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JOINT ILO/IMO/BC WORKING GROUP ON  
SHIP SCRAPPING  
2nd session  
Agenda item 11

ILO/IMO/BC WG 2/11  
14 December 2005  
ENGLISH ONLY

## REPORT OF THE JOINT WORKING GROUP

### 1 OPENING OF THE SESSION, ELECTION OF CHAIR, ADOPTION OF THE AGENDA

#### Opening of the session

1.1 The Joint ILO/IMO/BC Working Group on Ship Scrapping, hereinafter referred to as “Joint Working Group” or the “Group”, held its second session from 12 to 14 December 2005 at the United Nations Office at Geneva, having held its first session from 15 to 17 February 2005 at the headquarters of the International Maritime Organization (IMO). The list of participants is attached at annex 1.

1.2 Ms. Sachiko Kuwabara-Yamamoto, Executive Secretary of the Secretariat of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, welcomed the participants on behalf of the IMO, ILO and Basel Convention Secretariats. She thanked the United Kingdom for providing financial support for the organization of this meeting.

1.3 Ms. Kuwabara-Yamamoto noted that ship recycling is a priority on the international agenda, with the risks presented by the ship dismantling industry being the subject of much heated debate. In the light of the conclusions of the World Summit 2005, she observed the conviction of the three Organizations that addressing environmental, safety and occupational health risks related to the ship dismantling process could assure the long-term sustainability of the industry and contribute to sustainable development.

1.4 Ms. Kuwabara-Yamamoto reminded delegates that the Joint Working Group had been established with a mandate to consider the respective work programmes of the Organizations with a view to avoiding duplication of work and overlapping of responsibilities and competencies, identifying further needs, and facilitating the exchange of views to ensure a coordinated approach to ship scrapping. The Joint Working Group was also vested with the task of formulating and submitting recommendations and any other relevant information on pertinent matters to bodies of the three Organizations.

1.5 Referring to the issues addressed at the first session of the Joint Working Group, and recalling the significant progress made at that session, Ms. Kuwabara-Yamamoto observed that delegates would be asked to give further consideration to many of those issues.

1.6 Ms. Kuwabara-Yamamoto further highlighted the new issues on the agenda of the present session, notably, concepts of environmentally sound management (ESM) and prior informed consent, approaches to promote occupational health and safety and ESM of ship scrapping, and basic principles of an applicable control mechanism. She highlighted the importance of such issues to the achievement of a sustainable ship dismantling industry.

1.7 Referring to the recent resolution of the Assembly of the IMO requesting the development of a new legally-binding instrument on ship recycling, Ms. Kuwabara-Yamamoto invited delegates to take note of the draft proposal for a new legally-binding instrument prepared by Norway for submission to the 54<sup>th</sup> session of the Marine Environment Protection Committee (MEPC), a copy of which had been provided to them, in considering the aforementioned issues. She suggested this forum might present a valuable opportunity to exchange views and experiences, with the possible view to formulating recommendations for the relevant bodies of the three Organizations, including in respect of a new legally-binding instrument.

1.8 In conclusion, Mrs Kubawara-Yamamoto referred to the World Summit, which had recognised the contribution made by non-governmental organizations, civil society, the private sector and other stakeholders to national development efforts.

1.9 Mr. Paul Bailey, Senior Technical Specialist, Social Dialogue and Sectoral Activities Department (ILO), in his opening remarks, thanked Ms. Kuwabara-Yamamoto for her opening statement. He underscored the occupational health and safety aspects associated with ship scrapping. He briefly outlined the ILO tripartite structure, comprising representatives of Governments, employers and workers, stating that this ensures that viable standards are adopted as all three parties approve them by consensus.

1.10 Mr. Bailey stressed that all major hazards exist at ship scrapping facilities. Recalling further that the worker is the person primarily exposed to such hazards, he said better worker training and protection is the first defence in preventing and combating environmental disasters.

1.11 Mr Bailey welcomed the IMO initiative to develop a legally binding instrument on safe and environmentally sound ship recycling. He also urged that any provisions on occupational health and safety be consistent with the general principles developed by the ILO.

1.12 He informed delegates that, whilst the issue of abandonment of ships was another important challenge, it was also important to note that the situation of abandoned seafarers was also being dealt with in another working group. Mr Bailey concluded by suggesting that reference be made to the numerous ILO international instruments, such as the revised *Code of Practice on occupational safety and health in the iron and steel industry* for examples of best practice.

1.13 Mr Javier Llorens, Senior Technical Officer (IMO), in his opening remarks on behalf of the IMO Secretariat, thanked Ms. Kuwabara-Yamamoto for her opening statement. He stated that the first session of the Group was a success but that much work is left to be done.

1.14 Mr. Llorens reported that the MEPC had endorsed the recommendations of the first meeting of the Joint Working Group, had approved a circular (MEPC/Circ.466) on the implementation of the IMO Guidelines, and had issued a further circular (MEPC/Circ.467) inviting competent authorities in ship recycling States and all stakeholders to provide information to IMO on any experience gained in the implementation of the IMO Guidelines on ship recycling.

1.15 Furthermore, Mr. Llorens informed the Joint Working Group that the IMO Assembly had adopted resolution A.981(24) whereby it requested MEPC to develop a new legally-binding instrument on ship recycling, which should regulate ship recycling, including, *inter alia*, ship construction, operation and preparation so as to facilitate safe and environmentally sound recycling, the operation of ship recycling in a safe and environmentally sound manner, and the establishment of an appropriate enforcement mechanism for ship recycling. Mr. Llorens added that the IMO Assembly had requested the draft instrument to be completed in time for consideration and adoption in the 2008-2009 biennium. The IMO representative invited delegates to review a proposal for a new legally-binding instrument prepared by Norway.

1.16 Finally, Mr. Llorens noted that the IMO Assembly, in its resolution A.980(24), adopted amendments to the IMO Guidelines on Ship Recycling. Mr. Llorens highlighted amendments relating to, *inter alia*, the definition of “ship”, responsibilities of the recycling States as regards the condition of ships purchased for recycling and the enforcement of appropriate worker health and safety requirements. Provisions regarding responsibilities of shipowners are further clarified in the amended Guidelines.

### **Election of the Chair**

1.17 Mr. Roy Watkinson (United Kingdom) was elected Chair of the Joint Working Group.

### **Adoption of the Agenda**

1.18 The Chair proposed that items 3 and 10 be considered together as they both concern the work programme and priorities of the Joint Working Group. He also suggested that these items could be more appropriately addressed after the Group had discussed many of the substantive items on the agenda. The Joint Working Group agreed with this proposal.

1.19 The representative of Greenpeace International proposed that the meeting should address the promotion of the implementation of existing instruments on ship scrapping.

1.20 The Chair noted that the issue of “immediate” or “interim” measures could be raised within the discussion of agenda items 4 or 8.

1.21 The Joint Working Group adopted the provisional agenda contained in document ILO/IMO/BC WG 2/1.

## **2 ADOPTION OF THE RULES OF PROCEDURE**

2.1 The Chair invited the Secretariat to introduce this agenda item. Ms. Donata Rugarabamu recalled paragraph 1.30 of the report of the first session of the Joint Working Group, which indicated that the Joint Working Group had agreed to apply the draft Rules of Procedure on a trial basis at its first session, that delegations had been invited to submit any written proposals on amendments to the rules of procedure to the Joint Working Group at its second session, and that the Joint Working Group’s conclusions and report shall normally be adopted by consensus and only by voting when consensus cannot be reached. Ms. Rugarabamu indicated that no written proposals were received intersessionally.

2.2 The Joint Working Group agreed to continue to apply the draft Rules of Procedure provisionally, without adopting them, as it had done at its first session.

### **3 OVERALL OBJECTIVES AND PRIORITY-SETTING FOR THE JOINT WORKING GROUP**

3.1 The Joint Working Group agreed to defer the discussion of this item till Item 10.

### **4 THE WORK PROGRAMMES OF THE PERTINENT BODIES OF ILO, IMO AND THE CONFERENCE OF PARTIES TO THE BASEL CONVENTION ON THE ISSUE OF SHIP SCRAPPING**

4.1 The representative of the IMO Secretariat introduced document ILO/IMO/BC WG 2/4, providing information on the work programme of the MEPC on the issue of ship recycling.

4.2 He recalled that the MEPC had held its 53<sup>rd</sup> session from 18 to 22 July 2005 and its report on that session had been circulated under the symbol MEPC 53/24. An intersessional meeting of the Working Group on Ship Recycling was held from 13 to 15 July 2005 and its report on that session was submitted to MEPC 53 (MEPC 53/WP.2).

4.3 He further reported that MEPC 53 took the important decision of requesting the IMO Assembly to adopt a resolution seeking the development of a legally binding instrument on ship recycling at its 24<sup>th</sup> session.

4.4 He then informed the Group that MEPC 53 had approved a number of amendments to the IMO Guidelines on Ship Recycling. These amendments were adopted by an IMO Assembly Resolution earlier this month.

4.5 Finally, he noted that MEPC 53 had invited the 27<sup>th</sup> Consultative Meeting of Contracting Parties to the London Convention 1972 and the IMO Legal Committee to consider the issue of abandonment of ships on land or in ports. The IMO Legal Committee will discuss this issue at its 91<sup>st</sup> session in April 2006.

4.6 The representative of the IMO Secretariat outlined the outcome of the 27<sup>th</sup> Consultative Meeting of Contracting Parties to the London Convention 1972 which reviewed the provisions contained in various IMO legal instruments and guidelines related to the abandonment of ships. The Consultative Meeting endorsed the overview provided by the IMO Secretariat as contained in document ILO/IMO/BC WG 1/2/2, which was considered by the first session of the Group, regarding the applicability of IMO legal instruments to abandonment of ships as far as the London Convention competence is concerned.

4.7 Referring to document ILO/IMO/BC WG 2/4/1, Mr. Paul Bailey informed the delegates that this was a list of the ILO activities, and stated that ILO had been invited to a number of international conferences, which was a sign of the high degree of interest this topic attracts worldwide. He confirmed that the ILO had produced Bengali and Hindi versions of their guidelines, as well as a Chinese version on CD ROM and was preparing a hard copy of this version and an Urdu and Turkish version. He proceeded to give a brief outline of the programmes described in document ILO/IMO/BC WG 2/4/1, stating that his Indian colleagues would also be likely to add to these comments.

4.8 The representative of the Secretariat of the Basel Convention then reported on the work of the relevant bodies of the Basel Convention on the issue of ship dismantling. She stated that the Open-ended Working Group of the Basel Convention (OEWG) had, at its fourth session held in July 2005, adopted three decisions, further to the mandate granted by the Conference of the Parties, as reflected in document IMO/ILO/BC WG 2/4/2. She particularly drew the attention of the group to the following, namely:

- .1 the OEWG had endorsed the decisions and the work programme of the Joint Working Group;

- .2 the OEWG had requested stakeholders' comments on the practical, legal and technical aspects of ship dismantling. Some comments received were presented to the Group as document ILO/IMO/BC WG 2/8/3, as instructed by the OEWG. This document is also to be submitted to the fifth session of the OEWG to be held in April 2006, in order to enable it to prepare recommendations for the Eighth Meeting of the Conference of the Parties to be held in November 2006;
- .3 A questionnaire had been sent out inviting Parties for their views on the issue of abandonment of ships. A compilation of the answers provided were circulated as document ILO/IMO/BC WG 2/8/1 and demonstrated that this issue was on the minds of the Parties; however there were diverse views and approaches to the topic. There was no particular standard manner of addressing the topic.

4.9 The Joint Working Group welcomed the work that the three Organizations were undertaking, and noted that other organizations were also conducting relevant activities.

4.10 The Norwegian delegation was invited to provide an overview of its proposal for a draft new legally-binding instrument on ship recycling, which was included in document IMO/ILO/BC WG 2/INF.1, which was submitted for consideration by the MEPC at its 54<sup>th</sup> session.

4.11 Norway noted that its proposal was closely linked to many of the issues arising under agenda items 6 and 8 and advised that, when the Group began its deliberations on such items, he would make further reference to the proposal. The delegate informed that this was a first draft, taking into account the outcome of MEPC 53, as well as relevant Basel Convention and ILO guidelines. He informed delegates that the document proposes the adoption of a new free standing instrument on ship recycling. Although it was difficult to go into detail at this stage and not all the proposed provisions had been fully drafted, the representative stated that the proposal included an enforcement mechanism, reporting mechanism and requirements for ships and recycling facilities.

4.12 Several delegations congratulated Norway for the work it had undertaken in preparing the proposal for a draft legally-binding instrument on ship recycling. Some delegations noted, however, that they would still need time to further consider the proposal, but looked forward to coming to MEPC 54 to discuss this proposal in detail. The Joint Working Group welcomed the development of a legally-binding instrument that would enhance enforcement of standards and ensure a level playing field.

4.13 The delegate of Greenpeace International, referring to a new report of International Federation of Human Rights (FIDH) and Greenpeace International, estimated that thousands of workers have died during the last two decades in ship breaking, and emphasized the need for this Joint Working Group meeting to address immediate measures to prevent further death and pollution and that this Joint Working Group should as a very minimum send a strong recommendation to the parent organizations and countries to give the utmost importance to immediate implementation and enforcement of existing instruments.

