



CRITIQUE of DRAFT I.M.O. “INTERNATIONAL CONVENTION FOR SAFE AND ENVIRONMENTALLY SOUND RECYCLING OF SHIPS”

**Prepared by the Basel Action Network
on behalf of the Global NGO Platform on Shipbreaking¹**

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I. Introduction

In the submission of May 2005 to the International Maritime Organization’s (IMO) Marine Environment Protection Committee (MEPC), entitled “Obligations and Opportunities for a Mandatory Alternate or Additional Instrument to the Basel Convention for End-of-Life Ships,”² BAN and Greenpeace established the legal necessity that any new treaty which sought to supplant the existing Basel Convention’s competence over controls on the transboundary movement of waste ships for shipbreaking operations and their processing, would need to establish an “Equivalent Level of Control.” Not only is this principle of equivalency called for in decisions taken by the Parties, but in fact is a legal requirement found in the Convention’s Article 11.

However, it is also noted that a new treaty seeking to augment and co-exist with the Basel Convention, rather than supplant it, would not need to establish an “Equivalent Level of Control” and could be a welcome and prudent solution to provide greater specificity of regulation due to the special nature of ships, as well as to meaningfully address relevant issues that require actions before a ship becomes a waste, such as green shipbuilding and design.

It remains to be seen what will be the final fate and effect of the Norwegian “Draft International Convention for the Safe and Environmentally Sound Recycling of Ships” (“Draft Convention”), as outlined in Annex 1 of MEPC 54/3. Presumably, the

¹ The Global N.G.O. Platform on Shipbreaking members currently include: Basel Action Network, Ban Asbestos, Bellona Europa, European Federation of Transport and Environment. Greenpeace, International Federation of Human Rights, IBAS, North Sea Foundation.

² Found at: http://www.ban.org/Library/BAN_GreenpeaceSubmissionOEWG4.pdf.

exercise has been launched because of the shortcoming of the Basel regime in covering the special nature of ships when they become wastes. However, it has become a concern that the intent of shipping interests and many working within the IMO is indeed to wrest competence over all matters of ships as waste from the Basel Convention, not in order to better implement the Basel Convention's intended controls and principles, but to rather avoid the responsibilities implied in the Basel Convention. It is therefore imperative that the global community not allow this exercise to become a thinly veiled attempt to step away from internationally established principles and provide far less rigorous controls as have not become the global norm, simply because the shipping industry does not wish to be governed by them.

While the Draft Convention is only in a rudimentary stage of development, and therefore it is difficult at this juncture to provide an in-depth analysis of the document, it is nevertheless possible to observe that its framework, its basis, and its identified elements fail to address the most important aspects of the environmental injustice of present shipbreaking practices. It also fails to address many aspects of the issue that have created demand for global action. In the following sections of this paper, we will first address general aspects of the Draft Convention, and then, in order to better understand the positive and negative aspects of the text, we will also compare it with those elements currently present in the Basel Convention seen as relevant. We will also review additional elements that have been signaled in various international discussions as being necessary to properly address the global shipbreaking crisis. This examination will take the form of a comparative table.

Through this table we can create a report card that can be adjusted with each successive draft to measure whether the current activities in the IMO will equate to genuine progress or perhaps a regression from the current status of international law governing different aspects of shipbreaking.

II. General Commentary

A. Treaty Form

The Draft Convention is structured in an unorthodox manner in which most of the substantive provisions are found in annexes while most of the articles of the Convention itself are very generic in nature and almost without substance, except to refer to annexes. There can be but one reason for this type of structure, and that is the authors' wish to allow the treaty to be extremely flexible and malleable in the future. In the Draft Convention, annexes are far easier to amend than the main body of the treaty.

