

# THE IMO GUIDELINES ON SHIP RECYCLING *ANNOTATED*

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Basel Action Network (BAN)

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## Introduction

The shipbreaking issue has taken on a new level of recognition at the international stage. With the spate of cases such as the case US Maritime Administration's "Ghost Fleet" of dilapidated vessels being sent to the United Kingdom for recycling, and the United Kingdom's own vessel, *Genova Bridge*, going to Alang, India for breaking, the legality of such export has taken on greater attention than ever before.

Greenpeace and BAN have both been intensely engaged in bringing this once obscure issue into the light of public scrutiny, and in seeking solutions to the shipbreaking issue. Greenpeace and BAN, are thus, keenly interested in achieving a coherent and decisive global approach to this problem, one of which is to realize a cohesive set of legally binding instruments from all relevant international bodies addressing the issue, i.e. the Basel Convention, the IMO, and the ILO.

However, of all of the instruments currently in place that impact this issue, the Basel Convention is the only one

that is a) legally binding, and b) is in a clear position to actually minimize the export of ships containing hazardous materials to developing countries, and thus is the only instrument well placed to quickly prevent more impoverished workers from being poisoned or otherwise killed from risks associated with hazardous wastes such as flammable materials, carcinogens, etc.

Further, the Basel Convention clearly places responsibility on the polluter – the generator and owner of such waste, in the case of post consumer wastes.

The present IMO guidelines appears to be an elaborate exercise to protect the shipping industry from responsibility by pretending that the Basel Convention, its obligations and decisions, has little scope over ships-as-hazardous-waste (a position that is legally indefensible). Even more egregious from a moral point of view, is that the present guidelines pass the burden for economically motivated toxic waste export on the "recycling state" – these are the developing countries that to this day the shipping industry has seen fit to exploit.

The exploitation of substandard facilities in these "recycling states" was based on the fact that they did NOT have adequate facilities making them far less expensive which in turn assured that these facilities would receive the business of the shipping industry. Thus, the IMO guidelines create a perverse situation where the ultimate responsibility is born by the communities of workers and their families that toil in these ship recycling facilities, while the shipping industry, the recipient of the bounty of inexpensive ship disposal because of the absence of any health

and safety infrastructure in these facilities, are meekly reminded by the IMO guidelines of their duty to help solve the problem.

It is now an established principle of international law that polluters are responsible for the waste they produce, likewise exporters of hazardous wastes bear responsibility for not exporting such wastes and for being ultimately liable for its risk.

The IMO Draft Guideline seems intent on overturning or ignoring these fundamental guiding principles embodied in the Basel Convention.

We, thus have serious concerns about the glaring incongruity and ignorance shown by the present IMO Guidelines on Shiprecycling (IMO Guidelines) with respect to the Basel Convention and its respective guidelines on Shipdismantling (Basel Convention).

We have therefore presented an annotated version of the IMO Guideline. There are three main areas of inconsistencies: prior-decontamination; ships as wastes; and role of state Parties to both Basel and the IMO.

## **General Comments**

### *Prior Decontamination and Export of Hazardous Wastes*

As mentioned above, the morally egregious attempt to place the responsibility of the export and dumping of toxic wastes on developing countries on developing countries themselves is the fundamental agenda of this guideline. This is found most obviously

in the constant avoidance of the principle of decontamination prior to export.

The IMO Guideline was drafted with assumptions that hazardous wastes on board end-of-life vessels should be addressed primarily by the recycling state, and that the transboundary movement of these wastes not be curtailed. With these assumptions, the IMO Guidelines side steps the issue of prior decontamination as required under the Basel Guidelines on Ship Dismantling, and the Basel obligation to minimize transboundary movement of hazardous wastes.

The failure to address the issue of prior-decontamination leads to the support of the proposition, which is most glaring in the Section of the Green Passport, that hazardous wastes in end-of-life vessels can be legally transported across international borders without complying with Basel principles and obligations. Doing this with a misleading term of Green Passport is cynical in the extreme. With such a term the shipping industry is not going to stop exporting poisons but rather are now simply going to give you better information about them. Not only are these assumption an affront to the Ban Amendment, there is even the absence of minimum notification and consent requirements as required by the Basel Convention.

One of the key points in reconciling the IMO Guidelines and the Basel Convention is the need for the IMO Guidelines to first accept and afterwards strongly address and implement the prior-decontamination issue.

## *Ships as Waste*

There is a prevailing sentiment within the IMO that ships cannot become a waste. We call it a sentiment because it is nothing more than legal wishful thinking. This sentiment is found throughout the text of the IMO Guidelines making them fundamentally flawed and seemingly ignorant. This is found in the definition of "operating life of a ship". The term and the definition itself are misleading as both concepts proffer the idea that a ship cannot be a waste while it is functional or operational. This concept is in opposition to the Basel Convention, since the Convention defines objects as wastes when they are disposed of or intended to be disposed of or is required to be disposed of by national law, and not by the objects worthlessness or cessation of function.

The avoidance for the term "waste" throughout the document is another pathetic example of the head-in-sand, attempt to ignore the Basel Convention approach. A glaring example is in the definition of "hazardous materials", where the definition includes reference to the definition of the Basel Convention. The Basel Convention defines "hazardous wastes and other wastes" but not hazardous materials. It is clear that IMO Guidelines must refer to wastes, but does not wish to utilize the term as if the IMO can re-define its way out of the Basel Convention's scope.

The state of an object, such as a vessel, becoming or being a waste cannot be simply avoided or be manipulated by using longer names or phrases. The term "waste" has international legal

significance; the Basel Convention holds the collective authority to this. The minimum the IMO should do is to synchronize its definitions and concepts with the Basel Convention.

## *Legal Deflection away from Those Truly Responsible*

The draft IMO Guidelines places large responsibility on the shipbreaking issue to the "recycling states" to handle all of the hazardous wastes contained in the scrap vessels. This unequal distribution of responsibility attempts to shield state Parties to Basel who are ship owners or who have control over corporate ship owners from their responsibility to prevent the problems currently of crisis proportions today in shipbreaking.

The burden placed by the IMO Guidelines on "recycling states" flies in the face of the established principles of international law, which makes polluters responsible. With post-consumer wastes, such as obsolete vessels, the polluter is clearly recognized as the generator or owner of the waste and not its recycler. This principle is established in EU law with producer responsibility legislation now applicable to the auto and electronics industry. This principle of upstream responsibility is likewise established in the Basel Convention. The primary responsibility of the Basel Convention lies with the "State of Export" which in the case of ships can be imputed to be Port States, flag states, and states with jurisdiction over an owner or holder.

Further, the Basel Ban Amendment (which the IMO Guideline fails to even

recognize the Basel Ban which has been embodied in 3 decisions of the Convention and already is in de facto force for the majority of the world's hazardous wastes ( a notable exception being vessels). The Basel Ban recognizes the inequality of resources and capacity among developed and developing countries, and in an effort to bridge this gap and eliminate environmental injustice, it seeks to prevent all export of hazardous wastes from OECD to non-OECD member countries. As most "recycling states" are developing countries, the IMO Guidelines clearly run counter to the principle of the Ban Amendment.

Another consequence is that without a clear imputation of the responsibility of ship owners and flag States, the IMO Guidelines superficially attempts to address the problem of green design. The present draft provides little incentive on owners for demanding ships that are not toxic and thus will not be impacted by the restrictions in place on their export found in the Basel Convention.

## **Specific Comments**

Our specific comments to the IMO Guidelines are contained in the attached document, enclosed in text boxes with yellow highlight.

Greenpeace and BAN believes that the IMO Guidelines, while containing some excellent provisions, is at its heart, an effort to deflect responsibility away from the shipping industry (the polluter in this case) to its victims (developing countries and communities). The Basel Convention on the other hand is a legally binding instrument that has

sought to do precisely the opposite – to hold waste generators accountable through state action to prevent the exploitation of developing countries. It is time for the IMO to get its head out of the sand and recognize the established principles of international law with respect to environmental justice and producer responsibilities. Only then can the the gap of inconsistency between the existing draft and the Basel Convention and its Guidelines be closed and we can achieve a coherent set of international instruments to solve the shipbreaking crisis. The IMO can be a tremendous force in making this happen if it has the political will to do so.

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## 1 INTRODUCTION

1.1 Ships, at some stage, reach the end of their operating life. The life cycle for most ships, from “cradle to grave” or “makers to breakers”, gives a life span of operation of 20-25 years, or more. In 2001, the OECD noted an increasing casualty rate for older ships remaining in operation, especially for bulk ships and tankers. The steady withdrawal of older ships and their replacement by new tonnage, therefore, is a natural commercial process which provides the opportunity for the introduction of safer and more environmentally friendly designs, greater operating efficiency and a general reduction in marine risk.

