

## The Shame of Shipping: Breaking with Principle to Break Ships

### Basel Must Do Its Job

The migration of obsolete ocean going vessels laden with asbestos, PCBs, toxic paints, biocides, fuel residues and other hazardous substances, from wealthy shipping companies and nations to some of the poorest communities on earth for extremely hazardous scrapping - "on the cheap" - is precisely the type of scandalous exploitation that the Basel Convention and its subsequent Basel Ban Amendment was designed to arrest.

It is thus disturbing to find that despite the passage of many years since the global shipbreaking scandal was revealed to a horrified public, the Basel Convention has done so little to ensure that its principled legal controls are invoked for ships when such ships become hazardous wastes. This 8-year "thumb twiddling" is scandalous in its own right. But it can be attributed in large part to the timidity of the Basel Convention to act on principle against a scandalous and relentless pressure from one of the richest and most powerful industries on earth – the global shipping industry.

From the outset the Basel Convention was born out of principle. It was created to erect a bulwark against human rights abuses and the environmental injustice engendered when toxic wastes are freely traded without restraint in the global market place. 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. This concern over the justice and human rights abuses from the international waste trade was the driving force behind the creation of the Convention itself and the passage of the Basel Ban, which has been affirmed in repeated decisions ever since the first COP (I/22, II/12, III/1, IV/7, V/III, VI/33).

### Exploitation Is Not Prevented By Technology Alone

Contrary to some recent characterizations of the goals and objectives of the Basel Convention, the treaty is very clearly not *just* an instrument to promote technologically defined **environmentally sound management (ESM)**, without regard to the need to prevent the injustice that arises from a free trade in toxic waste. The Convention did not just make it obligatory to provide end-of-pipe, downstream hazard mitigation, and good housekeeping, but boldly demanded that all countries reduce

transboundary movement of wastes (particularly to developing countries) to a minimum and that all States accomplish this through waste minimization methods and by assuring environmentally sound management capacity within their own national borders.

Clearly, the current state of affairs that finds just a handful of developing countries managing the hazards and risks of over 90% of the world's toxic waste ships – most owned in rich developed countries, is the antithesis of what the Basel Convention stands for on principle and in obligation. If the Convention is to remain relevant and live up to its mandate, it must ignore the tantrums of an industry that has profited immensely from decades of exploitation and begin to move resolutely to preserve the intent and spirit of the Convention with respect to ships as hazardous wastes.

### Respective and Respectful Competence

The Basel Convention has a clearly defined role to play in resolving the shipbreaking crisis, as does the International Maritime Organization (IMO), and International Labour Organization (ILO). These respective competencies are to be respected, with each institution working to compliment and not compete with one another.

We are faced with a widening crisis -- where shipbreaking conditions in countries like Bangladesh and India are not improving to any serious degree while massive amount of ships, including the world's single-hulled tanker fleet, create a massive tide of ships awaiting disposal, the world desperately needs each of the above institutions to pursue their mandates toward the following concrete objectives:

1. **Developed countries must develop more shipbreaking and ship decontamination capacity. (IMO, Basel)**
2. **In developing countries, shipbreaking capacity for *pre-cleaned* (decontaminated) ships be maintained, further developed and vastly improved. (Basel, ILO)**
3. **Ensure that developing countries no longer receive ships laden with toxic substances. (Basel)**
4. **Mandatory proactive steps are taken now to ensure that all new ships are made with a minimum of toxic materials on board. (IMO)**

Ship Life Cycle Segment	Design and Building	Operation (Inventory / decontamination during service)	Ship as Waste being Transported	Ship as Waste Disposed / Recycled
IMO				
Basel				
ILO				

It is clear from the diagram above that each institution has a significant role to play in the life-cycle of a ship to ensure that its environmental and occupational impacts are minimized. While dialogue between all three institutions is always important, it is vital that each respective body upholds its own mission and competence. The IMO role is to ensure green ship design, proper inventorying and decontamination of hazardous substances prior to disposal, and the safe and sound operation of the ship. The ILO role is to protect workers at shipbuilding, during operations and at shipbreaking yards. The Basel Convention's competency begins once a ship becomes a waste – that is, when intent to dispose has been revealed or declared, and covers transboundary movement and disposal/recycling operations.