Given the lack of transparency found in the IMO, however, we find this bias toward flexibility very disturbing. This lack of transparency is characterized by the number of NGO observers intentionally limited and such observer status made very difficult to obtain and often threatened, and by NGO paperwork not made freely available on tables during meetings, etc., combined with the known shipping industry's dominance of that institution, where country delegations are routinely made up of private sector

and business representatives. As a result, it is feared that the present structure of the Draft Convention will allow a situation where the industry-dominated institution will be able to quietly and significantly alter the substance of the Convention and rapidly sabotage the positive elements, once the spotlight of attention on this issue has diminished, or when environmental or human rights NGOs may not have the resources to attend.

If the IMO were fundamentally a human rights institution or an environmental institution, existing primarily to protect the planet and its inhabitants rather than primarily an institution designed to protect the rights of the shipping industry, this flexibility would not be of such a great concern. However, most of the IMO delegations are dominated with persons whose duty is to perpetuate the profitability of the shipbreaking industry as a priority. Therefore, this highly unusual, ultra-flexible treaty is self-serving for powerful shipping interests which have already, in this case, indicated a very strong determination to continue to export hazardous waste on board ships to developing countries, and in fact had little interest in addressing this issue until environmental and development NGOs brought the concern to the point where it could not longer be ignored by the global community.

Of further concern, many of the actual specific obligations in the Draft Convention refer to non-legally binding *guidelines* found in Annex 2. It is vital, if the IMO is serious about this issue, that the substance of the Convention be established at the outset, that it be legally binding, and that its principles be established firmly in its preamble and its articles. Annexes should be used only for technical lists and data forms, which may need to be augmented in time, but should not consist of substantive legal obligations. After all, a treaty is a body of law, not a volume of guidelines.

B. Treaty Substance

1. Tackling Green Design and Hazardous Materials Inventory

On the very positive side, the Draft Convention addresses the vital issue of “green shipbuilding and design”, that neither the Basel Convention nor any other international body currently addresses directly. These issues are nevertheless consistent with the Basel Convention’s obligation to minimize the generation of hazardous waste, and can serve to improve the global situation if both treaties were in concurrent force.

The establishment of a framework for eliminating or restricting the use of hazardous materials in ship construction is clearly necessary to ensure that end-of-life ships will no longer be a source of contamination and occupational disease. However, the Draft Convention as yet contains no concrete proposals for new phase-outs and does not even list known hazardous substances such as asbestos or PCBs -- substances already subject to international bans and controls. So while the framework is promising, it remains to be seen whether the IMO will truly press the shipping industry forward on phase-outs of hazardous materials, or will merely rubber stamp existing global bans and the status quo.

Another positive aspect of the Draft Convention is that it also requires an ongoing inventory of hazardous substances on board ships and establishes the concept of a ready-for-recycling certificate. While these are already implicit in the Basel Convention obligations, the specificity and replication in the Draft Convention is welcome.

2. *Ignoring Human Rights and Global Environmental Justice*

Glaringly absent from the Draft Convention is *any* attempt to address the human rights or environmental justice aspects of the issue of the global waste trade and the clarion call, made as early as the late 1980s, for the minimization of *all* transboundary movements of wastes, in particular to developing countries. This IMO evasion of the most fundamental moral issue of concern over shipbreaking practices today – that is, the exploitation of weaker economies and desperate labor forces by those wishing to find cheap disposal routes for high-risk wastes, is very disturbing and could signal a giant step backwards for the global community, should the treaty not be vastly changed.

The Draft Convention does little to uphold the pillar of the Basel Convention – the minimization of transboundary movement of hazardous waste. Due to the transient nature of ships as waste, and the difficulty of identifying the equivalent of a responsible “exporting state”, the Basel Convention goal of minimizing transboundary movement of hazardous wastes and victimization of weaker economies can best be addressed through the concept of ship pre-cleaning in developed countries during the life of a ship and prior to its final voyage. However, this vital issue – the heart of the recent *Clemenceau* debate, has been completely ignored in the Draft Convention.

Further, the Draft Convention fails to address the environmental injustice that currently exists, when a handful of developing countries and some of their most desperate and impoverished communities bear a disproportionate burden of harm to their health and environment, by mandating or creating incentives for the establishment of green shipbreaking and decontamination facilities in developed countries – particularly those that have benefited most from the shipping industry. With post-consumer wastes, the manufacturer and user of a product are the polluters. The “polluter pays principle” is thus thwarted, as responsibility is conveniently evaded by those that should bear it.

