

2007 年殘骸移除奈洛比國際公約

2007 年 5 月 18 日 奈洛比通過，2015 年 4 月 14 日生效

Nairobi International Convention on The Removal of Wrecks, 2007

Nairobi, 18 May 2007 , Enter into Force on 14 April 2015

WRC 2007

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簡介：本公約目的規範領海外殘骸之立即及有效移除之國際統一規範，提供締約國得予以移除之法律基礎，以填補現行國際法律架構中之漏洞。締約國可自行決定是否將本公約適用於該國領水。

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Preamble

THE STATES PARTIES TO THE PRESENT CONVENTION,

CONSCIOUS of the fact that wrecks, if not removed, may pose a hazard to navigation or the marine environment,

CONVINCED of the need to adopt uniform international rules and procedures to ensure the prompt and effective removal of wrecks and payment of compensation for the costs therein involved,

NOTING that many wrecks may be located in States' territory, including the territorial sea,

RECOGNIZING the benefits to be gained through uniformity in legal regimes governing responsibility and liability for removal of hazardous wrecks,

BEARING IN MIND the importance of the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982, and of the customary international law of the sea, and the consequent need to implement the present Convention in accordance with such provisions,

HAVE AGREED as follows:

Article 1 Definitions

For the purposes of this Convention:

1. "Convention area" means the exclusive economic zone of a State Party, established in accordance with international law or, if a State Party has not established such a 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 200 nautical miles from the baselines from which the breadth of its territorial sea is measured.
2. "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.
3. "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.
4. "Wreck", following upon a maritime casualty, means:
 - (a) a sunken or stranded ship; or

序言

本公約各會員國，

意識到如殘骸不予以移除，會造成航行或海洋環境危險之事實，

注意到為確使殘骸之立即有效移除及所涉成本之賠償支付，有採行國際統一規則及程序之需求，

注意到諸多殘骸可能位於各國領域內，包括領海，

瞭解到經由統一規範移除危險殘骸責任義務之法律制度可獲得之優點，

認知到1882 年 12 月 10 日於蒙德哥灣所制訂之聯合國海洋法公約及海洋國際習慣法之重要性，以及依照這些規定以實施現有公約之後續需求，

茲同意如下：

第 1 條 定義

於本公約：

1. 「公約區域」係指一會員國依國際法所劃設之專屬經濟區，或如會員國尚未劃設該區域者，為一領海外，連接領海，由該國依據國際法所決定，從領海基線量起，寬度不超過 200 浬之區域。
2. 「船舶」指任何型式之海船，包括水翼船、氣墊船、潛水船、浮艇及浮動平台，然該平台處於固定狀態並用於從事海底礦物資源開採、勘探或生產者除外。
3. 「海難事故」係指船舶之碰撞、擱淺或其他航行事故、或船上或外來可能造成船貨實質損害或實質損害之立即威脅之其他事件。
4. 「殘骸」指海難事故後之下列情況：
 - (a) 沈沒或擱淺之船舶；或

- (b) any part of a sunken or stranded ship, including any object that is or has been on board such a ship; or
- (c) any object that is lost at sea from a ship and that is stranded, sunken or adrift at sea; or
- (d) a ship that is about, or may reasonably be expected, to sink or to strand, where effective measures to assist the ship or any property in danger are not already being taken.
5. “Hazard” means any condition or threat that:
- (a) poses a danger or impediment to navigation; or
- (b) may reasonably be expected to result in major harmful consequences to the marine environment, or damage to the coastline or related interests of one or more States.
6. “Related interests” means the interests of a coastal State directly affected or threatened by a wreck, such as:
- (a) maritime coastal, port and estuarine activities, including fisheries activities, constituting an essential means of livelihood of the persons concerned;
- (b) tourist attractions and other economic interests of the area concerned;
- (c) the health of the coastal population and the wellbeing of the area concerned, including conservation of marine living resources and of wildlife; and
- (d) offshore and underwater infrastructure.
7. “Removal” means any form of prevention, mitigation or elimination of the hazard created by a wreck. “Remove”, “removed” and “removing” shall be construed accordingly.
8. “Registered owner” means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship at the time of the maritime casualty. However, 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.
9. “Operator of the ship” means the owner of the ship or any other organization or person such as 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.
10. “Affected State” means the State in whose Convention area the wreck is located.
11. “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.
12. “Organization” means the International Maritime Organization.
13. “Secretary-General” means the Secretary-General of the Organization.
- (b) 沈沒或擱淺船舶之任何部位，包括在該船上或曾經在該船上之任何物件；或
- (c) 從擱淺、沈沒或海上漂浮之船舶上落海之任何物件；
- (d) 近乎或可合理期待即將沈沒或擱淺之船舶，且已不再針對該危難中船舶或其任何財產進行任何有效果之撈救措施。
5. 「危險」指包括下列任一情況或威脅：
- (a) 對航行之危害或阻礙；或
- (b) 可合理預期會造成海洋環境之重大實質損害，或造成對一或更多會員國之海岸或相關利益之損害。
6. 「相關利益」指受殘骸直接影響或威脅之任何沿海會員國之利益，例如：
- (a) 對相關人們之生計具有重要意義之海岸、港口或入海口海洋活動，包括漁業活動；
- (b) 相關區域之旅遊吸引力及其他經濟利益；
- (c) 海岸人民之健康或相關地區之康樂，包括有生海洋資源或生物之保護；
- (d) 近岸或水下設施。
7. 「移除」指對殘骸所生危險之任何形式之防止、減輕或排除。「移除」、「已移除」及「正移除」應為同樣之解釋。
8. 「船舶登記所有人」指於海難事故當時登記為船舶所有人之人或數人，或於未登記之情況下，為擁有船舶之人或數人。如船舶為某國家所有且為於該國登記為船舶營運人之某公司所營運者，則船舶登記所有人為該公司。
9. 「船舶營運人」係指船舶所有人或從船舶所有人處取得承負船舶營運之任何其他組織或個人，例如船舶經理人或光船租船人，而就該義務承擔而言，該人已同意承擔國際安全管理章程及其修訂所課以之所有職責及義務。
10. 「受影響國家」係指殘骸所在公約區域之國家。
11. 「船旗國」指船舶已登記者，為船旗國；船舶未登記者，為有權懸其國旗之國家。
12. 「本組織」指國際海事組織。
13. 「秘書長」指本組織之秘書長。

