

## Shipbreaking Practices in Bangladesh, India and Pakistan

An Investor Perspective on the Human Rights and  
Environmental Impacts of Beaching



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## Foreword

Shipbreaking has been on KLP's agenda for many years. We have all seen the pictures from the beaches of Bangladesh of workers in minimal or no protective gear who dismantle massive tanker ships piece by piece. As an investor with clear requirements regarding human rights and the environment, the risks from this type of activity are obvious. KLP expected, like many others, that the introduction of the Hong Kong convention would lead to necessary improvements in the industry. Unfortunately, that has not been the case thus far. The shipping industry now faces tremendous financial challenges, and the risk that additional vessels will be sent to beaching has never been greater. Even Norwegian-listed companies have made this choice in 2015. At the same time, we see several positive developments. The Norwegian Shipowners' Association, as the world's first, recommended in 2015 that its members abstain from beaching in Bangladesh, India and Pakistan – at least in the manner that this practice has been carried out historically. Additionally, new regulations on the horizon from the EU and new certification schemes may contribute to improve standards for the entire branch.

In KLP's experience, it has been difficult to find detailed and verifiable information about beaching. For two years in a row, we have used information from NGO Shipbreaking Platform to find which companies in KLP's portfolio have sent ships to beaching in Bangladesh, India, and Pakistan. Nevertheless, we saw the need for a more detailed analysis that also incorporated changes in the regulatory landscape. Therefore, we commissioned ILPI to produce this report. We hope that the report can help raise awareness of the severe human and environmental risks beaching can entail for shipping industry companies, their customers, and also for other investors.

KLP hopes to encourage investors to work together to engage with companies on improving labour and environmental conditions. The shipping industry is and will be an important part of Norwegian investors' portfolios for the foreseeable future. KLP's goal is to work towards a future where responsible shipbreaking is the industry standard.

18 May 2016

Håvard Gulbrandsen  
CEO  
KLP Kapitalforvaltning AS

## Executive Summary

- The majority of the world's ship recycling takes place in Bangladesh, India and Pakistan, where ships are demolished on the beach without proper installations and equipment – known as “*beaching*”. This practice is widely criticised due to the high risk to human health and safety as well as the environment.
- The shipbreaking industry in these countries is characterised by some of the world's most hazardous working conditions, with a high number of fatal and serious injuries every year. Common problems include lack of proper installations as well as personal protective equipment (PPE). Casualties from explosions and falling pieces of steel are common. In Bangladesh, the life expectancy for men in the shipbreaking industry is 20 years lower than for Bangladeshi men in the general population.
- Shipbreaking also carries a high risk for the environment. Old ships contain hazardous materials such as asbestos, but are dismantled without proper waste management systems. Shipbreaking activities are associated with pollution of the coastal soil, air, sea, and groundwater, and a decrease in marine life. This in turn affects local communities, who may subsist on impacted industries including agriculture and fishing.
- Since the early 2000's, a number of international organisations have offered guidelines on protecting workers' health and safety, and preventing environmental damage, yet the most basic health and safety standards are not implemented and hazardous waste continue to pollute the water and soil.
- International regulation aiming at a safer and more sustainable ship recycling has been adopted, but is not yet in force. The Hong Kong Convention on the Safe and Environmentally Sound Recycling of Ships was adopted in 2009, but is so far only ratified by 4 countries. The convention does not ban the beaching method, but does set out a list of requirements *inter alia* in relation to the management of hazardous waste. Early implementation efforts are made by the IMO who has issued guidelines to assist ship owners as well as ship recycling yards. Since September 2015, a handful of ship recycling yards in India has received a “Statement of Compliance” with the convention issued by a classification society. This has caused a debate as leading NGOs maintain that the requirements set forth in the convention are not met, and call for transparency of the certification process.
- The EU Ship Recycling Regulation was adopted in 2013 and will become gradually applicable from 2018, after which EU-flagged ships must go to EU-approved ship recycling facilities. The regulation sets out a list of requirements that have to be met for approval of ship recycling facilities, and may in practice exclude the shipbreaking yards in Bangladesh, India and Pakistan from such approval. The European Community Shipowners' Association is lobbying the European Commission to apply “the spirit of the regulation”, to the protests of local NGOs.
- The shipbreaking practices in Bangladesh, India and Pakistan have been examined in light of the internationally recognised frameworks for responsible business conduct (or corporate social responsibility) as well as the practice of the Council on Ethics for the Norwegian Governmental Pension Fund – Global. The OECD Guidelines for Multinational Enterprises and the UN Guiding Principles for Business and Human Rights (UNGP) are widely recognised international standards to which corporate responsibility can be measured. With the adoption of the UNGP in 2011, there has been an increased focus on the need for companies to take responsibility for adverse impacts throughout the value chain. Companies are required to carry out a risk-based due diligence with respect to the human rights as well as environmental impact of its business activities. For shipping companies, this would entail taking responsibility of their ships “from cradle to grave”, as recommended by the Norwegian Shipowners' Association.

# 1 Introduction

## 1.1 Background

Shipbreaking, ship dismantling, recycling and scrapping are synonymously used to define the process of taking a ship apart.<sup>1</sup> The practice is subject to health, safety and environmental concerns. Until the late twentieth century, most of the ship breaking took place in port cities of developed countries, such as the UK and the US, where the disposal of ships is regulated to protect workers and the environment. In Bangladesh, India and Pakistan, where the majority of shipbreaking now takes place, ships are frequently dismantled on beaches and piers rather than on dry docks or dismantling slips. Shipbreaking in these countries is subject to less control and inspection, and labour laws may not be enforced or cover these activities. Shipbreaking in Western countries peaked in the 1970s, then relocated to Taiwan and Korea; two industrializing nations where the demand for steel was high, allowing them to acquire steel at a cheap rate. As wages increased, the industry relocated to South Asian countries with low labour costs, weak occupational safety regulations and limited environmental enforcement.

In the late 1980's, Bangladesh, India and Pakistan became the major ship recycling destinations. Since then, the majority of ships in the world's large ocean-going commercial fleet have ended their days on the beaches of Chittagong, Bangladesh, Alang, India and Gadani, Pakistan. The method of ship dismantling employed in these areas is commonly referred to as *beaching*, which entails deliberately crashing the ship onto the beach so that it can be dismantled during low tide. This process is controversial and poses risks to the environment as well as human health and safety, as it is done without the use of concrete covering or any containment other than the hull of the ship itself.<sup>2</sup> Around 96 per cent of shipbreaking yards in these countries apply the beaching method.

## 1.2 Methodology and Outline

This report is an independent desk study conducted by ILPI. The review is two-fold, as it covers factual as well as regulatory aspects of the shipbreaking practices in question, including a discussion of the relevant standards for responsible business conduct.<sup>3</sup> The international normative frameworks presented and discussed in this report are a mix of so-called hard and soft law.<sup>4</sup> The report does not purport to describe or analyse the national laws of Bangladesh, India or Pakistan; national laws protecting against the hazards of the shipbreaking practices either do not exist, or are not enforced.

The data gathering for the factual description of the shipbreaking practices in Bangladesh, India and Pakistan included collecting and reviewing secondary sources, such as academic literature, analytical reports and publicly available data which meet the criteria of being available online and in English (or

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<sup>1</sup> While the terms are frequently used interchangeably, key stakeholders have different preferences. 'Shipbreaking' is the term preferred by, inter alia, ILO and EU; 'dismantling' is the preferred term in the guidelines of the Basel Convention; 'recycling' is preferred by IMO and the shipping industry-at-large; and 'scrapping' is used in the guidelines of the U.S. Environmental Protection Agency. See M. Sarraf *et al.*, *Ship Breaking and Recycling Industry in Bangladesh and Pakistan* (The World Bank, Report No. 58275-SAS, 2010) at vii-viii.

<sup>2</sup> See, inter alia, J.-F. Helfre, *Controversial Shipbreaking Dismantles Stakeholder Trust* (Sustainalytics, 2013) at 2-4.

<sup>3</sup> This term is used rather than "corporate social responsibility" (CSR), to denote a normative approach to corporate responsibility, and in line with the terminology used for example by the OECD.

<sup>4</sup> *Hard law* is used to describe legally binding obligations whereas *soft law* consists of guidelines or other aspirational frameworks that are not legally binding.

Norwegian). The report is based on sources that we consider to be reliable, and the findings are referenced throughout the report. Facts were also retrieved from relevant NGOs, including the NGO Shipbreaking Platform, a coalition of 19 environmental, human rights and labour rights organisations working to prevent the dangerous pollution and unsafe working conditions caused by beaching. Whilst the information provided by NGOs might be guided by their own agendas, we have endeavoured to separate the objective facts and the opinions expressed, and, where possible, fact-checked their reports using third-party sources. A reference list is included at the end of the report. The data was mainly collected and reviewed during the period of November 2015 through January 2016, and then updated prior to publication in May 2016.

Chapter 2 of this report will present a review of the shipbreaking practices in Bangladesh, India and Pakistan commonly referred to as *beaching*, with focus on the hazards shipbreaking imposes on human health and safety as well as the environment. Chapter 3 will discuss the international regulation of ship recycling, and chapter 4 will set out the international standards for responsible business conduct. Chapter 5 provides an assessment of human rights and environmental impacts of shipbreaking in light of the typical investor's requirements concerning responsible and sustainable business. We discuss the requirements set forth in the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights, and also examine the relevant practice of the Council on Ethics. It should be noted that the term "human rights" is used throughout the report to include "labour rights", although they are discussed separately as required by the context.

## 2 Shipbreaking Practices in Bangladesh, India and Pakistan

### 2.1 The Beaching Method

Shipbreaking takes many shapes and forms. With the *dry-dock approach* (also referred to as "docking" or "dry-dock recycling"), the ship is placed on a dock, water is pumped out and the ship is dismantled piece by piece. *Pier breaking* (also known as the "alongside" or "top-down" method) consists in securing the ship alongside a pier and removing pieces with a crane, starting from the top. *Slipway recycling* (or "landing") entails sailing ships against the shore at sites with little to no tide. The ship is then dismantled, using a mobile crane from the shore or from barges. With *beaching*, the ship is sailed "full steam onto a tidal flat at spring tide" on sites with a large tidal gauge.<sup>5</sup> There is no clear definition of beaching, but the Norwegian Shipowners' Association defines it as dismantling of ships without the use of using fixed installations for collection and handling of dangerous and polluting waste.<sup>6</sup>

Dry-docking and pier breaking are considered to be safer than slipway and beaching. The risk of spillage and pollution is minimal because the locations are sheltered. The practice is also easier to regulate due to the fairly permanent structures that make up dry-docks and piers. Slipway and beaching can in principle be done on many locations and are thus hard to regulate, since the sites are not always permanent. With

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<sup>5</sup> S. Overgaard, *Feasibility Study for Ship Dismantling* (Litehauz, 2013) at 27-28. The report proposes ways to upgrade to pier breaking and slipway breaking in a way that limits environmental harm.

<sup>6</sup> Henriksen, S., *Nei til Beaching av Skip* (Dagens Næringsliv, Op-Ed, 17 August 2015), also available at <https://www.rederi.no/aktuelt/2015/nei-til-beaching-av-skip/>.



slipway, the low-tidal range makes it possible to contain spillage. This is not the case with the large tidal ranges that make beaching possible, making it hard to avoid contaminating the water.

Beaching is by far the most common shipbreaking method in South Asia.<sup>7</sup> In 2015, 768 ships were dismantled worldwide, of which 469 were beached. Though this is a large number, it is a significant reduction in comparison to 2014 and 2013, when 641 and 645 ships, respectively, were beached in Bangladesh, India and Pakistan. In 2015, 20.5 million in gross tonnage was dismantled in total, of which 15 million were beached. In 2015, 194 ships (25 per cent) were dismantled in Bangladesh, 194 ships (25 per cent) in India, and 81 ships (11 per cent) in Pakistan. This too constitutes a significant reduction from earlier years. In 2014, for instance, the total number of ships dismantled was 309 ships (30 per cent) in India, 222 (22 per cent) in Bangladesh, and 110 (10.5 per cent) in Pakistan.<sup>8</sup>

Shipbreaking by means of beaching is the most common way to recycle ships because of the low costs that are associated with the practice.<sup>9</sup> Low wages, limited training, and few safety precautions contribute in different ways to keeping costs down. To that end, the workforce is assumed to largely consist of migrant workers and unskilled labourers.<sup>10</sup>

## 2.2 Risks Related to Environmental Damage, Health, Safety and Labour Rights

In sheltered recycling locations, it is possible to contain pollutants and avoid damage to the environment. On average, 95% of a ship's steel are coated with 10-100 tons of paints which contain lead, mercury, zinc, arsenic, chromium etc. PCBs, asbestos and a huge quantity of oil cause environmental pollution when the ship is broken for scrap.<sup>11</sup> When shipbreaking takes place on the beach in the intertidal zone, tidal water is able to wash out pollutants.<sup>12</sup> Combined with the emission of toxic gas into the air and the unsound storage of hazardous materials, shipbreaking activities likely affect the local ecology. Contamination of the coastal soil, air, sea, and groundwater also affects local communities, who may subsist on agriculture and fishing.<sup>13</sup>

In 2004, the International Labour Organization (ILO) characterized shipbreaking as “one of the most hazardous occupations”, in which workers are at high risk of death and injury.<sup>14</sup> The *Safety and Health in Shipbreaking: Guidelines for Asian countries and Turkey* lists the most frequent causes of accidents that cause injuries or death, which include: hazardous substances and wastes as well as physical, mechanical, biological, ergonomic and psychosocial hazards.<sup>15</sup> More recent sources confirm that fatal and serious accidents are still common in the shipbreaking industry.<sup>16</sup> Damage is caused both by accidents and diseases

<sup>7</sup> Ibid., at 27.