The Draft Convention prefers instead to place the primary burden of responsibility for the shipbreaking trade on either flag states or shipbreaking states. Yet, in the economic equation of the maritime industry, these are the entities that are least likely to have either greatly benefited economically from the ships’ useful life in commerce, or created the hazards (polluter) in the first instance through design choices. Nor are they the states most likely to possess the greatest likelihood of a full array of technology, governance, legal, social resources and infrastructure to ensure environmentally sound management of hazardous wastes.

The authors of the Draft Convention appear to favor ignoring these fundamental concerns, as if questions of human rights, “polluter pays principle”, and environmental justice have no place in the world of shipping. Yet the IMO is a

United Nations body, where the good of humankind should be paramount, certainly above the profit motives of global shipping. It would certainly be tragic if the IMO were to become a tool of exploitation due to a text that ignores these vital issues.

3. *Glaring absence of ship owner “polluter” accountability*

The obligations under the Draft Convention that pertain to the vessel and its preparation for recycling must be distributed equally to both Flag States and States having jurisdiction over the shipowners, in order to address the enforcement and “Polluter Does Not Pay” loophole created by vessels under Flags of Convenience (FOC), the practice where ship owners register or flag their vessels in countries other than their own.

In a 2001 Report by the International Transport Workers' Federation (ITF), it was revealed that FOC vessels accounted for 53 per cent of the total tonnage of the 88,000 seagoing vessels in the world fleet. The ITF has continuously raised concerns over the FOC States' failure to enforce safety and welfare obligations for seafarers in their vessels, noting the high casualty rate and other forms of labor abuses in FOC vessels. These facts beg the question that, if the FOCs who control more than half of the global tonnage cannot enforce fundamental obligations on safety and labor rights, how much more can they be expected to now enforce a new set of obligations under the Draft Convention, e.g. prohibit hazardous materials use, survey and inventory hazardous material, prepare vessels for shiprecycling, pre-cleaning etc.?

Clearly, the present framework of the Draft Convention is poised to create a major disincentive for responsibility for those that benefit most from the operational life of a ship, and for those that bear the responsibility as polluter at end-of-life, by failing to require accountability among all major stakeholders. This, in turn, can drive more ship owners to “flag out” and exploit the FOC loophole instead.

Ship owners already “flag out” to exploit the advantage of lax safety and occupational standards and cheap labor. This same behavior is also prevalent in the current shipbreaking crisis. Shipowners are already evading the high cost of environmental compliance, occupational safety, and tougher regulations by sending their toxic vessels to countries that have cheap labor, poor environmental standards, and weak enforcement. Without recognizing that States must have jurisdiction over ship owners as the key responsible party, the Draft Convention becomes a tool for further retreat from proper responsibility in accordance with the “polluter pays principle”.

In its obligations, the Basel Convention has recognized the obvious exploitative practice of avoiding responsibility for hazardous wastes by those generating them, calling for all transboundary movements to be avoided to the extent possible by building capacity in all nations for self-sufficiency in hazardous waste management.³ Further, and most crucially, the concept of “exporting State” upon which primary responsibility for controlling transboundary movements are placed under the Basel Convention, clearly establishes the State with jurisdiction over generators and

³ Basel Convention, Article 4,2,b

“owners” of waste as being the responsible government. There are numerous obvious advantages to this, including such States having real jurisdiction over the financial and legal entity that has control over the ship, its operations and its design. The shell game of FOC States where owners can easily re-flag their ships to the least common global denominator of responsible action, makes a mockery of any principles of responsibility including that of “polluter pays”. FOC States in fact exist to obfuscate and escape from financial responsibility. Thus any notion of expecting this system to deliver responsibility is, at best, a pipe dream and at worst, a cynical ploy to continue to avoid responsibility. The problem might be remedied in part if a ship recycling fund was collected upon registration with flag states, but this important idea of such a fund, paid by ship owners, is not found in the Draft Convention. In most instances with ships, the true economical owner and the state with the most financial interest in a ship can be identified. And mechanisms can be created to do so when the identification is more difficult. Why then, hasn’t there been an effort in this Draft Convention to do that? Rather it appears a deliberate effort prevails to allow ship owners to avoid their responsibilities.

