

ANNEX**HONG KONG INTERNATIONAL CONVENTION FOR THE SAFE AND ENVIRONMENTALLY SOUND RECYCLING OF SHIPS, 2009****THE PARTIES TO THIS CONVENTION,**

NOTING the growing concerns about safety, health, the environment and welfare matters in the ship recycling industry,

RECOGNIZING that recycling of ships contributes to sustainable development and, as such, is the best option for ships that have reached the end of their operating life,

RECALLING resolution A.962(23), adopted by the Assembly of the International Maritime Organization (Guidelines on Ship Recycling); amendments to the Guidelines adopted by resolution A.980(24); Decision VI/24 of the Sixth Meeting of the Conference of the Parties to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, which adopted Technical Guidelines for the Environmentally Sound Management of the Full and Partial Dismantling of Ships; and the Guidelines approved by the 289th session of the Governing Body of the International Labour Office (Safety and Health in Shipbreaking: Guidelines for Asian countries and Turkey),

RECALLING ALSO resolution A.981(24), by which the Assembly of the International Maritime Organization requested the Organization's Marine Environment Protection Committee to develop a legally-binding instrument on ship recycling,

NOTING ALSO the role of the International Labour Organization in protecting the occupational safety and health of workers involved in ship recycling,

NOTING FURTHER the role of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal in protecting human health and the environment against the adverse effects which may result from such wastes,

MINDFUL of the precautionary approach set out in Principle 15 of the Rio Declaration on Environment and Development and referred to in resolution MEPC.67(37), adopted by the Organization's Marine Environment Protection Committee on 15 September 1995,

MINDFUL ALSO of the need to promote the substitution of hazardous materials in the construction and maintenance of ships by less hazardous, or preferably, non-hazardous materials, without compromising the ships' safety, the safety and health of seafarers and the ships' operational efficiency,

RESOLVED to effectively address, in a legally-binding instrument, the environmental, occupational health and safety risks related to ship recycling, taking into account the particular characteristics of maritime transport and the need to secure the smooth withdrawal of ships that have reached the end of their operating lives,

CONSIDERING that these objectives may best be achieved by the conclusion of an International Convention for the Safe and Environmentally Sound Recycling of Ships,

HAVE AGREED as follows:

ARTICLE 1

General obligations

1 Each Party to this Convention undertakes to give full and complete effect to its provisions in order to prevent, reduce, minimize and, to the extent practicable, eliminate accidents, injuries and other adverse effects on human health and the environment caused by Ship Recycling, and enhance ship safety, protection of human health and the environment throughout a ship's operating life.

2 No provision of this Convention shall be interpreted as preventing a Party from taking, individually or jointly, more stringent measures consistent with international law, with respect to the safe and environmentally sound recycling of ships, in order to prevent, reduce or minimize any adverse effects on human health and the environment.

3 Parties shall endeavour to co-operate for the purpose of effective implementation of, compliance with and enforcement of this Convention.

4 The Parties undertake to encourage the continued development of technologies and practices which contribute to safe and environmentally sound Ship Recycling.

5 The Annex to this Convention forms an integral part of it. Unless expressly provided for otherwise, a reference to this Convention constitutes at the same time a reference to its Annex.

ARTICLE 2

Definitions

For the purposes of this Convention, unless expressly provided otherwise:

1 "Convention" means the Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships, 2009.

2 "Administration" means the Government of the State whose flag the ship is entitled to fly, or under whose authority it is operating.

3 "Competent Authority(ies)" means a governmental authority or authorities designated by a Party as responsible, within specified geographical area(s) or area(s) of expertise, for duties related to Ship Recycling Facilities operating within the jurisdiction of that Party as specified in this Convention.

4 "Organization" means the International Maritime Organization.

5 "Secretary-General" means the Secretary-General of the Organization.

6 "Committee" means the Marine Environment Protection Committee of the Organization.

7 “Ship” means a vessel of any type whatsoever operating or having operated in the marine environment and includes submersibles, floating craft, floating platforms, self elevating platforms, Floating Storage Units (FSUs), and Floating Production Storage and Offloading Units (FPSOs), including a vessel stripped of equipment or being towed.

