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A European initiative on the subject of ship recycling: A legal analysis
of the proposed EU Ship Recycling Regulation in the light of the
international law applicable to the recycling of ships.

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Abstract

As the Hong Kong Convention on Recycling of Ships have been waiting for accession for four years, and some not expecting it before 2020, EU are looking for an early transposition of the Convention into Community law. The Commission proposal is analysed against the background of the international conventions on ship recycling. The finding gives reason for cautious optimism.

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1 Introduction

Looking at shipping from an environmental perspective one may lose sight of two fundamental facts about shipping. Firstly, shipping is a positive. Shipping has evolved through some 5000 years and today the majority of the World's demands of goods are carried by sea.¹ In 2005 7 billion tons of cargo was shipped by sea to 160 countries.² Secondly, recycling is by far the most environmentally safe thing to do with a ship that can no longer be safely or profitably operated, as opposed to abandoning or scuttling. Requirements for 'greener' ships are introduced into the global shipping market, and consequently older ships must be disposed of some way or another.

The problems surrounding ship recycling reveals deeper lying issues of third world poverty and exploitation. In the worst cases the recycling operation is reportedly carried out on beaches and the work done by workers with minimal equipment and safety gear, and sometimes even child labour.³ While new ships are built in shiny shipyards, the less glamorous business of cutting and recycling the old ships has fallen on developing countries in South Asia, and in particular India, Bangladesh and Pakistan. These nations reportedly recycle 80% of the reported ldt. of ships recycled.⁴ In these nations the recycling business is vital, producing substantial income, employment for thousands and much needed high quality steel that would otherwise have to be mined for.⁵

¹ Martin Stopford, *Maritime Economics* (3rd edn, Routledge 2009) p 48

² *Ibid*

³ <http://www.shipbreakingplatform.org/problems-and-solutions/>

⁴ *Ibid*

⁵ Stopford (n 1) 649

1.1 Motivation

From a legal point of view, the international regulatory regime governing this part of the shipping business is not satisfactory. Following pressure from environmentalist groups, such as Greenpeace and investigating journalists, the international spotlight has hit the ship recycling industry and exposed the human and environmental costs of sub-standard recycling. After inter-agency cooperation between the ILO, IMO and the Secretariat of the Basel Convention, mandatory international standards have been agreed in the form of the SRC in 2009. The ratification and entry into force of the SRC have been slow, and the situation at this point in time is still unsatisfactory. In an interview at the Trade Winds Ship Recycling Forum at 12-13 March 2012 in Singapore, Nikos Mikelis⁶ expressed expectations that the imminent proposal from the EU would contribute greatly to speeding up the ratification process and implement the SRC standards.⁷

This development is intriguing from a legal point of view, and important for human health and the environment in developing countries. I wanted to assess for myself what the impact of The European initiative will be in this unglamorous and contentious aspect of the shipping industry.

⁶ Dr. Nikos Mikelis was Head of Marine Pollution Prevention and Ship Recycling Section, International Maritime Organization

⁷ <http://www.youtube.com/watch?v=rr2GKCVIGeY>

1.2 Research question

In this work the question is whether the proposed European Ship Recycling Regulation⁸ will improve the current situation on ship recycling, as some expectations have been expressed to that effect. Through a legal analysis of the proposed Regulation, against the background of international law on this field, the question is sought answered by comparing the different instruments, assessing whether it will provide for an equivalent level of control, if it would introduce effective measures and whether its implementation is feasible.

1.3 Scope and structure

It is beyond the scope of this work to give a full and detailed account for the detailed provisions of any of the three instruments analysed. It will be sought to highlight the most important aspects of each of the three instruments considered in this work, and to expose and discuss some of the problems that ensue from the transition.

This work consists of four chapters. Chapter one provides the introduction and explains the scope of this work. The following three chapters outline the background against which the proposed Ship Recycling Regulation is discussed and analysed, the analysis itself, and finally the conclusion.

⁸ European Commission, Proposal for a Regulation of the European Parliament and of the Council on Ship Recycling (Brussel 23 March 2012, COM(2012) 118 final)

1.4 Method and legal sources

Legal method is used. In regards to international law, the Vienna Convention on the Law of Treaties 1969⁹ holds a special position in this regard. Some of the legal sources used in this work are agreed but not in force, and thus not legally binding. Some sources are not finalized at the time of writing, but will be soon. Definite answers to any of the problems cannot be given in this work. The challenge lies in extracting legal doctrine without the benefit of legal or state practice.

⁹ United Nations Treaty Series vol. 1155, p. 331

2 Background: The international legal framework on ship recycling

2.1 The principle of sustainable development

As a matter of international environmental policy, the principle of sustainable development should form the foundation for any legal instrument attempting to regulate any activity for the purpose of protecting the environment. This principle developed through the United Nations, and was set out in the Rio Declaration on Environment and Development.¹⁰ Sustainable development is most commonly defines as covering the need of the present while preserving the future generation.¹¹

All states should apply a precautionary approach to any environmental damage as far as they are able, which means that uncertainty surrounding a threat to the environment is not an excuse not to act.¹² This is the precautionary principle.

The costs of pollution in the environment should as far as possible be internalized. That means that the polluter should in principle bear the cost of pollution, with due regard to public interest and avoid distorting trade.¹³ This is the polluter pays principle. In the case of shipping this would

¹⁰ Report of the United Nations Conference on Environment and Development, Rio de Janeiro 1992

(A/CONF.151/26 (Vol. I)), Annex I

¹¹ *Ibid* Principle 3

¹² *Ibid* Principle 15

¹³ *Ibid* Principle 16

mean that shipowners and others benefitting from the use of the ship bear the cost of any damage to the environment caused by the ship.

This principle is usually not applied today in ship recycling. The shipowner usually makes a profit from selling his outdated ship for scrap, which is maximised when selling to sub-standard facilities of intermediate buyers connected to such facilities. The damage is borne by the workers and people in the vicinity for such facilities.¹⁴

2.2 The Basel Convention

The Basel Convention¹⁵ entered into force 5 May 1992 and provides the framework for minimising international transport of wastes, and environmentally sound management. Subsequent to the Basel Convention's entry into force it has been established that it also covers the recycling of ships.¹⁶

¹⁴ European Commission, Commission Staff Working Document Impact Assessment (Brussels 23 March 2012 (SWD(2012) 47 final)

¹⁵ The Basel Convention on the Control of the Transboundary Movements of Hazardous Wastes and their Disposal 22 March 1989, U.N.T.S. 126, 28 I.L.M. 657 (entered into force 5 May 1992) (hereinafter the 'Basel Convention' or 'BC')

¹⁶ See chapter 2.2.4

2.2.1 Basic scheme

The Basel Convention applies to ‘transboundary movement’ of ‘hazardous wastes’.¹⁷ The transport is considered ‘transboundary movement’ when it involves any movement of hazardous wastes or other wastes, from one national jurisdiction of one state to or through the national jurisdiction of another state.¹⁸ The waste is ‘hazardous waste’ if it is listed in Annex I of the Basel Convention, unless they do not contain the characteristics listed in Annex III.¹⁹

The Parties to the Basel Convention are obliged to minimise the generation of hazardous wastes and to promote adequate disposal within the state where such wastes are generated.²⁰ The goal is to prevent dumping of toxic wastes onto developing countries.²¹ This goal is sought accomplished by reducing the generation of wastes and increase the capacity of the generating state to dispose of its own wastes.²²

Transboundary movement of hazardous wastes from and to non-Parties are prohibited under the Basel Convention.²³ Moreover, Parties can unilaterally prohibit the import of any hazardous wastes.²⁴ Today, almost every state is Party to the Basel Convention, including the major recy-

¹⁷ BC (n16) Article 1(1)

¹⁸ *Ibid* Article 2(3)

¹⁹ *Ibid* Article 1(1)(a)

²⁰ *Ibid* Article 4(2)(a) and (b)

²¹ See the Preamble to the Basel Convention

²² *Ibid*

²³ BC (n16) Article 4(5)

²⁴ *Ibid* Article 4(1)(a)

cling nations Turkey, China, India, Pakistan and Bangladesh.²⁵ Between Parties the transport is prohibited if it is believed that the wastes will not be managed in an ‘environmentally sound’ manner²⁶ or the State of Import has prohibited such import or not consented in writing.²⁷

Transport between parties is possible only under a restricted regime and only in three alternative circumstances. One of these is environmentally sound and efficient recycling of waste.²⁸

Furthermore, the transportation is only permitted subject to Prior Informed Consent (hereinafter PIC) of the importing state, or the state through which the waste is transported (the Transit State).²⁹ The PIC procedure is a primary component of the regulatory system under the Basel Convention. The permitted transport is controlled by the cumulative requirements of a movement document³⁰, and a notification document.³¹ During the permitted transport of a ship destined for recycling it would be under innocent passage and would not normally be inspected *en route*.³²

²⁵ [www.basel.int\[http://www.basel.int/Countries/StatusofRatifications/PArticleiesSignatories/tabid/1290/Default.aspx\]](http://www.basel.int/Countries/StatusofRatifications/PArticleiesSignatories/tabid/1290/Default.aspx)

²⁶ BC (n16) Article 4(2)(e) regarding prevention of export and (g) regarding prevention of import

²⁷ *Ibid* Article 4(1)(c)

²⁸ *Ibid* Article 4(9)(b)

²⁹ *Ibid* Article 6(1)

³⁰ *Ibid* Article 4(7)(c), see also Annex V PArticle B

³¹ *Ibid* Article 6(1), see also Annex V PArticle A

³² The concept of ‘innocent passage’ is set out in UN General Assembly, Convention on the Law of the Sea, 10 December 1982 (UNCLOS), UNTS 1833, Article 17

Failure to comply with the requirements of the Basel Convention procedure renders the movement of wastes ‘illegal traffic’³³, which is deemed a criminal offence.³⁴ Moreover, depending on who caused the breach, the State of Export must ensure that the waste is re-imported³⁵ or properly disposed of in accordance with the convention.³⁶ The State of Import may also be required to ensure proper disposal.³⁷ If no fault can be determined, they must cooperate to ensure proper disposal.³⁸ The same duties may also arise for legal traffic, if the agreed recycling cannot be completed according to the contract.³⁹ Together with the PIC this forms the control regime of the Basel Convention.