4.14 The ILO Workers stated that areas addressing workers' safety and health at ship recycling facilities was within the mandate of ILO and that the text for relevant provisions in the new legally binding instrument should be drafted by the ILO Secretariat. The ILO Workers further stated that if the MEPC working group recommended substantial changes to this text, it should be referred back to the Joint Working Group for consideration.

4.15 A number of delegations, while recognizing the importance of a new legally-binding instrument, observed that finalization and adoption of a text for a new instrument would take some time and noted that concerns regarding environmentally sound management of ship recycling and workers' health, were current problems which needed to be addressed in the short-term as well as the long term. These delegations noted that there were existing instruments and guidelines on these issues which could be used to address immediate problems.

4.16 In response to queries regarding the submission of proposals and comments to MEPC 54, the representative of the IMO Secretariat reminded delegates that all IMO members and observer delegations can and should attend MEPC sessions to consider this proposal and those delegations can be composed of all kinds of experts. He confirmed that the deadline for submission of all documents relating to the agenda to MEPC 54 consisting of 6 or more pages must be submitted thirteen weeks before the meeting, therefore by 16<sup>th</sup> December 2005, whilst documents relating to previous documents or agenda items which consist of less than six pages should be submitted nine weeks before the meeting, therefore by 9 January 2006. He noted that MEPC is scheduled to meet in both March and October 2006; therefore there will be ample time before these meetings to submit proposals or participate in deliberations.

4.17 The delegation of Norway expressed its wish that all those having relevant expertise would contribute to the development of the draft instrument.

## **5 PROMOTION OF THE IMPLEMENTATION OF THE GUIDELINES ON SHIP SCRAPPING**

5.1 The Chair invited the Secretariats of the three Organizations to provide brief updates on the activities undertaken by them for the promotion of the implementation of the guidelines. It was noted that, at its first session, the Joint Working Group had made five recommendations concerning this issue:

- .1 to invite the ship scrapping States to make publicly available information about the point of contact for the competent authorities responsible for issues related to ship scrapping;
- .2 that each Organization should ensure that a user-friendly web page is established providing information on ship scrapping matters and a link to the other two Organizations relevant web-pages and guidelines;
- .3 that each Organization should consider the translation of its guidelines into the working languages of the main ship scrapping States;
- .4 to invite Governments and all involved stakeholders to provide information to the three Organizations, as appropriate, on any experience gained in the implementation of the Guidelines; and
- .5 the implementation of the guidelines should be also promoted through joint technical co-operation activities, an issue which was discussed under item 5 of the agenda for that session.

5.2 The Joint Secretariat then advised delegates as follows:

- .1 The MEPC had issued a circular requesting States to provide information on the point of contact for ship recycling matters;
- .2 The three Secretariats had established user-friendly web pages on their respective websites;
- .3 ILO already had translations of the ILO guidelines in the languages mentioned in paragraph 4.7. The MEPC had recommended that translation of the IMO guidelines be considered in the context of technical assistance activities. The Basel Convention was exploring the means for translating the Basel Convention guidelines on ship dismantling.
- .4 The Joint Secretariat had invited parties to provide information on the experience gained from the implementation of their guidelines;

- .5 The promotion of the implementation of the three guidelines could be considered under agenda item 6.

5.3 The delegation of Denmark informed delegates that they were preparing a booklet providing practical guidance for ship recycling yards as to how to implement the Basel Convention guidelines.

5.4 The representative of the United Kingdom then provided a summary of the work being undertaken domestically on the issue of ship recycling, including promotion of the guidelines. A United Kingdom Ship Recycling Strategy is being developed which will set policy for the recycling of government-owned vessels and provide recommendations to shipowners and recycling facilities. In addition guidance is being developed for those wishing to recycle ships in the United Kingdom. Both the Strategy and guidance will be issued for public consultation in 2006.

5.5 The delegation of Greenpeace International informed the delegates that the IMO Circular on “gas-free-for-hot-work” certification, although in itself a good initiative, cannot, in their opinion, be considered to be effective, as deadly accidents continue to happen over the last months and emphasized that enforcement of existing instruments might well have saved lives.

## **6 EXAMINATION OF THE RELEVANT ILO, IMO AND BC GUIDELINES ON SHIP SCRAPPING**

6.1 Turning to agenda item 6, the Chair noted that the Group had before it a substantive document which had been prepared by an intersessional working group, which continued the work on this issue that had been begun during the first session of the Joint Working Group.

6.2 A representative of the United States’ delegation, which had participated in the intersessional group, presented an overview of the document. He reiterated that the objective had been to identify the key areas of consensus as well as any gaps, overlaps or ambiguities. Wherever possible, the group had tried to identify how to practically apply the Guidelines, identify any major gaps or ambiguities and recommend steps on how to resolve these.

6.3 The Joint Working Group considered the report of the inter-sessional Working Group on the comparison of the Guidelines of the ILO, IMO and the BC on ship scrapping (document ILO/IMO/BC WG 2/6). The document examined eleven key topic areas. There is a summary of the ambiguities and gaps. In discussing document ILO/IMO/BC WG 2/6, the Joint Working Group, being aware of the priorities of the MEPC given by the twenty-fourth session of the IMO Assembly, was of the view that the analysis and recommendations given in that document should be taken into account, as appropriate, in the development at the IMO of the mandatory requirements on the recycling of ships. Furthermore, the Group was of the view that the stakeholders should study the document in order to seek information assisting them in their implementation of the three sets of Guidelines. This paper is contained in annex 2.

6.4 In reviewing the various recommendations noted in the report, the delegation of Canada commented that in terms of paragraphs 86, 90, 106 and 108 referring to “ready for recycling criteria”, it was felt that such criteria should be set at the international level so as to ensure that all ships have to meet the same commonly agreed criteria.

6.5 The delegation of Turkey noted that the transboundary movement of wastes can take place only upon prior written notification by the State of export to the competent authority of the State of import. In this context, the question of whether the responsibility in connection with “prior informed consent and notification procedure” falls on the State of export or the exporting company could be explored at the Joint Working Group meetings.

6.6 In relation to the question of the delegation of Turkey regarding responsibilities in connection with “prior informed consent and notification procedure”, the delegation of the Shipbreakers’

Association of Turkey requested an exploration from the Joint Working Group as to whom should be considered as an exporting state and assign specific responsibilities to those states, in order to apply the PIC Notification Procedure effectively.

## **7 JOINT TECHNICAL CO-OPERATION ACTIVITIES**

7.1 The representative of the Secretariat of the IMO, introducing document ILO/IMO/BC WG 2/7, stated that this document had been prepared approximately three months ago. He highlighted that the MEPC 53 had endorsed the views of the Group and had agreed to invite the Technical Co-operation Committee (TCC) to consider technical co-operation activities for the Organization. Confirming that the TCC was to meet next in June 2006, he stated that it would consider a global/regional programme aimed at resource mobilization to finance the development/strengthening of the capacity of developing countries in implementing the relevant guidelines on ship recycling.

7.2 The Group was informed that, further to requests by the MEPC 53 and the endorsement of the TCC 55, the International Ship Recycling Fund was expected to be established in the near future.

7.3 In responding to a question by the ILO Workers as to whether there was any information available on how the Ship Recycling Fund would function, the representative of the IMO Secretariat informed the Group that the issue would be addressed when the Fund was established and when its amount was known, it would be the right moment to deal with this matter.

7.4 He further commented that the workshop held by IMO in Izmir, Turkey, had been a great success. IMO was looking to organise three further events in this vein and welcomed proposals to the IMO in this respect. Taking into consideration previous comments by one delegation, he added that translations of the IMO Guidelines into Bengali, Hindi and Urdu are also underway.

7.5 The representative of the Secretariat of the Basel Convention gave a brief update on its activities, confirming that capacity building and technical assistance is a priority for the Basel Convention. He expressed his appreciation of the Izmir workshop, which provided an opportunity for the different stakeholders to exchange views and discuss issues outside a formal setting.

7.6 The Izmir workshop, in particular the onsite visit, was praised by the representative of the ILO Secretariat, who also participated. The representative invited delegates to submit ideas for future events and topics. He noted that the participation of all three secretariats in workshops and other fora was appreciated, but noted that it was not always practical to participate in such fora.

7.7 Many delegations expressed their appreciation of the IMO workshop in Izmir and encouraged the organization of relevant events in the future. It was noted that, at the present time, many events were being organized relating to the issue of ship scrapping, and there was a need for coordination and cooperation between the three Organizations.

7.8 The representative of Greenpeace International informed the delegates about the conclusion of a discussion regarding the establishment of an eco-dismantling fund with contributions of shipowners during the first Joint Working Group meeting and proposed to discuss the fund possibilities in more depth at the next Joint Working Group meeting.

7.9 A representative of the ILO Workers noted that there should be greater recognition of the involvement of groups representing workers in such events.

7.10 The Joint Working Group, having taken into account the information provided on the technical co-operation activities on ship scrapping launched or planned by the three Organizations, agreed to:

- .1 recommend that each Organization invite the other two Organizations to participate in the workshops or seminars organized by the Organization;
- .2 recommend that each Organization include in the programme of its activities a section providing information on the Guidelines of the other two Organizations;
- .3 recommend that the secretariats of the three Organizations make efforts to enhance coordination and co-operation in the organizations of such activities; and
- .4 invite Governments and other stakeholders to provide information to the three Organizations on any technical co-operation activities or other relevant initiatives already launched or planned so that these activities could be taken into account in the future technical co-operation programmes of the Organizations.

## **8 COORDINATED APPROACH TO ALL THE RELEVANT ASPECTS OF SHIP SCRAPPING**

### **(a) Abandonment of ships on land or in ports**

8.1 The representative of the Secretariat of the Basel Convention introduced document ILO/IMO/BC WG 2/8/1, which comprised of information submitted by Argentina, Brazil, Brunei, Colombia, Estonia, Italy, Panama and Poland, in response to a questionnaire on abandonment of ships on land or in ports issued by the OEWG at its fourth session. The submissions were transmitted to the Joint Working Group pursuant to the instruction of the OEWG, and delegates were invited to consider them during their deliberations on this issue. The representative of the Secretariat observed that, since this document had been prepared, submissions had been received from Costa Rica, Greece, India, Indonesia and Mexico. These further submissions would be incorporated into the document that would be submitted to the OEWG at its fifth session to be held in April 2006. The representative of the Basel Convention advised that stakeholders could submit comments for consideration by OEWG 5 until 10 January 2006.

8.2 Delegations briefly discussed which forum would be the appropriate forum to address this important issue, but the Group did not reach a definitive conclusion in this regard.

8.3 Finally, the Joint Working Group noted the work being undertaken on the issue of abandonment of ships on land or in ports by the OEWG of the Basel Convention, and expressed its interest in seeing the outcome of these deliberations. The Group further noted that other bodies are considering this issue and recommended that the outcome of these deliberations should be considered by the Group (see also paragraphs 4.5 and 4.6).

### **(b) Concepts such as environmentally sound management and prior informed consent Environmentally Sound Management**

8.4 The United Kingdom had, in its capacity of member of the Working Group as the WEOG representative for the Basel Convention, submitted document ILO/IMO/BC WG 2/8 on Environmentally Sound Management (ESM). The delegation, in its overview on the document, noted that it identified the key aspects of this subject in the context of ship dismantling, and that it described current practice in the United Kingdom on this issue.

8.5 Many delegations welcomed the paper prepared by the United Kingdom, stating that it was informative and could be helpful in improving the situation at recycling facilities and in the work being undertaken with regard to mandatory requirements.

8.6 With respect to the paper on Environmentally Sound Management, the Joint Working Group agreed that the concepts embodied in the United Kingdom paper could be useful input to the IMO

process to develop a mandatory instrument for ship recycling and for other purposes as appropriate. The paper is contained in annex 3.

8.7 The delegation of the Gambia, being the representative of the African Group for the Basel Convention to the Joint Working Group, noted that the United Kingdom paper could be a useful input into the development of a mechanism to promote joint implementation of the relevant guidelines.

8.8 The delegation of Greenpeace International expressed its view that a new legally binding instrument should be built upon existing instruments and standards to ensure that a new regime will be stronger instead of weaker with respect to the protection of human health and environment.

### **Prior informed consent**

8.9 The Secretariat of the Basel Convention briefly presented document ILO/IMO/BC WG 2/8/2, on prior informed consent, noting that it outlined the Basel Convention procedure and made comparisons with the draft outline of a reporting system for ships destined for recycling as contained in document MEPC 52/WP.8.

8.10 It was observed that, since the MEPC 52 had undertaken its work on the draft outline of a reporting system for ships destined for recycling and the preparation of document ILO/IMO/BC WG 2/8/2, the IMO Assembly had approved the development by the MEPC of a new legally-binding instrument on ship recycling.

8.11 The delegation of Canada commented that it was important to emphasize that the provisions of the Basel Convention on prior informed consent required that such consent should be given in writing. That is, the prior informed consent to the import of the hazardous waste and other wastes of the State of import and the State of transit is required *in writing* before the State of export can authorise the commencement of any transboundary movement of such wastes. The same delegation also noted that a further important feature of the Basel Convention control mechanism is that it establishes a tracking system by which transboundary movements are monitored up to the issuance of the final certificate of disposal. Several delegations endorsed these statements, agreeing that these significant features of the Basel Convention mechanism should be highlighted.

