

EU Ship Recycling Regulation: What's in it for South Asia?

August 2014

*Silvia Pastorelli*¹

Shipbreaking does not feature on the headlines very often, however, this industry plays a very important role in the economies of South Asian countries. The recycling of end-of-life vessels for scrap metal and other materials is a very profitable industry for both ship-owning companies and the owners of shipbreaking yards. However, developing countries pay the highest price in terms of human lives and environmental damage, with Bangladesh, India and Pakistan on the frontline.

A legal framework to counteract these sub-standard recycling practices is already in place, thanks to the Basel Convention, the International Maritime Organisation, the International Labour Organisation guidelines and the latest Hong Kong Convention. The European Union has also recently introduced the Ship Recycling Regulation (SRR) aiming to reduce the environmental and human impact of this industry, especially on the developing countries. Yet, it is a long way before the Regulation could prove its effectiveness as experts have criticised its final version. The objective of this paper is to present the issue of shipbreaking in South Asia and its characteristics and to analyse the latest European Regulation on ship recycling, contextualising it in the international legal framework.

EU-Asia at a Glance is a publication series about the current state of affairs in Asia and EU-Asia relations

This paper expresses the view of the authors and not the European Institute for Asian Studies

¹ Silvia Pastorelli is a Junior Researcher at the European Institute for Asian Studies



Introduction

In recent years, shipbreaking has gained increasingly more importance at the policy making level, also thanks to greater engagement from civil society. Nonetheless, it still is a term relatively little known to the wider public. Consisting in the process of dismantling obsolete vessels, shipbreaking was defined by the International Labour Organisation (ILO) as one of the most hazardous jobs in the world. The majority of world vessels sold for scrap are sent to a handful of countries, namely Bangladesh, India, Pakistan, China and Turkey. Yet, shipbreaking (also referred to as ship recycling) is largely neglected by the general public and awareness, although increasing, is still too low.

The regulatory framework has also witnessed significant improvements over the years, both globally, with the Basel Convention, the International Maritime Organisation (IMO) guidelines, the ILO guidelines and recently the Hong Kong Convention, and at the European level, with the European Waste Shipment Regulation. Moreover, in December 2013, the European Union Ship Recycling Regulation (SRR) was officially adopted, with the final aim to reduce the environmental and human impact of this labour intensive industry, especially in developing countries. Nonetheless, critiques have highlighted the shortcomings of this regulation and doubts exist about its actual impact on South Asia, whose beaches constitute the world's main shipbreaking hub. Indeed, "out of 286 vessels broken during the second quarter of 2014 almost two thirds ended up on the beaches of South Asia", 53 of which were European owned.²

Ship recycling, if conducted in an environmentally safe and sound manner, has the potential to be a 'green business', through the re-use of materials and if new ships are designed with a cradle-to-grave approach in mind. However, many steps have still to be taken to achieve such result. This paper aims to outline the current context and characteristics of the shipbreaking industry in South Asia, stressing its negative externalities, and to analyse the changes the recent European Ship Recycling Regulation will introduce.

What is Shipbreaking?

Despite recent improvements of conditions of the yards, the shipbreaking industry has changed very little in South Asia considering the continuous use of the beaching method, highly hazardous for the local workforce and their livelihoods.

Recycling an old vessel, at the end of a life span of generally 20 to 30 years, consists of the progressive dismantling and recycling of all its components. In some years recycling activities tend to be more intense, as they also follow the global economy flow. Being made almost entirely of steel, it is easy to understand why ships are valuable also at this last stage of their life. Considering its purpose - to recycle or re-use basically every piece of old commercial vessels - this business has the potential to become both environmental friendly and economically profitable. However, vessels also contain a large amount of dangerous pollutants, chemicals and residual oil, exposing the environment to serious risks. While until the 1960s this business was commonly conducted in industrialised countries, presently the majority of commercial vessels are shipped to developing