2.2.2 The Basel Ban⁴⁰

Due to raised concerns about the sub- standard recycling in developing countries and as a counterpart to similar control regimes on the export of wastes within the OECD⁴¹, the parties to the Basel Convention agreed on an amendment which prohibited the transport of hazardous wastes

³³ BC (n16) Article 9(1)(a)-(e)

³⁴ *Ibid* Article 4(3)

³⁵ *Ibid* Article 9(2) (a)

³⁶ *Ibid* Article 9(2) (b)

³⁷ *Ibid* Article 9(3)

³⁸ *Ibid* Article 9(4)

³⁹ *Ibid* Article 8

⁴⁰ COP 3 Decision III/1 22 September 1995 the Amendment to the Convention on the Control of Transboundary Movement of Hazardous Wastes and their Disposal (hereinafter the ‘Basel Ban’). The amendment took the form of a new Article 4A (not in force)

⁴¹ OECD Council Decision C (2001) 107/Final on the Control of Transfrontier Movements of Waste Destined for Recovery Operations

from Annex VII-Countries⁴² to all other countries. This includes recycling, which was agreed to be faced out by the end of 1997.⁴³

The amended Article 4A states that Annex VII-Countries ‘shall prohibit all transboundary movements of hazardous wastes which are destined for [disposal or recycling], to states not listed in Annex VII’.⁴⁴ The Basel Ban has not yet entered into force internationally, but it is in force in the EU through community legislation.⁴⁵

2.2.3 The Basel Protocol⁴⁶

Any civil liability for damage caused by the transboundary movement of hazardous wastes must currently be based on national law. In an effort to establish an international regime of liability for such damage, the Conference of the Parties (hereinafter ‘COP’) agreed on the Basel Protocol. Consistent with the ‘polluter pays-principle’ the Basel Protocol establishes a foundation for limited strict, or unlimited fault-based liability for damage suffered as a result of the transboundary movement of hazardous wastes and illegal traffic. The Basel Protocol is not yet in force.

⁴² OECD, EU and Lichtenstein

⁴³ COP Decision II/12

⁴⁴ BC (n16) Article 4A (1) (not in force)

⁴⁵ Regulation (EC) No. 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste (OJ L 190, 12.7.2006, p1-98) (hereinafter ‘EWSR’), Article 36

⁴⁶ COP 5 Decision V/29 10 December 1999 The Basel Protocol on Liability and Compensation for Damage resulting from Transboundary Movements of Hazardous Wastes and their Disposal (hereinafter the ‘Basel Protocol’)

2.2.4 Using the Basel Convention for recycling of ships

The Basel Convention has proven to be difficult to apply to ships. In addition there is an obvious conflict between the environmentalist NGO's on one side and the maritime industry on the other regarding the role of the Basel Convention in regulating the business of ships.

2.2.4.1 Is a ship 'hazardous waste'?

The Basel Convention is not specific to ship recycling. It applies to transboundary movement of 'hazardous waste'.⁴⁷ The first question is therefore whether vessels destined for recycling can be considered 'waste' within the meaning of Article 2(1).

The definition of 'waste' is an 'object' which is 'disposed' of, is intended to, or required to be so.⁴⁸ The ordinary meaning of the word 'object' is a physical thing that may be seen or touched, and a ship would certainly fall within this definition.

The definition of 'disposal' is cumbersome.⁴⁹ It refers to the list of operations in Annex IV, which in turn applies 'with respect to materials legally defined as or considered to be hazardous wastes'.⁵⁰ This circular definition means that the definition of 'waste' depends on the meaning of 'disposal', which in turn is determined by whether the object is 'waste' or not.

⁴⁷ BC (n16) Article 1(1)

⁴⁸ *Ibid* Article 2(1)

⁴⁹ *Ibid* Article 2(4)

⁵⁰ *Ibid*

In determining the meaning of the text it shall be taken into account, together with the context, any subsequent agreement between Parties on the interpretation of the treaty.⁵¹ In Decision VII/26 the seventh Conference of the Parties (COP) determined that a ship could be defined as waste within Article 2 of the Basel Convention.⁵² It follows that a ship headed for recycling can be ‘waste’ within the meaning of the Basel Convention.

The COP 7 also noted that while a ship could be defined as waste within Article 2, it may at the same time still be defined as a vessel/ship under other international rules.⁵³ This leads to the question; at what time does the ship become ‘waste’?

The text of the convention states that the ship becomes waste when it is disposed of, is intended or required to be disposed of.⁵⁴ As showed above ‘disposal’ includes recycling. The question of when an intention to recycle a ship is materialised has been raised in litigation. In ‘*Sandrien*’ the Dutch Council of State held that a contract between the shipowners and shipbreakers in Alang, India, showed that the owners intended to scrap the ship.⁵⁵ This meant that the ship was ‘waste’ under the EU waste legislation at that time, and thus export was subject to permission. The owners failed to establish that they had subsequently abandoned the intension of scrapping the ship, and instead intended to make repairs and use it as a ‘floating vessel’ off the coast of West India.

⁵¹Vienna Convention (n9) Article 31(3)(a)

⁵²Decision VII/26, Seventh Conference of Parties of the Basel Convention (2004) UNEP/CHW.7/33

⁵³*Ibid*

⁵⁴ BC (n16) Article 2(1)

⁵⁵ *Upperton Ltd of Mauritius v Minister of Housing, Spatial Planning and the Environment* (Case 200105168/2) (judgement 19 June 2002)

The case illustrate a possible loophole for shipowners to escape the ambit of the Basel Convention: The owner could make sure that the classification of the ship as waste would only occur after the transboundary movement, thus avoiding it altogether. If the owner in *The Sandrien* case were to enter into a sham sales contract with a company in a non-OECD country rather than a scrapping contract, the transport of the ship would not be a transport of 'waste'. The subsequent classification as 'waste' when the vessel was ultimately recycled would not amount to a breach because there was no 'transboundary movement'.⁵⁶

2.2.4.2 Difficulties in defining the 'state of export' for the purpose of re-import

In some cases the uncertainty related to the time a ship becomes waste may also lead to uncertainty as to the identity of the state of export, to which the ship should be re-imported to in accordance with Article 8 and 9 of the Basel Convention. The State of Export is 'a Party from which a transboundary movement of hazardous wastes [...] is planned to be initiated or is initiated'.⁵⁷ For ships, this would be the port from which it sails, subject to it being classified as hazardous waste.⁵⁸

⁵⁶Michael N Tsimplis, 'Selling Ships for Scrap' 2004 Lloyd's Maritime and Commercial Law Quarterly 254, pp 260 and 263

⁵⁷ Basel Convention, Article 2 (10)

⁵⁸ Michael N Tsimplis, 'The Hong Kong Convention on the Recycling of Ships' (2010) LMCLQ 305, 330

In *The Blue Lady*⁵⁹ the Bahamian registered cruise ship ‘*SS Norway*’ was towed from Miami to Bremerhaven, where she remained for nearly two years while the owners pondered over her future. When rumours that she had been sold to south East Asia scrappers circulated, environmentalist NGOs demanded the removal of asbestos before leaving. However, the owners maintained that she was taken over by the parent company in Hong Kong for further employment. She was towed to Port Klang, without any pre cleaning in 2005. By May 2006 rumours that she had been sold to Indian scrappers and re-named ‘*Blue Lady*’ was confirmed. Environmental NGOs then filed an action to stop the scrapping operations on the grounds that it would be in breach of Indian law and the Basel Convention, due to large quantities of asbestos. After long proceedings the beaching and scrapping was allowed, subject to environmentally sound management. This decision was a pragmatic one, because the beaching (which had taken place before the decision) was irreversible and the fact that a state of export could not be easily identified, as Miami, Bremerhaven and Port Klang all could have been ‘State of Export’.

Although this decision helped implementing some standards for the recycling operation in India, it also shows that the re-import obligation is ineffective against ships.

⁵⁹ Supreme Court of India, *Research Foundation for Science Technology and Natural Resource Policy v Union of India and others* (2008) 1 MLJ 1029 (SC) (available at [<http://mljlibrary.com/nominal-index/F4PE3OB0LB0LK9U.htm>])

2.2.4.3 Environmentally sound management

Transport is prohibited if it is not ‘environmentally sound’.⁶⁰ Environmentally sound management is defined as ‘taking all practicable steps to ensure that hazardous wastes or other wastes are managed in a manner which will protect human health and the environment against the adverse effects which may result from such wastes’.⁶¹ Compared to the many provisions in which this requirement is reiterated, this definition is not very helpful, and thus unsatisfactory.⁶²

The malpractice in ship breaking operations in developing countries has been well documented over the years.⁶³ In the world’s largest ship recycling facility in Alang, in Gujarat, India NGO surveys found asbestos dusts above tolerable levels, stored in open dumpsites. Reportedly, the conditions are worse in Bangladesh.⁶⁴ Regardless of the futile definition of “environmentally sound”, it is clear that those practices are not that.

