

ENSURING SHIPBREAKING COMPLIES WITH THE BASEL CONVENTION

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NGO
SHIPBREAKING
PLATFORM

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network



The Center for International
Environmental Law

AGENDA

- I. Shipbreaking in South Asia: An Overview
By Patrizia Heidegger, Executive Director, NGO Shipbreaking Platform

- II. Will the Hong Kong Convention Save Us?
By Jim Puckett, Executive Director, Basel Action Network (BAN)

- III. The European Proposal: undermining Basel Principles
By Patrizia Heidegger

- IV. The Legal Analysis of EU Proposal
By David Azoulay, Managing Attorney, The Center for International Environmental Law (CIEL)

- V. The Way Forward
By Patrizia Heidegger

QUESTIONS & ANSWERS

SHIPBREAKING IN SOUTH ASIA: AN OVERVIEW





More than 1,000 vessels dismantled annually, about 1,300 in 2012. 70% are dismantled on the beach.

No official figures on accidents, deaths and occupational diseases.



Bangladesh – 15 killed in 2011, 15 in 2012

India – 27 killed in 2011, 13 in 2012

Pakistan – 20 killed in 2011, 12 in 2012

2011 TOTAL: 62

2012 TOTAL: 40



40-50 Years - a shipbreaking worker's average life expectancy.



21 species of fish and crustacean disappeared in the coastal region, a result of shipbreaking pollution, endangering traditional livelihoods.



2008: 1 in 5 workers in Chittagong, Bangladesh under age 15

QUESTIONS?



GREENPEACE

WILL THE HONG KONG CONVENTION SAVE US?



HONG KONG ENTRY INTO FORCE

The Convention enters into force 24 months after the date on which the following conditions are met:

- I. 15 States have either signed it without reservation as to ratification, acceptance or approval, or have deposited the requisite instrument of ratification, acceptance, approval or accession in accordance with Article 16;
- II. The combined merchant fleets of the States mentioned in paragraph 1.1 constitute not less than 40 per cent of the gross tonnage of the world's merchant shipping; and
- III. The combined maximum annual ship recycling volume of the States mentioned in paragraph 1.1 during the preceding 10 years constitutes not less than 3 per cent of the gross tonnage of the combined merchant shipping of the same States.

Q: WHEN COULD IT COME INTO FORCE?

A: 2020 at the earliest.

Q: WHAT DAMAGE WILL HAVE BEEN DONE BY THEN?

A: 8,000 more ships will have met end-of-life

A: 400 more workers will have been killed on the job.

Q: WHAT VINTAGE OF VESSEL WILL HONG KONG BE DEALING WITH WHEN IT IS IN FORCE?

A: Vessels reaching end-of-life in 2020 will have been built around 1990, 5- 10 years after many hazardous materials were banned from use in shipbuilding in many respective shipbuilding states.

BASEL CONVENTION

In force and applies to ships NOW



BASEL DECISION VII/26

“Noting that a ship may become a waste as defined in article 2 of the Basel Convention and that at the same time it may be defined as a ship under other international rules...

Noting that duplication of regulatory instruments that have the same objective should be avoided...

Invites the International Maritime Organization to continue to consider the establishment in its regulations of mandatory requirements ... that ensure an equivalent level of control as established under the Basel Convention...”

ARTICLE 11

Article 11 of the Basel Convention allows for Parties to enter into bilateral or multilateral agreements, but such agreements “shall stipulate provisions, which are not less environmentally sound than those provided for by this Convention in particular taking into account the interests of developing countries.”

DECISION X/17

“While some parties believe that the Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships provides an equivalent level of control and enforcement to that established under the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, some parties do not believe this to be the case.”

CARTAGENA, COLOMBIA – COP X

HK CONVENTION: BREAKING WITH PRINCIPLES TO BREAK SHIPS

- Polluter Pays / Producer Responsibility Principles
- Principle of Environmental Justice/Transfer no Harm
- Substitution Principle / Waste Prevention Principle
- Principle of Environmentally Sound Management

BASEL/HONG KONG EQUIVALENCY?

Basel Convention	Hong Kong Convention
Scope includes all ships.	NO. Government / small ships not covered.
Establishes global definition of waste and hazardous waste.	NO. Refuses to recognize existent (Basel) definitions of hazardous wastes or wastes. Presence of hazardousness triggers no special trade control.
Illegal traffic is considered criminal.	NO. Violations not necessarily criminal.
Enforcement/inspection possibility by port states not limited.	NO. Port state control severely limited to asking for on-board inventory but cannot check the validity of inventory.
States allowed to prohibit import of any waste including ships.	NO. No such provisions.
Obligation to minimize transboundary movement of hazardous waste, in particular to developing countries.	NO. No such provision / no notion of pre-cleaning prior to final voyage to avoid developing countries getting disproportionate burden of toxic waste.
Obligation to provide national capacity for waste management of all wastes (e.g. ships).	NO. Not even on a regional basis are countries expected to achieve any kind of self-sufficiency.
Obligation to ensure that exports do not take place unless exporting state is convinced of ESM in ship recycling state.	NO. No right exists for any state to impede the export/final voyage of a ship and entry if it has reason to believe ESM is not assured.
Requires state-to-state notification and consent of exporting, importing and transit countries prior to export.	NO. State-to-State communication (notification and consent) between port states, flag states and ship recycling states is not required.
Covers waste management downstream from initial facility.	NO. Fails to include downstream waste management in its scope.

