Chapter 3

Limitations of a National Response to Regulate the Global Shipbreaking Industry: A Study of the Indian Experience

I. Introduction

The shipbreaking industry functions with minimal or almost ‘no’ legal regulation on the Indian subcontinent. This *laissez-faire* environment has entrenched this industry in this part of the world. However, the consequences of this development have been severe. While shipowners and recyclers make windfall profits, hundreds of human lives have been lost, thousands of individuals have been maimed, and there has been severe degradation of the marine environment.\(^1\)

Among the three leading players – Pakistan, Bangladesh and India – not much is known about the state of relevant legal regulation in Pakistan. In Bangladesh, it is believed that legal regulation continues at a nascent stage.\(^2\) In India, recent initiatives to develop legal standards for the industry have had a profound impact on shipbreaking operations in that country. India’s largest shipbreaking yard, Alang, was a name once synonymous with shipbreaking itself. In its heyday, it provided employment to more than 35,000 workers, breaking almost one ship a day.\(^3\) Since 2003, Alang has been in decline. In 2005–2006, only 101 ships were broken providing employment to only 5,000 workers.\(^4\) One of the major reasons for this downturn can be traced to the attempt by the Supreme Court of India to introduce a regulatory framework to ensure cleaner and safer scrapping.\(^5\) Since then, the industry has migrated to neighbouring Bangladesh,

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\(^5\) See also *Recycling of Ships: Report on the Current Status of Ship Recycling at Alang in India*, Submitted by India, IMO/MEPC 53/INF.12, 13 May 2005 (KR-CON) (pointing out that India’s unilateral strict measures is diverting the recycling industry to non-regulating countries). India has lost its number one position and approximately 30,000 direct and 70,000 indirect workers have lost their
even as attempts are underway in India to dilute the rigour of the regulatory regime to re-attract the obsolete tonnage.

Unilateral national approaches to legal regulation of shipbreaking that are not founded on an international legal framework are incapable of regulating an industry that is essentially global in character. Analysis of the Indian regulatory experience concerning the ship scrapping industry, which includes the legislative response focussing on the rules and regulations applicable in Alang and the jurisprudence developed by the Indian Supreme Court on shipbreaking, reveals the limited success national governments have had in adequately regulating this industry. The arrival of the toxic ships, the ‘Riky’, the ‘Clemenceau’, and the ‘Blue Lady’ in Indian waters and the foot-dragging response by both the executive and the judiciary in spite of the comprehensive regulatory framework, demonstrates the sway of market forces and the inability of national laws to regulate this global industry. An examination of these facets of the Indian regulation of the shipbreaking industry shows that there is the need for a sound international legal regime to facilitate movement from shipbreaking to sustainable ship recycling.

II. The Legislative Framework for Ship Recycling: Rules and Laws Applicable in Alang

In addition to the specific laws that have direct application to the shipbreaking industry in India, a plethora of general laws indirectly apply. These laws primarily address worker’s rights and ensuring safe working conditions and secondly, environmental protection.

A. Protecting Labour and the Environment

The shipbreakers of Alang belong to the category of unorganised workers who are generally not visible to the law. Accordingly, it is difficult to identify an employer and hence an employer-employee relationship. This makes it problematic for law to influence the allocation of rights and responsibilities and to build a system of