1.2 In general, recycling is one of the basic principles of sustainable development. For the disposal of time-expired ships there are few alternatives to recycling. Lay-up only postpones the issue; there is only a limited opportunity to convert ships for other uses such as storage facilities, breakwaters or tourist attractions; scuttling, strictly controlled by the London Convention, gives no

opportunity for the steel and other materials and equipment in a ship to be recycled.

1.3 So, recycling is, generally, the best option for all time-expired tonnage. Furthermore, demand for ship recycling is expected to rise in the near future as ships, particularly oil tankers, which do not conform to the new international requirements set by the MARPOL Convention, reach the end of their commercial lives.

1.4 While the principle of ship recycling is sound, the working practices and environmental standards in the recycling facilities often leave much to be desired. Although responsibility for conditions in the recycling facilities has to lie with the countries in which they are situated, other stakeholders can contribute towards minimising potential problems related to health, safety and protection of the environment in the recycling facilities and should apply these Guidelines.

*It is an affront to all those that care about the environment and in global justice to read the statement above. Clearly, it is the lack of proper waste management and state infrastructure to ensure worker protections leading to cheaper costs that made the shipping industry exploit horrific waste management operations the first place. The issues of cheap labor are directly associated with poor environmental management, lack of medical, legal protections, etc. It is outrageous to put the onus on the poorest communities that are unable to improve conditions easily and who are desperate to alleviate poverty. This is particularly*

*outrageous when it is precisely these conditions that dictated the cheap disposal market that the shipping industry has sought to exploit. What is further omitted here is that the Basel Convention clearly places responsibility for ensuring environmentally sound management not just on the importing countries, but also on exporting states and on waste generators. Thus, when a transboundary movement of an end-of-life ship is involved and it contains hazardous waste, then responsibility lies not only with countries where the recycling facilities are situated but also on the exporting State, which covers states that have jurisdiction over the generator and exporter of the waste – the shipowners and the Flag state. This is an established principle of international law, wherever transboundary pollution is concerned, and yet the IMO appears to be willfully ignorant of this, and eager to place most responsibility on the country that is victimized by a shipping industry that has sought simply to find the cheapest labor markets on earth no matter what the consequence.*

1.5 These Guidelines have been developed to give guidance to all stakeholders in the ship recycling process. This includes flag, port and recycling States, authorities of shipbuilding and maritime equipment supplying countries, as well as relevant intergovernmental organisations and commercial bodies such as shipowners, shipbuilders, marine equipment manufacturers, repairers and recycling facilities. Additional stakeholders include workers, local communities, environmental and labour bodies.

1.6 These Guidelines seek to:

- .1 encourage recycling as the best means to dispose of ships at the end of their operating lives;
- .2 provide guidance in respect of the preparation of ships for recycling and minimising the use of potentially hazardous materials and waste generation during a ship's operationing life;
- .3 foster inter-agency co-operation; and
- .4 encourage all stakeholders to address the issue of ship recycling.

*The Guidelines should have more closely addressed the greening design of ships. While this is given a lot of rhetorical mention in the IMO Guidelines, there needs to be far more in the way of implementation of green design.*

1.7 In general, these Guidelines accept that the obligation for environmental and worker protection in ship recycling facilities must rest with the recycling facility itself and with the regulatory authorities of the country in which the recycling facility operates. Nevertheless, it is acknowledged that shipowners and other stakeholders have a responsibility to address the issues involved.

*This is perhaps the most egregious error of these guidelines. Again, it is a breach of responsibility and the height of hypocrisy to export vessels to the lowest wage communities and nations on earth and then state that the*

*responsibility for doing the job right rests with these poor communities. Had these shipbreakers in fact done the job right, and had the legal, governmental, medical and social infrastructure adequately existed in such countries, then the export would not have likely taken place. It is hypocrisy to first take advantage of a market made weak by cost externalities and then complain that it is the fault or responsibility of that market for not internalizing pollution costs. The polluter in this instance is the industry that has created the hazardous waste product, and those that seek to avoid the "Polluter Pays Principle" through exploiting weaker economies must be made fully responsible.*

*The shipbreaking problem is a global environmental problem. By squarely placing responsibility of this environmental problem on the shoulders of the importing or shipbreaking state, these Guidelines effectively shield the generators of the waste, the shipowners, exporting states and flag states, from any responsibility over this problem. The polluter pays principle and product stewardship principle, assert a primary responsibility for end-of-life management of wastes with those producing and who have profited from the product in the first instance. This has now been accepted in the electronics and automobile and other industries. The growing trend worldwide is for producers of products to take full life-cycle responsibility. Further, the Basel Convention often requires more from Parties, considering that State Parties to the Convention may at times be ship owners, or may assume jurisdiction over other entities such as waste brokers or ship*

*management companies.*

*The following provisions of the Basel Convention obligations affects Parties as ship owners or as other stakeholders:*

- 1. Art. 4 2(e) – the obligation not to allow hazardous wastes to be exported to a State, if the exporting Party has reason to believe that the waste will not be managed in an environmentally sound manner.*
- 2. Art. 4(2)(a) – the obligation to ensure that the generation of hazardous wastes within it is reduced to a minimum. Therefore, it is not just the obligation to ensure that the recycling facilities can properly handle the hazardous wastes, but that the generation of these wastes be minimized even before recycling.*
- 3. Art. 4(2)(d) – the obligation to ensure that the transboundary movement of hazardous wastes be reduced to the minimum. This obligation clearly discourages Parties/Shipowners from sending their time-expired vessels without the decontamination of hazardous wastes it contains to other states.*
- 4. Art. 4(2)(b) – the obligation to ensure the availability of adequate disposal facilities within its boundaries. This obligation is linked to Art. 4(2)(d), as a Party/Shipowner, the Convention requires self-*



*sufficiency in the hazardous wastes it generates.*

*Even if Parties are not shipowners themselves or take on the role of other stakeholders, the Convention under Art. 4(4) require those Parties to take appropriate legal, administrative and other measures to implement and enforce the provisions of the Convention. This is a specific obligation requiring the Parties to translate its Basel obligations into domestic law or application, ultimately, passing the same obligations mentioned above to shipowners and other stakeholders, as it is applicable.*

## 2 APPLICATION

2.1 These Guidelines have been developed to provide guidance to flag, port and recycling States, shipowners, shipbuilders, marine equipment suppliers, and recycling facilities as to “best practice”, which takes into account the ship recycling process throughout the life cycle of the ship.

2.2 They take into account the "Industry Code of Practice on Ship Recycling"\* and complement other international guidelines addressing this issue; notably those produced by the Conference of Parties to the Basel Convention on the Control of Transboundary Movements of

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\* In co-operation with other industry organizations, ICS has produced the "Industry Code of Practice on Ship Recycling", outlining the measures that shipowners should be prepared to take prior to recycling (see [www.marisec.org/recycling](http://www.marisec.org/recycling)).

Hazardous Wastes and their Disposal focusing on issues related to ship recycling facilities\*\* and those of the International Labour Organization addressing working conditions at the recycling facilities.\*\*\*

*Note the Basel Guideline on Ship dismantling focuses not only on the recycling facilities but also mentions the need for environmentally sound practices prior to dismantling, particularly decontamination of the ship before its final voyage for scrapping.*

Further information on these above-mentioned guidelines is provided in sections 9.5 and 9.6 of these Guidelines. The provisions of other international instruments, or work of their governing bodies, may be applicable to those ship recycling activities addressed by these guidelines. The Montreal Protocol on Substances that Deplete the Ozone Layer, the Stockholm Convention on Persistent Organic Pollutants (POPs), the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (London Convention 1972) and the United Nations Convention on the Law of the Sea are relevant.

## 3 DEFINITIONS

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\*\* Technical Guidelines for the Environmentally Sound Management of the Full and Partial Dismantling of Ships adopted by the Sixth Meeting of the Conference of Parties to the Basel Convention on 13 December 2002, (see [www.basel.int](http://www.basel.int)).

\*\*\* [Draft] Guidelines on Safety and Health in Shipbreaking developed by the International Labour Organization (ILO), (see [www.ilo.org/public/english/protection/safework/sectors/shipbrk/index.htm](http://www.ilo.org/public/english/protection/safework/sectors/shipbrk/index.htm)).

For the purpose of these Guidelines:

*Administration* means the Government of the State under whose authority the ship is operating. With respect to a ship entitled to fly the flag of a State, the Administration is the Government of that State. With respect to fixed or floating platforms engaged in exploration and exploitation of the sea-bed and subsoil thereof adjacent to the coast over which the coastal State exercises sovereign rights for the purpose of exploration and exploitation of their natural resources, the Administration is the Government of the Coastal State concerned.

*Existing ship* means a ship which is not a new ship.