It follows that transboundary movement of ships for recycling in non-OECD countries are prohibited under the Basel Convention because there is not yet environmentally safe management in those facilities. The same conditions is what makes them lucrative, and thus present the shipowner with the best price for his ships, enticing him to circumvent the prohibition by arranging a

⁶⁰ BC (n16) Article 4 (2) (e) and (g)

⁶¹ *Ibid* Article 2(8)

⁶² D. Engels, *European Ship Recycling Regulation: Entry-Into-Force Implications of the Hong Kong Convention* (Hamburg Studies on Maritime Affairs vol. 24 Springer 2013), p 140

⁶³ See Greenpeace.org [<http://www.greenpeaceweb.org/shipbreak/shipsforscrap3.pdf>] accessed 27.08.2013

⁶⁴ *Ibid*

straight sale of the ship, as described above. In any event, the result is the in EU-countries, because the EWSR implements the Basel Ban unilaterally in the EU.

2.2.5 Summary

The Basel Convention applies to ship recycling, and prohibits the transboundary movement of the ship, either because of the Basel Ban through European waste regulations or by virtue of the ship recycling not being ‘environmentally sound’. However, as described above, there are holes in the current international regulation of this subject which can be exploited to the detriment of the environment in developing countries.

The Basel Convention has proved to be a basis for actions against sub-standard shipping in developing countries, which has in some cases forced an improvement in practices. However, the Basel Convention regime has been criticised throughout its operation for being ineffective in solving the problems related to ships. Ships travel the world and passes through many jurisdictions, they can easily change register, name and flags, leaving the shipowners able to choose the most advantageous option for their ships. Some of the issues outlined above have highlighted the need for a specific international regime for ship recycling able to resolve those issues. To assist the development of a comprehensible international regime for transboundary movement of ships for scraping, the COP 7 invited the International Maritime Organization (IMO) to develop a regime with ‘equivalent level of control as developed under the Basel Convention’.⁶⁵

⁶⁵ COP 7 (n52) Decision VII/26

2.3 The Ship Recycling Convention

2.3.1 Introduction

The IMO agreed on a new convention 15th May 2009.⁶⁶ The convention is an attempt at solving some of the major problems regarding recycling of ships by developing a system of documentation and control and implementation of standards for ship recycling. It has not yet entered into force, but when it does it is an independent convention on equal terms with the Basel Convention.⁶⁷

The SRC does not prejudice any earlier treaties on the same matter.⁶⁸ This is not a hierarchy clause, but rather an effort to clarify different competence areas.⁶⁹ Under international law the later convention prevails over the former in case of conflict between countries which are members to both.⁷⁰ For parties both members to both SRC and the Basel Convention, the SRC convention would govern their mutual rights and obligations.⁷¹ Between a country Member to both and a State not Member to the SRC, the Basel Convention still applies.⁷²

⁶⁶ Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships 19 May 2009 SR/CONF/45 (hereinafter SRC)

⁶⁷ Tsimplis (n58), p 333

⁶⁸ SRC (n66) Article 15 (2)

⁶⁹ Engel (n62) 135

⁷⁰ Vienna Convention (n9) Article 30 (3)

⁷¹ *Ibid*, Article 30 (4) (a)

⁷² *Ibid*, Article 30 (4) (b)

2.3.2 A closer look

2.3.2.1 General requirements and obligations

The general requirements for contracting parties include implementing the SRC fully,⁷³ cooperate for effective implementation,⁷⁴ and continue development of technologies and environmentally practices.⁷⁵ The SRC allows for member states to take more stringent measures than those prescribed by the SRC, consistent with international law.⁷⁶

The SRC does not contain an express obligation to minimise the transboundary transportation of hazardous wastes. Rather, its regulations provide for control of such materials through the Inventory of Hazardous Material (IHM) and the Ship Recycling Plan (SRP).

Technical requirements of SRC are set out in 25 regulations. These are divided into four chapters; general requirements (regulations 1-3), requirements for ships (4-14), requirements for recycling facilities (15-23), and reporting requirements (24-25). These Regulations covers the ship throughout its operational life, thus taking a more holistic approach than the Basel Convention which focuses only on the disposal.⁷⁷ The Regulations are supplemented by voluntary Guidelines developed by the IMO.

⁷³ SRC (n66) Article 1(1)

⁷⁴ *Ibid* Article 1(3)

⁷⁵ *Ibid* Article 1(4)

⁷⁶ *Ibid* Article 1(2)

⁷⁷ SRC (n66) Regulation 2

2.3.2.2 Scope of application of the SRC

The SRC applies to ‘ships’ and ‘Ship Recycling [Facilities]’.⁷⁸ The definition of ‘ship’ is ‘a vessel of any type whatsoever operating or having operated in the marine environment’.⁷⁹ The definition is very wide, and the convention itself includes submersibles, different types of platforms, special crafts such as FPSOs, and stripped or towed vessels.⁸⁰ The SRC makes a distinction between ‘new ships’ and ‘existing ships’.⁸¹ The provisions apply differently to new ships and existing ships.

Ships less than 500 GT, warships, naval auxiliary, and governmental ships used only in non-commercial service are all excluded from the scope of SRC.⁸² The exclusion of warships from the scope of SRC is important, as the Basel Convention does not make the same exclusion. It has been questioned whether the exclusion in the SRC is a way of avoiding the particular problems caused by such ships.⁸³ The exclusion has also been criticized by some NGO platforms for making the SRC a weaker instrument than the BC.⁸⁴ However, excluded ships would still be covered by the BC as SRC does not prejudice the parties’ rights and obligations under other international agreements.⁸⁵

⁷⁸ *Ibid* Article 3(1)

⁷⁹ *Ibid* Article 2(7)

⁸⁰ *Ibid*

⁸¹ *Ibid* Regulation 1 (3) and (4)

⁸² *Ibid* Article 3(2) and 3(3)

⁸³ Tsimplis (n58) 316

⁸⁴ UNEP/CHW.10/INF/18 (August 11 2011), pp. 79-180

⁸⁵ SRC (n66) Article 15(2); Vienna Convention (n9) Article 30(2)

2.3.2.3 The International Inventory of Hazardous Materials Certificate

New ships must have on board an Inventory of Hazardous Materials from the start of their operational lives.⁸⁶ Existing ships shall comply ‘as far as practicable’, taking the Guidelines into account.⁸⁷ They must however have on board an IHM no later than five years after the entry into force of the convention, or when being certified for recycling, whichever is first.⁸⁸ This inventory is to be regularly verified and updated, and will be issued by the flag state⁸⁹ and enforced through Port State Control (PSC).⁹⁰ As Existing ships will not have IHM onboard prior to their recycling, it will be issued in relation with the final survey and the issuance of the Ready to Recycle Certificate (RRC).⁹¹ Thus, with regard to PSC an ‘existing ship’ will automatically be subject to detailed inspection.⁹²

The obligation to issue the IHM certificate rests primarily on the flag state or a recognised organisation (hereinafter RO).⁹³ The surveys are to be carried out by officers of the flag state, but may

⁸⁶ SRC (n66) Regulation 5.1

⁸⁷ *Ibid* Regulation 5.2

⁸⁸ *Ibid*

⁸⁹ *Ibid* Article 5

⁹⁰ *Ibid* Article 8

⁹¹ *Ibid* Regulation 11 (11)

⁹² Tsimplis (n 58) 320-321

⁹³ SRC (n66) Regulation 11(1) and Article 2

also be delegated to nominated surveyors or ROs.⁹⁴ The ultimate responsibility however still lies with the flag state.⁹⁵

The IHM certificate is valid for a period specified by the flag state, but not exceeding five years.⁹⁶ The validity of the certificate may also cease to be valid if the actual conditions of the ship does not correspond with the certificate, renewal survey is not completed within the set time, or the certificate is not endorsed in accordance with the regulations.⁹⁷ Finally a certificate ceases to be valid when the ship changes flag, and shall only be issued when the new flag state is fully satisfied that the ship is in compliance with SRC.⁹⁸ The IHM itself comprise of three parts; materials contained in ship structure or equipment (Part I), operationally generated wastes (Part II), and stores (Part III).⁹⁹

The purpose of the IHM certificate is to function as a ship-specific record of the hazardous and potentially hazardous materials used in its construction and repairs, those presently on board and stores carried throughout the life of the ship. The IHM and the continuing surveying and updating of the certificate will monitor hazardous material. This will help ensure that use of hazardous material will be minimised in the building, repairing and supplying of ships as required by Regu-

⁹⁴ *Ibid* Regulation 10(2)

⁹⁵ *Ibid* Regulation 10(4)

⁹⁶ *Ibid* Regulation 10(1)(2)

⁹⁷ *Ibid* Regulation 14(1) and (2)

⁹⁸ *Ibid* Regulation 14(1)(2)

⁹⁹ *Ibid* Regulation 5(4)

lation 4. The IHM is therefore an essential component of the SRC, and forms the basis for complying with the duty to ensure minimisation of the use of hazardous materials in ships.

