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Challenges and Legal Issues Associated With Wrecks and Derelicts' Removal in Nigerian Waters

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Abstract

The paper explores the challenges and legal issues associated with wrecks and derelicts removal from the Nigerian waters. It aims at identifying the various obstacles militating against the removal of wrecks and derelicts from Nigerian waters so as to find the lasting solutions to the problems of wrecks and derelict's removal in Nigeria. The research method adopted is the doctrinal research method supplemented with information obtained from various maritime chambers, shipping companies and governmental maritime agencies. Research findings revealed that the cost of wrecks and derelicts' removal in Nigeria have become more expensive and complicated. It is therefore an issue of great concern to Nigeria. Hence, the paper among others, recommends the domestication of the Nairobi international convention on the removal of wrecks 2007 in Nigeria without further delay. It also stresses the urgent need to review, amend and strengthen our domestic wrecks removal laws.

Keywords: Shipwrecks, derelicts, maritime, debris, Nigerian waters

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1. Introduction

The moment a ship reaches the end of its useful life, either following an accident at sea or when its owner decides that repairs and maintenance costs are not financially viable anymore, the vessel become a wreck.¹ The wreck of a ship poses several difficulties to the local community as well as the State.² It represents a serious environmental threat and a great financial burden on the local community with the government sometimes, left to foot large clean- up bills.³

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¹ Eva Grey Ship Technology, Cleaning up shipwrecks across the World (2017), available online at: <https://www.ship-technology.com/features/featurecleaning-up-shipwrecks-across-the-world-5728943/> accessed 16 May 2021.

² Rebecca Hamra, 'Wreck Removal and the Challenges of Constructive Total Loss', (2019), available at: <https://www.stabdard-club.com/knowledge-news/press-article-wrech-removal-and-the-chanllenges-of-cts-1181/>, (accessed 02 June 2020).

³ Grey, (n 1).

The devastating effects of Shipwreck and derelict vessels on the marine and coastal environment as well as the resulting economic losses and significant clean-up costs have led to much public attention on the menace of Shipwrecks and Derelicts and the challenges associated with removing them from the marine and coastal environment.⁴ This in fact, has spurred the development of international legal instruments as well as the adoptions and applications of international treaties, such as the Nairobi International Convention on the removal of Wrecks, 2007,⁵ to prevent and respond to such incidents and to provide for financial compensation via compulsory insurance in respect of loss resulting from incidents associated with Shipwrecks and Derelict Vessels.

In recent years, the costs of wreck removal operations have dramatically risen, partly due to a series of major incidents involving complex operations and partly to advances in technology which have made these operations possible. The ocean victory (Japan, 2006), the Rena (New Zealand, 2011), the Titanic (Britain, 2012) and the Costa Concordia (Italy 2012) incidents are just four, between them that cost many hundreds of millions of dollars in wrecks removal operations alone.⁶

The Protection and Indemnity Insurers have been willing to pay for reasonable operations but sometimes, there have been different views as to whether the proposed work was reasonably necessary or whether costs were incorporated to any hazard envisaged. Furthermore, disputes may arise as to how the costs are to be borne of wreck removal operation relating to an oil tanker presenting a threat of pollution after an incident governed by the Civil Liability and Fund Conventions.⁷ Difficulties may also arise regarding Limitation of Liabilities. This is because some states may have either exercised the reservation or opt-out clause contained in the International Convention for Limitation of Liabilities for Maritime claims (LLMC) 1976 (as amended), to exclude wrecks removal claims or due to liabilities incurred in the same incident for other types of maintenance claims.

This paper aims to identify the various impediments militating against the removal of wrecks and derelict vessel from Nigerian water. It hopes to recommend a solution to the problem of wrecks and derelicts removal from Nigeria. The paper is divided into four parts. Apart from this introduction, part 2 deals with the reasons for the sinking of ships. Part 3 addresses the challenges and legal issues associated with wrecks and derelicts' removal from the Nigerian coast while part 4, covers the conclusion and recommendations.

2. Reasons for the sinking of ships

Ships sink for many reasons. The various reasons, inter alia, are examined below:

a) *Negligence and human errors*

The element of human fallibility will always exist and will remain the prime cause of collision in navigable waters and consequently, the major reasons for the sinking of ships. Fatigue, negligence and simple mistake, all contribute to a number of disasters at sea. These occur when ships are

⁴ United Nations Conference on Trade and Development (UNCTAD), 'Liability and Compensation for Ship-Source Oil Pollution: An Overview of the International Legal Framework for Oil Pollution Damage From tankers', (2012) available at: <https://unctad.org/news/liability-and-compensation-ship-source-oil-pollution>, (accessed 15 June 2020).

⁵ The Nairobi International Convention on the removal of wrecks, 2007, available at: <https://www.imo.org/en/About/Conventions/Pages/Nairobi-International-Convention-on-the-Removal-of-Wrecks.aspx>, (accessed 02 October 2022).

