

# Introduction

This maritime legislation drafting project deals with the incorporation of the Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships, 2009 into the legal system of the Federal Republic of Germany.

The drafting project follows the traditional German drafting technique. This means that particularly the explanatory memorandum (Denkschrift), which provides an explanation of the Convention in question and of the reasons why Germany needs to incorporate the same in its legal system, follows the copy of the Convention.

However, bearing in mind readers who may not be familiar with the German drafting technique, this maritime legislation drafting project includes also a brief introduction to the legal procedure to be followed to incorporate the Hong Kong Convention into the German legal system and an introduction to the drafting structure, which usually will not be part of the documents to be submitted to the Parliament.

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## **I. The legal procedure to incorporate the Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships, 2009 into the legal system of the Federal Republic of Germany**

Germany's legal system consists of the Federal Government (Bundesregierung), Federal Parliament (Bundestag) and the Federal Council (Bundesrat).

Although Germany's legal system follows the Civil Law tradition, it is highly debatable whether it can be referred to as a monist country, since the German Basic Law (Constitution of Germany, Grundgesetz) does not make explicit reference to it. The prevailing opinion of academics seems to support the view that Germany is a dualist country, though there is no clear statement from the Federal Constitutional Court in respect of the relationship between international law and national law.

However, with regard to the process of conclusion, ratification and implementation of international treaties into domestic law, the German State acts generally like a monist State. International treaties, in case there is no existing domestic law which already regulates the matter the international treaty deals with, are implemented into domestic law through a direct incorporation. This is accomplished an Enactment Law, wherein it is stipulated that the Parliament approves the signing, ratification of or accession to the international treaty and that the international treaty is part of the domestic law. When the aforementioned Enactment Law is adopted, the international treaty has the same ranking as any other federal domestic law.

To incorporate the Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships, 2009 into the legal system of the Federal Republic of Germany (Hong Kong Convention), the following legislative process must be adopted:

1. Article 59.2 of the Basic Law provides:

“Treaties that regulate the political relations of the Federation or relate to subjects of federal legislation shall require the consent or participation, in the form of a federal law, of the bodies responsible in such a case for the enactment of federal law.”

In terms of Article 59.2 the responsible bodies are: The Federal Government as the executive organ of the Federal Republic, the Federal Council as the representative body of the Federal States and finally the Parliament as the representative body of the people.

In accordance with Art. 76.1 of the Basic Law

“The legislative initiative to implement a “new” international law comes from the Federal Government, members of the Parliament (a parliamentary committee or other grouping) or the Federal Council.”

2. The competent body to submit a draft legislation for the incorporation of international maritime treaties, - in this case the Hong Kong Convention - is principally the German Ministry of Transport, Building and Urban Development (Bundesverkehrsministerium für Verkehr, Bau und Stadtentwicklung) which acts on behalf of the Government. The Government according to the Constitution is the authority to negotiate and to conclude international treaties but delegates the drafting activities to the competent ministry. The said Ministry coordinates and follows up the important steps in order to achieve the complete formalities to present the draft to the Parliament with the objective of being approved by it.
3. In compliance with Art. 59.2 of the Basic Law, the procedure to incorporate the Hong Kong Convention requires an Enactment Law

that stipulates the approval by the legislative body. The legislative body is usually the Parliament and, in exceptional cases (if the legislation under consideration amends the constitution or touches on the foundations of the Federation), the Federal Council as well.

4. The Enactment Law contains few provisions, which refer to the approval of the Parliament of the international treaty and provide that the treaty will become part of the German Legislation, ensuring thus its proper incorporation. The text of the treaty, in the English and French version accompanied by an official German translation, is attached to the Enactment Law.
5. The draft will be submitted to the Governmental Cabinet to discuss its contents, and for the relevant Ministries, since the scope of the Convention also falls within their area of responsibility (e.g. Ministry of Foreign Affairs, Ministry of Environment, Nature Conservation and Nuclear Safety), to submit either proposals for amendments or to endorse it.
6. Thereafter the Federal Chancellor sends the draft to the President of the Parliament in order to bring about a decision of the Federal Parliament.

Considering that the incorporation of the Hong Kong Convention does not amend the Constitution or touches on the foundations of the Federation, the Federal Government has the competence to regulate all maritime matters for the Federal Republic, as stipulated in Article 73.1 No. 5, 74.1 No. 24, 29 of the Basic Law.

7. Once the draft of the Hong Kong Convention has been approved by the Parliament, the Federal Chancellor or the Government Minister in charge countersigns the draft executed by the Federal President. The Federal President of Germany, who is according to Art. 59.1 of the Basic Law the competent authority to represent the State internationally, signs the international treaties per procurationem of

Germany and thereby binds Germany in the international field to incorporate the treaty into domestic law and to enforce it in its territory.

8. Finally, Article 82 of the Basic Law provides that the Enactment Law will be published in the Federal Law Gazette (Bundesgesetzblatt). The new Law will then come into force 14 days upon publication. It binds both the State and its citizens as per Article 25, 2<sup>nd</sup> sentence of the Basic Law.

## **II. Introduction to the drafting structure**

### **1. Cover Letter of the Federal Government**

The cover letter, addressed to the President of the Parliament, provides a brief information on the draft attached. It is aimed at the introduction of the draft to the Parliament.

### **2. Introductory draft law pages for the Parliament**

The introductory draft law pages explain briefly the reasons why the Federal Government needs to accede to the Hong Kong Convention. The objective hereby is to inform the members of the Parliament about the issues the Convention is dealing with (objective and purpose of the treaty). Furthermore, the introductory draft law pages also give a brief description of the steps to be taken for the incorporation of the treaty into domestic law and the expenditures, if any, for the public budgets.