² Shipbreaking Platform (2014, July 7). *South Asia - Quarterly Update*. Retrieved from: <http://www.shipbreakingplatform.org/newsletter-archive/>

countries, mainly India, Bangladesh and Pakistan (71 per cent of the total tonnage in 2013).³ Two-thirds of European-owned ships are sold for scrap at the end of their life, according to the NGO Shipbreaking Platform, an umbrella organisation leading the campaign to halt substandard practices in the shipbreaking industry.⁴

Globally, beaching is the most commonly used method for ship recycling (95 per cent of the total) and the presence of tidal beaches, coupled with less stringent implementation of environmental law and labour rights, make South Asia a key location.⁵ The vessels are beached during the high tide and, once it recedes, they lie on the mudflats, where the dismantlement process takes place in an almost totally manual way. Workers in the yard break down the ship piece by piece and progressively drag it at higher points on the beach, where everything from metal scraps to furniture is loaded on lorries to be sold in domestic markets. This is ship breaking as it is known in South Asia, very different from the safer dry dock procedure adopted in other countries. Still, for many companies and ship owners, it represents the most cost-effective choice, as it ensures higher profits when selling the vessels to such facilities.

The process leading a ship to end up on a beach in a developing country is generally composed of two main steps. First of all, when an owner wants to sell a vessel, he can decide on who is going to be the buyer and on the price. The consequences are easy to guess: the yards with low environmental and labour standards allow ship-owning companies to make higher profits, in turn reinforcing unsafe and illegal practices. In this ship owners are helped by cash buyers, who assist them in finding a recycling facility, advise them on the ship recycling practices and, very often, buy the ship and reflag it before sailing to their final destination.⁶

Focus on South Asia: the Human and Environmental Impact

Chittagong in Bangladesh, Alang-Sosiya in India and Gadani in Pakistan are the favoured locations because of the easy sea access, the presence of big tidal ranges, the poorly enforced environmental and labour laws and, not least, because of the growing demand for steel.

India alone is the largest shipbreaking country, with the state of Gujarat (where Alang is located) leading in the business, followed by Maharashtra and West Bengal.⁷ Bangladesh immediately follows India in terms of tonnage scrapped. Indeed, it represents the country's first source of iron and provides 25-30 per cent of the total yearly demand for steel.⁸

Despite differences in the regulatory framework, the working conditions in these countries are very similar. Unskilled labour represents the main part of the workforce in the yards, formed by migrant workers coming from poorer villages hoping to provide for

³ NGO Shipbreaking Platform. (2013). *Annual Report 2013*, p. 7.

⁴ NGO Shipbreaking Platform. (2013). *NGOs Publish List of Toxic Ship Dumpers: German and Greek Companies Amongst the World's Worst*. Retrieved from <http://www.shipbreakingplatform.org/press-release-ngos-publish-2013-list-of-toxic-ship-dumpers-german-and-greek-shipping-companies-amongst-the-worlds-worst/>

⁵ Lloyd's Register (2011). *Ship Recycling: Practice and Regulation Today*, p. 10.

⁶ Iqbal, K. M. J., and Heidegger P. (2014) *Pakistan Shipbreaking Outlook*, p. 16.

⁷ Basu, S. (2013, May 10). *South Asia: World's Ship Scrapping Yard*. Retrieved from <http://www.downtoearth.org.in/content/south-asia-worlds-ship-scrapping-yard>

⁸ Alam S., and A. Faruque (2014). Legal Regulation of the Shipbreaking Industry in Bangladesh: The International Regulatory Framework and Domestic Implementation Challenges, *Marine Policy*, 47, pp. 46-56.



their families and they usually work without a contract for a few years. They live in settlements next to yards with scarce infrastructure and services and are given no adequate training or equipment for the job they are going to do. Additionally, in the shipbreaking yards, child labour has been regularly documented.⁹