*Hazardous material* means materials posing harm to human health or the environment identified in the IMDG Code, the Basel Convention, or other international authorities or instruments.

*The Basel Convention does not regulate hazardous materials, but rather hazardous wastes. Moreover, the Basel Convention may consider an entire ship to be a hazardous waste.*

*New ship* means a ship:

.1 for which the building contract is placed on or after 31 December 2003; or

.2 in the absence of a building contract, the keel of which is laid or which is at a similar stage of construction on or after 30 June 2004; or

.3 the delivery of which is on or after 31 December 2006.

*Organization* means the International Maritime Organization (IMO).

*Recycling facility* means a site, yard or facility used for the recycling of ships which is authorized or permitted for this purpose by the competent authority of the State where the site, yard or facility is located (Recycling State).

*Ship* means a vessel of any type whatsoever operating in the marine environment and includes hydrofoil boats, air-cushion vehicles, submersibles, floating craft and fixed or floating platforms and a vessel that has been stripped of equipment or is towed.

*Shipowner* means the person or persons or company registered as the owner of the ship or, in the absence of registration, the person or persons or company owning the ship. However, in the case of a ship owned by a State and operated by a company which in that State is registered as the ship's operator, "owner" shall mean such company. This term also includes those who have ownership of the ship for a limited period pending its sale to a recycling facility.

*Ship Recycling* means all associated operations including, mooring or beaching, dismantling, recovery of materials and reprocessing.

*The operating life* of a ship means the time when it is capable of performing its current functions.

*This definition may in fact be in contradiction to the Basel Convention in that one might conclude here that an operating ship is not a waste. According to the Basel Convention, a ship becomes a waste when it is disposed of or intended to be disposed of – the definition of waste does not depend on whether the object is operating, functioning or continues to generate income for its owner. (Art. 2(1))*

#### **4 IDENTIFICATION OF POTENTIALLY HAZARDOUS MATERIALS**

4.1 The principal materials of a ship (e.g., steel, aluminium) are not an overriding concern from the standpoint of human health or marine pollution. However, there are a number of potential sources of concern that should be addressed such as:

- .1 fuel, lubricants, and coolants;
- .2 floatable materials (e.g., plastics, Styrofoam insulation);
- .3 materials possibly containing PCBs such as wiring insulation;
- .4 sludges;
- .5 harmful aquatic organisms in ballast water; and, currently (on older ships)
- .6 asbestos used as insulation material and in accommodation panelling.

4.2 Items on ships that may potentially contain substances of concern include:

- .1 electrical equipment (e.g., transformers, batteries, accumulators);
- .2 coolers;
- .3 scrubbers;

- .4 separators;
- .5 heat exchangers;
- .6 storage facilities for production and other chemicals;
- .7 tanks, diesel tanks including bulk storage tanks;
- .8 stored solvents, and other chemical stocks;
- .9 paints;
- .10 electrical cabling installed before 1975 (plastic covering may contain PCBs);
- .11 sacrificial anodes;
- .12 fire extinguishing and fire fighting equipment;
- .13 piping, valves and fittings;
- .14 pumps and compressors;
- .15 engines and generators;
- .16 oil sumps;
- .17 hydraulic systems; and
- .18 light fittings and fixtures.

4.3 In identifying potentially hazardous materials on board ships, there are two key lists to consider for guidance, which are set out as Appendices 1 and 2 to these Guidelines Appendix 1 is based on the "List of Hazardous Wastes and Substances under the Basel Convention that are relevant to Ship Dismantling" (Appendix B to the "Technical Guidelines for the Environmentally Sound Management of the Full and Partial Dismantling of Ships"), and Appendix 2 is based on the list of "Potentially hazardous materials which may be on board vessels delivered to recycling yards" (Annex 1 of the "Industry Code of Practice on Ship Recycling").

#### **5 GREEN PASSPORT**

5.1 The Green Passport for ships is a document facilitating the application

of these Guidelines providing information with regard to materials known to be potentially hazardous utilised in the construction of the ship, its equipment and systems. This should accompany the ship throughout its operating life. Successive owners of the ship should maintain the accuracy of the Green Passport and incorporate into it all relevant design and equipment changes, with the final owner delivering the document, with the ship, to the recycling facility.

*The title "Green Passport" is misleading and cynical. No hazardous waste is eliminated from the ship through the use of the passport, thus, the term "green" should not be used. The term passport implies that it is cleared for sailing without problems. Again this highly misleading when all it is, is an inventory of the problems that remain on board. This should simply be called Hazard Inventory or Toxic Inventory and in fact NO contaminants should be on board when the ship is delivered to the recycling yards. This decontamination prior to export principle would equate to a genuine Green Passport. The way it is used here is simply a "green wash".*

5.2 The Green Passport should contain, at least, the following information:

.1 Ship details:

- .1 the name of the State whose flag the ship is entitled to fly;
- .2 the date on which the ship was registered with that State;
- .3 the date on which the ship ceased to be registered with that State.

- .4 the ship's identification number (IMO number);
- .5 Hull number on new-building delivery
- .6 the name and type of the ship;
- .7 the port at which the ship is registered;
- .8 the name of the shipowner and its address;
- .9 the name of all classification society(ies) with which the ship is classed;
- .10 the ship's main particulars (Length overall (LOA), Breadth (Moulded), Depth (Moulded), Lightweight);
- .11 Shipbuilder name and address;

.2 Inventory of the materials known to be potentially hazardous, containing the location and the approximate quantity/volume of each identified material onboard the ship, split into the following parts:

- Part 1 - Potentially hazardous materials in the ship's structure and equipment
- Part 2 - Operationally generated wastes
- Part 3 - Stores

5.3 Any changes relating to the entries referred to in paragraph 5.2 should be recorded in the Green Passport so as to provide updated and current information together with the history of the changes.

5.4 Ship details referred to in paragraph 5.2.1 should be included in the Green Passport by the shipowner.

5.5 Part 1 of the Inventory of potentially hazardous materials should be prepared:

.1 for new ships by the shipbuilder, in consultation with the equipment manufacturers, at the construction stage and passed to the shipowner;

.2 for existing ships by the shipowner, as far as is practicable and reasonable, by reference to ship's plans, drawings, manuals, technical specifications and ship stores manifests, in consultation with the shipbuilder, equipment manufacturers and others as appropriate.

5.6 Parts 2 and 3 should be prepared by the shipowner prior to the final voyage to the recycling facility.

5.7 The format contained in Appendix 3 may be used as a model for the preparation of the Inventory referred to in paragraph 5.2.2.

5.8 Administrations, designers, shipbuilders, and equipment manufacturers should take measures to facilitate the preparation of the Green Passport.

## **6 PROCEDURES FOR NEW SHIPS RELATED TO SHIP RECYCLING**

### **6.1 Minimization of hazardous substances used in the construction of new ships and their equipment**

6.1.1 Some of the problems associated with ship recycling might be addressed at the design and construction stage, not only in relation to the ships themselves

but also in respect of ships' equipment. The first step is to identify any potentially hazardous materials which might be incorporated, as a matter of routine, in the structure of ships and their equipment (see Section 4) and, where practicable, consider using less hazardous alternatives.

*The obligation found in the Basel Convention to minimize the generation of hazardous wastes affects the design of the waste generating activity, and not just the operation. Art. 4(2)(a) is a continuing obligation to ensure minimization of hazardous waste generation. This obligation does not establish a minimum floor level confirming compliance, but rather a constant requirement to minimize. The Convention requires Parties to seek not only "end-of-pipe" solutions but also "upstream" solutions, e.g. green design. And Art. 4(4) requires Parties to translate this obligation into national or domestic application.*

*The statement in the IMO report fails to properly reflect the obligatory nature of this principle. This paragraph would have been more suitably worded as follows:*

*"The first step is to identify any potentially hazardous materials which might be incorporated into a ship's structure or equipment or coatings, for any reason, including substances that might become hazardous upon further recycling, combustion or land disposal. Second, all effort must be made to find less hazardous*

*substitutes for such hazardous materials, unless the only less toxic substitutes create a hazard to crew safety or navigation.”*

6.1.2 The second step is to minimize hazardous materials generated during the operating life of a ship and at the end of a ship's life. Shipbuilders should already be aware of the need to minimize emissions and hazardous wastes to a level as low as reasonably achievable.

6.1.3 The initial stages might include an evaluation of:

- .1 the type, amount and potential hazard of materials utilised and their location on board a ship;
- .2 the activities expected during the operation of the ship and any potentially hazardous wastes which might be generated; and
- .3 the feasibility of addressing the potential for hazardous waste generation by considering:
  - .1 product reformulation installing components utilising less potentially hazardous materials;
  - .2 cleaner production technologies which generate less wastes;
  - .3 process modification to generate less waste;
  - .4 input substitution utilising less potentially hazardous consumables or those which generate less waste; and
  - .5 on-site, closed-loop recycling systems that recycle wastes on board the ship.