### **3. Enactment Law**

The Enactment Law is the law which enables the incorporation of the international treaty into German Law, provides for offenses and penalties and empowers the authority in charge to adopt necessary regulations in order to enforce the provisions of the Convention.

### **4. Reasons for the Enactment Law**

The Reasons give an analysis of the Enactment Law. Every provision in the Enactment Law is explained to point out the drafting technique used in the preparation of the Enactment Law. The objective is mainly to inform the members of the Parliament about additional provisions which have to be enacted for the proper incorporation of the international treaty, and to insure that the Enactment Law is in consistence with the German Constitution (Basic Law).



## **5. The International Convention**

A full copy of the International Convention to be incorporated into domestic law, i.e. Hong Kong Convention, is attached in an English and French version and in a German translation.

## **6. Explanatory Memorandum of the Convention (Denkschrift)**

The Explanatory Memorandum focuses on the treaty by stressing its importance. At first, it provides a general introduction, which is followed by the history, objectives and purposes of the treaty. It also emphasises why it is relevant for Germany to accede to it.

According to the German drafting procedure the Explanatory Memorandum is found at the end of the draft.

### **[III. Drafting Law]**

#### **[1. Cover Letter of the Federal Government]**

Federal Republic of Germany  
The Chancellor  
022(131) – 45002-Üb 39/00

Berlin, \_\_\_<sup>th</sup> January 2012

**To the  
President of the  
German Parliament  
Platz der Republik**

**11011 Berlin**

I am hereby transmitting a draft law concluded by the Federal Government,

of the 2009 Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships,

together with an explanatory note and introductory pages; and

kindly requesting the Federal Parliament to bring about a decision.

The Ministry of Justice is held primary responsible.

The Federal Council of Germany (Bundesrat), in accordance with Article 76.2 of the Basic Law, has decided during its \_\_\_\_\_<sup>th</sup> sitting on 25<sup>th</sup> November 2011 not to object to the draft.

**Angela Merkel**

**[2. Introductory Draft Law pages for the Parliament]**

**Deutscher Bundestag**

Printed Paper / 01/ 0015

**03. electoral term**

**(Date)**

**Draft Law**

**Of The Federal Government**

**Draft Law**

**relating to the incorporation of the Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships, 2009 into the German legal system**

**A. Policy Objectives**

In line with the development of international law and to ensure that ships, when being recycled after having reached the end of their operational lives, do not pose any unnecessary risk to human health, safety and environment, the Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships, 2009 (Hong Kong Convention) shall be incorporated into German Law as soon as possible.

**B. Solution**

Considering that in accordance with Article 59.2, first sentence of the Basic Law, the accession to an international treaty which refers to Federal Legislation needs to be approved through a Federal Law, the Hong Kong Convention shall be acceded to and incorporated through the Enactment Law, by the Federal Republic of Germany.

**C. Alternatives**

None.

**D. Expenditures for the Public Budgets**

1. Budgetary expenditure without execution expenditure

None.

2. Execution Expenditure

None.

**E. Other Expenditures**

None.

[3. ENACTMENT LAW]

**“Draft**  
**Law**  
**Relating to the**  
**Incorporation of the Hong Kong International**  
**Convention for the Safe and Environmentally**  
**Sound Recycling of Ships, 2009 into the**  
**German legal system**

**“Of”** (date of publication)

The German Parliament (Bundestag) has concluded the following Law:

**“Article 1”**

- (1) The Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships, 2009 is hereby approved and shall have force of law in the Federal Republic of Germany.
- (2) The Convention shall be published in the Federal Law Gazette (Bundesgesetzblatt) both in an English and a French version accompanied by an official German translation.

## **“Article 2”**

(1) This Law shall apply to:

- (a) Ships entitled to fly the flag of the Federal Republic of Germany or operating under its authority;
- (b) Ship Recycling Facilities operating under the jurisdiction of the Federal Republic of Germany.

(2) This Law shall not apply to any warships, naval auxiliary, or other ships owned or operated by the Federal Republic of Germany and used, for the time being, only on government non-commercial service.

However, the Federal Minister of Transport, Building and Urban Development shall ensure, by the adoption of appropriate measures not impairing operations or operational capabilities of such ships owned or operated by it, that such ships act in a manner consistent with this Law, so far as is reasonable and practicable.

(3) This Law shall not apply to ships of less than 500 GT or to ships operating throughout their life only in waters subject to the sovereignty or jurisdiction of the Federal Republic of Germany whose flag the ship is entitled to fly. However, the Federal Minister of Transport, Building and Urban Development shall ensure, by the adoption of appropriate measures, that such ships act in a manner consistent with this Law, so far as is reasonable and practicable.

## **“Article 3”**

(1) A ship and a ship recycling facility, to which this Law applies, shall comply with this Law.

(2) A Ship, to which this Law applies and which is subject to survey and certification, shall be surveyed and certified in accordance with this Law and the Regulations of its Annex.