For a long time advocacy groups have campaigned against such sub-standards procedures for ship recycling and to promote a healthier environment. The toxic and polluting substances contained in the vessels, like asbestos, polychlorinated biphenyls (PCBs) and oils, cannot be contained in this inadequate environment and, in contact with the sea and beaches, they cause serious environmental degradation of the coastal areas, marine habitats, fisheries and loss of biodiversity. Another concern is the disappearance of mangrove forests on the seashores as they are cut down to make space for new yards. The situation is particularly serious in Bangladesh, a country already battling against the consequences of climate change. Indeed, mangroves are not only an important resource for the coastal livelihood and ecosystem, but also (effectively) play an important role in reducing the impact of climate change, shielding the coastline from cyclone, storm surge and other natural disasters by reducing the wave energy and stabilise sediment.¹⁰

The safety of the workers in the shipbreaking yards is all but guaranteed. Most of the work is done manually, with few if any protections for the workers, since it is impossible to bring heavy machinery on the beach. This also means that not only heavy cranes cannot work on a muddy terrain, but also ambulances and other rescue services cannot reach the area in the event of accidents. As the Lloyd's Register Foundation reported from a 2008 visit, "almost no safety precautions were visible" and "oil was dumped in pits on the beach".¹¹ In the majority of the cases, the workers are not even aware that they are handling toxic substances and do not have proper equipment to take care of them. This lack of safety measures often leads to severe, and sometimes fatal, incidents, caused by explosions, fires, collapsing steel sections of the ships and illness due to prolonged exposure to chemicals.

Legal Background and the EU Regulation

The regulatory framework for shipbreaking is relatively recent, mainly based on voluntary commitment, and relies on a few legal centrepieces. The latest EU regulation will become part of this context when entering into force between 2016 and 2019, creating a new set of rules for its Member States.

The most known and most important initiative on shipbreaking is the Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and their Disposal of 1989. The Basel Convention is based on a series of fundamental principles, first of which is the minimisation of transboundary movement of hazardous wastes. This implies the necessity of Prior Informed Consent (PIC) procedure and the environmentally sound management (ESM) of wastes in order "not to export the hazards and damage to human

⁹ Shipbreaking Platform. (2013). *Problems and Solutions*. Retrieved from <http://www.shipbreakingplatform.org/problems-and-solutions/>

¹⁰ Prabua B., Md. S. N. Chowdhury and S. Sarker. (2010). Climate Change and its Risk Reduction by Mangrove Ecosystem of Bangladesh, *Bangladesh Research Publications Journal*, 4(3), pp. 208-225.

¹¹ Lloyd's Register. *Ship Recycling: Practice and Regulation Today*, p. 13.



health and the environment, to other countries".¹² Since it applies also to end-of-life ships containing such materials, it is evident from this disposition that the majority of ships sold for scrap are in breach of the Convention. Successively, in 1995, State parties to the Convention added an amendment banning the export of wastes for recovery and recycling to developing countries, which was incorporated by the EU in its Waste Shipment Regulation. The Basel Convention is probably the most important tool to safeguard both the environment and the workers as it also clearly defines illegal traffic of hazardous substances a crime.¹³ However, it is not completely exempt from critiques. For instance, its provisions are often circumvented declaring the intention to recycle the ship (hence technically making it 'waste') only when in international waters or at the shipbreaking site and the PIC can be violated purposely misrepresenting the nature of the waste.¹⁴

The latest addition to the international legislation on shipbreaking was developed by IMO in 2005 in Hong Kong and is the International Convention for Safe and Environmentally Sound Recycling of ships. Jointly prepared with the parties of the Basel Convention and ILO, its final aim is to ensure not to "pose any unnecessary risks to human health, safety and to the environment" in the ship recycling process.¹⁵ The Hong Kong Convention was adopted in 2009 and is intended to address all the issues around ship recycling, considering both the environmental and working conditions. This Convention requires the vessels to always carry inventories of all the hazardous materials on board, to update them regularly and to provide for certification and reporting.¹⁶ Moreover, the yards will have to issue a specific 'Ship Recycling Plan'. However, not only is the Hong Kong Convention still a long way from entering into force, but it also still fails to introduce a compulsory environmental-friendly ship recycling method. Furthermore, it does not properly enforce the 'polluter pays' principle since it does not impose substantial obligations on the owners and actually seems to shift the burden at the end of the recycling chain, "ignoring the real capacity of developing countries to adhere to such obligations".¹⁷