Article 2 Objectives and general principles

1. A State Party may take measures in accordance with this

第 2 條 目的及一般原則

1. 有關公約區域內造成危險之殘骸之

Convention in relation to the removal of a wreck which poses a hazard in the Convention area.

2. Measures taken by the Affected State in accordance with paragraph 1 shall be proportionate to the hazard.
3. Such measures shall not go beyond what is reasonably necessary to remove a wreck which poses a hazard and shall cease as soon as the wreck has been removed; they shall not unnecessarily interfere with the rights and interests of other States including the State of the ship's registry, and of any person, physical or corporate, concerned.
4. The application of this Convention within the Convention area shall not entitle a State Party to claim or exercise sovereignty or sovereign rights over any part of the high seas.
5. States Parties shall endeavour to co-operate when the effects of a maritime casualty resulting in a wreck involve a State other than the Affected State.

Article 3 Scope of application

1. Except as otherwise provided in this Convention, this Convention shall apply to wrecks in the Convention area.
2. A State Party may extend the application of this Convention to wrecks located within its territory, including the territorial sea, subject to article 4, paragraph 4. In that case, it shall notify the Secretary-General accordingly, at the time of expressing its consent to be bound by this Convention or at any time thereafter. When a State Party has made a notification to apply this Convention to wrecks located within its territory, including the territorial sea, this is without prejudice to the rights and obligations of that State to take measures in relation to wrecks located in its territory, including the territorial sea, other than locating, marking and removing them in accordance with this Convention. The provisions of articles 10, 11 and 12 of this Convention shall not apply to any measures so taken other than those referred to in articles 7, 8 and 9 of this Convention.
3. When a State Party has made a notification under paragraph 2, the "Convention area" of the Affected State shall include the territory, including the territorial sea, of that State Party.
4. A notification made under paragraph 2 above shall take effect for that State Party, if made before entry into force of this Convention for that State Party, upon entry into force. If notification is made after entry into force of this Convention for that State Party, it shall take effect six months after its receipt by the Secretary-General.
5. A State Party that has made a notification under paragraph 2 may withdraw it at any time by means of a notification of withdrawal to the Secretary-General. Such notification of withdrawal shall take effect six months after its receipt by the Secretary-General, unless the notification specifies a later date.

Article 4 Exclusions

1. This Convention shall not apply to measures taken under the International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969, as amended, or the Protocol relating to Intervention on the High Seas in Cases of Pollution by Substances other than Oil, 1973, as amended.

移除，會員國得依據本公約規定，採行相關措施。

2. 受影響國依第 1 項規定所採行之措施，應與危險相稱。
3. 該措施不應偏離危險殘骸之移除合理所需程度，且於殘骸移除後應立即中止；其不應不必要地介入包括船旗國及任何相關之人、實體或公司法人之權利及利益。
4. 本公約於公約區域內之適用不應使會員國有權於公海之任何部分，主張或行使主權或主權上之權利。
5. 受到造成殘骸之海難事故影響之受影響國以外之國家，各會員國應盡力合作。