2.3.2.4 Ready for Recycling Certificate¹⁰⁰

Along with the issuance and control of the IHM certificate, the flag state is also responsible for the issuing of an International Ready for Recycling Certificate during a final survey.¹⁰¹ It must also submit a list of ships furnished with such a certificate, and the annual number of ships recycled, within their jurisdiction to the IMO.¹⁰²

It has been noted by *M. Tsimplis* that an earlier draft of Reg. 12 required the flag state to submit information on the ships that were deregistered with the intention of recycling.¹⁰³ Such a requirement would have made deregistration for the purpose of avoiding international obligations such as the SRC more traceable and harder. Regrettably, the final text does not include such a requirement.¹⁰⁴

2.3.2.5 Authorised ship recycling facilities and the Ship Recycling Plan

The previous chapters have mainly focused on obligations directed towards the flag state. Those obligations are certainly important if the SRC is to be successful, but it is nevertheless the sub-

¹⁰⁰ SRC (n66) Appendix 4

¹⁰¹ *Ibid* Article 5

¹⁰² *Ibid* Article 12.4 and 12.5

¹⁰³ Tsimplis (n58) 317-318

¹⁰⁴ *Ibid*

standard operations of recycling facilities located in India, Pakistan and Bangladesh that pose the main source of damage to the marine environment. For the SRC to be successful the standards of ship recycling operations must be improved in addition to the further availability of information about the ships that are recycled there. For that purpose the SRC seeks to establish safer standards for recycling facilities through authorisation, certification, inspections and surveys.

Under the Basel Convention it is left to the exporting state to ensure itself that environmentally sound recycling may be conducted in the state of import.¹⁰⁵ The SRC shifts this obligation to the contracting state in which the recycling facility is located.¹⁰⁶

National legislation for the design, building and operations of the facility must be developed for the purpose of environmentally sound recycling of ships.¹⁰⁷ This arguably goes further than the Basel Convention, which only focus on the disposal of wastes.¹⁰⁸ Secondly, mechanisms for the authorisation of recycling facilities that meets the requirement of SRC must be developed, taking the guidelines into account.¹⁰⁹

The contracting state must also designate a competent authority responsible for the authorisation of facilities within its jurisdiction, and a contact point for the IMO and other stakeholders.¹¹⁰ The

¹⁰⁵ BC (n16) Article 4(2) (e) and (g)

¹⁰⁶ SRC (n66) Regulation 8(1)

¹⁰⁷ *Ibid* Regulation 15(1)

¹⁰⁸ Tsimplis (n58) 322

¹⁰⁹ SRC (n66) Regulation 15(2) and 16(1)

¹¹⁰ *Ibid* Regulation 15(4)

contracting state must finally ensure that the authorised facilities are controlled through inspections, monitoring and enforcement, primarily by the competent authority or delegated to ROs.¹¹¹

If authorisation is granted, the facility obtains a certificate in the form of a Document of Authorisation to undertake Ship Recycling (DASR).¹¹² The certificate contains the direct application of Regulations 16-25 including safe for hot work and safe for entry conditions, geographical limits and max size of vessel the recycling facility is authorised to recycle. The goal is to provide all the necessary information in the certificate to assess whether a facility is properly authorised.¹¹³

The management of the facility must ‘prevent, reduce, minimise and to the extent practicable eliminate’ environmental damage, taking into account the IMO Guidelines.¹¹⁴ The Facility Guidelines¹¹⁵ consists of detailed recommendations regarding records, permits, conditions for entry, emergency plans, management of hazardous material, and measures to prevent spills.

The enforcement against Recycling Facilities is left to be developed under national law.¹¹⁶ This results in a soft international enforcement regime. There is a risk of a ‘race to the bottom’, meaning that the first to establish the absolute minimum requirements of the SRC will have an ad-

¹¹¹ *Ibid* Regulation 15(3)

¹¹² *Ibid* Appendix 5

¹¹³ Tsimplis (n58) 324

¹¹⁴ SRC (n66) Regulation 17.1

¹¹⁵ 2012 Guidelines for Safe and Environmentally Sound Ship Recycling (Resolution MEPC.210(63) Annex 4)

¹¹⁶ SRC (n66) Article 10(1.2)

vantage against the competition.¹¹⁷ The SRC does not provide for civil liability, which will also be left to national law. Possibly the Basel Convention may prohibit export of ships to a country, even if it is compliant with the SRC, and this may mitigate such a ‘race’.¹¹⁸

The conscientious control by recognised organisations and classification societies appear to be the foremost safeguard against the industry seeking such an advantage, to the disadvantage of the environment.¹¹⁹ Whether this will provide a sufficient safeguard depends on the capacity of the classification societies, the control of their work, and the establishment of unison practice.¹²⁰

When a Recycling Facility is approached by the shipowner, it must develop a Ship-specific Ship Recycling Plan and have it authorised by the Competent Authority.¹²¹ The SRP should be based on the IHM and SRFP. It should contain a description of e.g. how hazardous material will be removed and stored in compliance with the SRC and the IMO Guidelines.¹²²

2.3.3 The recycling process in short

Recycling of ships may only be carried out by an authorised ship recycling facility.¹²³ In order to obtain authorisation the facility must prepare a SRFP, and submit this with the written application

¹¹⁷ Tsimplis (n58) 323

¹¹⁸ *Ibid*

¹¹⁹ *Ibid*

¹²⁰ Tsimplis (n58) 326

¹²¹ SRC (n66) Regulation 9

¹²² 2011 Guidelines for the Development of the Ship Recycling Plan (Resolution MEPC.196(62) Annex 2)

¹²³ SRC (n66) Regulation 8(1)

for authorisation to the competent authority in the contracting state.¹²⁴ When the competent authority is satisfied that the facility fulfils the requirements of the SRC and national law, it shall authorise the facility by giving it a DASR.¹²⁵

The shipowner may agree to recycle his ship in the authorised facility. Before he is allowed to do so he must notify the state in which the ship is registered, in order for the flag state to inspect and complete the IHM (part I, II and III) and prepare the final survey.¹²⁶ In the same way, the facility must notify the competent authority of the intent to recycle the ship, complete with the necessary information about the ship, including the completed IHM and a draft ship- specific SRP.¹²⁷ Before going to the Recycling Facility, the shipowner must minimize cargo residues, fuel oil and wastes on board.¹²⁸ If the ship is a tanker it must arrive with tanks and pump – rooms in a condition certified as safe-for-entry and/or safe-for-hot work, in accordance with national law.¹²⁹

The competent authority then approve or rejects the SRP, unless the state have opted for tacit acceptance of the SRP¹³⁰ in which case the SRP is automatically approved if the authority have failed to object to it within 14 days.

¹²⁴ *Ibid* Regulation 18

¹²⁵ *Ibid* Regulation 16(1) and 16(4)

¹²⁶ *Ibid* Regulation 24(1)

¹²⁷ *Ibid* Regulation 24(2)

¹²⁸ *Ibid* Regulation 8(2)

¹²⁹ *Ibid* Regulation 8(3)

¹³⁰ *Ibid* Article 16(6)

The approved SRP is then submitted by the shipowner to the flag state, which then checks the facility DASR and compares the SRP with the completed IHM in a final survey.¹³¹ On approval a Ready to Recycle Certificate is granted to the ship.¹³²

When the ship is granted a Ready to Recycle Certificate, the facility must notify the competent authority the planned start of the recycling operation¹³³, and finally provide a Statement of Completion.¹³⁴ A copy of the Statement of Completion is then sent by the competent authorities to the flag state administration.¹³⁵

2.3.4 Implementation and entering into force

Under Article 17 of the SRC three criteria must be met before it can enter into force. When the conditions are met it will enter into force 24 months after that date.¹³⁶

The first condition is that at least 15 contracting states have made an unreserved signature in accordance with Article 16.¹³⁷ This is considered to be easily obtainable, due to the support of the EU.¹³⁸

¹³¹ *Ibid* Regulation 10(1.4)

¹³² *Ibid* Appendix 4

¹³³ *Ibid* Regulation 24(3)

¹³⁴ *Ibid* Regulation 25

¹³⁵ *Ibid*

¹³⁶ SRC (n66) Article 17(1)

¹³⁷ *Ibid* Article 17(1.1)

Secondly the contracting states must represent at least 40% of the gross tonnage of the world's merchant shipping fleet.¹³⁹ This criterion may not be met by the support of the EU alone, as more than half of the world's global tonnage is registered in open registries of which only two are in EU countries, namely Malta and Cyprus.¹⁴⁰

According to recent records of the top flags of registry, the top ten comprise more than 65% of the world's ocean going merchant fleet with the top five accounting for 50%.¹⁴¹ This shows that without the support of the top ten flags of registry, there is little hope of the SRC entering into force in the foreseeable future. Furthermore, the support of the EU would account for roughly 17,9%.¹⁴² This creates an obstacle because the top flags are generally cautious regarding additional requirements for their registries likely to adopt a 'wait and see' attitude towards the ratification.¹⁴³

The third and final criterion is that the maximum annual ship recycling volume of all the contracting states was no less than 3% of the gross tonnage of the combined merchant shipping of

¹³⁸ Yvonne Baatz and others, *Maritime Law*, (2nd edn, Sweet & Maxwell London, 2011) 503

¹³⁹ SRC (n66) Article 17(1.2)

¹⁴⁰ Baatz (n138) 503

¹⁴¹ Engels (n62) 50

¹⁴² *Ibid*

¹⁴³ *Ibid*

those states during the past 10 years.¹⁴⁴ The purpose of this criterion is to ensure that the recycling market is not overrun.¹⁴⁵

This criterion is technical and difficult. The idea is that the contracting states (representing at least 40%) to the SRC must be able to serve their own need, thus requiring their combined maximum annual recycling volume constitute at least 3 % of their combined fleet. This means that the participation of major recycling nations is needed to bring the SRC into force. As of today this would require the participation of China and Turkey, which already have sufficient standards, but also others such as India or Bangladesh.¹⁴⁶ The two latter countries still have some way to go before the standards are sufficiently high. As the required upgrade will be costly and time consuming, the entry into force is delayed.

