

DUMPING HAZARDOUS WASTE IN INDIA: TOXIC SHIPS

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INTRODUCTION

Hazardous Waste

India has laws that expressly prohibit the import of hazardous waste, including asbestos waste. Yet, as recently as September 2007, the Supreme Court implicitly

ruled that hazardous wastes can indeed be imported if contained in other waste items – namely end-of-life ships. The law, counsel for the government claimed, was not intended to cover internalized waste, which would only be released after such vessels were scavenged. Astonishingly, the Court accepted this argument as they did the assertion that over 80% of the asbestos on board the Blue Lady – the disposal of which was under discussion – was suitable for recycling.

Permission to dismantle the Blue Lady, aka SS Norway and SS France, was given despite the fact that several days earlier the Court had issued a general order on ship-breaking, strengthening the quite stringent conditions it had decreed in 2003. Curiously, even under the 2003 rules, dismantling of the Blue Lady should not have been permitted. In another move, the Ministry of Environment and Forests (MoEF), in the same month as the above ruling, released proposed Draft Hazardous Materials (Management, Handling and Transboundary Movement) Rules, 2007 which, if adopted, would allow the Indian recycling industry to further bypass international conventions regarding the transport of hazardous materials.

The Alang Ship-breaking Yard

While the proposal to “reclassify” waste has met with universal condemnation, India’s ship-breaking regulations have been given tacit approval by the International Maritime Organization (IMO). Following a visit to Alang, India’s prime ship-breaking facility, IMO Secretary General Efthimios E. Mitropoulos said: “The new regime governing ship recycling in India, as recently decreed by the country’s Supreme Court, is remarkably similar to the requirements of the draft text of the new IMO Convention.”

The new convention, due to be approved in 2009, seeks to regulate all aspects of ship-breaking, including documentation, prior notification, legality of sale transactions and conditions in ship-breaking yards. One notable departure from earlier practice is that removal of hazardous materials will be permitted at approved ship-breaking yards. Regarding conditions in India,

the IMO Secretary General said there did not: “appear to be any major requirements for the recycling yards in excess of those laid down by the decision of the Supreme Court.” This all sounds fine, and indeed, much in the proposed convention is admirable, but do previous examples of enforcement of Supreme Court directions give confidence for the future – and what are the conditions in the Alang yards which have been approved by the IMO?

To highlight the way in which the Court and government ministries have acted in the past regarding hazardous ship-breaking, three prominent cases are reviewed. However, it is hardly encouraging that, since the Supreme Court order of September 6, 2007, there has been considerable confusion over required licences and approval procedures; by February 2008, 53 ships had “beached” illegally at Alang, with the Gujarat Maritime Board (GMB) apparently powerless to stop them.

Surprisingly, in view of all the international attention it has attracted, ship-breaking at Alang is in the doldrums. Lying 50km southeast of Bhavnagar in the state of Gujarat, Alang had the reputation of being the largest ship-breaking facility in the world, with 183 ship-breaking lots (individual yards) handling more than 300 ships a year and employing upwards of 40,000 workers directly and an estimated 200,000 in ancillary occupations. In recent years there has been a sharp decline in activity: in one five-month period in 2006 only 32 ships were dismantled by around 4000 workers and 2007 saw only a moderate revival – 71 ships and possibly 10,000 workers. However, future changes in the scrap steel market and regulation of overseas competition could see huge numbers of migrant workers return to the beaches and the hazards of this dangerous industry.

A report by a Supreme Court appointed panel in 2006, quoted fatal accident rates in ship-breaking of 2 per 1000 as opposed to 0.34 per 1000 in the mining industry. The same panel estimated asbestosis in ship-breaking workers to be around 16%. Greenpeace and the International Federation of Human Rights put the fatal accident rate at Alang still higher: at 50-60 per year.

Whatever their numbers at any particular time, those first in line to be damaged by toxic ships slipping through international and Indian controls are thousands of migrant and casual workers driven by poverty to the Alang yards; then the local communities whose environment is already heavily contaminated. After that, materials like recovered asbestos may pass deep into India, spreading their poison further.

