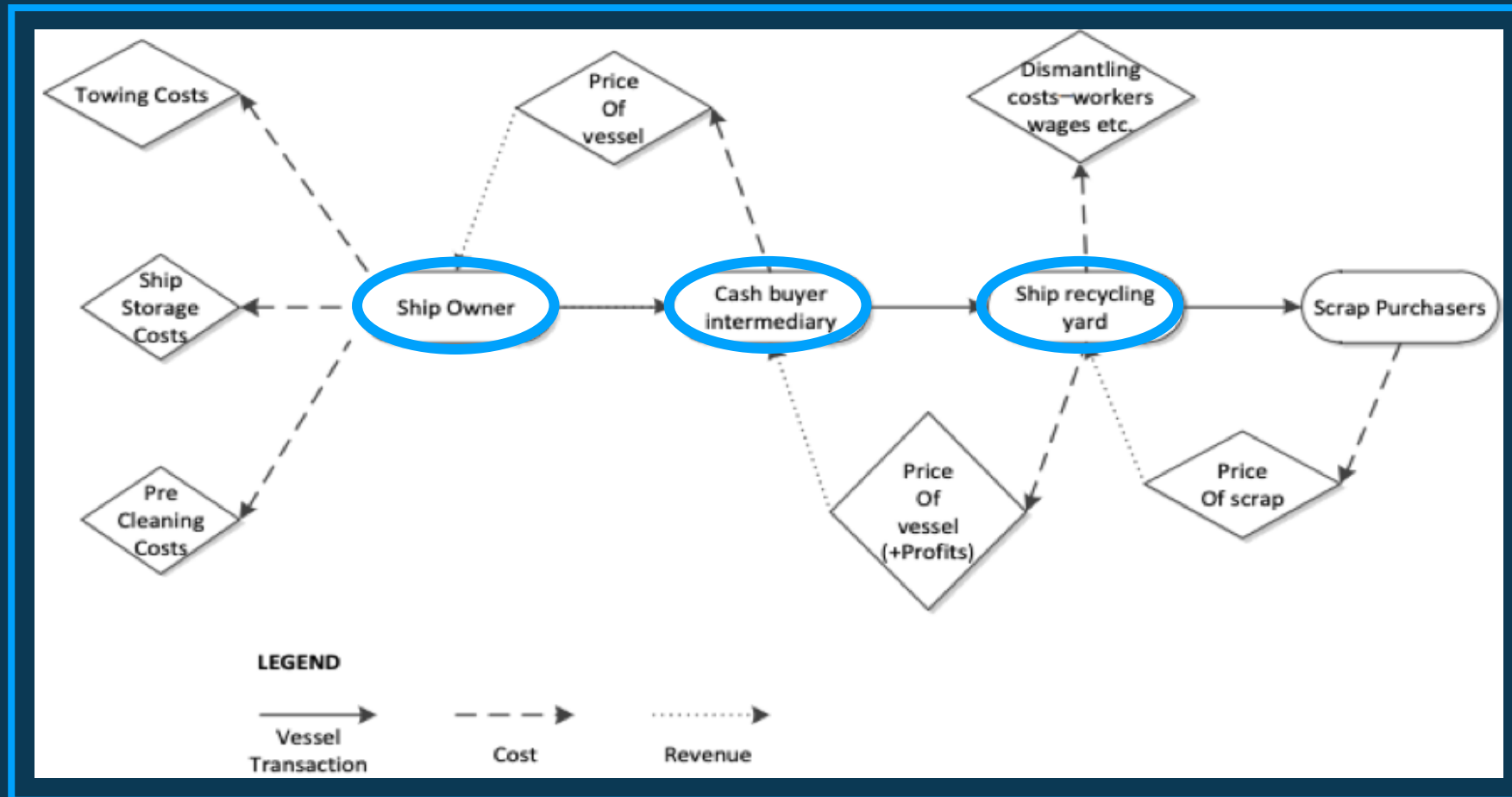


The legal matrix of ship recycling

The international framework and developments in EU legislation

- by Ingvild K. Hoel

Transactions and cash flows in ship recycling



M. Ahuja, "Driving Sustainable Ship Recycling: A Case Study of the Container Shipping Industry (Master thesis)," p. 38, NTNU Norwegian University of Science and Technology, 2012.

A large ship is being dismantled on a beach. A massive red crane is positioned over the ship's hull, which is being lifted or moved. The ship's name, "EDWARDS VICTORIA", is visible on the side. The beach is littered with debris, including large metal pipes and other ship components. Several people are standing on the beach, providing a sense of scale to the massive ship. The sky is overcast, and the overall scene depicts a large-scale industrial operation in a coastal setting.