8.12 The Dutch delegation thanked the Secretariat of the Basel Convention for providing a useful document in this respect. The Dutch view is that it is important to have a practical approach when it comes to reporting. Therefore they announced a demonstration project for the scrapping of four vessels in 2006. This trial will provide information about the practicalities of the elements that are under consideration, like:

- .1 an inventory
- .2 ship recycling plan
- .3 a checklist for environmentally sound management conditions
- .4 pre-cleaning prior to delivery and prior to cutting
- .5 reporting and timing

The Netherlands will report the results of this project to MEPC 55 and the report will be made available to the three respective UN bodies.

8.13 The Joint Working Group agreed that any reporting system developed at the IMO for the purposes of ship recycling should take into account the specific circumstances of ship recycling, and have regard to the objectives to be met by such reporting, e.g., to ensure scrapping is conducted in an

environmentally sound manner. The Group recommended that experience of prior informed consent as established under the Basel Convention and other existing reporting systems be considered in the development in the IMO of a reporting system as part of a mandatory instrument for ship recycling. Document ILO/IMO/BC WG 2/8/2 is in annex 4. The Group also noted that it was open for other interested stakeholders to submit further detailed papers on relevant experiences.

**(c) Practical approaches that promote occupational health and safety and environmentally sound management of ship scrapping**

8.14 The Joint Working Group briefly discussed this item. One delegation observed that the ILO could provide a valuable contribution to the development of provisions relating to occupational health and safety in the new legally-binding instrument on ship recycling to be developed by the MEPC.

**(d) Possible roles of concerned States, such as flag States, port States and recycling States in the context of occupational health and safety and environmentally sound management of ship scrapping**

8.15 The delegation of Norway observed that proposals for the possible roles of the above-mentioned concerned States had been addressed in its proposal for a draft new legally-binding instrument on ship recycling, which was included in document IMO/ILO/BC WG 2/INF.1, and which has been submitted for consideration by the MEPC at its 54<sup>th</sup> session. The delegation invited the Joint Working Group to consider these proposals.

**(e) Requirements for a reporting system for ships destined for scrapping**

8.16 The delegation of Norway observed that proposals for a reporting system for ships destined for recycling had been addressed in its proposal for a draft new legally-binding instrument on ship recycling, which was included in document ILO/IMO/BC WG 2/INF.1, and which has been submitted for consideration by the MEPC at its 54<sup>th</sup> session. The delegation invited the Joint Working Group to consider these proposals.

**(f) Basic principles of an applicable control mechanism**

8.17 Having substantively discussed issues pertinent to an applicable control mechanism under other agenda items, the Group did not raise any further issues under this agenda item.

**(g) Pre-cleaning and preparation of ships and its role in sustainable ship scrapping operations**

8.18 The issue of pre-cleaning and preparation of ships gave rise to extensive discussion amongst the participants in the Joint Working Group. The Joint Working Group agreed that this was an important issue, which had to be addressed in a realistic manner and address the safety of seafarers, as well as workers at recycling yards, and the protection of the environment.

8.19 Some delegations agreed that there are certain hazardous materials or substances that cannot be removed while a ship still has to proceed under its own power to the recycling yard (such as asbestos, PCBs, PVCs and wiring). Accordingly, pre-cleaning could only be performed to a certain extent before the final journey to the ship recycling yard. Some delegations agreed that, nevertheless, pre-cleaning of the ship should be done to the greatest extent possible while still permitting the ship to retain its operating certificates so that it could reach the recycling yard.

8.20 Many delegations stressed that the ship recycling yard should have the capacity to deal with any residual hazardous wastes in an environmentally sound manner that might be present on a ship to be scrapped.

8.21 It was noted that, in its decision OEWG IV-5, the OEWG had requested stakeholders to provide comments on practical, legal and technical aspects of ship dismantling, including views on possible requirements applying to recycling facilities, such as licences, certification, investment plans for provisions to ensure the environmentally sound management of ship dismantling and the capability to carry out pre-decontamination. Some comments received had been presented to the Group as document ILO/IMO/BC WG 2/8/3, as instructed by the OEWG. In this connection, the Secretariat of the Basel Convention advised that the original deadline for receipt of such comments for submission to the OEWG could be extended until 10 January 2006.

8.22 The delegation of Greenpeace International stressed that under the Basel Convention the legal responsibility for hazardous waste lies upon the shipowner and the exporting country (generator of the waste) instead of the shipbreaker and the shipbreaking country. Pre-cleaning of ships should therefore, in the opinion of Greenpeace International, happen under the financial responsibility of shipowners during the operational life of a ship (during construction and dry-docking), prior to the final voyage of a ship destined for breaking and prior to the cutting of a ship.

#### **(h) Potential benefits of a mandatory ship recycling plan**

8.23 The Group did not raise any further issues under this agenda item.

### **9 ANY OTHER BUSINESS**

9.1 A representative of Greenpeace International on behalf of Greenpeace International and the International Federation for Human Rights (FIDH) drew the attention of the delegates to a “Joint Declaration on Implementing Urgent Global Solutions to the Shipbreaking Crisis” (<http://www.greenpeace.org/sb-declaration>) that is signed by a global coalition of 20 human health, environmental and human rights NGOs, including trade unions. It was noted that the global coalition is very concerned about the acute exposure to asbestos, persistent organic pollutants and heavy metals, as well as to explosions from residual hydrocarbons, which is creating unacceptable levels of death and suffering from occupational disease and pollution. The global coalition called upon parties to the IMO, ILO and the Basel Convention, as well as to participants in the Joint Working Group of ILO, IMO and the Basel Convention, to take immediate measures such as implementation and enforcement of existing instruments, like the Basel Convention and the ILO Guidelines, in order to save human life and to protect the environment.

9.2 In its declaration the global coalition also urged the Joint Working Group of ILO, IMO and the Basel Convention on ship scrapping, to guarantee that existing environmental justice and human rights principles and regulations are incorporated in a new global mandatory regime on shipbreaking (watchdog function).

9.3 The Joint Working Group then considered the issue of a future meeting of the Group. There was extensive discussion on this matter. Many delegations considered that, in view of the developments at the IMO and the elements of the future work programme identified for the Joint Working Group, a further meeting should be held.

9.4 The ILO Workers expressed concern that the period before the next meeting shall be in excess of the one year stipulated in the draft rules of procedure.

### **10 WORK PROGRAMME**

10.1 When turning to this agenda item, the Group also considered agenda item 3, on the overall objectives and priority-setting for the Joint Working Group.

10.2 A number of elements were suggested in discussion which could be considered for the future work programme for the Joint Working Group. These included further consideration of:

- .1 the issue of abandonment of ships;
- .2 pre-cleaning of ships;
- .3 elaboration of ESM;
- .4 ship recycling fund(s);
- .5 health and safety;
- .6 the proposed new IMO instrument;
- .7 interim measures to be taken pending entry into force of the new IMO instrument.

10.3 Some delegations emphasised the importance of strengthening interim measures, such as implementation of existing instruments and the guidelines, implementation of MEPC circulars such as Gas Free for Hot Works, ship recycling plan and the Green Passport.

## **11 CONSIDERATION OF THE REPORT OF THE JOINT WORKING GROUP**

11.1 The Joint Working Group approved its report for its second session, as contained in the present document.

11.2 This report, including its annexes, will be submitted for information and consideration to MEPC at its 54<sup>th</sup> session, to the Open-ended Working Group of the Basel Convention at its fifth session and to the ILO Governing Body at its 295<sup>th</sup> session to act on as appropriate.

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**ANNEX 1**  
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## ANNEX 2

### FINDINGS OF THE INFORMAL WORKING GROUP ON THE COMPARISON OF THE THREE SETS OF GUIDELINES

#### Note by the Informal Working Group

#### SUMMARY

**Executive summary:** This document provides the findings of the comparison of the IMO/ILO/Basel Convention Guidelines on ship scrapping, undertaken by an informal intersessional working group coordinated by the United Kingdom.

**Related documents:** ILO/IMO/BC WG 1/8 (Annex 2 & 3), ILO/IMO/BC WG 1/3/1

#### Executive Summary

1 There appear to be no significant conflicts between the three sets of guidelines and cross references are made with frequency between the guidelines.

2 ILO guidelines are comprehensive and could be deferred to as the primary guidance on occupational safety and health at ship recycling yards.

3 All three guidelines agree on the need for a Green Passport and how it might fit into a ship recycling plan (or equivalent).

4 One key area of difference between the guidelines is how “informed consent” should be implemented among the flag states, ship owners, recycling yards and recycling states. More discussion is required on this issue.

5 Application of the Basel definition of environmentally sound management (ESM) appears to limit the use of sections of the other guidelines.

6 A summary of the ambiguities and gaps between the guidelines and the recommendations resulting from this comparison work is available from Paragraph 94.

#### Introduction

7 The first meeting of the Joint International Maritime Organization/International Labour Organization/Basel Convention Working Group on Ship Scrapping was held at the IMO Headquarters in February 2005. Agenda item 3 of the meeting called for the Group to undertake a comparison analysis of the sets of Guidelines issued by the three organizations on ship recycling. To this end an informal working group, chaired by the United Kingdom, was established.

8 It was agreed that within the available timeframe, a comprehensive analysis of the Guidelines would not be possible and would require further work. It was thus agreed to carry the work forward by intersessional correspondence, to be completed in time for consideration by the next meeting of the Joint Working Group in December.

9 Initial intersessional discussion determined that a comprehensive analysis of the Guidelines is impractical because insufficient funding and country expertise was available to perform the task. It was proposed, therefore, to undertake a more focused analysis of key aspects of the Guidelines that are believed to be fundamental to the major issues that need to be addressed by the JWG.

10 The purpose of the comparison analysis is to identify key areas of consensus, as well as any gaps, overlaps, or ambiguities among three ship recycling guidelines:

- .1 the *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 by Decision VI/24;
- .2 the *IMO Guidelines on Ship Recycling*, adopted on 5 December 2003 at the twenty-third session of the Assembly by resolution A.962(23); and
- .3 the *Safety and Health in Shipbreaking: Guidelines for Asian countries and Turkey*, endorsed for publication by the Governing Body of the International Labour Office at its 289<sup>th</sup> session (March 2004).

11 The following initial inputs were provided for the informal working group's consideration:

- .1 a table, correlating the issues presented in each of the Guidelines as a matrix (Annex 2 JWG report), which was based on the methodology proposed in document ILO/IMO/BC WG 1/3/1; and
- .2 A draft overview paper, submitted by the United Kingdom, outlining the purpose of each document and identifying some of the perceived differences and deficiencies of each (Annex 3 JWG report).

## **History and General Purpose of Each Guideline**

### **International Labour Organization (ILO)**

12 The International Labour Office (ILO) unanimously endorsed for publication by the Governing Body at its 289<sup>th</sup> session (March 2004) a set of criteria to govern end-of-life disposal and recycling of ships. These criteria were outlined in "*Safety and Health in Shipbreaking: Guidelines for Asian Countries and Turkey*", a document directed at those who have responsibility for occupational safety and health in shipbreaking operations, including shipbreaking employers, workers, and competent authorities.

13 The Guidelines were drafted to contribute to:

- .1 The protection of shipbreaking workers from workplace hazards and the elimination of work-related injuries, ill health, diseases, incidents and deaths;
- .2 Assisting and facilitating the improved management of occupational safety and health issues in or about the workplace.
- .3 The ILO guidelines are not legally binding, nor are they intended to replace national laws, regulations or accepted standards. They are intended to provide guidance in establishing effective national systems, procedures, and regulations to govern shipbreaking, particularly in those regions where such regulations are under development or are nonexistent.

14 The Guidelines suggest a national framework defining general responsibilities and rights for employers, workers and regulatory authorities with regard to shipbreaking. In addition, the Guidelines provide recommendations on safe shipbreaking operations including the management of hazardous substances, protection and preventative measures for workers against hazards and suggestions for a competence and training program.

15 The ILO approach is to facilitate step-by-step improvements of the hazardous practice of dismantling ships on beaches. The guidelines suggest that this can be achieved by:

- .1 Ensuring there is an inventory of hazardous materials onboard;
- .2 Decontamination and gas-freeing;
- .3 Planning for safe demolition;
- .4 Recycling; and
- .5 Safe waste management.

#### **International Maritime Organization (IMO)**

16 In December 2003, the International Maritime Organization (IMO) issued a document entitled “*Guidelines on Ship Recycling*” which was developed to give advice to all stakeholders in the recycling process, including administrators of shipbuilding and maritime equipment supplying countries, flag, port and recycling States, as well as inter-governmental organizations and commercial bodies such as shipowners, repairers, and recycling yards.

17 These Guidelines have been developed to provide guidance as to best practice, which takes into account the ship recycling process throughout the life cycle of the ship.

18 The Guidelines suggest practical measures for all stages of the ship recycling process including:

- .1 New ship and equipment design, in particular to minimize the use of hazardous substances and waste generation and to facilitate recycling and the removal of hazardous materials;
- .2 Preparation of a Green Passport for new and existing ships;
- .3 Selection of a recycling facility and preparation of a ship for recycling including a Ship Recycling Plan; and
- .4 Roles for primary stakeholders including flag, port and recycling States, the Basel Convention, the ILO and the shipping industry.

