

Ship recycling – Norwegian Appeals Court explores the limits of individual shipowner responsibility

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Norway-based marine insurer Gard has provided a long article on a topic that is moving up the agenda of shipowners – the limits of their responsibility when it comes to ship recycling.

Gard's Sofia Berisha, Claims Executive, Oslo, and Kim Jefferies, Special Adviser, Loss Prevention, Arendal, noted that illegal scrapping of vessels could result in criminal liability. This might be applicable not only to the ship owning company, but also to shipyards, brokers, insurance companies, banks and other entities enabling the transaction.

In 2020 Norway saw its first case – the **Tide Carrier** – which illustrated the extent of the prohibition against scrapping vessels in breach of the outlined regulations.

Following increased international criticism of the shipping industry's scrapping practices, the IMO adopted the Hong Kong Convention for the Safe and Environmentally Sound Recycling of Ships.

The Convention provides a “from cradle-to-grave” approach, meaning that its rules apply to ships from the moment they are being designed, built, and maintained and until they are recycled. The main obligations set out in the convention stipulate requirements for ships, ship scrapping facilities, as well as reporting requirements. Norway was the initiator of the convention and the first nation to ratify it.

However, despite being adopted in May 2009, the Convention still has not entered into force, as this can only happen two years after ratification by 15 States that represent between them at least 40% of world merchant shipping by gross tonnage. Although there are now more than 15 signatory states, they do not amount to 40% of the world tonnage. Although many EU nations, plus Turkey and India, two of the five top recycling nations are signatories, Bangladesh and Pakistan, also among the top recycling locations, are not currently signatories to the convention.

In Europe the scrapping of ships is currently regulated by two parallel regimes, one for EU-flagged ships, and one for non-EU-flagged ships.

Export of non-EU-flagged ships is regulated by the EU Waste Shipment Regulation 1013/2006 (EWSR) and the Basel Convention. Together these establish a “Waste Movement Regime”, because obsolete vessels are termed “waste”.

The Basel Convention on the Control of Transboundary Movements of Hazardous Waste and Their Disposal was adopted in 1989 and came into force in 1992. Most countries, with the notable exception of the United States, are parties to the Convention.

The Convention aims to control the movement of hazardous waste from developed countries to developing countries, preventing rich countries from dumping hazardous waste on poorer countries that are not equipped to deal safely with such waste. Because ships contain hazardous waste, an end-of-life ship headed from a signatory state to a South Asia beaching facility will often fall within the scope of the Basel Convention.

The unamended Basel Convention does not ban export, but it does require notice and permit approval from the exporting country and the importing country, as well as other regulatory requirements as enacted in national legislation.

The Basel Ban Amendment is an agreement taken by Basel Convention Parties to prohibit the member states of the Organization for Economic Cooperation and Development (OECD), the EU and Liechtenstein from exporting hazardous wastes to non-OECD countries.

EWSR 1013/2006 extends the obligations outlined in the Basel Convention. It covers all types of wastes and implements the Basel Ban Amendment, which prohibits shipment of waste destined for disposal to any developing non-OECD states.

Export of ships operating under EU flags is governed by the EU Ship Recycling Regulation 1257/2013 (ESRR). This regulates ship recycling based on terms modelled on the Hong Kong Convention and in some respects goes further than the Convention. It requires recycling to be performed in authorized shipyards included on the so-called “European list”.

The European List of approved facilities includes yards in several European nations as well as facilities in Norway, Turkey, the US and the UK. There are no South Asian yards on the approved list, even though many yards, particularly in India, have commissioned and received certification from classification societies that they are “Hong Kong compliant”.

Norway's adoption of the EU framework

Norway is not an EU member state, but it is a member of the European Economic Area Agreement, which includes an obligation on the EEA member states to incorporate the EU Waste Shipment Regulations. In Norway that was done by the enactment of the Norwegian Waste Regulation section 13-1, which entered into force on 1 July 2008. Henceforth it was prohibited to export vessels from Norway for recycling—irrespective of flag—to a non-OECD state for scrapping.

While the Waste Movement Regime looks at the exporting state and considers a ship as subject to the Convention only when it is intended to be scrapped, the ESRR looks at the nationality of the ship itself. This is determined by where it is registered or flagged. Given the financial incentive to scrap in South Asian yards by beaching the vessel rather than using yards that utilize dry docks and more expensive workers, European shipowners may seek to take advantage of the ease of re-flagging the vessel and disguising a final voyage as a sale of an operating vessel.

So-called “cash buyers” are the middlemen between the shipowner and the breaking yard.

This tension between maximizing return for scrap and the incomplete global regulation of shipbreaking led to the investigation and prosecution of the Tide Carrier case in Norway.