⁶ Collins de la Rue, Shipping and the Environment– Legal consultancy (2015), available online at: <https://www.collindelarue.com/>, accessed on 10 July 2020

⁷ Ibid.

undermanned with crews that are not properly trained or that are fatigued or not properly managed.⁸ Consequently, simple avoidable errors are prone to occur, for example, a wrong judgment regarding technical aspects can lead to the stability of the vessel being compromised. Hence, adequate efforts should be taken to keep the crew well-rested and to ensure that the vessel is properly manned at all times.

b) Grounding and collision

Many ships sink when they collide with rocks, reefs, icebergs or other ships. Grounding occurs when a vessel runs aground or otherwise makes contact with the sea bed.⁹ It is the impact of a ship on seabed or waterway side.¹⁰ Put simply, grounding is when the bottom of a ship is scrapped on the ground or on rocks near to the shore. The dangers associated with ship grounding vary according to the vessel and the situation that leads to the impact.

In some cases, ship grounding can lead to the vessel being stranded on the seabed that is contacted and allowing water to flood the vessel. The structural damage to the ship can be catastrophic, which may lead to loss of human life on board the vessel. If the grounding vessel is carrying dangerous or harmful cargo, it can have significant impacts on the surrounding environment. It can lead to oil spill that will contaminate the waters and shorelines nearby. This can lead to significant loss of animals and plants and can threaten the health of an entire ecosystem as well as the human population nearby.¹¹

Furthermore, the financial costs of such a spill can be very monumental both for the ship owner and the oil company, as well as the surrounding communities. Besides, once a ship is grounded, there is always a chance for the vessel to collide with other ships, if proper precautions are not taken, as it may take the ship hundreds of metres to come to a stop. Collision can also lead to loss of cargo which can destabilize the ship, leading to loss of stability.¹²

c) Flooding

A flood or flooding is an over flow of water that submerges the ship. It is the most common reason why ship sinks. A vessel suffers flooding and loss of integrity, caused by sea water ingress into the engine room, due to a hole in the hull or leakage from equipment and system.¹³ When water is able to enter the vessels through openings in the hull or superstructure, the regions are filled with water which creates imbalance, as the weight of the ship now larger than that of the displaced water. As a result, the vessel continually sinks lower in the water until it is completely submerged.¹⁴

d) Bad weather condition

Poor weather condition like wind, waves of the sea, low visibility is exceedingly common for ship sinking. Modern ships are much better at coping with storms and rough waters than ships of the

⁸ Ajay Menon, 'Why Ships Sink', (2020) 1, available at: <https://www.marineinsight.com/naval-architecture/why-ships-sink-10-major-reasons/>, (Accessed 02 October 2020).

⁹ Dan Cavallari, 'What is Ship Grounding?' Available at <http://www.wikimotors.org/what-is-ship-grounding.htm> (accessed 09 October 2022).

¹⁰ A. Mazaheri, J. Montewka, and P. Kujala, 'Modelling the Risk of Ship Grounding – A Literature Review from a Risk Management Perspective', (2014) 13(2) *WMU – Journal of Maritime Affairs*, 269-297.

¹¹ Ibid.

¹² Ibid.

¹³ IMCA, 'Vessel flooding Incident', available at: <https://www.imca-int.com/safety-events/vessel-Flooding-incident/> (accessed 10 October 2022).

¹⁴ Ajay Menon (n 8).

past but they are still vulnerable.¹⁵ Vessels can sink when wind and waves of the sea forcing the ship to lean at dangerous angles. They force vessels to take water which eventually leads to it becoming unstable and susceptible to sinking.¹⁶ Instability occurs when the centre of the ship strays from the optimal position. This can lead to the capsizing of the ship.

The few cases in which a ship sinking is a complete accident, weather is often to blame. For example in 1991, a cruise ship, MTS Oceanos, a French built and Greek-owned ship sank due to bad weather. She suffered uncontrolled flooding.¹⁷ Another cruise ship incident involving the Chinese MV DongfangXhi Xing in 2015 with 454 passengers onboard when it capsized in a severe thunder storm while travelling on the Yangtze River in Jianli, Hubei Province in China. 442 deaths were confirmed, with 12 rescued.¹⁸

Sometimes, capsizing can be prevented, even when bad weather is the cause. Storm tracking and navigation allows Captains to change course to avoid hazardous situations. Besides, Shipowners take necessary precautions to prevent sinking or capsizing of vessels, including keeping the ship seaworthy as well as ensuring workers are adequately trained among other things.¹⁹

e) Faulty equipment

Faulty equipment used in navigation of ship is one of the causes of accidents in maritime industry. Modern equipment guides the officers of the ship in the bridge in ensuring stability. Equipment, if not maintained or repaired when broken can cause serious harm. Besides, when ship workers are not adequately trained on how to use the equipment, accident are likely to happen. Poor training may lead to a worker using equipment incorrectly, not communicating correctly with other workers.²⁰

On the open ocean, stability can sometimes be low owing to mist or fog. More so, waves can make it difficult to detect floating object that may pose a danger to the vessel. Thus, faulty equipment is extremely dangerous, since the crew may use them to make key decisions.²¹

f) Fire and electrical accidents

Fire and electrical accidents are another reason why ship may sink. The explosion of cargo and chemical substances can destroy a vessel. When electrical systems are not kept up to date or are not maintained, serious explosion can occur. Electrical system and other causes of fires can be devastating, especially on ship at a sea, when there is nowhere to run.²²

¹⁵ Maritime Injury Centre, 'Vessel Capsizing and Sinking' Available at: <https://www.maritimeinjurycenter.com/accidents-and-injuries/vessel-capsizing-and-sinking/> accessed 10 October 2022.