The obstacles presented regarding the two latter amounts to rather pessimistic estimations stating that the entry into force of the SRC will not happen before 2020.¹⁴⁷

2.3.5 Summary

Through adapting the scheme of authorisation of recycling facilities, rather than prohibitions on transport, the SRC provides the means to include rather than exclude countries in the lucrative

¹⁴⁴ SRC (n66) Article 17(1.3)

¹⁴⁵ Baatz (n138) 504

¹⁴⁶ D Engels (n62) 53-54

¹⁴⁷ *Ibid*, 232

business of ship recycling. The SRC ensures free competition and, it is submitted, a fairer world trade.

The SRC does not prohibit beaching. This is the result of a compromise that had to be struck because India was adamant that they would not participate if the prohibition was made.¹⁴⁸ On one hand the SRC has been criticized for this exclusion, and even accused of endorsing such practise. On the other hand there would be no point in making a convention on ship recycling without the support of the major recyclers. This is connected to the criteria for entry into force. In this case, gradual improvement is better than nothing.

The SRC has successfully established a documentary system, whether it will fulfil its goal of improving the situation on ships recycling remains to be seen.

¹⁴⁸ Tsimplis (n58) 345

3 The new EU Ship Recycling Regulation

3.1 Introduction

On the 27 June 2013, the Council endorsed a compromise text of a new Ship Recycling Regulation agreed with the European Parliament. The compromise text is not publicly available at the time of writing, but should be made publicly available later in the autumn of 2013.¹⁴⁹

The Commission proposal was published 23 March 2012¹⁵⁰ and sought to exclude those ships that will be covered by the SRC from the existing EWSR.¹⁵¹ The Commission proposed that ‘in Article 1(3) of Regulation (EC) No 1013/2006, the following point is added: “(i) Ships falling under the scope of Regulation (EU) No XX [*insert full title of this Regulation*]”’.¹⁵² The first proposal received mixed reactions both from the market and environmental NGOs.¹⁵³

The expressed purpose of the new regulation is to “reduce significantly the negative impacts linked to the recycling of EU-flagged ships, especially in South Asia without creating unnecessary economic burdens”.¹⁵⁴ This is sought accomplished by bringing into force “an early imple-

¹⁴⁹ <http://ec.europa.eu/environment/waste/ships/>

¹⁵⁰ (n8)

¹⁵¹ *Ibid*

¹⁵² *Ibid* Article 29

¹⁵³ See <http://www.shipbreakingplatform.org/european-campaign/>; cf. European Community Shipowner’s Associations (ECSA), ‘EU Industry Joint Letter on Ship Recycling Regulation, no 12/6 (December) [<http://www.ecsa.eu/index.php/position-papers>] Accessed 20 August 2013

¹⁵⁴ (n8) Explanatory note 1.2

mentation of the requirements of the Hong Kong Convention, therefor hastening its entry into force globally”.¹⁵⁵ It was therefore considered necessary to exclude the ship covered by the Ship Recycling Regulation from the scope of the EWSR.¹⁵⁶

For this reason the proposal takes the form of a regulation, which is binding in EU Members from its adoption, without any form of legislative act from the national governments. It is the most direct form of EU legislation. The justification for choosing this instrument is that a uniform implementation is paramount, which the Commission thinks is best accomplished through a regulation.¹⁵⁷

On a general level the proposed Ship Recycling Regulation implements the requirements of the SRC by requiring EU flagged ships to have IHM, Ready to Recycle Certificate and be controlled through Flag State inspections and surveys as well as Port State Control. Requirements for Recycling Facilities resemble those of the SRC, but will be authorised through a European List.

The Commission proposal was presented to the European Parliament, which on 18 April 2013 produced a paper with more than 100 amendments.¹⁵⁸ Those amendments do not constitute the final text.

¹⁵⁵ *Ibid*

¹⁵⁶ *Ibid*, Explanatory note 1.3

¹⁵⁷ *Ibid*, Explanatory note 3.5

¹⁵⁸ P7_TA-PROV(2013)0182

It follows that all the sources are not readily available at this point and the exact articles of the Regulation cannot be determined at the point of writing. Some general aspects may still be underlined and discussed in the following for the purpose of highlighting the introduction of additional requirements and attempt to predict the future legal regime applicable in the EU on ship recycling.

3.2 A closer look

The proposed Regulation will apply to ships that will be covered under the SRC, and makes the same exclusions, with the addition of ‘[flying] the flag of a Member State’.¹⁵⁹

3.2.1 The European List of authorized recycling facilities places more stringent requirements on recycling facilities

The Ship Recycling Regulation seeks to establish a European list of authorised recycling facilities controlled by the Commission.¹⁶⁰ This is different from the SRC, which leaves it up to the Competent Authority in the Member State to authorise and certify its facilities.¹⁶¹

A recycling facility wishing to recycle any ship in accordance with the Regulation would have to apply for inclusion in the European List.¹⁶² To be eligible for inclusion in the European List, the

¹⁵⁹ (n8) Article 3

¹⁶⁰ *Ibid* Article 16

¹⁶¹ SRC (n66) Regulation 15 and 16

¹⁶² (n158) Article 15(1) (amendment 116)

Ship Recycling Facility applying for inclusion will have to comply with the requirements of the Ship Recycling Regulation, which goes further than the minimum requirements of the SRC.¹⁶³

The gist of the European List is probably to create an incentive for Ship Recycling Facilities outside the Union to improve their environmental standards, by granting them access to the market of EU registered ships. According to recent numbers this constitutes roughly 17,9%.¹⁶⁴ The incentive may diminish if more ships are re-flagged outside of the Union in the years to come. This has raised some concern regarding the enforcing of higher standards than SRC stipulates,¹⁶⁵ and it may well lead to modifications in the final text.

3.2.2 Beaching Ban

The amendments made by the European Parliament seeks to prohibit the use of the practice known as ‘beaching’, where a vessel is crashed onto a beach and is then cut and demolished by a large labour force with minimal equipment.¹⁶⁶ The amendment made by the European parliament inserts a requirement for the operation to take place from “permanent built structures [...]”.¹⁶⁷ This goes further than the SRC, which does not ban beaching practices explicitly, but rather requires certain other standards to be improved gradually.

¹⁶³ (n8) Article 12-15

¹⁶⁴ Engels (n62) p 50

¹⁶⁵ ECSA, ‘EU Industry Joint Letter on Ship Recycling Regulation, no 12/6 (December)
[<http://www.ecsa.eu/index.php/position-papers>]

¹⁶⁶ (n158) Recital 1a (amendment 2)

¹⁶⁷ *Ibid*, Article 12 (aa) (amendment 62)

3.3 A critical analysis of the new Ship Recycling Regulation

Following the adoption of the amended text by the European Parliament, the NGO Shipbreaking Platform and the European Environmental Bureau (EEB) announced that they do not support the proposed EU Regulation.¹⁶⁸ Although the ban on beaching, requiring an IHM for entry into EU ports and the more stringent requirements for recycling facilities on the European list are highlighted and approved of, three main issues are criticised: A lacking legal basis for the Regulation under both EU law and international law¹⁶⁹, a failure to address the re-flagging loophole, and the lack of a financial mechanism to act as an incentive for proper recycling.

The shipping Market has also made statements regarding the proposed Regulation.¹⁷⁰ The positives are that it seeks an early implementation of the SRC, which the Market sees as the way forward. However, they raise concerns about EU being an undesirable enforcer, and wish rather that the regime should be global.

Some have raised concerns about the rapid entry into force of EU, catching owners of guard, thus disturbing a volatile market at a time in which they can ill afford it.¹⁷¹

¹⁶⁸ NGO Shipbreaking Platform, [<http://www.shipbreakingplatform.org/european-campaign/>] accessed 24 July 2013

¹⁶⁹ L. Krämer, 'The Commission Proposal for a Regulation on ship recycling, the Basel Convention and the protection of the environment' [http://www.shipbreakingplatform.org/shipbrea_wp2011/wp-content/uploads/2012/12/Legal-Analysis-of-EC-proposal_Ludwig-Kramer_FINAL-1.pdf] accessed 10 June 2013

¹⁷⁰ Ecsa, 'EU Industry Joint Letter on Ship Recycling Regulation, no 12/6 (December) [<http://www.ecsa.eu/index.php/position-papers>] Accessed 20 August 2013

¹⁷¹ Lloyd's List (No. 60,922 13 March 2013)

The main issue, from a legal point of view, is the alleged illegality of the proposed Regulation and will be discussed in the following.

3.3.1 Legality

3.3.1.1 Introduction

The proposed ship recycling Regulation excludes those ships that will be covered by the SRC from the scope of EWSR¹⁷², which implements the provisions of the Basel Convention and the Basel Ban in the EU.

The legislating competence of the EU is determined in its founding Treaties. The competence of the Union and the Member States is regulated in Title I of the TFEU.¹⁷³

The general rule is that when the Union is conferred ‘competence’ by the Treaties, only the Union may adopt ‘legally binding acts’.¹⁷⁴ According to a normal understanding of the words, this includes both internal and external legislating competence because the word is not qualified, and ‘legally binding acts’ includes both international agreements and internal legislation.

