



NGO platform on shipbreaking

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The NGO Platform on Shipbreaking¹ welcomes the European Commission's (EC) 'Green Paper on better ship dismantling' released on 22 May 2007. The Platform shares the concerns expressed by the Commission regarding the current unacceptable shipbreaking crisis and the **need for a « radical change »**, and welcomes a number of proposals made.

In short, the Platform considers the following **accumulative measures** a priority for the successful implementation of a consolidated European Union (EU) policy aimed at ensuring safe and environmentally sound shipbreaking:

- The EU must take strong action on its own which includes **enforcing and enhancing existing regimes** while **building domestic capacity** for green dismantling/pre-cleaning;
- The EU should take the global lead and establish a **third-party auditing and certification system for Green Ship Dismantling** based on the International Maritime Organisation (IMO), International Labour Organisation (ILO) and Basel Convention Technical Guidelines;
- The EU should **support authorities in developing countries** so that international standards on workers rights and the protection of the environment are enforced. This should be done in line and within the wider framework of EU external relations and development policies.
- The EU must ensure that any new international regime has **at least the equivalent level of control** as that found in the Basel Convention;
- Legislation creating a **ship dismantling fund fed by the shipping industry** must be passed in order to internalize costs currently borne by the environment and the health of impoverished communities in developing countries; and
- The EU must ensure that a new generation of clean ships are built by **enforcing the principle of mandatory substitution**.

¹ The NGO Platform on Shipbreaking is a global coalition of environmental, human and labour rights organisations. The current members are: the Basel Action Network (BAN), Greenpeace, the International Federation of Human Rights (FIDH), the European Federation of Transport and Environment (T&E), Bellona, the North Sea Foundation, the Ban Asbestos Network, Prevention of Hazardous Shipbreaking Initiative Turkey, Young Power in Social Action (YPSA), Bangladesh Environmental Lawyers Association (BELA), Bangladesh Institute of Labour Studies (BILS), Toxic Links, Gujarat Occupational Safety and Health Association and the Corporate Accountability Desk India. The European Environmental Bureau (EEB) has also co-signed this document.



Chittagong shipbreaking yard, Bangladesh 2007

BACKGROUND & GENERAL COMMENTS

Most of the shipbreaking practices as carried out in today's facilities are creating unacceptable levels of death, injury, work-related diseases and environmental pollution². There is a **serious shortage of dismantling facilities compatible with the principle of environmental sustainability and international labour rights**. The Platform is concerned that this situation will be aggravated by the number of ships going out of service in the next few years following the global phase out of single hull oil tankers; the current back log of an estimated 15 million LDT³; and the general boom in shipbuilding over the last years.

The global crisis of shipbreaking must be understood within the larger framework of **illegal waste trade** involving human rights abuses and the environmental injustice provoked when toxic wastes are freely traded without restraint in the global market place. An **extreme externalisation of costs** to poor migrant workforces and the environment in South Asian developing countries, notably Bangladesh, India and Pakistan, is currently profiting a small group of entrepreneurs and yard owners as well as the shipping industry.

The Parties to the Basel Convention have made it clear that **a ship can be a waste and a ship at the same time** in its Decision VII/26 at the fifth Conference of Parties. The European Council endorsed this decision in relations to the Waste Shipment Regulation (WSR) at its 24 June 2005 meeting during the Luxembourg presidency. Therefore there is no doubt that a ship when containing asbestos, PCBs or other Basel listed hazardous waste will be considered as a hazardous waste under the EU WSR when destined for recycling or disposal. The current practice of sending end-of-life ships containing hazardous substances to developing countries is furthermore a form of hazardous waste trade forbidden according to the WSR. Recent case law involving the French ex-aircraft carrier *Clemenceau*⁴ and the Dutch controlled tanker *Otapan* support this conclusion.

² For more details see report of FIDH/Greenpeace/YPSA (2005): "End of Life Ships: The Human Cost of Breaking Ships" <http://www.greenpeaceweb.org/international/press/reports/end-of-life-the-human-cost-of>.