### Industry Asks IMO to Steal Basel Competence

Today, however, despite the very clear delineation and need for all of the respective roles of the relevant institutions, we are finding a strong push by the shipping industry for the Basel Convention to stand down and let the IMO take control over Basel's primary *raison d'être* – preventing the transboundary movements of hazardous wastes and environmental injustice.

The IMO in turn, seems all too willing to do the industry's bidding and have rushed to issue IMO Shipbreaking Guidelines (adopted by the IMO General Assembly in December 2003) prior to the Basel Convention having the ability to conduct its own legal deliberations on how best to close loopholes and implement the principles and obligations of the Convention with respect to ships. *Lately we are even seeing that the shipping industry is trying to prevent the Basel Convention from conducting its deliberations and appears to have embarked on a strategy obstruct its efforts and mandate!*

Without any legal footing to do so, the shipping industry claims that a ship cannot be a ship and a waste at the same time. Meanwhile, the Basel Convention has determined otherwise. Any product can of course become a waste when it is destined for disposal or recycling and not re-use under the Basel Convention. This is a fact of law. Yet, the IMO has given the Basel Convention's legal regime and mandate a slap in the face by provided a safe haven for the shipping industry to make these spurious claims.

***It has become clear that the shipping industry's strategy is to "use one United Nations body (IMO) to undermine another (Basel).*** Their motivation is not due to a question of territoriality or scope. Rather it is a cynical strategy to usurp competency being conducted not because the industry expects a *better* control regime under the IMO, rather because they expect a *weaker* one. They expect the IMO will be more likely to deliver them a greenwashed "business-as-usual" regime that still enables this powerful industry to exploit low-wage communities with high-risk enterprises and toxic residues. A precedent of allowing an industry to go "forum shopping" within the "UN store" for the weakest international law available threatens not only the future of the Basel Convention, but the credibility of the entire UN system.

### IMO: Places Burden on Shipbreakers, not on Shipowners

BAN and Greenpeace has reviewed the IMO Guidelines and carefully compared them to the obligations and definitions under

the Basel Convention. What we found were egregious and disturbing contradictions between the two regimes. Fundamental obligations and principles of the Basel Convention, such as *whether vessels are wastes, the need to minimize transboundary movements of wastes, the obligation to minimize the generation of hazardous waste*, to name a few, were ignored by the IMO.

Alarming, the IMO Guidelines unjustly pin the burden of ship dismantling risk and obligation on the developing countries that host most of the existing ship recyclers. This turns on its head what Basel stands for. It also distorts the polluter-pays principle – advocating instead a "polluted-pays" principle. By burdening the recipient countries with most of the mandatory responsibilities, ship designers, owners and operators who have the resources, both technical and financial, to deal with the hazardous materials upstream, are relieved of their duty to minimize the wastes they have, in effect, generated. Once more the poorest workers, their families, and communities in developing countries are left – disproportionately burdened by poisons not of their making.

### IMO: Wrong for Waste Justice, Right for "Green Design"

It is clear that the IMO is not the correct body to deal with matters of waste trafficking, human rights, the principle of environmental justice, nor minimizing the transboundary movements of hazardous waste ships. They have neither the culture, the context, the mission, nor the inclination to fulfill the crucial role Basel is meant to fill. However, there is a vital role for IMO to play – actually the most important role. *Rather than working to ensure that ships are not considered wastes, IMO should work to create a mandatory regime that ensures that all future ships will no longer contain hazardous materials.. If that is done, the days in which Basel must deal with toxic ships will be short-lived indeed.*

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### Acting on Principle

**The Basel Convention was created in 1989 to make a principled change in how we conduct waste business on earth. It and the subsequent Basel Ban Amendment were designed to make the world a better place by preventing the exploitation of poorer communities under the name of waste management. The job given Basel by the global community of prohibiting, notifying and otherwise controlling the transboundary movement of hazardous wastes with a view to minimizing such movement, is the clear competence of the Basel Convention. We should not shirk from the duty. We cannot start now to set a precedent whereby any industry that becomes unhappy with Basel's obligations on it can run off to create a parallel regime more favorable to its profit margin. Basel *must* stand its ground, and prevent any special interests from turning back the clock and breaking from Basel's landmark principles.**

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