6.1.4 Ship designers and shipbuilders are encouraged to take due account of the ship's ultimate disposal when designing and constructing a ship, by:

- .1 using materials which can be recycled safely and environmentally sound; and
- .2 minimising the use of materials known to be potentially hazardous to health and the environment.

6.1.5 In general terms, if opportunities exist, ship or equipment designers should recommend designs to ship operators that minimise or prevent waste at source and at the end of the operating life of the ship. Similarly, shipowners and operators should ask for such design considerations for new buildings and retro-fits.

6.1.6 Administrations and the competent authorities of ship building States are encouraged to advise shipbuilders to limit the use of hazardous materials in the construction of ships.

6.1.7 The competent authorities of ship building States have a role in encouraging research into the use of less potentially hazardous materials in the construction of ships and promoting the use of techniques which, without compromising safety or operational efficiency, contribute towards the facilitation of the recycling operation.

*The encouragements under Sections 6.1.6 and 6.1.7 above is inconsistent with the Basel Convention. As discussed earlier under Art. 4(2)(a) of the Basel Convention, there is a continuing*

*continuing obligation on Parties to ensure the minimization of hazardous waste generation. Merely encouraging the adoption of green design does not fully meet the Basel Convention requirement of ensuring minimization. Parties as an obligation must institute green design or adopt cleaner production or technologies to prevent hazardous waste generation.*

6.1.8 Substances prohibited or restricted by international Conventions such as the Stockholm Convention on Persistent Organic Pollutants (POPs), the Montreal Protocol on Substances that Deplete the Ozone Layer, and the International Convention on the Control of Harmful Anti-Fouling Systems on Ships, should not be used in the construction, refit and repair of ships.

*Notice the double standard. Whereas IMO wishes not to recognize obligations of the Basel Convention, they have no problem recognizing obligations of Stockholm Convention or the Montreal Protocol.*

## **6.2 Design of ships and ships' equipment to facilitate recycling and removal of hazardous materials**

6.2.1 Ship designers and shipbuilders, without compromising safety or operational efficiency, should take due account of the ship's ultimate disposal when designing and constructing a ship, by considering:

.1 structural designs that could facilitate ship recycling;

.2 equipment designs that facilitate removal from ships during recycling;

.3 the use of structural materials that can be readily recycled;

.4 providing to the new owner a brief technical document advising on the optimal approach for recycling the ship;

.5 the use of recycled materials in ship or equipment designs;

.6 limiting the use of materials that are difficult to separate into their specific individual substances or components; and

.7 taking measures to facilitate the removal of such materials.

6.2.2 Manufacturers of marine equipment that contain hazardous substances, should be encouraged to design them so as to facilitate the safe removal of those substances, or give advice as to how such substances can be safely removed, at the end of the working life of the equipment.

## **6.3 Preparation of the Green Passport**

Shipowners and shipbuilders should prepare the Green Passport in accordance with section 5.

## **6.4 Minimization of the use of potentially hazardous substances**

Shipowners should make every effort to minimize the amount of potentially hazardous materials on board the ship, including those carried as stores, during routine or major maintenance or major conversions, seeking assistance from other parties as necessary.

## 6.5 Minimization of waste generation

Ship operators should continuously seek to minimize hazardous waste generation and retention during the operating life of a ship and at the end of a ship's life.

## 7 PROCEDURES FOR EXISTING SHIPS RELATED TO SHIP RECYCLING

### 7.1 Preparation of the Green Passport

Shipowners should prepare the Green passport in accordance with section 5.

### 7.2 Minimization of the use of potentially hazardous substances

7.2.1 Shipowners should make every effort to minimize the amount of potentially hazardous materials on board the ship, including those carried as stores, during routine or major maintenance or major conversions, seeking assistance from other parties as necessary.

7.2.2 The points listed in section 6.1.3 for new ships should be considered when seeking to minimize hazardous materials aboard existing ships.

### 7.3 Minimization of waste generation

Ship operators should continuously seek to minimize hazardous waste generation and retention during the operating life of a ship and at the end of a ship's life.

## 8. PREPARATIONS FOR SHIP RECYCLING

*The IMO Guidelines have omitted a crucial step in the preparation for ship recycling. In accordance with the Basel Convention Technical Guidelines on the Full and Partial Dismantling of Ships, all removable hazardous components must be removed from a vessel prior to its final voyage to a ship recycling state. In accordance with the spirit of the Basel Ban Amendment, such removal should take place in a member state of the Organization for Economic Cooperation and Development (OECD) so as to avoid the dumping of hazardous wastes on developing countries. Such removal should be done in a fully licensed and registered hazardous materials handling facility.*

### 8.1 Selection of the recycling facility

*The IMO conveniently omits that any transboundary movement of a ship containing hazardous wastes or deemed a hazardous waste under the Basel Convention must comply with all provisions of the Basel Convention and its Decisions and in any case should comply with the spirit of that Convention and its principles. The Basel Convention's Decisions I/22, II/12 and III/1 preclude the export of hazardous wastes from member states of the OECD to non-OECD states.*

*Also since end-of-life vessels are hazardous wastes, the notification requirements of Articles 6 and 7 of the Basel Convention should be incorporated in this Guideline, and complied with prior to the selection of the recycling facility.*



8.1.1 A recycling facility should have the capability to recycle the ships it purchases in a manner consistent with national legislation and relevant international conventions. This capability should be monitored by the appropriate national administration and should be in compliance in particular with the relevant Guidelines developed by ILO (Guidelines on Safety and Health in Shipbreaking) and the Basel Convention (Technical Guidelines for the Environmentally Sound Management of the Full and Partial Dismantling of Ships).

8.1.2 Information on the above is not, currently, widely available. Competent authorities in recycling States should assess the capabilities of their recycling facilities and make available the results of those assessments.

8.1.3 In selecting the recycling facility, a shipowner, in consultation with competent authorities of the recycling State, should consider, in the context of the above guidelines, the working practices and facilities in the ship recycling facility in question including:

*It is mandatory for Basel Parties, and not just an encouragement, that they are forbidden from exporting hazardous wastes to another Party, if the exporting Party has reason to believe that the waste will not be managed in an environmentally sound manner. (Art. 4(2)(e)). Note, that Basel Parties must synchronize their shipping regulations to comply with existing Basel obligations, thus, affecting and effectively imposing the same obligation to shipowners and other stakeholders.*

.1 its ability to handle safely, and dispose of properly, any potentially hazardous materials that may be present in the ship such as asbestos, PCBs, halons, petroleum products and other residues;

*This assumption that hazardous materials will be on the ships is in contradiction to the Basel Convention Technical Guidelines which exhorts that to the extent possible, all ships be decontaminated of hazardous materials prior to export for dismantling.*

*Further the IMO pretends that the global stage is an even playing field with all countries under the same responsibilities - as if all countries had the same resources and economies. This is not the case, which the Basel Convention clearly recognized in its delineation between OECD and non-OECD which the IMO conveniently fails to mention.*

.2 the provision of appropriate and sufficient personal protection and safety equipment;

.3 the ability of a recycling facility to maintain and monitor the ship in a gas free condition and approved "fit for hot work" during the whole process of ship recycling; and

.4 other information such as safety records, training programmes for workers and assessment of the work quality.

8.1.4 Some recycling facilities may be capable of recycling almost any ship in an “as is” condition. Others, even though technically advanced, may not be able to properly manage any resulting hazardous materials or wastes. In such cases, shipowners should, following discussions with the recycling facility, arrange to remove and properly dispose of those materials that the facility cannot manage.

*Again assumptions are made in paragraph 8.1.4 that the Basel Technical Guidelines will be ignored and hazardous materials will not be removed prior to final voyage for dismantling! Further, under Basel, Art. 4(2)(d), Parties are obligated to reduce the transboundary movement of hazardous waste. The idea that hazardous wastes would first be exported and then exported again is in complete contravention of the Basel obligation of minimizing transboundary movements of hazardous waste. To comply with its Basel obligation, Parties should require shipowners to decontaminate the ship destined for recycling before leaving the port of export.*

8.1.5 Where, after investigation, it is assessed that the selected recycling facility has no means of managing hazardous materials or wastes in a manner consistent with national law and relevant international instruments and Guidelines, the shipowner should arrange for the removal of those materials to another appropriate facility or ensure that the facility obtains the technical capability to do so.

*Paragraph 8.1.5 is written without regard to the principle of decontamination prior to export for dismantling. Further the language employed “has no means of managing” is far from the requirement of Basel in Article 4, 2(e) – “if there is reason to believe”.*

8.1.6 While recycling facility selection is made on a commercial and risk management basis, shipowners should select facilities that are best capable of managing all relevant hazardous materials and wastes arising from the recycling process.