The workers have been described as poorly equipped and inadequately trained. Not so long ago one reporter pictured the scene at Alang as “Dickensian,” with swarms of half-clad workers virtually tearing ships apart with primitive hand tools. Conditions

have undoubtedly improved in recent years with the supply of some protective clothing and rudimentary training, but it is hard to believe that sophisticated asbestos removal procedures based on those used in Europe and the US, for example, could easily be introduced.

A picture in a 2006 Frontline article* showed workers removing asbestos from a pipe in a partially screened-off area. They appeared to be in inadequately sealed protective suits and wore full masks or respirators of some sort. No air lines could be seen in the rather small picture, but if they were wearing respirators there is no way of knowing how efficient they were – only the best will give adequate protection, and then only when external fiber concentrations are kept low. Also, the enclosure – a skip-like structure – was scarcely shoulder height and close to other facilities, obviously not an ideal situation; there was no indication of how clothing was to be changed to avoid contamination. The greatest worry concerns the removal of such pipes from the ship itself. The Supreme Court order talks of using proper enclosures on board ships in future, but this is only for certain categories of work. For other types of asbestos removal, wet stripping (presumably without enclosures) has been ruled adequate.

There will undoubtedly be some improvement in documentation as a result of the Supreme Court’s rulings. But does the IMO truly believe that sophisticated safety measures will be observed in practice to protect the health of easily-replaced workers, amid the mayhem of the breaking beaches; particularly, if business starts to boom again, with profits relying on increasingly rapid turn-rounds on the sprawling lots of Alang.

At present, Alang is still a no-go area for the media and activists; permits are difficult to obtain, photography is frowned upon, and men with shotguns police the yards. In this climate how can there be any confidence that safety criteria will be observed. Clearly, neither the government nor the Alang Ship Breaking Association want the experiences of the casual and migrant workers to be revealed to the world at large.

The Association has the ear of government, is even able to influence the outcome of elections – in Bhavnagar South, recently, a fiercely pro-ship-breaking National Congress candidate was elected, bucking the State trend to the BJP party. As will be shown in the discussion of the Blue Lady and other toxic ships, government ministries have, in the past, sympathized with the ship-breaking industry to the extent of manipulating Supreme Court judgments.

The workers themselves, however, are effectively disenfranchised. Unable to find work in their home villages and townships, they come from Uttar Pradesh, Orissa, Bihar and Jharkhand.

The ancestors of V.S Naipaul, the Booker Prize winning author, came from such a village in Uttar Pradesh, but for the majority of the Alang workers even the right to vote is a distant dream. Few among this drifting population even possess election identity cards, most have never voted. No profit for political parties in courting their votes, but it can’t be right that they should be abandoned by their nation.

THE CASE OF THE BLUE LADY

Supreme Court Supports the Ship-breakers

By every rule in the book, the Blue Lady, carrying asbestos waste and radioactive materials, should not have been allowed into Indian waters, let alone be beached at Alang. And yet, despite well-premised objections, the central government has persuaded the Supreme Court to rule that this ship be dismantled there. The judgment was in relation to an application submitted to the Court, by the author of this article, asking the Court to prevent dismantling of the Blue Lady, principally as such would be contrary to the Court’s own Order of 2003. As of writing, the case is still ongoing in that a further application for clarification has been accepted for consideration by the Court.

The controversial decision came in the second of two related judgments in the matter of ship-breaking and hazardous waste issued by the Supreme Court on September 6 and 11, 2007. Justices Dr. Arijit Pasayat and S. H. Kapadia delivered both the orders. The first order contained new rules applicable to ship-breaking generally, following from earlier deliberations on the Clemenceau case (briefly outlined below). The second order made specific reference to the status of the Blue Lady, a ship known to contain dangerous substances – including asbestos and radioactive materials – then currently beached at the Alang shipyard, though lacking clear authorization to be there.

This second order gave the go-ahead for the dismantling of the ship, and laid down some conditions on how the process was to be conducted. However, the Court did not dispute that the entry of the Blue Lady into Indian territorial waters and its continued presence since June 2006 was itself in violation of the Court’s own order of October 14, 2003. It was also in violation of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, and a number of other international environmental and labor conventions and treaties that govern the breaking of contaminated ships – to all of which India is a signatory.

