

Towards the Establishment of an appropriate System of Control & Enforcement Mechanisms for the Recycling of Ships

EMSA Workshop on Ship Recycling

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24 April 2007



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Context: What

- Crucial need to:
 - minimize the environmental, occupational health and safety hazards related to ship recycling;
 - improve the protection of human health and the environment at ship recycling facilities; and
 - secure the smooth withdrawal of ships that have reached the end of their operating lives.

Context: Whom (1)

- Ship Owner(s):
 - All aspects of the ship.
- Flag State(s):
 - Design & Construction of the ship;
 - Operation of the ship; and
 - Preparation of the ship for recycling.

Context: Whom (2)

- Recycling State:
 - Operation of the recycling facility; and
 - After operating life of the ship.
- Recycling Facility:
 - All aspects of the recycling facility.

Context: When

- New Ships:
 - Design;
 - Operation; and
 - At the end of operating life.
- Existing Ships:
 - Operation; and
 - At the end of operating life.

Context: Where

- Worldwide: flag states and recycling states
 - Developed – developing countries;
 - But also: Developed – developed countries;
 - And: developing – developing countries;
 - And: developing – developed countries.
- Mandatory requirements adopted at global level.
- Equal application to all Parties.

How: Control & Enforcement Mechanisms

1. A Party and its ships (Flag State obligations);
2. A Party and the ships flying the flags of other Parties (Port State control rights);
3. A Party and its recycling facilities;
4. Communication and exchange of information;
5. Reporting at the end of life;
6. Detection of violations; and
7. Auditing implementation.

Reporting System: an Enforcement Tool

- Not a self-sustaining objective in itself.
- Different nature from the other items identified as mandatory requirements.
- Should be designed to ensure the implementation of the other substantial requirements.

Reporting System: an Enforcement Tool

- Objective of reporting system clarified:
 - **only a tool** to contribute to the enforcement of other mandatory requirements in relation to:
 - ships (Inventory of Hazardous Materials, International Ready for Recycling Certificate, Ship Recycling Plan; etc.); and
 - recycling facilities (facility licensing, facility selection, etc.).
- Application of reporting system:
 - should be proportional to the level of enforcement needed in accordance with the general provisions of the Convention.

Reporting System: an Enforcement Tool

- Basically, Convention requires reporting *ex post facto*:
 - the finalisation of the Inventory of Haz. Materials;
 - the development of the Ship Recycling Plan; and
 - the delivery of the ship;
 - the completion of recycling.
- However the potential weakness of the *ex post facto* reporting is avoided by introducing the “ready for recycling” certification by the Flag State or RO.

Reporting System: an Enforcement Tool

- Reg. 25 allows the flag State Administration to undertake the obligation and right of control, as follows:
 - to prepare for (survey and) “ready for recycling” certification.
 - The finalisation of Ship Recycling Plan & Inventory of the Hazardous Materials enables the Flag State to make sure that the authorized ship recycling facility chosen for each specific ship can recycle the ship in compliance with the requirements of the Convention.

Reporting System: an Enforcement Tool

- Reg. 25 allows the Competent Authority(ies) of the Recycling State to:
 - undertake the needed control actions to ensure that only an authorized facility can recycle the ship in compliance with the requirements of the Convention.

Reporting System: an Enforcement Tool

- State-to-State notification
 - What would be the added value to the current reporting system?
 - Unclear added-value.
 - Necessary to make an informed decision?
 - By whom?
 - To whom?
 - When?
 - How?

Reporting System: an Enforcement Tool

- Clear draw-backs:
 - Excessive & unnecessary bureaucracy.
 - “to be a workable and effective one, with the minimum required administrative burden and catering for the particular characteristics of world maritime transport”, a MEPC basic principle for the reporting system: not fulfilled.
 - Undue administrative delay to the detriment of the ship recycling process, as demonstrated by the experience of the Basel Convention.
 - Commercially sensitive information.

Reporting System: an Enforcement Tool

- Possible Scenarios:
 - Change of flag once notification started (UNCLOS requirements on non-hindrance of flag change).
 - Stateless ship (no flag).
 - Ship to be recycled sequentially in multiple Recycling States.

Reporting System: an Enforcement Tool

- Prior Informed Consent
 1. Satisfaction that the ship is intended to be recycled:
 - provided through Reg. 25(1) & 25(2).
 - stakeholders involved:
 - Ship Owner; and
 - Recycling Facility.
 - notification from both stakeholders to respective competent authorities.

Reporting System: an Enforcement Tool

2. Satisfaction that a ship is in a condition to be recycled:
 - provided through Reg. 8(1)(5) & 10.
 - stakeholders involved:
 - Flag Administration (or delegated to RO).
 - certify ship destined to be recycled as ready for recycling prior to any recycling activity taking place.

Reporting System: an Enforcement Tool

3. Satisfaction that a ship will be recycled in a safe and environmentally sound manner (1):
 - provided through Reg. 9 (Ship Recycling Plan).
 - stakeholders involved:
 - Recycling Facility;
 - Recycling State;
 - Ship Owner; and
 - Flag Administration.

Reporting System: an Enforcement Tool

4. Satisfaction that a ship will be recycled in a safe and environmentally sound manner (2):
 - provided through Chapter 3 – Requirements for ship recycling facilities.
 - stakeholders involved:
 - Recycling State; and
 - Recycling Facility.

Reporting System: an Enforcement Tool

- Prior Informed Consent

- Pros:

- introducing notification & reporting requirements for controlling and enforcing effective implementation, satisfies the requirement for introducing prior informed consent in the Convention.

- Cons:

- this may also lead to persistent commercial disputes by having introduced an element of serious uncertainty in the sale and purchase contract.

Equivalent Level of Control

- The “level of control” is an evaluation on the expected functioning of the control & enforcement mechanisms to achieve the policy objectives and the “comparison” with other legal instruments which do not have identical policy objectives is not necessarily useful.

Equivalent Level of Control

- Unnecessarily increasing the administrative burden of Parties may be an obstacle to effective implementation.
- This instead of increasing the level of control, it causes rather the opposite!

Equivalent Level of Control

- Basic philosophy - provide sufficient control and enforcement mechanisms from **cradle to grave**.
- Basel Convention – no control and enforcement mechanisms in the cradle (tries to solve the problem in or on the way to the grave).

Conclusion

- The proposed Convention provides a more **holistic** approach to the issue of ship recycling, especially through the **cradle to grave approach** and the establishment of an appropriate system of control & enforcement mechanism for the recycling of ships, which is expected to result in a **higher level of control** than established under the Basel Convention.

Thank you

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