19 The Guidelines seek to encourage recycling as the best means of ship disposal while providing guidance in preparing ships for recycling by minimizing the use of potentially hazardous materials and waste generation during a ship’s operating life.

20 In general, the Guidelines take the view 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 noted that shipowners and other stakeholders have a responsibility to address the issues involved.

## Basel Convention (BC)

21 In 2002, the Basel Convention (BC) adopted “*Technical Guidelines for the Environmentally Sound Management (ESM) of the Full and Partial Dismantling of Ships*,” a document directed at those countries which already have or wish to establish facilities involved in ship dismantling.

22 The guidelines provide information and recommendations on procedures, processes and practices that must be implemented to attain ESM at facilities for ship dismantling. The guidelines also provide advice on monitoring and verification on environmental performance.

23 Specifically, the BC ship dismantling guidelines provide guidance on:

- .1 The process of ship decommissioning for disposal and identification of potential contaminants and prevention of releases;
- .2 Suggested good practice in the design, construction and operation of ship dismantling facilities; and
- .3 The principles of ESM and how to achieve it at ship dismantling facilities, including a recommended timetable of requirements to be implemented within one, five, and 10 years.

## Comparison of the key issues in the three guidelines

24 The following 11 topic areas were examined in each of the guidelines. The analysis below indicates where there is agreement, ambiguities, and gaps. Recommendations are provided throughout for consideration.

### Green Passport

25 IMO defines a Green Passport as a document that provides information with regard to materials known to be potentially hazardous used in the construction of the ship, its equipment and systems. IMO notes that the Green Passport should accompany the ship throughout its operational life and be submitted to the recycling yard. IMO developed a list at 5.2.2 which may be used as the elements of a Green Passport (see Inventory of Materials Known to be Potentially Hazardous). The passport should identify the approximate quantities and location of each identified material. IMO separates the inventory into potentially hazardous materials, operationally generated wastes, and ship stores. IMO directs shipowners to prepare a Green Passport to the extent “practicable and reasonable” based on ships plans, diagrams, manuals, technical specifications and ships stores records.

26 The 2004 ILO Safety and Health in Shipbreaking guidance endorses the use of a Green Passport. According to ILO, a Green Passport should contain an inventory of all materials potentially hazardous to human health or the environment used in the construction of a ship and it should accompany the ship throughout its operating life.

27 Section 4 of the Basel Guidelines recommends that all ships destined for breaking include an inventory of hazardous substances and wastes that are onboard. This approach is quite similar to the IMO Green Passport approach. There does not appear to be significant differences among the three guidelines regarding the development and use of the Green Passport.

28 **Recommendation:** It may be worthwhile to develop a model Green Passport, acknowledging the fact that certain elements would be more appropriate for existing versus new vessels. At some point in the future, concerns about PCBs, TBT, and asbestos should lessen because their use will cease.

## Ship Recycling Plan/Certificate for Dismantling/Environmental Management Plan

29 IMO recommends that the facility prepare a ship recycling plan in consultation with the ship owner. Section 8.3 describes the various parts of the plan. Section 8.3.2.4 identifies the principal components of this plan to include: a Green Passport, technical advice from the shipbuilder, details on the ship's operational equipment and potential sources and amounts of hazardous contaminants, and identification of potential hazards to OSH. The plan has different elements, some submitted by the ship owner while others are prepared by the recycling yard. Section 8.3.3 recommends that the last owner take certain actions in preparation to prevent pollution. These actions include the minimization of quantities of fuel, lubricants, hydraulics, oils and chemicals and the removal of wastes at the last port. Ship owners are also urged to insure that a Green Passport is completed and that there is some form of control of drainage and ballast water at the yard. These recommendations are quite similar to the ESM element found in the Basel guidance but are not a one-for-one match.

30 Section 8.3.3.2 of the IMO guidelines note that the shipowner, in consultation with the recycling yard, should "consider" the following: that the yard can remove and dispose of asbestos safely, that the yard can discharge halon to an appropriate facility, that removal of material remaining in tanks is accomplished to the maximum extent possible. This section notes that all materials should be managed in an environmentally sound manner (however there is no direct reference here to the Basel ESM definition).

31 **Recommendation:** Reference to Basel ESM definition should be made in IMO and ILO Guidelines as appropriate.

32 The recycling plan in the IMO guidelines at Section 8.3.4 notes that the shipowner should arrange for the issuance of a "gas free for hot work" certificate by the recycling yard, and should ensure that all oxygen deficient areas of a ship are clearly identified, and that a program for protecting occupational safety and health are implemented. The IMO guidelines specifically reference the MSC/Cuc 1084 "Principles for hot work on board all types of ships" and Assembly Resolution A.864(20) Recommendations for entering enclosed spaces aboard ships. This implies that compliance with these two standards are "best practices".

33 ILO Section 2.3.5 promotes the use of a Certificate for Dismantling. This certificate contains many of the same elements as the IMO's ship recycling plan. The ILO certificate has the following elements: an updated list of hazardous substances and wastes on board, assurances from the shipowners and recycling yard that the ship is decontaminated and is gas free, information is provided to assure that a safe shipbreaking plan can be developed, an Occupational Safety and Health (OSH) management system is implemented, and that there is provision of appropriate housing, welfare and sanitary facilities for all workers.

34 As noted above, Basel requires yards to develop and implement an Environmental Management Plan (EMP) which includes many aspects of the IMO ship recycling plan and ILO's certificate of dismantling. All of these documents have essentially the same elements but use different terms. They require the yard to implement a occupational safety and health program, that a Green Passport accompany the ship to the recycling yard, that as much wastes are removed prior to recycling as is possible, and that monitoring of both OSH and the environment is accomplished.

35 **Recommendation:** It may be necessary to summarize and consolidate the differing terminologies noted in the three guidelines related to EMP, ship recycling plans, and the certificate of recycling.

### **List of hazardous waste or hazardous material on the ship**

36 The IMO guidelines define hazardous materials as materials posing harm to human health or the environment as identified in the IMDG code, in the Basel Convention, or other international authorities. IMO references Basel and MARISEC. Basel has developed its own list, called “List of Hazardous Wastes and Substances that are Relevant to Ship Dismantling”. Shipowners in the MARISEC guidance include a list entitled Potentially Hazardous materials which may be on board vessels delivered to recycling yards. It would appear that the IMO document incorporates Basel definitions by reference.

37 **Recommendation:** It may be appropriate for future work to consolidate these lists so as to narrow the focus to elements that are most appropriate for ship recycling. For example, there may be substances on the list that would be present as an integral part of steel, but steel is not a “hazardous substance.” Development of a single list would be valuable (MEPC is progressing this issue).  
Occupational Safety and Health (OSH)

38 Section 1.7 of the IMO guidelines states that the obligation for environmental protection and occupational health and safety 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. The IMO guidelines, however, do state that shipowners have a responsibility to address these issues. IMO references the ILO guidelines, but does not cover OSH issues in detail.

39 The Basel guidelines clearly state that they do not specifically deal with occupational safety and health aspects of ship recycling and refers readers directly to the ILO. Basel does however note on page 92 a list of 13 specific OSH issues that must be complied with within one year. The Basel guidelines acknowledge that many recycling yards have gaps in their operations and that some time should be given for them to achieve compliance with ESM.

40 The ILO guidance is the most comprehensive guide covering all aspects of occupational safety and health related to ship recycling. The ILO guidelines are not obligatory, rather they are viewed by national governments as recommended practices. ILO-OSH 2001 is an ILO guidance on occupational safety and health which indicates that workplaces should develop a health management system. A health management system includes surveillance of the working environment which encompasses identification and evaluation of environmental factors that may affect workers health. Such an approach also requires continuous review. This approach to reviewing risks, addressing them, and continued monitoring is consistent with the Basel ESM approach.

41 ILO Section 2 recommends that each ship destined for recycling include a Certificate for Dismantling (see Section 2.3.5). This Certificate includes: 1) most aspects of a Green Passport, 2) assurances from owners, brokers, and breakers that the ship has been successfully decontaminated and is gas free, 3) that OSH (Occupational Safety and Health) management systems are in place, 4) assurances that the recycling yard is implementing relevant OSH conventions, and 5) the provision of appropriate housing, welfare and sanitary facilities are available to all workers. OSH training for supervisors, workers and contractors is a critical aspect on the ILO approach. Section 14 notes that training should cover all workers, that workers should be retrained on a regular basis, that training is reviewed to assure that risks are being addressed, and that the training program be documented so that each worker is issued certification of training.

42 ILO Section 3 sets out the general requirements for a national OSH program. Such a program is the responsibility of the recycling state and should be based on specific laws and regulations that have effective mechanisms for inspections and enforcement. This national program must protect all workers (3.1.4), set exposure limits (3.1.5), and pass and enforce national labor laws (3.2). Section 9.2 clearly notes that workers potentially exposed to asbestos should comply with the Asbestos Convention (no. 162) and Recommendations (no. 172) which establish best practices to

protect workers from asbestos exposure. Section 9.2 also notes that ship recycling yards must also comply with the ILO Code of Practices for Occupational Exposure to Airborne Substances Harmful to Health which also establishes best practices to manage exposure to industrial chemicals. While this ILO Code is not ship-yard specific, it is comprehensive regarding the range of chemicals likely to be found during ship recycling. If a recycling nation has not established exposure limits and a means to enforce them, it may not be possible for any party to issue the assurances needed in the ILO Certificate for Dismantling or the IMO “Ready for Recycling” declaration.

43 ILO section 3.4 concludes that it is the principle responsibility of the ship recycling yard to protect its workers. This section identifies the general responsibilities of employers as including: identification and periodic assessment of hazards and risks, implementation of preventive and protective measures, and compliance with international conventions, codes of practice and national laws.

44 ILO establishes a process for governments to develop an occupational safety and health program which would apply to ship recycling yards. This program is found at Section 4.0 Occupational Safety and Health Management. This management system relies on the ILO Guideline on Occupational Safety and Health Management Systems (ILO-OSH 2001). The system has four components: an OSH policy, organization and training, hazard risk assessments/planning/implementation, and evaluation of OSH performance. ILO recommends (at 4.3) that an initial risk assessment of a recycling yard be conducted and each yard should develop a ship specific breaking plan that integrates the national OSH management plan.

45 **Recommendation:** It appears feasible to integrate the ILO OSH requirements (Certificate for Dismantling) into the IMO ship recycling plan. It may also be feasible to develop a list of minimum OSH requirements (see ILO Section 7.2.1.4) that should be in place within one year that mirror the Basel one-year worker issues noted on Table 11 page 92 of the Basel guidelines.

46 ILO notes in section 4.3-4.6 that the management system should also include routine hazard identification and risk assessments, a plan implementation approach, and an emergency response plan (very similar to the Basel contingency preparedness plan (CPP)). Section 5 recommends that all worker related injuries are reported in compliance with the Employment Injury Benefits Convention (1964(121)), and the ILO Code of Practices Recording and Notification of Occupational Accidents and Diseases.

47 ILO Section 6 recommends that yards establish on-site occupational health services. Such services (see Section 6.5) would conduct health surveillance on all workers. This recommendation is consistent with ILO Technical and Ethical Guidelines for Worker Health Surveillance.

48 Part II of the ILO guidelines include recommendations specific to safe shipbreaking operations. ILO makes OSH recommendations for the three primary aspects of ship recycling: preparation, deconstruction, and material (scrap) management. All OSH issues should be integrated into a ship breaking plan that is ship-specific. Section 7.1.2 supports the need for a Green Passport to be submitted to the recycling yard as part of the preparation process. Section 7.1.3 notes that the ship breaking plan should be prepared in advance of recycling and be a means to systematically improve working conditions. The plan must include assurances that all workers have received proper training and have been issued PPE (ILO PPE recommendations are noted in Section 15) and protective clothing. ILO recommends that PPE and protective clothing be provided at no cost to workers.

49 ILO Section 7.2 includes all of the aspects of a model OSH ship breaking plan. As noted above ILO supports the preparation of a Green Passport. ILO also recommends that all ships destined for recycling have a plan that includes a Certificate for Dismantling. Section 7.2.1.4 identifies at a minimum that the breaking plan: 1) get an updated list of hazardous substances on the ship provided by the shipowners in accordance with the Basel Convention, 2) confirm with owners, brokers, and

breakers that the ship is decontaminated and is gas free, and 3) that a ship breaking plan is prepared and made available to the yard.

50 The ILO approach requires that a specific breaking plan be developed that addresses specific risks related to a specific ship. This plan must be updated throughout the breaking process. At a minimum, ILO notes at 7.2.3 that precautionary and preventive measures should be in place that address access and egress, safe platforms for work are available, hot work is carefully planned, there is a safe atmosphere for all workers, and the ship has adequate fire fighting and first aid equipment in place. ILO Section 16 indicates that in the absence of formal medical facilities, the recycling yard should have eye wash stations, showers and emergency phone numbers to summon help. The recycling yard however should have onsite first aid staff that have undergone proper and routine training. ILO appears to have set an interim first aid standard that allows yards to break ships until such time as there are medical facilities established. This approach of allowing breaking for some interim period is consistent with IMO.

