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Shipbreaking in Developing Countries: A Requiem for Environmental Justice from the Perspective of Bangladesh, by Md Saiful Karim
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Shipbreaking is the process of dismantling or demolishing a ship to extract raw materials, such as steel, or equipment that can be reused such as engines and batteries.¹ Shipbreaking is a dirty and dangerous business.² Workers use handheld blowtorches, cutters and other tools to dismantle decades-old vessels, and they often carry jagged scrap metal with their bare hands to recycling sites.³ The dismantling process exposes workers to toxic paints, asbestos, and hazardous wastes, not to mention burns, cuts, and broken bones caused by falls.⁴ In the three South Asian countries where most shipbreaking occurs⁵ – Bangladesh, India, and Pakistan – ships are dismantled directly on the beaches, where unused fuels, oily wastes, chemicals and other hazardous substances discharge into the sea, creating severe marine pollution that contaminates local fisheries and swimming sites.⁶ These consequences of shipbreaking, and the failure of the legal system to prevent them, are the focus of Md Saiful Karim’s book, *Shipbreaking in Developing Countries: A Requiem for Environmental Justice from the Perspective of Bangladesh*.

Karim provides a systematic analysis of the international and Bangladeshi national legal regimes that fail to regulate the shipbreaking industry or address the environmental injustice associated with the practice. The book details how international environmental laws have neglected the consequences of shipbreaking, and it illustrates how international maritime law, despite the adoption of the Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships (Hong Kong Convention)⁷ has similarly failed to mitigate the risks to human health and the environment that shipbreaking causes. Sadly, as the book shows, Bangladeshi law has failed to address the gaps and prevent the profound injustice exacted upon labourers and communities that depend upon income and resources from shipbreaking. While the book ends with some proposed legal reforms, it serves primarily as a useful case study of how environmental injustice persists despite international and national laws which should otherwise prevent it.

¹ P. Gwin, ‘The Shipbreakers’, *National Geographic*, May 2014, available at: <https://www.nationalgeographic.com/magazine/2014/05/The-Ship-Breakers>.

² Ibid.

³ Ibid.

⁴ Ibid.

⁵ NGO Shipbreaking Platform, ‘The Problem’, available at: <https://www.shipbreakingplatform.org/our-work/the-problem>. China and Turkey also have sizeable shipbreaking industries, but their operations are reportedly cleaner and better regulated: *ibid*.

⁶ *Ibid.*; Gwin, n. 1 above.

⁷ Hong Kong (China), 19 May 2009, not in force, IMO Doc. SR/CONF/45, available at: <http://www.imo.org/en/OurWork/Environment/ShipRecycling/Pages/Default.aspx>.

The introductory chapter explores the factors that led to the transition of the industry from developed countries to developing countries, including the costs of complying with environmental, health and safety requirements in developed countries; the much cheaper labour costs and weaker regulatory systems in developing countries; and the ever-increasing demand for steel in some developing countries, which depend upon old ships for a significant portion of their steel supplies. The chapter then documents the harm caused by the shipbreaking industry, particularly in Bangladesh, which has become one of the world's epicentres for poorly regulated shipbreaking. The harm includes pollution of coastal waters, unregulated disposal of hazardous wastes, and grossly unsafe working conditions, which have led to numerous deaths. The chapter makes a clear case that the severe impact of the shipbreaking industry on the marine environment and human life necessitates an effective legal regime to bring about environmental justice.