¹⁷² (n8) Article 29

¹⁷³ The Treaty on the Functioning of the European Union (TFEU) [2012] (OJ C-326/01)

¹⁷⁴ *Ibid* Article 2(1)

In some areas the legislating competence is ‘shared’ between the Union and the Member States, the ‘environment’ being one.¹⁷⁵ The term ‘shared competence’ means that both the Union and the Member States may adopt legally binding acts, but the competence of the Member States is limited to the extent that the Union has not exercised theirs.¹⁷⁶

It follows from the provisions stated above that the EU have been conferred competence in the area of ship recycling, being within the principle area of ‘environment’ and having taken action. Any action taken by the Union will also limit the competence of the Member States.

The Union’s exercise of this conferred competence is however subject to the principle of subsidiarity and proportionality.¹⁷⁷ The principle of subsidiarity determines that, in areas of non-exclusive competence, the Union may only act ‘insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States [...] but [would] be better achieved at Union level’.¹⁷⁸ Furthermore, the proposed action should not ‘exceed what is necessary’ to achieve the objective.¹⁷⁹

This is usually a formality, and was observed by the Commission in its proposal.¹⁸⁰ There is no apparent reason why this proposed Regulation should be considered in breach of those provisions.

¹⁷⁵ *Ibid* Article 4(2) (e)

¹⁷⁶ *Ibid* Article 2(2), second point

¹⁷⁷ The Treaty on the European Union (TEU) [2012] (OJ C-326/01), Article 5(1)

¹⁷⁸ *Ibid* Article 5(3)

¹⁷⁹ *Ibid* Article 5(4)

¹⁸⁰ (n8) Recital (14)

It follows that the Union have competence, and may exercise this competence in the form of a Regulation, according to the Treaties of the EU.

However, the proposal does not mention any international treaties in relation to the legal basis of the proposal. It is a question that must be considered because “[agreements] concluded by the Union are binding upon the institutions of the Union and on its Member States”.¹⁸¹ Thus, a new regulation must be consistent with international law. This will be discussed in the following.

3.3.1.2 EU and international law

Ship recycling is currently regulated in the EU by the Basel Convention and the EWSR, which implements the Basel Convention provisions and the Basel Ban Amendment into EU law. The EU is a member to the Basel Convention, and is thus bound by its provisions through the principle of *‘pacta sunt servanda’* under international law.¹⁸² It is settled case law in the ECJ that international treaties prevail over secondary Community legislation.¹⁸³

According to the principle of contracting parties’ contractual freedom under international law, it can ‘modify’ a multilateral treaty, such as the Basel Convention, if the possibility to do so ‘is pro-

¹⁸¹ TEU (n177) Article 216(2)

¹⁸² Vienna Convention (n9) Article 26

¹⁸³ Case C-344/04 *International Air transport Association and European Low Fares Airlines Association v Departement of Transport* [2006] ERC I-403

vided for by the treaty.¹⁸⁴ It follows that secondary EU legislation may only derogate from the provisions of the Basel Convention if it is permitted by the convention itself.

The Basel Convention seemingly prohibits derogation from its provisions by stating that ‘no reservations or exceptions may be made to this Convention’.¹⁸⁵ However, the Basel Convention permits its’ Parties to enter into other bilateral, multilateral or ‘regional agreements or arrangements’ concerning transboundary movements of hazardous wastes, subject to providing ‘environmentally sound management’.¹⁸⁶ This corresponds to the rule under international customary law¹⁸⁷

3.3.1.3 ‘regional arrangement’

The first question is whether an EU Regulation is a ‘regional [...] arrangement’ within the meaning of Basel Convention Article 11(1).

Prima facie the EU is clearly ‘regional’, within the ordinary meaning of the word, because it is an intergovernmental organisation consisting of sovereign nations in the European region, with a few exceptions. Furthermore, secondary legislation such as a regulation is easily recognizable within the ordinary meaning of “arrangement”.

¹⁸⁴ Vienna Convention (n9) Article 41(1) (a)

¹⁸⁵ BC (n16) Article 26(1)

¹⁸⁶ *Ibid* Article 11(1)

¹⁸⁷ Vienna Convention (n9) Article 41(1) (a)

It is however arguable that, within the context of the Basel Convention, EU legislation is not a ‘regional [...] arrangement’, because the EU itself is a party to the Basel Convention.¹⁸⁸ It could therefore be seen as a unilateral device, arranging a party’s internal legal order.¹⁸⁹ Krämer summarises: ‘This has the consequence that EU legislation on waste issues must be understood as the internal legislation of the Contracting Party EU and not as an international agreement between EU Member States. Consequently, the application of Art 11 of the Basel Convention on EU legislation, and in particular on the Proposal on ship recycling is excluded’¹⁹⁰

This opinion is not supported in this work. It is unnatural to view the EU as a sovereign state so long as it is established by sovereign states conferring powers to the Union under the agreements in TEU and TFEU. Moreover, the opposite result would contradict the general principle in international law; that parties to treaty may modify it between themselves in good faith.¹⁹¹

Thus, it is submitted here that the proposed Ship Recycling Regulation is a ‘regional [...] arrangement’ within the meaning of Basel Convention Art 11.

¹⁸⁸ Krämer (n169) 7

¹⁸⁹ *Ibid*

¹⁹⁰ *Ibid*

¹⁹¹ Vienna Convention (n9) Article 41

3.3.1.4 'less environmentally sound'

The question of legality therefor depend on whether the Ship Recycling Regulation is 'less environmentally sound' than the Basel Convention.¹⁹² Article 11(1) elaborates: 'These agreements or arrangements shall stipulate provisions which are not less environmentally sound than those provided for by this convention in particular taking into account the interests of developing states'.¹⁹³

On the natural construction of the words, the latter part is a more specific paraphrasing of the prohibition to derogate from proper waste management. In order to properly analyse the question of equivalent level of control one must construe the term 'not less' in particular.

When one reads the words 'not less', giving the words their ordinary meaning, 'less' means a smaller amount than the unit it is compared to. Coupled with the negative 'not' in front it reads as a prohibition against the diminishing of a certain quality; in the case of Article 11 the Basel Convention 'environmentally sound management'. Alternatively it can be read as a positive, meaning that the agreement must be equal to the Basel Convention or better.

The context of the words may be considered in the interpretation, which includes *inter alia* subsequent agreements by the parties.¹⁹⁴ The interpretation of the words seems to have been agreed at COP 7 in 2004¹⁹⁵ where the IMO was invited to ensure that the draft convention, as it then was,

¹⁹² BC (16) Article 11(1)

¹⁹³ *Ibid*

¹⁹⁴ Vienna Convention (n9) Article 31 (3)(a)

¹⁹⁵ (n52)

provided “equivalent levels of control” as that of the Basel Convention in order to avoid duplication of regulatory instruments. One should therefore apply a test of equivalence.

What exactly is meant by the word “control” in the decisions mentioned above is not clear. As Tsimplis observes, this could mean either control of ships as hazardous wastes or the relevant mechanisms set out in the two conventions.¹⁹⁶

There is a curious element to the test prescribed by Article 11, because it appears to focus on a comparison of practical applicability between the Basel Convention and any subsequent agreement on the same issue. As such practical applicability naturally must be hypothetical in nature with regard to the instrument not in force; the test is either biased or flawed. Any solution or consideration of this problem is not known to the author, but it may influence the level of practical applicability one might demand from the latter prior to its entry into force.

The Open-ended Working Group developed some criteria which were considered as a basis for further work, in relation to the newly agreed SRC.¹⁹⁷ Because the proposed Ship Recycling Regulation seeks to implement the requirements of the SRC, those criteria and the discussions in the COP are relevant.

The OEWG called on the parties at the COP to evaluate the equivalence of the two instruments ‘in their entirety’ and made out two ‘overarching’ considerations: First, the special characteristics

¹⁹⁶ Tsimplis (n58) 333

¹⁹⁷ UNEP/CHW/OEWG/7/21 (14 May 2010), p 31-36

of ships and international shipping. Secondly, the principles of the Basel Convention (including environmentally sound management) and the relevant COP Decisions must be considered. Under the auspices of those considerations the test of equivalence was divided into four main criteria: Scope/applicability, Control, Enforcement, and Exchange of information/ cooperation. Each main criterion was then divided into sub-criteria.¹⁹⁸

3.3.1.4.1 *Difference in scope*

The SRC applies to all ships and other vessels of any type of 500 GT or more which are not governmental ships, and recycling facilities.¹⁹⁹ It covers the entire duration of a ships operational life, and also regulates the building and planning of recycling facilities. Therefore it is more specifically constructed with ships in mind, and adopts a cradle-to-grave approach.

In contrast the Basel Convention applies more generally to hazardous wastes which are subject to transboundary movement.²⁰⁰ Therefore it is less specific to ships and only covers the final voyage and disposal.

Prima facie the Basel Convention provides a better cover as it covers those ships that are excluded from the scope of the SRC. However, most of those ships are not usually sent for recycling overseas. This is particularly true of smaller ships, as the scrap value does not justify the expenses of the journey. It is clearly evident that the scope is different. However, this does not mean that

¹⁹⁸ *Ibid*

¹⁹⁹ SRC (n66) Article 3 and Article 2(7) and (9)

²⁰⁰ BC (n16) Article 1(1)

the level of control under the SRC is not ‘equivalent’ to that under the Basel Convention. It is argued here that one should not look for a replica of the Basel Convention’s provisions of scope and application, but rather on whether the *partial* scope of the Basel Convention covered by the SRC and the Ship Recycling Regulation is done so while providing an equal level of control, while taking into account the special characteristics of ships and the principle of the Basel Convention. Taking these considerations into account it is submitted that the more specialized and holistic approach of the SRC is better adapted to cover the recycling of ships.