8 “Gross tonnage” means the gross tonnage (GT) calculated in accordance with the tonnage measurement regulations contained in Annex I to the International Convention on Tonnage Measurement of Ships, 1969, or any successor convention.

9 “Hazardous Material” means any material or substance which is liable to create hazards to human health and/or the environment.

10 “Ship Recycling” means the activity of complete or partial dismantling of a ship at a Ship Recycling Facility in order to recover components and materials for reprocessing and re-use, whilst taking care of hazardous and other materials, and includes associated operations such as storage and treatment of components and materials on site, but not their further processing or disposal in separate facilities.

11 “Ship Recycling Facility” means a defined area that is a site, yard or facility used for the recycling of ships.

12 “Recycling Company” means the owner of the Ship Recycling Facility or any other organization or person who has assumed the responsibility for operation of the Ship Recycling activity from the owner of the Ship Recycling Facility and who on assuming such responsibility has agreed to take over all duties and responsibilities imposed by this Convention.

ARTICLE 3

Application

1 Unless expressly provided otherwise in this Convention, this Convention shall apply to:

- .1 ships entitled to fly the flag of a Party or operating under its authority;
- .2 Ship Recycling Facilities operating under the jurisdiction of a Party.

2 This Convention shall not apply to any warships, naval auxiliary, or other ships owned or operated by a Party and used, for the time being, only on government non-commercial service. However, each Party 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 Convention, so far as is reasonable and practicable.

3 This Convention 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 State whose flag the ship is entitled to fly. However, each Party shall ensure, by the adoption of appropriate measures, that such ships act in a manner consistent with this Convention, so far as is reasonable and practicable.

4 With respect to ships entitled to fly the flag of non-Parties to this Convention, Parties shall apply the requirements of this Convention as may be necessary to ensure that no more favourable treatment is given to such ships.

ARTICLE 4

Controls related to Ship Recycling

1 Each Party shall require that ships entitled to fly its flag or operating under its authority comply with the requirements set forth in this Convention and shall take effective measures to ensure such compliance.

2 Each Party shall require that Ship Recycling Facilities under its jurisdiction comply with the requirements set forth in this Convention and shall take effective measures to ensure such compliance.

ARTICLE 5

Survey and certification of ships

Each Party shall ensure that ships flying its flag or operating under its authority and subject to survey and certification are surveyed and certified in accordance with the regulations in the Annex.

ARTICLE 6

Authorization of Ship Recycling Facilities

Each Party shall ensure that Ship Recycling Facilities that operate under its jurisdiction and that recycle ships to which this Convention applies, or ships treated similarly pursuant to Article 3.4 of this Convention, are authorized in accordance with the regulations in the Annex.

ARTICLE 7

Exchange of information

For the Ship Recycling Facilities authorized by a Party, such Party shall provide to the Organization, if requested, and to those Parties which request it, relevant information, in regard to this Convention, on which its decision for authorization was based. The information shall be exchanged in a swift and timely manner.

ARTICLE 8

Inspection of ships

1 A ship to which this Convention applies may, in any port or offshore terminal of another Party, be subject to inspection by officers duly authorized by that Party for the purpose of determining whether the ship is in compliance with this Convention. Except as provided in paragraph 2, any such inspection is limited to verifying that there is on board either an International Certificate on Inventory of Hazardous Materials or an International Ready for Recycling Certificate, which, if valid, shall be accepted.

2 Where a ship does not carry a valid certificate or there are clear grounds for believing that:

- .1 the condition of the ship or its equipment does not correspond substantially with the particulars of the certificate, and/or Part I of the Inventory of Hazardous Materials; or
- .2 there is no procedure implemented on board the ship for the maintenance of Part I of the Inventory of Hazardous Materials;

a detailed inspection may be carried out taking into account guidelines developed by the Organization.

ARTICLE 9

Detection of violations

1 Parties shall co-operate in the detection of violations and the enforcement of the provisions of this Convention.

2 When there is sufficient evidence that a ship is operating, has operated or is about to operate in violation of any provision in this Convention, a Party holding the evidence may request an investigation of this ship when it enters the ports or offshore terminals under the jurisdiction of another Party. The report of such an investigation shall be sent to the Party requesting it, to the Administration of the ship concerned and to the Organization, so that action may be taken as appropriate.