<sup>8</sup> NGO Shipbreaking Platform, *Annual Report 2014* (NGO Shipbreaking Platform, 2015) at 8; NGO Shipbreaking Platform, *Press Release 4 February 2016 – NGO Publishes 2015 List of All Ships Dismantled Worldwide* (NGO Shipbreaking Foundation, 2016). Descriptive statistics was retrieved from the dataset attached to the 2016 press release.

<sup>9</sup> M. Sarraf *et al.*, *Ship Breaking and Recycling Industry in Bangladesh and Pakistan* (The World Bank, Report No. 58275-SAS, 2010) at 2.

<sup>10</sup> M. Sarraf *et al.*, *Ship Breaking and Recycling Industry in Bangladesh and Pakistan* (The World Bank, Report No. 58275-SAS, 2010) at 24-25.

<sup>11</sup> M. I. Talukder *et al.*, ‘Environmental Impacts of Ship Breaking and Recycling Industry of Sitakunda, Chittagong, Bangladesh’, *Advances in Natural Science* 8:1 (2015) 51-58 at 52.

<sup>12</sup> NGO Shipbreaking Platform, *Annual Report 2014* (NGO Shipbreaking Platform, 2015) at 3.

<sup>13</sup> *Summary of Annual Reports 1996-2014* (UN Office of the High Commissioner for Human Rights, 2015) at 18.

<sup>14</sup> International Labour Office, *Safety and Health in Shipbreaking: Guidelines for Asian countries and Turkey* (International Labour Organization, 2004) at p. 4.

<sup>15</sup> International Labour Office, *Safety and Health in Shipbreaking: Guidelines for Asian countries and Turkey* (International Labour Organization, 2004) at p. 8.

<sup>16</sup> NGO Shipbreaking Platform, *Annual Report 2014* (NGO Shipbreaking Platform, 2015) at 3.

contracted from long-term exposure to hazardous waste. Also, the working conditions generally fail to meet international standards. Workers are killed and injured by tank explosions and falling steel plates. Some fall to their death as a result of missing protective gear. Many end-of-life ships contain flammable liquids, gases, and material. Furthermore, some injuries occur as a result of failure to take necessary precautions in gas freeing operations prior to flame-cutting.<sup>17</sup> As limited personal protective equipment (PPE) is offered, burn injuries are common.

There is also long-term damage to health associated with shipbreaking. A 2015 study found higher concentrations of PCBs, PAHs, and HCB in the air near the shipbreaking areas than in the city of Chittagong as a whole. Inhalation of these compounds elevates human health risks.<sup>18</sup> For instance, PCBs are classified as a human carcinogen, which means they are directly involved in causing cancer.<sup>19</sup> This is supported by a Chinese study, which found that Taiwanese shipbreaking workers had a higher risk of cancer compared to the overall population, possibly as a result of exposure to asbestos.<sup>20</sup>

### 2.3 Bangladesh: The Ship Recycling Industry in Chittagong

The Sitakunda coastal strip northwest of Chittagong, Bangladesh is where beaching started 40 years ago. Together with Alang in India, it is largest shipbreaking site in the world. Approximately 40,000 workers are employed by the yards in this area. Most employees are migrant workers from Northwest Bangladesh.<sup>21</sup> Accidents are common and fairly well documented. One report claims that 90 workers died in the period 2005-2012, more than one worker death, on average, per month.<sup>22</sup> Another report of the period between 2011 and 2015 shows 53 workers were killed and 78 injured at the Chittagong shipbreaking yards.<sup>23</sup> In 2014, five workers were injured in tank explosions, four were severely injured from gas cylinder explosions, five were killed and three were injured from inhaling toxic gas. In addition, three were killed from falling metal plates or cables, three fell to their deaths, two died and one was injured in unknown circumstances.<sup>24</sup> In 2015, 16 workers died on the job and 22 were injured.<sup>25</sup> The first four months of 2016 has seen 7 fatal accidents, with at least four more workers seriously injured.<sup>26</sup>

<sup>17</sup> NGO Shipbreaking Platform, *Why Ships are Toxic* (NGO Shipbreaking Platform, 2012) at 2.

<sup>18</sup> T. H. Nøst *et al.*, 'High Concentrations of Organic Contaminants in Air from Ship Breaking Activities in Chittagong, Bangladesh', *Environmental Science & Technology* 49 (2015) 11372-11380.

<sup>19</sup> International Agency for Research on, *List of Classifications, volumes 1-114* (World Health Organization, 2016). Retrieved 20 January 2016 from <[http://monographs.iarc.fr/ENG/Classification/latest\\_classif.php](http://monographs.iarc.fr/ENG/Classification/latest_classif.php)>

<sup>20</sup> W.-T. Wu *et al.*, 'Cancer Attributable to Asbestos Exposure in Shipbreaking Workers: A Matched-Cohort Study', *PLoS ONE* 10:7 (2015) 1-12. A 2014 study had similar findings, see W.-T. Wu *et al.*, 'Cancer Incidence of Taiwanese Shipbreaking Workers who have been Potentially Exposed to Asbestos', *Environmental Research* 132 (2014) 370-378. Shipbreaking in Taiwan took place in the Kaohsiung deep water port using a method similar to pier breaking. However, the working conditions resemble that of South Asian yards, as the shipbreaking was carried out using cutting torches and limited PPE, and with a significant number of casualties. See M. Stopford, *Maritime Economics* 2<sup>nd</sup> ed. (London: Routledge, 1997) at 486; Reuter, *Taiwan Ship-Scrapping Firms are Heading for the Scrap Heap* (Reuter, 1988).

<sup>21</sup> IndustriALL, *Report: Research Mission on the Situation of Shipbreaking Workers in South Asia* (IndustriALL, 2013) at 9-10. Retrieved 20 January 2016 from <[http://www.industriall-union.org/sites/default/files/uploads/images/Shipbreaking\\_Campaign/report\\_on\\_shipbreaking\\_workers\\_in\\_south\\_asia.pdf](http://www.industriall-union.org/sites/default/files/uploads/images/Shipbreaking_Campaign/report_on_shipbreaking_workers_in_south_asia.pdf)>

<sup>22</sup> [http://www.shipbreakingbd.info/death\\_trap.html](http://www.shipbreakingbd.info/death_trap.html)

<sup>23</sup> The Daily Star, *Life at Death Yard* (The Daily Star, 2016). Retrieved 20 January 2016 from <<http://www.thedailystar.net/frontpage/life-death-yard-202612>>

<sup>24</sup> NGO Shipbreaking Platform, *South Asia Quarterly Update: 7 April 2014* (NGO Shipbreaking Platform, 2014) at 2; NGO Shipbreaking Platform, *South Asia Quarterly Update: 7 July 2014* (NGO Shipbreaking Platform, 2014) at 2; NGO Shipbreaking Platform, *South Asia Quarterly Update: 9 October 2014* (NGO Shipbreaking Platform, 2014) at 2.

<sup>25</sup> NGO Shipbreaking Platform, *South Asia Quarterly Update: 21 January 2016* (NGO Shipbreaking Platform, 2016).

<sup>26</sup> NGO Shipbreaking Platform, *South Asia Quarterly Update: 27 April 2016* (NGO Shipbreaking Platform, 2016)

The lack of adequate safety measures is at the core of these incidents, as when a worker was hit by an iron plate and killed instantly on 19 January 2016.<sup>27</sup> The average life span for workers is 40 years, which is 20 years less than the average life expectancy for Bangladeshi men.<sup>28</sup>

In at least one case, a yard owner has been reported to take steps to cover up a worker's death.<sup>29</sup> Following an accident on 25 July 2013, yard management did not pay for medical treatment. When the worker died from his injuries, the yard not only denied compensation, but also did not admit that he had worked there.<sup>30</sup>

According to a 2008 report, child labour prevails in shipbreaking yards in Bangladesh. Children worked long hours with limited or no PPE. All the children interviewed had experienced light injuries, such as superficial cuts and burns.<sup>31</sup> While the report indicates that children and adults have different kinds of responsibilities, children were still in contact with hazardous waste. After inhaling toxic fumes, some children described the sensation of burning pain in their chest, which made them not want to eat.<sup>32</sup> More recent data on child labour, including both the numbers and age of underage labourers, is lacking; but child workers have been observed as recently as 2014.<sup>33</sup> The NGO Shipbreaking Platform upholds that child labour is still present in the Chittagong shipbreaking industry:

*Despite a lot of international attention on the problems of shipbreaking on the beaches of South Asia, the statistics for 2015 show that the vast majority of ship owners have not changed their practice for the better. On the contrary, most have opted for one of the worst shipbreaking destinations in the world – Bangladesh, where children are still illegally exploited to break ships manually on tidal mudflats. - NGO Shipbreaking Platform Director Patrizia Heidegger.<sup>34</sup>*

The environmental impacts of shipbreaking in Chittagong were documented as early as 2000. Collecting samples from the air, water, sludge, soil, paint, electrical cables, and sediment from the intertidal zone, Det Norske Veritas documented various types of contamination. Oil was found in water and in mud. Significant levels of PCBs were found in paint, an electrical cable, and the soil. According to the report, “(a)bestos was detected and present mostly everywhere in the ship breaking yards”. Moreover, “(t)here were no precautions or action at any level enforced in order to control this substance”.<sup>35</sup> Although 15 years have passed, shipbreaking activities continue to adversely impact the Chittagong ecology. Water samples taken from Chittagong in 2015 “clearly indicated the environmental degradation” from the shipbreaking yards.<sup>36</sup> Environmental protection at the shipbreaking yards is best described as limited, and routines for the sound

<sup>27</sup> The Daily Star, *Another Ship Breaking Worker Killed* (The Daily Star 2016). Retrieved 20 January 2016 from <<http://www.thedailystar.net/backpage/another-ship-breaking-worker-killed-204445>>

<sup>28</sup> NGO Shipbreaking Platform, *Media Release 14 December 2010 – 46 Workers killed on the shipbreaking yards of South Asia this year* (NGO Shipbreaking Platform, 2010).

<sup>29</sup> NGO Shipbreaking Platform, *South Asia Quarterly Update: 7 July 2014* (NGO Shipbreaking Platform, 2014) at 2.

<sup>30</sup> NGO Shipbreaking Platform, *South Asia Quarterly Update: 10 April 2015* (NGO Shipbreaking Platform, 2014) at 2-3. The widow finally received compensation on 15 March 2015 after threatening to take legal action and inform the media.

<sup>31</sup> Ruben Dao, *Childbreaking Yards: Child Labour in the Ship Recycling Industry in Bangladesh* (International Federation for Human Rights and Young Power in Social Action, 2008) at 13.

<sup>32</sup> *Ibid.*, at 17 and 20.

<sup>33</sup> *Ibid.*, NGO Shipbreaking Platform, *Annual Report 2014* (NGO Shipbreaking Platform, 2015) at 6, 12-13, and 17.

<sup>34</sup> NGO Shipbreaking Platform, *Press Release 4 February 2016 – NGO Publishes 2015 List of All Ships Dismantled Worldwide* (NGO Shipbreaking Foundation, 2016). <http://www.shipbreakingplatform.org/press-release-ngo-publishes-2015-list-of-all-ships-dismantled-worldwide/>

<sup>35</sup> A.B. Anderson *et al.*, *Technical report* (Det Norske Veritas, Report No. 2000-3158, 2000) at 38-42.

<sup>36</sup> M. I. Talukder *et al.*, ‘Environmental Impacts of Ship Breaking and Recycling Industry of Sitakunda, Chittagong, Bangladesh’, *Advances in Natural Science* 8:1 (2015) 51-58 at 57.

management of hazardous waste were described in 2010 as “virtually non-existent”.<sup>37</sup> Illegal logging is also a problem. For instance, in 2014, the government evicted two yards because they illegally cut down mangrove trees intended to shield local communities from cyclones.<sup>38</sup>

## 2.4 India: The ship Recycling Industry in Alang

The shipbreaking industry in Alang (also referred to as Alang-Sosiya) competes with Chittagong in Bangladesh as the largest in the world.<sup>39</sup> Located in the villages of Alang and Sosiya in the Indian state Gujarat, shipbreaking employs around 35,000 migrant workers directly, and additional workers indirectly, through related industries. Workers migrate from all over India, especially from Odisha, Uttar Pradesh, Bihar, Jharkhand and West Bengal.<sup>40</sup> In the period between 1983-2013, an estimated 6,318 ships were beached and dismantled at Alang. The yards produce three million metric tonnes of scrap metal per year.<sup>41</sup> Some ships are younger than fifteen years old, which may contain less hazardous substances and are thus considered safer than older ships.<sup>42</sup>

As in Chittagong, accidents are frequent. From 1983 to 2013, around 470 workers died in accidents at Alang.<sup>43</sup> Recent examples include two workers dying in March 2014 after being crushed by a falling steel plate; five workers killed and another 10 injured in a major gas explosion on 28 June 2014; as well as an unknown number of workers being injured in an explosion on 29 June 2014.<sup>44</sup> The fatality rate of Indian shipbreaking yards is approximately six times higher than in the Indian mining industry.<sup>45</sup>

Causes of death are not necessarily adequately recorded. For example, the cause of death for a worker who died on 22 September 2014 was reported as falling from a ladder. However, colleagues reported that the victim’s face was burnt and disfigured, which indicates a gas explosion. The NGO Shipbreaking Platform suggests that masking the death is a way to shift the blame from yard owners to the worker. Deaths from explosions and toxic gas clearly indicate insufficient safety precautions, such as the lack of PPE, lists of hazardous inventory, and training. Although ladder accidents can be limited too – for instance, by wearing safety harnesses – it might be easier to blame ladder accidents on the workers. According to the NGO Shipbreaking Platform, covering up explosions have been observed.<sup>46</sup>

Workers reside in shanties in or close to the yards. These dwellings lack basic facilities such as clean water, sanitation, electricity, drainage systems, schools and teachers for children, ambulances and hospitals with a capacity to treat potentially fatal incidents. In 2013, estimates indicated that there were 12 stand posts for bathing and six toilets for 35,000 workers. Workers typically resort to defecating in the open. Because water

<sup>37</sup> M. Sarraf et al., *Ship breaking and recycling industry in Bangladesh and Pakistan* (The World Bank, Report No. 58275-SAS, 2010) at 2.