³ European Commission Directorate General Environment: "Ship Dismantling and Pre-cleaning of Ships" Final report June 2007

⁴ For the *Clemenceau* ruling see: http://www.conseil-etat.fr/ce/jurisprd/index_ac_Id0607.shtml

The aim of an EU ship dismantling strategy should be the « **protection of the environment and human health** » worldwide. This should be done by full implementation of the WSR, which incorporates the Basel Convention, including the Basel Ban Amendment, and its principles. Member States are furthermore obliged by Article 4 of Directive 75/422/EEC on waste to take the necessary measures to **ensure that waste is recovered and disposed of without endangering human health and without using processes or methods which could harm the environment.**

The EU has thus a **legal obligation to uphold the WSR with respect to ships as waste.** This will not only be necessary in order to apply an adequate level of control in the lengthy interim period prior to the IMO Convention entering into force, but should also guide the EU's position in the framework of the current negotiations at the IMO. It must further be borne in mind that not only for the coming years, but also after the entry into force of the IMO Convention – should the EU Member States choose to ratify this convention and give it exclusive competence over its scope – there will be a need to maintain a dual regime, for example for warships and for smaller vessels not covered by the IMO regime. Moreover, if the IMO Convention does not achieve an «equivalent level of control» to that of the Basel Convention and WSR, then the EU Member States will be **obliged to abide to the more rigorous regime.**

The Platform has made a number of recommendations to States, including EU Member States, South Asian shipbreaking states, companies and international organisations such as the IMO and the United Nations Environmental Program (UNEP) in order to protect the human rights of workers and communities as well as the environment affected by shipbreaking. The Platform believes that the EU has an important role to play in achieving the goal of safe and environmentally sound shipbreaking worldwide and that the scope of the shipbreaking problem **calls for urgent action.**

RECOMMENDATIONS

(1) How can the enforcement of current Community law (Waste Shipment Regulation) affecting end-of-life ships be improved? What is the best mix of measures to divert EU-flagged or EU-owned vessels to dismantling sites with high environmental and safety standards?

A mix of measures should be employed to improve the enforcement of the WSR, most importantly:

- Guidance of the waste shipment rules and definitions (see question 2);
- Guidance on pre-cleaning (see question 6); and
- Establishment of a ship dismantling fund (see question 9).

In order to divert vessels to dismantling yards with high environmental and safety standards the EU should take the global lead in identifying the yards that comply with existing international standards and establish a **third-party auditing and certification system for safe and environmentally sound ship dismantling based on the IMO, ILO and Basel Technical Guidelines as well as relevant EU legislation.** The shipping industry has itself called for such a list of

**Third Party
Certificate
and Audit**

acceptable yards and committed itself to take use of such yards for end-of-life operations⁵.

As there are currently few yards that comply with existing safety and environmental standards the EU should develop such capacity within its Member States as well as upgrade the working conditions on the yards in South Asia so that pre-cleaned vessels can be safely dismantled there. The costs of running an EU certification and auditing system could be linked to a ship dismantling fund (see question 9).



Chittagong shipbreaking yard, Bangladesh 2004



Chittagong shipbreaking yard, Bangladesh 2005

A stricter EU policy could however lead to a massive «exodus» of European ships to cheap flags of convenience (FOC) countries, not respectful of environmental or workers' rights standards. Older vessels are already often sold to owners using open registers with minimum capacity to ensure appropriate implementation of international rules and standards and cease to operate in European waters to avoid the stricter port state controls of the EU. It is no new dilemma for EU governments that if they police international rules strictly, and enforce additional constraints, they may find that owners transfer their vessels to less onerous registers.

The EU must find mechanisms to ensure that European ship owners do not re-flag their vessel in avoidance of requirements for responsible shipping, including end-of-life operations. To avoid end-of-life vessels leaving EU Member States' control, the following measures should be considered:

- Conditions for benefiting from state aid should be looked at; in the Commission's 'Guidelines to State Aid to Ship Owning Companies', the Commission attaches as series of strings to the eligibility of Member States to grant exemptions from general tax rules to shipping companies. These include the recruitment of European seafarers, adherence to international safety standards and an increase in registration of vessels under European flags. Each Member State is required to notify the Commission on a regular basis – proving that these policy goals are met. If not, the whole tonnage tax regime can fall. Once a policy on shipbreaking has been defined and adopted, adherence and application of such rules could also be included as a **prerequisite for allowing Member States to grant state aid to ship owners** operating out of Europe;
- Other legal tools, such as requiring plans and financing of decontamination of hazardous material before scrapping for **granting of ISM certificates,**

⁵ See 'Industry Code of Practice on Ship Recycling' August 2001; and the Industry Working Group on Ship Recycling's 'Interim Measures for Shipowners intending to Sell Ships for Recycling' July 2007

entry into European ports, or even benefiting from reduced port dues, as Sweden has done for air pollution, should be considered; and

- The EU can **intensify controls of old vessels** and not allow re-flagging after a ship has reached a certain age or is in poor condition to continue trading.