Ship-breakers Denied – the Clemenceau

To understand how extraordinary was the decision in the Blue Lady case it is necessary to look at what happened to the Clemenceau, a former French warship which had been permitted, by a

*Lyla Bavadam. Profits over Safety. Frontline. 2006, Issue 02; online: <http://www.flonnet.com/fl2302/stories/20060210007701100.htm>

French court, to set sail from France on December 31, 2005, bound for disposal at Alang – despite claims that it contained up to 1000 tonnes of asbestos.

A storm of protest had preceded the ship's departure and continued as it made its way toward India. Responding to this outcry and acting on advice from its Monitoring Committee on Hazardous Waste Management (SCMC), on January 16, 2006, India's Supreme Court banned the ship from entering India's Exclusive Economic Zone (EEZ). Within a month, on February 13, the Supreme Court considered a further report of the SCMC concerning the *Clemenceau*. However, Justices Arijit Pasayat and S. H. Kapadia questioned the competence of the SCMC to advise on toxic waste in relation to the scrapping of the ship and proposed the formation of another panel of experts comprising retired Navy and DRDO (Defence Research and Development Organisation) personnel, preferably with dockyard experience.

The Court was scheduled to reconvene on February 17 to consider the matter further, but on February 15 events in France preempted any action by India. Responding to petitioners Comité Anti-amiante de Jussieu (anti-asbestos committee of Jussieu), Andeva (National Association of defense of asbestos victims) and Greenpeace, the French Supreme Court reversed the lower Court's decision allowing the ship to leave France for scrapping without prior decontamination. Accordingly, three days before his arrival in India on a brief visit, President Chirac ordered the recall of the *Clemenceau*.

With a general consensus in Europe that the export of hazardous waste in the manner that had been intended for the *Clemenceau* was illegal, there was some talk of the French government facing prosecution. In India, however, the issue of whether such ships should be admitted had serious economic repercussions and the Supreme Court addressed the matter in the February 17 hearing, originally intended to consider the *Clemenceau* case alone. As a means of determining if the infrastructure and operating procedures at Alang were adequate to prevent "environmental hazards and pollution" and where deficiencies were found of recommending "remedial measures," the Court ordered that there should be constituted "a committee of technical experts." This duly constituted "Technical Experts Committee on Ship Breaking" (TEC) features prominently in the *Blue Lady* case, where its not so reliable recommendations were accepted too readily by Supreme Court Justices. In addition to the retired naval officers requested by the Court, the 12-member committee included several members from government ministries and state industries as well as academics from government institutes.

Misleading Evidence Leads to Blue Lady Verdict

In its decision on the *Blue Lady* the Supreme Court was particularly concerned with a question at the heart of the Indian economic boom, namely the balancing of individual hardship against benefits to the community at large:

"It cannot be disputed that no development is possible without some adverse effect on the ecology and environment ... The comparative hardships have to be balanced and the convenience and benefit to a larger section of the people has to get primacy over comparatively lesser hardship."

As the case progressed, the "balance" sought by Justices Pasayat and Kapadia apparently caused them to lean too heavily in favor of forces of economic liberalization in their too ready acceptance of doubtful evidence submitted by government agencies and the Court's own committees.

Presence of Radioactive Elements Verified

In making its order the Supreme Court relied on a submission by Gopal Subramaniam, the Additional Solicitor General, claiming that the *Blue Lady* no longer contained any radioactive material and her beaching was irreversible. The former claim was based on an inspection by the Atomic Energy Regulatory Board (AERB) and GMB on August 14, 2007 which had been ordered by the Court following a petition by myself. The inspection had revealed the presence of 12 smoke detectors containing radioactive Americium 241. Following removal of the offending items the inspection teams reported that the ship: "now, does not contain any radioactive material." However, a perusal of the report shows that the entire inspection of 16 floors of the 315 meter ship seems to have been completed within a period of 4 hours (commendable alacrity, but was it thorough).

In my petition, I had referred to a letter sent by one Tom Haugen (who had been the Project Manager for Engineering, Delivery, Installation, Commissioning and later services and upgrades as regards fire detection installation systems on board the *Blue Lady*). Haugen had written to Meena Gupta, Chairman of the TEC that the fire detection system on the *Blue Lady* contained 5500 detection points which included 1100 ion smoke detectors containing radioactive Americium 241. In a separate letter to the Prime Minister dated 19 September 2007, Haugen has reiterated the fact about the quantity of radioactive material on the ship, pointing out that he himself had supervised its installation. Countering the AERB-GMB report that the ship did not contain any radioactive material after their inspection, Haugen wrote that in most cases, the fire detection systems are not labeled or indicated in any way, as they are typically "buried" out of sight. According to Haugen, due to the risk of hazardous radioactive exposure, they should only be

handled by professionals or certified technicians. "The system and its detectors are very subtly placed and virtually completely hidden in most parts, so it is totally understandable that a non-expert team might miss it during a broader inspection of the vessel," wrote Haugen.