<sup>38</sup> NGO Shipbreaking Platform, *South Asia Quarterly Update: 7 April 2014* (NGO Shipbreaking Platform, 2014) at 1.

<sup>39</sup> IndustriALL, *Report: Research Mission on the Situation of Shipbreaking Workers in South Asia* (IndustriALL, 2013) at 6.

<sup>40</sup> G. Sahu, ‘Workers of Alang-Sosiya: A Survey of Working Conditions in a Ship-Breaking Yard 1983-2013’, *Economic & Political Weekly* 49:50 (2014) 52-59 at 53.

<sup>41</sup> *Ibid.*, at 53.

<sup>42</sup> *Ibid.* at 19.

<sup>43</sup> G. Sahu, ‘Workers of Alang-Sosiya: A Survey of Working Conditions in a Ship-Breaking Yard 1983-2013’, *Economic & Political Weekly* 49:50 (2014) 52-59 at 52.

<sup>44</sup> NGO Shipbreaking Platform, *South Asia Quarterly Update: 7 April 2014* (NGO Shipbreaking Platform, 2014) at 2; NGO Shipbreaking Platform, *South Asia Quarterly Update: 7 July 2014* (NGO Shipbreaking Platform, 2014) at 3.

<sup>45</sup> G. Sahu, ‘Workers of Alang-Sosiya: A Survey of Working Conditions in a Ship-Breaking Yard 1983-2013’, *Economic & Political Weekly* 49:50 (2014) 52-59 at 54. Sahu reports fatal incidences in the shipbreaking industry at 2.0 per 1,000 workers.

<sup>46</sup> NGO Shipbreaking Platform, *South Asia Quarterly Update: 10 April 2015* (NGO Shipbreaking Platform, 2014) at 3. The yard initially did not offer compensation, but the parents later received a payment after standing outside the yard for two weeks.

is not usually provided in the shanties, it is normal to purchase water from local suppliers. Furthermore, workers are not allowed to take advantage of governmental services implemented for the local communities.<sup>47</sup>

Shipbreaking also impacts the ocean's ecosystem that surrounds the worksite. For instance, the colia and hilsa catfish have disappeared and the general number of fish has decreased at the Alang beach.<sup>48</sup> While beaching generally damage on the environment, local communities' dependence on the shipbreaking yards effectively silences critics. According to one scholar, local villagers formerly protested the environmental pollution, but have since stopped protesting as economic integration with the industry increases.<sup>49</sup>

Recent developments taking place in India to address the hazards to human life and the environment have led to improved conditions at certain shipbreaking yards, to the extent that some have received a "Statement of Compliance" with international norms (see below in 3.3.3). A shipbreaking workers' training centre is also underway, according to the IndustriALL Global Union.<sup>50</sup>

## 2.5 Pakistan: The Ship Recycling Industry in Gadani

In 2013, the shipbreaking industry in Gadani was recognized as the third largest in the world,<sup>51</sup> but it has now been surpassed by yards in China.<sup>52</sup> Nonetheless, the conditions in the area provide for a better working environment than at other shipbreaking sites. The beaches are sandy and the water level is deep, which means that beaching is easier.<sup>53</sup> The tidal range is lower than in Chittagong and Alang-Sosiya. This results in a dryer working environment and allows for a "relatively high level of mechanization" in the Gadani shipbreaking industry.<sup>54</sup> Unlike India, Gadani receives older ships, which tend to be more dangerous because they contain substances that have since been banned.<sup>55</sup>

There is a general lack of data on accidents at Gadani. Iqbal and Heidegger note that "neither the operators nor the authorities document accidents, casualties and occupational diseases".<sup>56</sup> This does not mean that accidents do not occur. In 2012, a Pakistani trade union recorded 12 deaths in the shipbreaking yards.<sup>57</sup> In October 2014, 15 workers were injured in two accidents of an unknown nature.<sup>58</sup> Unlike Bangladesh, reports say that child labour is not found in Pakistani yards.<sup>59</sup>

<sup>47</sup> G. Sahu, 'Workers of Alang-Sosiya: A Survey of Working Conditions in a Ship-Breaking Yard 1983-2013', *Economic & Political Weekly* 49:50 (2014) 52-59 at 53-54.

<sup>48</sup> J.-F. Helfre, *Controversial Shipbreaking Dismantles Stakeholder Trust* (Sustainalytics, 2013) at 4.

<sup>49</sup> G. Sahu, 'Workers of Alang-Sosiya: A Survey of Working Conditions in a Ship-Breaking Yard 1983-2013', *Economic & Political Weekly* 49:50 (2014) 52-59 at 58.

<sup>50</sup> [industriall-union.org](http://industriall-union.org)

<sup>51</sup> IndustriALL, *Report: Research Mission on the Situation of Shipbreaking Workers in South Asia* (IndustriALL, 2013) at 1.

<sup>52</sup> In 2015, 158 ships were scrapped in China and 81 ships in Gadani, according to *2015 List of all ships scrapped worldwide – facts and figures* (NGO Shipbreaking Platform, 2016) at 1.

<sup>53</sup> K. M. J. Iqbal and P. Heidegger, *Pakistan Shipbreaking Outlook: the Way Forward for a Green Ship Recycling Industry – Environmental, Health and Safety Conditions*, 2<sup>nd</sup> ed. (Sustainable Development Policy Institute and NGO Shipbreaking Platform, 2014) at 18.

<sup>54</sup> *Ibid.* at 8.

<sup>55</sup> *Ibid.* at 19.

<sup>56</sup> *Ibid.* at 10.

<sup>57</sup> *Ibid.* at 10.

<sup>58</sup> NGO Shipbreaking Platform, *South Asia Quarterly Update: 16 January 2015* (NGO Shipbreaking Platform, 2015) at 4.

<sup>59</sup> K. M. J. Iqbal and P. Heidegger, *Pakistan Shipbreaking Outlook: the Way Forward for a Green Ship Recycling Industry – Environmental, Health and Safety Conditions* 2<sup>nd</sup> ed. (Sustainable Development Policy Institute and NGO Shipbreaking Platform, 2014) at 9; M. Sarraf *et al.*, *Ship Breaking and Recycling Industry in Bangladesh and Pakistan* (The World Bank, Report No.



A general problem in shipbreaking yards is that yard owners do not take effective measures to minimize casualties. Moreover, workers do not get adequate training to perform the tasks assigned to them. A 2013 fact-finding mission reported that the yard owners provided no PPE such as goggles, masks or gloves, no climbing gear or safety belts, and no proper safety training. Children were seen playing among asbestos and swimming in water with toxic substances. Furthermore, there was no clean drinking water on site.<sup>60</sup> Another report from 2013 corroborated the claim that hazardous waste is not managed in a safe way as well as the lack of safe drinking water, PPE, training and capacity building.<sup>61</sup> Workers labour seven days a week and do not get overtime pay or paid vacations.<sup>62</sup>

As in Chittagong and Alang, shipbreaking negatively impacts the environment. Fishing activities south of Gadani were brought to a stop by pollution from shipbreaking. Marine life has in general decreased as a result of the shipbreaking industry.<sup>63</sup> According to a 2013 report, oil spills and the release of pollutants constitute a threat to the environment. Moreover, “(p)rovisions for the sound management of hazardous wastes, such as asbestos, PCBs or heavy metals, are non-existent in the Gadani shipbreaking yards”.<sup>64</sup>

In August 2015, *The Express Tribune* reported that Pakistani government officials would make efforts to protect the environment and adhere to international conventions. These efforts would include developing “inventories of hazardous waste and other waste of Gadani”.<sup>65</sup> It is unknown what, if any, concrete measures have been taken since August 2015.

## 3 International Regulation of Shipbreaking

### 3.1 Introduction

The shipping industry has traditionally been subjected to international regulation to protect the health and safety of workers as well as the maritime environment. The International Convention for the Safety of Life at Sea (SOLAS) is the most important treaty concerning the safety of merchant ships.<sup>66</sup> Another line of international treaties addresses the pollution risk from ships. The International Convention for the Prevention of Pollution from Ships (MARPOL) is the main international convention aiming at the prevention of pollution of the marine environment by ships, from operational or accidental causes.<sup>67</sup> In contrast to the detailed regulation in the operational phase of a ship’s life, the dismantling of end-of-life

58275-SAS, 2010) at 9, 25. Iqbal and Heidegger note that although no child labour was observed, some workers responded that they had been working in the yard since the age of 14.

<sup>60</sup> IndustriALL, *Report: Research Mission on the Situation of Shipbreaking Workers in South Asia* (IndustriALL, 2013) at 2.

<sup>61</sup> K. M. J. Iqbal and P. Heidegger, *Pakistan Shipbreaking Outlook: the Way Forward for a Green Ship Recycling Industry – Environmental, Health and Safety Conditions*, 2<sup>nd</sup> ed. (Sustainable Development Policy Institute and NGO Shipbreaking Platform, 2014) at 9-10.

<sup>62</sup> *Ibid.* at 9.

<sup>63</sup> *Ibid.* at 37.

<sup>64</sup> *Ibid.* at 27.

<sup>65</sup> *The Express Tribune, Ship breaking: Call for Proper Waste Management* (The Express Tribune, 2015). Retrieved 21 January 2015 from <<http://tribune.com.pk/story/939892/ship-breaking-call-for-proper-waste-management/>>

<sup>66</sup> First adopted in 1914 in response to the Titanic disaster, its main objective is to set minimum standards for the construction, equipment and operation of ships compatible with their safety. The current version was adopted in 1974 and has been amended on numerous occasions since then. A number of other treaties have been adopted to tackle various safety aspects, including the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW).

<sup>67</sup> MARPOL was adopted in 1973 and entered into force in 1983. There are a number of annexes regulating specific forms of pollution, as well as liability issues through the International Convention on Civil Liability for Oil Pollution Damage (CLC).

ships has traditionally not been subjected to international standards, neither for the protection of human health and safety, nor for the environment. With the global shift of the industry from developed, highly regulated nations towards countries with weak regulatory and enforcement systems came calls for international regulation to ensure the protection of human rights standards for occupational health and safety as well as the environment.

In the absence of international regulation aimed at the specific challenges of ship recycling, the Basel Convention on the Movement of Hazardous Waste has been used to tackle the regulatory challenges. In 2009, the International Maritime Organization (IMO) adopted the Hong Kong Convention on Ship Recycling, which has yet to come into force. At the European level, regulation has been developed to implement these conventions as well as help in the development of a European system for control of the ship recycling industry. The relevant instruments will be described briefly below.

## 3.2 The Basel Convention

### 3.2.1 The Application of the Basel Convention to Ship Recycling

The only international treaty that currently applies to ship recycling is the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, in force since 1992. The United Nations Environmental Program (UNEP) adopted the Basel Convention in 1989 as a response to a series of incidents involving hazardous waste trafficking. It has been ratified by more than 180 states, including Bangladesh, India and Pakistan. Although enacted for a different purpose, the Basel Convention was the first international legal instrument that was seen to offer some control of the risks related to the hazardous materials contained in the old ships sold for recycling. Old ships were seen as “toxic waste in disguise” as they contain numerous hazardous substances: sealants containing PCBs; up to 7.5 tons of various types of asbestos; and several thousand litres of oil (engine fuel, bilge oil, hydraulic and lubrication oils and greases).<sup>68</sup> By defining the end-of-life vessels themselves as “hazardous waste”, their movement became subject to the Basel Convention. Pending the entry into force of other regulations, it remains the only set of legally binding regulations that can be used to manage the challenges posed by ship recycling. However, the convention was not drafted to regulate these challenges and falls short of addressing the problems associated with shipbreaking.

In 1995, the parties to the convention agreed to incorporate the so-called Ban Amendment into the convention. The amendment puts a ban on export to non-listed countries of hazardous wastes intended for final disposal, as well as wastes intended for recovery and recycling. However, the Ban Amendment has not entered into force, due to it not being ratified by three-fourths of the parties who accepted it.<sup>69</sup>

### 3.2.2 Secretariat of the Basel Convention’s Technical Guidelines

To assist governments and ship recycling facilities in improving environmental, health and safety standards in the shipbreaking industry, the Secretariat of the Basel Convention developed the *Technical Guidelines for*

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<sup>68</sup> Greenpeace, *Shipbreaking: a Global Environmental, Health and Labour Challenge* (Greenpeace, 2000) at 2. Retrieved from <[http://www.shipbreakingplatform.org/shipbrea\\_wp2011/wp-content/uploads/2013/03/2000-Greenpeace-report-to-IMO-MEPC-44-session.pdf](http://www.shipbreakingplatform.org/shipbrea_wp2011/wp-content/uploads/2013/03/2000-Greenpeace-report-to-IMO-MEPC-44-session.pdf)>

<sup>69</sup> The Ban Amendment has been ratified by 81 states.