- (3) A ship, to which this Law applies, shall have on board in accordance with this Law and the Regulations of its Annex either an International Certificate on Inventory of Hazardous Materials or an International Ready for Recycling Certificate.
- (4) It shall be the duty of the registered owner of the ship to ensure that the ship is in compliance with this Law. Any violation of the provisions of this law shall constitute an offence. The registered owner, for each offence, shall be liable to a fine not exceeding one-hundred-thousand Euro.
- (5) The ship may in any port or offshore terminal of the Federal Republic of Germany, be subject of inspection by officers duly authorized by the Federal Republic of Germany for the purpose of determining, whether the ship is in compliance with this Law.
- (6) Where, during an inspection, a ship is unduly detained or delayed, an adequate compensation shall be made by the authority in charge for any loss or damage suffered hereby.
- (7) Ship Recycling Facilities to which this Law applies and that recycle ships to which this Law applies, or ships treated similarly pursuant to this Law, shall be authorized in accordance with this Law and the regulations of its Annex.
- (8) It shall be the duty of the owner or operator of the Ship Recycling Company to ensure that such Ship Recycling Company is in compliance with this Law. Any violation of the provisions of this Law shall constitute an offence. The owner or operator, for each offence, shall be liable to a fine not exceeding one-hundred-thousand Euro.

#### **“Article 4”**

- (1) The Federal Minister of Transport, Building and Urban Development is empowered to enact the necessary

statutory instruments for the enforcement of and compliance with this Law.

(2) The administrative body responsible to prevent any violations of this Law and protect the waterborne environment is the Federal Agency for Maritime Traffic and Hydrographic in Hamburg (Bundesamt für Seeschifffahrt und Hydrographie, BSH).

(3) The administrative body empowered to deal with administrative offenses according to § 36.1 No. 1 of the Administrative Offenses Law (Gesetz über Ordnungswidrigkeiten) is the BSH.

#### **“Article 5”**

(1) This Law shall enter into force for the Federal Republic of Germany on the day of its proclamation and publication in the Federal Law Gazette (Bundesgesetzblatt).

(2) The day, when the Convention according to its Article 17 paragraph 1 enters into force for the Federal Republic of Germany, shall be published in the Federal Law Gazette (Bundesgesetzblatt).

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The constitutional rights of the Federal Council (Bundesrat) are observed.

The preceding law is herewith completed and will be proclaimed in the Federal Law Gazette (Bundesgesetzblatt).

Berlin, (date)

The Federal President (Bundespräsident)

Joachim Gauck



The Federal Chancellor (Bundeskanzler)

Dr. Angela Merkel

The Federal Foreign Minister (Bundesaußenminister)

Dr. Guido Westerwelle

The Federal Minister of Transport, Building and Urban  
Development (Bundesminister für Verkehr, Bau und

Stadtentwicklung)

Dr. Peter Ramsauer

The Federal Minister of Environment, Nature Conservation and  
Nuclear Safety (Bundesminister für Umwelt, Naturschutz und

Reaktorsicherheit)

Dr. Norbert Röttgen

## **[4. Reasons for the Enactment Legislation]**

### **Explanation**

#### **“Regarding Article 1”**

Article 59.2 first sentence of the Basic Law is applicable to the Hong Kong Convention, as the latter relates to matters of Federal Legislation.

#### **“Regarding Article 2”**

This Article corresponds to Article 3 of the Convention and stipulates the scope of application.

#### **“Regarding Article 3”**

The content of this Article corresponds to Article 4 of the Convention and deals with requirements to be complied with by ships and ship recycling facilities. Further, it stipulates for sanctions when violations of the provisions of the law occur. The provision is necessary as Article 103.2 of the Basic Law requires the adoption of special statutory instruments regarding the imposition of any such penalties.

#### **“Regarding Article 4”**

The content of this Article corresponds with Article 80.1 of the Basic Law, which states that the Federal Minister in charge is authorised to issue statutory instruments. The content, purpose and scope of the authority conferred are specified in the law. Further, in accordance with Article 87.1 and Article 89 of the Basic Law, Federal Administrative Authorities and their own

administrative substructures are in charge of maritime matters.

**“Regarding Article 5”**

Paragraph 1 corresponds to the requirements of Article 82.2 first sentence of the Basic Law. The date of entry into force of the international treaty for the Federal Republic of Germany shall be published in the Federal Law Gazette (Bundesgesetzblatt).

**“Final remark:”**

The Federation, States and Municipalities of Germany will not be burdened with additional expenses due to the execution of Federal Laws.

**5. HONG KONG INTERNATIONAL CONVENTION  
FOR THE SAFE AND ENVIRONMENTALLY SOUND  
RECYCLING OF SHIPS, 2009<sup>1</sup>**

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<sup>1</sup> French and German translations of the Convention at this stage have not been available, yet.

## **6. Explanatory Memorandum (Denkschrift)**

### **(a) General Introduction**

The attention paid to environmental and safe aspects of ships has increased steadily over the last decades. However the challenges remain present, especially in relation to vessels, which have outlived their economic use and enter their dismantling and recycling phase. Mortal dangers hide behind the curtain of dismantling and recycling of ships. Puthucherril describes the end of such vessels in a remarkable visual way as follows:

“Geriatric ships are resting peacefully on these once pristine and unique beaches, awaiting their last rites and burial. But beneath this silence comes up a storm”.<sup>2</sup>

Since the shipbreaking industry has started its work, the beaches within the relevant region have turned black and the water is now covered with oil particles. The environment in these regions has been scarred and marine biodiversity has been systematically devastated. These wrecking facilities are representing huge battlefields covered with millions of pieces relating to abandoned vessels.<sup>3</sup>

Further, shipbreaking happens under totally unacceptable conditions. The job of shipbreaking is extremely hazardous. Shipbreakers working there are exposed to life threatening substances like asbestos, polychlorinated biphenyls, residual oil and other dangerous and toxic liquids and are often not equipped with protective gears. While disassembling the ships, unexpected explosions occur and steel loosens itself falling down. Consequently, many workers in these facilities have

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<sup>2</sup> Puthucherril, Tony George, “From Shipbreaking To Sustainable Ship Recycling”, *Legal Aspects of Sustainable Development*, Martinus Nijhoff Publishers (2010), p. 1.

