



## POSITION PAPER

# Make the polluter pay! Why we need the EU Ship Recycling Licence

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The human rights abuses and pollution caused by unsustainable shipbreaking practices were first raised at the international level, in public fora and in the media already 20 years ago. In 2015, Bangladesh, where conditions are known to be the worst, was still the ship owners' preferred destination for breaking large ocean-going ships. It is therefore high time to hold the shipping industry accountable for the proper end-of-life management of ships and to find effective solutions to end the dangerous and dirty breaking of ships on the beaches of South Asia.

The NGO Shipbreaking Platform calls for legislation that makes ship owners pay for the proper recycling of their end-of-life vessels. Ship owners, who order the construction of ships and then use them as their main means to generate income, are 'the polluters'. European environmental policies related to end-of-life products have only been successful when an obligation for 'the polluter' to pay for sustainable life cycle management has been introduced. **European measures that apply equally to all ships calling at EU ports and are flag neutral are necessary to increase environmental and social protection and to ensure that ship owners have to internalise the costs for end-of-life management.**

## RECOMMENDATIONS



We call on the European Commission, the European Parliament and Member States to support a legislative proposal that introduces an effective financial incentive to implement the polluter pays principle and that supports clean and safe ship recycling in line with the standard set by the European Ship Recycling Regulation. The effective implementation of European environmental policies has been dependent on making the 'polluter pay'. If the EU is serious about its commitment to sustainable ship recycling, all ship owners trading in Europe need to be held financially accountable.



We call upon the EU and Member States to ensure that European shipping companies follow EU environmental law and do not resort to end-of-life practices that would never be allowed in Europe.



We call on Member States to support the transposition of the efforts made at European level, the EU List of approved ship recycling facilities and a financial incentive similar to the ship recycling licence, to the international level.



**Ship owners are all up in arms against an EU Ship Recycling Licence. A surprise? No! The shipping industry has been on the go for the last 15 years trying hard to fight off regulation that would really hold them accountable for dirty and dangerous shipbreaking practices. Now it is finally time to act.**

## BACKGROUND

Each year, approximately 1000 large ocean-going vessels are sold for dismantling to recover valuable steel. Only a small fraction of these are however broken down in conditions that are safe for the workers and protective of the environment. More than 70% of the world's end-of-life tonnage is simply ramped up on a tidal beach in South Asia where migrant and untrained workers are deployed to cut down the huge metal structures manually. Oils, toxic paint chips and dust, and other harmful materials found within the structure of the ship, pollute the sea, and hazardous materials such as asbestos and heavy metals poison the workers. Extremely unsafe working conditions kill or injure many workers at the yards each year. In Bangladesh, where conditions are known to be the worst, children continue to be exploited at the shipbreaking yards. Despite widespread knowledge of the problems of beach breaking, last year, Bangladesh, followed by India and Pakistan, was the shipping industry's preferred destination for end-of-life ships.

Most end-of-life vessels are controlled by owners in Europe and East Asia. These earn millions of dollars with every vessel beached in South Asia and the true costs of safe and clean ship recycling are externalised to poorer communities and their environment. This is unacceptable. The conditions in the Indian, Bangladeshi and Pakistani beaching yards would never be allowed in the main ship-owning countries. Indeed the beaching method is banned in Europe, North America and East Asia. NGOs globally are therefore calling for the implementation of the polluter pays principle to ensure a move towards sustainable ship recycling that provides decent work and safeguards environmental justice.

Many more ships are expected to head for the scrapping yards in the coming years due to the overcapacity in the containership and bulker markets, low freight rates and new environmental requirements. It is therefore urgent to find an effective solution that can ensure a shift away from the current unacceptable practices and which does not rely on the flag state to enforce sustainable behaviour of its ships. Indeed, a financial incentive was deemed necessary by the European Parliament to ensure effective implementation of the new EU Ship Recycling Regulation [1].