Also, as the EC's Maritime Green Paper proposes;

- Ways of making **exceptions to the principle of the exclusive jurisdiction of the flag state over its vessels**, or to alleviate or supplement this principle, should continue to be explored;
- The EC and its Member States should put the full weight of their specific powers, combined influence and external policy instruments behind a policy to **improve the performance of all flag states**; and
- New instruments to strengthen the **monitoring of international rules** on the high seas and their control by port states should be urgently developed using state-of-the-art technologies such as global satellite navigation, including **official data on real time movements of vessels**.

(2) Would guidance on waste shipment rules and definitions on end-of-life ships help to improve implementation of rules and business practices, and what form should it take?

One of the first and most immediate steps to be taken, perhaps in the WSR correspondence group, is to provide Member States with a **guidance document on how to better implement the intent of the WSR and the Basel Convention in the case of ships**. Much as the Correspondent Group for this regulation has recently made the WSR more applicable to post-consumer electronic waste or WEEE, a guideline needs to be produced to help Member States better implement the Regulation for the nuances of post-consumer ship waste – **with an aim to close some of the identified loopholes for ships and the WSR and ensure consistent EU wide application**.

The guidance document relating to ship dismantling should cover how to best enforce the WSR for ships as waste with a view to ensuring that ship owners, like other waste generators/holders, are ultimately held responsible by the states with jurisdiction over them. The guideline must assist Member States in addressing two identified loopholes that allow for circumvention of the WSR. These are:

- How to determine **«intent to dispose»**; and
- Which states have responsibility to act as **«exporting state»**.

A hierarchy of responsibility should be established with first the «State with jurisdiction over Owner», then the «Flag State», and finally the «Exporting/Transit State» as being seen as «State of Export» for the purposes of implementing the regulation. The reason for not giving the flag state prime responsibility is related to the large number of vessels registered under FOCs, especially at the end-of-life phase. Instead, the EU needs to clearly establish the state with jurisdiction over generators and «owners» of waste as being the responsible state. The shell game of FOCs where owners can easily re-flag their

**WSR
Guidance
Document**

ships to the least common global denominator of responsible action makes a mockery of any principles of responsibility including that of «**polluter pays**». In most instances with ships, the true economical owner and the state with the most financial interest in a ship can be identified. Mechanisms should be created to do so when the identification is more difficult.

Guidance on how to **test the veracity of reuse/refurbishment claims** needs to be developed and seen in light of clarifying the meaning of «intent to dispose». Cases such as the Ricky in Denmark, SS Norway in Germany, and more recently the Aqaba Express in Spain and Valmont Express in Greece, clearly demonstrate this need. Training of port authorities to better identify and control suspected end-of-life vessels should be prioritised.



Oil pollution, Chittagong shipbreaking yard, Bangladesh 2007

(3) What is the best way of steering the current negotiations on the IMO Ship Recycling Convention in order to improve ship dismantling practices globally?

A new legally binding instrument on ship recycling is as mentioned currently being negotiated at the IMO; EU Member States should **adopt a coordinated position** in that framework, along the following lines in particular:

- The EU must play a leading role in ensuring that the IMO regime creates **at least an «equivalent level of control» as required by the Basel Convention and WSR**. An «equivalent level of control», while not requiring identical control mechanisms, must nevertheless adhere to basic fundamental principles and obligations of the Basel Convention including:
 - a) «Prior informed consent»;
 - b) Minimisation of transboundary movements of hazardous wastes via pre-cleaning requirements in developed countries during the normal life of a ship and/or prior to the final voyage;
 - c) Equivalency of exporting state (other than solely the flag state), transit and importing states having responsibilities to ensure

Equivalent Level of Control

amongst other environmentally sound management and full transparency in disclosing the hazards on board; and

d) That violations are considered as illegal traffic and criminal.