BASEL TECHNICAL GUIDELINES: NO BEACHING

- I. According to the Technical Guidelines, containment in the ship dismantling zone, which occurs in the intertidal zone at beach facilities, requires adequate impermeable bottom protection such as concrete or asphalt [Technical Guidelines, Page 79].
- II. In order to *Close the Gap* by 2013, the Technical Guidelines also calls for the use of impermeable floors wherever hazardous materials and wastes are handled [Technical Guidelines, Page 92].

CAN BASEL WORK FOR SHIPS?



The Sandrian chemical tanker destined for Alang, was detained in Amsterdam (2001)

Turkey denied entry of the Sea Beirut and called for its return (2002)

Bangladesh denied entry of The Blue Lady (2005)

India sent back Le Clemenceau (2006)

Bangladesh denied entry of the Gulf Jash (former Probo Koala) (2011)

QUESTIONS?

THE EUROPEAN PROPOSAL: UNDERMINING BASEL PRINCIPLES

- **European Commission Proposed Ship Recycling Regulation, 23 March 2012**
 - removes end-of-life vessels from Basel/Waste Shipment Regulation
 - allow for export to non-Annex VII countries if ship recycled in a facility on the EU list
 - early implementation of the Hong Kong Convention for EU-flagged ships

THE EUROPEAN PROPOSAL: UNDERMINING BASEL PRINCIPLES

- **Vote in the Environment Committee of the European Parliament, 26 March 2013**
 - Ban on Beaching
 - Ship Recycling Fund
 - Removes ships from Basel/Waste Shipment Regulation

THE EUROPEAN PROPOSAL: UNDERMINING BASEL PRINCIPLES

- **Vote in Plenary, 18 April 2013**
 - Ban on Beaching
 - Ship Recycling Fund: delayed
 - Removes ships from Basel/Waste Shipment Regulation

Trilogues under the Irish Presidency of the Council

QUESTIONS?



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David Azoulay

Legal opinion on the legality of the EU proposed regulation on ship recycling
NGO Shipbreaking platform side event



Mechanisms of the EU proposed regulation

- Amends the existing EU regulation implementing Basel
- Excludes ships from its scope to subject them to the requirements of the new regulation (Art 29)
- The new regulation aims at implementing the HK convention (to which the EU isn't a party).

Based on the idea that HK provides an equivalent level of protection and control than Basel.



Can the HK Convention be considered an “Article 11 agreement”?

HK differs from Basel in scope, standards, and enforcement modalities.

- Different goals;
- Exclusion of all categories of ships (Gov. Owned non commercial ships, war ships, ships under 500 GT etc..)
- No inspection of recycling yards, no monitoring of downstream waste processing facilities
- Allows for tacit agreement of waste importing country
- No criminalization of illegal transfer,

...

HK Convention does not provide an equivalent level of protection and control than that of Basel



The critical question of the Basel Ban

- EU has signed, ratified and implemented in community legislation the Basel Ban
- It is bound by it, even before its entry into force according to Article 18 of the Vienna convention:
“A party is obliged to refrain from acts which could defeat the object and purpose of the treaty when
 - a) it has signed a treaty (..), or*
 - b) It has expressed its consent to be bound by the treaty, pending entry into force of the treaty (...)”*



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The objective of the EU proposed regulation is precisely to organize the contravention of the Ban amendment.

It is therefore illegal under International law



Even if HK is recognized as a valid Article 11 agreement

- Art 4A of Basel does not mention art 11 or the possibility to conclude bilateral, multilateral or regional agreement
- Art 11 refers explicitly to Art 4.5 but makes no mention or reference to a possible derogation to art 4.A

The proposed regulation remains illegal under
International Law



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European Council Legal Service

“Legal Service considers that there is a serious risk that the simple exclusion of ships from Regulation 1013/2006 in the manner being proposed could amount to a breach of the obligation not to defeat the object and purpose of a treaty prior to its entry into force. As the Court has consistently held, “The European Union must respect international law in the exercise of its powers...” and the Legal Service is therefore of the opinion that it would be prudent, at the very least, to seek a form of words that would not prejudice the application of the Ban Amendment as regards ships.”



The legality of the proposed regulation under EU Law

- COP has repeatedly called on parties to continue apply Basel as it relates to ships
- COP decision have equivalent standing than the Treaty itself and are higher in the EU hierarchy of Law than regulations and directives.

A regulation that violates a COP decision is therefore illegal under EU law and as such subject to annulment by the European Court of Justice



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By unilaterally excluding a certain category of waste covered by the Basel Convention (ships) from the control mechanisms of the Basel convention, the proposed EU regulation is illegal under International and European Law.



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Thank you for your attention

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Find out more about this topic at

http://www.ciel.org/Publications/Shipbreaking_22Apr11.pdf

<http://bit.ly/WH98os>

QUESTIONS?

THE WAY FORWARD: COEXISTING MODEL

- A Principled and Practical Solution

<u>Basel and Hong Kong Coexistence</u>	
Hong Kong Convention Application	Basel Convention Application
1. Ships not covered by Basel (see column to the right) flying a HK Party State flag located anywhere in the world*	1. Ships containing hazardous materials flying BC Party State flag less than 500 GWT
	2. Government Ships containing hazardous materials
	3. Ships containing hazardous materials of any flag or size in a port or territorial waters of BC Party State when intent to be disposed is known

QUESTIONS?