A [report](#) written jointly by Ecorys, the classification society DNV-GL and Erasmus University School of Law, and published by the European Commission in July 2016, looks into the possibility of introducing a financial incentive to enhance safe and environmentally sound ship recycling [2]. The report recommends that contributions for a ship recycling licence are collected from all ships visiting EU ports, regardless of their flag. The capital amount accumulated during the operational life of the vessel would be set aside for the ship and be earmarked to reduce the cost-gap between substandard and sustainable end-of-life ship management. This amount would only be paid back to the last owner of the vessel if the ship is recycled in a sustainable facility approved by the EU.

Ship owners are responsible for the proper recycling of their vessels and the NGO Shipbreaking Platform thus supports the proposed ship recycling licence for the following reasons:

- Despite awareness of the harms caused by shipbreaking on South Asian beaches, the vast majority of the shipping industry continues to opt for the highest profits possible when selling to substandard yards at the expense of workers' lives and the environment. Their practice has hardly changed since the grave conditions in substandard shipbreaking yards was first revealed 20 years ago.
- Incentives that go beyond flag state jurisdiction are necessary to ensure proper implementation of the EU Ship Recycling Regulation, in particular to avoid likely circumvention of the law by simply flagging out end-of-life ships to a non-EU flag.

- A time based licence acquired upon entry to an EU port will proportionately and without discrimination affect all beneficial owners of a given ship by distributing the responsibilities and costs of sustainable ship recycling throughout the life cycle of the ship. An incentive based on port entry will also affect a substantial portion of the world fleet beyond EU flagged ships.
- An incentive that pushes ship owners towards better practices will provide a clear business case to innovate and invest in sustainable ship recycling. Facilities that have already invested in modern technologies and that are currently not operating to their full capacity will be rewarded.

## EU'S OPPORTUNITY AND RESPONSIBILITY TO ACT...

The NGO Shipbreaking Platform **supports the standard set by the European Union for sustainable ship recycling** in the EU Ship Recycling Regulation. The upcoming EU list of approved ship recycling facilities will function as an **important market differentiator for yards that have already invested in proper occupational health & safety and environmental standards**. The EU List provides a clear **business case to innovate and invest in cost effective solutions** where providing safe and clean solutions will become a competitive advantage [3]. A financial incentive that pushes ship owners towards the use of the list will reward and encourage the development of sustainable yards. It is also greatly in line with the ambitions of creating a circular economy.

European recycling companies are competitive with regards to sustainability and should be encouraged by an enabling public policy. Valuable resources must be recycled in a safe and environmentally sound manner. The social and environmental impacts of shipbreaking can no longer be viewed as an externality and should be accounted for in shipping companies' individual accounts. **The ship recycling licence sets a fair and non-discriminatory price for pollution that only represents a fraction of the operating costs of shipping.** Introducing such a scheme at the EU level is feasible and legal (see Annex) and brings with it the promise of shifting the industry off the beach!

Several studies [4] have addressed the question of how to best ensure compliance with environmental and social standards aimed at improving ship recycling conditions globally. All studies have identified that any **policy exclusively based on flag state jurisdiction is prone to fail in changing the behaviour of end-of-life ship owners** due to the nature of shipping and the widespread use of open registries and flags of convenience [5]. Therefore Article 29 of the EU Ship Recycling Regulation calls for the European Commission to produce a *“report on the feasibility of a financial instrument that would facilitate safe and sound ship recycling and shall, if appropriate, accompany it by a legislative proposal”*.

The Preamble of the Regulation further states: *“In the interest of protecting human health and the environment and having regard to the ‘polluter pays’ principle, the Commission should assess the feasibility of establishing a financial mechanism applicable to all ships calling at a port or anchorage of a Member State, irrespective of the flag they are flying, to generate resources that would facilitate the environmentally sound recycling and treatment of ships without creating an incentive to out-flag.”*

EU ship owners account today for about one third of the end-of-life tonnage beached in substandard yards in Bangladesh, India and Pakistan. Thus, as the single largest market selling end-of-life ships for dirty and dangerous shipbreaking the EU has a **particular responsibility to regulate ship recycling**. Proper implementation of the Ship Recycling Regulation entails making sure that ship owners are directed towards the use of EU approved recycling facilities and do not simply flag out to circumvent the law.