### **ESM at a ship scrapping facility**

51 The Basel Technical Guidelines for the Environmentally Sound Management of Full and Partial Dismantling of Ships (2003) states on page 1 of the Executive Summary that the guidelines provide information and recommendations on procedures, processes and practices that must be implemented to attain Environmentally Sound Management (ESM) at such facilities. Such a statement does not leave a lot of flexibility in developing alternative approaches to Basel which would meet the Basel definition of ESM.

52 Basel further defines ESM as “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 result from such wastes”. Basel is clear that its guidelines apply to both existing as well as new ship recycling yards.

53 ESM under Basel has five major components: 1) the development of an ESM policy, 2) identification of objectives, 3) the development and implementation of an Environmental Management Plan (EMP), 4) development of operational controls and procedures, and 5) means to check compliance and take corrective action when necessary. Basel further defines the EMP as a document which has the following components: a) an assessment of potential impacts (Environmental Impact Assessment), b) formulation of potential preventive approaches (inventory of best practices), and c) development and implementation of a ship yard specific environmental management system that includes a waste management plan (WMP), a contingency preparedness plan (CPP), and a monitoring plan (MP). An assessment of potential risks noted in the Basel EMP is similar to ILO’s Section 4.3.

54 Basel Section 6.2 notes that to achieve ESM, yards should demonstrate performance using an environmental management system. According to Basel the international standard (best practice) is ISO 14001.

55 **Recommendation:** There is a need to clarify how compliance with Basel ESM can be achieved if elements of the other guidelines are adopted.

### **Best practice/good practice for a ship scrapping facility**

56 IMO section 2.1 notes that compliance with this guidance would constitute “best practices”. Section 9.4.4 of the IMO guidelines state that the recycling state should ensure that the handling and disposal of asbestos, oils and other hazardous substances, whether prior to the ships arrival or subsequently, have been conducted in an “acceptable manner” (which is undefined). This section then references the ILO and Basel guidelines.

57 The entire Section 4 of the Basel guidelines (starting on page 43) describe the “good practices” necessary to meet ESM. There is no ambiguity that this section should be interpreted as the equivalent to a best practice even though Basel uses the term “good” versus “best”. Basel establishes good practices for seven activities: 1) inventory of onboard hazardous/polluting wastes (essentially a Green Passport), 2) removal and cleaning of the vessel prior to recycling, 3) securing the vessel to assure adequate safe access, 4) removal of equipment, 5) removal of hazardous/polluting substances, 6) dismantling and 7) storage/recycling and disposal.

58 Basel notes that prior to cutting, the ship should be cleared of all residual materials. The ship should be cleaned so it is presented for dismantling in a clean and safe condition. Basel does not rule out cleaning of a ship at a recycling yard if the yard has that ability. Basel “good practice” for dismantling requires the preparation and implementation of a dismantling plan. Such a requirement is similar to the IMO’s Recycling Plan and ILO Certificate of Dismantling.

59 **Recommendation:** It appears possible to develop a common list of minimum elements of the ship recycling plan.

60 Section 4.2 of the Basel guideline identifies potential contaminants and makes recommendations to avoid or manage them. This section contains additional recommendations which constitute good practices and most are consistent with ILO and IMO guidelines. Basel identifies four types of releases that need to be addressed: metals, oils and fuels, bilge and ballast water, and paints and coatings.

61 Basel discussion on metals relates primarily to the cutting of metal and how “hot work” should be accomplished. On this topic, the ILO guidelines are generally preferred since ILO provides very specific guidance. However, the Basel discussion in this section regarding the handling and disposal of anodes, lead, and mercury wastes are not found in ILO and are therefore useful supplements to the ILO information.

62 Basel notes that waste oils and fuels should be recycled where possible. The guidelines however do not address the situation where used oils or fuels may be blended offsite and burned as fuel.

63 Bilge water has been an environmental problem at ports throughout the world and methods to treat and dispose of it are well understood. Basel notes that this water may be treated or discharged overboard – the guidance is somewhat vague on this point and does not necessarily call for minimum protections before discharging. Compliance with the MARPOL convention is referenced.

64 **Recommendation:** To assure that minimum levels of environmental protection are achieved, it may be necessary to further review the existing MARPOL standards for bilge water and the recently adopted IMO standard for ballast waters.

65 Basel notes that there are environmental and OSH risks related to the removal and disposal of tributyl tin (TBT) and isocyanate paints.

66 Section 4.2.5 of Basel discusses the good practices needed for the handling and disposal of asbestos. As noted earlier, ILO suggests that workers exposed to asbestos comply with the Asbestos Convention (no. 162) and Recommendations (no. 172) which establish best practices to protect workers from asbestos exposure. Basel suggests that asbestos removed from ships should not be reused or recycled.

67 Section 4.2.6 addresses PCB removal and disposal. The Basel Convention considers wastes containing greater than 50 mg/kg PCBs as hazardous wastes. There appears to be general agreement

that all free liquids containing PCBs should be removed from a ship prior to breaking. There is further agreement that a Green Passport should identify all remaining PCB containing equipment or cables. It is further understood that cabling containing PCBs should not be burned to recover metals since such burning releases PCBs into the air.

68 Section 4.3 in the Basel guidelines discusses how monitoring of occupational safety and health and the environment should be accomplished. Basel has the only requirements for monitoring releases to the environment. Basel recommends that an environmental monitoring plan be developed so that releases to ground, sediments, water, air and noise are all monitored. The Guidelines also note that the recycling state needs to establish environmental standards limiting pollutants entering the environment and that monitoring then is used to assure that those standards are not exceeded.

69 **Recommendation:** Basel environmental monitoring could be incorporated into a ship yard monitoring plan that is called for under ILO for OSH purposes.

70 Basel OSH monitoring suggests that risk assessments be first conducted and then an exposure control strategy be implemented. Such an approach is consistent with the ILO Guidelines on Occupational Safety and Health Management Systems (ILO-OSH 2001). Basel also recommends that the yard implement an emergency response plan. This recommendation is consistent with ILO Section 4.3-4.6.

#### **Acceptable recycling facility**

71 Section 8.1.1 of the IMO guidelines notes that the ship recycling facility should have the capability to recycle ships it purchases in a manner consistent with national legislation and relevant international conventions including ILO and Basel. IMO further notes that the competent authority in the recycling state should assess the capability of their recycling facilities and make those results available to ship owners. IMO does not address how such assessments should be conducted and against what criteria. IMO does, however, once again cross reference ILO and Basel. It is not clear whether a yard would be in compliance if it did not meet ISO 14001 or ILO labor standards but did meet some other competent authority standards.

72 Basel Section 5.3 establishes design and operation practices for the six operating zones in a model ship recycling yard. Basel allows five to 10 years to comply with all of these design standards. The ILO guidelines at Figure 4 (page 64) also describe the elements of a model yard.

73 Basel notes at Section 6.2 that for a yard to achieve ESM of hazardous wastes a number of conditions must be met. They are as follows: a) a regulatory and enforcement infrastructure is in place ensuring compliance with applicable regulations, b) authorization of sites or facilities occurs assuring that an adequate standard of technology and pollution control exist to deal with hazardous wastes, c) there is monitoring of environmental performance, d) there is enforcement capability ensuring appropriate actions are taken when non-compliance is identified, e) that training of personnel is maintained.

74 **Recommendation:** The Basel guidelines set out 13 specific occupational safety and health elements (see Table II page 92) which must be complied with at least within one year to comply with ESM. As a future work item, it may be useful to develop further a set of minimum standards.

75 IMO and Basel note that there should be an assessment of conditions at a yard to determine if it is meeting national and international standards. Part of this evaluation should include a determination that the yard or nearby facilities have the capacity to handle and properly dispose of the volumes of wastes likely to be encountered during breaking. ILO also notes in section 7.3 that evaluation of a yard should include a “hazard identification and risk assessment”.

76 **Recommendation:** Consider whether such evaluations of yard could/should be undertaken by independent third parties.

77 These guidelines generally do not discuss how market leaders can influence the adoption of best practices at ship recycling yards. MARISEC has established an Industry Code of Practice on Ship Recycling that does not conflict with ILO, IMO or the Basel guidelines, which are general approaches toward acceptable ship recycling. However, individual shipowners may be able to exert influence should they wish to include specific OSH and environmental protection clauses as part of their enforceable contracts.

### **Informed Consent**

78 IMO Section 8.1.8 notes that the shipowner, after selecting a recycling yard, should inform the competent authority of the recycling state. This approach is not the same as Basel prior informed consent that involves the exporting country and the recycling state. IMO does reference Basel's prior informed consent approach at Section 9.5.2, which is not consistent with IMO section 8.1.8. The ILO guidelines do not directly deal with informed consent.

79 The Basel guidelines state at page 22 that "transboundary movement of hazardous wastes or other wastes can take place only upon prior written notification by the state of export to the competent authority on the states of import and transport". The Basel approach to consent involves the exporting, recycling and transit states. Basel assumes that communication among all the parties continues throughout the recycling process to assure all parties that they are complying with relevant national or international standards. The Basel approach is therefore significantly different than the IMO.

### **Responsibilities of ship owner**

80 IMO Section 8.1.3 notes that the shipowner should "consider" the following: the ability of the yard to safely handle hazardous materials and dispose of them properly, that there is provision of appropriate personal protective equipment, that the yard maintain and monitor ships so that gas free environment is maintained, and there is a OSH program that includes record keeping and appropriate training. This list of requirements is essentially the same as the ILO guidelines but in somewhat more general terms.

81 IMO Section 8.1.1 notes that the recycling facility should have the capability to recycle ships consistent with national legislation and relevant international conventions. IMO further notes that compliance should in particular be with the ILO and Basel guidelines. Such language implies that yards should be in compliance with all three guidelines.

82 IMO section 8.1.4 notes that if after investigation (by the shipowner) it is assessed that the recycling yard does not have the capacity to manage hazardous materials or wastes consistent with national laws or relevant guidelines, the shipowner should arrange for removal at another appropriate facility. Such language raises the issue of the extent of prior removal of wastes required on ships destined for recycling.

83 **Recommendation:** It might be useful to develop a set of minimum requirements that a recycling yard must achieve within five years regarding the handling and storage of hazardous wastes so that IMO and Basel guidelines could be reconciled on this issue.

84 As noted above, MARISEC has developed general guidance for shipowners to follow for proper ship recycling. Basel also notes that in addition to their responsibility for prior informed consent, shipowners retain a level of responsibility throughout the recycling process. Basel recommends that owners should not send ships to yards that do not abide by ESM principles.

### **Responsibility of Flag State**

85 Section 9 of the IMO guidelines lays out the general responsibilities of the Flag state. Section 9.2 states that the flag state is responsible for operations throughout the life of the ship (including its final voyage) as long as the ship is operational. The limit of responsibility in the IMO guidelines is in conflict with the Basel guidelines that indicate that the ship owner retains responsibilities throughout the recycling process.

86 **Recommendation:** It would be helpful to reach consensus on actions the shipowner should take on the final voyage, such as the degree of prior cleaning of the vessel. It should be noted that IMO section 9.2 does note that the flag state should develop clear criteria need to declare a ship “ready for recycling”.

### **Responsibility of the Recycling State**

87 The IMO and ILO guidelines are quite clear that the recycling state has the responsibility to develop national laws which implement the IMO, ILO and Basel guidelines. Section 9.4 of IMO also notes that the recycling state is fully responsible for enforcing national and international legislation and guidance. Section 9.4.1.3 states that the recycling state should check that any potentially hazardous waste which might be generated during recycling can be safely handled before it accepts a ship. This section also notes that the recycling state should conduct its own reviews of its yards and make that information available to shipowners.

88 **Recommendation:** Some combination of flag state and recycling state review of a recycling yard appears desirable to assure that minimum capabilities to handle and dispose of hazardous materials can be accomplished prior to delivery of a ship.

89 IMO section 9.4.1.2 states that the recycling state should set any conditions it considers necessary before a ship is accepted for recycling. This may be slightly in conflict with Section 9.2 which suggests that the flag state should set its own “ready for recycling” criteria.

90 **Recommendation:** It would be helpful to reconcile the flag state “ready for recycling criteria” and the establishment of a minimum set of recommended conditions required to be in place prior to accepting a ship for recycling.

91 IMO section 9.4.2 noted that MARPOL 73/78 requires that adequate port reception facilities are in place to manage ship generated wastes. IMO notes that the IMO Manual for Port Reception Facilities also provides detailed guidance to manage ship-generated wastes. The IMO guidelines also refer to the Basel guidelines on this point. It is however still unclear what the status of the ship is when a recycling yard formally takes ownership of it.

92 ILO clearly notes that it is the responsibility of the recycling state to develop and enforce a national OSH program with assistance from the shipowners and flag states.

93 Basel section 6.3 notes that some form of enforcement and a certain level of reporting are required to confirm compliance. Basel does not specify at what level within a national regulatory framework reporting should take place. The issue of how to determine if a yard is in compliance with national and international standards needs to be more fully developed.

### **Summary of Recommendations**

94 It may be worthwhile to develop a model Green Passport, acknowledging the fact that certain elements would be more appropriate for existing versus new vessels. At some point in the future, concerns about PCBs and TBT should lessen because their use will cease (Paragraph 28).