¹⁶ Ajay Menon (n 8).

¹⁷ Wikipedia, 'MTS Oceans', available at: <https://en.m.wikipedia.org/wiki/mts-oceanos> (accessed 10 October 2022).

¹⁸ Saheed Ahmed, 'China Cruise Ship Disaster: 434 Bodies Recovered; 8 Still Missing', available online at: <https://edition.cnn.com/2015/06/08/asia/china-ship-sinking/index.html> (accessed 10 October 2022).

¹⁹ Ibid.

²⁰ Maritime Injury Center, 'Maritime Accident and Injury Overview', available at: <https://www.maritimeinjurycenter.com/accidents-and-injuries/> accessed 15 October 2022.

²¹ Ajay Menon (n 8).

²² Ibid.

A good example was the Liners SS Normandie.²³ The SS Normandie was a French ocean Liner, built in Saint-Nazaire France. It was launched in 1932. In 1942, the SS Normandie caught fire and sank. The ship was the largest ship in the world for five years.

g) Piracy, sabotage and hijacking

This is an act of robbery or criminal violence by ship or boat-borne attackers upon another ship.²⁴ Piracy at sea continues to be a menace.²⁵ Armed with missile launchers, torpedoes and interception devices, they are able to effectively board, loot and eventually sink the vessel that they attack. Generally, piracy results in the ship and the crew being held for ransom.²⁶ Once the target ship surrenders, the crew most likely would be taken prisoners or killed.²⁷ More than a dozen ships with almost 300 crew are currently in the hands of pirates, who have demanded millions of dollars in ransom.²⁸

Modern day pirates use sophisticated technology that rivals the Navies of some countries. Sometimes, the ships are too massive for the pirates to manage and hence, the bottom is scuttled once the attack is complete.²⁹ Thus, sabotage, hijacking and piracy are serious grounds for a vessel's sinking. Hijacking and piracy are very common, notably off parts of South-East Asia, South America and Africa, in the Mediterranean and the Indian Ocean.³⁰

Other factors responsible for the sinking of a vessel include: lack of proper dredging; lack of navigational aids; vessel age with older vessels being more prone to sinking as standard tends to decline as vessels mitigate during their life span to lower quality operation;³¹ vessel owner cannot or does not want to pay to properly dispose the vessel and allows it to sink and deteriorate in the waters.³²

3. Challenges and Legal Issues Associated with Wrecks and Derelicts' Removal from the Nigerian Coast

Shipwrecks and derelict vessels are problems for many Nigerian harbours, bays and shorelines. Sunken, stranded and decrepit vessels can be an eyesore and become hazards to navigation. At the same time, these vessels can pose significant threats to natural resources. They can physically destroy sensitive marine and coastal habitats, sink or move during coastal storms, disperse oil and toxic chemicals still on board, become a source of marine debris and spread derelict nets and fishing

²³ War History Online, 'SS Normandie', Available at: <https://www.warhistoryonline.com/ships/ss-normandie.html> accessed 19 August 2022.

²⁴ G.A. Olagunju, 'Piracy Jure Gentium: Re-Surgence of the Old Problem as a New Challenge in International Maritime Law', (2011) 4(2) *Journal of African and International Law* 309-325.

²⁵ G.A. Olagunju (n 24).

²⁶ G.A. Olagunju (n 24).

²⁷ The Pirate Ship 'Royal Conquest, How Pirates Captured a Ship', available at: <https://boattoursjohnspass.com/how-pirates-captured-a-ship/>, accessed 15 October 2022.

²⁸ The Guardian, 'Pirate Ship Sunk by Indian Navy was Hijacked', available at: <https://amp.theguardian.com/world/2008/nov/26/piracy>, accessed 15 October 2022.

²⁹ Ibid.

³⁰ Robin Rolf Churchill and Alan Vaughan Lowe, *The Law of the Sea* (3rd Edition), (1999), 209.

³¹ Lou Rui, 'Average Ship Towing', (2014) 6 *Navigation Technology* 31-32.

³² Transport Canada, 'Addressing Abandoned Derelict Wrecked Vessels in the Canadian Coast' (2016), available at: <https://www.ccg-gcc.gc.ca/awah-ienad/addressing-intervention-eng.htm>, (accessed on 30 October 2020).

gear that entangle and endanger marine life.³³ In particular, several challenges and legal issues exist in the removal of shipwrecks and derelict vessels from the Nigerian waters.

