

Hong Kong Convention: an important step forward in ship recycling

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Initially adopted in May 2009, the Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships (the “**Hong Kong Convention**”) has reached the seminal moment of ratification and will enter into force in June 2025. The Hong Kong Convention seeks to ensure that a ship is recycled when it reaches the end of its operational life and does not become a threat to the environment or human health and safety. Whilst the ratification is undeniably a positive development, what is yet to be seen is how the Hong Kong Convention will operate alongside and more importantly the extent it will complement or complicate the position in relation to the existing European Ship Recycling Regulations 2013 (the “**2013 Regulations**”) and other relevant legislation.

Hong Kong Convention

The Hong Kong Convention seeks to provide international regulation of ship recycling and to fill the gaps that exist in the current regulation in particular the Basel Convention on the Control of Transboundary Movements for Hazardous Wastes and their Disposal (the “**Basel Convention**”). The Hong Kong Convention broadly covers the design and construction of ships so as to facilitate safe and environmentally sound recycling; the operation of ship recycling facilities; and establishes an enforcement mechanism for ship recycling, setting out certification and various reporting requirements.

The threshold criteria required ratification of the Hong Kong Convention from at least 15 states representing not less than 40% of global merchant shipping by gross tonnage, with a ship recycling capacity of no less than 3% of gross tonnage. Following ratification by Bangladesh and Liberia in recent weeks, there are now 22 contracting parties representing approximately 45.81 per cent of the gross tonnage of the world’s merchant fleet and a recycling capacity 3.31 per cent of gross tonnage including India, Bangladesh and Turkey.

2013 Regulations

The 2013 Regulations has been the only dedicated legally binding international (albeit not encompassing much of the world fleet) framework for the regulation of ship recycling. It applies to all ships flying the flag of an EU country and (to a lesser degree) to vessels with non-EU flags that call at an EU port or anchorage. The 2013 Regulations were introduced because it was felt that the EU Waste Shipment Regulations 2006 (the “**2006 Regulations**”) which had introduced the Basel Convention and Basel Ban Amendment into European law were ineffective in the context of the recycling of ships and it was not clear when the Hong Kong Convention would enter into force.

The 2013 Regulations sets out the parameters for shipowners and ship recycling facilities to ensure ships flying the flag of an EU country are recycled with environmentally compliant methods, sets out restrictions on the use and the requirement for inventories of hazardous materials on ships, requires EU countries to submit reports on ship recycling every 3 years and establishes a list of

European ship recycling facilities. The European list of ship recycling facilities sets out specific facilities located both within and outside of the EU and ensures ship recycling facilities can only maintain list status if the facilities comply with requirements relating to environmental safety and worker protection. The detailed provisions in the 2013 Regulations are already perceived as setting a higher standard than that of the Hong Kong Convention. Following Brexit, the relevant regulation in the UK is now Ship Recycling (Facilities and Requirements for Hazardous Materials on Ships) (Amendment) (EU Exit) Regulations 2019.

Fitting the Hong Kong Convention into the existing regulatory landscape

It remains to be seen how in practice the Hong Kong Convention will fit into the existing ship recycling regulatory regimes and the consequences of the discrepancies in this regulatory landscape notably:

1. The 2013 Regulations follow a stricter framework than the Hong Kong Convention but to date the EU list of ship recycling facilities only includes a small number of shipyards outside of Europe (Turkey and USA) and (consistent with the concepts of the Basel Ban Amendment) does not include any non-OECD shipyards, even though this means the major ship recycling capacities of Bangladesh, India, and Pakistan are all unavailable to ships caught by the 2013 Regulations.
2. The Basel Convention require hazardous waste to be disposed of in an environmentally sound manner. While there are 191 signatories to the Basel Convention, it does not expressly deal with ship recycling and does not recognise the concept of flag States. Instead, it requires the State from which the ship departs on its last voyage and the State where the recycling will take place to consent to the shipment.
3. The Basel Ban Amendment, to which there are 103 signatories, prevents the export of hazardous wastes from OECD to non-OECD countries. There are 38 OECD countries and while this includes Turkey, the other key ship recycling countries such as Bangladesh, India and Pakistan are all non-OECD countries.

The ratification of the Hong Kong Convention is definitely a welcome step towards a safer more environmentally sound global approach to the regulation of ship recycling, but it does not necessarily mean that the navigation of the various regimes applicable to ship recycling will become any easier.

Postscript

In November 2023, the Hamburg Public Prosecutor charged 3 defendants for scrapping a ship in Alang, India. The *CS Discovery* was recycled allegedly in breach of the 2006 Regulations. The case is the latest demonstration (other examples include the cases connected with the end-of-life disposal of the vessels *Harrier* and *Jumbo*) that authorities, at least in Europe, are active in pursuing criminal proceedings in connection with the end-of-life disposal of vessels that does not conform to relevant regulatory requirements.