Chapter 2 then defines 'environmental justice' and argues that international and national laws should, at least in their concept, ensure that such justice is realized. In its simplest form, environmental justice means that all people, regardless of their race, class, nationality or other characteristics, deserve equal protection from environmental harm and enforcement of environmental standards. The chapter emphasizes that socio-economic inequality is a key factor of environmental injustice and must therefore be addressed thoroughly in any attempt to restore environmental justice. In defining environmental justice, Karim also applies economist Amartya Sen's 'idea of justice',⁸ or the concept of comprehensive realized justice, which posits that people should enjoy the freedom to live a life they have reason to value. Karim then uses international human rights instruments – such as the Universal Declaration of Human Rights,⁹ the International Covenant on Civil and Political Rights,¹⁰ and the International Covenant on Economic, Social and Cultural Rights¹¹ – to advocate the integration of socio-economic considerations in environmental justice. This integration, Karim argues, should require international law to afford citizens of developing countries enhanced environmental protection, since these citizens typically lack the political or economic power to campaign for justice on their own. The author also applies the basic principles of international environmental law, including the sustainable development principle and the principle of pollution prevention, to argue that international law already embraces concepts of environmental justice. Turning to national law, the book illustrates that Bangladeshi law seems to recognize some form of right to environmental justice through the socio-economic and fundamental rights protected under Part II of the Bangladesh Constitution, 'Fundamental Principles of State Policy'.¹²

⁸ A. Sen, *The Idea of Justice* (Harvard University Press, 2009).

⁹ Paris (France), 10 Dec. 1948, GA Res. 217A (III), UN Doc. A/810, 71, available at: <http://www.un.org/en/universal-declaration-human-rights>.

¹⁰ New York, NY (US), 16 Dec. 1966, in force 23 Mar. 1976, available at: <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

¹¹ New York, NY (US), 16 Dec. 1966, in force 3 Jan. 1976, available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>.

¹² Constitution of the People's Republic of Bangladesh, 4 Nov. 1972, in force 16 Dec. 1972, available at: http://bdlaws.minlaw.gov.bd/pdf_part.php?id=367. Part II of the Bangladesh Constitution provides the

The chapter concludes by establishing that the shipbreaking industry in developing countries causes environmental injustice, where the deprived workers of the industry are the victims.

Chapter 3 criticizes the international environmental conventions that have failed to address environmental injustice by preventing marine pollution from the shipbreaking industry in developing countries. In order to document their respective failures to regulate the industry adequately, the author analyzes the United Nations Convention on the Law of the Sea (UNCLOS),¹³ the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention),¹⁴ the International Convention for Prevention of Pollution from Ships (MARPOL Convention),¹⁵ and the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (Rotterdam PIC Convention).¹⁶ Karim first notes that UNCLOS has no provisions applicable specifically to the shipbreaking industry and thus provides no means to remedy the injustices experienced in Bangladesh and other developing countries. Although theoretically the Basel Convention could provide a mechanism to control hazardous wastes, its definition of ‘hazardous wastes’ does not expressly include shipbreaking or ship recycling, which has hampered attempts to use this Convention to ensure environmentally sustainable management of the shipbreaking industry. The MARPOL Convention is similarly ambiguous, and thus ineffective. Although it contains provisions for the control of marine pollution from ships, it does not clearly apply to a ship on its final voyage to a shipbreaking destination. Finally, the Rotterdam PIC Convention lists a number of chemicals for which informed consent from the importing country is compulsory, but obsolete ships are not considered waste and thus are not regulated. One by one, this chapter thus systematically examines the potential international laws that could – and arguably should – apply to shipbreaking, and yet do not.

Chapter 4 then discusses the development of the international legal regime for shipbreaking under the International Maritime Organization (IMO), responsible for regulating maritime shipping and transport. However, as with the relevant international environmental laws, the IMO legal regime has long ignored shipbreaking. While the Hong Kong Convention¹⁷ – which aims to prevent, reduce, minimize, and even eliminate adverse effects of ship recycling on human health and the environment – could provide some relief, it too is inadequate. The Convention requires the shipbreaking industry to have adequate shipbreaking facilities without specifying what adequate

fundamental principles of state policy that are not judicially enforceable, but these principles are fundamental for the governance of Bangladesh.

¹³ Montego Bay (Jamaica), 10 Dec. 1982, in force 16 Nov. 1994, available at: http://www.un.org/depts/los/convention_agreements/texts/unclos/closindx.htm.

¹⁴ Basel (Switzerland), 22 Mar. 1989, in force 5 May 1992, available at: <http://www.basel.int>.