To put all this in context, it should be pointed out that way back in 2006 the TEC had reported that there was no radioactive material at all on the *Blue Lady*, as did the Gujarat Pollution Control Board (GPCB), Gujarat Enviro Protection and Infrastructure Ltd, (GEPIL) and the ship's current owner Priya Blue Shipping Pvt Ltd. However, one of the Committee members, Dr. Virendra Misra of the Industrial Toxicology Research Centre (ITRC), Lucknow, had disagreed with the findings, particularly mentioning smoke detectors. This was ignored by the TEC's then chairman, Prodipto Ghosh, who alone signed the final report.

Following this flurry of claims and counterclaims, and in spite of inspection reports, radiation risks aboard the *Blue Lady* remain the same: there are still over one thousand items of equipment containing radioactive material on the ship and Haugen has a diagram showing where they are all located.

Presence of Asbestos Verified

Regarding the presence of asbestos in the ship, Additional Solicitor General Subramaniam saw fit to argue ingeniously: "In the present case, the vessel does not contain a single kilogram of asbestos and/or ACM as cargo." But, of course, it had never been the stand of the plaintiff that asbestos or asbestos-containing materials (ACMs) were present as cargo – they were built into the ship's structure.

The question of differentiating between inbuilt material containing asbestos and asbestos cargo had, in fact, already been addressed by a Parliamentary Committee. The Parliamentary Committee on Petitions, on August 17, 2007, issued its report in response to the matter being raised in Lok Sabha by Basudev Acharya. Senior parliamentarian Acharya had petitioned the Committee, arguing that the *Blue Lady*'s entry violated India's sovereignty. Incidentally, the MoEF presented oral evidence before this Committee, but here also failed to disclose possible radiation risks.



The Parliamentary Committee, chaired by Prabhunath Singh, in its response, noted that it was extremely concerned that the ship contained an estimated 1240 tonnes of ACMs and about 10 tonnes of PCBs inbuilt in its structure. After remarking on the carcinogenic properties of both product types, the report got into the issue of asbestos in the cargo of ships as opposed to structural asbestos. Virtually indicting the government, the report stated:

"The committee strongly deprecate (sic) the repeated stand taken by the ministry that since no hazardous wastes have been allowed on board as cargo, there is no violation of the Hon'ble Supreme Court directions. The Committee need not emphasize that hazardous wastes whether as cargo or inbuilt material are equally detrimental to the environment and to the human health."

Earlier, Kalraj Mishra, a member of the Parliamentary Committee on Industry, had argued that since the French ship *Clemenceau* had been sent back to its country of origin, the *Blue Lady*, being 50 times more toxic than the *Clemenceau*, should also be sent back.

It appears that the Supreme Court has accepted the government standpoint that the ACMs contained in wall partitions and ceilings (85% of total ACMs in the ship) do not pose a risk if the panels containing them can be removed undamaged. No mention seems to have been made of the other 15% which translates as 186 tonnes. This is likely to be much more friable material and its removal will subject workers to grave risks of asbestosis, mesothelioma, lung cancer and other asbestos-related illnesses.

In my petition, I brought to the notice of the Court that asbestos waste is banned in India and asbestos itself is banned in some 44 countries and even the World Trade Organization had passed a verdict against it because of its carcinogenicity at every level of exposure. There is indisputable evidence that safe and controlled use of asbestos is impossible. Despite this, the Additional Solicitor General Subramaniam claimed that: "Safe use and controlled use of asbestos is possible in India." Further, he contended that the asbestos waste in the structure of the ship was not hazardous and the ban on asbestos waste in India applied only to "virgin" asbestos waste!