In addition, the EU must actively insist that the IMO Convention:

e) Fully incorporates existing International Labour Organisation (ILO) standards;

f) Aims at a phase-out of the beaching method and incorporates the requirement of full containment;

g) Disallows states from letting hazardous waste ships go to non-Parties of the Convention; and

h) Has no exemptions (e.g. for government owned ships).

- The EU must also request that the new instrument places a requirement on shipbuilding states to ensure **phase-out of toxic substances** in ship construction and design wherever and whenever less toxic or hazardous substitutes exist. Further, the EU should press for designs conducive to safe and efficient recycling.
- The EU must ensure that a provision be inserted in the new IMO Convention that will **create a fund paid for by ship owners** which will pay for pre-cleaning of all hazardous substances to the extent feasible, during the life-cycle of a ship and prior to its final voyage; compensate the workers victims of accidents and occupational disease contracted at the yards due to violations of the provisions of the said treaty; and improve conditions and environmentally sound management in shipbreaking yards globally.
- Finally, the EU must demand **third party auditing and certification** of all facilities. National legislation and enforcement mechanism as well as whether downstream waste management is conducted to meet high standards to ensure environmentally sound management should be included and also examined by a third party.

The Platform has on several occasions voiced concern, however, that the IMO regime will come into force too late to deal *inter alia* with the phased out single hull tanker fleet, and too late for the thousands of workers dismantling the world's end-of-life fleet today. Indeed, the new legally binding IMO instrument might at the earliest be adopted in 2009, and only then will the ratification process start, which most probably will take several more years. This is the reason why the EU must urgently proceed with its own measures to address the global shipbreaking crisis in parallel to, or irrespective of, the IMO process.

Also of concern is the fact that the draft IMO Convention is currently so weak that it places no substantial additional legal obligations or financial incentives for shipbreaking countries or ship owners to improve upon the *status quo*⁶. The draft convention further fails to recognise the inherent structural differences distinguishing a developed and a developing country; ignoring this fact will only allow the current **race-to-the-bottom** to perpetuate.

⁶ See Platform submission to MEPC 55 (MEPC/3/7) and the Platform's "IMO Draft Convention Critique" at www.ban.org.

Unilateral action is likely to be the only pressure that will succeed in ensuring that the IMO regime is eventually strengthened from its current ineffectual state. Much as the original Basel Convention was weak and was only strengthened by regional accords that proceeded to accomplish what initial consensus could not, **the EU must take leadership.**



Workers, Chittagong shipbreaking yard, Bangladesh 2002



Chittagong shipbreaking yard, Bangladesh 2007

(4) Should the EU aim at global environmental and safety standards under the IMO Convention that are comparable with EU standards?

Yes. To do otherwise is to create double standards. We cannot accept this particularly when the EU has largely created the surplus of ships needed to be disposed by actions taken to protect its own environment. This cannot translate into harm to the health or environment of others.

The Sixth Community Environment Action Programme of 2002-2012 contains various commitments relevant in the given context. Article 2(6), for instance, emphasises the «positive and constructive role of the **European Union as a leading partner**» in the protection of the global environment, the development of a global partnership for environment and sustainable development, and the integration of environmental concerns and objectives into all aspects of the Community's external relations. The aims and objectives set out in the Programme shall be pursued, amongst others, by encouraging more effective implementation and enforcement of Community environmental legislation (Article 3[2]). In Article 9, the Programme lays down as objectives the «**pursuit of ambitious environmental policies at the international level**» and «making progress to ensure that trade and environment policies and measures are mutually supportive».

Also, the EU officially composes its external policy in conformity with international human rights norms. One of the objectives of the EU foreign and security policy is «to develop and consolidate democracy and the rule of law, and **respect for human rights and fundamental freedoms**» (Treaty on European Union, Article 11, February 1992). These should be the guiding principles for an EU shipbreaking policy.

Further, most of the occupational toxicity problems at ship dismantling yards involve chronic toxicity which creates debilitating disease and death over the course of many years. Many of these cancers and diseases are related to asbestos. Based on an international scientific consensus the EU has forbidden the use of all types of asbestos. It is therefore **unacceptable to send EU vessels**

High Global Standards

Exporting death : asbestos

containing asbestos to countries where this material is known to recycled⁷. Exports of asbestos to countries such as India and Bangladesh are equivalent to exporting death⁸.