3.1 Difficulties in the identification of the vessel's owner

The first challenge in the removal process of a derelict or wrecked vessel is locating or finding the owner of the vessel. Section 367 of the Merchant Shipping Act³⁴ provides that the Receiver of wrecks which is domiciled in the Nigeria Maritime Administration and Safety Agency (NIMASA), must "set a reasonable deadline" by which the shipowner must remove the wreck.

The shipowner must then be notified in writing of the deadline and informed that should he (the shipowner) fail to remove the wreck, the receiver will do so at the shipowner's expenses. The cost associated with the removal of wrecked and derelict vessels in most cases, exceeds the value of the vessels. More importantly, the cost can only be recovered if the owner of the vessel is known and has enough assets to offset the cost of removing the abandoned vessel.

In Nigeria, most vessels have incomplete registration and many such vessels cannot be linked to a specific owner. Identification of a vessel can be carried out using, two pieces of information namely: identification number (I.D) assigned to the vessel and name of the owner.³⁵ In cases of wrecked and derelict vessels, the I.D numbers can easily be removed thereby rendering the vessels almost impossible to identify the owners. Consequently, it is often the case that the owner of wrecked or derelict vessel in Nigeria, cannot be found. This creates obvious difficulties with respect to ordering removal. Moreover, even where government has ordered removal, it is impossible to recover removal costs without a named defender, more so, as the cost of removal will usually exceed the value of the wrecked or derelict vessel.

3.2 The rising cost of wreck and derelict removal

Removal of shipwrecks and derelict vessels from the coastline or from deeper water are major undertakings and expensive ventures which can incur great costs and challenges. It is an acknowledged fact that in the past few years, the world has witnessed countless accidental and great numbers of high-profile marine wrecks such as "the Haven" which sank in 1991 off Genoa, Italy, with an oil cargo of about 144000mt.³⁶

Similarly, there was the incident of MSC Napoli in the English Channel in 2007, which cost £120 million and saw hundreds plunder the 2300 washed up containers.³⁷ It cannot also be easily forgotten in a hurry, the incident of "the Rena" which ran aground in New Zealand in 2011³⁸ and

³³ Office of Response and Restoration, 'Abandoned and derelict Vessels', available at: <https://response.restoration.noaa.gov/oil-and-chemical-spills/abandoned-and-derelict-vessels>, (accessed on 18 October 2022).

³⁴ Merchant Shipping Act, No. 27 of 2007, Cap M11 LFN 2004.

³⁵ Eric Machum and Kyle Ereaux, 'Abandoned and Derelict Ships: Where Do We Go from Here', available at: <https://www.cmla.org/papers/Derelict%20and%20abandoned%20ships.pdf>, (accessed 30 May 2021).

³⁶ Safety for Sea, 'MT Haven: The Worst Oil Spill Ever in the Mediterranean', available at: <https://safety4sea.com/cm-mt-haven-the-worst-oil-spill-ever-in-the-mediterranean/>, (accessed 22 October 2022).

³⁷ Tianna Corbin, 'Looking Back at MSC Napoli Shipwreck Disaster, 13years on', available at: <https://www.devonline.com/what-on/what's-on-news/looking-back-MSC-napoli-shipwreck-3835767.amp>, (accessed 22 October 2022).

³⁸ C.N. Battershill, P.R. Rose and D.R. Schiel, 'The MV Rena Shipwrecks: Time – Critical Scientific Response and Environmental Legacies', (2016) 50(1) *New Zealand Journal of Marine and Freshwater Research*, 173-182.

most recently, there was equally “the Costa Concordia”, which sank off the Western Coast of Italy in 2012.³⁹

In the same manner, Nigeria has her own share of the menace of shipwrecks and derelict vessels. In the last few years, the Federal Government of Nigeria has spent billions of naira to clear waterways of wrecks and derelict vessels.⁴⁰ While raising public awareness of the continued perils of shipping, even in this day and age of advanced technology and engineering, these cases highlights an issue of growing concern to marine insurers, shipowners and wider marine industry. Managing wrecks removal operations of these cases has cost or is costing in the case of Costa Concordia, huge amount of money as well as technical and environmental challenges.⁴¹ For mariners, insurers, shipowners and salvage contractors alike, the rising cost of removing wrecks is of equal concern. Wreck removal has not only become more visible and expensive but also more common. Changing attitudes to the environment and media focus mean that there is in general, a presumption that a wreck should be removed.⁴²

The above well-known cases of the container ship MSC Napoli, beached off the South Coast of England and the container ship Rena, grounded offshore in New Zealand, generated worldwide interest. These cases have now been eclipsed by the cruise liner Costa Concordia which appears to be the most complex and expensive wreck removal operation of its kind. It cost the insurance industry about \$600 million which does not include the cost of the hull. Such cases have raised public awareness of the issue of wreck removal, but the shipping and insurance industries have a particular concern with the rising cost: according to the international Group (IG) of major P&I clubs (the Marine Industry's Mutual Liability Insurers) the total cost of the top 20 most expensive wreck removal from the past decade is presently at US \$211 billion and set to rise as some cases are ongoing.⁴³