The Eide Carrier becomes the Tide Carrier, and then the Harrier

The Eide Carrier was built in 1989 as a “Lighter Aboard Ship” (LASH) vessel with the primary purpose of carrying barges. The vessel had been out of service and laid up in western Norway when in 2015 the NGO Shipbreaking Platform received an anonymous tip that the vessel had been sold by its Norwegian owner for scrap.

The Platform recounted that, after receiving the tip, it contacted the owner to say that exporting the vessel to a South Asian beaching yard would be in breach of the Waste Movement Regime. The owner at that time denied that the vessel had been sold for scrap.

In February 2017 the vessel attempted to leave Norway under the name Tide Carrier. The registered owner was by now Julia Shipping, incorporated in St Kitts and Nevis, and the vessel was Comoros-flagged. A few hours after the vessel's departure it suffered an engine stoppage. The Norwegian authorities had to mount a salvage and rescue operation to prevent the vessel from grounding.

NGO Shipbreaking Platform alerted the Norwegian authorities that there were red flags indicating that the vessel had been sold to a beaching yard in South Asia and that Julia Shipping was likely a front concealing a cash buyer.

When the Norwegian Environment Agency boarded the vessel, they found documentation that the vessel was not actually bound for a repair yard in the Middle East (as had been represented on its departure from Norway) but was bound for a breaking facility in Gadani, Pakistan.

The sale contract to Julia Shipping from 2015 showed that the contact person for Julia Shipping was the Chief Financial Officer of Wirana, a well-known cash buyer. The vessel was arrested and was prohibited from leaving Norway without an export permit from the Norwegian authorities.

It turned out that Julia Shipping had been incorporated by Wirana for the purpose of owning the vessel. Julia Shipping renamed the vessel **Harrier** and reflagged it in Palau. Ultimately, Julia Shipping was granted permission from the Norwegian authorities to sail the vessel to Aliaga, Turkey for recycling.

The police investigation, led by Økokrim, the Norwegian Authority for Investigation and Prosecution of Economic and Environmental Crime, resulted in the conviction of the Norwegian shipowner. In November 2020 the Norwegian shipowner was convicted and sentenced by the Sunnhordaland District Court to six months imprisonment for having assisted Wirana in its attempt to illegally export the vessel in contravention of Norway's Pollution Control Act. In addition, the Court ordered the confiscation of "criminal dividends" of NOK2m from the Norwegian shipowning company. This sum represented the nominal profit that would have been realized by scrapping in Pakistan, compared to the regulation-compliant yard in Turkey.

Wirana was fined NOK7m for the attempt to illegally export the ship, as well as two counts of false statement and one count risk of acute pollution in the attempted sailing of the Tide Carrier.

The shipowner appealed. In March 2022 the Gulating Court of Appeal upheld the six-month prison sentence.

The Court stated that it made little difference to the criminality of an act whether a shipowner sells a ship directly to a scrapyards or indirectly via an intermediary. However, the decision was not unanimous. Two of the seven judges felt that the burden to prove guilt beyond a reasonable doubt had not been met. Leave to appeal to the Norwegian Supreme Court was denied. The judgment is now final. The writers said that the judgement was important for all actors involved in the shipping industry as it could be presumed to form a basis for the prosecutor's office to follow up cases concerning end-of-life ships bound from Norway to scrapping facilities in non-OECD countries.

The judgement also created precedent for the courts in future cases.

The writers noted that the case demonstrated that environmental and labour rights groups were passionate about ending environmentally damaging and unsafe working conditions in some shipbreaking nations and these groups provided

information to authorities when they see red flags indicating possible evasion of regulations.

The most important lesson, the writers said, was that the sale of the vessel to a third party did not necessarily relieve the shipowner of responsibilities for compliant shipbreaking. It was also worth noting that the ruling might also have relevance outside of Norway and could potentially influence legislation and court procedures in other European and developed countries.

“Given the current patchwork of international, regional and national legislation, all actors who are involved in the process of dismantling the ship are recommended to perform extra due diligence in the process of preparing a vessel for scrap including obtaining expert advice with respect to the complex regulatory environment”, the writers said.

Author Sofia Berisha thanked Professor Trond Solvang for the review of her thesis, which formed the basis for the regulatory discussion. Co-author Kim Jefferies thanked Herman Steen, partner with Wikborg Rein for his review and comments and also thanked Rebecca Pskowski for sharing her article “No Country for Old Ships? Emerging Liabilities for Ship Recycling Stakeholders”, published by the Tulane Maritime Law Journal.

<https://www.gard.no/web/articles?documentId=33835898>