Beaching definition:

«Recycling of ships without using fixed installations for collection and handling of dangerous and polluting wastes» – *Norwegian*

Shipowners' Association

Ship recycling statistics

Global ship recycling in 2023:

- 325 of 446 commercial ships and floating offshore platforms recycled in Bangladesh, India and Pakistan, amounting to more than 85% of the gross tonnage dismantled.
 - <https://shipbreakingplatform.org/spotlight-data-2023/>
- “In 2022, while over 30% of the world’s end-of-life fleet was owned by European companies, less than 5% had an EU flag when they were sold for scrap.”
 - <https://shipbreakingplatform.org/hrw-report-bangladesh/>
- 2023: 6 workers died, 19 severely injured in Bangladesh.
 - <https://shipbreakingplatform.org/spotlight-data-2023/>

2009-2023:

- 8078 ships beached – 449 deaths – 404 injuries.
 - [NGO Shipbreaking Platform](#)

Sea level rise

IPCC 2007 estimation = 0.21m – 0.78m by 2099

- Gadani: 3500-8100 m³
- Chattogram: 11000-25000 m³
 - Release of lead: 5696,2-13019,9 kg

IPCC 2019 estimation = 0.3-1-1 m

The ship recycling countries' conflict of interest

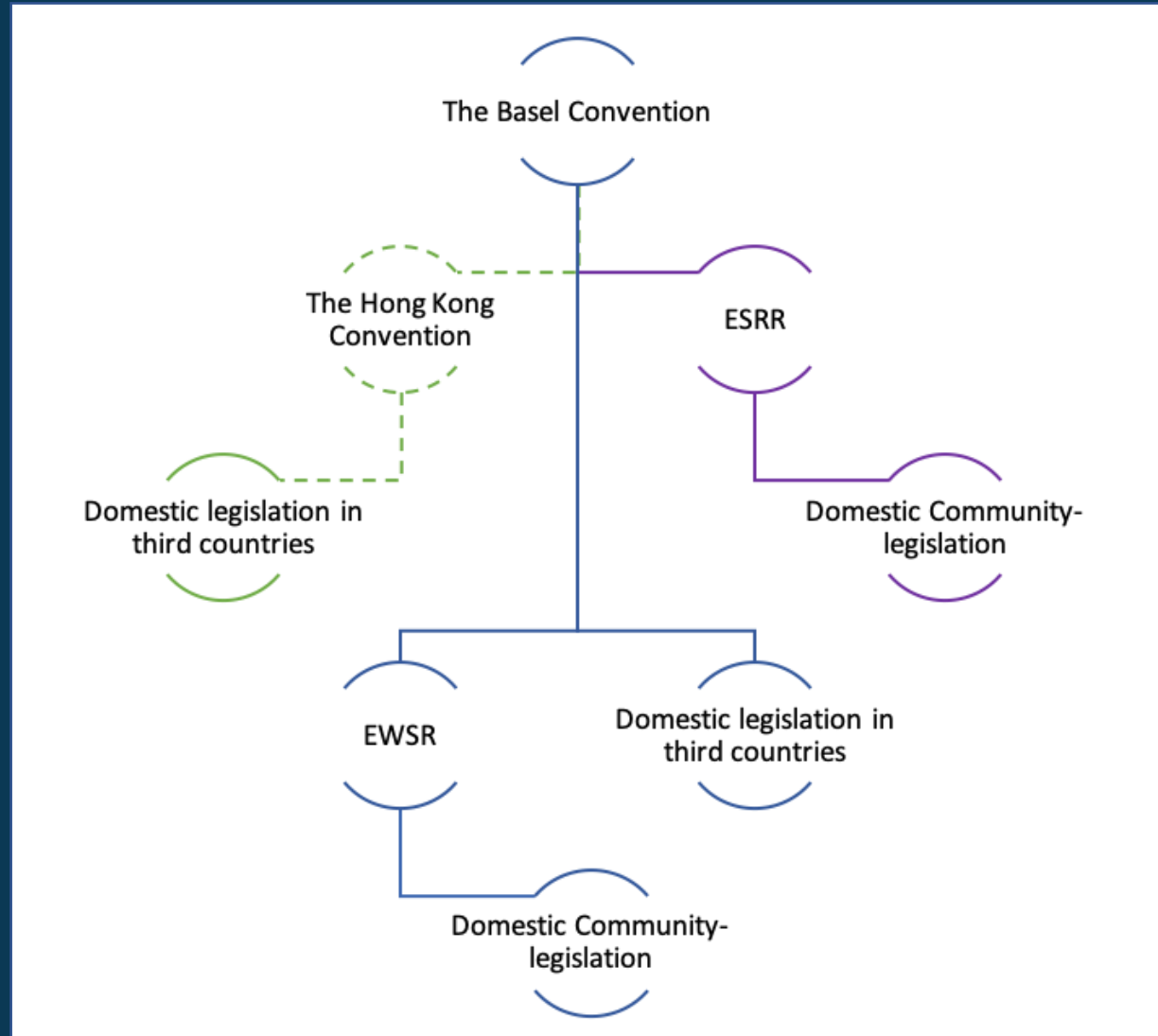
- Employ 225 000 in ship recycling and ancillary operations (2019 estimation)
- Ship recycling provide 80-90% of Bangladesh steel supply
- Circular economy: on average, 1.9 tonnes of carbon is emitted per tonne of steel produced
- 5-12 billion Pakistani Rupees (€25 143 419 – 60 368 551) in taxes annually