The IMO and Draft Convention would be wise to follow the lead developed by Basel and stop this exploitative pattern, by recognizing the concurrent responsibility of ship owners and ensuring their compliance. This can be done by distributing the obligations of the Draft Convention to focus primarily on States that have jurisdiction and financial leverage over ship owners, in addition to the Flag States, which currently have an actual disincentive and little capacity in any case to demand anything of owners.

4. Using technology as a blind justification to perpetuate environmental injustice

In past critiques of the narrow IMO worldview, BAN has argued strenuously that a fixation on downstream environmentally sound management and moreover only from a strictly technological approach, misplaces responsibility to solve the problems from the polluters to the victims. Further it ignores the realities of all aspects of true capacity in developing countries.

First, regardless of the technological possibilities in developing countries to manage hazardous wastes, wherever hazardous material such as asbestos and PCBs are involved, there is nevertheless substantial risk even in the best of technological circumstances. It is therefore simply not appropriate for developing countries, due to their economic status and cheaper labor, to receive a disproportionate share of this global risk and hazard, as is currently the case.

Second, even if one were so callous as to believe that it is morally acceptable from an environmental justice standpoint for the shipping industry to send 95% of its toxic waste-containing fleet to developing countries (as is currently the case), even with state-of-art technology, it must be understood that the issue of managing risk goes far beyond technological issues. Even more important than technological systems is the governance and infrastructural capacity that is almost assuredly lacking in developing countries and needs to be in place in the context of the technology, in order to address risk. These issues include:

- Enforcement capacity to ensure technology is maintained and operated to the optimum standard;
- Ability to respond to emergencies and accidents;
- Ability to educate labor force;
- Training programs for labor force;
- Occupational Safety and Health Clinics;
- Existence of trade unions or labor advocacy organizations;
- Ability for such trade unions or labor advocacy organizations to function optimally;
- Right-to-know legislation for occupational and community hazards;
- Adequate legislation protecting workers and communities from hazards;
- Tort law for damaged parties to seek reparations; and
- Existence of waste management infrastructure including state-of-art residual hazardous waste disposal (e.g. destruction for POPs waste)

The lack of resources in developing countries leads to situations where such countries are not characterized by low wages alone, but almost certainly are lacking in the above types of social and environmental safety nets vital for environmental and occupational protections.

Lastly, the technological approach runs counter to two fundamental principles of sustainable development, Principles 14 and 16 of the Rio Declaration on Environment and Development (Rio Declaration).

Principle 14 of the Rio Declaration unequivocally states that, “States should effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause severe environmental degradation or are found to be harmful to human health”.

Principle 16 of the Rio Declaration states that, “National authorities should endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment”.

In sum, it is for these reasons that this Draft Convention, which perpetuates a socio-economically blind approach, denying global inequities and human rights, and fixates instead on approving shipbreaking yards in developing countries, is fundamentally bankrupt and self-serving to a shipping industry which might wish to use the IMO to perpetuate business-as-usual and the continuing trade in hazardous wastes to the lowest wage countries and communities on earth.

To ignore these crucial fundamentals of environmental justice now would be a giant step backwards, and would fail to prevent this type of economically motivated dumping which has led, in the case of the shipping industry, to developing countries and impoverished communities receiving the vast majority of the world’s hazardous waste from ships, disproportionately burdening such laborers, communities and countries.

To avoid such an unfortunate outcome, the preferred way forward for the global community is to make certain that the two Conventions – the Basel Convention with its context of avoiding economic exploitation and the IMO Conventions governing the shipping industry, truly augment one another, and that one is not used to override or supplant the aims and obligations of the other. In this way, we can create a total package of principle and rigor necessary to provide justice and an environmentally sustainable shipping industry.