<sup>3</sup> Dodds, David, “Breaking up is Hard to Do: Environmental Effects of Shipwrecking and Possible Solutions under Inias’s Environmental Regime”, *Comment*, (2007) 20 *Pac. McGeorge Global Bus. & D.L.J.* p. 207.

mortally diseases, caused also by the water. The soil and the coastal habitants are heavily polluted.<sup>4</sup>

Safety and the protection of the environment are regarded as paramount objectives followed by all States. The importance of reducing the occupational, health and safety risks of the workers involved in the shipbreaking process and the pollution of the environment caused by vessels, cannot be overemphasized. This is so if one considers the increasing number of vessels being dumped in the developing countries such as India, Pakistan, Bangladesh and China and other far South-Asian countries, where ships get scrapped on their beaches without any dry dock facilities (it is assumed in these days that the dismantling is conducted at a dry dock or at a dismantling slip; however, it is more frequently taking place on beaches).

Without strict compliance with high safety and environmental standards, a high number of workers loose their lives and the contaminations of the surrounding environment are immense. Both, the work force being constantly exposed to toxic and poisoned substances and the absence of proper equipments for the handling of hazardous materials, lead to pollution of water and soil, which in turn affects the surrounding habitats and fishing grounds. Each year around 600 sea-going ships with more than 1500 dead-weight tons are being disassembled worldwide.<sup>5</sup> A peak has been reached in 2010 when close to 700 single-hull tankers have been taken out of operation, following the Maltese-registered tanker “*Erica*”<sup>6</sup> and the Bahamas-registered

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<sup>4</sup> Puthucherril, p. 2.

<sup>5</sup> Md. M. Hossain and M. M. Islam, “Ship Breaking Activities and its Impact on the Coastal Zone of Chittagong, Bangladesh: Towards Sustainable Management“, Young Power in Social Action (YPSA), Chittagong, Bangladesh, 2006, p 1; Secretariat of the Basel Convention UNEP/SBC “Environmentally Sound Dismantling of Ships“, United Nations, Geneva 2010, p 1-2, <<http://basel.int/pub/leaflets/leaflet01012011-3.pdf>> 05 November 2011.

<sup>6</sup> International Oil Pollution Compensation Funds, “Erika France 12 December 1999“, (1999), <<http://www.iopcfund.org/erika.htm>> 15 October 2011.

tanker “*Prestige*”<sup>7</sup> oil pollution catastrophies (schedule in Marpol Annex 1).<sup>8</sup>

As explained above, most of the dismantling process is conducted in the beaches in the generally less developed countries of South-Asia where safety and environment regulations are not observed as strictly as in Europe.<sup>9</sup> That is the place where the huge merchant end-of-life ships come from the industrialized world.<sup>10</sup> It is to be expected that the beaches in the developing world will soon be full of rotting ships awaiting to be taken to pieces. This situation will also lead to greater environmental degradation and more human suffering, unless the terms in that industry will be modified prompting solely responsible working conditions and environmentally scrapping.<sup>11</sup>

The best practical solution to dispose of ships that have reached the end of their operational life is therefore the unconditionally responsible recycling or burial.

Hence, the International Maritime Organisation (IMO) and the International Labour Organisation (ILO) addressed the aforesaid concerns, analyzing the role of the flag States and recycling sSates and the shipping community in this process. The IMO elaborated on a new legally binding instrument, specific on recycling of ships. The new instrument is focusing on vessels “from the cradle to the grave”, e.g. from the construction of a vessel of a more easy way to recycle up to the preparation for her final voyage and to her appropriate recycling or burial.

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<sup>7</sup> International Oil Pollution Compensation Funds, “Prestige Spain 13 November 2002”, (2011), <<http://www.iopcfund.org/prestige.htm>> 15 October 2011.

<sup>8</sup> IMO, Revised phase-out schedule for single-hull tankers enters into force, <[http://www5.imo.org/SharePoint/mainframe.asp?topic\\_id=1018&doc\\_id=4801](http://www5.imo.org/SharePoint/mainframe.asp?topic_id=1018&doc_id=4801)> 15 October 2011.

<sup>9</sup> Annex II, Dismantling Countries, Heading for Increasing Concentration, p. 3, <[http://www.sgmer.gouv.fr/IMG/pdf/Annex\\_2\\_Dismantling\\_countries.pdf](http://www.sgmer.gouv.fr/IMG/pdf/Annex_2_Dismantling_countries.pdf)> 08 October 2011.

<sup>10</sup> Puthucherril, p. 2.

<sup>11</sup> Puthucherril, p. 4.

The new convention was adopted at the International Conference on the Safe and Environmentally Sound Recycling of Ships, held from 11th to 15th May 2009 in Hong Kong, attended by delegates from more than 60 States. The objective was to ensure that vessels, when being recycled, do not pose any unnecessary risks to human health and safety or to the environment. The Convention was open for signature by any State at the Headquarters of the Organization until August 2010 and shall remain open for accession by any other State which has not signed the Convention, yet.<sup>12</sup>

### **(b) History of the Convention**

The recycling industry has been building up over the past decade. Politicians and administrations looked for ways to regulate ship recycling with international common standards. The first attempt of addressing the problem was to try to implement the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, which was adopted in 1989 and which came into force in 1992.<sup>13</sup> The reason for the adoption of the Basel Conventions was a tightening of environmental regulations in industrialized countries in 1980s, which led to a dramatic rise in the cost of hazardous waste disposal. Seeking for cheaper ways to get rid of the wastes, merchants began to transport over the sea hazardous waste to developing countries. Once this activity was revealed, outrage in the whole world led to the draft and adoption of the Basel Convention.

