

OEWG-III/3: Legal aspects of the full and partial dismantling of ships

The Open-ended Working Group,

Recalling Conference of the Parties decision VI/24, in which the Conference of the Parties requests the Open-ended Working Group to present its recommendations on the legal aspects of the full and partial dismantling of ships to the Conference of the Parties at its seventh meeting,

Also recalling its own decision OEWG-II/4 establishing a small inter-sessional working group to prepare a report analysing and synthesizing the comments received from Parties and others on the set of questions and issues set out in decision OEWG-II/4 for the consideration of the Open-ended Working Group at its third meeting,

Considering the comments received from Parties and others on the set of questions and issues set out in decision OEWG-II/4, as contained in document UNEP/CHW/OEWG/3/INF/5 and Add.1 and as analysed and synthesized in the conference room paper considered by the Open-ended Working Group at its third session,

1. *Decides* to extend the mandate of the small intersessional working group until the seventh meeting of the Conference of the Parties to commence work, with the assistance of the Secretariat, in accordance with the work programme contained in the annex to the present decision with a view to indicating possible solutions to the questions and issues set out in decision OEWG-II/4;
2. *Notes* that a ship may become waste as defined in article 2 of the Basel Convention and that at the same time it may be defined as a ship under other international rules;
3. *Decides* to submit for consideration by the Conference of the Parties at its seventh meeting the following paragraphs:
 - (a) [*Urges* [Parties that are flag States, States of export or States of import][States concerned] to implement the provisions of the Basel Convention, in particular with respect to the application of the obligations of prior informed consent and principles of environmentally sound management;]
 - (b) [*Urges* flag States, owner States and [other] States of export as well as States of import that are Parties to [implement] [apply] the [provisions] [aims] of the Basel Convention, in particular with respect to the application of the obligations of prior informed consent and principles of environmentally sound management];]
4. *Requests* the small inter-sessional working group on legal aspects of the full and partial dismantling of ships to undertake, with the assistance of the Secretariat, the work set out in the work programme contained in the annex to the present decision and to report on the progress made with respect to that work to the Conference of the Parties at its seventh meeting;
5. *Requests* Parties and others to continue to submit to the Secretariat any comments or information relating to the questions and issues set out in paragraph 1 of decision OEWG-II/4.

Annex to decision OEWG-III/3

Work programme for future action

Each study envisaged under the proposed Basel Convention Work Programme, as set forth below, should take into consideration reports, recommendations and any other information on pertinent matters of the joint International Labour Organization/International Maritime Organization/Basel Convention working group, as appropriate, and if the joint working group is working on a similar issue. However, noting that the consideration of the same topics by the two groups may not coincide, the finalization of the texts prepared under the Basel Convention Work Programme may take cognisance of recommendations of the joint ILO/IMO/BC working group.

I. Notification procedure

Action

- (i) Analysis of the application of the notification procedure under the Basel Convention to ships which have become waste for control under the Basel Convention and that are subject to transboundary movements.
- (ii) Review of reporting/notification procedures under other international institutions that may assist in reaching a conclusion on this issue.
- (iii) Review of reporting/notification procedures under domestic legal regimes that may assist in reaching a conclusion on this issue.

Specific reference should be made to the comments provided by Parties and others pursuant to decision OEWG-II/4 in connection with the questions set out in paragraphs 1(a), (b), (c) and (d) of that decision.

Who should conduct this task

The Secretariat should prepare an analysis for submission to the IWG for comment. Upon incorporation of such comments, it will be circulated to the IWG with a view to making recommendations to the OEWG.

Deadline for completion

To be determined by the IWG.

Relevant documents

Extracts from the Basel Convention: article 6

UNEP/CHW/OEWG/3/INF/5

Compilation and summary of comments and observations to facilitate the work of the intersessional working group prepared by the Secretariat

UNEP/CHW/LWG/4/4

Relevant case law

II. Duty to re-import

Action

Analysis of the application of the duty to re-import under the Basel Convention to ships that have become waste for control under the Basel Convention and that are subject to transboundary movements.

Specific reference should be made to the comments provided by Parties and others pursuant to decision OEWG-II/4 in connection with the question set out in paragraph 1 (c) of that decision. Reference should also be made to comments provided by Parties and others in connection with the questions set out in paragraph 1(a) and (b) of decision OEWG-II/4.