(5) How can the EU best ensure that European ships are dismantled in a safe and environmentally sound way during the interim period before the IMO Convention becomes effective? What about ships owned by the public sector? Will national strategies and voluntary commitments by ship-owners be sufficient? What additional measures would be needed at EU level?

The question presumes the IMO Convention will be effective. There is however no evidence to that effect to date and already the drafting of the Convention is almost completed. But it is true that the EU must act with a sense of urgency and regardless of the outcome of the IMO Convention. National strategies such as the UK National Strategy are welcomed.

The Platform does not believe that encouraging voluntary action by ship owners is a sufficient measure by itself to change the current situation – industry guidelines have existed since 2001 without engendering any change in practice – the EU should however still encourage corporate social responsibility commitments by ship owners and possibly include responsible ship dismantling to the relevant award systems of the EU.

In addition to initiating third party auditing and certification of yards and developing a consolidated guidance document on the WSR as mentioned above (questions 1 and 2), and building capacity within the EU for safe and environmentally sound ship dismantling (see question 6), the EC should pay particular attention to enforcement over government owned ships as well as the EU controlled single hull oil tankers. As regards state owned vessels EU member states should show the example by following strict public procurement rules allowing for high standards dismantling when it comes to their own end-of-life ships. The EU institutions should further develop a definitive and consolidated list of single hull oil tankers subject to phase-out regulations as a first step towards proper enforcement.

(6) Should the EU and its Member States take an active role in increasing the EU's own ship recycling capacity, and how?

The Platform strongly supports encouraging **best-practice ship recycling and the pre-cleaning of ships from gas and toxic waste within the EU**. This is undeniably called for first by the obligations of the Basel Convention for all States to ensure the availability of adequate capacity for hazardous waste management (Article 4,2,b)⁹ and the minimization of transboundary movement (Article 4,2,d). Increasing appropriate capacity within the EU will also address the immediate

**Capacity
Building**

⁷ See the recent ruling in the Indian Supreme Court 11 September 2007 concerning the SS Blue Lady.

⁸ For further details see Laurie Kazan-Allan (2007): "Killing the Future, Asbestos Use in Asia" The International Ban Asbestos Secretariate

⁹ The Basel Convention Article 4,2,b requires Parties to «ensure the availability of adequate disposal facilities, for the environmentally sound management of hazardous and other wastes, that shall be located, to the extent possible, within it [...]»

scandals that have occurred and will continue to occur as ships reach end-of-life and no suitable global capacity for environmentally sound and safe shipbreaking is likely to exist. A commitment by Member States to deal with all state-owned ships in this way as well as binding end-of-life clauses when such ships are sold to third parties are initial crucial steps.

As the WSR is to be implemented fully for EU ships (EU port state, EU state with jurisdiction over the owner, EU flag state), it must be assured that a thorough **pre-cleaning of all hazardous substances takes place prior to onward transit to a non-OECD country**. This will assist in alleviating some of the lack of capacity and provide avenues for getting clean secondary steel to Asian destinations where its demand is high. The best time for pre-cleaning is during the useful life of the ship and the EU should therefore encourage life-time pre-cleaning. In this way engine rooms can be cleaned of asbestos and thus after the vessel is ready for dismantling it can sail under its own power to any destination. **Toxic waste remediation businesses therefore need to be identified and a Pre-Cleaning Guidance document developed.**

Pre-cleaning

As concluded in the COWI report¹⁰, the development of environmentally sound scrapping capacity is possible but will only happen if legal and/or economic incentives are created. It is fully **justifiable to utilize State aid** for shipbreaking particularly in the initial stages of developing safe and environmentally sound shipbreaking capacity due to the fact that EU policies and EU government ships are a significant cause of the problem. Further, as the competitive advantage of environmentally unsound yards have made it impossible to develop green capacity in the private sector in the EU, it is clear and compelling that the State must ensure such yards exist to comply with their own legal obligations. However, **on a longer term funding safe and environmentally sound ship dismantling needs to be in accordance with the principles of Polluter Pays and Producer Responsibility** (see question 9).

State Aid



Asbestos and oil pollution, Chittagong shipbreaking yard, Bangladesh 2007

¹⁰ European Commission (2004): *Oil Tanker Phase Out and the Ship Scrapping Industry. A study on the implications of the accelerated phase out scheme of single hull tankers proposed by the EU for the world ship scrapping and recycling industry*, Final Report to the European Commission Directorate-General Energy and Transport, June 2004, Brussels

(7) What measures and actions should the EU take to encourage South Asian states to introduce and implement higher environmental and safety standards for ship dismantling?