- 449 deaths at shipbreaking yards since 2009.
- In Bangladesh: Asbestosis in 35% of workers, 20 years shorter life expectancy for shipbreaker than the average population,
- 80% reported eye-, lung-, gastrointestinal- and musculoskeletal-related symptoms.
- 13% child labour, 20% in night shift
- Significant pollution of the marine environment

Transparency International corruption index:

- India 85/180
- Pakistan 140/180
- Bangladesh 147/180

The legal matrix



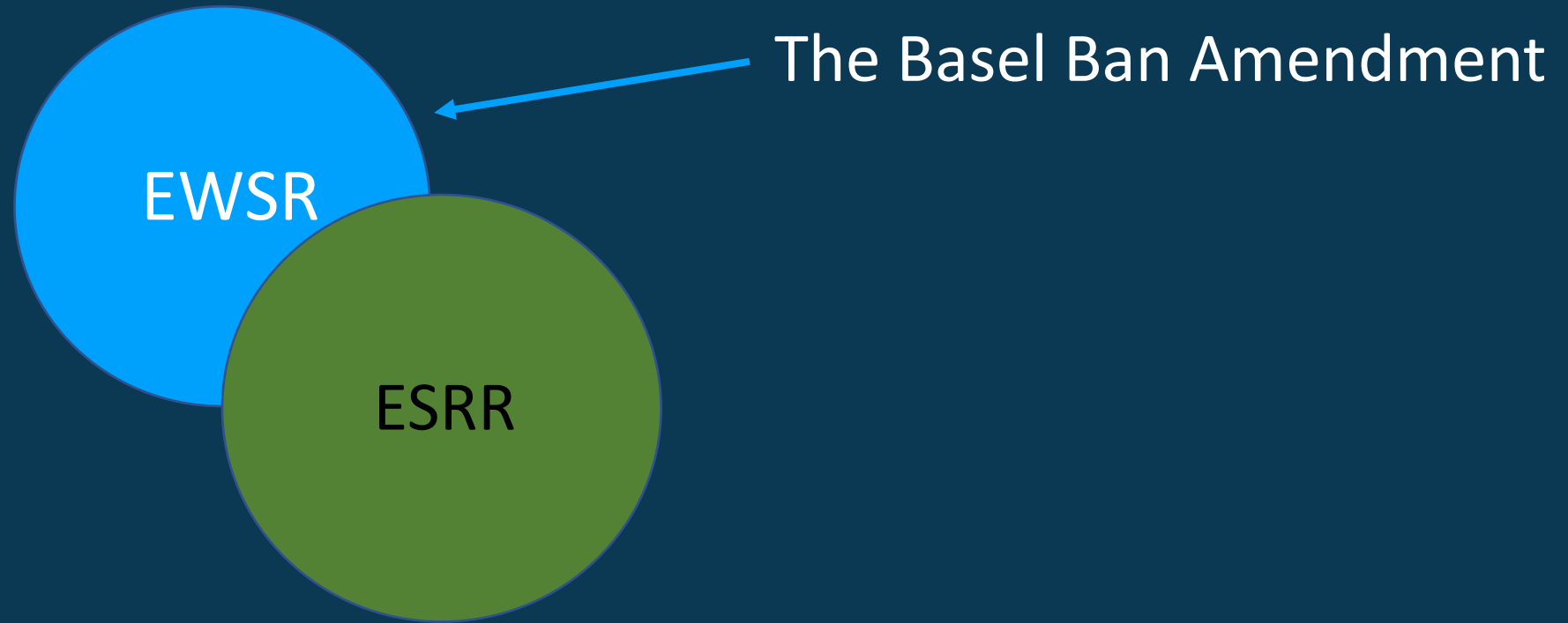
The legal matrix

- Basel art. 26: «*no reservation or exception may be made to this Convention*»

