitcairn, Henderson, Ducie and)	
South Sandwich Islands)		Oeno Islands)	
		St. Helena, Ascension and Tristan)	
		da Cunha***)	
		Turks and Caicos Islands)	

Bailiwick of Guernsey with effect from 14 September 2001.

³ Extended to Bonaire, Sint Eustatius and Saba (the Caribbean part of the Netherlands) with effect from 10 October 2010. For more details on the restructuring of the Netherlands see footnote 4, in section II of SOLAS 1974.

List of Nations not party to the Salvage Convention

213.	Angola
214.	Antigua and Barbuda
215.	Argentina
216.	Australia
217.	Bahamas
218.	Bahrain
219.	Bangladesh
220.	Barbados
221.	Belize
222.	Benin
223.	Bolivia (Plurinational State of)
224.	Bosnia and Herzegovina
225.	Brunei Darussalam
226.	Cambodia
227.	Cameroon
228.	Cabo Verde
229.	Chile
230.	Colombia
231.	Comoros
232.	Cook Islands
233.	Costa Rica
234.	Côte d'Ivoire
235.	Cuba
236.	Cyprus
237.	Czech Republic
238.	Democratic People's Republic of Korea
239.	Democratic Republic of the Congo*
240.	Djibouti
241.	Dominican Republic
242.	El Salvador
243.	Equatorial Guinea
244.	Eritrea
245.	Ethiopia
246.	Fiji
247.	Gabon
248.	Gambia
249.	Ghana
250.	Grenada
251.	Guatemala
252.	Guinea-Bissau
253.	Haiti
254.	Honduras
255.	Hungary
256.	Indonesia
257.	Iraq
258.	Israel
259.	Japan
260.	Kazakhstan
261.	Kuwait
262.	Lebanon
263.	Libya
264.	Luxembourg
265.	Madagascar
266.	Malawi

267.	Malaysia
268.	Maldives
269.	Malta
270.	Mauritania
271.	Monaco
272.	Morocco
273.	Mozambique
274.	Myanmar
275.	Namibia
276.	Nepal
277.	Nicaragua
278.	Pakistan
279.	Panama
280.	Papua New Guinea
281.	Paraguay
282.	Peru
283.	Philippines
284.	Portugal
285.	Qatar
286.	Republic of Korea
287.	Republic of Moldova
288.	Saint Lucia
289.	Saint Vincent and the Grenadines
290.	Samoa
291.	San Marino
292.	Sao Tome and Principe
293.	Senegal
294.	Serbia
295.	Seychelles
296.	Singapore
297.	Slovakia
298.	Solomon Islands
299.	Somalia
300.	South Africa
301.	Sri Lanka
302.	Sudan
303.	Suriname
304.	Thailand
305.	The former Yugoslav Republic of Macedonia
306.	Timor-Leste
307.	Togo
308.	Trinidad and Tobago
309.	Turkmenistan
310.	Tuvalu
311.	Uganda
312.	Ukraine
313.	United Republic of Tanzania
314.	Uruguay
315.	Venezuela (Bolivarian Republic of)
316.	Viet Nam
317.	Zambia
318.	Zimbabwe

Supplementary submissions, for further clarity, on questions raised and replied during the course of recording²⁰ of oral evidence before the Committee on 16.09.15.

1. Question: It is mentioned that liability of owner is exempted if the pollution damage is due to war, act intentional act/omission of third person, negligence/wrongful act of Government/ authority. Give some example of act of God and omission of third party. Who will decide on omission of third party Give some clarity on this aspect [Page No. 5 of document containing recorded oral evidence].

Answer/submissions: As was submitted by the DG Shipping, Gol, during the meeting, act of God or force majeure is a condition of occurrence of a natural calamity. Such an act needs to be an act which is not foreseen and is beyond the control of the human beings. If the person wants an exemption from the liability, he has to prove that such an act is not caused by him or his employee or agent, but by a third person. Hence the third person needs to be a totally external person not connected with the owner as employee or agent. As regards, the act of God, there is a plethora of case laws which has now got very well adjudicated and now has got very well settled by the apex court, as to what constitute an act of God or the force majeure situation. It is very well understood in terms of juristic principles, and there may not be any ambiguity for it during the adjudication proceedings. The court will decide, if it is an act of third party, in case there is a claim for an exemption from the liability.

2. Question: Claims to be preferred within three years from the date of damage or six years from the date of incident. Explain the two limitations given in the Act [Page No. 5 of the document containing recorded oral evidence].

Answer/Submissions: As was submitted by the DG Shipping, Gol, it is further clarified that one may get the compensation if a claim is made within three years from the date of occurrence of damage. However, no claim can be made after six years from the date of incident which has caused the damage. In simple words, it is perceptible damage for which there is an actionable claim, then the maximum limitation is three years. However, if there is an incident which otherwise is not so significant but later on can be related to original cause of action and more by way of social cause, then in such cases the limitation period shall be six years. It is in terms of graded impact on the environment and ecology which may occur immediately on occurrence of the incident or may come out after passage of time.