第 3 條 公約適用範圍

1. 除本公約另有規定外，本公約應適用於位於公約區域內之殘骸。
2. 會員國得依第 4 條第 4 項規定擴大本公約之適用範圍於殘骸位於其領域包括其領海之情況。此時，會員國應將前述情況通報秘書長，明示表明其願受本公約拘束之時間點。會員國通知本公約適用於殘骸位於其領域包括領海者，其不應損及該會員國對於位於其領域包括領海之殘骸，採行除依本公約為定位、標示及移除以外之任何措施之權利義務。本公約第 10、11 及 12 條規定，除本公約第 7、8 及 9 條規定者外，不適用於其所採行之任何措施。
3. 會員國依第 2 項規定為通報時，受影響國之「公約區域」即應包括該會員國之領域，包括其領海。
4. 會員國依前述第 2 項所為通報對該會員國之生效日期，如先於本公約之生效日期者，則於公約生效日才生效。如通報係於本公約對該會員國生效後才為之者，則於秘書長收到該通報六個月後生效。
5. 依第 2 項為通報之會員國得於任何時間，以向秘書長提送撤銷通知之方式，予以撤銷。該撤銷通知於秘書長收到撤銷通知六個月後或在該通知上所載明較晚日期屆滿後生效。

第 4 條 除外事項

1. 本公約不適用於 1969 年關於油污損害事故於公海行使干預國際公約及其修訂，或 1973 年關於油以外物質污損事故於公海行使干預公約議定書及其修訂所採行之措施。

2. This Convention shall not apply to any warship or other ship owned or operated by a State and used, for the time being, only on Government non-commercial service, unless that State decides otherwise.
 3. Where a State Party decides to apply this Convention to its warships or other ships as described in paragraph 2, it shall notify the Secretary-General, thereof, specifying the terms and conditions of such application.
 4.
 - (a) When a State Party has made a notification under article 3, paragraph 2, the following provisions of this Convention shall not apply in its territory, including the territorial sea:
 - (i) Article 2, paragraph 4;
 - (ii) Article 9, paragraphs 1, 5, 7, 8, 9 and 10; and
 - (iii) Article 15.
 - (b) Article 9, paragraph 4, insofar as it applies to the territory, including the territorial sea of a State Party, shall read:
Subject to the national law of the Affected State, the registered owner may contract with any salvor or other person to remove the wreck determined to constitute a hazard on behalf of the owner. Before such removal commences, the Affected State may lay down conditions for such removal only to the extent necessary to ensure that the removal proceeds in a manner that is consistent with considerations of safety and protection of the marine environment.
2. 本公約不適用於任何軍艦或政府所有或營運之其他非商業使用之船舶。
 3. 會員國決定將本公約適用於第 2 項所述軍艦或其他船舶者，該會員國應通知秘書長並特別指明所適用之條件及情況。
 4.
 - (a) 任一會員國一旦依第3條第2項為通報，本公約下列條款規定即不適用於其領域，包括其領海：
 - (i) 第2條第4項；
 - (ii) 第9條第1、5、7、8、9及10項；及
 - (iii) 第15條。
 - (b) 第9條第4項規定，就其適用於任一會員國之領域，包括其領海，應重讀為：
於適用受影響國國內法之情況下，船舶登記所有人得約僱任何救助人或其他人代替其進行構成危險之殘骸之移除作業。於開始為是項作業前，受影響國得對該移除作業設定條件，然僅限於為確保移除作業過程及方式能維護安全及海洋環境保護所需之程度。

Article 5 Reporting wrecks

1. A State Party shall require the master and the operator of a ship flying its flag to report to the Affected State without delay when that ship has been involved in a maritime casualty resulting in a wreck. To the extent that the reporting obligation under this article has been fulfilled either by the master or the operator of the ship, the other shall not be obliged to report.
2. Such reports shall provide the name and the principal place of business of the registered owner and all the relevant information necessary for the Affected State to determine whether the wreck poses a hazard in accordance with article 6, including:
 - (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 noxious substances; and
 - (e) the amount and types of oil, including bunker oil and lubricating oil, on board.

Article 6 Determination of hazard

When determining whether a wreck poses a hazard, the following criteria should be taken into account by the Affected State:

- (a) the type, size and construction of the wreck;

第 5 條 殘骸之通報

1. 會員國應要求懸該國旗幟之船舶之船長及船舶營運人應毫不遲延地將船舶可能成為殘骸之海難事故向受影響國家為通報。船長或船舶營運人任一方履行本條通報義務者，其他方即無義務再為通報。
2. 該通報應包括船舶登記所有人之名稱及主事務所所在地及受影響國家依公約第 6 條為認定殘骸是否構成危險所需之所有相關資訊，包括：
 - (a) 殘骸所在精確位置；
 - (b) 殘骸大小、形式及結構；
 - (c) 殘骸損害本質及狀況；
 - (d) 貨物性質及數量，特別是有毒有害物質；及
 - (e) 油料數量及類型，包括船上燃油及潤滑油。

第 6 條 危險之認定

於認定殘骸是否存在危險時，受影響國應考量下列因素：

- (a) 殘骸之大小、船型及構造；