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Two Roads for Hong Kong Convention to Enter into Force



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At the beginning of this year it appeared that the prospects of Hong Kong Convention's entry into force were not too bright. At that time there had been only six ratifications/accessions, the last of these having been deposited almost two years earlier, in April 2017.

As we approach the 10th anniversary of the adoption of Hong Kong Convention, four new Contracted States were added in quick succession, first with ratifications by Turkey and the Netherlands on January 21 and February 20 and then by the accessions of the Republic of Serbia and of Japan on the 20 and 27 of March.

Japan's accession to the Convention is a milestone for a number of reasons. As the 10th Contracting State, Japan brings to the Convention its large merchant fleet. Also, being the first Asian Contracting State, Japan now encourages other Asian shipping countries to formally acknowledge that the Convention is the only available practical and workable global standard for the recycling of ships.

Over the last 13 years Japan has devoted tremendous effort and resources, first in the development, and then in the promotion and the voluntary implementation of Hong Kong Convention and of its Guidelines. Without Japan's effort the Convention would probably have been less well developed and also, we may not have witnessed the radical transformation of India's scrapyards into a modern and Hong Kong Convention compliant ship recycling industry. Japan's accession has brought the Convention's entry-into-force closer.

Let us consider the provisions for entry-into-force: Hong Kong Convention will enter into force 24 months after the date on which all three criteria are met:

- (1) 15 States or more have acceded to it or ratified it;
- (2) whose fleets amount to at least 40 percent of world merchant shipping by gross tonnage; and
- (3) whose recycling facilities' combined maximum annual ship recycling volume during the preceding 10 years is at least three percent of the gross tonnage of the contracting States.

IMO Conventions usually have, either one condition for entry into force (for example the entry-into-force provisions of the Nairobi Convention on the Removal of Wrecks is simply 12 months after 10 States have acceded to it or ratified it), or more frequently two (one example being the Ballast Water Management Convention which specifies that entry-into-force will take place 12 months after 30 States have acceded to it or ratified it, whose fleets constitute not less than 35 percent of the world's merchant shipping by gross tonnage).

The Hong Kong Convention is unusual in having a third condition which ensures that there is adequate ship recycling capacity for the fleets of Contracting States before the Convention can enter into force. Interestingly, this condition works in one direction only: it ensures that there is proportionate (three percent or more) recycling capacity for the needs of the fleets of Contracting States, but it does not ensure that there will be sufficient tonnage in the fleets of Contracting States to provide a sufficient market for the ship recycling industries of Contracting States. This mechanism creates the unintended effect of restraining large flag States from acceding to the Convention in case too much tonnage accumulates under the second condition (i.e. well over the required minimum of 40 percent) and thus making it difficult to meet the third condition.

Recently, Germany and Estonia have both secured their accession to Hong Kong Convention through their Parliaments and should be delivering their instruments of accession to the IMO very soon. Also, Malta and India are known to be making progress and are expected to deliver their instruments of accession within 2019. These four countries would bring the tonnage of the 14 Contracting States to 30 percent of the world's fleet, while also the third condition would still not be satisfied.

If China was also to accede to the Convention, it would add its fleet which amounts to 3.8 percent of the world's fleet. If Hong Kong was to accede at the same time as China this would add another 8.8 percent of the world's fleet, which would satisfy the second condition. Furthermore, although China banned the import of ships for recycling from the beginning of 2019, it still has substantial legacy recycling capacity from 2012 and 2013 which will last until 2022 before it starts diminishing. This capacity is presently sufficient for the third condition to be satisfied and for the Convention to enter-into-force 24 months thereafter.

While waiting for China's decision, flag States such as Liberia and Marshall Islands (each with a fleet of around 11 percent of the world's tonnage) who may be ready and willing to accede to Hong Kong Convention are unfortunately restrained from accession in case their action violates the third condition.

If on the other hand China continues to show no signs that it is willing to accede to the Convention, then accession by Bangladesh will provide the necessary recycling

capacity to comfortably satisfy the third condition, in which case accession by Liberia or the Marshall Islands will fulfill the second condition.

As however the standards of most of the ship recycling industry in Bangladesh are well below the requirements of the Convention, the government of Bangladesh as well as the ship recycling yards will need to invest in the proper training of the workforce; in the creation of a facility for the treatment, storage and disposal of hazardous wastes; and in improvements in the infrastructure and working methods in the yards. To accelerate compliance to the requirements of the Convention, international technical assistance may need to be provided to Bangladesh.

In conclusion, following Japan's accession, it appears that the entry-into-force conditions of Hong Kong Convention could be satisfied even within 2019 and therefore the Convention could enter-into-force two years later.

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The opinions expressed herein are the author's and not necessarily those of The Maritime Executive.

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