Analysis of the costliest wreck removal by large casualty working group of the International Group of P&I Club suggest that the following factors are central to the cost of wreck removal: location of wreck; type of and size of the ship; depth of the sea; value of the cargo recovered; effectiveness of the contractor; and nature of the bunker fuel removal.⁴⁴

³⁹ Becky Little, ‘The Costa Concordia Disaster: How Human Error made it worse’, (2021), available at: <https://www.history.com/amp/news/Costa-concordia-Cruise-Ship-disaster-sinking-captain>, (accessed 22 October 2022).

⁴⁰ The Sun Nigeria, ‘N.P.A-Single Shipwreck Costs F.G \$1.8M to remove’ (2017), available at: <https://www.sunnewsonline.com/single-shipwreck-costs-fg-1.8m-to-remove-mpa/>, (accessed 22 October 2022); Amaka Anagor, ‘NIMASA Opens N30 Billion Wreck Removal, Recycling Market in Nigeria’ (2021), available at: <https://businessday.ng/amp/maritime/article/nimasa-opens-n30bn-wreck-removal-recycling-market-in-nigeria>, (accessed 22 October 2022).

⁴¹ Tom Bolt, ‘Director, Performance Management, Lloyd's, Forward’ in J. Hebert (ed), *The Challenges and Implication of removing Shipwrecks in the 21st Century* (2016), available at: <https://assets.lloyds.com/assets/pdf-risk-reports-wreck-report-final-version/1/pdf-risk-reports-Wreck-Report-Final-version.PDF>, (accessed 22 October 2022).

⁴² Hugh Shaw, ‘The Secretary of State's Representative for Maritime Salvage and Intervention’, in J. Hebert (ed), *The challenges and implication of removing Shipwrecks in the 21st Century* (2016), available at: <https://assets.lloyds.com/assets/pdf-risk-reports-wreck-report-final-version/1/pdf-risk-reports-Wreck-Report-Final-version.PDF>, (accessed 22 October 2022).

⁴³ Andreas Tsavlis, ‘Wreck removal Issues – the Contractors perspective – the International Salvage Union – Saving Lives, Ships and Cargo’, available at: <https://www.marine-salvage.com/media-information/articles/archive/wreck-removal-issues-the-contractors-perspective/>, (accessed 22 October 2022).

⁴⁴ J. Hebert, ‘The Challenges and Implication of removing Shipwrecks in the 21st Century’ (2016), available at: <https://assets.lloyds.com/assets/pdf-risk-reports-wreck-report-final-version/1/pdf-risk-reports-Wreck-Report-Final-Version.PDF>, (accessed 23 October 2022).

Thus, the cost of wreck removal has generally increased over the past few years. As the cost of wrecks removal rise, so do the cost of insurers and ultimately ship owners.

3.3 Lack of compulsory insurance provisions and direct actions against ship owners' insurers

Shipwrecks are third party liabilities and therefore, the costs of dealing with them are usually covered by the ship owners' membership of a Mutual Protection and Indemnity Club (P&I club).⁴⁵ Recognizing that it is crucial that ship owners have the obligations for the cost of reporting, locating, marking and removal of wrecks and derelict vessels, there is a great need for mandatory insurance for vessel owners.

The insurance or other financial security such as a guarantee of a bank or similar institution covers liability in an amount that equals the limit of liability under the applicable national or international regime. Regrettably, the provision for compulsory insurance or other financial security by the ship owners as well as direct actions against the ship owners' insurers are lacking in Nigeria's various statutes that purport to regulate wrecks and derelict vessels removal. The statutes comprise; the Merchant Shipping Act 2007, the Nigeria Port Authority Act, the National Inland Waterway Authority Act, and the Nigerian Maritime Administration and Safety Agency Act.⁴⁶

The Nairobi International Convention on the removal of Wrecks, 2007, provides the legal basis for states to remove or have removed shipwrecks that affect adversely the safety of lives, goods and property at sea as well as the marine environment. The Nairobi Convention provides a set of uniform international rules aimed at ensuring the prompt and effective removal of wrecks located beyond the territorial sea of States parties.⁴⁷ The Convention also includes an optional clause enabling States parties to apply certain provisions of the Convention to their territory, including their territorial seas.⁴⁸ Although, the Nairobi International Convention does not expressly mention abandoned and derelict vessels per se, there is some overlap. More so, even as derelict vessel is a form of wreckage.⁴⁹

Importantly, Article 12(1) of the Nairobi Convention mandates all ship owners to maintain compulsory insurance or other financial securities like bank guarantee, to cover liabilities for wreck removal for all vessels in excess of 300 Gross Tones. Article 12(10) on the other hand, provides for direct actions against the vessel owners' insurers by the State party.