The Supreme Court has not yet dealt with an application filed by Bhagvatsinh Haluba Gohil, Sarpanch, Village Sosiya, Tehsil Talaja, and District Bhanvnagar on behalf of 30,000 villagers and 12 panchayats of the Bhavnagar district of Gujarat. The residents of the villages sought to prevent the dismantling of the Blue Lady on account of the large amount of asbestos on board which could contaminate their villages, close to the Alang yards.

Faulty Argument on a Beached Ship not Being Refloatable

There's more. Allen Todd Busch, Vice President and General Manager, Titan Salvage, a Crowley Company, one of the largest and most respected salvage companies, also wrote to the Prime Minister. He said, "The primary reason the court has ruled in favour of breaking the vessel, in its current position, is because there is a belief that the vessel can not be removed from where it now rests." Claiming that his firm had the capability and expertise to refloat the vessel, Busch continued: "Please allow us to present to the Prime Minister and India's Court our credentials, history and experience that there is actually very high probability that the Blue Lady is not at all in an 'irreversible' position, as the esteemed Court has found." Supporting this view, Aage Anderson, a firm involved in the Clemenceau case, affirmed in a technical memo that the Blue Lady could be refloated.

The fact that the Additional Solicitor General Subramaniam was able to convince the Court that the beaching of the Blue Lady was irreversible, was sufficient to override all other arguments regarding the legality of the ship's presence in India.

Dangerous Precedent for Globalization of Waste

In my petition to the court I pointed out that the Prior Informed Consent procedure, which has been incorporated in the Rio Declaration, Basel Convention, Cartagena Protocol, Rotterdam Convention, and Stockholm Convention, was also incorporated in Hazardous Wastes Rules 1989. As per this principle, no member state can send hazardous waste to a developing country without its prior consent. This protocol has not been followed in the case of the Blue Lady. Another important principle states that ships should be decontaminated prior to being exported for dismantling. The Supreme Court itself has previously declared this to be an essential prerequisite for acceptance of a vessel for recycling on Indian territory.

Since the Clemenceau had been recalled in early 2006, it might have been expected that, by September 2007, a similar recall would have been issued in the case of the Blue Lady, which departed from Germany in 2005. But, exposing differing interpretations of international conventions among European nations, Germany has failed to honor the Basel Convention and has

not recalled the ship. Meanwhile, the owners of the Blue Lady have escaped the high cost of decontaminating the ship in Europe.

The Scrapping of the Riky

First, a ship with dubious credentials leaves the shores of Denmark. Then a month later, India allows it to beach at Alang for scrapping. In between, it gets a new name and rules are flouted to let it in. Here chronicled is how the Riky, unlike the Clemenceau, sailed through the law. Though the case of the Riky preceded that of the Blue Lady, it is still being considered by the Supreme Court. Meanwhile, the ship-breakers are violating earlier Supreme Court orders with impunity.

On April 15, 2005, Connie Hedegaard, Denmark's Environment Minister alerted her Indian counterpart A. Raja (currently heading the Communications Ministry) to the illegal movement of a 51 year-old asbestos laden ship, Kong Frederik IX. The ship was on its way to Alang for scrapping. The ship's new owners, Jupiter Ship Management, a Mumbai-based company, had renamed it "MV Riky."

Hedegaard wrote: "I write to you on a matter of great concern for me as Minister for the Environment in Denmark – the illegal traffic of hazardous substances in ships." She told Raja that the Kong Frederik IX had left Denmark on March 16, 2005, allegedly to operate in the Middle East as a cargo ship; presently it was passing through the Suez Canal on its way to the Red Sea. However, Hedegaard had learned from "several independent sources" that, contrary to the information given by the owners, the ship was in fact ultimately bound for the west coast of India to be dismantled; it could arrive within a week.

Hedegaard referred to the provisions of the UN's Basel Convention, of which Denmark, India and 168 other countries are signatories. In accordance with the Basel Convention, a ship must be characterized as waste if the owners intend to dispose of it. Further, transboundary movement of hazardous substances without prior notification should be deemed as illegal traffic in waste.

The Danish minister appealed to the Indian Environment Minister saying, "I believe our interests are joint – and I call on you to co-operate in this case by denying [permission for] the ship to be dismantled in India and refer the ship to return to Denmark to be stripped of the hazardous waste." She added that by so doing, India and Denmark could send a strong signal: that neither country would accept export of environmental problems that could be solved locally, and that "we – as governments – will not accept this kind of foul play which results in lasting damage of the environment."