8.1.7 In addition to the considerations set out above, the shipowner should consider the following:

- .1 establishing the procedures to be used by the recycling facility in removing and properly disposing of any potentially hazardous materials;
- .2 specifying the method of recycling in the recycling contract,
- .3 reserving in the recycling contract the right to monitor the recycling process, and
- .4 contractual provisions for incentive payments to ensure the recycling is carried out in accordance with the relevant Guidelines.

8.1.8 The shipowner having selected a recycling facility to recycle a ship should inform the Administration and the competent authority of the recycling State accordingly.

## 8.2 Delivery of the ship to the recycling facility

*Once a decision has been made to dispose of a ship, any transboundary movement of a ship containing hazardous waste or considered hazardous waste under the Basel Convention must fully comply with the Basel Convention and its decisions. Special attention must be paid to the Basel Convention's work on legal ramifications of ships as waste that is ongoing and as yet not concluded.*

8.2.1 At the end of a ship's operating life the shipowner is responsible for delivery of the ship to the recycling facility as described in the contract with the facility. In addition, the shipowner should provide the recycling facility with the ship's Green Passport, and if available, any technical advice from the shipbuilder or equipment supplier on dismantling as described in these Guidelines.

8.2.2 Shipowners should ensure that appropriate insurance is in place to cover response and liability in respect of the voyage of the ship to the recycling facility. Shipowners should also have in place contingency arrangements in the event that either the ship is unable to complete the voyage to the recycling facility (e.g. due to bad weather), or the recycling facility is unable to accept delivery of the ship (shutdown of operations, etc.).

8.2.3 The shipowner having delivered a ship to a recycling facility should inform the Administration accordingly in order to deregister the ship.

## 8.3 Preparation of a ship for recycling

*As already indicated, all ships should be decontaminated of hazardous materials and wastes prior to any transboundary movement for dismantling as noted in the Basel Technical Guidelines on the Full and Partial Dismantling of Ships.*

### 8.3.1 General

8.3.1.1 The preparation of a ship for recycling should address occupational safety and health, environmental issues and the safe operation of the ship prior to and on its final voyage to the recycling facility. Conditions on the ship that may threaten worker safety at the recycling facility should, to the extent practicable, be identified by the shipowner, seeking assistance from other parties if required, and either be rectified or reported to the recycling facility to ensure that appropriate safety precautions are taken. Ideally, a facility should be capable of recycling the whole ship in a responsible way.

8.3.1.2 With regard to potentially hazardous materials which cannot be safely removed and properly disposed of by the purchasing recycling facility, the shipowner should, consistent with the safe operation of the ship, either:

- .1 remove these materials from the ship elsewhere in a manner that is consistent with relevant national and international legislation and relevant Guidelines; or

.2 minimize these materials in amount and location and report to the recycling facility to ensure that suitable arrangements can be made for their reclamation, recycling or disposal.

*Once again Paragraph 8.3.1.2 is contrary to the established principle of decontamination prior to export to dismantling state which is established in the Basel Convention Technical Guideline on the Full and Partial Dismantling of Ships.*

8.3.1.3 The preparation of the ship for recycling is, to a large extent, dependent on the capabilities of the recycling facility and the requirements of the relevant national authority as referred to in section 8.1.1 of these Guidelines.

### 8.3.2 Ship Recycling Plan

The preparation of the ship for recycling should begin before the ship arrives at the recycling facility and the recycling facility should work with the shipowner before the delivery of the ship in determining the extent of pre-recycling work that is desirable.

*It is not a question of “desirability” when it comes to the issue of removal of hazards and decontamination prior to export to dismantling state, as evidenced by the Basel Convention, it is an international responsibility and obligation.*

8.3.2.2 The development and implementation of a recycling plan can help ensure that a ship has been prepared to the maximum extent possible prior to its recycling and

that the safety of the ship, prior to delivery, has been taken into account. The plan should be developed by the recycling facility in consultation with the shipowner, taking into account the potential hazards which may arise during the recycling operation, the relevant national and international requirements and the facilities available at the relevant recycling facility in terms of materials handling and the disposal of any wastes generated during the recycling process.

8.3.2.3 A major purpose of the plan is to ensure that wastes potentially contributing to pollution of the environment or potential hazards to worker health and safety, are properly identified and handled.

8.3.2.4 The recycling plan should take into account *inter alia*:

- .1 the Green Passport (section 5);
- .2 any technical advice from the shipbuilder;
- .3 details of the ship's operational equipment and potential sources, amounts and relative hazards of potential contaminants (including chemical and biological) that may be released to the environment as indicated by the Inventory; and
- .4 potential hazards to worker safety that may arise during the recycling operation.

8.3.2.5 Agreement to implement the Recycling Plan should be part of the contract between shipowner and facility.

8.3.2.6 Technical considerations to assist in developing the Ship Recycling

Plan include but are not limited to the following:

- .1 Suggestions for planning work;
- .2 General notes on salvage;
- .3 Ship stability during clean-up and transits;
- .4 Tank cleaning;
- .5 Cleaning compartments with bilges;
- .6 Dealing with piping and fittings;
- .7 Cleaning fitted machinery;
- .8 Suggestions on handling waste.

### 8.3.3 Preparations to prevent pollution

*Again, this section is inconsistent with the principle established in Basel Technical Guidelines of decontamination prior to delivery to recycling state, and it condones transfer of hazardous wastes to other countries.*

8.3.3.1 The last owner of a ship sold for recycling should, consistent with the safe operation of the ship:

- .1 minimise the quantities of fuel, diesel, lubricating, hydraulic and other oils and chemicals on board at delivery to the facility;
- .2 if the facility is not equipped with reception facilities, remove wastes at the last port with reception facilities before delivery of the ship to the recycling facility;

.3 ensure that the Green Passport is completed in accordance with section 5;

.4 take measures to facilitate the controlled drainage, by the recycling facility, of potentially harmful liquids from the ship; and

.5 take measures to ensure that ballast water of the ship is managed in accordance with the relevant international or national standards and requirements.

8.3.3.2 Among the items which may be considered by the shipowner in consultation with the recycling facility in accordance with paragraph 8.3.1 prior to recycling, consistent with the safe operation of the ship, are:

.1 the removal and safe disposal of asbestos or alternatively, the clear marking of any Asbestos Containing Materials (ACMs) or Presumed Asbestos Containing Materials (PACMs);

.2 the discharge of halon to an approved facility and the use of portable and returnable fire-fighting equipment for the final voyage to the recycling site;

.3 the removal of materials remaining in tanks or piping, to the maximum extent possible (including fuel, lubricating oils, hydraulic fluids, cargoes and their residues, and grease). Drummed, tanked, or canned liquids or gaseous materials should be removed from the ship. All materials removed should be

managed in an environmentally sound manner (e.g., recycling and, in certain cases, onshore incineration);

.4 the removal of equipment containing liquid PCBs;

.5 the identification of capacitors and transformers containing dielectric fluid;

.6 the removal of residues from parts of the ship used for storage of fuel or chemical stocks such as tanks (these areas should be flushed and cleaned);

.7 the provision of advice on the nature of any hazardous materials on board, as in the Inventory of potential hazardous materials; and

.8 the clear marking of other potentially hazardous materials and spaces on board the ship.

*The last owner of a ship sold for recycling should, consistent with the principle of decontamination, decontaminate the vessel of hazardous materials prior to delivery to a ship recycling state, and second, make reasonable efforts while in an OECD state to:*

*a) remove all quantities of fuel, diesel, lubricating, hydraulic and other oils and chemicals on board at delivery to the yard;*

*b) remove all asbestos, toxic substances, PCBs, ozone-depleting substances and all other*

*potentially hazardous materials, including those inherent in the structure of the ship [(Green Passport.)<sup>20</sup>] or used as coatings on the vessel, those contained in machinery, pipelines or cylinders or carried as stores, or accumulations of operational residues;*

*c) take measures to ensure that ballast water of the ship is managed in accordance with IMO standards and requirements.*

### **8.3.4 Preparations to protect occupational health and safety**

8.3.4.1 Prior to recycling the shipowner should in accordance with paragraph 8.3.1 and consistent with the safe operation of the ship:

.1 in connection with the delivery of a ship, provide or arrange for a gas-free certificate or hot work safe certification as applicable, issued by a relevant and appropriate body, for enclosed spaces onboard ship (It should be recognized that any such certification is valid only at the time it is issued and that such certification should not discourage the ship recycling facility from conducting their own inspections of such areas);

*The above is an excellent and essential provision that must be required of all owners.*

.2 ensure that any compartments on the ship which may contain an oxygen-deficient atmosphere are clearly marked as such, and that the facility is duly notified of these and other hazardous enclosed spaces. (This should not preclude or discourage recycling facilities from conducting similar inspections);

.3 ensure that any area of the ship where there may be structural integrity problems (e.g., collision damage) are identified and their location indicating to avoid collapses and accidents; and

.4 ensure that any area of the ship where there are critical support structures that should be dismantled in a way that avoids accidental structural collapse are identified and their location indicated.