## ...WHERE OTHERS HAVE FAILED

The shipping industry is difficult to regulate due to the use of flags of convenience. The majority of European shipping companies do not register their ships under the flags of EU Member States during their operational life, and opt instead for flags of convenience such as Panama, Liberia, the Marshall Islands and Bahamas. Port states have thus increasingly been seen as solution providers to fight the many substandard practices of shipping.

The EU Ship Recycling Regulation requires all vessels sailing under an EU flag to use an EU approved ship recycling facility. A major shortcoming of the Regulation is, as mentioned, that ship owners can circumvent the law by simply flagging out to a non-EU flag. Major European ship owner Maersk has already threatened to flag out from the Danish ship registry to allow the use of non-EU approved shipbreaking facilities on the beach in India. This move has been strongly criticised by environmental NGOs [6] and clearly illustrates why measures that go beyond flag state jurisdiction are needed to hold the shipping industry accountable for environmental and social protection.

In most cases, at end-of-life, cash-buyers act as intermediaries for the selling of vessels to substandard yards in South Asia. Cash buyers change not only the name of the ship, but also its flag, just weeks before the ship reaches the breaking yard. Flags of convenience that are grey- or black-listed by European governments under the Paris Memorandum of Understanding are particularly popular with cash buyers. These flags offer special last voyage discounts. As ships are sold for higher prices to substandard shipbreaking yards it is likely that irresponsible ship owners will continue to use cash buyers. This will allow for the circumvention of the EU Ship Recycling Regulation with **vessels re-flagged to popular end-of-life flags, such as Comoros, St Kitts and Nevis or Niue, before hitting the beach**. The NGO Shipbreaking Platform has well documented this practice in the report *“What a difference a flag makes”*.

**The proposed international Hong Kong Convention will not solve the problem.** Whereas the shipping industry upholds the International Maritime Organisation’s Hong Kong Convention (HKC) as the only solution for improving shipbreaking conditions globally, it must be kept in mind that also the HKC relies on flag state jurisdiction and is thus and similarly prone to circumvention by flagging out to non-signatory Parties. In particular the grey- and blacklisted end-of-life flags that are popular for last voyages to South Asian yards are likely to either not ratify or not properly implement the Convention.

Whilst the HKC is still far from entering-into-force, it has been criticised by NGOs globally, the UN Special Rapporteur on Toxics and Human Rights and the majority of developing countries party to the UNEP Basel Convention for not providing standards that will ensure sustainable ship recycling. Indeed, local South Asian authorities already claim that all existing beaching facilities are compliant with the HKC’s requirements [7]. The



***Do we really believe that an end-of-life flag such as Niue, a black-listed tax haven in the Pacific with less than 2000 inhabitants, a cash buyer who hides behind an anonymous post box company in the British Virgin Islands, and Bangladesh, a country unable to fulfil its international obligations for labour rights and environmental protection, will solve the shipbreaking crisis for the ship owners headquartered in the world’s shipping hubs? That is the ‘solution’ offered by the industry-driven Hong Kong Convention.***

stakeholders involved in the business of shipbreaking - ship owners earning extra profits on selling to substandard yards, cash buyers and the flag administrations of FOCs - are not likely to contest this authorisation and even actively promote the weak convention. This would lead to a situation where the status quo will be perpetuated by the HKC regime.

The EU Ship Recycling Regulation sets higher standards than the IMO's HKC – the beaching method is not allowed and requirements related to downstream toxic waste management as well as labour rights are included. Moreover, EU-approved ship recycling facilities are subject to a higher level of scrutiny: there is independent third party certification and auditing, and NGOs, such as ours, are allowed to submit complaints should they deem that a listed facility is not operating in line with the Regulation. These are important safeguards that are alarmingly absent under the HKC regime.