III. Comparative Table

Below is a non-exhaustive specific comparison of key elements, deemed important in addressing the global shipbreaking crisis, that need to be addressed in the body of international law, whether found in IMO, Basel or both, acting concurrently. This is useful both to determine which legal regimes come closest to addressing necessary elements for rigorous controls, as well as to determine whether the IMO regime can begin to come close to establishing an “equivalent level of control” to the Basel Convention.

Comparative Table of Key Elements Needed to Address Global Shipbreaking Crisis		
Key Elements	Basel Convention	Draft Convention
Legal Force and Scope		
The instrument must be legally binding	YES.	YES. However, much of the “requirements” are only to be found in non-binding associated guidelines.
No exemptions except for matters well covered under another treaty	YES.	NO. Exemption for military and government owned vessels is present and unacceptable.
Definition of Waste and Hazardous Waste	YES. (Articles 1 and 2, Annexes I, III, IV, VIII and IX)	NO. While the IMO seeks to establish lists of hazardous materials, it refuses to recognize such materials at end-of-life as waste. This can cause very serious problems in integrating the body of existing law (Basel Convention, Bamako Convention, EU Waste Shipment Regulation etc.), with the IMO regime. It is clear that ships fall under established definitions of waste and must be referred to as such. If this avoidance is allowed for ships, many waste streams can be characterized as non-wastes to

		avoid the Basel Convention and the body of waste law making the Basel Convention ineffectual. Further, in the Draft Convention, despite the definitions being in place for hazardous materials, the presence of hazardous substances does not trigger any special controls regarding ship trade (such as pre-cleaning) or notification/consent.
Illegal Traffic is considered criminal	YES. (Article 4.3) The Basel Convention defines “illegal traffic” and makes it a criminal act. Maintaining this level of punitive measure by states is very important.	NO. The Draft Convention does not address this issue and leaves it to the national laws of state Parties to determine the sanctions for any violation. This loophole creates a race to the bottom scenario, as it creates an incentive for would-be violators to perpetuate a violation in a jurisdiction that has the lightest of sanctions undermining jurisdictions that have stronger sanctions.
No trade between Parties and non-Parties.	YES. (Article 4.5) Basel recognized the pernicious effects of the trade of toxic wastes and has seen it fit to prohibit trade between Parties and non-Parties. The goal of the prohibition is to force non-Parties to become part of Basel to ensure the application of a stringent global standard on toxic waste exports.	NO. The Draft Convention has no such prohibition. This lapse can again create a race to the bottom, since ship owners of vessels flying an FOC flag can send the vessel for disposal to a non-party who doesn’t need to comply with the various guidelines of the Draft Convention.
Existence of valid contract	YES. (Art. 6.3.b) The State of Export is prohibited from allowing any export of hazardous wastes unless it has received written confirmation, among others, of the existence of a valid contract between the exporter and disposer specifying the environmentally sound management of the wastes.	NO. There is no mention of the need for a valid contract.
Ability to conduct diligent enforcement not limited.	YES. (Article 4.4) No limitations are placed with regard to enforcement. Indeed each Party is asked to take appropriate legal, administrative and other measures to implement and enforce the provisions of the Convention, including measures to prevent and punish conduct in	NO. Article 8 is rather shocking in that it is written intentionally to limit the rights of authorities to inspect ships. First the inspection is limited to only verifying there is an onboard inventory and only an inspection of the items on that inventory. However the inspection cannot apply to materials known to cause the