3 If the ship is detected to be in violation of this Convention, the Party carrying out the inspection may take steps to warn, detain, dismiss, or exclude the ship from its ports. A Party taking such action shall immediately inform the Administration of the ship concerned and the Organization.

4 If a request for an investigation is received from any Party, together with sufficient evidence that a Ship Recycling Facility is operating, has operated or is about to operate in violation of any provision of this Convention, a Party should investigate this Ship Recycling Facility operating under its jurisdiction and make a report. The report of any such investigation shall be sent to the Party requesting it, including information on action taken or to be taken, if any, and to the Organization for appropriate action.

ARTICLE 10

Violations

1 Any violation of the requirements of this Convention shall be prohibited by national laws and:

- .1 in the case of a ship, sanctions shall be established under the law of the Administration, wherever the violation occurs. If the Administration is informed of such a violation by a Party, it shall investigate the matter and may request the reporting Party to furnish additional evidence of the alleged violation. If the

Administration is satisfied that sufficient evidence is available to enable proceedings to be brought in respect of the alleged violation, it shall cause such proceedings to be taken as soon as possible, in accordance with its law. The Administration shall promptly inform the Party that reported the alleged violation, as well as the Organization, of any action taken. If the Administration has not taken any action within one year after receiving the information, it shall inform the Party which reported the alleged violation, and the Organization, of the reasons why no action has been taken;

- .2 in the case of a Ship Recycling Facility, sanctions shall be established under the law of the Party having jurisdiction over the Ship Recycling Facility. If the Party is informed of such a violation by another Party, it shall investigate the matter and may request the reporting Party to furnish additional evidence of the alleged violation. If the Party is satisfied that sufficient evidence is available to enable proceedings to be brought in respect of the alleged violation, it shall cause such proceedings to be taken as soon as possible, in accordance with its law. The Party shall promptly inform the Party that reported the alleged violation, as well as the Organization, of any action taken. If the Party has not taken any action within one year after receiving the information, it shall inform the Party which reported the alleged violation, and the Organization, of the reasons why no action has been taken.

2 Any violation of the requirements of this Convention within the jurisdiction of any Party shall be prohibited and sanctions shall be established under the law of that Party. Whenever such a violation occurs, that Party shall either:

- .1 cause proceedings to be taken in accordance with its law; or
- .2 furnish to the Administration of the ship such information and evidence as may be in its possession that a violation has occurred.

3 The sanctions provided for by the laws of a Party pursuant to this Article shall be adequate in severity to discourage violations of this Convention wherever they occur.

ARTICLE 11

Undue delay or detention of ships

1 All possible efforts shall be made to avoid a ship being unduly detained or delayed under Article 8, 9 or 10 of this Convention.

2 When a ship is unduly detained or delayed under Article 8, 9 or 10 of this Convention, it shall be entitled to compensation for any loss or damage suffered.

ARTICLE 12

Communication of information

Each Party shall report to the Organization and the Organization shall disseminate, as appropriate, the following information:

- .1 a list of Ship Recycling Facilities authorized in accordance with this Convention and operating under the jurisdiction of that Party;
- .2 contact details for the Competent Authority(ies), including a single contact point, for that Party;
- .3 a list of the recognized organizations and nominated surveyors which are authorized to act on behalf of that Party in the administration of matters relating to the control of Ship Recycling in accordance with this Convention, and the specific responsibilities and conditions of the authority delegated to the recognized organizations or nominated surveyors;
- .4 an annual list of ships flying the flag of that Party to which an International Ready for Recycling Certificate has been issued, including the name of the Recycling Company and location of the Ship Recycling Facility as shown on the certificate;
- .5 an annual list of ships recycled within the jurisdiction of that Party;
- .6 information concerning violations of this Convention; and
- .7 actions taken towards ships and Ship Recycling Facilities under the jurisdiction of that Party.