## FINANCIAL ACCOUNTABILITY: ACT LOCAL, THINK GLOBAL!

**The EU Ship Recycling Regulation provides the shipping industry with an objective list of recycling facilities that meet standards that will allow for sustainable practices.** These facilities will be able to recycle ships from the world's fleet and can be located **anywhere in the world** - many situated in the EU, Turkey, China and the US are already expected to feature on the list. A financial incentive that will direct ship owners towards the use of these facilities is key if the aim is to ensure safer and cleaner practices globally. This is the only measure that will push irresponsible ship owners towards using the EU list.

There is a clear added value for action at the EU level. The ship recycling licence is not contradictory to international trade law, on the contrary, it puts environmental protection and human rights at the forefront with a clear aim of raising the level playing field towards internationally accepted environmental and labour standards as developed by UNEP and the ILO (see Annex). Whilst modern ship recycling industries around the world will benefit from the introduction of a ship recycling licence scheme, it may also be transposed to the international level.

There should be strong support for an incentive that gives a competitive advantage to yards that have already invested, or are willing to invest, in modern technologies. A move towards sustainable ship recycling practices is key for developed and developing countries alike. Workers and the environment need to be protected equally anywhere in the world and the EU has a particular responsibility to make sure that ships controlled by European owners do not continue to cause harm at end-of-life.

Dangerous and dirty shipbreaking has headed the frontlines for more than two decades, involving also many European ship owners. **Now it is time to ensure 'no more business as usual'!**

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## NOTES

[1] The EU has long recognised the weaknesses of flag state jurisdiction due to the use of flags of convenience, and the European Commission initially proposed a clause on “penultimate ownership responsibility” for EU flagged end-of-life ships to be included in the Ship Recycling Regulation. A financial incentive was however deemed more effective as it will affect all vessels, regardless of flag, entering an EU port. As ships need to trade with the EU the measure would affect a large proportion of the world fleet.

[2] Article 29 of the EU Ship Recycling Regulation asks the European Commission to submit a report on the feasibility of a financial instrument that would facilitate safe and sound ship recycling, and to accompany this report by a legislative proposal if deemed appropriate. This article was introduced as an earlier proposal for a ‘ship recycling fund’ was narrowly rejected by the European Parliament in 2013 with industry stakeholders, including the shipping industry and ports, at that time strongly opposing the fund. Whilst ship owners remain unwilling to bear the cost of sustainable recycling, and damn any regional attempts to regulate shipping, both the public and private European port associations – ESPO and Feport – have expressed that they are satisfied with the new ship recycling license proposal. The license scheme will not be administered by the ports. It is also time-based, with the option of a monthly or yearly license, rather than based on the collection of a fee at each individual port call.

[3] Industry represented by SeaEurope, Europe’s ship yard and maritime equipment association, has expressed enthusiasm towards ensuring better implementation of the Ship Recycling Regulation – they have called for support to enhance ship recycling capacity and R&D towards more cost effective solutions in Europe. [See press release from 11 May 2016.](#)

[4] Ecorys 2005, COWI/Milieu 2009, Profundo 2013, Milieu 2013

[5] Approximately 40% of the world fleet is controlled by owners based in the EU+EFTA, only 17% of the world fleet, however, sails under an EU+EFTA flag. The vast majority of EU-owned ships are sailing under the flags of states such as Panama, Liberia, the Marshall Islands and Bahamas during operational life. The percentage of EU flags drops to less than 8% at end-of-life.

[6] [See NGO press statement.](#)

[7] The European Community of Shipowners’ Associations (ECSA) heavily relies on the Statements of Compliance (SoC) with the Hong Kong Convention which have been issued by consultants to some of the yards in Alang, India, including by the classification societies ClassNK and RINA in their private capacity, in order to claim that beaching practices are sound. These SoCs, however, only look at procedures and not the actual performance of the yards. For more information on why HKC SoCs do not guarantee sustainable practice click [here.](#)

## ANNEX

### REACTION TO LEGAL CONCERNS WITH REGARDS TO THE SHIP RECYCLING LICENCE

The opponents of the Ship Recycling Licence, in particular ship owners and their associations, have been quick in identifying several legal concerns related to the Ship Recycling Licence in order to show that the measure would not be possible, enforceable or lawful. Given the fact that the measure is meant to enhance the European Union's contribution to preserve, protect and improve the quality of the environment, to protect human health and to implement globally established principles such as the polluter pays principle, extended producer responsibility and environmental justice, these legal arguments are far-fetched with the only intention to shoot down an instrument necessary to hold the shipping industry accountable for its environmental and social footprint.