	contravention of the Convention.	most harm in a shipbreaking situation – e.g. structural hazardous materials such as PCBs and asbestos. Thus there can be no efforts to implement pre-cleaning requirements. Further there can be no determination whether the inventory of structural materials is completed correctly. This article makes a mockery of the entire inventory exercise as it practically prevents diligent enforcement.
Allows States to Impose more Rigorous Requirements	YES. (Article 4.11) Basel allows States to impose additional requirements as long as they are consistent with the Convention and the rules of international law.	NO. There is no provision stating implicitly that states are allowed to impose more strict provisions.
Establishment of Capacity Building Mechanisms such as Regional Training Centers and a Revolving Fund to assist in Emergencies (e.g. Abandoned Ships)	YES. (Article 14) Basel clearly establishes these financial commitments to assist developing countries.	NO. There are no provisions for capacity building in developing countries as yet, although Article 13 is set aside for some of this perhaps.
Producer Responsibility / Ship Clean-up Fund		
Establishes a Ship Recycling Fund based on the Principle of Extended Producer Responsibility -- to be used for Pre-Cleaning and Green Shipbreaking in OECD States.	NO. The Basel Convention was created before policies of extended producer responsibility for post-consumer wastes came into being. Further this is best done on a waste stream by waste stream basis.	NO. The notion of producer responsibility should now be applied in any new instrument for ships wherein ship owners become financially responsible for end-of-life management. Greenpeace has prepared a paper on how this can be done which was welcomed by the MEPC but we see no such mechanism in the Draft Convention.
Minimizing Generation of Hazardous Waste – Green Shipbuilding		
Obligation to minimize the generation of hazardous wastes.	INCOMPLETE. (Article 4.2.a) The obligation is there in a general way but without any specific mandates.	YES. This is an area where considerable progress can be made beyond the general in Basel to the specific, by the IMO with respect to ships. Indeed the Draft Convention has laid out a framework for elimination or severely restricting the use of certain materials. It is very important that this framework be applied to phase-in green shipbuilding and non-toxic alternative materials as rapidly as possible and not just merely echo existent global bans, for example on asbestos and PCBs.
Requirements to ensure that shipbuilders implement design	NO. There is no direct provision in Basel that	NO. Regulation B-I focuses on the installation or use of

<p>changes to make ship recycling safer and more efficient</p>	<p>mandates this activity. However, the obligation to ensure environmentally sound management can be indirectly considered to cover this area, as it entails all Parties to take all practicable steps to ensure that hazardous and other wastes are managed in a manner that will protect human health and the environment against the adverse effects of such wastes.</p>	<p>hazardous materials, and not on designing new vessels to make ship recycling safer and more efficient. The Draft Convention should address this area to supplement Basel.</p>
<p>Environmental Justice -- Minimizing Transboundary Movement of Hazardous Wastes, Particularly to Developing Countries</p>		
<p>Obligation to minimize transboundary movement of hazardous waste.</p>	<p>YES. (Article 4.2.d) A general obligation does exist in Basel. Pre-cleaning in developed countries during the lifespan of a ship is a very practical way in which transboundary movements of hazardous waste ships can be minimized.</p>	<p>NO. Remarkably the Draft Convention makes no effort to minimize TBM (the fundamental goal of the Basel Convention) by mandating or otherwise encouraging pre-cleaning in OECD/EU countries and facilities during the life of a ship and prior to its final voyage. Incentives/mandates need to be put in place to require the removal of TBT paints, mercury, asbestos, PCB impregnated materials, etc. during the life of all ships. Without this, the global community takes a giant step backwards from the Basel Convention and Basel Ban Amendment's principles that clearly seek to prevent dumping of hazardous wastes on developing countries and <u>promote environmental justice.</u></p>
<p>Need to provide for all ships destined for shipbreaking yards in developing countries (non-OECD/EU) to be decontaminated in OECD/EU prior to delivery to the fullest extent possible.</p>	<p>YES. This is in line not only with the Basel Convention's overarching goal of minimizing transboundary movement but also with Basel's Decision II/12, and III/1 (Basel Ban Amendment) implementing the principle of global environmental justice. Developing countries should not be forced to bear a disproportionate burden of the world's ship-derived hazardous waste. Further, developed nations who are members of the OECD/EU are more likely to have the technological, legal, social safety nets vital for managing</p>	<p>NO. The Draft Convention turns a blind eye on the injustice that is occurring when a handful of poor communities in developing countries are forced to manage 95% of the world's ship-derived hazardous wastes. This injustice is perpetuated in the current convention as long as the receiving facility is authorized to take in the polluting vessel. As virtually all current yards are authorized by their governments, this convention really changes nothing.</p>