*the Environmentally Sound Management of the Full and Partial Dismantling of Ships*<sup>70</sup> in 2003. The Guidelines provide recommendations on procedures, processes and practices that must be implemented to attain safe and environmentally sound ship dismantling. The Guidelines also provide advice on monitoring and verification of environmental performance.

To upgrade existing ship dismantling facilities, the guidelines recommend that yards take a number of steps towards yard improvement, at the latest within one year, including: having procedures for spill clean-up; ship inventories of hazardous materials; requiring hot work certification for workers; cleaning and testing ships before dismantling; creating hazardous waste storage facilities; providing fire fighting equipment on site; dispersing basic PPE; providing protective equipment against respiratory hazards (e.g. toxic gas); segregating and collecting waste; and following proper asbestos handling procedures.<sup>71</sup> Numerous other upgrades were suggested in a five and ten-year timeframe, such as installing and using draining and pumping equipment.

### 3.3 The Hong Kong Convention

#### 3.3.1 The Hong Kong Convention on Ship Recycling

In 2009, the IMO adopted the Hong Kong Convention for the Safe and Environmentally Sound Recycling of Ships. It was developed with input from IMO member states and NGOs, and in co-operation with the International Labour Organization and the Parties to the Basel Convention. It is the first international treaty that intends to address all the various aspects of ship recycling from shipbuilding, shipping operations and shipbreaking, including concerns about working and environmental conditions at ship recycling facilities. It has, however, been criticized for not taking a clear stand against the beaching method.<sup>72</sup>

The Hong Kong Convention sets out requirements to ship owners and ship recycling facilities as well as local governments, and covers:

- the design, construction, operation and preparation of ships so as to facilitate safe and environmentally sound recycling
- the operation of ship recycling facilities in a safe and environmentally sound manner
- the establishment of an appropriate enforcement mechanism for ship recycling, incorporating certification and reporting requirements.

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<sup>70</sup> Secretariat of the Basel Convention, *Technical Guidelines for the Environmentally Sound Management of the Full and Partial Dismantling of Ships* (Secretariat of the Basel Convention, 2003). Retrieved 8 February 2016 from <[http://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---safework/documents/publication/wcms\\_117942.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---safework/documents/publication/wcms_117942.pdf)>

<sup>71</sup> Secretariat of the Basel Convention, *Technical Guidelines for the Environmentally Sound Management of the Full and Partial Dismantling of Ships* (Secretariat of the Basel Convention, 2003) at 8.

<sup>72</sup> NGO Shipbreaking Platform, <http://www.shipbreakingplatform.org/new-ship-recycling-convention-legalizes-scrapping-toxic-ships-on-beaches-of-poor-countries/>



Ships to be sent for recycling will be required to carry an *inventory of hazardous materials*, which will be specific to each ship. An appendix to the Convention provides a list of hazardous materials, the installation or use of which is prohibited or restricted in shipyards, ship repair yards, and ships of Parties to the Convention. Ships will be required to have an initial survey to verify the inventory of hazardous materials, renewal surveys during the life of the ship, and a final survey prior to recycling.

Ship recycling yards will be required to provide a *ship recycling plan*, to specify the manner in which each ship will be recycled, depending on its particulars and its inventory. States will be required to take effective measures to ensure that ship-recycling facilities under their jurisdiction comply with the convention.<sup>73</sup>

The Hong Kong Convention will enter into force 24 months after its ratification by 15 States, representing 40 per cent of world merchant shipping by gross tonnage. However, so far only Norway, France, Congo and Belgium have ratified the convention. Although several countries, including the UK<sup>74</sup>, Turkey (note) and Panama,<sup>75</sup> have indicated willingness to ratify the convention, but it remains an open question when it will enter into force.

### 3.3.2 IMO Guidelines on Ship Recycling

Following the adoption of the Hong Kong Convention in 2009, the Marine Environmental Protection Committee (MEPC) of the IMO has developed and adopted a number of guidelines to assist in the early implementation of the technical requirements set out in the convention, as well as to provide guidance to stakeholders such as ship builders, ship owners and ship recycling facilities:

- 2011 Guidelines for the Development of the Inventory of Hazardous Materials
- 2011 Guidelines for the Development of the Ship Recycling Plan
- 2012 Guidelines for Safe and Environmentally Sound Ship Recycling

Further guidelines have been developed to assist states following the entry into force of the Convention.

## 3.4 The EU Ship Recycling Regulation

The European Union has followed up the international legal instruments by taking legislative steps towards a uniform implementation of the relevant conventions throughout the EU, in some instances anticipating the entry-into-force at an international level. When the EU's Waste Shipment Regulation<sup>76</sup> was adopted in 2006, it brought about European-wide implementation not only of the Basel Convention, but also of the Ban Amendment that is not yet in force as an international law. End-of-life ships are generally classified as hazardous waste, and as such are prohibited from being exported from the European Union for recycling in non-OECD countries. This regulation falls short of redressing the problems surrounding ship recycling on

<sup>73</sup> International Maritime Organization, *The Hong Kong Convention for the Safe and Environmentally Sound Recycling of Ships* (IMO, Webpage, 2016). Retrieved 8 February 2016 from <<http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/The-Hong-Kong-International-Convention-for-the-Safe-and-Environmentally-Sound-Recycling-of-Ships.aspx>>

<sup>74</sup> *Letter dated 11 January 2016 from Rt. Hon. Patrick McLoughlin to Ian Waddell* (IndustriALL, 2016). Retrieved from [http://admin.industriall-](http://admin.industriall-union.org/sites/default/files/uploads/documents/Campaigns/Hong_Kong_Convention/let_from_rt_hon_mcloughlin_11.01.16.pdf)

[union.org/sites/default/files/uploads/documents/Campaigns/Hong\\_Kong\\_Convention/let\\_from\\_rt\\_hon\\_mcloughlin\\_11.01.16.pdf](http://admin.industriall-union.org/sites/default/files/uploads/documents/Campaigns/Hong_Kong_Convention/let_from_rt_hon_mcloughlin_11.01.16.pdf).  
<sup>75</sup> *Panama begins accession process for BWM and Hong Kong Conventions*, Seatrade Maritime 2016, retrieved from <http://www.seatrade-maritime.com/news/americas/panama-begins-accession-process-of-bwm-and-hong-kong-conventions.html>.

<sup>76</sup> Regulation (EC) No. 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste.

the beaches in South Asia for many reasons, including the ease of shifting the flag of a ship and the insufficient recycling capacity in OECD countries.

In 2013, the EU adopted the Ship Recycling Regulation<sup>77</sup> to address the challenges of unsafe and unsound ship recycling practices and to facilitate early ratification of the Hong Kong Convention. It aims to direct ships flying the flag of a Member State to EU-approved ship recycling facilities that practice safe and environmentally sound methods of dismantling ships.<sup>78</sup> Its purpose is, as stated in Article 1, “to prevent, reduce, minimise and, to the extent practicable, eliminate accidents, injuries and other adverse effects on human health and the environment caused by ship recycling”.

The Regulation essentially applies the ship recycling requirements of the Hong Kong Convention to ships flying the flag of a Member State, as well as certain requirements to non-EU flagged ships calling at EU ports. It also creates a mechanism whereby shipbreaking yards that wish to recycle European ships must document compliance with the relevant requirements and be included in *the European List*. European ships may only be recycled at ship recycling facilities included in the European list. In summary, the regulation sets out a number of requirements directed at ship owners, ship recycling facilities and competent authorities:

- All ships are required to keep an *Inventory of Hazardous Materials* on board, and the use of certain hazardous materials will be prohibited in new ships.
- Ship owners are required to develop a *Ship Recycling Plan*.
- Ships may only be recycled at ship recycling facilities that are included in *the European List*.
- Ship recycling facilities located outside the EU intending to recycle European ships must apply to be included in *the European List*, providing evidence of compliance with the relevant requirements.

With respect to the ship recycling facilities, the regulation sets out a detailed list of requirements that apply to both European yards and ship recycling yards located in third countries wishing to recycle European-flagged ships. Non-European ship recycling facilities will have to submit applications to the Commission for uptake in the European List. They will need to document that they meet the extensive list of requirements for installations, systems, procedures and techniques to eliminate or minimise health and safety risks for workers as well as adverse effects on the environment.<sup>79</sup> The application procedure was opened in December 2015.

It is widely expected that these requirements in practice exclude the shipbreaking yards in Bangladesh, India and Pakistan that use the beaching method.

The EU ship recycling regulation will apply to large commercial ships flying the flag of an EU Member State, and to ships flying the flag of a third country calling at EU ports or anchorages. Its different provisions will become applicable at different times as set out in Article 32, and it is expected to be fully applicable by the end of 2018. The Ship recycling regulation is directly applicable in EU member states without need for national legislation. It will become applicable to ships flying the Norwegian flag (and the flag of other EFTA states) if and when the EEA Joint Committee makes a decision to incorporate this regulation into the EEA Agreement *and* Norway takes the necessary steps to implement it into Norwegian law. The ship recycling regulation is currently under review by the EEA Joint Committee.

<sup>77</sup> Regulation (EU) No. 1257/2013 of the European Parliament and of the Council of 20 November 2013 on ship recycling.

<sup>78</sup> Preamble (7) to Regulation Article Regulation (EU) No. 1257/2013 of the European Parliament and of the Council of 20 November 2013 on ship recycling.

<sup>79</sup> See <http://ec.europa.eu/environment/waste/ships/list.htm>.

### 3.5 Other International Standards and Guidelines for Sustainable Shipbreaking

In parallel with the various legislative processes over the past few decades, a number of initiatives have been taken to address the regulatory gaps surrounding the social and environmental impact of ship recycling and provide standards and guidance for safer and more environmentally sound shipbreaking practices. Some of these precede the Hong Kong Convention; others have been developed to assist with its implementation. These measures are not legally binding, but nevertheless set a standard for sustainable ship recycling.

#### 3.5.1 ILO Guidelines for safety and health in shipbreaking

In 2004, the International Labour Organization published a set of guidelines to provide assistance to ensure safe working environments in shipbreaking within the framework of the ILO Decent Work Agenda. *Safety and Health in Shipbreaking - Guidelines for Asian Countries and Turkey*<sup>80</sup> was adopted unanimously by an Interregional Tripartite Meeting of Experts, appointed by employers, workers, governments and non-governmental organisations.

*Safety and Health in Shipbreaking* recommends that the employer of the shipbreaking facilities should implement preventative and protective measures to inhibit or minimize hazards and risks, including “providing and maintaining workplaces, equipment, tools and machinery safe and without risk to health” and “setting up arrangements to deal with work-related injuries and diseases, ill health and incidents which may involve hazards or risks to safety and health”.<sup>81</sup> The guidelines provide ample examples of how to avoid or minimize accidents. Yard management should measure, monitor, and keep track of chemical hazards on sites.<sup>82</sup> Precautions against the fall of persons and materials include providing fencing, guardrails, safety nets, safety harnesses and life vests.<sup>83</sup> Safety requirements for hot work include welding helmets, suitable eye shields, and leather working gloves. Only competent personnel should carry out flame cutting, and the surface to be cut should be inspected prior to cutting to ensure the absence of combustibles.<sup>84</sup> The guidelines also reaffirm the importance of a hazardous materials inventory.

#### 3.5.2 Industry Working Group on Ship Recycling

An Industry Working Group on Ship Recycling was established in 1999. Co-ordinated by the International Chamber of Shipping (ICS), its members include many international shipping organisations, such as BIMCO, IACS, INTERCARGO, INTERTANKO, IPTA, OCIMF, and ITF. In 2001, the Working Group issued its first practical guidelines on ship recycling: the *Industry Code of Practice on Ship Recycling*.<sup>85</sup>

After the adoption of the Hong Kong Convention and pending its entry into force, the Working Group adopted *Guidelines on Transitional Measures for Shipowners* in 2009.<sup>86</sup> The 2009 guidelines were replaced by new guidelines in January 2016.<sup>87</sup> According to the 2016 edition, the guidelines “represent the shipping

<sup>80</sup> International Labour Organization (2004): *Safety and Health in Shipbreaking. Guidelines for Asian countries and Turkey*.

<sup>81</sup> International Labour Organization, *Safety and Health in Shipbreaking: Guidelines for Asian Countries and Turkey* (International Labour Organization, 2004) at 13-20. Quotes retrieved from page 20.

<sup>82</sup> Ibid. at 92-96.

<sup>83</sup> Ibid. at 80-81 and 127.

<sup>84</sup> Ibid. at 110-112.

<sup>85</sup> Lloyd's Register, *Ship Recycling: Practice and Regulation Today* (Lloyd's Register, 2011) at 9.

<sup>86</sup> Maritime International Secretariat, *Guidelines on Transitional Measures for Shipowners: Selling Ships for Recycling* 1<sup>st</sup> ed. (Maritime International Secretariat 2009).