#### EU competence and legislative procedure on a financial incentive

Environment is a shared competence between the Union and the Member States (Article 5 TFEU). Paragraph 3 states that the Union should exercise its shared competence "insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States". The comprehensive execution of a financial incentive intended to redress the likely circumvention of the EU Ship Recycling Regulation (SRR), which was itself adopted by means of the Union exercising its shared competence, can only be exercised at Union level, too. It would not be expedient to enhance the efficiency of a Regulation by means of a Directive that would be implemented in disparate ways by Member States. The Commission has a right to make legislative proposals within the limits of Article 17(2) TEU. Therefore, the Commission is within its full powers when making a legislative proposal on a financial incentive on clean and safe ship recycling.

A legislative proposal for a financial incentive fulfils all four aims set out under Article 191(1) TFEU:

- preserving, protecting and improving the quality of the environment,
- protecting human health,
- prudent and rational utilisation of natural resources,
- promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change.

The limits of these aims are not, and cannot, be drawn at the borders of the EU, as can be inferred from the fourth point as well as being a well-established concept of public international law on environmental protection (*sic utere tuo ut alienum non laedas*). The primary objective of a legislative proposal for amending the SSR, or a separate legislative proposal on a financial incentive, is to effectively implement the SRR in order to ensure safe and sustainable ship recycling (Article 29 SRR). As such, a similar proposal would not fall under Article 192(2) as it is neither "primarily" of a fiscal nature – nor is it, in fact, a fiscal measure at all.

A financial incentive for clean and safe ship recycling as presented in the form of the Ship Recycling Licence is not a fiscal measure as its aim is to curb the re-flagging of EU vessels to non-EU flags prior to dismantling by way of providing an incentive to shipowners. It is not intended as a means to create revenue for the Union or the Member States. Moreover, it is not fiscal as it is designed to provide a premium. In fact, in order for its aim to be met shipowners have to reclaim their licence money back. Forfeiture is merely a side-effect of the measure, but not its primary objective. The transfer of moneys into the ship recycling fund is therefore solely based on the choice of the ship owners, given that the measure is intended to prompt them to reclaim their money back.

Hence, a legislative proposal on a financial incentive based on Article 29 of the SRR falls under Article 191 TFEU and cannot be considered “primarily of a fiscal nature” under Article 192(2). As such, a future legislative proposal on a financial incentive under Article 29 of the SRR follows the ordinary legislative procedure.

## WTO law compatibility

Transport in transit under the GATT Article V:3 includes the movement of vessels. However, what type of hindrance to trade would be caused by a Ship Recycling Licence? A hindrance to the trade in goods on the vessels, to the trade in vessels themselves, or to the trade in steel at end of life?

Firstly, the Ship Recycling Licence would not hinder the trade of goods on the ships and it would not hinder the import, export or transit of goods through Europe. The goods would be traded to and from the EU regardless of the licence to be obtained by the ship owners. Furthermore, the contribution of the licence is comparatively small to the overall costs of transportation and will hardly (if at all) be noticeable in the price of the goods imported, exported or in transit in the EU. The measure is neither of a fiscal nature nor is it a custom duty. It is only a “charge” to the extent that the last ship owner may forfeit all the money accumulated during the life cycle to a ship recycling fund if he does not use the standard for ship recycling set by the SSR. However, there is nothing to say that the accumulation of money, which is intended to be paid back, is a “transit charge” on the vessels transporting goods.

The following part of GATT Article V:3 does therefore not apply to the Ship Recycling Licence: *“such traffic coming from or going to the territory of other contracting parties shall not be subject to **any unnecessary delays or restrictions** and shall be exempt from customs duties and from all transit duties or other charges imposed in respect of transit, **except charges** for transportation or those commensurate with administrative expenses entailed by transit or **with the cost of services rendered.**”*

Acquiring a ship recycling licence does not cause unnecessary delay or restriction on traffic, hence it does not create a barrier to trade of goods on the vessels in transit. If Article V:3 is applicable at all, it may possibly amount to a “cost of services rendered”: namely the acquisition of a ship recycling licence of the transporting vessel.