Who should conduct this task

The Secretariat could prepare an analysis for submission to to the entire IWG for comment and, thereafter, to OEWG.

Deadline for completion

To be determined by the IWG.

Relevant documents

Extracts from the Basel Convention: article 8

UNEP/CHW/OEWG/3/INF/5

Compilation and summary of comments and observations to facilitate the work of the IWG prepared by the Secretariat

UNEP/CHW/LWG/4/4

Relevant case law

III. Role of States

Action

A study analysing the options for recommendations as to which States, if any, should assume the obligations under the Basel Convention with respect to ships that have become waste for control under the Basel Convention and that are subject to transboundary movements, by reference to the Basel Convention provisions defining the obligations borne by various concerned States (e.g., State of export, state of disposal, etc.), taking into consideration the submissions received pursuant to decision OEWG-II/4 and such other information as may be relevant. Particular regard should be had to existing international maritime rules and procedures, for example, those relating to flag States.

Specific reference should be made to the comments provided by Parties and others pursuant to decision OEWG-II/4 in connection with the questions set out in paragraphs 1 (c) and (d) of that decision.

Who should conduct this task

The Secretariat could prepare an analysis for submission to the entire IWG for comment and, thereafter, to the OEWG.

Deadline for completion

To be determined by the IWG.

Relevant documents

Extracts from the Basel Convention: Article 2

UNEP/CHW/OEWG/3/INF/5

Compilation and summary of comments and observations to facilitate the work of the intersessional working group prepared by the Secretariat

UNEP/CHW/LWG/4/4

Relevant case law

IV. Basel Convention annexes

Action

Analysis, in close consultation with IMO and ILO, from the legal perspective, of the application of the Basel Convention annexes to ships that have become waste for control under the Basel Convention and that are subject to transboundary movements. Reference could also be made to IMO guidelines.

Specific reference should be made to the comments provided by Parties and others pursuant to decision OEWG-II/4 in connection with the question set out in paragraph 1 (e) of that decision. Reference should also be made to comments provided by Parties and others in connection with the question set out in paragraph 1 (b) of decision OEWG-II/4.

Who should conduct this task

The Secretariat should prepare an analysis in close consultation with IMO and other relevant international organizations for submission to the entire IWG for comment and, thereafter, to the OEWG.

Deadline for completion

To be determined by the IWG.

Relevant documents

Basel Convention annexes

UNEP/CHW/OEWG/3/INF/5

IMO guidelines

Relevant case law

V. “Intent to dispose”

Action

Analysis of the means and mechanisms for determining “intent to dispose” of ships that may become waste for control under the Basel Convention and that are subject to transboundary movements.

Specific reference should be made to the comments provided by Parties and others pursuant to decision OEWG-II/4 in connection with the questions set out in paragraphs 1 (b) and (e) of that decision. Reference may also be made to paragraphs 1 (a), (c) and (d) of decision OEWG-II/4.

Who should conduct this task

The Secretariat should prepare an analysis in close consultation with IMO and other relevant international organizations for submission to the IWG for comment and, thereafter, to the OEWG.

Deadline for completion

To be determined by the IWG.

Relevant documents

Extracts from the Basel Convention: articles 2, (para. 1), 6, 9, Annex IV

UNEP/CHW/OEWG/3/INF/5

Compilation and summary of comments and observations to facilitate the work of the intersessional working group prepared by the Secretariat

UNEP/CHW/LWG/4/4

Relevant case law

VI. Recommendations for action in the context of the Basel Convention on the legal aspects of the full and partial dismantling of ships

Action

Analysis of the conclusions contained in the studies of the five above-mentioned topics, with a view to formulating recommendations for future action to be undertaken in the context of the Basel Convention on this subject.

Specific reference should be made to the comments provided by Parties and others pursuant to decision OEWG-II/4 in connection with the question set out in paragraph 1 (f) of that decision.

Who should conduct this task

The Secretariat should prepare an analysis for submission to the IWG for comment and, thereafter, to OEWG, with a view to facilitating the formulation of recommendations by the OEWG for the eighth session of the Conference of the Parties.

Deadline for completion

To be determined by the IWG.

Relevant documents

Studies resulting from the completion of items I–V above

UNEP/CHW/OEWG/3/INF/5

UNEP/CHW/LWG/4/4

Relevant case law