The idea of the Basel Convention is to protect human health and the environment against adverse effects that result from the generation and management of hazardous and other wastes. The Basel Convention, in particular, focuses on regulating the transboundary movement of hazardous wastes across international frontiers in its effort to protect

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<sup>12</sup> IMO, Recycling of ships, <[http://www5.imo.org/SharePoint/mainframe.asp?topic\\_id=818](http://www5.imo.org/SharePoint/mainframe.asp?topic_id=818)> 15 October 2011.

<sup>13</sup> Secretariat of the Basel Convention, Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal <<http://archive.basel.int/convention/basics.html>> 10 October 2011.



developing countries from the import of hazardous wastes which is not managed in an environmentally sound manner.<sup>14</sup>

However, the Basel Convention does not establish a dedicated system for ships. Its provisions, and particularly its system of prior informed consent of the designating State of export, did not envisage ships. This has created difficulties in enforcing the Convention to ships before the end of their operational life. Difficulties arose especially in the EU, where the Basel Convention is implemented, by forbidding the export of hazardous wastes to non-OECD countries.

As early as October 2004, the IMO was invited to the 7th conference of the Basel Convention, first, to consider the establishment of mandatory requirements in its regulations, which ensure an equivalent level of control as established under the Basel Convention, and secondly, to ensure the environmentally sound management of ship dismantling.<sup>15</sup>

IMO's role in the recycling of ships was first raised at the 44<sup>th</sup> Marine Environment Protection Committee (MEPC) session in 2000 followed by a correspondence group, which was established to research this issue and provide information about current ship recycling practices and suggestions on the role of IMO.<sup>16</sup>

Guidelines were developed by the MEPC and were adopted as the "Guidelines on Ship Recycling" by the 23rd Assembly in 2003. After subsequently amended by another resolution, the IMO Assembly in 2005 eventually agreed that IMO should develop a new legally binding

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<sup>14</sup> Mikelis, Nikos, "The Hong Kong International Convention For The Safe and Environmentally Sound Recycling of Ships", in UN Conference on Trade and Development, multi-year expert meeting on transport and trade facilitation, Geneva 2011.

<<http://www.imo.org/OurWork/Environment/ShipRecycling/Documents/2010-12-09%20%20UNCTAD%20On%20the%20Hong%20Kong%20Convention.pdf>> 10 October 2011.

<sup>15</sup> Ibid.

<sup>16</sup> IMO, "The Development of the Hong Kong Convention", in Ship Recycling, <<http://www.imo.org/OurWork/Environment/ShipRecycling/Pages/Default.aspx>> 10 October 2011.

instrument on ship recycling. The Assembly requested the MEPC to develop a new method that would provide regulations for an effective, acceptable and enforceable global ship recycling.<sup>17</sup> At the end, this led to a new Convention in 2009, the Hong Kong International Convention for The Safe and Environmentally Sound Recycling of Ships.

### **(c) Objectives and purposes of the International Convention**

The wrecking or dismantling of ships implies serious hazards to the health and safety of the workers. Vessels run abeach and are cut up by unqualified workers who are many times exposed to toxins, exploding gases, falling steel plates and other dangers. Therefore workers, who have not suffered from an accident at the ship dismantling facilities, may suffer at a later time from long-term damages to their health for having permanent contact with poisoned materials during their working life. Ships of different building types contain materials affected with asbestos (90% of ships of every age contain asbestos)<sup>18</sup>, polychlorinated biphenyls, tributyltin, heavy metals, hydrocarbons, ozone depleting and other dangerous substances.<sup>19</sup> On that account breaking up a ship is also highly bad for the environment.

The Hong Kong Convention addresses all these issues concerning recycling of ships, including the fact that ships for scrapping contain environmentally hazardous substances. The Convention indeed deals with the concerns raised from the working and environmental conditions at the world's ship recycling locations.

The aim of the new adopted Convention is to deal with all matters of shipwrecking, thus, it affects and provides challenges for the whole maritime recycling industry, from the cradle to the grave.

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<sup>17</sup> Ibid.

<sup>18</sup> Gramann, Henning, "Why life cycle considerations have to go beyond known boundaries", Shipbuilding Recycling, in HANSA International Maritime Journal, 148 Ed. 2011 No. 10, p. 46.

<sup>19</sup> European Commission Environment, Ship dismantling (Introduction), <<http://ec.europa.eu/environment/waste/ships/index.htm>> 12 October 2011.