It is amidst this criticism of the already existing legal framework that the European Ship Recycling Regulation was introduced on 30 December 2013. It sets out a series of new requirements for large commercial vessels flying a EU Member State flag and for those flying a third country flag calling at EU ports. Hence, the ships covered by this regulation will be excluded by the Waste Shipment Regulation (EC) 1013/2006, currently implementing the Basel Convention, raising also the issue of potential breaching of international obligations.

The intention of the European Union is to better regulate the end-of-life stages of European owned ships in order to prevent the mismanagement and dumping of toxic substances, especially in developing countries. The regulation states that European

¹² Alam and Faruque, *Legal Regulation of the Shipbreaking Industry in Bangladesh: The International Regulatory Framework and Domestic Implementation Challenges*, p. 50.

¹³ Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, signed on 22 March 1989, entered into force on 5 May 1992, Article 4.

¹⁴ Alam and Faruque, *Legal Regulation of the Shipbreaking Industry in Bangladesh: The International Regulatory Framework and Domestic Implementation Challenges*, p. 50.

¹⁵ International Maritime Organisation. (2009). *The Development of the Hong Kong Convention*. Retrieved from <http://www.imo.org/OurWork/Environment/ShipRecycling/Pages/Default.aspx>

¹⁶ International Maritime Organisation, *The Hong Kong Convention for the Safe and Environmentally Sound Recycling of Ships*, retrieved from: <http://www.imo.org/about/conventions/listofconventions/pages/the-hong-kong-international-convention-for-the-safe-and-environmentally-sound-recycling-of-ships.aspx>

¹⁷ Alam and Faruque, *Legal Regulation of the Shipbreaking Industry in Bangladesh: The International Regulatory Framework and Domestic Implementation Challenges*, p. 50.



owners will have not only to ensure to have on board an inventory of hazardous substances and to provide a 'ready for recycling' certificate, but "will have to ensure that ships are only recycled in ship recycling facilities included in the European List", which will be published at the end of 2016 at the latest.¹⁸ While the European Waste Shipment Regulation was largely based on the Basel Convention, it is easy to see from its characteristics that the SRR was conceived as an early implementation of the Hong Kong Convention, albeit with some stricter parameters.

While introducing some positive aspects, the European Ship Recycling Regulation resulted very controversial in its final draft and it attracted many critiques. Already in June 2013, during the most important phases of the debate, some South Asian countries raised their voices in an outcry, stating that this ban would have a deeply negative impact on their national economies and local communities, since 300,000 people depend on this business in Bangladesh alone.¹⁹

Also, the NGO Shipbreaking Platform, together with the European Environmental Bureau, announced that they would have not supported the Ship Recycling Regulation in its final version. One of the main reasons behind this is the fact that it does not include any kind of financial incentive mechanism for ship recycling, thus depriving the legislation, in their opinion, of real effectiveness. It is also important to notice that the SRR does not specifically spell out the beaching method as illegal, potentially creating a legal loophole.

Unfortunately, the main issue remains re-flagging. This practice is already commonly used among ship owners. It consists in the registration of a vessel to a non-EU flag, before it sails for its final journey, easily bypassing the regulation.²⁰ Flags of convenience are normally used exactly with the purpose to circumvent legislation and European shipping companies do not make an exception, as data confirm that some of the flags most used on end-of-life ships are those of Comoros, Sierra Leone and Saint Kitts and Nevis.²¹