Secondly, the Ship Recycling Licence does not hinder trade of vessels themselves in the secondary market as the price of a vessel may very well reflect the added value of holding a ship recycling licence. Moreover, the investment in a ship recycling licence is not lost to the buyer as the new owner may reclaim that amount once the vessel is sold for recycling to an EU-listed facility. Hence, the measure falls outside the prohibitions of transit charges and it applies indiscriminately to all vessels entering the EU.

Thirdly, the Ship Recycling Licence is intended to cover the externalised costs of ship recycling, notably environmental costs. The ship recycling licence is not designed in such a way to reduce competition on steel prices or to favour certain steel markets. In fact, it excludes any such calculation of the contribution for the licence. As such, there is no evidence to say that a ship recycling licence scheme could affect or distort the trade in steel recovered from ships.

Even if a financial incentive in the form of a ship recycling licence were to be construed as infringing the GATT or GATS provisions, such a financial incentive would be justified under the General Exceptions provisions under GATT Article XX (b):

*Subject to the requirement that such measures are **not applied** in a manner which would constitute a*



*means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a **disguised restriction on international trade**, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:*

...

b) necessary to protect human, animal or plant life or health; ...

Assuming it even qualified as a “charge”, the likely effect of not including a financial incentive to work along the SRR is to have a surge in EU-flagged vessels flagging out at end of life in order to circumvent EU legal obligations. As a result, a financial incentive for ship recycling is a measure that is necessary to ensure the protection of human, animal and plant life and health. The measure does also not constitute a breach of the no less favourable treatment principle as the financial mechanism would be applied indiscriminately to all vessels entering EU ports.

With regards to ship recycling facilities, neither the SRR nor the financial mechanism discriminate against any country where ship recycling takes place as any ship recycling facility in any country can be EU-approved if it fulfils the conditions under the Regulation. The ship owners’ preference of EU-listed ship recycling facilities over non-listed facilities incentivised by the Ship Recycling License would in any way be in support of the exception provided in GATT Article XX (b).

## UNCLOS compatibility

Articles 194 and 195 UNCLOS set out obligations that all states, without limiting them to jurisdictional spaces, are bound by. The latter of these codifies the rule on transboundary environmental harm (sic utere tuo ut alienum non laedat), mentioned above. These Articles read as follows:

### Article 194

*Measures to prevent, reduce and control pollution of the marine environment*

1. States shall take, individually or jointly as appropriate, all measures consistent with this Convention that are necessary to prevent, reduce and control pollution of the marine environment from any source, using for this purpose the best practicable means at their disposal and in accordance with their capabilities, and they shall endeavour to harmonize their policies in this connection.

2. States shall take **all measures necessary** to ensure that **activities under their jurisdiction or control** are so conducted as not to cause damage by pollution to other States and their environment, and that pollution arising from incidents or activities under their jurisdiction or control does not spread beyond the reas where they exercise sovereign rights in accordance with this Convention.

3. The measures taken pursuant to this Part shall deal with all sources of pollution of the marine environment. These measures shall include, inter alia, those designed to minimize to the fullest possible extent:

- (a) the release of toxic, harmful or noxious substances, especially those which are persistent, from land-based sources, from or through the atmosphere or by dumping;
- (b) pollution from vessels, in particular measures for preventing accidents and dealing with emergencies, ensuring the safety of operations at sea, preventing intentional and unintentional discharges, and regulating the design, construction, equipment, operation and manning of vessels;

4. In taking measures to prevent, reduce or control pollution of the marine environment, States shall refrain from unjustifiable interference with activities carried out by other States in the exercise of their rights and in pursuance of their duties in conformity with this Convention.

