



‘Beaching’ of vessels for shipbreaking – legal, illegal or somewhere in between?

In light of increasing public and political concern globally over the practice of beaching vessels for dismantling, Gard reviews the current legal regime that may apply to shipowners when considering their recycling options.

Published 15 August 2018

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Commercial vessels have a 'lifespan' and when they reach the end of it, they are recycled. The European Commission estimates that up to [1,000 ships are recycled](#) each year world-wide.

In addition to valuable and re-useable products like steel, ships also contain hazardous waste and pollutants that are harmful to people and the environment. There has been increasing public and political concern over the practice of some shipbreaking facilities to ram vessels onto tidal flats where workers break down the vessels in ways that are dangerous for the workers and damaging to the environment. To address the hazards, the International Maritime Organization (IMO) adopted the Hong Kong International Convention for the Safe and Environmentally sound Recycling of Ships.

The Hong Kong Convention provides a 'cradle-to-grave approach' – a system of control and enforcement over a ship's lifetime from design, through construction, operation and up to the recycling stage. The Convention establishes mandatory requirements on shipowners to ensure the safe and environmentally sound recycling of ships. The Convention also applies to Ship Recycling Facilities. In general, the Convention requires Facilities “to establish management systems, procedures and techniques which do not pose health risks to workers or the population in the vicinity of the Facility and which will prevent, reduce, minimize and to the extent practicable eliminate adverse effects on the environment caused by Ship Recycling.”

Adopted in 2009, the [Hong Kong Convention](#) is not yet in force. Entry into force will only occur 24 months after ratification by 15 States, representing 40 per cent of world merchant shipping by gross tonnage. Today the Hong Kong Convention has been ratified by only six nations – Belgium, the Congo, Denmark, France, Norway and Panama.

Shipping is global and the ideal way to ensure a uniform approach to ship recycling is by an international convention. Uniformity provides certainty and an even playing field, reducing the financial incentives for practices that endanger people and the environment. Yet the ratification process can be painfully slow. The European Union partially filled the gap by regulating ship recycling based on terms modeled on the Hong Kong Convention. The EU regulations apply to vessels that are flagged in the EU irrespective of where the recycling takes place.

The EU Ship Recycling Regulation entered into force in 2013. One of the principal components of the Regulation is the certification of facilities, the so-called “European List” of approved facilities which meet the requirements of the Regulation (and consequently would also meet the requirements of the Hong Kong Convention). The first “[European List](#)” of approved facilities was adopted by the Commission in December 2016. It then included 18 shipyards, all located in the EU. The list was updated in May 2018 and now includes 21 shipyards.

The European Commission has received applications from shipyards outside of the EU and the applications are pending.

As of 1 January 2019 all large sea-going vessels sailing under an EU Member State flag are required to use one of the approved ship recycling facilities. The majority of ships, however, are recycled at sites outside of the EU and mostly in South Asian sites where the vessels are 'beached' and broken up largely by hand.

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Commonly, ships are sold to buyers who reflag and may then have the financial incentive to recycle at a site outside of the EU where the vessel is beached and dismantled in conditions that do not meet the EU standards. On the face of it, this seems to be legal because the vessel is not flagged in an EU country after sale – but beware. The Rotterdam District Court held a Dutch company responsible for breach of the EU Waste Shipment Regulation when the shipowner sold to a buyer who then sent the vessels for scrapping on beaches in South Asia.

The court found that when the ships left the ports of Rotterdam and Hamburg in 2012, the intention was already to demolish the ships which qualified the ships as “waste”, even though they were still seaworthy, certified, insured and operational.

A shipowner who sells a vessel at the end of its lifespan to a buyer who then contracts for shipbreaking at a facility that beaches may not be breaking the law. Nonetheless, there can be reputational and even financial consequences. Ships can be easily tracked to their final destination and a non-governmental organisation (NGO) may ‘name and shame’ the vessel owner despite the fact that the recycling contract is made by the buyer. Media is quick to pick up such stories. Increasingly, investors are also shifting away from companies whose ships end up beached and dismantled in conditions that are harmful to workers and the environment.

So, to conclude, the practice of beaching vessels for recycling is illegal in parts of the world and for all European flagged ships. While the practice may not at this time be illegal in other circumstances, Owners who sell end of life ships to buyers knowing that such buyers are likely to dismantle the ship in an unsafe and environmentally unsound manner, may, at the least, face reputational risk. At the worst, such sellers may find themselves charged with violation of waste shipment regulations.

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