Responding to Hedegaard on April 28, 2005, Raja wrote: "As you are aware India is a party to the Basel Convention since 1992 and has strengthened the national legislation on Hazardous Wastes management notified in 1989

to ensure compliance of our obligations under the Convention. We have determined that the ship cannot be classified as 'Wastes' within the scope of Art 2.1 of the Basel Convention." Raja argued that a ship sailing under its own power could not be classified as "waste." However, the ship in question, now renamed Riky, had finished its sailing days, having been beached at Alang five days earlier, on April 23, 2005.

In the same letter Raja informed Hedegaard that, according to the GMB, GPCB and the Central Pollution Control Board (CPCB) who inspected the ship, there was no objectionable hazardous material on the ship: "There are only inbuilt insulation materials which are part of the structure of all ships. As per Indian Laws and our position under the Basel Convention and the IMO, the ship has the requisite permission for beaching." He assured her that India had the capability to ensure environmentally sound dismantling of the ship and disposal of its contents.

At around the same time as Hedegaard's letter, Per Stig Moller, the Danish Minister of Foreign Affairs also wrote to K. Natwar Singh, the then Indian Foreign Minister. This was followed up by meetings between Michael Sternberg, the Danish ambassador in Delhi and Pradipto Gosh, the top bureaucrat and then Secretary of the MoEF. Nothing changed.

Mystery surrounds the arrival of the Riky at Alang. N B Deshmukh, Assistant Commissioner, Customs Division, Bhavnagar, Gujarat said that the Riky was carrying the flag of the Democratic Peoples Republic of Korea (North Korea). However, Madhumita Dutta, who later in 2005 challenged the MoEF in the Supreme Court on the ship's admission into India, alleged that the Riky sailed in under the flag of Roxa, a non-existent country.

Subsequently, on June 2, 2005, the SCMC granted permission for the Riky to be dismantled, subject to the presence of officers from the CPCB and GPCB. The SCMC was set up by the Supreme Court in October 2003 to monitor the progress in implementation of Hazardous Waste (HW) Rules as well as a series of orders on hazardous waste matters passed by the Court. Prior to their decision, on May 24, 2005, Dutta had written to the SCMC, alleging that the registration document for renaming the ship had been fabricated to confuse the Danish authorities and thus facilitate beaching of the vessel. Despite all the protests, the SCMC decision was implemented and the Riky was dismantled following a final GMB go-ahead on September 23, 2005.

It should be noted that serious repercussions soon followed the facile beaching of the Riky. Even in the interim between the Riky's arrival and the SCMC's decision, other controversial ships were turning up. It was the Danish Environment Minister who again wrote to Raja warning that two Danish

ships, the Dronning Margrethe and the Rugen, had set sail for India but "disappeared" on the high seas. Asbestos was mentioned: it's a "case of illegal traffic of hazardous waste," her letter stated categorically. A familiar pattern followed: international laws were flouted and the Dronning Margrethe under the name "Beaupoort II" was welcomed by India with open arms.

Was the Government of India's decision to let in the Riky illegal and wrong?

Breaking Every Law in the Book

The direction to dismantle the ship was issued despite the fact the Basel Convention specifically categorizes ships destined for scrapping as "wastes." Having left Denmark without notification of its hazardous content Riky's transit to India did not fulfil the minimum requirements of the Basel Convention. Since its voyage was not authorized by Denmark, the ship's papers could not have included Form 7, a necessary document for import and export of hazardous wastes both under Indian and International law. However, having deemed end-of-life ships as no longer "wastes" the Government of India disingenuously waived this requirement, knowing full well that under the Basel convention if one party considered the ship "waste" – and Denmark clearly did – then that was sufficient for the Riky to be so classified.

The SCMC chose to ignore negative observations made in the report of the joint inspection team of CPCB and GPCB officials that visited the ship on April 26, 2005. The team found:

- ◆ no detailed inventory of inbuilt materials (including asbestos, glass wool etc.) in the inventory prepared by Customs;
- ◆ the workers on the plot (ship-breaking unit) were little equipped to handle the asbestos waste believed to be on the ship and lacked suitable training;
- ◆ little purpose served in carrying out the post facto inspection since the GPCBs guidelines specifically require an inspection and an inventory prior to beaching.