8.3.4.2 Guidance with regard to safe working practices and procedures for hot work and entry into enclosed spaces onboard ships which are provided in the circular MSC/Circ.1084 "Principles for hot work on board all types of ships" and in the Assembly resolution A.864(20) "Recommendations for entering enclosed spaces aboard ships", are presented in Appendices 4 and 5 to these Guidelines.

## **9 ROLE OF STAKEHOLDERS AND OTHER BODIES**

*Here there is a glaring departure and omission from the Basel Convention in that no effort is made*

*to mention the role of "State of Export" under the obligations of the Basel Convention. Indeed it can be assumed under Basel that in the case of ships, the state having jurisdiction over the "exporter" or "generator" (defined as "any person whose activity produces hazardous wastes or other wastes or, if that person is not known, the person who is in possession and/or control of those wastes) is the "State of Export" with numerous obligations to control or prohibit that export.*

### **9.1 General**

9.1.1 In recent years, certain governments and other bodies have been developing and implementing incentive mechanisms and programmes to promote quality shipping that operates in an environmentally sound manner. The "Green Ships Award" programme, created through the Port of Rotterdam, is one example. The reduction and minimization of hazardous materials aboard ships during their operating lives is often a key component of these incentive mechanisms. This contributes to reducing the hazardous materials that recycling facilities must manage at the end of ships' operating lives.

9.1.2 Another example of an incentive mechanism is a financial benefit for recycling facilities that meet sound environmental requirements, e.g. lower import taxes could make "green facilities" more competitive and ease the choice of a shipowner in favour of human health and environment.

9.1.3 The development of such incentive mechanisms for operating cleaner shipping by governments and other bodies, therefore, can significantly assist the implementation of these Guidelines. Administrations and other stakeholders should consider such mechanisms.

## 9.2 Role of the flag State

The role of the Administration covers the whole operating life of a ship (including its final voyage) and, during that life it should ensure that the ship complies with applicable IMO Conventions and other relevant requirements for as long as the ship is operational.

Administrations should promote the application of these Guidelines.

*Further under the Basel Convention, the flag State should be considered as “State of Export” at times when other responsible states are not easily found. As such, the flag State would be responsible for ensuring decontamination prior to export and/or forbidding export to non-OECD countries or initiating the “prior informed consent” procedure.*

### 9.2.1 Criteria for “ready for recycling” conditions

Administrations should establish criteria to declare a ship “ready for recycling”. The basic criteria would be the completion of the work to prepare a ship for recycling, set out in section 8 of these Guidelines.

*Ready for recycling should ideally mean, removal of all contamination prior to its final voyage to a non-OECD*

### 9.2.2 Implementation

Administrations should:

- .1 promote the use of a ship recycling sale and purchase contract, such as DEMOLISHCON, the BIMCO standard contract, in order to ensure that full account is taken of all relevant environmental, health and safety considerations included in these Guidelines; and
- .2 co-operate with recycling States to facilitate the implementation of the Guidelines.

## 9.3 Role of the port State

*The port State must very often assume its clear role as the “State of Export” under the Basel Convention. As such, the flag State would be responsible for ensuring decontamination prior to export and/or forbidding export to non-OECD countries or initiating the “prior informed consent” procedure.*

The port State assumes a role in verifying compliance with international maritime conventions by the inspection of foreign ships in national ports to check that the condition of the ship and its equipment comply with the requirements of international regulations and that the ship is manned and operated in compliance with these rules.



The port State functions also in respect of recycling of ships as a supplement to flag State control, when it executes port State control.

### 9.3.1 Port State control procedures for ships destined for recycling

9.3.1.1 Ships destined for recycling are subject to current port State control procedures, as any other ship, in accordance with applicable international regulations.

*Yes, and one of these international regulations is the Basel Convention and its instruments..*

9.3.1.2 Co-ordination between the port State and the flag State is encouraged to ensure the ship meets all relevant IMO requirements, and any other applicable requirements, at all times.

### 9.3.2 Implementation

Port States should:

- .1 promote the widespread use of IMO guidelines within the industry; and
- .2 co-operate with flag States and recycling States to facilitate implementation of the Guidelines.

*The port State's crucial role to exercise their obligations under the Basel Convention when and if the ships contain hazardous substances, and thus are hazardous wastes under the Basel Convention, should be listed here.*

## 9.4 Role of the recycling State

### 9.4.1 General

9.4.1.1 The role of the recycling State is to enforce international obligations and national legislation in respect of worker safety, health and welfare and the protection of the environment in the ship recycling industry, in particular, with respect to hazardous and other wastes handled at a recycling facility.

9.4.1.2 The recycling State should introduce national regulations in relation to the condition of ships purchased for recycling both at the time of purchase and at the time of delivery. In effect, the recycling State should lay down any conditions it considers necessary before a ship is accepted for recycling.

*Under the Basel Convention, all Parties should make available adequate disposal facilities for recycling their own country's waste **WITHIN** their own boundaries and refrain from importing wastes ensuring that transboundary movements of such waste (ships declared as intended to be disposed are by definition a transboundary movement of waste) is reduced to a minimum. Further all Parties must make sure that the disposal facilities located within it are environmentally sound.*

*Note that under the terms of the Basel Convention, state Parties, in this case the recycling state, also have the sovereign right to define any materials, wastes or ships as hazardous waste and prohibit or control their importation*

*as they see fit. Such controls or prohibitions should be conveyed to the Basel Convention Secretariat.*

9.4.1.3 The Green Passport, including its inventory of potentially hazardous materials which should be delivered to the recycling facility by the last owner of the ship, gives information which might be demanded by the recycling State as to the materials on the ship. The recycling State should check that any potentially hazardous wastes which might be generated during the recycling operation can be safely handled before it accepts the ship for recycling.

*The recycling State also must be sure that the import is legal under the Basel Convention. That is, that it was exported with appropriate prior informed consent notification, that it was trade between two Basel Convention Parties unless a special multilateral or bilateral agreement is signed, or it is not prohibited by decisions I/22, II/12 or III/1. These decisions collectively ban the export of hazardous wastes for any reason from OECD to non-OECD countries.*

9.4.1.4 After the ship has been accepted, the recycling State is responsible for monitoring the safe handling of any hazardous materials generated during the recycling process.

9.4.1.5 Competent authorities in recycling States should assess the capabilities of their recycling facilities and make available the results of those assessments.

#### **9.4.2 Reception facilities for ship-generated wastes**

9.4.2.1 MARPOL 73/78 provisions require the government of each party to ensure the provision of adequate port reception facilities without causing undue delay. For example, regulation 12(1) of Annex I to MARPOL 73/78 requires governments to provide reception facilities “at oil loading terminals, repair ports, and in other ports in which ships have oily residues to discharge” which are “adequate to meet the needs of the ships using them”. Regulation 12(2)(c) extends this to “all ports having ship repair yards or tank cleaning facilities”.

9.4.2.2 Regulation 17(1)(c) of Annex VI of MARPOL 73/78 requires the Government of each Party to the Protocol of 1997 to ensure the provision of port reception facilities adequate to meet the needs in ship recycling facilities for the reception of ozone-depleting substances and equipment containing such substances when removed from ships.

9.4.2.3 While only Annex VI of MARPOL 73/78 requires explicitly the provision of reception facilities at recycling facilities, Governments of recycling States should ensure that, in authorising a recycling activity,

adequate reception facilities are in place.

9.4.2.4 The IMO Manual for Port Reception Facilities provides detailed guidance to manage ship-generated wastes. The Technical Guidelines for the Environmentally Sound Management of the Full and Partial Dismantling of Ships, adopted by the Conference of the Parties to the Basel Convention, also provides guidance.

### **9.4.3 Measures for the control of ships delivered for recycling**

9.4.3.1 Recycling States should, in their national legislation, lay down the conditions under which ships may be accepted into their state as imports for recycling and, equally, define and enforce appropriate worker health and safety requirements.

9.4.3.2 Recycling States should introduce and enforce legislation which requires that all ships being recycled have a gas-free certificate or hot work safe certification as applicable, issued by a relevant and appropriate body, for enclosed spaces on board ship.

9.4.3.3 Recycling States should also promote that those acting on behalf of recycling facilities in purchasing ships for recycling utilise a standard ship recycling contract, such as DEMOLISHCON - the BIMCO standard contract document, in order to ensure that full account is taken of all relevant environmental, health and safety considerations included in these Guidelines.