Finally, there are concerns on the legality of the SRR itself, as it exempts ships from the European Waste Shipment Regulation, which incorporates the United Nations Basel Convention and its Basel Ban Amendment on the control of transboundary movements of hazardous waste and its disposal. In addition, there are also fears that it would slow down, if not jeopardise, the ratification of the Hong Kong Convention. The Ship Recycling Regulation is based on the Convention itself and is envisioned as a way to make progress on the issue without waiting for its ratification and, at the same time, to speed up the process. However, the decision of the EU to act unilaterally to regulate the matter is seen by some, as for example former executive of the International Marine Organisation Mr Nikos Mikelis, as a disincentive for many states to ratify the Convention.²²

Although the regulation is intended to be a step forward to put a halt to substandard procedures and to improve Corporate Social Responsibility (CSR), in practice, its effectiveness is questionable. The use of flags of convenience is not prevented by its

¹⁸ European Commission. (2013) *Ship Recycling*. Retrieved from <http://ec.europa.eu/environment/waste/ships/>

¹⁹ Paris, Costas, and Biman Mukherji (2013, June 16). EU and South Asia Scrap Over Recycling Ships. *Wall Street Journal*. Retrieved from <http://online.wsj.com/news/articles/SB10001424127887324423904578522982568438250>

²⁰ Bulleid, Roz (2014, February 4). Most of Europe's Old Ships Still Ends Up in Asia. ENDS Europe. Retrieved from <http://www.endseurope.com/>

²¹ NGO Shipbreaking Platform. *Annual Report 2013*, p. 7.

²² Paris and Mukherji, EU and South Asia Scrap Over Recycling Ships.

provisions, creating an easy loophole for ship owners who could still look to South Asia where steel is bought for a higher price than in other markets. Even before the SRR, many of them already used to re-register their vessels to countries where the legislation on hazardous substances is less stringent, in order to try to protect their image. Indeed, it is unclear how many companies will comply with this regulation, especially considering the absence of a financial incentive scheme (even though the European Commission will review this option in 2017).

Considering all these issues, it is easy to understand the concern that the Ship Recycling Regulation will become another 'paper tiger'. While the hope is that these new provisions will stimulate the debate and prompt more actions to be taken forward, the impact of this regulation, at least in the short term, is likely to be very modest, leaving the ship breaking yards of South Asia to work business as usual.

Future Developments and Conclusions

The shipbreaking industry has been flourishing in recent years and it seems it will continue on this path. The global economic crisis has led many ship owners to face an unexpected overcapacity of ships, finding the only solution in earlier selling of their vessels. Also the phasing-out of single hull oil tankers, for pollution prevention, in favour of safer double-hull tankers is expected to be accomplished by 2015 and hence it might provoke a final rush to get rid of the older ships before the final date.²³ The EU regulation will not enter into force before 2016 at the earliest and, hence, will not be able to counteract the likely increase of ships ending on South Asian beaches on the short term.

Even on paper, the real impact of the European Ship Recycling Regulation remains unclear, as ways to circumvent the legislation already exist. However, these concerns should not completely overshadow it, since its final aim is commendable. It wants to create a better framework for the recycling of ships and especially try to prevent that the burden of environmental externalities is shouldered by developing countries alone. Despite its shortcomings, the European Regulation on Ship Recycling has the merit of bringing the issue of shipbreaking, and consequently of labour and environmental rights and CSR, back on the EU policy making agenda, where it can get the attention it deserves. A future review of the legislation has already been planned and it will be fundamental that this time European policy makers do not miss the chance to effectively change the practices of an environmentally damaging business. This will have to be done bearing in mind that the aim is not to shut down this type of industry or to excessively burden developing countries, but to upgrade ship recycling to fulfil its 'green business' potential, without depriving South Asian countries of economic opportunities.

²³ International Maritime Organisation (1973), *International Convention for the Prevention of Pollution from Ships*. Retrieved from [http://www.imo.org/about/conventions/listofconventions/pages/international-convention-for-the-prevention-of-pollution-from-ships-\(marpol\).aspx](http://www.imo.org/about/conventions/listofconventions/pages/international-convention-for-the-prevention-of-pollution-from-ships-(marpol).aspx)