Addressing some of these points, they recommended that it should be ensured that ship owners provide the GPCB with a detailed inventory, not only of cargo, but also of inbuilt hazardous materials, well in advance of a request to beach a vessel.

The Challenge in the Supreme Court

On August 13, 2005, an intervention application was filed in the Supreme Court challenging the contentions of the MoEF on the admission of the Riky. The court was informed of the violations involved in allowing the Riky to beach at Alang, including violations of the Court's own orders of October 2003. The application was moved by Madhumita Dutta, on behalf of a voluntary group named Corporate Accountability Desk.

The application asked that the Government of India be directed to cooperate

with the Government of Denmark, as a party to the Basel Convention, and furthermore initiate an enquiry into the illegal entry of the ship. The applicant also called upon the Court to take appropriate action against concerned officers of Gujarat Maritime Board, Gujarat Pollution Control Board and Customs Department, Bhavnagar as well as the MoEF and the Minister himself.

On September 12, 2005, M. Subba Rao, as Member-Secretary of the SCMC filed an affidavit in the Supreme Court refuting the claims against the MoEF in the matter of Riky. However, the fact that Subba Rao is also an Additional Director at the MoEF demonstrates the conflict of interest, which appears to have compromised the independence of the SCMC. The SCMC's membership comprises bureaucrats from the very government departments that are defendants in hazardous waste cases being currently heard by the Supreme Court.

Dr. Claude Alvares, another member of the SCMC, said that the affidavit filed by the SCMC represented the position of the government and not the SCMC:

"I was wholly unhappy with the Riky affidavit filed on behalf of the SCMC. Others in the SCMC agreed with me. I made a lot of noise in the SCMC about it because that affidavit was prepared by the MoEF and the GPCB, both of whom are respondents in the petition on hazardous wastes, and filed in the name of the SCMC. We thought our objections would be taken on board. They were not."

He also noted that none of the Riky documents were shown to any of the SCMC members.

But why did the Supreme Court allow the independence of its own committee to be compromised? Why create a committee to oversee government enforcement of hazardous waste rules, and then let government officials themselves sit on it? The Supreme Court generally asks the government to suggest names or asks them to constitute its committees; the government blatantly ignores the principles of natural justice and conflicts of interest. Ministries make their own officials members of such committees – they have done so in several other cases. For instance, there is another committee, the "Supreme Court Committee on Waste to Energy," where there is a similar conflict of interest.

On September 15, 2005, responding to critical press reports, the MoEF went on the offensive by issuing a press release. Their first target was Denmark: they claimed to have not received any communications from the Danish Minister for Environment since April 2005. This, of course, was not true and Hede-gaard, no doubt weary of the MoEF's duplicity, expressed disappointment at the misrepresentation of her government's actions. Then they turned their attention to international agreements, pointing out imagined disparities between guidelines on ship-breaking

provided by the IMO, the International Labour Organization (ILO) and the Basel Convention. Another bogus argument (at that time, at least); for in fact a Joint Working Group on Ship Scrapping was established by IMO, the ILO and the Conference of Parties to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, for a more cohesive approach to the problem. The group concluded its second meeting in Geneva in December 2005.

The MoEF press release also mentioned that the Riky had a "cargo free certificate issued by the Customs Department, as the vessel arrived at Alang in ballast (empty)." The difference in voices within the arms of the government continued. On September 30, 2005, N B Deshmukh (Assistant Commissioner, Customs Division, Bhavnagar) said in an affidavit that the quantity of structural material in the Riky that could give rise to hazardous waste was unknown to the customs authorities. But the MoEF and SCMC contended that Customs authorities had boarded the ship at anchorage and had not found any hazardous waste. Why were the MoEF and SCMC interpreting an "I don't know" as a "not there" with regard to hazardous waste on the Riky?

In an interview for Frontline, a news magazine and in conversation with me in early 2006, Alvares said, "The MoEF is the last institution in this country that is concerned about the environment." In noting that the SCMC received a report saying that the asbestos waste generated on demolition of the Riky was 222 kg, whereas the Danish authorities claimed the ship contained 17 tonnes of ACMs, he said that the SCMC wanted to re-examine this aspect of the matter. Implying that ships like the Riky fell into a special category, he continued:

"We took serious note of Riky and then Clemenceau because we found that in the case of Riky, the Danish government objected to the export of the ship, and in the case of Clemenceau, we had indication that decontamination was not done as required by the Supreme Court order and the directions of the SCMC. These are fairly logical decisions. Other ships continue to come to Alang, but follow the norms given in the apex court order."