The confusion

- ESRR art. 15 cf. Art. 13:
 - Community facilities shall be authorised and added to the EU-list if they are compliant with the requirements of article 13, while facilities in «*third countries*» may apply for inclusion.
 - The ESRR makes no reservation for applications from facilities in non-OECD+ countries, and so the text of the Regulation allow for export of end-of-life ships to non-OECD+ countries, insofar as the destination-facility meet the criteria in article 15.

The legal matrix



The EU 1995

«any derogation from the general obligation of Article 4A by way of [article 11] would be a violation of the spirit and the provisions of the Convention» and «unacceptable from a legal point of view»

The EU 2012

Recognised the «*difficulty*» of relying on article 11 «*as regards to the Ban Amendment [...] particularly in the absence of any appropriate interpretative Decision of the Basel Convention COP*»

The EU Commission 2020

- 1) no recycling yard situated in a non-OECD+ country can be accepted to the EU-list before the EU has concluded a ship recycling-agreement with the third country in question
- 2) an agreement between the EU and the third country can make the ESRR-system article 11-compliant
- 3) insofar as no yard in a non-OECD+ country is on the EU-list, the theoretical possibility of such an inclusion does not in itself constitute a violation of the Basel Ban Amendment

The EU 2021

EWSR Amendment proposal, Preamble recital (14):

*«However, following the recent international entry into force of the Ban Amendment, it is necessary to ensure that the ships covered by the scope of Regulation (EU) No 1257/2013 which become waste in the Union are made subject to the relevant Union waste shipment rules implementing the Ban Amendment, **in order to ensure strict legal compatibility of the Union's legal regime with international obligations.**»*

“Regulation on shipments of waste”

- EWSR is repealed from the date of entry into force of this Regulation, 20 days after publication in the official journal.
- EWSR continues to apply for 24 months.
 - 2021/0367 (COD)

2024: “new EWSR”

Proposal preamble (14)

- “Regulation (EU) No 1257/2013 of the European Parliament and of the Council applies to large commercial ships flying the flag of a Member State of the Union, which were excluded from the scope of application of Regulation (EC) No 1013/2006. *Such ships, when becoming waste and except when all hazardous substances and materials have been removed from it, are generally classified as hazardous waste.* Following the recent international entry into force of the Ban Amendment, it is necessary to ensure that the ships covered by the scope of Regulation (EU) No 1257/2013 which *are considered waste* and *are exported from* the Union are made subject to the relevant Union waste shipment rules, **including those** implementing the Ban Amendment, in order to ensure strict legal compatibility of the Union’s legal regime with international obligations. At the same time, it is also necessary to amend Regulation (EU) No 1257/2013 to clarify that ships falling within the scope of that Regulation and which *are considered hazardous* waste and *are exported from* the Union *should* only be recycled at those facilities included in the European List of ship recycling facilities established under that Regulation, which are located in countries listed in Annex VII to the Basel Convention.”

Amendments in scope

EWSR Art 2(2)(h)

“This Regulation shall not apply to:

- ships flying the flag of a Member State falling within the scope of Regulation (EU) No 1257/2013, with the exception of ships;
- ***which are considered as hazardous waste, are located*** in an area under the national jurisdiction of a Member State ***and are exported from the Union for recovery***, to which ***only*** Article 36, ***45, 46*** and Title ***VII*** apply, ***or***
- ***which are considered as waste, are located in an area under the national jurisdiction of a Member State and destined for disposal***”

ESRR Art 6(2)(a)

“Ship owners shall ensure that ships destined to be recycled:

are only recycled at ship recycling facilities that are included in the European List and, in the case of ships ***which are considered as hazardous waste, are located in an area under the national jurisdiction of a Member State and are exported from the Union***, only at those facilities included in the European List which are located in countries listed in Annex VII to the Basel Convention.”