This would not create a gap under international law, as the SRC will supplement the Basel Convention rather than replace it. Moreover, those issues which are not covered by the SRC should still be covered by the Basel Convention, e.g. military and government ships, smaller ships and downstream waste.

3.3.1.4.2 *Control*

The SRC prescribes control through authorisation processes and certificates. Most notably Regulation 16 and its supplementary Guidelines, requirements for management, the SRFP, damage prevention, management of hazardous material, emergency preparedness, and worker safety and training.²⁰¹ In contrast the Basel Convention only prescribes “environmentally sound management” which is mentioned throughout its provisions. The definition²⁰² is not sufficiently precise to assess what “environmentally sound management” means and a universal application seems

²⁰¹ SRC (n66) Regulations 17-22

²⁰² BC (n16) Article 2(8)

unlikely, as different opinions on standards are evident. In this regard the SRC provide for a better system.

Both instruments provides for a chain of information through notifications. The PIC requires an initial notification upon export and another on completion. Similar requirements are provided for in the SRC.²⁰³ However, with regards to traceability of hazardous material during the recycling of the ship and subsequent disposal, the SRC is lacking in controlling mechanisms. The mechanism of PIC obliges contracting states to notify the exporting state and the Competent Authorities of the person performing the final disposal, thus providing control of the whole chain of operations undertaken.²⁰⁴ In contrast the SRC only requires that the Recycling Facility notifies the Competent Authorities and the Flag State once the recycling is completed in accordance with its provisions.²⁰⁵ Those include an obligation to transfer waste resulting from the dismantling process only to an authorised facility,²⁰⁶ but there is no requirement to pass on information regarding the identity of the facility in Reg. 25. Thus it provides less traceability.

The SRC has no provisions on the prohibition of export/import of hazardous material, but can only delay the authorisation of the SRFP and SRP. There is a clear discrepancy in this regard.

The Flag State is under no explicit obligation to consider the interest of developing nation in the process of issuing an International Ready to Recycle Certificate similar to that in the Basel Con-

²⁰³ SRC (n66) Regulation 24- 25

²⁰⁴ BC (n16) Article 6 (9)

²⁰⁵ SRC (n66) Regulation 25

²⁰⁶ Regulation 20 (4)

vention Art 4(2) (e).²⁰⁷ This is no surprise as the SRC does not operate with a distinction between developed and developing countries, but rather introduces equivalent standards to all contracting states.²⁰⁸

Moreover the Transit State is given no interests in the process under the SRC.²⁰⁹ This was pointed out as a weakness in the SRC by CIEL.²¹⁰ This is arguably less of a concern with regards to ships. When hazardous wastes are transported on land, the Transit States have a real possibility of control which is more limited on the seas due to freedom of navigation and innocent passage under international customary law.²¹¹ Moreover, the ship owner may avoid intervention by the Transit State by sailing around their territory.

In summary there is several discrepancies between the two instruments in this regard, which are mostly attributable to their different approach.

3.3.1.4.3 *Enforcement*

In general, the SRC have very few provisions on enforcement. It only prescribes for port state authorities in Member States to “warn, detain, dismiss, or exclude the ship from its ports” in relation to detected violations of the provisions, e.g. lack of valid IHM.²¹² If a violation of the SRC

²⁰⁷ SRC (n66) Regulation 11(11) and 10(4)

²⁰⁸ Tsimplis (n58) 330

²⁰⁹ *Ibid*

²¹⁰ UNEP/CHW.10/INF/18, p 24

²¹¹ (n32)

²¹² SRC (n66) Article 9(3)

becomes evident while the ship is in a port of the recycling state, the authorities in that port must take appropriate actions according to its national law.²¹³ Sanctions for violations in national law must be adequate to discourage violations.²¹⁴ It does not provide for additional enforcement mechanisms. This is in contrast to the Basel Convention which prescribes a duty to re-import or arrange for proper disposal²¹⁵ and criminalising illegal traffic²¹⁶.

This may open loopholes if the ship owner, upon rejection, is allowed to remove the vessel from the jurisdiction by retracting his declaration of intent given to the Flag State²¹⁷ and seek further employment in the area. If the Port State is a Party to the Basel Convention it is only in compliance with its obligations if it detains the vessel and arrange for proper recycling.²¹⁸ Furthermore, the national laws of the Flag State must not allow a withdrawal of the declaration of intent.²¹⁹

Given the trouble with FOCs there is no guarantee for the SRC to be implemented in such a manner. This loophole has not been solved through the SRC, and is a general problem in international shipping. In any event, it is arguable that the situation is not much better under the Basel Convention. The few cases regarding export and re-import under the Basel Convention illustrates how the Basel Convention has helped improving the standards for recycling of ships, but it is not the

²¹³ *Ibid* Article 10 (2)

²¹⁴ *Ibid* Article 10 (3)

²¹⁵ BC (n16) Article 8 and 9

²¹⁶ *Ibid*, Article 4(3)

²¹⁷ SRC (n66) Regulation 24 (1)

²¹⁸ Tsimplis (n58) 331-332

²¹⁹ *Ibid*

full truth. The current international legal framework continues to be circumvented, with a reportedly increase in 2013 for European ships.²²⁰ As summarised by Tsimplis:

*'It is one thing to say that the successful cases have triggered development in the law, in essence the SRC, and another to say that they provide an exemplary solution to the problem of ships characterised as waste.'*²²¹

The Commission proposal sets out a regime similar to that of the SRC, and does not mention criminal sanctions.²²² It does mention that sanctions, which 'may be of a civil or administrative nature', 'should' be adopted by the Member States, but this is a recommendation, not an obligation.²²³ In contrast, the Parliament amendments make criminal sanctions applicable for certain violations.²²⁴ If the Parliament's proposal is included in the final text of the Regulation, it would be more likely to fulfil the test of equivalence. However, if the inclusion is followed by extensive re-flagging to countries outside the Union, it may prove to apply to fewer ships than intended and thus lessen the positive impact the Regulation might have on speeding up the entry into force of the SRC.

Any critique of the softer approach of the SRC must be accompanied by the realisation that the application of a command-and-control approach of stricter measures and criminal sanctions is

²²⁰ <http://www.shipbreakingplatform.org/press-release-european-shipowners-dumped-365-toxic-ships-on-south-asian-beaches-last-year/>

²²¹ Tsimplis (n58) 331

²²² (n8) Article 23

²²³ *Ibid*, Recital (11)

²²⁴ (n158) Article 23(1a) (amendment 101)

bound to make the participation of the large flags of registry less likely, as they would lose their attraction to independent shipowners and investors if they become members to such a regime. The participation of these countries is paramount to a globally applicable regime.

In an effort to dissuade sham sales to dealers outside of the Union, who then sells the ship to sub-standard scrappers, the Commission proposes sanctions on the penultimate owner.²²⁵ Exemptions can be made where the shipowner can prove that the sale was not a sham; that he did not sell with the intention of scrapping.²²⁶ The commission proposal is along the same lines, but with a longer period between the sale and sailing for recycling.²²⁷ This proposal is an interesting addition. If implemented and enforced effectively it could form a blueprint for other countries to solve this global problem. On the other hand there is reason to believe that this addition might have the same effect as those mentioned above in relation to criminal sanctions, and might not survive the final reading.

In summary the enforcement provisions of the SRC are much softer than the Basel Convention. There is therefore a discrepancy between the two instruments.

3.3.1.4.4 *The Basel Ban amendment (1995)*

²²⁵ (n8) Article 23 (5)

²²⁶ *Ibid*, Article 23 (6)

²²⁷ (n158) Article 23 (5) (amendment 103)

With regards to the legality of the proposed EU regulation of ship recycling this is argued to be the main issue.²²⁸ The Basel Ban amendment is not in force, and cannot be relied upon in the EU Member States or the Union. The export ban provided for in the Basel Ban amendment can only be relied upon through the EWSR Art 36.

Similar to any sovereign state in the world, the EU institutions are free to adopt legislation and thus also amend legislation of the same status within its legal order, provided they are conferred legislating competence in the relevant field and the legislation is not incompatible with international law. As explained above, the EU possesses legislating competence in the field of environment.

Under international law a party to a convention must ‘refrain from acts which would defeat the object and purpose of a treaty’ not yet in force.²²⁹ The question therefore is whether it would defeat the object and purpose of the Basel Ban amendment to dispose of the ban with regards to large merchant ships and implements a European List in its place.

Prima facie the arrangement of controlling the recycling of hazardous wastes through authorisation of facilities in the European List directly contradicts a restriction on the trade of said subject matter, as it lifts the export ban to non-Annex VII countries subject to approval for inclusion on the list.

²²⁸ Krämer (n169) p 10

²²⁹ Vienna Convention, Article 18

Although the instrument is different, the instrument is not the true subject for analysis. It is the ‘object and purpose’ the prohibition in Article 18 is concerned with. In its Decision II/12 the COP recognized the high risk of not environmentally sound recycling operation associated with export to non-OECD countries. Thus the object and purpose of the Ban is to establish environmentally sound management of wastes, which may include ships, and to diminish the risks surrounding sub-standard recycling of such wastes and the negative impact in developing countries caused by export from developed countries.