95 Reference to Basel ESM definition should be made in IMO and ILO Guidelines as appropriate (Paragraph 31).

96 It may be necessary to summarize and consolidate the differing terminologies noted in the three guidelines related to the Environmental Management Plan, ship recycling plans, and the certificate of recycling (Paragraph 35).

97 It may be appropriate for future work to consolidate these lists so as to narrow the focus to elements that are most appropriate for ship recycling. For example, there may be substances on the list that would be present as an integral part of steel, but steel is not a “hazardous substance”. Development of a single list (MEPC is progressing this issue) would be valuable (Paragraph 37).

98 It appears feasible to integrate the ILO OSH requirements (Certificate for Dismantling) into the IMO ship recycling plan. It may also be feasible to develop a list of minimum OSH requirements (see ILO Section 7.2.1.4) that should be in place within one year that mirror the Basel one-year worker issues noted on Table 11 (page 92) of the Basel guidelines (Paragraph 45).

99 There is a need to clarify how compliance with Basel ESM can be achieved if elements of the other guidelines are adopted (Paragraph 55).

100 It appears possible to develop a common list of minimum elements of ship recycling plan (Paragraph 59).

101 To assure that minimum levels of environmental protection are achieved, it may be necessary to further review the existing MARPOL standards for bilge water and the recently adopted IMO standard for ballast waters (Paragraph 64).

102 Basel environmental monitoring could be incorporated into a ship yard monitoring plan that is called for under ILO for OSH purposes (Paragraph 69).

103 The Basel guideline sets out 13 specific OSH elements (see Table II page 92) which must be complied with at least within one year to comply with ESM. As a future work item, it may be useful to develop further a set of minimum standards (Paragraph 74).

104 Consider whether such evaluations of yard could/should be undertaken by independent third parties (Paragraph 76).

105 It might be useful to develop a set of minimum requirements that a recycling yard must achieve within five years regarding the handling and storage of hazardous wastes should be developed so that IMO and Basel guidelines could be reconciled on this issue (Paragraph 83).

106 It would be helpful to reach consensus on actions the shipowner should take on the final voyage such as the degree of prior cleaning of the vessel. It should be noted that IMO section 9.2 does note that the flag state should develop clear criteria need to declare a ship “ready for recycling” (Paragraph 86).

107 Some combination of flag state and recycling state review of a recycling yard appears desirable to assure that minimum capabilities to handle and dispose of hazardous materials can be accomplished prior to delivery of a ship (Paragraph 88).

108 It would be helpful to reconcile the flag state “ready for recycling criteria” and the establishment of a minimum set of recommended conditions needed to be in place prior to accepting a ship for recycling (Paragraph 90).

### **Summary of Ambiguities or Gaps**

109 The use of the word “consider” may be interpreted as not requiring mandatory actions, and could therefore be viewed as inconsistent with the ILO and BC guidelines.

110 It may be necessary to develop minimum standards for the safe handling and disposal of wasted oils and fuels which are not directly recycled.

111 ILO exposure guidelines already address worker risks; however, it may be appropriate at some time in the future to develop waste disposal guidance addressing the ultimate disposal of TBT and isocyanate paint wastes.

112 Possible future work might include development of asbestos disposal guidance since many countries do not have such regulations.

113 None of the three guidance documents address how a yard should properly dispose of PCB materials with concentrations less than 50 mg/kg.

114 There is not a clear consensus in the guidance documents on prior informed consent.

115 The Basel guidelines infer that during the 1-5 year transition period recycling yards may not need to have facilities in place but rather must have adequate storage for wastes.

116 Is it a ship which must meet MARPOL or IMO reception guidance? Or is it a waste that should comply with Basel guidelines?

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### ANNEX 3

#### NOTE BY THE UNITED KINGDOM, IN ITS CAPACITY OF MEMBER OF THE WORKING GROUP AS THE WEOG REPRESENTATIVE FOR THE BASEL CONVENTION ON ENVIRONMENTALLY SOUND MANAGEMENT (ESM)

##### SUMMARY

**Executive summary:** This document identifies the key aspects of environmentally sound management (ESM) and how it may be applied to the dismantling of ships.

**Related documents:** ILO/IMO/BC WG 1/6

#### Introduction

1 The Basel Convention (“the Convention”) is founded on a number of principles that underpin the Articles of the Convention to deliver its objectives. One of these is the principle of Environmentally Sound Management of waste. In applying this principle to the transboundary movement, storage, treatment and disposal of waste, the Convention is seeking to ensure that throughout all the steps of its management, human health and the environment are protected from the potential adverse impacts that mis-management of waste may cause.

2 This principle is broadly defined in the Convention but not elaborated in practical terms. The Convention, through the Secretariat, publishes documents that describe aspects of the application of ESM to particular types of wastes and their management. Drawing on those, the purpose of this document is to identify the key aspects of ESM and how it may be applied to the dismantling of ships.

#### What does ESM mean?

3 For the purpose of the Basel Convention, Article 2(8) provides the broad definition of "environmentally sound management of hazardous wastes or other wastes" as:

"...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".

4 In support of Article 2(8), Article 4.2 of the Convention (reproduced in Appendix 1) details some of these steps. This requires Parties to the Convention to take “appropriate measures” to control the generation of wastes. It specifies that those involved in the management of wastes should take steps to prevent pollution arising from their activities and imports should be prevented where the Party believes that the wastes will not be managed in an environmentally sound manner.

5 In further explaining how this is to be achieved in practice, the guidelines and other documents published by the Convention recognise that the steps required to ensure protection of human health and the environment can vary from one waste to another and between geographical situations. ESM depends on a number of factors. These range from the pre-conditions for successful implementation of ESM, including legislation, to the actual activities undertaken at sites where waste is being managed.

6 The Basel Convention's key requirements for ESM could be summarised as being those of:

- regulatory compliance
- practical standards
- management control

7 Taking Article 2(8) of the Convention into account ESM could then be described as:

“The combination of regulatory provisions, practical standards and management controls brought to bear on processes that ensures the protection of human health and the environment from the potential impacts of waste management activities”.

8 The Basel Convention guidelines on the key criteria for ESM are summarised in a general overview document which sets out the meaning of ESM for the purpose of developing other, technical guidelines. This is contained in the “Preparation of Technical Guidelines for the Environmentally Sound Management of Wastes Subject to the Basel Convention”. Two sections from that document are reproduced in Appendix 2. The first headed “Note on Environmentally Sound Management” describes in paragraphs 6 to 9 the key requirements for legislative control. The second section “Good Management Practices” sets out what should be expected by way of standards and management control at sites. These are necessarily generic in approach but should be applicable to all operations where ESM considerations are relevant.

9 There are also specific Guidelines on a variety of waste streams and waste management activities. In this context, the Technical Guidelines for the Environmentally Sound Management of the Full and Partial Dismantling of Ships derive their basis from the principles of the Convention.

### **How ESM is interpreted in practice, taking the UK as an example**

10 In order to effectively apply an understanding of what ESM means for the purposes of transboundary controls, there has to be a body of legislation (as the Convention expects) as the basis of ensuring compliance, coupled with the standards. Ensuring compliance with ESM in practice can then be achieved by a regulator taking enforcement action, where this is seen to be necessary. This can be seen by reference to the UK as an example, which effectively delivers ESM at the facilities it regulates by means of the process described in paragraph 7 above.

11 The UK has a substantial body of environmental legislation, which is enforced by systems of permitting by competent authorities with powers of enforcement. An outline of the policies, legislation and strategies pertinent to transboundary movement of waste as enacted by the UK, is given in the Convention's “Country Fact Sheets” (2004, p513) provided as part of the national reporting requirements.

12 In the UK, interpretation of ESM is to be found in a Government policy document provided for the purposes of meeting obligations under the EU “Waste Shipments Regulation” (WSR), which itself implements the Basel Convention in the European Union. The UK has produced a Statutory plan (“the Plan”) that sets out these obligations and how they are to be interpreted by the Competent Authorities charged with regulating transboundary movements of waste. The Plan (which is under review as a revised WSR is introduced in the EU) states that the overriding objective is to ensure a “high level” of protection of the environment and human health. It currently describes the approach to ESM in the following terms:

“1.44 Parties to the Basel Convention are obliged to ensure that exported wastes should be managed in an environmentally sound manner in the country of destination or elsewhere (Article 4(8)). This obligation is reflected in the Waste Shipments Regulation Title IV. Articles 14 to 18). For exports to non-OECD countries moreover there are additional

considerations in particular those arising from decisions taken at the Second and Third Conference of the Parties to the Basel Convention (see paragraphs 4.10 to 4.12) to prohibit exports of hazardous waste for recovery from OECD to non-OECD countries after 1997.

1.45 The assessment of what is environmentally sound management should be construed in the light of the guidance in this Plan. It is for competent authorities to determine in any particular case whether or not the facilities for which wastes are destined are operating to a standard which ensures that any environmental pollution resulting from the disposal or recovery operation is kept within acceptable limits –ie. limits which ensure that human health and the environment are adequately protected from adverse effects. Operation to this standard is environmentally sound. The information needed by competent authorities to determine whether or not an operation is environmentally sound will depend on whether the facility is in the UK in another OECD country or in a non-OECD country. These issues are explored in more detail in Chapters 4 and 5.”

13 The first of the key criteria (regulatory compliance), as described in paragraph 6, is met by provision of these policies, the legislation enacted to give enforceability to the WSR, and legislation to control the management of waste.

14 The Plan describes how specific circumstances encountered are to be dealt with in more detail. For example, when considering exports to non-OECD countries:

“4.20 For the purpose of determining environmentally sound management at facilities in non-OECD countries, the first requirement must be compliance with the regulatory requirements applicable in that country. An operation which fails to meet such requirements must automatically be considered to be environmentally unsound. Where the importing country appears to lack relevant regulatory, enforcement and technical infrastructure to enforce compliance with regulatory requirements, the operation should not normally be accepted as environmentally sound. Some exceptions to this rule may be appropriate. One example might be where a facility is owned and operated by a multi-national company according to recognised international standards comparable with other facilities located in OECD countries. But this would also depend upon how self-contained the process was, and would need to take account of the manner in which any residues from the process were disposed of.

4.21 UK competent authorities should not automatically look for operations which are as sophisticated as those within the UK. But they should not accept as environmentally sound any operation which, if it were located in the UK, would be regarded as offering inadequate protection against adverse effects on human health and the environment. This consideration is particularly important with regard to the methods used for disposing of any residues from the recovery operations.”

15 References are then made in the Plan to the UK’s own series of technical guidance documents that describes the standards for regulation at UK facilities. Some of these documents have now been superseded, but in essence they provide practical standards for operation at a variety of different types of facility. Many of these, or their up-to-date equivalents give the regulator a clear set of conditions or standards that may be used when specifying conditions in site-specific permits.

16 Achieving successful protection of the environment at the facility is then in the hands of the operator who has to comply with the terms of the environmental permits, taking into account any technical standards for operation contained in the permit alongside requirements for monitoring and reporting. Management standards such as quality management systems may be applied to ensure that the necessary standard of environmental protection is delivered.

17 Together these requirements then fulfil the second and third criteria of standards and management control against which an assessment of whether ESM is in place at any facility can be judged.

18 In general terms, whether ESM is likely to be achievable in any given set of circumstances can be assessed using the approach outlined above. It may equally be applied to activities involving the dismantling of ships. It may be helpful to use a checklist to identify whether any facility is likely to meet the conditions for ESM. Such a checklist could include the following elements, taking into account the three key criteria suggested in paragraph 6:

### **Checklist for ESM**

#### **I - Regulatory compliance**

- Has the Basel Convention been implemented into national law?
- What specific laws provide for regulation of waste activities i) at a domestic level and ii) for imports and exports of waste?
- Is there an environmental regulator charged with ensuring compliance with the legislative regime?
- Are there site-specific permits issued for the operation of a facility detailing conditions pertinent to that site, that provide for prevention of pollution by limits of emissions to air, water and land?
- Are there penalties for failure to comply, enforceable through the courts?
- Are there records of documented inspections?
- Are there recorded data on regulatory monitoring of the facility by a competent authority?

#### **II - Practical standards**

- Are there published environmental criteria at national or local level that identify the expected level of environmental protection?
- Are there published environmental standards, either derived from the above criteria or independently (may include relevant recognised international standards)
- Are there published industry standards?
- Are there technical standards for operation of facilities including practical manuals?
- Are there environmental assessment techniques or procedures for identifying the potential impact of facilities?

#### **III - Management control**

- Does the site have documented management and operational procedures?
- Are any quality management systems (that may be audited by a third party, such as an accredited independent auditor) in operation that underpin the operation of the facility?
- Are staff trained and technically competent?
- Is there monitoring of the operation of individual facilities by the operator to check for compliance with the permit?
- Is there monitoring of the environment outside and in the vicinity of the facility?
- Are there provisions (e.g. emergency plans, shut down procedures) for dealing with non-compliance or remediating effects of non-compliance?

19 While not every element may be met in all cases, a substantial number of these would have to be fulfilled to achieve ESM. Some equivalent means of demonstrating that the key criteria are being

met may be provided. It may be, for example, that where national standards may not exist, a facility manager has devised some for local use and uses them to manage the facility. Where these are documented and evidence exists that they are being adhered to, through, say, a quality management system backed up with monitoring, then it may still be possible to show that ESM is being delivered.