The Basel Convention obligations require national self-sufficiency in hazardous waste management. It is thus not the job of the European Union to improve the yards for the sake of sending toxic EU ships or ships under EU control. Rather **these yards should be improved for humanitarian and environmental reasons**. Any aid to improve the yards in South Asia must therefore be de-linked from any notion that the EU will send its own toxic ships to Asia. It is an obligation of the EU to **ensure adequate capacity for pre-cleaning if a vessel is to be exported to a non-OECD country**. As mentioned, improving the yards in non-OECD countries cannot be used as an avenue for the EU to violate the Basel Ban, nor preclude the Basel obligation to achieve national self-sufficiency in waste management.

However if a large pre-cleaning and towing trade develops, it will be incumbent on the EU to ensure that while the ships delivered are toxics-free, they are still managed in a manner not likely to be injurious to the health and safety of workers. Workers at the South Asian shipbreaking yards have so-called 3D jobs: **dirty, dangerous and degrading**; protective equipment is scarce or inexistent, and unions' rights are *de facto* extremely restricted¹¹. National legislation on workers' rights is not properly enforced. Wages are low (less than EUR 2 per day), and the considerable profits go to a small group of entrepreneurs and yard owners. While low wages paid in developing countries alone do not account for the disparity in occupational norms between developed and developing countries, low wages correlate to a serious lack of infrastructure and resources to enforce laws, monitor compliance, provide training and education, access to clinics, legal recourse through tort law, or political action, which all create an environment placing workers at high risk. So, **though much of the occupational hazards will be dealt with by only exporting pre-cleaned vessels, unsafe working conditions as well as other violations of international human rights in South Asian breaking yards will need to be addressed**. Also, beyond technical and financial assistance to improve the conditions at the shipbreaking yards in developing countries, funds will be required for the **remediation of contaminated soil and water and other damages caused by uncontrolled shipbreaking activities**.

Improve working conditions

The Platform wishes to stress that the types of problems endemic to the situation on the ground in developing countries cannot be addressed by simply providing technological advancement alone. The Green Paper talks about the «major source of revenue» ship dismantling represents for the South Asian countries. The Platform wants however to strongly emphasise that this is currently **not a sustainable source of income** as costs are being brutally externalised to the health and lives of migrant workers as well as the environment and surrounding communities. This extreme externalisation further explains most of the current «structural comparative cost advantage» of sending end-of-life vessels to South Asia.

Wider Framework

All European Union Member States are parties to the two 1966 international covenants on human rights. The International Covenant on Economic, Social and

¹¹ International Metal Workers Federation (2006): "A Survey on Working and Socio-Economic Conditions of Shipbreaking Workers in India"; FIDH/Greenpeace/YPSA (2005): "End of Life Ships: The Human Cost of Breaking Ships".

Cultural Rights (ICESCR) provides for international obligations of States, whether they act individually or in the framework of an international organization. In particular, States have the duty to control non-states actors on which they have an influence and to provide international assistance and cooperation in order to achieve economic, social and cultural rights in third countries. Developed states have a particular responsibility towards developing nations. They have to respect, protect and implement all economic, social and cultural rights and refrain from leading action that could directly or indirectly hinder the exercise of these rights in third countries. When dealing with exports of hazardous waste to developing countries there is a real risk of not complying with these principles. When evaluating whether a country is able to deal with hazardous wastes in a safe and environmentally sound manner the questions below should be considered:

IMPORTANT QUESTIONS THAT NEED TO BE ADRESSED WHEN DEALING WITH WASTE EXPORTS TO DEVELOPING COUNTRIES

What guarantees are possible that enforcement and monitoring of the technology and compliance with national laws will be assured? What guarantees are possible that workers have the right to assemble, to bargain collectively for better conditions, and have access to occupational health clinics? What guarantees are there that the tort law is such that victims of occupational disease or injury can be adequately compensated? What assurances are there that the emergency response and medical infrastructure in a community can come to the aid of workers? What guarantees are there that downstream waste management infrastructure and hazardous waste legislation is adequate to prevent further contamination and exposure to workers from toxic paints, asbestos, PCBs etc.?