ARTICLE 13

Technical assistance and co-operation

1 Parties undertake, directly or through the Organization and other international bodies, as appropriate, in respect of the safe and environmentally sound recycling of ships, to provide support for those Parties which request technical assistance:

- .1 to train personnel;
- .2 to ensure the availability of relevant technology, equipment and facilities;
- .3 to initiate joint research and development programmes; and
- .4 to undertake other actions aimed at the effective implementation of this Convention and of guidelines developed by the Organization related thereto.

2 Parties undertake to co-operate actively, subject to their national laws, regulations and policies, in the transfer of management systems and technology in respect of the safe and environmentally sound recycling of ships.

ARTICLE 14

Dispute settlement

Parties shall settle any dispute between them concerning the interpretation or application of this Convention by negotiation or any other peaceful means agreed upon by them, which may include enquiry, mediation, conciliation, arbitration, judicial settlement, or resort to regional agencies or arrangements.

ARTICLE 15

Relationship with international law and other international agreements

1 Nothing in this Convention shall prejudice the rights and obligations of any State under the United Nations Convention on the Law of the Sea, 1982, and under the customary international law of the sea.

2 Nothing in this Convention shall prejudice the rights and obligations of Parties under other relevant and applicable international agreements.

ARTICLE 16

Signature, ratification, acceptance, approval and accession

1 This Convention shall be open for signature by any State at the Headquarters of the Organization from 1 September 2009 to 31 August 2010 and shall thereafter remain open for accession by any State.

2 States may become Parties to this Convention by:

- .1 signature not subject to ratification, acceptance, or approval; or
- .2 signature subject to ratification, acceptance, or approval, followed by ratification, acceptance or approval; or
- .3 accession.

3 Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.

4 If a State comprises two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval, or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

5 A declaration under paragraph 4 shall be notified to the Secretary-General in writing and shall state expressly the territorial unit or units to which this Convention applies.

6 A State at the time it expresses its consent to be bound by this Convention shall declare whether it requires explicit or tacit approval of the Ship Recycling Plan before a ship may be recycled in its authorized Ship Recycling Facility(ies). This declaration may be revised thereafter by notification to the Secretary-General. Such revision shall specify the effective date of the revision.

ARTICLE 17

Entry into force

1 This Convention shall enter into force 24 months after the date on which the following conditions are met:

- .1 not less than 15 States have either signed it without reservation as to ratification, acceptance or approval, or have deposited the requisite instrument of ratification, acceptance, approval or accession in accordance with Article 16;
- .2 the combined merchant fleets of the States mentioned in paragraph 1.1 constitute not less than 40 per cent of the gross tonnage of the world's merchant shipping; and
- .3 the combined maximum annual ship recycling volume of the States mentioned in paragraph 1.1 during the preceding 10 years constitutes not less than 3 per cent of the gross tonnage of the combined merchant shipping of the same States.

2 For States which have deposited an instrument of ratification, acceptance, approval or accession in respect of this Convention after the requirements for entry into force thereof have been met, but prior to the date of entry into force, the ratification, acceptance, approval or accession shall take effect on the date of entry into force of this Convention, or three months after the date of deposit of the instrument, whichever is the later date.

3 Any instrument of ratification, acceptance, approval or accession deposited after the date on which this Convention enters into force shall take effect three months after the date of deposit.

4 After the date on which an amendment to this Convention is deemed to have been accepted under Article 18, any instrument of ratification, acceptance, approval or accession deposited shall apply to the Convention, as amended.

ARTICLE 18

Amendments

1 This Convention may be amended by either of the procedures specified in the following paragraphs.

2 Amendments after consideration within the Organization:

- .1 Any Party may propose an amendment to this Convention. A proposed amendment shall be submitted to the Secretary-General, who shall then circulate it

to the Parties and Members of the Organization at least six months prior to its consideration.

