Chapter 4
Contemporary International Law and Ship Recycling

I. Introduction

Shipping was initially dependant on the rules laid down by powerful maritime states. As the movement of people, goods, cargo, and freight via ships grew, the shipping industry also developed at a rapid pace, necessitating greater cooperation between the different states to meet the myriad of challenges that emerged. The realisation that global solutions were appropriate for shipping found concrete expression with the establishment of the International Maritime Organization (IMO) as a specialised agency of the United Nations with the obligation to regulate and support shipping services engaged in international maritime trade.

An integral component of the shipping business, ship recycling is also a global industry. While there are very few binding standards at the international level that directly deal with shipbreaking, several international hazardous waste management instruments do impact on the ship recycling industry. In particular, the *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 1989*, the primary international legal hazardous waste management law, as well as the Basel Ban and the Technical Guidelines for the Environmentally Sound Management of the Full and Partial Dismantling of Ships, govern the transboundary movement of ships for recycling. Elements of the 1982 *United Nations Convention on the Law of the Sea* (LOS Convention) are also relevant to shipbreaking. The International Labour Organization (ILO) has established standards to protect workers for occupational safety and health. Several IMO conventions on shipping and maritime safety are also apposite to shipbreaking. These include the *Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972* (London Convention).

---

1 See generally Edgar Gold, *Maritime Transport: The Evolution of International Marine Policy and Shipping Law* (Massachusetts: Lexington Books, 1981). Dividing the historical development of maritime law into five distinct periods—the first beginning from pre-history to the early Mediterranean period; the second from the years 1000 to 1400 when Codifications began to appear; the third which included the years 1400 to 1700 which saw European dominance (Spain, Portugal, France, the Netherlands, the Hansa and England); the fourth, including the years 1700 to 1840, where maritime power was concentrated in England, the Netherlands and France; and finally the century from 1840 to 1940 when England was the predominant maritime power. Edgar Gold, *International Maritime Law: Basic Principles Lecture Notes and Materials* (Faculty of Law, World Maritime University, Sweden, 30 June 1986) at 22.


This chapter maps out some of the major features of these international legal instruments with a view to understand what scope these have in terms of their relevance to managing the ship recycling industry at an international level. It also reviews the adequacy of this framework to meet the challenges posed by the operation of this industry.

**II. Ship Dismantling and International Hazardous Waste Management Law**

The *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 1989* is the foremost international legal instrument that recognises and provides for measures to contain the growing threat to human health and to the environment due to the transboundary movement of hazardous wastes. These wastes are transferred primarily from the developed to the developing world, following “the path of least resistance.” Sponsored by the United Nations Environment Programme: Stockholm Convention on Persistent Organic Pollutants, 22 May 2001, 40 I.L.M. 532 (entered into force on 17 May 2004). Mindful of the precautionary approach, its objective is to protect human health and the environment from persistent organic pollutants. *Ibid.*, art. 1. It specifically limits importation and exportation of PCBs unless environmentally sound disposal and use are provided for. *Ibid.*, art. 3(2). Even though it does not specifically deal with the ship scrapping issue, this convention imposes the duty on states to consider persistence, bioaccumulation, potential for long-range environmental transport, and adverse effects when (if ever) it reassesses a chemical already in use. *Ibid.*, art. 3(4), annex D. Furthermore, the convention recognises the need for developed countries to render “timely and appropriate technical assistance” to developing countries and parties with economies in transition. *Ibid.*, art. 12. See also *Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade*, 11 September 1998, 38 I.L.M. 1 (entered into force 24 February 2004).

Hazardous waste treatment facilities in the industrialised nations are filled to capacity, and due to rising environmental awareness, fewer new facilities are being built. This has caused the cost of disposal in the United States to skyrocket to more than USD2,000 per tonne in some areas, whereas developing nations charge as little as USD20 per tonne. Diane Kilcoyne, “The Basel Convention: Will It Curtail Hazardous Waste Exports” (1992) 16:2 Environ. Pol’y J. 47 (HeinOnline).