<sup>87</sup> International Chamber of Shipping, *Shipping Industry Guidelines on Transitional Measures for Shipowners Selling Ships for Recycling* 2<sup>nd</sup> ed. (Marisec Publications, 2016). Retrieved 8 February 2016 from <<http://www.ics-shipping.org/docs/default-source/resources/environmental-protection/shipping-industry-guidelines-on-transitional-measures-for-shipowners-selling-ships-for-recycling.pdf?sfvrsn=6>>

industry's commitment to adhere to the IMO Hong Kong Convention's requirements, as far as practically possible, in advance of the full implementation of a legally-binding global regime".<sup>88</sup> The guidelines provide instructions on creating an inventory of hazardous materials, the content of the ship-recycling plan, and the role of classification societies. The report lauds shipbreaking as a "green" industry, while stressing the importance of disposing of parts "safely and in an environmentally sound manner".<sup>89</sup> Through providing advice on what the Hong Kong Convention entails for ship owners, the 2016 guidelines outline a step-by-step approach to compliance that the industry can attempt to apply during the transitional period prior to the entry into force of the convention.

### 3.5.3 Other initiatives Towards More Sustainable Ship Recycling

Several environmental, human rights and labour rights NGOs have been vocal in advocating for improved shipbreaking practices in South Asia. Greenpeace has protested shipbreaking that violates environmental standards since at least 1998.<sup>90</sup> They are currently part of the NGO Shipbreaking Platform; a coalition of 19 organizations that seeks to prevent pollution and unsafe working conditions at shipbreaking yards. Strategies include litigation, advocacy and awareness campaigns in countries with companies that export their ships for dismantlement elsewhere, as well as countries with a shipbreaking industry. They also publish a quarterly newsletter and take part in negotiations with the Basel Convention's Open Ended Working Groups and Conferences of the Parties.

The Clean Shipping Index is a ranking tool for the environmental impact of ships and carriers. The Clean Shipping Network is an association of cargo owners and forwarders who wish to screen their sea transport providers for environmental impact as part of their supply chain management. In April 2015, it was reported that 32 multinational companies, including ABB, H&M, Philips, Tetra Laval, Volkswagen, and Volvo, have asked their forwarders to adopt sustainable ship recycling practices and abstain from beaching.<sup>91</sup>

The Norwegian Ship Owners' Association has taken a lead internationally on the issue of sustainable shipbreaking practices. Following the 2008 revelations of unacceptable conditions in the shipbreaking yards in Bangladesh, the Norwegian Ship Owners' Association recommended that its members abstain from sending ships to Bangladesh for dismantling on the beaches. In August 2015, this recommendation was extended to a firm call for "no beaching", including in India and Pakistan.<sup>92</sup> The recommendation is that members use ship-recycling facilities that are compliant with the Hong Kong Convention.

## 3.6 Recent Developments towards Compliance with International Standards

### 3.6.1 Statements of Compliance with the Hong Kong Convention

So far the Hong Kong Convention has failed to live up to expectations of a swift and far-reaching improvement of the conditions throughout the ship-breaking industry in South Asia. However, despite the

<sup>88</sup> Ibid., at 3.

<sup>89</sup> Ibid., at 3.

<sup>90</sup> Greenpeace, *Shipbreaking: A Global Environmental, Health and Labour Challenge* (Greenpeace, 2000) at 10-11; NGO Shipbreaking Platform, *Substandard Shipbreaking: a Global Challenge* (NGO Shipbreaking Foundation, 2016) at 6.

<sup>91</sup> NGO Shipbreaking Platform, *32 Multinational Companies say 'No' to Dirty and Dangerous Shipbreaking* (NGO Shipbreaking Platform, 2015). Retrieved 8 February 2016 from <<http://www.offthebeach.org/wordpress/32-multinational-companies-say-no-to-dirty-and-dangerous-shipbreaking/>>

<sup>92</sup> Henriksen, S., *Nei til Beaching av Skip* (Dagens Næringsliv, Op-Ed, 17 August 2015), also available at <https://www.rederi.no/aktuelt/2015/nei-til-beaching-av-skip/>.

slow ratification rate, the convention and the guidelines developed to aid its implementation do play a role in setting standards that some of the shipbreaking yards are moving towards.

Since September 2015, the Japanese classification society ClassNK has issued Statements of Compliance (“SOC”) to four shipbreaking yards in Alang, India. ClassNK issues a SOC to ship recycling facilities which verifies that they are in compliance with the Hong Kong Convention, after confirming that the ship recycling facility plan developed by the ship recycling facilities meet the requirements of the Hong Kong Convention and that the facilities are carrying out recycling procedures in accordance with their plan. RL Kalthia Ship Breaking and Priya Blue Industries received certificates in September, whereas Shree Ram Vessel Scrap Pvt. Ltd. and Leela Ship Recycling Pvt. Ltd. received certificates in December of 2015.<sup>93</sup>

The certifications have caused debate over which criteria ClassNK uses to meet certifications and how they interpret the Hong Kong Convention.<sup>94</sup> Bellona points out that even at yards that have built some permanent structures, the waste is still dumped in the tidal zone, and queries why media and NGOs are denied access to the yards to ascertain whether the requirements of the Hong Kong Convention are indeed fulfilled.<sup>95</sup> Whereas ClassNK lists impermeable flooring as a key criterion for compliance certification, the NGO Shipbreaking Platform points out that the yards in question do not have impermeable flooring where the ship-cutting is conducted.<sup>96</sup> The NGO has raised concerns over the certification process:

*Moreover, anyone can hand out Statements of Compliance (SOCs) to shipbreaking yards claiming they operate in line with the convention. While some certifiers act with more diligence, others have started to offer cheaper and quicker certifications. It is expected that many yards will soon hold a HKC compliance certificate. This is a development similar to ISO 30.000, for which most yards in India and Bangladesh were quick to produce certificates, rendering the standard meaningless.<sup>97</sup>*

### 3.6.2 Can South Asian Shipbreaking Yards Make It to the European List?

Meanwhile, the certification procedure under the EU ship recycling is moving forward. The application procedure for inclusion in the European list opened in December 2015,<sup>98</sup> and in April 2016 the Commission published in a communication a *Technical guidelines note* under the regulation, setting out requirements and procedure for the inclusion for facilities located in third countries in the European List of ship recycling facilities.<sup>99</sup> The note provides detailed interpretation of the technical requirements regulation that, on the face of it, appears to exclude shipbreaking yards that use the beaching method.

Whilst one of its major objectives of the EU Regulation is to ensure early and EU-wide implementation of the Hong Kong Convention, the requirements to be met by the ship recycling facilities go beyond those of the convention. The beaching method as it is practised in Bangladesh, India and Pakistan appears

<sup>93</sup> ClassNK, *Press release 15 December 2015 – ClassNK Issues Hong Kong Convention Statements of Compliance to two Additional Ship Recycling Facilities in India* (ClassNK, 2015); G. Shettar, *Alang Breakers’ Certification Fuels Flooring Debate* (IHS Maritime 360, 2015).

<sup>94</sup> A. Corbett, *Controversy as ClassNK certifies Indian recyclers* (TradeWinds, 2015) at 9. For more on the problems associated with the classified yards in Alang, see NGO Shipbreaking Platform, *Substandard Shipbreaking: a Global Challenge* (NGO Shipbreaking Foundation, 2016) at 6.

<sup>95</sup> Bellona: *Fire norkse skip på asiatiske strender*, <http://bellona.no/nyheter/skipsfart/2016-02-17420>.

<sup>96</sup> G. Shettar, *Alang Breakers’ Certification Fuels Flooring Debate* (IHS Maritime 360, 2015).

<sup>97</sup> NGO Shipbreaking Platform 2016, retrieved from <http://www.shipbreakingplatform.org/platform-news-indian-ngos-voice-concerns-as-ship-owners-promote-beaching/>.

<sup>98</sup> Commission implementing decision (EU) 2015/2398.

<sup>99</sup> Official Journal 2016/C 128/01, 12 April 2016.



incompatible with the EU requirements. In April 2016, a delegation from the European Community Shipowners' Association (ECSA), accompanied by government officials from EU member states as well as the Commission and the International Chamber of Shipping (ICS) visited a number of shipbreaking yards in Alang, India. The purpose of the visit was to assess to what extent ship breaking operations in the intertidal zones can be sustainable and thus be potentially compliant with the provisions of the EU ship recycling regulation. In a statement following the visit, ECSA has called for EU recognition of the improvements that have taken place:

*It is obvious that the implementation of standards differ considerably, but an increasing number of yards have clearly taken the responsible path towards full compliance with the Hong Kong Convention, both in letter and spirit. We want to ensure that the other yards are following these first movers so that the bar can be raised overall. As the Hong Kong Convention has not entered into force yet, we have encouraged these yards to apply for recognition under the EU Ship Recycling Regulation. In turn, we urge the Commission to assess these applications in the true spirit of the Regulation and the Convention.<sup>100</sup>*

However, local NGOs have voiced their concern and have submitted letters to the European Commission highlighting pollution caused by the beaching method, the lack of transparent and adequate downstream management, as well as labour rights violations.<sup>101</sup> Environmental groups in India remain very critical with regards to the state of the shipbreaking industry in Alang:

*None of the yards in Alang have to undergo an environmental impact assessment (EIA) even when they open new yards or set up new infrastructure. EIAs are required by the law, and they would ensure a transparent process, including a proper assessment of the environmental impacts of the industry, as well as allow for civil society and local communities such as fishermen to express their views.” Advocate Ritwick Dutta from LIFE (Legal Initiative for Forest and Environment).<sup>102</sup>*

### 3.6.3 A Call for Transparency

Whilst there is clearly a development for the better at some shipbreaking yards in India, it remains an open question to what extent the human rights and environmental concerns are addressed. Leading NGOs and media were hoping to join the delegation that visited shipyards in Alang in April 2016, but were in the end denied access.<sup>103</sup> Several NGOs express concern over the lack of transparency regarding the certification process. Bellona remains sceptical of the recent certifications, and calls for transparency on the part of the shipbreaking yards as well as the ship owners to enable civil society to ascertain that the requirements of the Hong Kong Convention are in fact being met.<sup>104</sup>

<sup>100</sup> European Community Shipowners' Association: "European shipowners invite Commission to acknowledge emerging sustainable shipping practices in India", retrieved from <http://www.ecsa.eu/news-and-media/latest-news/9-latest-news/255-european-shipowners-invite-commission-to-acknowledge-emerging-sustainable-shipping-practices-in-india>.

<sup>101</sup> NGO Shipbreaking Platform 2016, retrieved from <http://www.shipbreakingplatform.org/platform-news-indian-ngos-voice-concerns-as-ship-owners-promote-beaching/>.

<sup>102</sup> NGO Shipbreaking Platform 2016, retrieved from <http://www.shipbreakingplatform.org/platform-news-indian-ngos-voice-concerns-as-ship-owners-promote-beaching/>.

<sup>103</sup> NGO Shipbreaking Platform 2016, retrieved from <http://www.shipbreakingplatform.org/press-release-european-ship-owners-on-promotional-tour-in-alang-environmental-and-human-rights-activists-denied-access/>.

<sup>104</sup> Bellona (2016), retrieved from <http://bellona.no/nyheter/skipsfart/2016-02-17420>.

## 4 International Standards for Responsible Business

### 4.1 Introduction

With the increasingly globalised economy in the twenty-first century, questions of corporate conduct and the responsibility of multinational corporations with regard to human rights and environmental impacts of their business operations have come to the forefront. Under international law, the legal obligation to protect human rights and the environment rests with governments. States have, to varying degrees, taken on international law obligations in this respect, which is reflected in their ratification of relevant international treaties. Yet not all states are party to all international conventions on human rights or the protection of the environment. Those states that have ratified international treaties sometimes fail to implement and enforce them; this is particularly the case in states where the regulatory, legal and institutional frameworks are fragile. Against this backdrop, a set of international standards for responsible business conduct has been developed and is increasingly raising the bar against which a company's conduct is being measured by its stakeholders. Hence, most institutional investors express expectations or requirements related to a company's performance in respect of human rights and the environment.

In this chapter we present the most relevant international standards for responsible business conduct, and in the following chapter we discuss their relevance in relation to the human rights and environmental risks posed by the shipbreaking practice of beaching.

### 4.2 Global Compact

The UN Global Compact was founded in 2000 and is the world's largest sustainability and corporate citizenship initiative. The Global Compact contains ten principles based on human rights, labour rights, the environment, and corruption. It also provides companies with guidance on adopting policies as well as reporting on implementation in these areas. The ten principles are:

- (1) *Businesses should support and respect the protection of internationally proclaimed human rights.*
- (2) *Businesses should make sure that they are not complicit in human rights abuses.*
- (3) *Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining.*
- (4) *Businesses should uphold the elimination of all forms of forced and compulsory labour.*
- (5) *Businesses should uphold the effective abolition of child labour.*
- (6) *Businesses should uphold the elimination of discrimination in respect of employment and occupation.*
- (7) *Businesses should support a precautionary approach to environmental challenges.*
- (8) *Businesses should undertake initiatives to promote greater environmental responsibility.*
- (9) *Businesses should encourage the development and diffusion of environmentally friendly technologies.*
- (10) *Businesses should work against corruption in all its forms, including extortion and bribery.*

The principles are derived from the Universal Declaration of Human Rights, the International Labour Organization's Declaration on Fundamental Principles and Rights at Work, the Rio Declaration on Environment and Development, and the United Nations Convention Against Corruption. With respect to labour rights, the Global Compact reflects the principles set out in the ILO Core conventions on the freedom of association and the right to collective bargaining, as well as elimination of forced labour, child labour and discrimination. Transparency on the efforts to implement the principles is a key component of the commitment undertaken by companies who have joined Global Compact, and they are required to submit an annual "Communication on Progress" report that is made public.