9.4.3.4 The recycling facility should be required by the recycling State to check every ship before it accepts it for recycling. This check should ensure that the actual condition of the ship is consistent with these and other relevant international Guidelines, the purchase contract, and that national requirements are fulfilled. From the moment the recycling facility accepts the ownership of the ship for recycling, the responsibility for the proper handling of any wastes generated lies with the facility.

*The above are all excellent provisions.*

### **9.4.4 Measures for the control of recycling facilities**

9.4.4.1 The recycling State should introduce, implement and enforce sound legislation and other requirements concerning the recycling of ships, including measures to authorize or license recycling facilities. To this end, recycling states should examine, and where necessary adopt national legislation or requirements, any applicable internationally developed conventions, recommendations and guidelines relevant to the ship recycling industry such as these Guidelines and those produced by the International Labour Organization (ILO) and under the Basel Convention.

9.4.4.2 Those Authorities with responsibilities for recycling facilities should ensure that the handling and disposal of asbestos, oils and other hazardous substances, whether prior to the ship's arrival at the recycling facility or subsequently, have been conducted in an acceptable manner.

*This passage fails to note that the Basel Convention guidelines require that ships be decontaminated prior to export. This would ensure dramatic reductions in the recycling state's liabilities and risks. These guidelines as written appear to be a dramatic wholesale transfer of risk from the owners of the ships to the recycling countries – this is unacceptable under present international law.*

9.4.4.3 The recycling State should also be prepared to give support to their facilities in the decision to accept or not to accept a ship for recycling. The facilities themselves are responsible for handling the ship and ensuring that the recycling operation is in compliance with national legislation and other national requirements.

## **9.5 The role of the Basel Convention**

The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal was adopted in 1989 and entered into force in 1992. The main objective of this Convention is to protect human health and the environment against adverse effects caused by the generation, improper management and transboundary movements of hazardous and other wastes.

One of the fundamental aims of the Basel Convention is to ensure that hazardous and other wastes are managed in an environmentally sound manner (ESM). Article 2, paragraph 8 of the Convention defines ESM to mean “taking all practicable steps to ensure that hazardous wastes or other wastes

are managed in a manner which will protect human health and the environment against the adverse effects which may result from such wastes”. (For more information on the Convention, and the obligations it imposes, see the Basel Convention website: [www.basel.int](http://www.basel.int).)

*Paragraph 9.5 fails to mention that the fundamental aim of the Basel Convention is to minimize transboundary movements of hazardous wastes and to ensure that all countries become self-sufficient in waste management.*

*Further Paragraph 9.5 pointedly fails to mention the Basel Ban produced by decisions II/12, and III/1 of the Parties. In 1994, the Basel Convention concluded in Decision II/12 that based on the definition of ESM, exports of hazardous wastes to developing countries, did not constitute ESM under the Convention and should therefore be banned. This ban was adopted as a proposed amendment to the Convention in 1995 by Decisions III/1. The Amendment is on a pace to come into force in the next 5 years. The export of ships that contain hazardous substances and are destined for disposal to be hazardous wastes under the Convention and subject to the Basel Ban Amendment and the Decisions II/12 and III/1.*

*It is absolutely negligent of the IMO to so pointedly ignore another body of international law's decisions and obligations. Rather they have above picked and chosen only the parts of the Basel Convention that suits their purpose – to ignore the more important*

*aspects of the Convention which the shipping industry wishes did not exist.*

Convention, also other technical guidelines for specific operations and for specific wastes have been developed which may be relevant to ship recycling activities.\*

### **9.5.1 Environmentally sound dismantling of ships**

9.5.1.1 In order to assist countries that have or wish to establish recycling facilities, the Conference of the Parties to the Basel Convention, at its sixth meeting in December 2002, adopted the Technical Guidelines for the Environmentally Sound Management and Full and Partial Dismantling of Ships, which provide information and recommendations on procedures, processes, and practices that should be implemented to conform with the environmentally sound management obligations under the Convention.

These Technical Guidelines provide guidance for Parties, where dismantling of ships occur, to fulfil their obligations under the Convention.

9.5.1.2 The Technical Guidelines are applicable to existing, as well as to new, ship recycling facilities. They include principles for the environmentally sound management of ship dismantling, good practice in environmental control procedures at ship recycling facilities, good practice in design, construction and operation of ship recycling facilities and how to achieve protection of the environment and human health. Under the Basel

This section fails to mention that under the Basel Convention, failure to export ships containing hazardous wastes to facilities that have not taken “all practicable steps to protect human health and the environment” are illegal.

This section fails to mention that under the Basel Convention, failure to export ships containing hazardous wastes to facilities that have not taken “all practicable steps to protect human health and the environment” are illegal.

### **9.5.2 Principle of notification and prior written consent**

9.5.2.1 The Basel Convention addresses the transboundary movement of hazardous wastes. Although the legal aspects of ships destined for recycling are being considered under the Basel Convention, its provisions may provide some useful concepts to address transboundary concerns of the final voyages for ships destined for recycling.

*The Basel Convention is an internationally legally binding instrument. The Basel Convention does not simply provide useful concepts as it contains mandatory obligations on Parties that must be complied with, particularly in the transboundary movement of hazardous*

*wastes, and this fact should be emphasized in this portion.*

9.5.2.2 A key component in the implementation of the Basel Convention is that transboundary movements of hazardous and other wastes covered by the Convention, occur with the prior written notification and consent of the importing State upon notification by the exporting State. The basic procedures under the Basel Convention are that the exporter notifies its Government (the exporting State) of the intended movement, the exporting State notifies transit and importing States, which responds to the notification by consent or refusal or seeking additional information before issuing the written consent.

*Another key component is the Basel Ban Amendment which bans the export of ships laden with asbestos, PCBs, etc. to developing countries as is the common practice of the shipping industry today.*

## **9.6 The role of the International Labour Organization**

9.6.1 The ILO is concerned with ship recycling where land-based workers in the industry can be exposed to an extremely dangerous work environment with a high accident rate. All major occupational risks - chemical, physical, biological, ergonomic and psychosocial - are present. Although not drafted with ship recycling in mind, a considerable number of existing ILO

Conventions, Recommendations and Codes of Practice can be applied to deal with numerous occupational safety and health hazards and worker protection issues arising from ship recycling\*\*. As a complement to the work undertaken in IMO and under the Basel Convention, ILO has prepared Guidelines on safety and health in shipbreaking.

9.6.2 ILO will provide advice and guidance in helping countries to implement the Guidelines on health and safety in shipbreaking., thereby improving working conditions at recycling facilities. It would also assist administrations in establishing criteria by which facilities might be ranked as meeting certain minimum requirements, as contained in its guidelines, in order to obtain government approval. The ILO is invited to continue to develop programmes for raising awareness on improving working conditions at ship recycling facilities.

## **9.7 The London Convention 1972/1996 Protocol**

### **9.7.1 Dumping of vessels**

9.7.1.1 The primary function of the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972 (London Convention 1972) and of the 1996 Protocol to the London Convention 1972 is to control the disposal at sea of wastes or other matter. Under the London Convention the disposal at sea of industrial wastes and of radioactive wastes are prohibited, whereas under the London Protocol all disposal at sea is prohibited with certain exceptions. Both the Convention and the Protocol allow, in principle, the disposal at sea of

decommissioned ships. However, in accordance with the “Specific Guidelines for Assessment of Vessels” which were adopted in 2000 as an authoritative interpretation of both the Convention and the Protocol, the assessment of any proposal for disposal at sea is required where recycling is considered one of the alternatives to disposal.

9.7.1.2 The “Specific Guidelines for Assessment of Vessels”<sup>\*\*\*</sup>, as a first step, work through a process of comprehensively examining alternatives to disposal at sea. If the option to recycle a ship is selected by the owner then the process for evaluation of the disposal at sea proposal stops. The process can, however, assist in preparing the vessel for the recycling option, as would be carried out similarly if it were disposed of at sea. The aforementioned guidelines outline in detail the equipment and contaminants aboard a vessel that should be removed prior to disposal. This process can be used as a guide for both shipowners, flag States and recycling States when preparing a ship for the recycling facility or the last voyage.

## 9.7.2 Abandonment of ships

9.7.2.1 One concern related to ship recycling is that final shipowner, in order to avoid recycling costs (clean-up, structural repairs for last voyage, towing, insurance, etc.), may choose to abandon a ship at sea or in port. The abandonment of a ship at sea, for the purpose of its disposal, constitutes an uncontrolled dumping operation and, therefore, should be considered a

violation of the London Convention/Protocol and subject to enforcement procedures of relevant Parties following investigation. The abandonment of a ship in port, with or without its crew, is not covered by the London Convention/ Protocol, but would be a liability matter for the port State to pursue with the flag State and the shipowner. In cases where the crew is also abandoned, port States should be encouraged to ensure the care and safe return of crew members to their countries of origin, citizenship, or residence as appropriate and to pursue recovery of the costs of such measures with the parties responsible for the abandonment in accordance with the relevant international standards presently being discussed by the Joint IMO-ILO *Ad Hoc* Expert Working Group on Liability and Compensation regarding claims for Death, Personal Injury and Abandonment of Seafarers.