Nevertheless, Nigeria has not yet domesticated the Nairobi International Convention on the removal of Wrecks, 2007, even though she has ratified it.⁵⁰ The implication is that, Nigeria will not be able to enforce the provisions of the Nairobi Convention on the registered ship owners in Nigeria, especially its provisions of compulsory insurance and direct actions against ship owners' insurers, since it is not yet a law in Nigeria. Even more critically is the issue of difficulty of

⁴⁵ J. Hebert (n 44).

⁴⁶ J. Hebert, *Ibid*, (n 44), Merchant Shipping Act, no.27 of 2007, Cap M11 LFN 2004; Port Authority Act, cap 126 Laws of Federation of Nigeria, 2004; National Inland Water Ways Act, Cap N47, LFN 2004; Nigerian Maritime Administration and Safety Agency (NIMASA) Act, No.17 of 2017, Cap N161, LFN 2004.

⁴⁷ IMO, Nairobi International Convention on the Removal of Wrecks, 2007, available at: <https://www.imo.org/en/About/Conventions/ListofConventions/pages/Nairobi-International-Convention-on-the-Removal-of-Wrecks.aspx>, (accessed 23 October 2022).

⁴⁸ Article 3.2 and Article 4.4 of the Nairobi International Convention on the removal of wrecks, 2007.

⁴⁹ Article 1.4 of the Nairobi International Convention, 2007.

⁵⁰ Joy Dimka, Wreck removal can boost the sustainability of Nigerian maritime <https://www.financialnigeria.com/wreck-removal-can-boost-the-sustainability-of-nigerian-maritime-blog-651.html#:~:text=Nigeria%20was%20the%20eighth%20country,of%20wreckage%20removal%20in%20Nigeria>.

enforcing the law. For example, there are limited actions that the Nigerian Authorities may take against a shipowner with limited financial capacity, whose vessel become a wreck.

3.4 The fragmented and limited scope of the regulatory and institutional frameworks in the Nigerian maritime industry

The prevalence of shipwrecks and derelict vessels in the Nigeria Coast and the associated cost incurred to remove them points to the fact that the current legal and institutional frameworks are not well-suited to deal with the menace of shipwrecks and derelicts in Nigeria. The legal frameworks governing wrecks and derelicts removals in Nigeria is a blend of our coastal state's domestic laws and the relevant international Conventions such as the Nairobi International Convention on the removal of Wrecks, 2007 and the 1976 International Convention on the Limitation of Liability for Maritime Claims, as extended by its Protocol of 1996.

The Nigerian coastal domestic laws on the removal of shipwrecks and derelict vessels are spread out in several regulations. Thus, there is a lack of uniformity or commonality in the approach to wrecks and derelicts removal in Nigeria. The Nigerian Port Authority (NPA) and National Inland waterways Authority (NIWA) Acts are very useful and necessary legislations in regulating the removal of wrecks and derelicts in Nigeria. The two legislations apply to obstructions in the navigable waters within the port environs and inland waterways of Nigeria. Section 7(1) of the NPA Act empowers the Authority of NPA to control pollution arising from oil or any other substances from ship, using the port limit or their approaches. Section 9(d) of the NIWA Act, on the other hand, vest on the Authority of the National Inland waterways, the power to survey, remove and receive derelicts and wrecks and other obstructions from inland waters.

The Nigerian Maritime Administration and Safety Agency (NIMASA) Act, Section 22 precisely, saddles the agency with the responsibility of State port control and administration, wrecks receipt and removal and marine pollution prevention and control. It is worthy to note that unlike the provisions of the NPA and NIWA, which restrict their powers over wrecks to inland waters and port environs respectively, NIMASA is not restricted to any particular area. NIMASA's regulatory control extends over the economic zone, territorial and inland seas, inland waterways and the ports of the Federal Republic of Nigeria. However, it is important to stress that it is this "open ended or blanket" provision in the NIMASA Act that brings it into conflict with both the NPA and NIWA in the agencies' exercise of their respective statutory mandates.⁵¹

However, the Merchant Shipping Act (MSA) 2007 is unable to define precisely, the geographical and operational ambit of the receiver of wrecks in Nigeria. Besides, the liability of the ship owner with regards to the cost of reporting, locating, marking and removal of wrecks in Nigeria is not well articulated. More so, there is no requirement for compulsory insurance or other financial securities like bank guarantee to indemnify the regulatory Authority of the above expenses. Furthermore, Section 364 of the MSA 2007 which empowers the receiver of wrecks to remove all wrecks that constitute hazard to navigation, did not explicitly name NIMASA as the receiver of wrecks in Nigeria. This has caused conflict and controversy among the various governmental agencies charged with the responsibility of administering wrecks and derelicts in Nigeria.

