

Executive Summary:

This document presents the view of Greenpeace International and the Basel Action Network (BAN) on the necessary improvements of the IMO Guidelines in order to make the Guidelines consistent with existing international law.

Action to be taken:

Take this document into consideration

Related Documents:

MEPC/51/3/1

*Analysis of inconsistencies between IMO Guidelines on Shiprecycling
and the Basel Convention*

Introduction

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

Background

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

Role of the Basel Convention

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

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

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

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

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

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

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

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

General Comments

Prior Decontamination and Export of Hazardous Wastes

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

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

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

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

Ships as Waste

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

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

The state of an object, such as a vessel, becoming or being a waste cannot be simply avoided or be manipulated by using longer names or phrases. The term "waste" has international legal significance; the Basel Convention holds the collective authority to this. The IMO should at minimum try to synchronize its definitions and concepts with the Basel Convention.

Legal Deflection away from Those Truly Responsible

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

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

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

Another consequence is that without a clear imputation of the responsibility of ship owners and flag States, the IMO Guidelines superficially attempt to address the problem of green design. The present

draft provides little incentive for owners to demand ships that are not toxic and thus will not be impacted by the restrictions in place on their export found in the Basel Convention.

Specific Comments

Greenpeace and BAN believe that the IMO Guidelines, while containing some excellent provisions, pose an effort to deflect responsibility away from the shipping industry (the polluter in this case) to its victims (developing countries and communities). The Basel Convention on the other hand, is a legally binding instrument that has sought to do precisely the opposite, namely to hold waste generators accountable through state action to prevent the exploitation of developing countries. It is time for the IMO to recognize the established principles of international law with respect to environmental justice and producer responsibilities. Only through such acknowledgement can the gap of inconsistency between the existing draft and the Basel Convention and its Guidelines be closed and we can achieve a coherent set of international instruments to solve the shipbreaking crisis. The IMO can be a tremendous force to make this happen if it has the political will to do so.