These questions should be taken into account by the EU when implementing the EU-India and EU-Bangladesh **Country Strategy Papers (CSP)** for the period 2007-2013. Good governance and human and social development policies are identified as central concerns of the CSPs with India and Bangladesh. Further, one of the priorities of the CSP with both India and Bangladesh is to **support pro-poor sector reform policies**; the migrant workers employed at the shipbreaking yards of Alang and Chittagong come from some of the poorest regions of South Asia; regions hit by natural disasters often amplified by weak governance structures.



Demonstrations for improved working conditions at the shipbreaking yards in Chittagong, Bangladesh 2006

«Community policy in the sphere of development co-operation [...] shall foster the sustainable economic and social development of the developing countries, and more particularly the most disadvantaged among them [...]. The Community and the Member States shall comply with the commitments and take account of the objectives they have approved in the context of the United Nations and other competent international organisations» (Treaty establishing the European Community, 2002, Article 177). The Community must further take into account these objectives in the policies that it implements which are likely to affect developing countries (Ibid, Article 178)¹²; any EU policy in South Asia concerning the improvement of working conditions at the shipbreaking yards must be seen within this wider context. Through its aid and co-operation policy, the EU should support the efforts of the ILO, NGOs, trade unions and the developing states concerned, in order to improve the working conditions at the yards, and bring them in conformity with international human rights and ILO standards.

(8) What measures and actions should the EU take to encourage ship-owners to direct end-of-life ships to dismantling sites with high environmental and safety standards?

As mentioned under question 1, all community funding and support mechanisms for the shipping industry and state aids for maritime transport should be made dependent on the beneficiary's use of clean and safe dismantling facilities.

Also as mentioned under question 1, the EU should take the lead in establishing a list of yards that comply with international standards of safe and environmentally sound ship dismantling.

(9) How should the EU secure sustainable funding for clean ship dismantling in accordance with the polluter pays principle, and what measures and actions should it take?

The Platform welcomes the proposal made for a funding system whereby **ship owners pay for the safe and environmentally sound dismantling**. Legislation creating a ship dismantling fund must be passed in order to **internalise costs** currently borne by the environment and the health of those in developing countries. The fund should contribute to upgrading ship dismantling facilities and to compensating workers who are victims of accidents or occupational diseases contracted at the yards. In this way there is also a built-in incentive for Green Designed ships. The Green Paper proposes that if such a fund is not made possible at the international level, a regional system should be considered. As there are currently no indications that a fund will be established at the international level, the Platform calls upon the EU to take urgent action in establishing a regional fund.

**Polluter
Pay
Principle**

¹² The United Nations Office of the High Commissioner for Human Rights has long recognised the issue of toxic waste dumping on developing countries as a human rights issue and has authorized a special rapporteur on the subject since 1995. Since then, the special rapporteur has documented the environmental justice and human rights concerns with respect to shipbreaking. In 2005, the special rapporteur Mr. Okey Ibeanu wrote of these concerns to the IMO reminding it of the human rights aspects of shipbreaking.

A report entitled «The Ship Recycling Fund – financing environmentally sound recycling of sea going ships» (Ecorys Transport, February, 2005)¹³ not only argues that financial costs for safe and clean breaking of end-of-life ships can be borne by the shipping industry, it also argues that the costs are manageable at a minor fraction in relation to the total turnover generated by the shipping industry (0.5%). Such a Ship Recycling Fund would provide shipbreakers and shipbreaking countries worldwide with the means to invest in best practice facilities and working methods at a yard. A Ship Recycling Fund would also provide ship owners with the means to finance pre-cleaning of ships and responsible disposal of their end-of-life vessels as well as **support the improvement of working conditions at shipbreaking yards and compensate the victims and their family in case of accident.**

Regulation without the creation of a parallel financing mechanism will continuously lead to circumvention of the rules and an increased use of substandard shipbreaking yards by ship owners to avoid extra costs. The above-mentioned report recommends that abidance by the rules should be promoted through the introduction of an indirect financing mechanism in which financing is raised at the newly built stage or during the lifetime of a ship.