- .2 An amendment proposed and circulated as above shall be referred to the Committee for consideration. Parties, whether or not Members of the Organization, shall be entitled to participate in the proceedings of the Committee for consideration and adoption of the amendment.
- .3 Amendments shall be adopted by a two-thirds majority of the Parties present and voting in the Committee, on condition that at least one-third of the Parties shall be present at the time of voting.
- .4 Amendments adopted in accordance with subparagraph 3 shall be communicated by the Secretary-General to the Parties for acceptance.
- .5 An amendment shall be deemed to have been accepted in the following circumstances:
 - .5.1 An amendment to an article of this Convention shall be deemed to have been accepted on the date on which two-thirds of the Parties have notified the Secretary-General of their acceptance of it.
 - .5.2 An amendment to the Annex shall be deemed to have been accepted at the end of a period to be determined by the Committee at the time of its adoption, which period shall not be less than ten months after the date of adoption. However, if by that date more than one-third of the Parties notify the Secretary-General that they object to the amendment, it shall be deemed not to have been accepted.
- .6 An amendment shall enter into force under the following conditions:
 - .6.1 An amendment to an article of this Convention shall enter into force, for those Parties that have declared that they have accepted it, six months after the date on which it is deemed to have been accepted in accordance with subparagraph .5.1.
 - .6.2 An amendment to the Annex shall enter into force with respect to all Parties six months after the date on which it is deemed to have been accepted, except for any Party that has:
 - .6.2.1 notified its objection to the amendment in accordance with subparagraph .5.2 and that has not withdrawn such objection; or
 - .6.2.2 notified the Secretary-General, prior to the entry into force of such amendment, that the amendment shall enter into force for it only after a subsequent notification of its acceptance.
 - .6.3 A Party that has notified an objection under subparagraph .6.2.1 may subsequently notify the Secretary-General that it accepts the amendment. Such amendment shall enter into force for such Party six months after the

date of its notification of acceptance, or the date on which the amendment enters into force, whichever is the later date.

- .6.4 If a Party that has made a notification referred to in subparagraph .6.2.2 notifies the Secretary-General of its acceptance with respect to an amendment, such amendment shall enter into force for such Party six months after the date of its notification of acceptance, or the date on which the amendment enters into force, whichever is the later date.

3 Amendment by a Conference:

- .1 Upon the request of a Party concurred in by at least one-third of the Parties, the Organization shall convene a Conference of Parties to consider amendments to this Convention.
- .2 An amendment adopted by such a Conference by a two-thirds majority of the Parties present and voting shall be communicated by the Secretary-General to all Parties for acceptance.
- .3 Unless the Conference decides otherwise, the amendment shall be deemed to have been accepted and shall enter into force in accordance with the procedures specified in paragraphs 2.5 and 2.6 respectively.

4 Any Party that has declined to accept an amendment to the Annex shall be treated as a non-Party only for the purpose of application of that amendment.

5 Any notification under this Article shall be made in writing to the Secretary-General.

6 The Secretary-General shall inform the Parties and Members of the Organization of:

- .1 any amendment that enters into force and the date of its entry into force generally and for each Party; and
- .2 any notification made under this Article.

ARTICLE 19

Denunciation

1 This Convention may be denounced by any Party at any time after the expiry of two years from the date on which this Convention enters into force for that Party.

2 Denunciation shall be effected by written notification to the Secretary-General, to take effect one year after receipt or such longer period as may be specified in that notification.

ARTICLE 20

Depositary

1 This Convention shall be deposited with the Secretary-General, who shall transmit certified copies of this Convention to all States which have signed this Convention or acceded thereto.

2 In addition to the functions specified elsewhere in this Convention, the Secretary-General shall:

- .1 inform all States that have signed this Convention, or acceded thereto, of:
 - .1.1 each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;
 - .1.2 the date of entry into force of this Convention;
 - .1.3 the deposit of any instrument of denunciation from this Convention, together with the date on which it was received and the date on which the denunciation takes effect; and
 - .1.4 other declarations and notifications received pursuant to this Convention; and
- .2 as soon as this Convention enters into force, transmit the text thereof to the Secretariat of the United Nations, for registration and publication in accordance with Article 102 of the Charter of the United Nations.

ARTICLE 21

Languages

This Convention is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

DONE AT HONG KONG, CHINA, this fifteenth day of May, two thousand and nine.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments for that purpose, have signed this Convention.

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