Regulations in the Convention cover the design, construction, operation and preparation of ships so as to facilitate safe and environmentally sound recycling, without compromising the safety and operational efficiency of ships; the operation of ship recycling facilities in a safe and environmentally sound manner; and, the establishment of an appropriate enforcement mechanism for ship recycling, incorporating certification and reporting requirements.<sup>20</sup>

Moreover, ships to be sent for recycling will be required to have onboard the so called Inventory of Hazardous Materials (IHM), which will be specific to each ship. Further, ships will be required to have an initial survey to verify the inventory of hazardous materials, additional surveys during the life of the ship, and a final survey prior to recycling.<sup>21</sup>

Ship recycling yards will be obliged to provide a "Ship Recycling Plan", to specify the manner in which each ship will be recycled, depending on its particulars and its inventory. The mission of the parties of the Convention is subsequently to take effective measures ensuring that shiprecycling facilities under their jurisdiction comply with the Convention.<sup>22</sup>

These provisions have been developed to give guidance to all stakeholders in the ship recycling process. This includes flag-, port States, recycling facilities, shipbuilders and maritime equipment manufactures, ship owners and other institutions that are concerned with breaking up ships. However, the Convention does not apply to ships less than 500 GT (Gross Tonnage), warships, naval auxiliary or other state-

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<sup>20</sup> Lloyds Register, "Ship recycling Practice and regulation today", June 2011, p. 16, <[http://www.lr.org/Images/ShipRecycling\\_040711\\_tcm155-223320.pdf](http://www.lr.org/Images/ShipRecycling_040711_tcm155-223320.pdf)> 12 October 2011.

<sup>21</sup> IMO, The Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships, List of Conventions, <<http://www.imo.org/About/Conventions/ListOfConventions/Pages/The-Hong-Kong-International-Convention-for-the-Safe-and-Environmentally-Sound-Recycling-of-Ships.aspx>> 03 October 2011

<sup>22</sup> Ibid.

owned or operated vessels which are used for purposes other than merely commercial service.<sup>23</sup>

In summary, at the international level the Convention establishes mandatory requirements to ensure the safe and environmentally sound recycling of ships in a more effective and efficient manner. In order to raise the level of standards in the ship recycling industry, the Convention relies on the survey and certification of ships, the authorisation of ship recycling facilities and specific requirements such as the obligation for shipowners to create an inventory of hazardous materials built in or installed onboard their ships. Moreover, it is of great importance to call upon contracting States to ensure the reduction of toxic materials usage in shipbuilding and also to enhance thereby the safety of human health and the environment throughout a ship's operational life.<sup>24</sup>

The Convention will enter into force 24 months after the date on which 15 States, representing 40 per cent of world merchant shipping by gross tonnage, have either signed it without reservation as to ratification, acceptance or approval. Furthermore, the combined maximum annual ship recycling volume of those States must, during the preceding 10 years, constitute not less than three per cent of their combined merchant shipping tonnage.<sup>25</sup>

#### **(d) Importance and purpose for Germany to become a Party to this Convention**

It is recognised that 25 per cent of the world's merchant ships fly the flags of EU-Member States and about 40 per cent of ships are owned by European companies. Against this background, in October 2009, shortly

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<sup>23</sup> Art. 3 of the Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships, 2009.

<sup>24</sup> Puthucherril, p. 148 f.

<sup>25</sup> IMO, loc.sit.

after the adoption of the Hong Kong Convention, the Council of the EU drew upon conclusions on an EU strategy for better shipbreaking.<sup>26</sup>

The EU acknowledges that the level of control and enforcement established by the Hong Kong Convention will depend on economic factors and enforcement actions of States, and that the legal obligations of the Convention could require significant capacity to be successfully implemented by a high number of States. Therefore the EU underlines the urgent need to give support through technical equipment and other co-operation for the implementation and enforcement of the Convention by other States, in particular those that have a developing status and have or intend to establish recycling facilities for ships.

Through the EU Strategy Paper of 26<sup>th</sup> of March 2009, the European Parliament affirms again the said IMO Convention by requesting the EU Member States to sign and ratify it for a clear improvement of the actual situation regarding recycling and dismantling of ships worldwide and to facilitate its enforcement as soon as possible in order to generate a real and effective change.<sup>27</sup>

Germany has the third largest merchant fleet owned by nationals worldwide and the incorporation of the Hong Kong Convention might lead to a change at an international level.

Although Germany has very few ship recycling yards (mainly for small ships), it might be possible that Germany plans to have ship recycling facilities in the future to cope with the issue of dismantling end-of-life ships since the large merchant fleets are operating under EU flags or owned by companies in the EU.

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<sup>26</sup> Council of the European Union, Council Conclusions on an EU Strategy for better ship dismantling 2968th ENVIRONMENT Council meeting Luxembourg, 21 October 2009, p. 1, <[http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/envir/110626.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/envir/110626.pdf)> 15 October 2011.

<sup>27</sup> No. 7 (2010/C 117 E/34) of EU strategy for better ship dismantling, European Parliament resolution of 26 March 2009 on an EU strategy for better ship dismantling, in Official Journal of the European Union, 06.05.2010, p. 2.

Moreover, Germany, wherefrom a great number of ships sail to South-Asia to be dismantled and thus causing directly or indirectly environmental dangers, may contribute considerably to the reduction of environmental impacts and to the improvement of occupational safety and health situation by supporting the developing countries in South-Asia in which operating facilities, ships coming from States all over the world, are dismantled.<sup>28</sup> Germany also may be instrumental in the phasing out of unsafe and environmentally harmful working methods by assisting the building up of appropriate facilities in Asia, so as to avoid the dangerous practice of beaching eliminated ships. Germany might be of great help due to its enormous research and development in recycling methods of toxic materials.

As a Party to the Convention, Germany could yet assist the shipbreaking countries by dealing with this issue from the beginning, in the form that all ships flying its flag may carry a “green passport or certification” (Regulation 10 ff. of the Convention) which would follow a ship from the day it was built till the day it will reach the end of its operating life and therefore will be scrapped. This document ought to certify that its ship is safe for dismantling, meaning no damage to the environment, human and animal life while being dismantled. Therefore, the use of hazardous materials is to be avoided during shipbuilding and repair process to preserve yard-workers safety and health.