### 4.3 OECD Guidelines for Multinational Enterprises

The OECD Guidelines for Multinational Enterprises – Recommendations for Responsible Business Conduct in a Global Context are recommendations by governments to companies. They cover a wide range of areas related to responsible business, from human rights and labour rights, to environment, anti-corruption and transparency. The Guidelines were launched in 1976 and last updated in 2011. The latest revision included a human rights chapter, which is drawn from the UN Guiding Principles on Business and Human Rights of 2011. The OECD Guidelines are also compatible with other corporate responsibility standards such as the UN Global Compact and ISO 26000.

The governments of the OECD countries have undertaken an obligation to promote the Guidelines. To this end, states are required to set up an implementation mechanism through the so-called National Contact Points, that are empowered to deal with individual complaints of non-compliance with the Guidelines, primarily through mediation.<sup>105</sup>

The general approach of the Guidelines to all the issues they cover, including human rights, labour rights and the environment, is set out in Chapter II General Policies, which, inter alia, call on companies to<sup>106</sup>:

- Carry out risk-based due diligence to identify, prevent and mitigate actual and potential adverse impacts and account for how these impacts are addressed. The nature and extent of due diligence depend on the circumstances of a particular situation.
- Avoid causing or contributing to adverse impacts on matters covered by the Guidelines, through their own activities, and address such impacts when they occur.
- Seek to prevent or mitigate an adverse impact where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations, products or services by a business relationship. This is not intended to shift responsibility from the entity causing an adverse impact to the enterprise with which it has a business relationship.
- In addition to addressing adverse impacts in relation to matters covered by the Guidelines, encourage, where practicable, business partners, including suppliers and sub-contractors, to apply principles of responsible business conduct compatible with the Guidelines.

The OECD Guidelines' chapter on the Environment contains several principles dealing with how companies should operate in a manner that takes due account of the need to protect the environment, inter alia recommending that enterprises should:

- *Assess, and address in decision-making, the foreseeable environmental, health, and safety-related impacts associated with the processes, goods and services of the enterprise over their full life cycle with a view to avoiding or, when unavoidable, mitigating them.*<sup>107</sup>
- *Consistent with the scientific and technical understanding of the risks, where there are threats of serious damage to the environment, taking also into account human health and*

<sup>105</sup> For information from the Norwegian Contact Point, see [www.responsiblebusiness.no](http://www.responsiblebusiness.no).

<sup>106</sup> Paragraphs 10-13.

<sup>107</sup> Chapter VI, paragraph 3.



*safety, not use the lack of full scientific certainty as a reason for postponing cost-effective measures to prevent or minimise such damage.*<sup>108</sup>

The OECD Guidelines contain separate chapters on human rights<sup>109</sup> and labour rights.<sup>110</sup> However, here the provisions of the OECD Guidelines incorporate and mirror the UN Guiding Principles on Business and Human Rights (UNGP), and will be discussed under that heading.

## 4.4 UN Guiding Principles on Business and Human Rights (UNGP)

### 4.4.1 The Protect, Respect and Remedy Framework

The UN Guiding Principles on Business and Human Rights (UNGP) is a non-binding set of standards that were adopted in 2011. Following the introduction of the Global Compact in 2000, there was an intense international debate on whether the UN should aim for a legally binding treaty on corporate responsibility for human rights.<sup>111</sup> The UNGP is a non-binding instrument that nevertheless sets out recommendations to states as well as companies on how to respect human rights in the context of business activities. They were developed by the former UN Special Representative of the Secretary-General on Human Rights and Business, Professor John Ruggie, after a lengthy process that involved extensive consultations with businesses, governments, civil society and affected stakeholders.<sup>112</sup> Also referred to as the “Protect, Respect, Remedy” framework, the UNGP is based on three pillars:

- The state duty to protect human rights
- The corporate responsibility to respect human rights
- The need appropriate and effective remedies for victims of business-related human rights abuse.

At the core of the UNGP is the idea that whilst the obligation to protect against human rights abuse rests with the states, businesses also have a responsibility to respect human rights. States are called upon to protect against human rights abuse by third parties, such as companies, and to set out a clear expectation that business enterprises respect human rights throughout their operations. In doing so, many states, including Norway, have developed national action plans for business and human rights that formulate their expectations of companies in this regard.<sup>113</sup> Although the UNGP use the term “responsibility” for companies to respect human rights, this is not a reference to legal responsibility. Despite – or perhaps because of – its non-binding nature, the UNGP have quickly become the internationally accepted norm for corporate responsibility in the field of business and human rights.

The corporate responsibility set out in the UNGP is based on a “do no harm” principle, and the responsibility to respect human rights requires that companies:

<sup>108</sup> Chapter VI, paragraph 4.

<sup>109</sup> Chapter IV on Human Rights.

<sup>110</sup> Chapter V on Employment and Industrial Relations.

<sup>111</sup> This discussion continues despite the adoption of the UNGP, and in June 2014, the Human Rights Council adopted resolution 26/9 by which it decided “to establish an open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights, whose mandate shall be to elaborate an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises.”

<sup>112</sup> They are sometimes referred to as “the Ruggie principles” or “the Ruggie framework”.

<sup>113</sup> The Norwegian Action Plan for Business and Human Rights, launched in October 2015, can be retrieved from [https://www.regjeringen.no/globalassets/departementene/ud/vedlegg/naringsliv/ud\\_naeringsliv\\_og\\_menneske\\_uu-versjon2.pdf](https://www.regjeringen.no/globalassets/departementene/ud/vedlegg/naringsliv/ud_naeringsliv_og_menneske_uu-versjon2.pdf)

- Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; and
- Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, *even if they have not contributed to those impacts*.<sup>114</sup>

This makes it clear that the responsibility of companies operating in the global market place does not stop at its own doorstep, but extends to adverse human rights impacts in the entire value chain.

#### 4.4.2 Which Human Rights are Covered

UNGP 12 sets out *which* human rights standards are relevant to the corporate responsibility to respect human rights:

*The responsibility (...) refers to internationally recognized human rights – understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work.*

The reference in UNGP 12 in practice embraces the human rights set out in the main international human rights treaties, namely:

- The International Covenant on Civil and Political Rights
- The International Covenant on Economic, Social and Cultural Rights,
- ILO’s eight core convention relating to child labour, forced labour, discrimination, and the right to freedom of association and collective bargaining.

Taken together, the human rights instruments that are referred to contain a long list of specific human and/or labour rights. The commentary to UNGP 12, however, makes it clear that the list is not intended to be exhaustive, and that depending on their circumstances, companies may also need to consider additional international human rights standards, such as the UN instruments on the rights of children, indigenous peoples, migrant workers and other vulnerable groups. A matrix of more than 30 specific human and labour rights covered by UNGP 12 and explanations on how businesses may impact those human rights has been set out by the UN Guiding Principles Reporting Framework.<sup>115</sup>

#### 4.4.3 Human Rights Due Diligence

A central feature of the UNGP is that companies are required to carry out a human rights due diligence in order to identify, prevent, mitigate and account for how they address their adverse human rights impacts. The human rights due diligence is described as a four step process:

- 1) Identify and assess any actual or potential adverse human rights impacts with which the company may be involved either through their own activities or as a result of their business relationships;
- 2) Take appropriate action to prevent and mitigate adverse human rights impacts;

<sup>114</sup> UNGP 13

<sup>115</sup> This is a reporting tool developed through the Human Rights Reporting and Assurance Frameworks Initiative, and is available at <http://www.ungpreporting.org/resources/how-businesses-impact-human-rights/>

- 3) Track the effectiveness of their response; and
- 4) Communicate externally how they address their human rights impacts.<sup>116</sup>

It is recognised that appropriate action will vary according to whether the company causes or contributes to an adverse impact, or is involved solely because the impact is directly linked to its operations, products or services.<sup>117</sup> It is furthermore emphasised that the appropriate action will depend on the extent of the company's leverage in addressing the adverse impacts. A company holds such leverage where it has the ability to affect change in the wrongful practices.<sup>118</sup> Companies are, moreover, asked to consider how they may increase their leverage, for example by offering capacity building or other incentives, or collaborating with other actors.<sup>119</sup>

The explicit extension of corporate responsibility to adverse impacts that the company have not contributed to, but is nevertheless linked to through its business relationships has widened the scope of corporate responsibility. Another novel feature that was introduced with the UNGP is the requirement to carry out a human rights due diligence. With the 2011 revision of the OECD Guidelines, the due diligence requirement was extended to environmental and other issues such as anti-corruption. This represents the most significant development in the international standards for responsible business conduct in recent years. It is reflected in the practice of the National Contact Point in the Norconsult matter that was successfully mediated in June 2015. Norconsult was accused of breaching the OECD Guidelines (with respect to human rights and the environment) despite its relatively minor role as technical consultant (through a local subsidiary) to the company responsible for two hydropower projects in Malaysia.<sup>120</sup> In a recent op-ed on responsible business conduct, the leader of the Norwegian National Contact Point, professor Ola Mestad underlined the need for companies to carry out due diligence in respect of the environment as well as human rights, and said: "*Of immense importance is that companies are now required to take responsibility for the entire value chain, not merely their own activities.*"<sup>121</sup>

## 5 Corporate Responsibility for the Risks of Human Rights Violations and Environmental Damage

### 5.1 The Role of Corporate Responsibility

The shipbreaking practices on the beaches of Bangladesh, India and Pakistan have considerable negative impacts on the environment as well as the health and safety of the workers and are likely to adversely affect the local communities in the areas in which they operate. The endeavours to meet these challenges with adequate international regulation have yet to bear fruit. Even though new regulatory schemes will become applicable at the international level in the years to come, this will not solve all problems, as demonstrated by the recent debate surrounding the Statements of Compliance with the Hong Kong Convention to

<sup>116</sup> UNGP 17-21.

<sup>117</sup> UNGP 19.

<sup>118</sup> Commentary to UNGP 19.

<sup>119</sup> Ibid.

<sup>120</sup> Joint statement by Norconsult AS and Fivas, retrieved from [http://nettsteder.regjeringen.no/ansvarlignaringsliven/files/2015/11/150622-Joint-Statement-by-Norconsult-AS-and-FIVAS\\_FINAL.pdf](http://nettsteder.regjeringen.no/ansvarlignaringsliven/files/2015/11/150622-Joint-Statement-by-Norconsult-AS-and-FIVAS_FINAL.pdf).

<sup>121</sup> Mestad, O., *Bedrifters samfunnsansvar* (Dagens Næringsliv, Op-Ed, 6 May 2016).

shipbreaking yards in India. The EU legislation that will apply to EU-flagged may be easily circumvented by ship owners who may a different flag at some stage prior to recycling of their ships. And weak enforcement systems will continue to challenge implementation of international standards in the states that are home to the shipbreaking yards. Hence to a large degree addressing the environmental and human rights issues related to shipbreaking on the beaches in South Asia is, and will continue to be, a matter of how the shipping companies respond to the calls for sustainable and safe ship recycling practices.

In this chapter, we will discuss the application of the standards for responsible business conduct to the practice of beaching. We will first examine the role of the ship owners in light of the UN Guiding Principles for Business and Human Rights and OECD Guidelines for Multinational Enterprises. In line with the recommendation that companies carry out a human rights due diligence through their value chain, we set out in some detail the main human rights that are adversely impacted by the shipbreaking practices in Bangladesh, India and Pakistan. Finally we will discuss the corporate complicity in human rights violations and environmental damage in light of the practice of the Norwegian Council on Ethics. The Ethical Guidelines for the Norwegian Government Pension Fund – Global (GPF) and the recommendations of the Council on Ethics have set a standard that is followed by other investors, including KLP.<sup>122</sup>

## 5.2 Corporate Responsibility throughout the Value Chain

A number of different companies are involved in a ship's journey to the South Asian beaches for scrapping. The impacts on human rights and the environment are caused by the activities of the shipbreaking yards. When a ship is ready for recycling, a key role is played by the "cash buyers"; intermediaries who handle the process of placing end-of life vessels for recycling. Their role and level of engagement and decision-making may vary. Any number of shipping companies may have been involved as owners and/or operators of the ship prior to its demolition. Some ship owners escape the problems related to recycling by selling the ships while they still have some time left of the operational phase. Others may seek to distance themselves from the end-of-life recycling of their ships by transferring ownership of an end-of-life vessel onto a non-related corporate entity just prior to the recycling. Ship owners may opt for so-called flags-of-convenience. Some commonly used flag states even offer full "last voyage packages" with easy registration schemes for ships intended for scrapping.<sup>123</sup>

In an analysis of legal responsibility, questions of "piercing the corporate veil" would need to be addressed in order to hold a (previous) ship owner responsible for the adverse impacts of its recycling. However, this is not an issue in terms of the various frameworks for responsible business conduct, since they explicitly extend the corporate responsibility to adverse impacts that are "directly linked" to the companies' operations, products or services by virtue of their business relationships. In principle, the ship recycling yard is part of the ship owners' value chain, regardless of the number of transactions over the vessel on its way to the shipbreaking yard. Hence a ship owner who sells on the end-of-life vessel to a third party may not be excused for turning a blind eye.<sup>124</sup> Following this approach, a ship owner could be expected to take responsibility for the ship "from cradle to grave".<sup>125</sup>

<sup>122</sup> See KLP' Ethical Guidelines and Guidelines for Responsible Investments, [www.klp.no](http://www.klp.no).