SCMC members including Alvares have voiced scepticism about the motives of the Danish government, being unaware of any action taken against the owners of the Riky. The facts, however, are quite different: when the Danish authorities became aware that the ship had arrived off the Indian coast bound for the Alang shipyards, they immediately instituted proceedings against those responsible. On April 25, 2005, the Danish Police were directed to seek and prosecute companies and persons responsible for this violation of EU shipment regulations, the Danish Act on Protection of Environment and the Danish Criminal Code. The role of the Danish city of

Korsør is also under investigation, as local authorities may have committed an error by granting permission for the ship to leave the local harbor.

Following tension between the SCMC and the MoEF, the SCMC appointed advocate Raj Panjwani as their counsel. It appears the SCMC wished to avoid MoEF officials filing affidavits on their behalf with the Supreme Court. The Court approved Panjwani to appear on behalf of the SCMC in February 13, 2006; up to that point, the SCMC did not have its own independent counsel.

Bleak Outlook for Hazardous Waste Regulation

Tackling illegal and hazardous waste movement has been on the international agenda in different forums for a long time. However, in India, little overall progress has been made since 1995 when the Supreme Court took cognizance of one Bhopal-based Bharat Zinc Company importing hazardous zinc ash waste without following relevant procedures. Although the Court had pursued the entire issue of hazardous waste for over 10 years, the Riky case illustrated that in the absence of compliance with the Court's orders, the situation had come back to square one.

In dealing with the Riky the SCMC appeared to act as an implementer of MoEF policy. An affidavit filed at the Court alleged that both the SCMC and MoEF along with Customs had misinterpreted several provisions of both national and international law in a manner that seemed "mischievous." A dangerous precedent was set for gaining approval for the dismantling of ships in contravention of the law.

The Riky and the Blue Lady are remarkable only in the amount of hazardous materials they contained and the public attention they have attracted. To reveal the true extent of illegal beaching and breaking operations, the GMB should be required to submit to the Court a comprehensive list of ships that have beached at Alang subsequent to the Court's order of October 14, 2003, along with the papers required for their entry as laid out both under the Basel Convention and India's Hazardous Waste Management Rules.

Conclusion

Dismantling of the Blue Lady would set a dangerous precedent. Hazardous and poisonous material does not become

non-hazardous and non-poisonous merely because the government – the MoEF and an Additional Solicitor General – proclaim it to be so. The Blue Lady story illustrates the means by which not only hazardous substances, but dangerous industries also have been transferred to India, often quite openly, with the connivance of Indian authorities. In this instance, the government steered the highest court in the land toward the rulings the ship-breaking industry wanted. Apart from submission of dubious technical evidence the authorities even resorted to humanitarian appeals: the original permission to beach the ship in 2006 having been granted not on account of legality, but on the humanitarian grounds that it faced dangerous weather conditions at sea.

As of February, 2008, the situation at Alang remains confused, as shipowners await clear guidance from the Supreme Court. Matters pertaining to applications for clarification, which came up for hearing on October 23, 2007, remain sub-judice; these concern the quantity of various toxic and radioactive substances on board the Blue Lady, how decontamination will be done, the scientific basis of the decision that beaching was not reversible, the position regarding the original and illegal entry, anchorage and beaching of the ship itself, among others. At this hearing, the Additional Solicitor General asked for more time to formulate a response. Meanwhile, as mentioned previously, 53 ships have beached illegally, with the owners unable to get any clear approval or rejection of applications to beach.

While India has gone ahead with its own rules for "safe ship-breaking," the IMO is close to finalizing new guidelines. The IMO is set to overturn the conventional wisdom of removing hazardous materials before sending ships for scrapping, and seems satisfied that India has laid down adequate guidelines for hazardous materials to be handled safely at Alang. But the safety of workers depends on implementation not rhetoric. As has been shown, Supreme Court Orders can be circumvented and whatever improvements might be made at Alang the greatest protection of migrant and casual workers from asbestos hazards would be for ships to arrive there asbestos-free.

