1.0 Introduction

The ship recycling industry has attained some infamy for its dangerous working conditions and environmentally harmful practices; attracting the disparaging title of "shipbreaking". This negative attention is not warranted for industry participants engaged in responsible ship recycling. However, the label is understandable given conditions present in certain developing nations; particularly India, Pakistan, and Bangladesh. These States afford ship recyclers with a cheap labour force, lax environmental regulations and enforcement, and amenable coastal features, the combination of which makes for lucrative trade opportunities. Corrective efforts by national and foreign actors are complicated by local industries' dependence on existing conditions. Government regulation which aims to improve working conditions tends to stifle the industry,[1] thereby depriving local economies of financial profits, employment opportunities, and material resources.

One trademark "shipbreaking" practice is that of beaching and dismantling vessels directly in the marine environment – specifically in shallow, expansive tidal zones such as mudflats. The practice of beaching causes harm because hazardous substances contained in ships (such as asbestos, ammonia, chlorofluorocarbons, oily residues and lead) are released into the coastal environment.[2] This phenomenon has been well documented[3] and samples of beached ships are easily viewable by way of satellite imagery (i.e. Google Earth[4]).

In light of the environmental challenges associated with certain ship dismantling practices this paper seeks to evaluate both the status of Canada's role in "shipbreaking" and also Canada's international obligations in relation to ship recycling. This topic is related to the Rio +20 objectives of assessing progress toward international agreements and addressing new and emerging challenges. This paper will begin by reviewing Canada's treaty obligations with respect to ship recycling and will then survey domestic legislation to determine the current status of Canadian laws. This survey will be followed by a case study involving two end-of-life ferries. The paper will conclude with recommendations as to how the existing legal framework might be improved.

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[1] This phenomenon was recently described in an article in The Economist: "Ship breaking in Bangladesh: Hard to break up" (27 Oct 2012), online: The Economist <http://www.economist.com/news/asia/21565265-controversial-industry-says-it-cleaning-up-its-act-activists-still-want-it-shut-hard-break>.

[2] Amy E. Moen, "Breaking Basel: The elements of the Basel Convention and its application to toxic ships" (2008) 32 Marine Policy 1053-1062 at 1053.

[3] Tony George Puthucherril, *From Shipbreaking to Sustainable Ship Recycling: Evolution of a Legal Regime* (Leiden: Martinus Nijhoff, 2010) at 36-37; Frederico Demaria, "Shipbreaking at Alang-Sosiya (India): An ecological distribution conflict" (2010) 70 Ecological Economics 250; Md. Saiful Karim, "Environmental Pollution from the Shipbreaking Industry: International Law and National Legal Response" (2009-2010) 22 Geo. Int'l Envtl. L. Rev. 185 at 188.

[4] See for example, the shipbreaking yards near Alang, India.

2.0 Canadian Context

2.1 Shipping industry

Canada is framed by the longest coastline in the world and boasts an active and profitable shipping industry. [5] According to Transport Canada, this country's international maritime trade was worth $170 billion in 2010.[6] As of January 3, 2006, there were 6,592 commercial vessels and 20 crown corporation vessels registered in Canada. [7] The total number of registered ships was 46,119 (including government, crown corporation, pleasure crafts, commercial, non-fishing, and fishing).[8] Canada is a founding member of the International Maritime Organization (IMO) and "is represented on all the IMO committees and subcommittees."[9]

In May 2009, Canada signed the International Convention for the Safe and Environmentally Sound Recycling of Ships along with 58 other IMO members. At that time, Transport Minister John Baird was quoted as saying:

> The Government of Canada welcomes the adoption of this international Convention which is a significant step forward in protecting workers involved in ship recycling […] It also protects the environment by limiting the release of hazardous materials used in the building and dismantling of ships.[10]

In 2010, the IMO Assembly elected Canada as a member of the IMO Council for the 2010-2011 biennium as one of the "10 States with the largest interest in international seaborne trade."[11]

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[5] "Canada: Committed to the Goals of the International Maritime Community" *Transport Canada* (12 August 2011), online: <http://www.tc.gc.ca/eng/marinesafety/tp-tp14916-menu-182.htm>.

[6] *Ibid*.

[7] "Ships Statistics" (3 January 2006), Transport Canada, online: < http://www.tc.gc.ca/media/documents/marinesafety/stats2006.pdf>.

[8] *Ibid*.

[9] *Supra* note 5.

[10] "Canada Signs International Ship Recycling Convention" *Transport Canada* (27 May 2009), online: <http://www.tc.gc.ca/eng/mediaroom/releases-nat-2009-09-h073e-4336.htm>.

[11] "Assembly elects new 40-Member Council" *IMO News*, (2010) Issue 1 at 7 online: < http://www.imo.org/mediacentre/newsmagazine/documents/2010/imo_news_no1_10.pdf>.

chemicals."[26] Italy ultimately sent two ships to retrieve the waste after an Italian freighter was seized by Nigerian authorities "pending a resolution of the waste issue."[27]

The Koko event prompted Nigeria to enact the Harmful Waste Decree 42 which "made it a criminal act, punishable by life imprisonment, to carry, deposit, transport, import, sell, buy or negotiate in trade of harmful waste within Nigeria territory."[28] In spite of this legislation, efforts to import additional hazardous wastes have continued. According to Odubela et al., "there have been many attempts since 1988 to ship waste, toxic chemicals, and contraband chlorofluorohydrocarbons into the country."[29] Odubela et al. provide several reasons for this trend:

(1) the down turn in the economy, which is compelling industrialists to seek for cheap secondary raw materials and goods;

(2) poor awareness of existing enforcement agencies and bottlenecks in the enforcement of the regulations; and

(3) porous borders[30]

In 1992, the same year the Basel Convention came into force, more than 3,000 tons of fertilizer containing "1,000 tons of ash from copper smelting furnaces" were sold to the Bangladesh government by an American chemical company. [31] The lead-and-cadmium-containing fertilizer was subsequently "sold throughout Bangladesh and used on farms."[32] This final incident exemplifies the type of transaction the Convention is designed to address.

[26] *Supra* note 23.

[27] "Italy Agrees It Will Retrieve Toxic Waste Sent to Nigeria" *The New York Times* (24 July 1988), online: <http://www.nytimes.com/1988/07/24/world/italy-agrees-it-will-retrieve-toxic-waste-sent-to-nigeria.html>.

[28]Modoupe Taiwo Odubela, Soyombo, Oluronke, Adegbite, Femi, and Ogungbuyi, Kitan, "Transboundary Illegal Shipments of Hazardous Waste, Toxic Chemicals (Pesticides) Contraband Chlorofluorohydrocarbons: The Nigerian Experience" presented at the 4th International Conference on Environmental Compliance and Enforcement (April 1996) at 2, online: International Network for Environmental Compliance and Enforcement <http://www.inece.org/4thvol2/odubela.pdf>.

[29]*Ibid*.

[30] *Ibid*. at 1.

[31] *Supra* note 22.

[32] *Supra* note 23.