<sup>123</sup> NGO Shipbreaking Platform, *What a Difference a Flag Makes* (NGO Shipbreaking Platform, 2015) at 16-20. Retrieved 8 February 2016 from <[http://www.shipbreakingplatform.org/shipbrea\\_wp2011/wp-content/uploads/2015/04/FoCBriefing\\_NGO-Shipbreaking-Platform\\_-April-2015.pdf](http://www.shipbreakingplatform.org/shipbrea_wp2011/wp-content/uploads/2015/04/FoCBriefing_NGO-Shipbreaking-Platform_-April-2015.pdf)>

<sup>124</sup> The price the owner achieves for the tonnage is but one factor that will be indicative of where the ship will end up for recycling. The additional cost of recycling by other methods than beaching may be USD 3 to 7 million, according to Sturla Henriksen, President of the Norwegian Ship Owners' Association, in *Dagens Næringsliv* 17 August 2015.

<sup>125</sup> This is also the recommendation from the Norwegian Shipowners' Association, *ibid*.

A ship owner may either “contribute to” or be “directly linked” to the human rights and environmental risks posed by the shipbreaking practices in the terms of UNGP and the OECD Guidelines. The distinction between the two levels of involvement does not rely on formalities but on the underlying circumstances. Moreover, the distinction is not one of principle, but denotes how the company may be expected to prevent or mitigate the adverse impacts. Even if these are beyond the control of the company, it may have leverage to address the adverse impacts with its business partners. Ultimately, a company may need to cease a business relationship.

The objective of a human rights due diligence is to identify, prevent, mitigate and account for how the company addresses its adverse human rights impacts.<sup>126</sup> The risk assessment should prioritise the company’s most salient human rights issues, meaning the human rights at risk of the most severe negative impact. For a shipping company whose ships are recycled in the shipbreaking yards in Bangladesh, India and Pakistan, the human rights risks faced by the workers at these yards would no doubt be among the company’s most salient human rights issues.

### 5.3 The Human Rights Impacted by the Shipbreaking Practices

The shipbreaking practices described in chapter 2 represent potential violations of several human rights and/or labour rights. At the outset, it may be useful to note that one often distinguishes between what is perceived as human rights on the one hand and labour rights on the other, the term human rights is also used to include labour rights. The most common way of distinguishing between these categories is by identifying human rights as the rights contained in human rights treaties and labour rights as the rights (largely) contained in ILO conventions. In practice there is a significant overlap as many of the core international human rights instruments also include labour rights.

In the following, we shall discuss the most salient human rights risks related to the shipbreaking practices described in chapter 2, namely the right to life and the right to health. In respect of the latter, breaches of labour standards are also relevant. Finally, we will address the issue of child labour, which are covered by a number of international treaties, in particular to protect children against hazardous work.

#### 5.3.1 The Rights to Life and Health

The right to life is protected in the UN Covenant on Civil and Political Rights (ICCPR), Article 6:

*Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.*

Traditionally, the right to life has been understood as a protection against state mandated or directed (lethal) violence, such as the use of arbitrary force by police or security forces. In later years, however, general agreement is emerging that the state has a duty, under this provision, to protect individuals against acts from third parties (for example, corporations). The monitoring body of the ICCPR, the Human Rights Committee, has stated that:

*the Committee has noted that the right to life has been too often narrowly interpreted. The expression "inherent right to life" cannot properly be understood in a restrictive manner, and the protection of this right requires that States adopt positive measures.<sup>127</sup>*

<sup>126</sup> UNGP 17.

<sup>127</sup> General Comment No. 06: The right to life (art. 6): 04/30/1982, para.5.

The Human Rights Committee is in the process of drafting a new General Comment to article 6.<sup>128</sup> In the current draft there is a section dealing with the states' duty to protect life, which clearly demonstrates the current thinking that the right to life also encompasses a positive duty (on the part of the state) to protect life. The draft contains a specific mention of environmental pollution as a threat to life in the draft text:

*States parties should also take adequate measures to protect the environment against life-threatening pollution...*<sup>129</sup>

Furthermore, the UN Independent Expert on the issue of human rights relating to the enjoyment of a safe, clean, healthy and sustainable environment, John Knox, also specifically mentioned the right to life as a key human right that can be adversely affected by environmental damage in his report mapping the links between human rights and the environment.<sup>130</sup>

The right to health is laid down in the International Covenant of Economic, Social and Cultural Rights (ICESCR), article 12, and states that everyone has the right to *the enjoyment of the highest attainable standard of physical and mental health*. The monitoring body of the ICESCR has in a General Comment on the right to health made the following observations:

*However, the reference in article 12.1 of the Covenant to "the highest attainable standard of physical and mental health" is not confined to the right to health care. On the contrary, the drafting history and the express wording of article 12.2 acknowledge that the right to health embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health, such as food and nutrition, housing, access to safe and potable water and adequate sanitation, **safe and healthy working conditions**, and a healthy environment.*<sup>131</sup> (Emphasis added).

In recent years, the recognition of the links between human rights and the environment has greatly increased. A safe, clean, healthy and sustainable environment is integral to the full enjoyment of a wide range of human rights, including the rights to life, health, food, water and sanitation. In 2012, the Human Rights Council established a mandate on human rights and the environment and appointed an Independent Expert (now Special Rapporteur) on human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment. The Independent Expert stated in his first report that "environmental degradation can and does adversely affect the enjoyment of a broad range of human rights."<sup>132</sup> He has also pointed to the right to health as one of the key rights to consider with regard to environmental damage that also affects health, for example toxic waste and exposure to harmful chemicals.<sup>133</sup>

### 5.3.2 Labour Rights Related to Occupational Health and Safety

A number of ILO conventions are relevant for the labour rights of the workers in the shipbreaking yards. The Safety and Health in Construction Convention No.167 clearly pertains to shipbreaking. The Convention applies to all "construction activities, namely building, civil engineering, and erection and dismantling work, including any process, operation or transport on a construction site, from the preparation of the site to

<sup>128</sup> CCPR/C//GC/R.36.

<sup>129</sup> Ibid, para 28.

<sup>130</sup> Mapping Report, A/HRC/C25/53, 30 December 2013, para 19.

<sup>131</sup> General Comment No.14, The right to health, E/C.12/2000/4, 11 Aug. 2000, para 4.

<sup>132</sup> A/HRC/22/43, para 34.

<sup>133</sup> Mapping Report, A/HRC/C25/53, 30 December 2013, para 20.



the completion of the project.”<sup>134</sup> More specifically, the convention encompasses: “building, including excavation and the construction, structural alteration, renovation, repair, maintenance (including cleaning and painting) and *demolition of all types of buildings or structures*” (Emphasis added).<sup>135</sup>

It goes on to specify a long list of measures that must be taken to secure construction (and demolition) sites and workplaces, including in a general provision that states that “[A]ll appropriate precautions shall be taken to ensure that all workplaces are safe and without risk of injury to the safety and health of workers.” And, that “[A]ll appropriate precautions shall be taken to protect persons present at or in the vicinity of a construction site from all risks which may arise from such site.”<sup>136</sup>

Several other ILO conventions are relevant for shipbreaking, including, but not limited to, conventions on:

- pollution in the work place,<sup>137</sup>
- the right to occupational health services,<sup>138</sup>
- protection from exposure to chemicals<sup>139</sup> and asbestos,<sup>140</sup>
- night work,<sup>141</sup>
- minimum wages<sup>142</sup>
- medical care and sickness benefits.<sup>143</sup>

These so-called “technical” labour rights conventions are not among the eight core conventions encompassed by UNGP Principle 12, but they contain important labour rights which are relevant with regard to shipbreaking, especially since non-compliance with these standards directly impacts on occupational health and safety.

### 5.3.3 Child Labour

Child labour is covered by two of ILO’s core conventions, namely ILO Convention No. 182 on the Worst Forms of Child Labour and ILO Convention No. 138 on Minimum Age. The worst forms of child labour are defined as all forms of slavery including the trafficking and sale of children and/or debt bondage; forced or compulsory labour including recruitment of children for use in armed conflict; and the use of children for prostitution, pornography or other illicit activities such as the production or trafficking of drugs; and *work that is likely to harm the health, safety of morals of children*.<sup>144</sup>

The ILO Convention No. 138 on Minimum Age specifies that the minimum legal working age should not be less than the age of completion of compulsory schooling, and under no circumstances be less than 15 years of age (or 14 years of age for a specified time if a country’s economy and educational status are insufficiently developed).<sup>145</sup> Article 3 of this Convention sets a minimum age of 18 years for work, which

<sup>134</sup> Ibid. Article 1.

<sup>135</sup> Ibid. Article 2.

<sup>136</sup> Ibid. Article 13.

<sup>137</sup> International Labour Organization (ILO) Environment (Air Pollution, Noise and Vibration) Convention No. 148 (1981).

<sup>138</sup> International Labour Organization (ILO) The Occupational Health Services Convention No.161 (1985).

<sup>139</sup> International Labour Organization (ILO) The Chemicals Convention No. 170 (1990).

<sup>140</sup> International Labour Organization (ILO) The Asbestos Convention No. 162 (1986).

<sup>141</sup> International Labour Organization (ILO) Night Work Convention No. 171 (1990).

<sup>142</sup> International Labour Organization (ILO) Minimum Wage Fixing Convention No. 131 (1970).

<sup>143</sup> International Labour Organization (ILO) Medical Care and Benefits Convention No.130 (1969).

<sup>144</sup> International Labour Organization (ILO), Worst Forms of Child Labour Convention No.182 (1999), Article 3.

<sup>145</sup> Ibid. Articles 1 and 2.

*by its nature or the circumstances in which it is carried out is likely to jeopardize the health, safety or morals of young persons.*<sup>146</sup>

States may authorise employment or work from the age of 16 years on condition that their health and safety are fully protected and that the young persons have received adequate specific instruction or vocational training in the relevant branch of activity.<sup>147</sup> Children may do “light work” when they are 13-15 years old,<sup>148</sup> on the condition that the work does not interfere with the child’s schooling.

Allegations of child labour need to be examined in light of the various treaties to ascertain whether child labour is taking place, and if so, which form it takes. This means establishing whether there are workers under the age of 18 and if so, whether the work they carry out is hazardous and “likely to jeopardize the health, safety or morals” of children. To the extent that children are found to be involved in the “ordinary” shipbreaking work described in the ship recycling facilities on beaches, it appears very likely that this work falls within the scope of “hazardous” work, which is unlawful under international human rights law, even for older children.

As set out in chapter 2 of this report, there have been reports of child labour in the ship recycling yards, particularly in Bangladesh. The International Federation of Human Rights reported in 2008 that children and young workers below 18 years account for up to 25 per cent of the workforce at the Chittagong yards.<sup>149</sup> More recent reports with reliable figures are not available, although the NGO Shipbreaking Platform asserts that children continue to be employed in the Chittagong shipbreaking industry.<sup>150</sup> These reports are clearly concerning, but more solid documentation would be required to conclude that there is child labour.

To the extent that persons under the age of 18 do work in the shipbreaking yards, it seems probable that the work they carry out is likely to cause harm to their health and safety. It would therefore fall under the definition of the worst forms of child labour by all the relevant conventions.

#### 5.4 The Human Rights Impacts of Beaching in Light of the Council on Ethics’ Practice

The Norwegian Government Pension Fund – Global (GPF) was among the first to develop a set of ethical guidelines for their investments in 2004 (the Ethical Guidelines).<sup>151</sup> The Council on Ethics was established with a mandate to examine allegations of breach of the Ethical Guidelines and make recommendations in relation to such breaches. Many other institutional investors, including KLP, have mirrored the Ethical Guidelines of the GPF and look to the practice of the Council on Ethics in their own responsible

<sup>146</sup> *Ibid* Articles 1-3.

<sup>147</sup> *Ibid* Article 3.

<sup>148</sup> States may substitute the age 12 – 14 years of age, if their minimum age of work is 14 years.

<sup>149</sup> Ruben Dao, *Childbreaking Yards: Child Labour in the Ship Recycling Industry in Bangladesh* (International Federation for Human Rights and Young Power in Social Action, 2008).

<sup>150</sup> NGO Shipbreaking Platform 2016, retrieved from <http://www.shipbreakingplatform.org/press-release-ngo-publishes-2015-list-of-all-ships-dismantled-worldwide/>

<sup>151</sup> For the background, see <sup>151</sup> Graverutvalget, *Forvaltning for Fremtiden: Forslag til Etiske Retningslinjer for Statens Petroleumsfond* (Statens forvaltningstjeneste, NOU 2003:22, 2003). Retrieved from <https://www.regjeringen.no/no/dokumenter/nou-2003-22/id118914/>



investment policies. The practice of the Council on Ethics is therefore a relevant starting point for a discussion of corporate accountability for human rights violations as well as environmental damage.<sup>152</sup>

#### 5.4.1 The Human Rights Exclusion Criterion

The main focus of the Council on Ethics has been on the exclusion criteria set out in the Ethical Guidelines, according to which a company shall be excluded where there is an unacceptable risk that the company causes or contributes to, inter alia, *systematic or serious human rights violations such as murder, torture, deprivation of liberty, forced labour, the worst forms of child labour and other serious or systematic violations of workers' rights or serious environmental damage*. The latter is discussed below in 5.5.

The Council on Ethics has provided some general guidance for the interpretation of the human rights exclusion criterion. In its recommendation to exclude Total SA,<sup>153</sup> the Council stated that the wording itself makes several things clear:

- There must be an unacceptable risk that human rights abuses take place or that they will happen in the future.
- There must be a clear link between the company and that risk.
- With respect to the type of human rights that is covered, the words “such as” imply that the specific human rights violations listed are examples of such violations and that the list is not exhaustive.
- The term “human rights” is meant to include labour rights.