3. Question: There is mention of compulsory insurance & exemption to vessels owned or operated by the Government and used for the non

commercial service. Explain such exemption to Govt. vessels [Page No. 5 of the document containing recorded oral evidence].

Answer/submission: As was submitted by the Secretary (S), the vessels owned or operated by the Government and used for the non commercial service, are exempted from the compulsory insurance, as the broad principle is that the Government in case of accidents are funded sufficiently and if some compensation is to be paid to some person, the Government will be able to pay. Government is a kind of sovereign guarantee in itself. Therefore most of the equipments in the Government are not insured.

4. Question: When does a Convention come into force i.e. how countries are required to be party to a Convention to put it into force [Page No. 16 of the document containing recorded oral evidence]?

Answer/submissions: There are different criteria which are mentioned in the text of the respective Conventions itself. However, following is the criteria for putting these three Conventions into force;

Bunker Convention: Article 14 of this Convention stipulates that the Convention shall enter into force one year following the date on which 18 states, including 5 states each with ships whose combined gross tonnage is not less than 1 million, have either signed it without reservation as to ratification, acceptance or approval or have deposited the instruments of ratification, acceptance, approval or accession with the secretary General of the IMO. Accordingly the Bunker Convention, 2001 came into force only on 21.11.08

Nairobi Convention: Article 18 of this Convention stipulates that the Convention shall enter into force twelve month following the date on which 10 states have either signed it without reservation as to ratification, acceptance or approval or have deposited the instruments of ratification, acceptance, approval or accession with the secretary General of the IMO. Accordingly the Nairobi Convention, 2007 came into force only on 14.04.15 [i.e. this year only]

Salvage Convention: Article 29 of this Convention stipulates that the Convention shall enter into force one year following the date on which 15 states have expressed their consent to be bound by it. For an state which expresses its consent to be bound by this Convention after the conditions for entry into force thereof have been met, such consent shall take effect one year after the date of expression of such consent. Accordingly the Salvage Convention, 1989 came into force only on 14.07.96.

5. Question: Details of the around 30 wrecks already there in the Indian waters & what is happening to them may be give [Page No. 19 of the document containing recorded oral evidence].

Answer/submissions: The detail ²⁰ about the status of the wrecks already there in the Indian waters, is enclosed [Appendix-VII].

6. Question: Whether these Conventions are applicable to the fishing and cruise vessels?

Answer/submissions: The three conventions as mentioned do not make any reference or differentiate its application to the type of vessel. The general principle of application adopted is the gross tonnage of the vessel. The criteria for application of Bunker Convention to a ship are that it should be above 1000 GT. The Nairobi wreck removal Convention shall be applicable to ships which are of 300 GT and above. No such limit is mentioned in the Salvage Convention.

Comparison of existing and proposed provisions of the Bunker, Nairobi and Salvage Convention vis-a-vis benefits and cost to be incurred.

Name of the Convention	Existing provision	Proposed provisions	Benefits	Cost , if any to
International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 [Bunker Convention]	no Provisions	<p>Enables compensation for pollution damage caused by bunker oil used as fuel in a vessel.</p> <p>Liability of owner for cost incurred in taking preventive measures to minimize the damage.</p> <p>Liability of owner also for any damage caused while taking the preventive measures.</p> <p>Joint and several liability if damage is caused by two vessels</p> <p>[Certain exemptions are provided like war, act of third person].</p> <p>Owner may limit his liability as per LLMC Convention.</p> <p>High Court to determine the limitation of liability and distribution of claims.</p> <p>Claim may be made within three year of occurrence of damage but not later than six years from the incident.</p> <p>Owner of vessels above 1000GT need to maintain compulsory insurance or coverage financial security.</p>	<p>DGS can issue certificates of financial security to Indian ships which is now being issued by foreign entities.</p> <p>Claims can be made for any pollution damage caused by Bunker oil.</p> <p>Claims can be made for efforts to reduce damage.</p> <p>Foreign going Indian ships will be benefitted as DGS can issue compliance certificate.</p> <p>Time period for claims well defined, so will be processed quickly in time bound manner.</p>	<p>Vessel on international voyages are already complying with the requirement as Convention is already in force, hence no additional cost for such vessels.</p> <p>Vessels on the coast of India may have to take additional insurance cover.</p> <p>Cost of such insurance is not expected to exceed 1\$ per GT per annum [66.4 rupees</p>