New EWSR – Title VII

Central changes: “Title VII – Environmentally sound management and enforcement”:

- Article 56 - Environmentally sound management: obligation upon waste producer, notifier and shipper to ensure the management of waste recovery/disposal and residual waste generated in accordance with human health, climate and environmental protection requirements broadly equivalence to EU standards.
- Article 57 – Enforcement: MS to periodically inspect establishments, undertakings, brokers and waste shipments. Inspections at waste producer, collector, holder, notifier, shipper, at destination, during shipment in EEA or at EEA borders.
- Article 58 – Documentation and evidence: as minimum verification of documents and checking of waste where appropriate. May require documents also from consignee and, *inter alia*, detain the transport until satisfactory evidence is given.

New EWSR – Title VII

Cont.:

- Art. 59 – Inspection plans: MS to create risk-based (waste streams and illegal shipment sources) inspection plans for its territory.
- Art. 60 – Penalties: shall be with regards to nature, gravity and extent; intent or neglect; financial capacity of the natural or legal responsible party|/parties; the economic benefits derived; environmental damage caused; actions taken to mitigate or remedy damage caused; repetitive or singular character, and; aggravating or mitigating circumstances. MS shall as a minimum have penalties, revocation or time-limited suspension as available sanctions.
- Art. 61 – Enforcement cooperation at a national level: facilitating cross-departmental cooperation.
- Art. 62 – Enforcement cooperation between MS: sharing of information and cooperation.
- Art. 63 – Waste shipment enforcement group: up to 3 representatives from each MS with at least annual meetings. Work together on, inter alia, detecting illegal shipments.
- Arts. 64-68 – Actions performed by the Commission: slight similarities to its competences under competition law.

New EWSR

Final provisions: art. 69 (4)(2)(c)

- “In addition, the Commission shall address in that report (...) contribution of the Regulation to climate neutrality, achieving circular economy and zero pollution, taking into account the reports and data published by relevant Union’s agencies.”

The (former) issue of incentives

Seatrade case 2018 (annulled, going to retrial):

- Court case for 4 ships, sold for 11 932 797,07\$
- Company fined 750 000€ & CFO's fined 50 000€ with 1 year professional disqualification
- Stated in verdict that if not for the novelty, they would have been jailed
- Yet, the company beached 15 ships in the period 2010-2017, two of which were after legal proceedings had begun
- The total revenue of beaching was close to 40 000 000\$

Other international developments

- UAE new Ship Recycling legislation bans beaching and landing method. Ships in UAE territory that are unable to find suitable recycling facilities (dry docks), may flag to UAE and be subjected to its Flag State jurisdiction.
- BIMCO Comment on implementation of the Hong Kong Convention, submitted by Bangladesh, India, Norway, Pakistan, ICS and BIMCO to the IMO.

The BIMCO comment:

- “Once a ship has received an International Ready for Recycling Certificate (IRRC) under the HKC, it may at the same time be considered a hazardous waste under the provisions of the BC. During the entire validity period of the IRRC (up to three months), the ship could therefore be at risk of being arrested for being in breach of the BC requirements while still trading. Hence, it is of the utmost importance that complying with the HKC shall not result in sanctions under the BC. “
- “Among the issues which may provide confusion is article 2 of the BC which can result in a ship being defined as waste. This means that both the HKC and the BC can apply to end-of-life ships and result in shipowners being prosecuted even if they have sent their ships for safe and environmentally sound recycling under the provisions of the HKC in one of the four major recycling states, namely Bangladesh, India, Pakistan and Türkiye. The co-sponsors take the view that this is not an acceptable situation after 25 June 2025.”

The BIMCO comment:

- “After the successful adoption of the HKC, at the tenth COP, the following decision³ was taken: "The Conference of the Parties... encourages parties to ratify the HKC to enable its early entry into force". This is a strong and undisputed message, which should be noted in the efforts to provide legal clarity prior to the entry into force of the HKC.”
- The 10th CoP Decision X/17: “BC-10/17: Environmentally sound dismantling of ships The Conference of the Parties, Recalling its decision IX/30, I Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships 1. Notes that, while some parties believe that the Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships provides an equivalent level of control and enforcement to that established under the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, some parties do not believe this to be the case; 2. Encourages parties to ratify the Hong Kong Convention to enable its early entry into force; 3. Acknowledges that the Basel Convention should continue to assist countries to apply the Basel Convention as it relates to ships;”
 - <https://www.basel.int/TheConvention/ConferenceoftheParties/Meetings/COP10/tabid/6158/Default.aspx>
- The notion was also rejected by the 11th CoP, and has still not been accepted.



Ingvild Kristine Hoel

LL.M. International and European Law, Ugent

Masters of Law, UiB

LinkedIn:

<https://www.linkedin.com/in/ingvild-kristine-hoel/>