¹⁵ London (UK), 2 Nov. 1973, in force after the 1978 London Protocol on 2 Oct. 1983, available at: [http://www.imo.org/about/conventions/listofconventions/pages/international-convention-for-the-prevention-of-pollution-from-ships-\(marpol\).aspx](http://www.imo.org/about/conventions/listofconventions/pages/international-convention-for-the-prevention-of-pollution-from-ships-(marpol).aspx).

¹⁶ Rotterdam (The Netherlands), 11 Sept. 1998, in force 24 Feb. 2004, available at: <http://www.pic.int>.

¹⁷ N. 7 above.

facilities are in practice. Moreover, the Convention does not require exporting states to pre-clean ships before dumping them in a developing country, even though pre-cleaning could be an effective means of preventing hazardous wastes and harmful chemicals from polluting shipbreaking countries. Finally, the Hong Kong Convention has not yet entered into force, so its potential benefits remain elusive. Thus, as with the previous chapter, this chapter presents a compelling case that the international legal regime for shipbreaking also fails to ensure environmentally sustainable management of shipbreaking industries.

Chapter 5 then turns its lens towards Bangladesh to show how its legal and institutional framework for shipbreaking industries perpetuates environmental injustice by failing to prevent gross violations of environmental and labour laws. Although Bangladesh has a number of laws that could conceivably regulate shipbreaking – which include the Environmental Conservation Act,¹⁸ the Coast Guard Act,¹⁹ the Merchant Shipping Ordinance,²⁰ and the Territorial Waters and Maritime Zones Act²¹ – none specifically applies to shipbreaking; nor do its labour laws. Karim argues that accidents in the shipbreaking industry in Bangladesh result from gross negligence on the part of employers, which should result in criminal liability. However, as with the Bangladeshi environmental laws, its labour laws offer no relief. Indeed, Karim notes that Bangladeshi laws are far less protective than those of India, which impose absolute liability for causing harm to workers in its shipbreaking industry. Thus, the chapter concludes that the laws of Bangladesh, like the relevant international laws, are inadequate to prevent environmental injustice caused by its shipbreaking industry.

Chapter 6 concludes by arguing that the failure of the international and national regulatory frameworks for the shipbreaking industry victimizes the impoverished shipbreaking workers and is damaging the marine environment of the coastal area, neither of which has any voice or influence. This legal vacuum has perpetuated ongoing environmental injustice caused by the shipbreaking industry.

As indicated by the title, *Shipbreaking in Developing Countries: A Requiem for Environmental Justice from the Perspective of Bangladesh*, the book offers neither optimism nor much of a way forward. Rather, its key contribution is to demonstrate how socio-economic conditions, combined with a fundamentally inadequate legal regime, have led to profound environmental injustice in the shipbreaking industry. Karim does not provide any specific recommendations for resolving the gaps in the international conventions and Bangladeshi laws; nor does the analysis clarify whether the international conventions concerning the prevention of marine pollution or the Hong Kong Convention could or should play a key role in ensuring environmental justice in the shipbreaking industry in the future. Despite these gaps, the book offers a necessary and sober look at how international and national laws have failed the

¹⁸ Act No. 1 of 1995, 30 May 1995, available at: <http://extwprlegs1.fao.org/docs/pdf/bgd42272.pdf>.

¹⁹ Act No. 26 of 1994 13 Dec. 1994, available at: <https://www.sai.uni-heidelberg.de/workgroups/bdlaw/1994-a26.htm>.

²⁰ Ordinance No. XXVI of 1983, 30 June 1983, available at: http://bdlaws.minlaw.gov.bd/pdf_part.php?id=642.

²¹ Act No. XXVI of 1974, 14 Feb. 1974, available at: http://bdlaws.minlaw.gov.bd/pdf_part.php?id=467.

workers, the communities, and the environments in developing countries that host most of the world's shipbreaking businesses.

Ashrafal Alam
Western Sydney University, Sydney (Australia)