*The abandonment of a vessel at port, where the vessel contains hazardous wastes, is an area which is clearly within the jurisdiction of the Basel Convention. As such, vessels are disposed of as wastes by their owners, and these vessels invariably contain hazardous wastes controlled under the Basel Convention, Art. 6 of the Basel Convention requiring prior written consent of the State of import should have been obtained.*

*Failure to follow the Art. 6 procedure of the Basel Convention, necessitates the application of Art. 9, which defines illegal traffic and imposes the take-back obligation on the exporter of the waste, if practicable.*

*This clear application of the Basel Convention should be mentioned under this section and yet the IMO fails to do so as they wish to re-write the existing international legal framework, and pretend that Basel does not apply to ships.*

### **9.7.3 “Placement” of vessels on the sea-bed**

Vessels, or parts thereof, are sometimes used for the construction of artificial reefs, or placed on selected locations for marine habitat enhancement or creation of a diving attraction. “Placement of matter for a purpose other than the mere disposal thereof” is excluded from the definition of “dumping” both under the London Convention and Protocol, provided such placement is not contrary to the aims of the Convention/Protocol and not used as an excuse for disposal at sea of waste materials.

Notwithstanding the distinct differences between “dumping” and “placement”, in practice, a vessel needs to be well prepared and cleaned for such operations. Some national administrations have chosen to apply their licensing system for dumping also to construction of artificial reefs, possibly using vessels, in order to control the materials used for such construction.

### **9.7.4 Reports under the London Convention regarding dumping of vessels**

In most reports received by the London Convention Secretariat concerning permits issued by Contracting Parties for sea disposal of vessels, the removal of all floatable materials is mentioned, and the removal of all fuels, oils, liquid

chemicals, and flushing of pipelines, etc. Some national administrations have developed detailed clean-up standards for decommissioned vessels with particular attention given to disposal of vessels in shallow waters as diving attractions. In these standards, asbestos would not be removed from vessels as standard practice, as this did not harm the marine environment, but would where there was a possibility of exposure to divers.

### **9.7.5 Options for disposal of decommissioned vessels**

Controlled sea disposal operations of decommissioned vessels under the London Convention/Protocol, controlled placement activities of such vessels on the seabed in accordance with national regulations, and recycling of decommissioned vessels on land have the same goal of preventing pollution of the (marine) environment. However, recycling of decommissioned vessels on land, where this is possible, is the preferred option from the perspective of the London Convention/Protocol.

## **9.8 Role of the shipping industry**

The co-operation between the shipowner and the recycling facility, before and during the recycling operation, is essential in facing and finally solving the problems associated with ship recycling. Shipowners and the recycling facilities should develop this co-operation.

The shipping industry should also continue its co-operation with the other stakeholders towards improving plans to



decommission ships in a safe and environmental sound manner.

*The ship owners, and therefore shipping industry, should be THE most responsible for the problem of ensuring the safe and legal dismantlement of ships. It is they that should ensure that ships are decontaminated prior to export to developing countries. It is the states in which these companies are located which must be considered at times "States of Export" under the Basel Convention – and thus are ultimately responsible to adhering to all provisions of the Basel Convention.*

*It was the shipping industry that chose to save vast sums of money by poisoning many thousands of workers in developing countries rather than paying more to ensure that such workers would not die of cancer, explosion, disease, accidents, and other fates. It is outrageous to see this responsibility now being pardoned away with the passage of a code of practice, particularly when that same industry is working hard to ensure that they are not bound in a legal way to take real responsibility for ensuring that such export of harm does not take place ever again.*

### **9.8.1 Industry Code of Practice on Ship Recycling**

9.8.1.1 The Industry Working Party on Ship Recycling was established under the co-ordination of the International Chamber of Shipping (ICS) in February 1999 in response to growing concerns expressed by governments, environmental groups and the industry itself regarding:

- .1 the legal position with respect to potentially hazardous substances on ships sold for recycling;
- .2 the working conditions and safety provisions for workers in recycling facilities; and
- .3 environmental controls at recycling facilities.

9.8.1.2 The Industry Group, recognising the concerns of various parties, has developed a Code of Practice, outlining a series of recommendations which would constitute "good practice" in respect of ships destined for recycling. This Code of Practice is available from the Industry Working Party participants\*.

9.8.1.3 The shipping industry is encouraged to continue the further development of the "Industry Code of Practice on Ship Recycling", seeking endorsement of and comments on its work from the Organization at regular intervals in the future.

### **9.8.2 Contract covering the sale and purchase of a ship for recycling**

At the end of a ship's operating life the shipowner is responsible for delivery of the ship as described in the contract, including all the documents in accordance with these Guidelines. Although contractual matters are the purview of the parties involved, it is recommended that sellers (shipowners) and purchasers (recycling facilities) use a standard contract that deals with all the relevant issues. BIMCO has revised its standard contract covering the sale of ships for recycling, DEMOLISHCON, to incorporate, in the standard terms and conditions, reference to the aforementioned "Industry Code of

Practice on Ship Recycling". BIMCO is invited to consider revising DEMOLISHCON taking into account these Guidelines.

## **9.9 The role of the ship recycling industry**

9.9.1 The ship recycling industry itself is an important stakeholder with responsibilities for the adoption and implementation of these Guidelines even though the standards and methods of operation in those shore-based industries involved in ship recycling do not fall within the remit of IMO. However, the ship recycling industry has an important role in establishing control standards in their facilities that can contribute towards ensuring the safe and environmentally friendly disposal of time-expired ships.

9.9.2 The ship recycling industry should:

.1 take due note of available technical guidance on ship recycling such as the guidelines adopted by ILO and the Parties to the Basel Convention and those developed by national bodies\* and Recognised Organizations;\*\*

.2 develop a code of practice appropriate to that industry, as guidance on work practices in relation to shore based

activities in recycling facilities to ensure acceptable environmental, safety and health standards and to monitor its application;

.3 encourage appropriate international bodies to endorse any such industry code of practice;

.4 encourage recycling facilities to make available details regarding procedures for the chosen method for the safe handling of hazardous materials (e.g. asbestos, PCBs and PABs, halon/freon, oily residues) and working practices in enclosed spaces;

.5 improve the quality management system of the recycling facilities by implementing measures as proposed by the relevant technical Guidelines and by improving the skills of the personnel and the quality of the equipment; and

.6 establish adequate waste management systems.

## **9.10 Role of Other Interested Stakeholders**

Other Interested Stakeholders are encouraged to contribute to addressing issues associated with ship recycling.

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\* EPA, A Guide to Ship Scrappers, Tips for Regulatory Compliance, Summer 2000

\*\* Technical Report DNV RN 590, Decommissioning of Ships, Environmental Standards, Decommissioning Guidelines, The GUIDEC Approach.

## 10 TECHNICAL CO-OPERATION

10.1 Ship recycling, if conducted in an environmentally sound and safe manner, is a positive benefit to the overall environment and to specific national and local economies and represents the most viable method of disposing of the majority of time expired tonnage. Therefore, if the transfer of technology or aid funding is necessary to improve facilities and working practices in the facilities, organizations or nation groupings with access to economic assistance funds should co-operate with the governments concerned with recycling on actual infrastructure projects.

10.2 National or regional organizations should co-operate with governments in ship recycling States and other interested parties on projects involving the transfer of technology or aid funding to improve facilities and working practices in the recycling facilities.

*It is absolutely inappropriate for rich developed country ship owners to continue to exploit weaker economies and impoverished work forces with the export of toxic substances now cloaked by the export of improved technology. Weaker economies inevitably suffer from far more important needs than simply technological ones. The export of any kind of state-of-the-art technology is not going to solve the problems of:*

- *Lack of liability law*
- *Lack of tort system to enable workers to sue*
- *Lack of a democratic climate for workers to organize or raise issues*

- *Lack of downstream waste management infrastructure*
- *Lack of legal and enforcement infrastructure*
- *Lack of occupational health infrastructure, training, and expertise*
- *Lack of a worker's or a community's right of access to information about risks*
- *Local corruption; etc., etc.*

*It is morally reprehensible for countries to pass the burden of their own toxic wastes to other's simply because they are poor, and then when caught in the act of doing so, by simply saying that it will be ok now because we are going to export the poor some better technology. This mentality is contrary to the established principles of environmental justice.*

*Facilities can be improved and should be of course, but this should in no way be related to the effort to end economically motivated dumping of toxic waste ships on developing countries.*

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