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## References

The United Kingdom Management Plan for the Import and Export of Wastes DoE 1996, HMSO ISBN 0-11-753181-2

The Basel Convention on the Control of Transboundary Movements of Hazardous Waste and their Disposal 1989 [www.basel.int](http://www.basel.int)

Guidance Document on the Preparation of Technical Guidelines for the Environmentally Sound Management of Wastes Subject to the Basel Convention [www.basel.int](http://www.basel.int)

Basel Convention Technical Guidelines for the Environmentally Sound Management of the Full and Partial Dismantling of Ships 2003 ISBN 92-1-158620-8 (also available from website)

Compilation of Country Fact Sheets, Basel Convention no 2004/1, ISBN 92-1-158632-1

## Appendix 1

### **The Basel Convention on the Control of Transboundary Movements of Hazardous Waste and their Disposal Article 4.2:**

4.2. Each Party shall take the appropriate measures to:

- (a) Ensure that the generation of hazardous wastes and other wastes within it is reduced to a minimum, taking into account social, technological and economic aspects;
- (b) Ensure the availability of adequate disposal facilities, for the environmentally sound management of hazardous wastes and other wastes, that shall be located, to the extent possible, within it, whatever the place of their disposal;
- (c) Ensure that persons involved in the management of hazardous wastes or other wastes within it take such steps as are necessary to prevent pollution due to hazardous wastes and other wastes arising from such management and, if such pollution occurs, to minimize the consequences thereof for human health and the environment;
- (d) Ensure that the transboundary movement of hazardous wastes and other wastes is reduced to the minimum consistent with the environmentally sound and efficient management of such wastes, and is conducted in a manner which will protect human health and the environment against the adverse effects which may result from such movement;
- (e) Not allow the export of hazardous wastes or other wastes to a State or group of States belonging to an economic and/or political integration organization that are Parties, particularly developing countries, which have prohibited by their legislation all imports, or if it has reason to believe that the wastes in question will not be managed in an environmentally sound manner, according to criteria to be decided on by the Parties at their first meeting.
- (f) Require that information about a proposed transboundary movement of hazardous wastes and other wastes be provided to the States concerned, according to Annex V A, to state clearly the effects of the proposed movement on human health and the environment;
- (g) Prevent the import of hazardous wastes and other wastes if it has reason to believe that the wastes in question will not be managed in an environmentally sound manner;
- (h) Co-operate in activities with other Parties and interested organizations, directly and through the Secretariat, including the dissemination of information on the transboundary movement of hazardous wastes and other wastes, in order to improve the environmentally sound management of such wastes and to achieve the prevention of illegal traffic.

## Appendix 2

Extracts from “Guidance Document on the Preparation of Technical Guidelines for the Environmentally Sound Management of Wastes Subject to the Basel Convention” [www.basel.int](http://www.basel.int)

### A - “Note on Environmentally Sound Management

4. Whilst waste disposal has clearly been practised in various forms for milleniums, waste management is a much more recent activity. Indeed, even in industrially developed countries, legislation specifically addressing waste disposal has only emerged over the last 20 years. Controls prior to that were of a more general nature, related perhaps to public health issues or land-use planning. Waste management is a much more recent activity which is designed to identify and manage wastes throughout their entire life cycle with a strong emphasis in reduction, re-use and recycling activities.

5. Although the term 'Hazardous Waste' is often used in a loose and non-specific sense, the Basel Convention provides a classification of the categories of waste to be controlled. The Convention further provides that it should include as hazardous waste any wastes defined as, or considered to be hazardous waste by the domestic legislation of the Party of export, import or transit. Environmentally sound management of wastes is also described within the Convention, and is stated as being the 'taking of 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'.

6. In the absence of stringent national legislation it is extremely difficult to expect effective technical control over the environmentally sound management of wastes and in particular hazardous wastes in any country.

7. Domestic legislation and a statutory regulatory framework are seen as essential prerequisites for controlling transboundary movements and disposal of wastes, and in particular hazardous wastes. Nevertheless, this should not prevent countries which are Parties to the Convention, even though national legislation is not yet in place, undertaking the obligations and measures necessary to control waste being produced currently within their national territory.

8. Legislation and measures adopted at the domestic level need to include provisions related to enforcement. Such provisions would outline procedures spelling out responsibilities of each person involved in the management of hazardous wastes. Domestic legislation need also to provide a framework for implementing international conventions and for ensuring that such agreements are being enforced in a way to protect the environment and health from the possible harmful effects of transboundary movements, treatment and disposal of hazardous wastes. In this regard, monitoring of measures taken represent an important way to aim towards environmentally sound management.

9. Environmentally sound management is defined in the Basel Convention as 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 adverse effects which may result from such wastes. In this context, the criteria to assess environmentally sound management include the following:

(a) There exists a regulatory infrastructure and enforcement that ensures compliance with applicable regulations;

(b) Sites or facilities are authorised and of an adequate standard of technology and pollution control to deal with the hazardous wastes in the way proposed, in particular taking into account the level of technology and pollution control in the exporting country;

- (c) Operators of sites or facilities at which hazardous wastes are managed are required, as appropriate, to monitor the effects of those activities;
- (d) Appropriate action is taken in cases where monitoring gives indication that the management of hazardous wastes have resulted in unacceptable emissions;
- (e) Persons involved in the management of hazardous wastes are capable and adequately trained in their capacity.

Countries also have obligations to avoid or minimize waste generation and to ensure the availability of adequate facilities for their waste, so as to protect human health and the environment.

In this context, countries should, *inter alia*:

- (a) Take steps to identify and quantify the types of waste being produced nationally;
- (b) Use best practice to avoid or minimize the generation of hazardous waste, such as the use of clean methods;
- (c) Provide sites or facilities authorised as environmentally sound to manage its wastes, in particular hazardous wastes.

In addition, enforcement and monitoring could be enhanced through international cooperation.”

## **B - “Good Management Practices**

40. The management and control of all hazardous waste treatment, recovery and disposal facilities, need to be carried out to environmentally sound standards. The management and supervision of the facility must be in the hands of experienced, technically competent persons, and everyone employed at the site should be properly trained for the tasks and duties they are required to perform. All the training necessary should be carried out on a properly structured basis, records of training should be kept, and the content of training programmes reviewed and updated on a regular basis.

41. All facilities should be operated pursuant to written standards or procedures. Particular attention should be given to recording in this way, operating methods for plant and equipment, systems for the management and control of site activities, and site safety rules and requirements and the methods for ensuring their observation. All written systems and procedures should be coordinated into an overall operating/systems/safety manual and preferably subjected to external quality assessment and verification.

42. The environmental aspects of properly designed and operated waste management facilities, are essentially no different to those of any other well-run process activity handling similar materials. Waste treatment is not materially different to other forms of processing and manufacture in terms of its potential to cause environmental pollution. Nevertheless, often held public perceptions to the contrary may lead operators of waste management facilities handling sensitive substances such as PCBs to undertake additional environmental monitoring so as to provide assurance that the activities are not contributing to adverse environmental impact. Such monitoring could include regular on and off-site sampling of soil, foliage, ambient air, dust and surface wipes. In addition, health screening programmes on employees, which are used in some cases, may provide additional useful information.

43. Post closure supervision of hazardous waste management sites is a feature particularly relevant for landfill activities. Post closure monitoring of landfill sites, particularly involving analysis of leachate or borehole abstracts located near the site should, as a matter of course, periodically

investigate the presence of contaminants or specific hazardous constituents. Treatment and disposal sites of engineered design and construction should be designed to prevent releases to the environment. Such sites will also provide for the collection and treatment of spillages, and the run-off of contaminated rainwater. In such cases, decommissioning of an activity can incorporate cleaning of plant, equipment and hardstanding areas, sumps. etc., and this should minimize the likelihood of any future detection of significant contamination. In the case of facilities not enjoying the benefit of such protective and precautionary measures, decommissioning activities should include more extensive sampling to detect the presence and possible extent of any contamination. Requirements will tend to be site specific, but periodic retesting may have to be considered.”

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## ANNEX 4

### NOTE BY THE SECRETARIAT OF THE BASEL CONVENTION ON PRIOR INFORMED CONSENT

#### SUMMARY

**Executive summary:** This document identifies the key aspects of prior informed consent and how it may be applied to the dismantling of ships.

**Related documents:** ILO/IMO/BC WG 1/8, ILO/IMO/BC WG 2/8/3, ILO/IMO/BC WG 2/4

#### Introduction

1 At its first session, the Joint ILO/IMO/BC Working Group on Ship Scrapping agreed that the concept of prior informed consent should be placed on the agenda for its second session.<sup>1</sup>

#### Background

2 Decision VII/26 adopted at the seventh meeting of the Conference of the Parties to the Basel Convention requested the Open-ended Working Group of the Basel Convention (“OEWG”) to “consider the practical, legal and technical aspects of the dismantling of ships in the context of achieving a practical approach to the issue of ship dismantling, to report on developments and to present any proposals, as appropriate, to the Conference of the Parties at its eighth meeting on a legally binding solution, taking into consideration the work of the International Maritime Organization and the work of the joint working group”.

3 Also at its seventh session the Conference of the Parties to the Basel Convention invited the International Maritime Organization (“IMO”) “to continue to consider the establishment in its regulations of mandatory requirements, including a reporting system for ships destined for dismantling, that ensure an equivalent level of control as established under the Basel Convention and to continue work aimed at the establishment of mandatory requirements to ensure the environmentally sound management of ships dismantling, which might include pre-decontamination within its scope”.

4 The OEWG, at its fourth session, adopted decision OEWG-IV/5 in which, in operational paragraph 1, it invited Parties, other States, ship owners, and other stakeholders, through the appropriate channels, to submit to the Secretariat of the Basel Convention, comments on any gaps, overlaps or ambiguities between the notification procedure under the Basel Convention and the draft reporting system being developed by the Marine Environment Protection Committee (“MEPC”) of the IMO and any recommended solutions to address such gaps, overlaps or ambiguities.<sup>2</sup>

5 At its fifty-second session (“MEPC 52”), the MEPC, having considered the need for developing mandatory measures for ship recycling, agreed that certain parts of the IMO Guidelines on Ship Recycling (“the IMO Guidelines”) might be given mandatory effect and instructed its Working Group on Ship Recycling to start identifying the elements of the IMO Guidelines for which a

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<sup>1</sup> See document ILO/IMO/BC WG 1/8, paragraph 7.4

<sup>2</sup> In accordance with decision OEWG-IV/5, these comments and recommended solutions have been compiled and will be submitted to the Joint Working Group in document ILO/IMO/BC WG 2/8/3 by the Secretariat of the Basel Convention.

mandatory scheme might be regarded as the most suitable option for their implementation. In considering the development of a “reporting system” for ships destined for recycling, MEPC 52 instructed its Working Group to start the development of an outline for a reporting system for ships destined for recycling, with the aim of developing a workable and effective reporting system, which would cater for the particular characteristics of world maritime transport. MEPC 52, having considered the report of the Working Group (MEPC 52/WP.8) regarding the reporting system for ships destined for recycling, noted that the Working Group agreed that this system should be developed in accordance with the following basic principles:

- “.1 the system should be transparent, effective, ensure uniform application and respect commercially sensitive information;
- .2 the system should be developed in such a way as to facilitate the control and enforcement of any mandatory provisions on ship recycling that may be developed by IMO;
- .3 the system should be implemented by the shipowner, the recycling facility, the flag State and the recycling States with the latter two stakeholders having the primary role for ensuring its proper application;
- .4 the system should be a stand-alone reporting mechanism; and
- .5 although existing notification and reporting procedures under other existing legal instruments could be taken into account, the system should be a workable and effective one, with the minimum required administrative burden and catering for the particular characteristics of world maritime transport.”

6 MEPC 52 noted the draft outline of the reporting system for ships destined for recycling which the Working Group had developed, as a starting point, in order to identify in a schematic way what should be reported, to where and by whom (annex 2 of document MEPC 52/WP.8). In this respect, it was noted that additional work was needed for the further development of this system with the aim of considering, amongst other issues, the appropriate time-frame for the reporting, a harmonized reporting format and the possible need for additional flow of information between the involved stakeholders.

7 As reported in document ILO/IMO/BC WG 2/4, an intersessional meeting of the MEPC’s Working Group on Ship Recycling was held from 13 to 15 July 2005. The Working Group considered, *inter alia*, the reporting system for ships destined for recycling and agreed that, although such a system is not a self-sustained objective, it should be developed and included in the mandatory requirements with the aim of facilitating the control and enforcement of the other mandatory provisions on ship recycling, as well as promoting transparency in their implementation. The Working Group, having considered that the reporting system could be a useful tool in ensuring the safe and environmentally sound ship recycling, agreed that it should be developed in parallel and in harmony with the other mandatory requirements, ensuring in that way, its maximum efficiency and effectiveness.

