

**INSPECTION AND ENFORCEMENT
OF HAZARDOUS WASTE AND GOODS:
FOSTERING INTERNATIONAL CROSS-BORDER COLLABORATION
BY THE INAUGURATION OF A SEAPORT NETWORK**

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SUMMARY

The Seaport Environmental Security Network consists of authorities involved in the monitoring and control of cross-border movements of waste shipped through ports. The ultimate success of the Seaport project is dependent on the drafting of feasible plans and proper supervision of all stages of the project. Environmental protection is a complex field that requires an integral approach, encompassing economic aspects along with focusing on the protection of the environment and human health. The impact of expanding global markets on the environment makes cross-border cooperation a necessity.

This paper discusses the need for the Seaport Network because the ports are vital components of the logistical chain of waste shipments. Cooperation between the various organisations operational concern with seaports (including customs, maritime police, port authorities, and environmental agencies) must be enhanced. Divergences between these organizations include cultural differences, ineffective reporting and exchange of information, competence issues, lack of experience, and inadequate capacity. One of the goals of this paper is to act as a stimulus for discussion on improvements to the existing structures for effective cross-border cooperation, including methods to reduce current obstacles.

1 INTRODUCTION

The Seaport Environmental Security Network is comprised of authorities involved in the monitoring and control of cross-border movements of waste shipped through ports. This Network creates a bridge between principle and practice. Multilateral agreements, such as the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, the Convention on International Trade in Endangered Species of Wild Fauna and Flora, and the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, do not automatically strengthen the principle of cross-border cooperation and enforcement. The provisions of such international agreements have limited impact on enforcement until they are imbedded into a country's national legislation and policy. Further, solid cooperation mechanisms and enforcement structures need to be developed to enable the implementation of

these international agreements. Enforcement is an integral part of the regulatory cycle; however, it is often given low priority.

Cooperation through the Seaport Network stimulates awareness and encourages the creation of domestic policy while maintaining the "Sovereign Principle" in cases of cross-border control and enforcement. Seaports are strategic hubs in the logistical chain of waste shipments, resulting in the great need for an effective Seaport Network to promote environmental compliance and enforcement. Cooperation between the various agencies and organisations involved in regulating seaports must be enhanced. This paper aims to stimulate discussion surrounding improvements to the existing structures for effective cross-border cooperation and ways in which current obstacles can be reduced.

2 THE ROLE OF SEAPORTS

Seaports are the crucial global hubs in the movements of goods and waste. The seaport network provides the infrastructure through which intelligence and administrative information can pass. Conduits already exist for the exchange of administrative information, such as historic bills of lading, which is a document issued by a carrier acknowledging that specified goods are onboard for conveyance to a specific location and person. However, experience has proven that these documents do not always contain accurate information either in content or as valid proof of the cargo's antecedence. It is neither practicable nor desirable that a system be imposed that requires every item to be double-checked. However, the tracking of goods should strive for a life-cycle approach. For example, if there is continuity of registration in the system it should be possible to trace a shipment back to its place of origin and forward to its destination.

Many agencies are involved in the handling and control of shipments, including the port authority, customs, the police, shipping agents, and cargo handlers. The priorities given to the various stages of control, storage, and trans-shipment are a matter for the regime in the port where the cargo rests at any given time – this is known as the "Sovereign Principle." These priorities will not necessarily coincide with other ports on the shipments journey to its destination. For example, checks carried out in a modern container port, such as Rotterdam, will likely involve more sophisticated control mechanisms and inter-agency cooperation than would be the norm in a busy, less affluent port in a developing country. With the introduction of a comparison process, a joint working programme between ports could be implemented. This would create a continuity of procedure that would facilitate an enhanced flow of information; as a result, enforcement structures and compliance controls would be supported.

3 THE REGULATORY PROCESS

Involving various authorities in the monitoring and control of cross-border movements of waste shipped through ports will help enhance the regulatory

process related to port management. Developing policy, law-making, permitting, and enforcement are all aspects of the regulatory process and are interrelated. Enhancing cooperation is a core aim of the Seaport Network; improving the processes of assessment, review, and development will generate valuable feedback for all those involved, including governments, port authorities, and attendant agencies. Guidance is necessary for sound management and implementation of environmental enforcement and compliance strategies at the ports. Regulations in the field of environmental protection are complex and can even appear contradictory; as a result, cooperation and dialogue provide an opportunity for a better understanding of the regulations resulting in improved compliance.

4 THE OBSTACLES TO COOPERATION

The obstacles to cooperation vary with the location of the port. Cultural differences are often underestimated in the international forum. Concepts are freely given as are proposed solutions, but dispersal of ideas does not ensure that these concepts will be well received or considered necessary from a cultural perspective. Political considerations are by their very nature in a constant state of flux. However, economic realities are usually more static. Likewise, the presence or absence of good governance is also a factor worthy of careful consideration.

Where there is a simple lack of experience, competence, or skill, support must accompany the proposed cooperation. The Seaport Network needs to consider the importance of technology transfer between ports. Likewise, available information technology capability is a factor in the efficient exchange of information and intelligence. Given the extent of global networks, access of digital information is usually not a problem. However, the manner of its use, especially in regard to information databases, often raises challenges. For example, many governments regard the existence of any database that they do not exclusively control as a possible threat; which is the reason why in certain countries there is no link between information concerning criminals and administrative records. Mutual cooperation, including information exchange, between the various port authorities and agencies must be enhanced.