Pursueing this, a fundamental requirement of the Convention is the documentation of hazardous materials onboard. This can be done by inspecting and maintaining new ships through Germany’s well-known Ship-Classification association “Germanischer Lloyd (GL)”.<sup>29</sup> All ships sailing on international routes have to be classified. Thus GL’s activities as a classification society cover a broad range of fields, from developing

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<sup>28</sup> So done in Turkey, Annex II, Dismantling Countries, Heading for Increasing Concentration, p. 7, <[http://www.sgmer.gouv.fr/IMG/pdf/Annex\\_2\\_Dismantling\\_countries.pdf](http://www.sgmer.gouv.fr/IMG/pdf/Annex_2_Dismantling_countries.pdf)> 20 October 2011.

<sup>29</sup> Today, more than 7200 vessels, equivalent to 100 million GT, are classed by that association. Every year GL performs about 24 000 inspections, <<http://www.gl-group.com>> 10 October 2011.

standards, rules and guidelines for the design, construction and operation of ships to regular inspections and surveys to ensure compliance. GL assists owners of GL-classified vessels with a multitude of supporting services to keep them abreast of international regulations. Ships will therefore have to undergo an initial survey to verify the inventory of hazardous materials, re-surveys during the life of the ship, and a final survey directly prior to recycling. Hence, GL will make for Germany a contribution by offering expert solutions to inventory hazardous materials on board of ships which follow exactly the requirements of the latest IMO-IHM Guidelines (MEPC.62 2011).<sup>30</sup>

Germany also deals with the aforementioned issue legally, by having already signed, ratified and implemented the Basel Convention from 1989 (21th of April 1995) as Act “AbfVerbG”<sup>31</sup>, which regulates the movement of hazardous waste across international borders.<sup>32</sup> Further at EU level, Germany is also bound by the EU Waste Shipment Regulation<sup>33</sup>, which is designed to ensure the protection of the environment when waste is subject to shipment. This regulation implements in addition the Basel Convention at an EU level. Opting out from its provisions is not allowed, and as a result all waste shipped worldwide has to be managed without endangering human and animal health or the environment throughout the period of shipment and during its disposal.

Moreover Germany is also bound by several legislations at EU and domestic level, which regulate the safety, security and health of

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<sup>30</sup> Germanischer Lloyd, “Setting course for a green future Inventory of Hazardous Materials for newbuildings“, <[http://www.gl-group.com/pdf/GL-ShipRecycling-NewBuilding\\_web.pdf](http://www.gl-group.com/pdf/GL-ShipRecycling-NewBuilding_web.pdf)> 25 October 2011.

<sup>31</sup> Law to enact the EU Regulation No. 1013/2006 of the European Parliament and of the Council, and Law to implement the Basel Convention of 22th of March 1989 Controlling Transboundary Movements of Hazardous Wastes and their Disposal.

<sup>32</sup> The Basel Convention has currently 172 Parties which includes nearly all of the Member States, with the exception of the USA.

<sup>33</sup> Council Regulation (EC) No 1013/2006/EC of the European Parliament and of the Council of 14<sup>th</sup> of June 2006.

workers, in particular those related to specific management of toxic materials such as asbestos, biphensyls and tributylin.<sup>34</sup>

Finally, Germany becoming member of the Convention, will make a great contribution to the reduction of risks from ships being disassembled or recycled somewhere else than in the EU. The willingness of flag States such as Germany to ratify the Hong Kong Convention will be influenced by the political, legal and economic incentives for becoming a Party. Flag States and their ship economies therefore could find it attractive to become a Party to such a Convention, which, in comparison to the EU Regulation in force, provides a less strict system of rules which would satisfy the public demand for safe and environmentally sound ship recycling worldwide without creating unnecessary burdens for shipowners.

#### **(e) Particulars**

##### **(1) Content of the Treaty**

The Hong Kong Ship Recycling Convention is divided into 21 articles and the Annex of regulations, which include technical requirements and specific standards. The Annex of the Convention is an integral part as provided in Art. 1.5 of the Convention. Its regulations particularize the provisions of the Convention and together assist a State Party in the correct implementation and application of the provisions in order to achieve the aims of the Convention.

##### **(2) Relationship with other regulations**

In accordance with Article 15.2 of the Hong Kong Convention, existing rights and obligations of the parties remain valid. Thus, the Basel Convention of 1989 implemented in German domestic law, which regulates the movement of hazardous waste across international borders will continue to apply. The broad definition of waste there might cover vessels themselves and not only waste materials contained therein, if

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<sup>34</sup> Council Regulation (EC )No. 89/391/EWG of the European Parliament and of the Council.



ships are sent to another State with the purpose of being dismantled. Indeed, the Hong Kong Convention is the only system of rules which is geared to shipbreaking or recycling of ships en bloc.

Further, Germany is also bound by the EU Waste Shipment Regulation, which is in force and designed to ensure the protection of the environment in case waste is subject to shipment, and to other EU regulations which determine the safety, security and health of workers, in particular regarding to a specific management of determined toxic materials.

The regulations will not be interfered with since firstly they impose more obligations on the members of the EU relating to ship waste which support the notion of the Hong Kong Convention more effective than ever. Secondly, these regulations shall apply only to shipments of waste between member states, within the Community or with transit through third countries, imported into the Community from third countries, exported from the Community to third countries, in transit through the Community and on the way from and to third countries (Art 1.2 of the Regulation (EC) No 1013/2006). As long there is no link to the member states of the EU, the Hong Kong Convention will apply.