Moreover, it stands to reason from the provision of Section 364 of the MSA 2007 that if a wreck does not pose hazard to navigation, it will not necessitate removal. The Nigerian territorial waters cover a vast area, while some portions are frequently used for navigation, there are inevitably larger

⁵¹ Global Legal Group, 'Shipping Laws and Regulations Nigeria 2025-2026', available at: <https://iclg.com/practice-areas/shipping-laws-and-regulations/nigeria>.

portions that are rarely navigated. Given this contrast, if only those wrecks that pose hazard to navigation are subject to removal, there will be considerably larger wrecks to be abandoned in the Nigeria waters. The environmental consequences could be very great. Wrecks may be harmless to navigation and still need to be removed from the waters.

More so, it can be deduced from the provision of section 364 of the MSA 2007 that wrecks and derelict vessels found beyond the territorial sea of Nigeria or in the Exclusive Economic Zone, that pose hazard to navigation cannot be removed by the country. More importantly, the MSA 2007 did not provide for underwater cultural heritage or shipwrecks on the deep sea bed. Thus, the overall regulatory framework governing the removal of shipwrecks and derelict vessels in Nigeria is disjointed, fragmented and limited in scope. The laws are difficult to comprehend and full of conflicts and controversies.

The four different statutes that purport to regulate the administration and removal of wrecks and derelicts are scattered in different documents. There is no nexus connecting the various statutes together. Why Nigeria needs four different ways to remove wrecks and derelict is uncertain. Why these powers are scattered in four different statutes are even less clear. None of the statute makes reference to the other and there is no interaction whatsoever among them. Altogether, confusion reigns and the entire legal system lack unity. The entire system is in a state of comatose, disjointed and lacks nexus. Indeed, this fragmented and limited scope of the regulatory framework in the Nigerian maritime industry has aided many shipowners to escape liabilities for wrecks and derelicts' removal. Consequently, it becomes a burden for the Nigeria Government to have the wrecks and derelicts removed because it is the responsibility of government to protect the marine environment as every ship has the right of innocent passage whilst traversing the territorial sea.⁵²

3.5 The location and types of the wreck

International legal variations make the location of a wreck an important factor in determining how it is treated. For example, is it located within the territorial waters or Exclusive Economic Zone (EEZ)?⁵³ Removing wrecks that are located within the Exclusive Economic Zone (EEZ) applies only to the states that have ratified the Nairobi International Convention on the Removal of Wrecks, 2007.⁵⁴ Thus, location of wreck or derelict is very crucial and poses great challenge in the removal process. Environmental damage, remote site, distant from supply bases and sources of heavy equipment pose challenges, as the duration of the operations extends and the period of hire for equipment lengthens. Globally, the amount of heavy lifting gear is limited and concentrated in comparatively few locations. Larger parts of the world are very distant from the equipment that might be needed to undertake a substantial wreck removal.⁵⁵

The type of vessel that is wrecked is also a major factor. All classes of vessels offer their own challenges but container ships present higher and more difficult challenges in removing large number of containers individually, which can be a protracted process, even before dealing with the wrecked hull itself.⁵⁶ Thus, the location and type of wreck is very crucial with some vessels located in hard-to-reach area, requiring large, specialized equipment for recovery. Some derelict and wrecked vessels may contain fuel and hazardous materials which could leak into the surrounding

⁵² Articles 192 and 194 of the United Nations Convention on the Law of the Sea, 1982.

⁵³ Simon O. Williams, 'Law of the Sea Mechanism: Examining UNCLOS Maritime Zones (2014)', available at: <https://maritime-executive.com/article/Law-of-the-Sea-Mechanism-Examining-UNCLOS-Maritime-Zone-2014-12=01>, (accessed 27 April 2020).

⁵⁴ Article 1.1 and 3.1 of the Nairobi International Convention on the removal of wrecks 2007.

⁵⁵ J. Hebert (n 44).

⁵⁶ J. Hebert (n 44).

waters. The wreckage may persist for years, breaking apart and creating widespread debris that threaten marine and coastal resources.⁵⁷

3.6 Lack of skilled personnel with expertise and technical know-how

The removal of wrecked and derelict vessels is a difficult and major undertaking that requires complex engineering and the use of substantial and sophisticated inventories of equipment including heavy lifting gear as well as skilled personnel.⁵⁸ There is acute dearth of highly skilled and competent underwater engineers in Nigeria to undertake such sophisticated task. Majorly of the consultants parading themselves as salvage and wreck removal specialists in Nigeria ostensibly lack the technical know-how and the requisite knowledge of the equipment to undertake the complex task of wrecks and derelicts removal.⁵⁹

Wrecks and Derelicts' removal operations should be carried out by highly skilled and competent personnel with technical know-how and knowledge of the equipment. This is because, wrecks and derelicts' removals are major and complex undertakings that should be carried out with due care to prevent environmental pollution. The International Salvage Convention of 1989, holds in Article 8(1) that the Salvor must carry out his Salvage operations in such a manner as to prevent or minimize pollution of the marine environment.⁶⁰