		<p>A certificate to Indian vessel will be issued by the DGS.</p> <p>Certificate to foreign vessels may be issued on satisfaction that such vessel has insurance or financial security.</p> <p>Claim may directly be made against the insurer or person providing financial security.</p> <p>No vessel to enter or leave any port or place unless it has insurance cover or financial security.</p> <p>Certificate from foreign country who are party to this Convention will be accepted in India.</p> <p>Judgement by Indian court shall be enforceable in country which is a party to Bunker Convention.</p> <p>Power to make rules.</p>	<p>Indian coasts & ports will be protected from bunker pollution and ships not having insurance can be denied entry.</p> <p>Direct action against the insurers is possible, due to which there is no need to go through lengthy process, to recover the expenses.</p>	<p>per GT per annum], subject to the condition of the vessel, risk factor, claims history of the company and ships.</p>
<p>International Convention on Removal of Wrecks, 2007 [Nairobi WRC]</p>	<p>Part XIII Appointment of receiver of wrecks by central govt.</p> <p>Duties of receiver of wreck when a vessel is in</p>	<p>The new provisions will be applicable on wrecks at Indian coasts and up-to EEZ.</p> <p>Duty of master or operator to report the wreck to receiver of wreck and the DGS</p> <p>Duty of master or operator to report the wreck when it is out of India to that country and the DGS</p> <p>Foreign vessel becoming wreck in Indian waters to</p>	<p>Scope extended up-to EEZ i.e. beyond territorial waters, therefore better protection to ports approaches to near offshore and installation.</p> <p>Direct action against the insurers is</p>	<p>Same as above.</p> <p>The P&I cover provided by the IG group of Clubs generally includes cover for both Bunker pollution damage and wreck removal.</p>

	<p>distress [i.e. preserve lives & cargo as far as possible].</p> <p>Use of adjoining land to save lives, cargo or equipment when a vessel is wrecked or stranded or in stress. But damage caused to such place shall be a charge on the vessel, cargo or equipment. Such dispute to be decided by Magistrate.</p> <p>Person /Owner of a wrecked vessel to inform receiver about such wreck.</p> <p>Investigation</p>	<p>inform the DGS about it including its location, type, size, damage caused.</p> <p>Criteria has been specified for determination whether the wreck is a hazard [like type, size, depth of water, traffic density, metrological condition, proximity with tourist spots etc].</p> <p>DGS may direct the location and marking of wreck by receiver, Port authority, DGLL, maritime board, Indian coast Guard.</p> <p>If the wreck is determined to be a hazard, then owner or operator needs to mark it at his own cost till it is removed.</p> <p>Measures to facilitate the removal of the wreck & inform the ship's registry.</p> <p>Registered owner to remove wreck if it constitutes a hazard. Cost of marking and removal of the wreck to be borne by registered owner.</p> <p>Every Indian and foreign vessel of 300GT and above to have compulsory insurance coverage or financial security, otherwise may be detained.</p> <p>Claim for recovery of cost of marking and locating of wreck is three year from date of determination of hazard but not later than six years from the incident.</p>	<p>possible, due to which there is no need to go through lengthy process, to recover the expenses.</p> <p>Vessels of 300 GT and above without insurance coverage can be denied entry into Indian ports</p> <p>Quicker response mechanism to deal with the wrecks resulting in better protection of environment.</p>	
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	<p>by receiver of wreck Notice by receiver of wreck to public at large about a wreck Claim by owner within one year Search warrant when a wreck is concealed.</p>			
<p>International Convention on Salvage, 1989</p>	<p>Salvage payable for saving life, cargo or wreck, based on no cure no pay principle] Govt agencies are also entitled for payment for salvages services</p>	<p>Provide law for judicial or arbitral proceeding relating to salvage. Salvage payable even if there is no cure but efforts made for reduction of hazard or pollution Govt agencies are also entitled for payment for providing the salvages services. Master can enter into a contract for salvage. Intervention by other salvors acceptable if requested by owner.</p>	<p>Encourages salvors to attempt salvage, to minimise environmental damage even if complete success is not possible. Govt can intervene to give direction in salvage operation, to protect the environment.</p>	<p>Generally no cost on owner, unless salvage service is required due to the exigency. Cost of salvage will vary depending on the value of the property saved.</p>

<p>Dispute regarding amount due for providing salvage will be decided by judicial Magistrate or High Court.</p> <p>Power to make rules [for both wreck and Salvage]</p>	<p>Rights and duties of owner, Central Govt and salvors well defined.</p> <p>Central Govt can prescribe criteria for claiming rewards.</p> <p>Right of salvor to enforce maritime lien.</p> <p>Disputes to be decided by High Court.</p> <p>Salvor to make the claim within a period of two years.</p>	<p>salvors and owners of vessels have been clearly specified, so as to minimize disputes pertaining to claims, resulting in easier settlement of disputes.</p>	
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