The EU can for example require that any ship using its ports must possess a «ship life insurance» which would recover the costs of scrapping and any pre-cleaning in an environmentally sound manner. Through annual life insurance premiums which permit the ship to enter EU ports, funds can be saved for the eventual dismantling. Per ship type an estimate would be made of the required funds (and annual premiums to be paid) on the basis of the expected scrapping costs involved. The pre-cleaning and breaking of ships should be paid by the ship owner, but could be reimbursed out of the fund, on submission of proof (e.g. a certificate) of clean scrapping or pre-cleaning. This certificate should be linked to the third party auditing and certification system.

OTHER

THE CLEAN SHIP

Due to the weakness of the draft IMO Convention on the issue of Green Shipbuilding, it is vital that the EU take up this matter unilaterally much as they have done in the Electronics Industry through the ROHS Directive (Restrictions on Hazardous Substances). A list of unacceptable compounds in ships needs to be drawn up with a mechanism for adding additional substances through implementation of the Substitution Principle. Any ship sold to a European ship owner and that wishes to operate in European Waters must have a certificate on board certifying that the ship, if built after a certain date, is clean of the «red» listed material.

FLAGS OF CONVENIENCE

Recognising the specify of the maritime world includes recognising the extreme lack of transparency and accountability one comes across when dealing with the shipping industry. Unscrupulous ship-owners have long used FOCs to evade tax

¹³ The report "The Ship Recycling Fund, Financing environmentally sound scrapping and recycling of sea-going ships" Ecorys Transport can be downloaded from <http://www.greenpeaceweb.org/shipbreak/fund.pdf>

rules, licence regulations, safety standards and social requirements for the treatment of crew. End-of-life vessels can re-flag and change names several times before reaching the dismantling yard to confuse management and surveillance authorities, a practice known as "flag hopping". Backed by shell companies, joint-ventures and hidden owners, FOCs are therefore considerable constraints to combating illegal toxic waste dumping as they make it extremely difficult to locate and penalise the real owners of FOC vessels. The fact is further that the majority of end-of-life vessels are flying FOC flags when arriving to the South Asian shipbreaking yards.

Much as DG Fishing recognises the problem of FOCs in relations to illegal fishing, the EU needs to address the issue of FOC when dealing with illegal exports of toxic end-of-life vessels; «...use of a flag of convenience constitutes a pernicious practice that drags the entire control system downwards».¹⁴ The sensitivity of the «genuine link» debate should not prevent progress being made on sustainable management of end-of-life vessels and it must be recognised that FOCs are at the root of many of the environmental and human rights abuses the shipping industry is being accused of.

A key aspect to combating illegal dumping of toxic waste is therefore to ensure **greater transparency in the flagging and ownership information of vessels**. Ideally, it should be registered in publicly available, up-to-date and reliable databases where the basic information would appear: current and previous vessel names and flags, owners and beneficial owners, country of ownership, call-sign, tonnage, etc. Details of ownership and management of ships should be made fully transparent to enable appropriate follow-up to breaches of regulations, and effective liability arrangements must be put in place to ensure that the guilty parties are held responsible for the consequences of poor shipping standards and practices.



Mother holding picture of dead sons, Bangladesh 2005

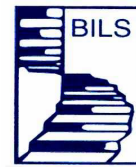


Worker Chittagong shipbreaking yard, Bangladesh 2007

A guiding principle of environmental justice is that no peoples should be disproportionately burdened by environmental risk and hazard simply because of their racial, social, geographic, or economic status.

¹⁴ http://ec.europa.eu/fisheries/cfp/external_relations/illegal_fishing/flags_convenience_en.htm

The NGO Platform on Shipbreaking is a global coalition of environmental, human and labour rights organisations. The current members and co-signers of this document are:



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The NGO Platform on Shipbreaking is a global coalition of environmental, human and labour rights organisations. The current members and co-signers of this document are: Bangladesh Environmental Lawyers Association (BELA), the European Federation of Transport and Environment (T&E), the North Sea Foundation, the Basel Action Network (BAN), the International Federation of Human Rights (FIDH), Prevention of Hazardous Shipbreaking Initiative Turkey, Young Power in Social Action (YPSA), the Ban Asbestos Network, Toxic Links, Greenpeace, the International Ban Asbestos Secretariate, Bangladesh Institute of Labour Studies (BILS), Bellona, Gujarat Occupational Safety and Health Association (OSHA) and the Corporate Accountability Desk India. The European Environmental Bureau (EEB) has in addition co-signed this document.