3.7 Government intervention in wrecks and derelicts removal operations

The most significant impact of all the key factors to be considered in wrecks and derelicts' removal operations is the intervention by government or other authorities of government. The involvement of coastal States in wreck removal is linked to the Nairobi International Convention on the removal of Wrecks 2007.⁶¹ Articles 2, 5, 6, 7, 8 and 9 justify States involvement in wrecks removal operations. The measures taken by coastal States in wrecks removal operations must not only be reasonable and proportionate but the deadline for removal must also be reasonable, taking into account, the nature of the hazard and the location of the wreck.⁶²

Thus, statutory authorities in coastal States can exercise great power in wreck removal. Multiple tiers of government (Local, State and federal) governmental agencies can all claim a legitimate role bringing the respective perspectives to bear and influencing operational and commercial decisions.⁶³ More so, political consideration can have significant impact on wreck removal. Political instability or frequent change of government exerts an influence on wreck removal, as every political party or government has its own programme and philosophy. A new government will usually abandon the programme of its predecessor and establish its own programme.⁶⁴

⁵⁷ Sixth International Marine Debris Conference: NOAA Marine Debris Program, Prevention and Removal of Abandoned and Derelict Vessels: Case Studies and Lesson's Learned, available at: <https://internationalmarinedebrisconference.org/index.php/prevention-and-removal-of-abandoned-and-derelict-vessels-case-studies-and-lessons-learned/> accessed 15 November, 2021.

⁵⁸ J. Hebert (n 44).

⁵⁹ Anthony Preye Preghafi, 'The Law and Challenges of Wreck Removal in Nigerian waters' (2018), available at: https://www.academia.edu/8746709/THE_LAW_AND_CHALLENGES_OF_WRECK_REMOVAL_IN_NIGERIA_WATERS, (accessed 27 October 2022).

⁶⁰ The International Salvage Convention of 1989.

⁶¹ Nicholas Gaskell and Craig Forrest, Law of Wrecks (2019).

⁶² The Nairobi International Convention on the removal of Wrecks, 2007, available at: <http://www.official-document-gov.uk/document/cm82/8243.pdf>, (accessed 27 October 2022).

⁶³ J. Hebert (n 44).

⁶⁴ Field work.

In sum, the removal of shipwrecks and derelict vessels is a complex undertaking in Nigeria. This is due to various challenges and legal issues surrounding the removal, such as: restrictive legal authorities, ownership questions, high cost and limited funding streams, lack of insurance provisions, location and type of wreck as well as lack of skilled personnel with expertise and technical know-how. The overview provided covers important points to consider, prior to initiation of any removal action for a shipwreck or a derelict vessel. Points include; ownership identification and notification, Federal removal authorities influence, removal funding and potential disposal methods.⁶⁵

4. Conclusion

The removal of shipwrecks and derelict vessels from the Nigerian waters is a major undertaking with considerable physical, financial and environmental risks. The removal operations are getting more complicated and costly due to modern ships designs, accommodation structures, various types of cargo on board, inaccessible locations and given the need for skilled personnel. Besides, it can require complex engineering and use of substantial inventories of equipment, including lifting gear. It is therefore, an issue that is of great concern to Nigerian government, local community and the maritime industry as a whole.

The prevalence of shipwreck and derelict vessels in the Nigerian coast has justified that the current regulatory and institutional frameworks in Nigeria are disjointed, outdated, lax and not well-suited to accomplish widespread prevention and removal of wrecks derelicts in Nigeria. The laws are scattered in several regulations and there is no nexus connecting the various statutes that purport to regulate wrecks and derelicts in Nigeria. Altogether, confusion reigns and the entire system lack unity.

It is therefore, pertinent for Nigeria to domesticate the Nairobi International Convention on the removal of Wrecks, 2007 and at the same time, review, amend and strengthen her domestic laws, by narrowing the gap between her domestic wreck removal laws and the Nairobi International Convention, 2007. In terms of the amendment, the registered owner of a ship of 100 tones should obtain liability insurance or other financial securities such as a guarantee of a bank or similar institutions.

Although, the Nairobi International Convention on the removal of Wrecks, 2007, require the registered owner of a ship of 300 gross tonnages and above, to obtain compulsory insurance or other financial securities, such as bank guarantee, but majority of oil tankers operating in Nigeria's inland water are less than 300 tonnages. Besides, those ships are usually old with poor, backward and limited equipment.

More so, the seafarers are not properly trained and lack the necessary qualifications. Consequently, the risks of oil pollution from such ships are high. Moreover, owners of such vessels are usually small private companies. When pollution incident occurs, these companies may become bankrupt and the owners of such vessels may escape liabilities for oil pollution damage.

⁶⁵ Dan R. Norton and Danielle M. Renoud, 'Management of derelict Vessels that Threaten our Waters: A Primer on Derelict Vessel Removal with Success Stories', International Oil Spill Conference Proceedings, available at: <https://meridian-allenpress.com10sc/article/2008/1/1081/202827/MANAGEMENT-OF-DERELICT-VESSELS-THAT-THREATEN-OUR-WATERS>, (accessed 30 April 2023).