8 MEPC 53 agreed that the IMO should develop, as a high priority, a new instrument on ship recycling with a view to providing legally binding and globally applicable ship recycling regulations for international shipping and for ship recycling facilities and approved a draft Assembly resolution, for adoption by the twenty-fourth session of the Assembly (21 November to 2 December 2005), setting out the Organization’s commitment to develop this new IMO instrument. The draft Assembly resolution, *inter alia*,

- “1. Requests the MEPC to develop a new legally binding instrument on ship recycling that would provide regulations for:

- .1 the design, construction, operation and preparation of ships so as to facilitate safe and environmentally sound recycling, without compromising the safety and operational efficiency of ships;
- .2 the operation of ship recycling facilities in a safe and environmentally sound manner; and
- .3 the establishment of an appropriate enforcement mechanism for ship recycling (certification/reporting requirements)”<sup>3</sup>.

### **The Basel Convention notification procedure: before the commencement of a transboundary movement**

9 For the purpose of meeting its objective of protecting human health and the environment, the Basel Convention establishes a system to control the transboundary movements of hazardous wastes and their disposal. The control system under the Convention is applied through a notification procedure, established under Article 6 of the Convention, whereby the prior informed consent to the import of hazardous wastes and other wastes of the State of import and the State of Transit is required before the State of export can authorise the commencement of any transboundary movement of such wastes.

10 To ensure that the State of import has the requisite information to make an informed decision as to whether to accept or reject an import of wastes, the Basel Convention requires that certain information be provided to the State of import. The information to be provided is listed in Annex V A to the Convention and includes detailed information of the wastes in question, proposed methods of transportation and disposal, as well as evidence of a contract between the exporter and the disposer. Written confirmation is also required that the notifier has received the written consent of the State of import and the existence of a disposal contract which specifies the environmentally sound management of the wastes in question.

11 Article 4, paragraph 2, of the Basel Convention imposes an obligation on each Party not to allow the export of hazardous wastes or other wastes and to prevent the import of such wastes “if it has reason to believe that the wastes in question will not be managed in an environmentally sound manner”.

### **Comparison of the notification procedure under the Basel Convention and the draft reporting system for ships developed by MEPC 52**

12 Figures A and B contained in the annex to the present document illustrate the notification procedure under the Basel Convention and the draft outline of the reporting system for ships destined for recycling which the MEPC’s Working Group had developed at its 52<sup>nd</sup> session (hereinafter referred to as “MEPC 52 draft reporting system”), respectively. These diagrams indicate numerous similarities between the two systems, as well as the differences. It is, nevertheless, highlighted, that MEPC continues its deliberations on a draft reporting system.

13 It is noted that the MEPC 52 draft reporting system provides for a transfer of information between concerned entities, including the provision of information regarding the contract between the shipowner and the recycling facility that must be accompanied by a recycling plan. As indicated in the IMO Guidelines, “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

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<sup>3</sup> See Annex 7 to the report of MEPC 53 (MEPC 53/24/Add.1).

and handled”<sup>4</sup>. The IMO Guidelines also provide that “agreement to implement the recycling plan should be part of the contract between the shipowner and the facility”<sup>5</sup>. These provisions parallel the requirement under the Basel Convention of a contract between the exporter and the disposer specifying the environmentally sound management of the wastes in question. The diagram showing the MEPC 52 draft reporting system suggests the possibility of information being transmitted from the flag State to the recycling State. The nature of this information is not specified, however, and, as this text is bracketed, this may not have been agreed.

14 It is noted that, in the diagram of the MEPC 52 draft reporting system, there is no explicit indication of the requirement of consent from the recycling State before a ship may enter that State. As noted above, the requirement of prior informed consent is a fundamental element of the Basel Convention control system. The IMO Guidelines do, however, provide that “[t]he 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”<sup>6</sup>. Moreover, the IMO Guidelines state “[t]he 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”<sup>7</sup>. This guidance reflects a notion of prior informed consent that could be specifically referred to and included as a mandatory element of a reporting system and could serve towards providing for an equivalent level of control, in this context, as established under the Basel Convention.

15 Furthermore, the Basel Convention control system confers rights on States of transit.<sup>8</sup> The prior informed consent of any State through which a shipment is intended to transit is also required before a State of export can authorize a transboundary movement to commence. Again, this requirement is designed to promote the objective of the Convention to protect human health and the environment.

16 In contrast, the draft reporting system developed by MEPC 52 does not appear to address the transmittal of information to States of transit. To establish a reporting system for ships destined for dismantling that ensures a level of control equivalent to that under the Basel Convention, the question of transit States could be addressed. The Joint Working Group may wish to consider whether port State rights and obligations under IMO instruments could address this issue.

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<sup>4</sup> Annex to IMO General Assembly resolution A.962(23), paragraph 8.3.2.3.

<sup>5</sup> Ibid, paragraph 8.3.2.5.

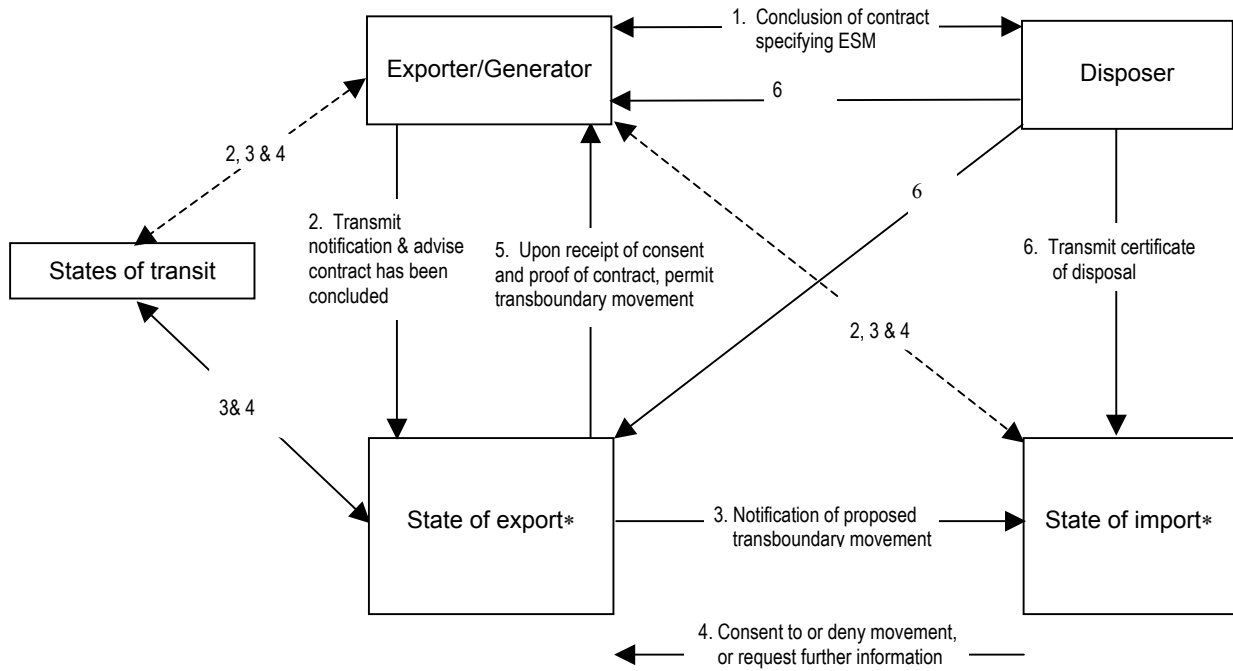
<sup>6</sup> Ibid, paragraph 9.4.1.2.

<sup>7</sup> Ibid, paragraph 9.4.1.3.

<sup>8</sup> Article 2(11) provides that States of transit means “any State, other than the State of export or import, through which a movement of hazardous wastes or other wastes is planned to take place”.

Annex

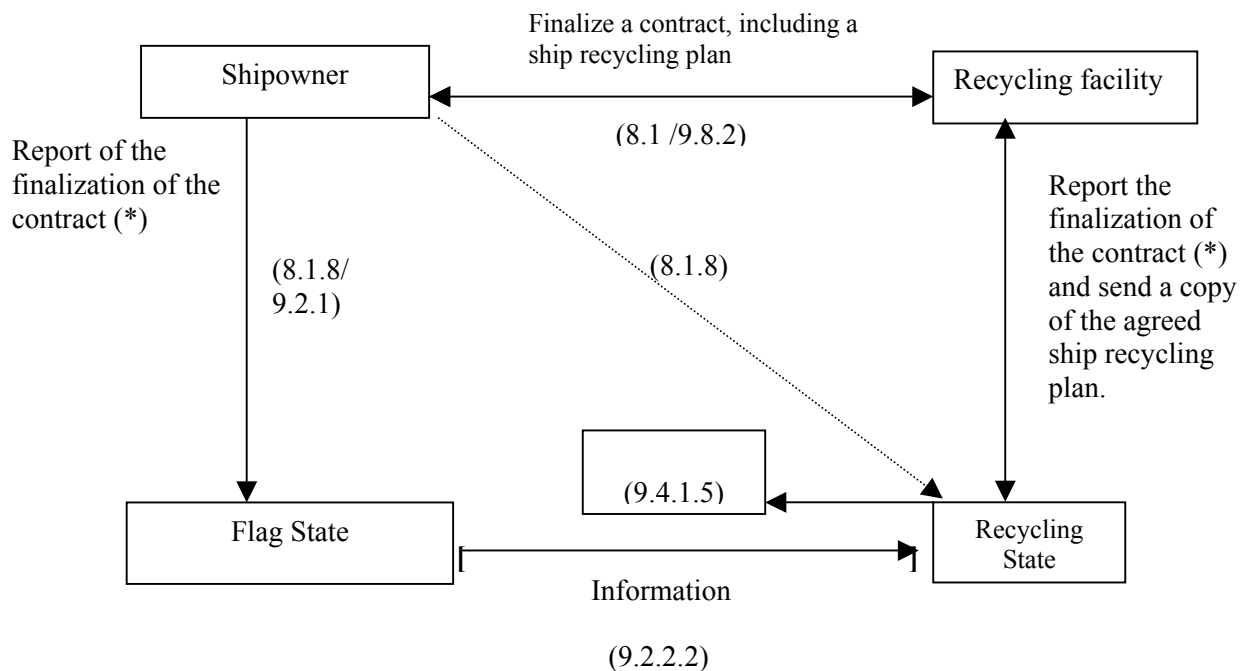
A. Basel Convention notification procedure



\*State of export and State of import shall require that each person who takes charge of a transboundary movement of hazardous waste or other wastes sign the movement document either upon delivery or receipt of the wastes.

**B. Draft outline of the reporting system developed by the Marine Environment Protection Committee's Working group at its fifty-second session**

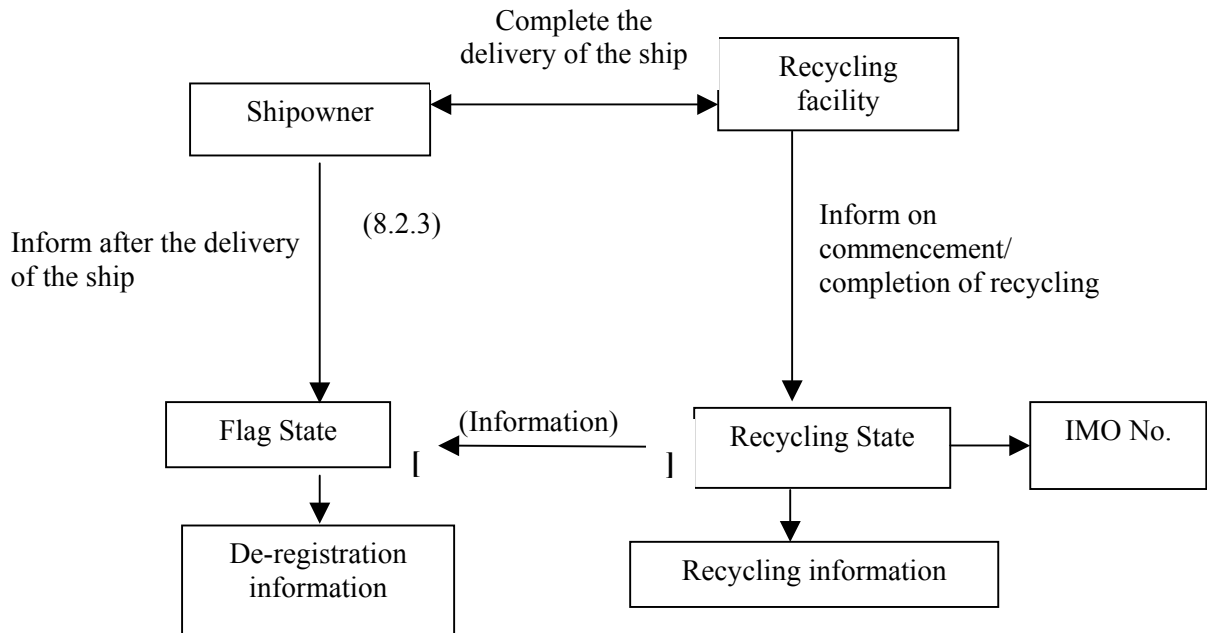
**1 Prior to delivery of the ship to the recycling facility**



(\*) The following information should be indicated:

- (a) the registered shipowner from whom the ship is purchased (name and contact details);
- (b) the recycling facility responsible for executing the contract (name, contact details, licence/authorization details).

2 After the delivery of the ship to the recycling facility



- Notes:**
- 1 Items in square brackets have not been agreed by the Group
  - 2 Numbers in brackets refer to paragraphs in the IMO Guidelines

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