Moreover, when it comes to the qualification of the human rights violations in question, the council made it clear that the word “or” is significant and means that human rights violations that are *either serious or systematic* will fulfil the criterion:

*(A) determination of whether human rights violations qualify as serious or systematic needs to be related to the specific case at hand. However, it seems clear that a limited number of violations could suffice if they were very serious, while the character of a violation need not be equally serious if it were perpetrated in a systematic manner.*<sup>154</sup>

It is also clear that the assessment looks at the *future* risk of serious or systematic human rights violations. Whilst it is clearly relevant to look at adverse human rights impacts that have occurred, the question is whether such violations imply an unacceptable risk for future breaches.

#### 5.4.2 Violations of the Rights to Life and Health – Occupational Health and Safety

As described in Chapter 2, the workers in the ship recycling yards in Bangladesh, India and Pakistan have a high risk of fatalities, injuries and work-related diseases. The high number of workplace accidents resulting in casualties and injuries are clearly linked to a lack of safety measures. Guidelines on how to ensure effective measures to protect workers' safety and health have existed for more than a decade, but are not adequately implemented. In addition, workers seem to be exposed to toxic substances, including asbestos, and may suffer from diseases as a result of long-term exposure to hazardous materials. It seems likely that many accidents could be avoided through implementing the health and safety requirements set out e.g. in

<sup>152</sup> For a discussion of the practice of the Council on Ethics, see Gro Nystuen, “Disinvestment on the basis of corporate contribution to human rights violations: the case of the Norwegian Government Pension Fund” in G. Nystuen, A. Føllesdal, & O. Mestad (eds.), *Human Rights, Corporate Complicity and Disinvestment* (Cambridge University Press, 2011).

<sup>153</sup> The Council on Ethics Recommendation regarding Total SA, 14 November 2005, at 8.

<sup>154</sup> The Council on Ethics Recommendation on Total SA, 14 November 2005, at 8.

the Basel Convention Secretariat's Technical Guidelines from 2003 and/or the ILO Guidelines for Safety and Health in Shipbreaking from 2004. For instance, flame cutting is much safer when conducted after removing highly flammable paints, liquids and gases. Without going into detail, it seems clear that there are numerous breaches of the labour rights set out in the relevant ILO conventions.

In the practice of the Council on Ethics, breaches of internationally recognised labour standards contained in the technical ILO conventions would generally not amount to "serious or systematic human rights violations". In this case, however, the massive failure to meet internationally recognised minimum standards to protect the life and health of workers directly impacts the fundamental rights to life and health. One must therefore look at the risk to these fundamental human rights, factoring in if the risk is linked to a failure to meet internationally recognised standards for the protection of occupational health and safety.

In the Wal-Mart Recommendation,<sup>155</sup> the Council on Ethics added up a large number of work environment incidents in Wal-Mart's own business and supply chain. The Council noted that:

*[I]solated occurrences of this type, even if serious, would probably not suffice to exclude a company since such events would not constitute sufficient grounds for establishing a risk of violation in the future..... Concerning violations of working environment standards, ..... these too will probably not be sufficient in themselves to recommend exclusion, even in cases where they must be regarded as systematic.*

The Council then went on to say:

*In the view of the Council, what makes this case special is the **total sum of violations** of standards, both in the company's own business operations and in the supply chain. It appears to be a systematic and planned practice on the part of the company to operate on, or below, the threshold of what are accepted standards for the work environment. **Many of the violations are serious, most appear to be systematic, and altogether they form a picture of a company whose overall activity displays a lack of willingness to countervail violations of standards in its business operations.** (Emphasis added.)*

The Council on Ethics thus laid the ground for looking at cumulative human rights abuses, and stating that such a pattern of violations can be found to reach the threshold of *systematic* human rights violations as set out in the Ethical Guidelines.

The same analysis may be applied to the shipbreaking practices in Bangladesh, India and Pakistan. Such assessment would need to take into account the specific circumstances of the shipbreaking practices in question, and there would be variations depending on the state of affairs in the specific shipbreaking yard. However, notwithstanding the differences between the three countries, it seems clear that in general terms the workers' rights to life and health are threatened as a direct result of the shipbreakers' failure to comply with internationally recognised standards for occupational health and safety. Taken separately, each incident might not reach the threshold of a *serious* violation of the right to life or the right to health (although certain events, such as fatal accidents as a result of poor security measures, *could* amount to a serious violation of the right to life). But when accumulated, there emerges a pattern where the health hazard incidents, resulting from the unsafe working conditions experienced on a daily basis in these shipbreaking yards, could be argued to amount to *serious or systematic* human rights violations.

<sup>155</sup> Council on Ethics, Recommendation on Wal-Mart Stores Inc., 15. November 2005, at 22.

We base this conclusion on the fact that there is a pattern of continuous breaches of several human rights and labour rights standards aimed at protecting the life and health of workers from occupational hazards, and these breaches are of a systematic nature. The risk materialises on a regular basis as a number of workers are killed or severely injured at work every year. Moreover, the risks to health and safety linked to the shipbreaking practices as discussed in this report seem both predictable and preventable. Many of the fatal and serious incidents appear to be linked to the lack of protection equipment and to other sub-standard safety measures. It seems likely that many of the occupational risks to health and safety generated by this practice could be prevented if the relevant instruments, including national legislation and the relevant ILO conventions as well as the specific guidelines for shipbreaking, were implemented.

This general conclusion needs to make a caveat with respect to the improvements that have recently taken place at some of the shipbreaking yards, particularly in India where a number of ship recycling facilities have received a “Statement of Compliance” with the Hong Kong Convention, although it remains to be seen to what extent the human rights risks are adequately addressed.

#### 5.4.3 The Practice of the Council on Ethics on Attribution to a Listed Company

The analysis of the Council on Ethics of whether the practices of a specific company meet the criteria for exclusion as set out in the GPFGE Ethical Guidelines, is always made on the basis of a concrete inquiry into the particular facts pertaining to the acts or omissions of that particular company. For the purpose of this report, we have analysed the practice of shipbreaking from a general point of view. A complete analysis as undertaken by the Council of Ethics on whether a company has contributed to human rights violations, requires an analysis into the link between the com<sup>156</sup>pany and the human rights violations.

In its recommendation to exclude Total SA, the Council on Ethics elaborated on the connection between the human rights violation and the listed company in question:

*Based on the guidelines’ preparatory work, the Council lists the following criteria which constitute decisive elements in an overall assessment of whether there exists an unacceptable risk of the Fund contributing to human rights violations:*

- *There must exist some kind of linkage between the company’s operations and the existing breaches of the guidelines, which must be visible to the Fund.*
- *The breaches must have been carried out with a view to serving the company’s interests or to facilitate conditions for the company.*
- *The company must either have contributed actively to the breaches, or had knowledge of the breaches, but without seeking to prevent them.*
- *The norm breaches must either be on-going, or there must exist an unacceptable risk that norm breaches will occur in the future. Earlier norm breaches might indicate future patterns of conduct.*<sup>157</sup>

The analysis outlined here can only be undertaken in light of the concrete facts of each individual case. However, it should be pointed out that the shipping company who owned the ship (at some stage) prior to

<sup>156</sup> For a general discussion of this issue, see M Mestad, O., “Attribution of responsibility to listed companies”, in Nystuen, G., A. Føllesdal, & O. Mestad (eds.), *Human Rights, Corporate Complicity and Disinvestment* (Cambridge University Press, 2011).

<sup>157</sup> The Council on Ethics Recommendation on Total SA, 14 November 2005, at 12.

recycling could *in principle* be seen to *contribute to* the risks posed by the sub-standard ship recycling. When a company has

An assessment of the possible exclusion of a company on the basis of systematic human rights violations or serious environmental damage (or similar criteria) would always require a thorough examination of the facts pertaining to that company and its links to the human rights and environmental impacts.

## 5.5 The Environmental Impact of Beaching in Light of the Council on Ethics' Practice

The Council on Ethics have recommended exclusion of a number of companies based on the criterion that there is an unacceptable risk that the company causes or contributes to *severe environmental damage*. In its 2006 recommendation to exclude Freeport McMoRan Copper & Gold Inc (Freeport),<sup>158</sup> the Council provided comprehensive guidance for the interpretation of the criterion “severe environmental damage”, which has been followed in subsequent cases. The Council outlined an overall assessment based on a consideration of these seven factors:

- The damage is significant.
- The damage causes irreversible or long-term effects.
- The damage has considerable negative consequences for human life and health.
- The damage is the result of violations of national law or international norms.
- The company has neglected to act in order to prevent damage.
- The company has not implemented adequate measures to rectify the damage.
- It is probable that the company's unacceptable practice will continue.

In the ship recycling yards in Bangladesh, India and Pakistan, where shipbreaking takes place in the intertidal zone, pollutants are not contained, but washed out with the tidal water.<sup>159</sup> Combined with the emission of toxic gas into the air and the unsound storage of hazardous material, shipbreaking activities likely affect the local ecology and contaminate the coastal soil, air, sea, and groundwater while also adversely affecting local communities that may subsist on agriculture and fishing.<sup>160</sup> As discussed in chapter 2, few of the shipbreaking yards in these three countries have adequate waste reception facilities, and many reports clearly indicate that the hazardous material involved in the practice of shipbreaking (bacterial oil sludge, toxic paints, asbestos, ozone depleting substances, fuel residues, heavy metals, organotins or biocides, and persistent organic pollutants) can damage the environment.<sup>161</sup> Yet, as pointed out in a 2013 report, there is a lack of verifiable, scientific evidence as to the full scope and nature of the environmental damage.<sup>162</sup> On a general level, the following observations can be noted from the practice of the Council on Ethics:

<sup>158</sup> Council on Ethics Recommendation on Freeport McMoRan Copper & Gold Inc., 15 February 2006.

<sup>159</sup> NGO Shipbreaking Platform, *Annual Report 2014* (NGO Shipbreaking Platform, 2015) at 3.

<sup>160</sup> Special Rapporteur on the Implications for Human Rights of the Environmentally Sound Management and Disposal of hazardous Substances and Wastes, *Summary of Annual Reports 1996-2014* (UN Office of the High Commissioner for Human Rights, 2015) at 18.

<sup>161</sup> M. Sarraf *et al.*, *Ship Breaking and Recycling Industry in Bangladesh and Pakistan* (The World Bank, Report No. 58275-SAS, 2010) at 5-8

<sup>162</sup> F. Frey, 'Breaking Ships in the World-System: an Analysis of two Ship Breaking capitals, Alang, India and Chittagong, Bangladesh', *CSSJ Working Papers 13-01* (2013) at 12.

- There is a strong emphasis by the Council on Ethics that their recommendations in this field should be made on the basis of verifiable, reliable evidence.
- The actual cases investigated by the Council on Ethics have involved significant resources to establish the facts in each case, through investigative trips and comprehensive studies.

In order to make such an assessment, it would be necessary to address the issues highlighted in the considerations above on a concrete level, including a comprehensive analysis of the available research on the significance and irreversibility of the damage in question, the health effects of the relevant pollutants, the long-term aspects of the damage and the consequences, and the estimated costs of clean-up and treatment of health effects. In addition, a more comprehensive analysis of the relevant applicable national and international legal frameworks would be required to consider the extent to which the damage is the result of violations of national law or international norms.

## 5.6 Some conclusions

The internationally recognised standards for responsible business conduct require shipping companies to avoid adverse impacts on human rights as well as the environment, or address them as they may occur. Both the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles for Human Rights require companies to carry out due diligence processes and address the risks to human rights and the environment of their business operations. Companies are expected to take responsibility for such risks throughout their value chain, on the basis that they either contribute to, or are directly linked to the adverse impacts through their business relationships. When prioritising the human rights issues that are at risk in relation to the business operations, the most salient human rights risks are required to be addressed and prioritised, regardless of where in the value chain they take place. For shipping companies, following the principles set out in the OECD Guidelines and the UNGP would entail taking responsibility for their ships “from cradle to grave”.

The facts presented on the shipbreaking practices in Bangladesh, India, and Pakistan leave little doubt that this activity carries considerable adverse impacts on the human rights of the workers, as well as potentially on the people living in the communities around the shipbreaking yards. The high level of work-related fatalities, injuries and occupational diseases implicate that there are adverse impacts on the right to life and the right to health as well as the rights to decent working conditions. It remains to be seen whether the improvements that have been made at a handful of shipbreaking yards in Alang, India, leading to a Statements of Compliance with the Hong Kong Convention, is sufficient to address all the concerns. Full transparency would be a first step to demonstrate that the international calls for an end to the hazardous practice that threatens life and health as well as the environment, have been heard.

The cumulative and systematic infringements of the right to life and the right to health appear to be directly linked to the many breaches of internationally recognized labour standards. The risk to workers’ life and health could have been reduced considerably through adherence to available, and often inexpensive, safety guidelines. The sheer amount of deaths and injuries that have been, and continue to be, reported, and the fact that they appear to be largely preventable through observing basic safety measures as set out in international labour standards and specific guidelines for the shipbreaking industry, implies that there may be an unacceptable risk of future systematic human rights violations as long as these concerns are not addressed.

Change for the better may be on the way, both as a result of more companies taking action for more sustainable shipbreaking, and as the new international regulatory regimes come into force. Whilst the Hong Kong Convention is a long way from entering into force, the EU ship recycling regulation will gradually start applying to the European shipping fleet over the coming years. However, due to the ease of changing the flag of a vessel, a European shipping company that wishes to continue benefit from the costs saved by using sub-standard shipbreaking yards as long as they are available, may easily do so.



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