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**Open-ended Working Group of the Basel Convention
on the Control of Transboundary Movements of
Hazardous Wastes and Their Disposal**

Fourth session

Geneva, 4-8 July 2005

Item 5 (f) of the provisional agenda*

**Implementation of the decisions adopted by the Conference of the
Parties at its seventh meeting: abandonment of ships (decision VII/27)**

Abandonment of Ships

Note by the Secretariat of the International Maritime Organization

1. By decision VII/27 regarding the abandonment of ships in ports or on land, the Conference of the Parties requested, at paragraph 3, “the Secretariat to consult with the Secretariat of the International Maritime Organization on this issue”. For this purpose, the International Maritime Organization (“IMO”) secretariat prepared this note for distribution to the Parties present at the fourth session of the Open-ended Working Group.
2. This document was initially circulated at the first session of the Joint ILO/IMO/BC Working Group on Ship Scrapping, held at the IMO Headquarters in London from 15-17 February 2005.
3. The documents of the Joint ILO/IMO/BC Working Group referred to in the note of the IMO Secretariat are available in English on the Basel Convention website (www.basel.int).

* UNEP/CHW/OEWG/4/1.

Abandonment of ships

Note by the IMO Secretariat

I. Introduction

1. As outlined in paragraph 8 of document ILO/IMO/BC WG 1/2/1, submitted by the Basel Convention Secretariat, the seventh meeting of the Conference of the Parties to the Basel Convention (COP7), which was held from 25 to 29 October 2004, adopted decision VII/27 on “abandonment of ships” in recognition of concerns by a number of developing countries relating to the abandonment of ships on land or in ports. The Basel Convention Secretariat was requested to consult the IMO Secretariat on this issue. This note is prepared in response to this request.

II. London Convention 1972

2. The Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, in short the London Convention 1972, regulates worldwide the dumping of *inter alia* vessels and entered into force in August 1975. Currently, 80 States are Contracting Parties to this Convention.

3. The concept of “abandonment” is not addressed as such under the London Convention 1972. Pursuant to its Article III(1)(ii) dumping means: “any deliberate disposal at sea of vessels ...”. Dumping of a vessel is a well-planned activity and results from a thorough assessment of all disposal options available, including recycling, in accordance with the “Specific Guidelines for Assessment of Vessels”, as adopted in 2000 by the 22nd Consultative Meeting of Contracting Parties to the London Convention.

4. In Article (III)(3) “sea” is defined as: “all marine waters other than the internal waters of States”. In other words, the territorial waters are covered by the Convention, whereas the internal waters are not. So the act of abandonment of a vessel in the internal waters of a State is not governed by the London Convention and should be addressed by national laws of the State concerned.

III. 1996 Protocol to the London Convention 1972

5. The 1996 Protocol to the London Convention 1972 is developed to replace the London Convention itself, but is not yet in force. Currently, 21 States are Contracting States to this Protocol.

6. Similar to the London Convention, the 1996 Protocol regulates world-wide the dumping of vessels, which pursuant to its Article 1.4.1.2 means: “any deliberate disposal into the sea of vessels ...”. In contrast with the Convention “dumping” now also includes: “any abandonment or toppling at site of platforms or other man-made structures at sea, for the sole purpose of deliberate disposal.” Furthermore, the definition of “dumping” excludes the “abandonment in the sea of matter (e.g., cables, pipelines and marine research devices) placed for a purpose other than the mere disposal thereof.” This means that the abandonment or toppling at site of platforms etc. will require a prior dumping permit to be issued on a case-by-case basis.

7. The “Specific Guidelines for Assessment of Vessels” mentioned in paragraph 3 above also apply to the 1996 Protocol. Similar to the London Convention, internal waters are excluded from the 1996 Protocol under its Article 1.7. However, Parties can choose to apply the provisions of the Protocol with regard to dumping or incineration to their internal waters if they wish under Article 7.2 (so-called “opting-in”).

8. In other words, the concept of “abandonment” is included under the 1996 Protocol, but solely in conjunction with platforms, i.e. offshore installations at sea.

IV. Draft Wreck Removal Convention (DWRC)

9. The Draft Wreck Removal Convention (DWRC) that is currently being negotiated at the IMO Legal Committee is intended to provide international rules on the rights and obligations of States and shipowners with respect to wrecks and drifting or sunken cargo which may pose a hazard to navigation and/or pose a threat to the marine environment. The Convention is intended to clarify the rights and obligations regarding the identification, reporting, locating and removal of hazardous wrecks, in particular those found beyond territorial waters. The proposed Convention will also cover the issue of compensation in the event that the coastal State itself needs to take relevant action. Under the DWRC, coastal States at risk would be entitled to require the registered owner to remove a wreck posing danger to navigation or hazard to the marine environment. If the registered owner does not remove the wreck, the removal could be carried out by the coastal State facing potential risks and that State would then be able to recover the cost of the operation from the registered owner. As currently drafted, the definition of “wreck” (Article 1.4) includes, *inter alia*, a sunken or stranded ship, following a maritime casualty. A wreck is, therefore, the result of a maritime casualty, which is defined in Article 1.3 of the DWRC as a “collision of ships, stranding or other incident of navigation or other occurrence on board a ship or external to it resulting in material damage or imminent threat of material damage to a ship or its cargo”.

10. Proposals to include “abandonment” under “maritime casualty” have been rejected on the grounds that the purpose of the DWRC would be to deal with wrecks following upon a maritime casualty. However, if a ship were abandoned or derelict following upon a maritime casualty, the DWRC would apply. Once the Convention is in force, it would not involve retrospective action for the removal of current wrecks. Adoption of the Convention is currently planned for 2006.

V. IMO Guidelines and Standards for Removal of Offshore Installations

11. The IMO “Guidelines and Standards for the Removal of Offshore Installations and Structures on the Continental Shelf and in the Exclusive Economic Zone” (IMO resolution A.672(16)), adopted in 1989, address the removal of installations and structures fixed at the sea-bed from the perspective of safety of navigation and having due regard to fishing, protection of the marine environment, and the rights and duties of other States.

12. These Guidelines and Standards address abandonment of such installations and structures and advise coastal States, in that context, “to ensure that legal title to installations and structures which have not been entirely removed from the sea-bed is unambiguous and that responsibility for maintenance and the financial ability to assume liability for future damages are clearly established” (paragraph 3.11).

VI. Conclusions

13. The abandonment of a ship **at sea**, for the purpose of its disposal, (take the crew off and simply let go) 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.

14. The abandonment of a ship **on land or 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. Acts of abandonment in internal waters of a State should therefore be addressed in the national laws of the State concerned. If a party has chosen to apply the provisions of the London Protocol to its internal waters under Article 7.2 (see paragraph 7 above), then dumping of a ship in the internal waters of that State would be covered under the Protocol.

15. The Draft Wreck Removal Convention would apply to the abandonment of a ship only if such a ship was abandoned or derelict following upon a maritime casualty.