The mechanism of a trade ban is just one of many that could have been chosen, and it is arguable that it does not preserve the interests of developing countries, in spite of that being its chief objective. The implementations of environmentally sound recycling costs money, exactly what a developing country does not have in abundance. Thus, a gradual improvement will take time. The income and employment that the recycling of ships provides for these countries are substantial. It has been argued that the Basel Ban in particular is used as a tool in competition favoring the developed countries by denying developing countries lucrative scrapping contracts.²³⁰ It is submitted here that this is not ethical, nor the right way to improve standards on ship recycling.

On the other hand the most recent arbitration panel decisions have strengthened the support of the argument that internationally agreed conventions, even if not yet in force, are sufficient to allow impeding trade for the protection of human life and the environment under Article XX in the

²³⁰ Prasanna Srinivasan, ‘The Basel Convention 1989: A Developing Nations’ Perspective’ (2001)

[http://www.libertyindia.org/pdfs/basel_convention_srinivasan.pdf]

WTO/GATT.²³¹ However, if the SRC comes into force this would be the preferable option because it is in line with the WTO/GATT agreement.²³²

In relation to the mechanism in the proposed Ship Recycling Regulation the ban on export would operate until the European list is finished. Also it would still apply to all ships not covered in the new regulation. As the object of Basel Ban is not ship specific one would be hard pressed in arguing that its object and purpose would be defeated by such an arrangement.

3.3.1.4.5 *Totality*

As set out by the OEWG the assessment on equivalence between the two instruments should be considered “in their entirety”.²³³ Therefore the control provided for by the two instruments, for all their differences, should be considered in their totality. The differences highlighted above are only the first part of this assessment. It is further submitted that the totality should be of overriding importance.

The purpose of the SRC is the protection of both human health and the environment throughout its operation.²³⁴ In contrast the purpose of the Basel Convention is to minimise the generation and

²³¹ *United States-Import Prohibition of Shrimp and Certain Shrimp Products*, WT/DS58/RW

²³² Tsimplis (n58) 347

²³³ OEWG (n197)

²³⁴ SRC (n66) Article 1 (1)

transport of hazardous wastes as well as ensuring environmentally sound management.²³⁵ As such, the latter focuses solely on the final voyage and disposal.

It is evident from the purpose of the Basel Convention that the minimisation of the movement of wastes is a cornerstone in its overall objective. This is arguably incompatible with ship recycling. In general ships are always on the move, and it is a reality that the largest flags of registry do not have the capacity to recycle their own ships. This aspect is also recognised in the Basel Convention itself by excluding recycling operations from the general prohibition.²³⁶

It is well documented, and has been illustrated here, that the current regime applicable to end-of-life ships headed for recycling is widely circumvented and thus ineffective in enforcing environmentally sound recycling.

Given that the ‘special characteristics of ships and international shipping’ is a chief consideration, there is legally room to argue that one may first consider whether the export/import- perspective was suitable for ships and shipping in the first place.²³⁷ This aspect was mentioned in the opinion submitted by Japan in relation to COP 10.²³⁸

²³⁵ BC (n16) Preamble and Article 4

²³⁶ *Ibid* Article 4 (9) (b)

²³⁷ OEWG (n197)

²³⁸ Preliminary assessment COP10 (UNEP/CHW.10/INF/18), pp 19 and 28

A ship may leave the port in the State of Export for a number of reasons.²³⁹ Sometimes they leave without any cargo, but that does not mean that the shipowner has any intention to recycle it. It may leave for bunkering, finding a more attractive port to pick up cargo, headed for a suitable waiting place, seeking employment elsewhere or *en route* to be delivered ready for a new charterer in a different port agreed between the parties.

These characteristics are unique to ships. When a container of *inter alia* scrap metal or disused electronic components leaves a port in a container it is more natural to talk of wastes than is the case for ships. This is reflected in some of the difficulties regarding the definition of ships as wastes, and determining the point at which a ship may become waste.²⁴⁰ Furthermore, as shown in the case of the *Blue Lady*, it may be difficult to establish which state is the State of Export.²⁴¹

It follows that for ship recycling the export/import approach is not well suited to the particular nature of ships and shipping. The cradle-to-grave approach taken by the SRC applies far better to ships, because it follows the ship around, regardless of its location at any given time. Also it provides for more frequent control over a longer time, as the ship will be surveyed and inspected regularly by the Flag State and in ports of call.

Another aspect of control is to choose the right enforcers. Shifting the role of enforcer from the State of Export/ Import to Flag State/ Recycling Facility State is arguably not an improvement. Re-flagging of vessels is both cheap and easy to do, making the problem of sub-standard Flag

²³⁹ Tsimplis (n58) 329-330

²⁴⁰ *The Sandrien* (n55)

²⁴¹ (n59)

States, commonly referred to as 'Flags of Convenience' or 'FOCs', a problem in relation to effective enforcement.

The SRC has admittedly done little to close the loophole of re-flagging. But on the other hand, neither has the Basel Convention.²⁴² They are equally weak in this area. In this regard there are no differences between the Basel Convention and the SRC. The problems related to FOCs and sub-standard shipping is sought availed through use of Recognized Organizations and Port State Control through regional MOUs, and has had some success.²⁴³

On the whole, the SRC would probably better the real-world situation, which today is effectively unregulated because of wide loopholes. The way that a consensus is reached in the IMO leads to less rigorous provisions than is desirable from an environmental view. But it is important to remember that the same consensus leads to a greater will to participate, ratify and implement the convention effectively. These considerations should be included in the test of equivalence.

3.3.1.5 Conclusion

In summary it is therefore submitted that when assessing the question of equivalence one should not look narrowly at the specific requirements of each convention. Rather, it makes more sense to adopt a wide view of the issue and ask whether the main principle of ESM and the spirit and purpose of Basel Convention is maintained in the SRC, within the special context of international

²⁴² Tsimplis (n58) 331

²⁴³ http://www.parismou.org/Publications/Press_releases/2011.05.09/Successful_implementation_of_New_Inspection_Regime.htm

shipping and the challenges that entails. It is further submitted that this is within the ambit of Decision VII/12 and what ‘not less environmentally sound’ in Article 11 really means.

Thus, it is argued in this paper that the SRC may well provide a different but equal level of control for recycling of ships to that of the Basel Convention. However, this does to a large extent depend on how effectively the regime, and in particular the Guidelines, will be implemented and enforced in national legislation.

Following what is concluded here there should be a sufficient legal basis for the EU to adopt the new Ship Recycling Regulation.

3.3.2 Final remarks

The ban of beaching, if it is included in the final text of the EU Ship Recycling Regulation, will probably be considered a victory by environmentalist NGOs. However it is doubtful that some of the major recycling nations will share that view.

The Ship Recycling Regulation does not provide for a civil liability regime. Alternative measures to internalize the costs of ship recycling was put forward in the form of a Recycling Fund, but reportedly defeated.²⁴⁴ Thus, the costs of ship recycling still fall on the workers and the environment in developing nations. It is however possible that the EU will leave the door open for such financial mechanisms in the future, as it have been a matter of much debate. Suggestions have

²⁴⁴ <http://www.shipbreakingplatform.org/european-campaign/>

been made that a Transitional Fund, gradually supplemented by annual contributions from ship-owners and charterers calling at EU ports, is a feasible option.²⁴⁵

²⁴⁵ Prufondo EconomicResearch, 'Financial Mechanisms to ensure responsible ship recycling' (2013)

[http://www.shipbreakingplatform.org/shipbrea_wp2011/wp-content/uploads/2013/01/Financial-mechanisms-for-responsible-ship-recycling-22_01_2013-FINAL.pdf]

4 Conclusion

It has been argued here that the proposed EU Ship Recycling Regulation has sufficient legal basis to enter into force in the near future.

However, the situation regarding the ratification of the SRC has yet to be definitely resolved following the disappointing outcome of COP 10²⁴⁶, where it became evident that there was no agreement on the subject of equivalent level of control under the two conventions.²⁴⁷ This procrastinating has the repercussions that a ‘wait-and-see’ attitude is promoted, further delaying the ratification of the SRC.

The situation must improve because the damage caused to human health and irreparable devastation of the environment in South Asia is not offset by its benefits. But the SRC seems still far from entry into force as it is held ‘hostage’ by its difficult entry-into-force provisions and a few key nations. Until such time regional solutions may improve the current situation, leaving less work to be done on national level, but is not the final answer because what is needed is uniform application and legal clarity

²⁴⁶ UNEP/CHW.10/INF/18 (August 11 2011), p 1-35

²⁴⁷ IMO, ‘Outcome of the tenth meeting of the Conference of the Parties to the Basel Convention ((2011) MEPC 63/3/8), 1-5

In the current economic climate in the EU one might ask whether the extra costs of establishing and maintaining a European List is sustainable without the supplement of a Fund or similar economic mechanism.

All sceptic remarks aside, at the present a regional initiative from the EU is the only viable option, together with voluntary measures from a minority of responsible shipowners, to improve on the current situation. Some practice shows that shipowners are following these to ‘avoid hassle’, minimise the risk of delay, early compliance and improve image as the perception seems to be that SRC is the way forward.²⁴⁸ If the EU Ship Recycling Regulation is only the first, it may prove a useful blueprint for others. In this regard the IMO Guidelines should assist anyone wishing to take similar measures unilaterally or on regional. As such one might conclude with a message of cautious optimism.

²⁴⁸H. Gramann (Green Ship Recycling Services), at ClassNK Seminar in Tokyo 13 December 2012 [http://classnk-rd.com/pdf/katsudou201212_B.pdf] accessed 30 June 2013.

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