#### **Article 195**

*Duty not to transfer damage or hazards or transform one type of pollution into another*

In taking measures to prevent, reduce and control pollution of the marine environment, **States shall act so as not to transfer, directly or indirectly, damage or hazards from one area to another or transform one type of pollution into another.**

These parts clearly set out the Union's international obligations. They also clearly indicate that there is a duty to take active measures to prevent pollution and harm, based on the precautionary principle. It is evident that a key purpose of a legislative proposal for Ship Recycling Licence is also to ensure that the Union, through the EU shipping industry, is not responsible for breaching its obligations under UNCLOS by not taking "all measures necessary" under its "jurisdiction or control."

There may be a concern that such measures may go well beyond the limits of Port State Jurisdiction defined under Article 218 UNCLOS. Article 218 covers the enforcement by port states, but it is not clear that it limits the prescription jurisdiction of a port state. What needs to be remembered is that Article 218, as well as a large part of UNCLOS provisions, is a codification of international customary law and it in no way limits the rules of the Law of the Sea to the articles under UNCLOS. For instance, the United States, a non-party to UNCLOS, follows the rules of customary international law which are also contained under the Convention, not because the USA has any direct obligation to abide by it. As such, the "generally accepted rules and international standards" are by their effect mostly those rules and standards developed under the IMO, but Article 218 cannot be intended to limited those rules to just the IMO. In fact, the ILO has also **developed rules** which are enforced by Port States (going well beyond the enforcement right to violations relating to illegal discharges). Moreover, there are examples where States, in implementing international rules and standards, have decided to enact stricter requirements because they are deemed to be too weak or insufficient to ensure that a Port State abides by its other international obligations in labour, human rights and environment matters (e.g. the EU, Australia and USA).

#### **General Principles of international law**

The financial incentive is in its essence designed to incentivise ship owners to opt for sustainable ship recycling, the fact that those shipowners who do not decide to recycle their vessels according to the SRR lose the money which they put aside to obtain a Ship Recycling Licence is simply a side effect. Therefore, only those ship owners who pollute lose money under this scheme. This model is evidently founded on the Polluter Pays Principle (PPP). The "polluter" is not the ship recycler, but rather the ship owner who makes higher profits when the ships are sold to substandard facilities and therefore externalises the cost for cleaner recycling. The PPP precisely demands that the polluter internalises the costs of its polluting business model on which it makes profit. The PPP includes the Extended Producer Responsibility Principle (EPR), which has been formally endorsed by the OECD and it requires that the responsibility should be borne throughout the life-cycle of the product, including in the upstream and downstream of the economic activity. The PPP/EPR is not a principle that can be borne by the recyclers and waste handlers alone; rather, it is paramount that the ship owners live up to their responsibility to ensure not only the ordering and building of clean ships, but also the proper disposal of their vessels with which they carry out their economic activity. The financial incentive is thus a way to condition ship owners' choices to make them abide by the PPP and EPR.

Another principle which has been used to criticise the possible proposal of a financial incentive is the principle of Common but Differentiated Responsibilities (CBDR). An acrobatic interpretation of the CBDR that has been raised by ship owners is that ship recyclers in developing states should be allowed to be held against looser pollution requirements in order to acknowledge the country's need for development. The principle of CBDR says that while all states are responsible for addressing global environmental destruction, there is a need to recognize the wide differences in levels of economic development between states: the more economically powerful a state, the more responsibility. Therefore, the financial incentive is actually a way for the EU to apply the CBDR to the benefit of developing states. Incentivizing ship owners to opt for responsible recycling, no matter where in the world it takes place, has the effect of incentivizing recycling facilities who are not on the EU-approved List, no matter where in the world they may be, to upgrade to acceptable environmental, labour and social standards. As such, a financial incentive has only the effect of encouraging sustainable development, being fully in line with CBDR which requires developed states to take the lead to improve conditions in the ship recycling industry and to hold their own shipping industry accountable.



The NGO Shipbreaking Platform is a global coalition of environmental, human rights and labour organisations that works for the safe and environmentally sound recycling and disposal of end-of-life vessels.

[www.shipbreakingplatform.org](http://www.shipbreakingplatform.org)