### **(3) Effects of each provision of the Convention on the German Law**

#### **Article 1:**

Article 1 states the general obligations for the parties of the treaty. These provisions address the enforcement of general principles and special provisions contained in the treaty as well as regulations in the Annex. This article emphasises how the State Parties should incorporate the provisions to achieve the deliberate effect of the treaty, in other words, this article is the guidance how to implement the treaty rules into German domestic law.

**Article 2:**

Article 2 contains the legal definitions of the treaty, which become definitions of the German Domestic Law once incorporated into German law.

**Article 3:**

Article 3 sets forth the scope of application of the treaty provisions. The result is that the incorporated provisions only bind the determined target group.

**Article 4:**

Article 4 specifies that the State Parties shall take effective measures to ensure compliance with the requirements of the treaty. The result is that Germany has also to incorporate specific regulations in order to control compliance with the treaty by the target groups under German jurisdiction.

**Article 5:**

Article 5 prescribes that each State Party shall ensure survey and certification of ships flying its flag in accordance with the regulations set out in the Annex to the treaty. Therefore, Germany has to incorporate specific provisions into its domestic law that determines the requisites for the issue of certifications regarding recycling pursuant to the regulations in the Annex.

**Article 6:**

Article 6 lays down that each Party shall ensure authorization of Ship Recycling Facilities that operate under its jurisdiction in accordance to the regulations in the Annex. Subsequently, Germany has to incorporate specific provisions into its domestic law that determine the requirements for the establishment of such facilities pursuant to the regulations of the Annex.

**Article 7:**

Article 7 stipulates that the Party shall provide the IMO and other Parties, if requested, with relevant information regarding the decision of authorization of a recycling facility. This information then shall be exchanged in a swift and timely manner. Germany has to determine in the enactment law which authority has the competence and responsibility to authorize and survey a recycling facility. This authority then will be responsible to inform the IMO and other Parties.

**Article 8:**

Article 8 provides that Port State Control Officers have the right to inspect any ship, to which this Convention applies for the purpose of determining whether the ship is in compliance with this Convention. Therefore, Germany has to incorporate provisions that specify the inspection or the process of verifying Certificates and the duties of the Port State Control Officers in order to fulfill the requirements of the Convention. Germany has also to stipulate conditions when a detailed inspection is to be carried out, taking into account guidelines developed by the IMO.

**Article 9:**

Article 9 deals with the detection of violations on ships and recycling facilities. Moreover it obliges the Parties to co-operate by enforcing the provisions laid down in the Convention. The result is that Germany has to appoint in the Enactment Law a competent authority and determine steps of procedure to detect violations in order to guarantee the compliance with the treaty.

**Article 10:**

Article 10 stipulates that violations of the treaty shall be prohibited by national law and therefore adequate and severe sanctions shall be established under the national law. Subsequently, Germany needs to include in its law the possibility to bring up legal proceedings against the alleged offender to ensure compliance as well as penalties if the

offender has violated rules of the Convention. Germany should also appoint the competent authority, which will be responsible to guarantee the enforcement of the treaty.

**Article 11:**

Article 11 prescribes that undue delay or detention of ships shall be avoided during the inspection, detection of violations or other legal procedures. Further it states that in such a case the State Party is liable for any loss or damage occurred and arising from unduly administrative proceedings. Thus, Germany has to incorporate provision, which entitles the suffered subject to compensation.

**Article 12:**

Article 12 sets forth that the German Law has to incorporate a regulation for communication procedures in order to share specific information with the IMO, in particular determining which authority is responsible to report to the IMO.

**Article 13:**

Article 13 does not have any special effect on German Law since undertaking technical assistance and co-operation is subject to national law.

**Article 14:**

Article 14 requires regulations to be incorporated into domestic law which dealing with disputes between parties of the Convention concerning interpretation and application of this Convention, and which may include procedure rules to settle such disputes.

**Article 15:**

Article 15 stipulates that nothing in this Convention shall prejudice other international (customary) rules and agreements.

**Article 16 to 21:**

Article 16 to 21 being procedures in nature would not form part of German Law.

**Annex Regulations 1 to 3:**

These regulations have to be incorporated into domestic law. They contain a list of definitions, the general applicability as well as a request to the Party to take measures for implementing the requirements of the regulations of this Annex. In doing so, the following shall be taken into account: relevant and applicable standards, recommendations and guidance developed by ILO and the relevant and applicable technical standards, recommendations and guidance developed under the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal.

Subsequently, Germany has to establish a provision in its domestic law, which refer to the Regulations of the Annex directly in respect of the demanded requirements.

**Annex Regulations 4 to 7:**

These Regulations have to be implemented, considering that the German domestic law must refer to these provisions, which determine the requirements for ships.

**Annex Regulations 8 and 9:**

Considering that the German Domestic Law must refer to these provisions, which determine the requirements for Ship Recycling, regulations 8 and 9 has to be implemented.

**Annex Regulations 10 to 14:**

Regulations 10 to 14 prescribe the specific requirements for ships and procedures for the issuance and endorsement of a valid recycling certificate by an appointed authority or authorized organisation. Steps to

be taken by Germany are mentioned in the analysis of Article 5 of the Convention (see above).

**Annex Regulations 15 to 23:**

Regulations 15 to 23 lay down the specific requirements for ship recycling facilities such as authorization, general requirements, controls, safety and health of worker matters. Steps to be taken by Germany are mentioned in the analysis of Article 6 of the Convention (see above).

**Annex Regulations 24 and 25:**

Regulations 24 and 25 deal with the specific reporting requirements. Steps to be taken by Germany are mentioned in the analysis of Article 12 of the Convention (see above).