Some countries believe that any form of environmental regulation will adversely affect competitiveness. However, this view has never been substantiated. In contrast, the World Bank concluded in the 1994 publication *Competitiveness and Environmental Standards* that the higher environmental standards achieved in industrial countries has not adversely affected their competitive position internationally.

The final obstacle that warrants discussion is corruption. In many countries corruption is viewed as a business norm, and bribes are not unusual or considered dishonest. Bribes often occur between two individuals, one of whom has power over the other. For example, one person requires a permit for something and the other has the official position of authority to issue the desired permit. Where

inherent corruption exists the permit applicant will accept that he or she must make a payment to the official before the document required will be issued. This transaction is never recorded and no complaint will be made. A request for cooperation in such an environment will be greeted with warm enthusiasm, but the actual cooperation will not materialise unless it is considered to be to the advantage (financial or otherwise) of the individual concerned.

5 EXAMPLE OF INTERNATIONAL ENFORCEMENT COLLABORATION

The project "Sky-Hole-Patching" is an example of how international cooperation and collaboration can result in the prevention of illegal movements of hazardous goods and waste. The project, launched in September 2006, is an initiative of the UNEP Regional Office for Asia and the Pacific together with the World Customs Organization Regional Intelligence Liaison Office for Asia and the Pacific. The project developed a tracking, notification, and monitoring system to follow movement of suspicious shipments of ozone depleting substances (ODS) and dangerous commodities across several customs territories. The system enabled the involved authorities to: (1) follow shipments; (2) exchange information and intelligence; and (3) take immediate enforcement action on any abnormality detected during the monitoring process. The initiative has intercepted several cases of illegal movements of ODS and hazardous wastes.

6 WASTE IN DISGUISE

Hazardous waste presents a clear and present danger. Non-hazardous waste, destined for unlawful or incompetent disposal or treatment, carries with it an insidious danger to the environment and human health. When the figures for waste tonnage collected for recycling or disposal are compared with the capacity available to process it, there is no doubt that a considerable amount of it just "disappears." Such disappearance often occurs in affluent societies due to the rising costs of processing and disposing of the waste. The container's documentation does not always accurately reflect its content and without port checks it will unjustly become another country's problem. It is imperative that this traffic be stopped.

There are many legitimate recycling companies. They operate an "open door" policy and prove that waste can be profitably sorted and safely shipped abroad to be recycled. Conversely, there are unscrupulous companies that ship waste without the intent to recycle or safely dispose of the hazardous material, resulting in an eventual health hazard. This waste, even when intercepted, cannot be easily traced back to its original source, resulting in the perpetrator being free of any responsibility for the illegal shipping, the potential health risks, and the violation of national and international laws. Without cross-border cooperation between ports, an increase in domestic regulation, and a strengthening of environmental compliance and enforcement, the present international legislation is powerless.

7 SEAPORT ENVIRONMENTAL SECURITY NETWORK

INECE is establishing a Seaport Environmental Security Network to facilitate capacity building and compliance cooperation on issues associated with the trade in environmentally sensitive commodities. This project will initially focus on the transboundary movement of wastes, but could eventually be expanded to other threats such as chemicals and smuggled wildlife.

In order to prevent illegal transboundary movements, the Network will promote compliance with provisions related to transboundary movements and management of waste.

Fostering national and international collaboration will also be a priority. The Network will also offer support regarding inspections and enforcement of transboundary movements of waste.

To accomplish the abovementioned aims, the project will set up an active and practical network of focal points involved in the monitoring and enforcement of waste shipments shipped via seaports around the world, making use of already existing structures and platforms, linking and expanding them. The Network will also conduct a needs assessment within the network. This assessment will be done with a questionnaire and interviews and should provide information regarding the current situation with respect to capacity, cooperation, legal powers, legal and executive frameworks, and knowledge. Also, the assessment should give a clear view of the different needs to improve the situation. Developing a toolkit to build capacity and support inspections, enforcement, and collaboration should also occur. This toolkit could, for example, include inspection manuals (based on already existing documents), the organization of trainings and workshops, the exchange of inspectors, and the development a communication tool for information exchange. Finally, the Network should organise and facilitate joint cooperation with respect to actual inspections in seaports and their follow-up.

8 CONCLUSION

Cross-border cooperation, achieved through the Network, is paramount to the effectiveness of international laws for the control of waste movements globally and the ongoing protection of the environment. This will be achieved by stimulating and facilitating cooperation between the relevant authorities and related enforcement bodies. It is proposed that the Seaport Network also develops tools such as manuals, memorandum of understanding, and joint working programmes. The Network should also carry out an assessment of current enforcement structures. Additional tools, training, instruction in risk assessment, and awareness raising will also be included.

The Seaport Network will encourage awareness, foster cross-border cooperation, enhance and empower enforcement, and facilitate the adoption of coherent

national policies. Accomplishing this will result in increasing the significance and enforcement of international agreements. Additionally, these factors will help ensure a stable and healthier future environment.

(The aim of this paper is to promote membership of the Seaport Network by demonstrating the necessity for the Network and the added value of membership. Delegates are invited to join the Seaport Network and support its vital role in the future of Inspection and enforcement of hazardous waste and goods and international cross-border collaboration. For more information, please visit www.inece.org/seaport.)

9 REFERENCES

¹ United Nations Environment Programme, *Guidelines on compliance with and enforcement of Multilateral Agreements* (2001), <http://www.unep.org/DEC/docs/UNEP.Guidelines.on.Compliance.MEA.pdf>.

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