	toxic wastes. Moreover, decontaminating the vessels in these countries especially through an extended producer responsibility mechanism/fund creates a strong incentive for ship owners under these nations to further reduce the generation of hazardous wastes in their vessels.	
Non-OECD/EU shipbreaking countries agree to not accept any vessels that have not been pre-cleaned in OECD/EU countries.	YES. This is consistent with obligation to minimize transboundary movement, as well as the Basel Ban Amendment and Decisions I/22, II/12 AND III/1.	NO. As mentioned earlier, under the Draft Convention, ship recycling states appear to have little say to deny vessels once existing facilities are authorized and the rudimentary reporting requirements are complied with even if they wished to do so.
Obligation to establish waste management capacity nationally.	YES. (Article 4.2.b) Here Basel establishes a clear obligation that each state develop its own capacity for waste management as an alternative to export.	NO. The Draft Convention has no incentives or mandates for the creation of ship decontamination facilities and ship recycling capacity in developed countries – even if limiting this to countries that have the capacity to do so. Rather it continues to embrace the notion that developing countries should accept the environmental burden and risk of end-of-life vessels simply because they are poorer and have lower-wage conditions.
No export to those banning import.	YES. (Article 4.b) Parties are prohibited from exporting to Parties who have prohibited the import of such wastes.	NO. There is no such prohibition under the Draft Convention. Further once a facility has been designated as having met the requirements of the Draft Convention, and the facility owners notify the ship recycling state of its intent to take in a vessel, the ship recycling state appears to have limited grounds to ban any unwanted vessel.
Guarantees of Environmentally Sound Management		
Obligation to ensure that no shipment takes place unless all States Concerned are convinced of environmentally sound management.	YES. (Article 4.2.e and g and 4.8) Competent authorities must not authorize a shipment unless all competent authorities of the States Concerned (import, export and transit states) are convinced that the wastes will be managed in an environmentally sound manner.	NO. The Draft Convention only requires the Flag States and other Parties to look into whether vessels in their port or under their jurisdiction have the Inventory of Hazardous Materials. Parties who have detected this violation may warn, detain, dismiss, or exclude the ship from its ports, but it does not have the right to

		impede the movement or processing of the ship if the Party is convinced that the vessel is not going to be managed in an environmentally sound manner.
Obligation to Require Environmentally Sound Management in Shipbreaking yards	YES. (Article 4.2.b, and 4.8) Basel Convention requires ESM, which means taking all practicable steps to ensure protection of human health and the environment.	NO. While the Draft Convention calls on all Parties to adhere to criteria established in the Annex, the annex merely states that “Parties shall establish management systems, procedures and techniques which will reduce, minimize and ultimately eliminate adverse effects on the marine environment and human health caused by ship recycling taking into account the guidelines developed by the Organization.” It is shocking that only efforts to <i>reduce</i> adverse effects will satisfy this requirement and further that only the marine environment is being addressed. A <i>reduction</i> could be claimed for even the most minimal improvement in the yards.
State-to-State Notification and Consent Principle		
Establishment of State to State responsibility for Import, Export and Transit States.	YES. (Article 2 and throughout the Convention) Much of the effectiveness of the Basel Convention stems from the fact that all decisions for approving an export, import or transit of hazardous wastes must be scrutinized and consented to prior to initiation by national governments, not private sector actors. This state responsibility implies state liability over waste generator, thus there is special obligation placed upon the initiating entity – the exporting state – or state with jurisdiction over the exporter/owner/generator. This supplies an incentive to further reduce the generation of hazardous wastes – in the case of ships for producing vessels without toxic substances. The Flag state can not be considered to have the kind of responsibility over the owners, comparable	NO. Responsibility in the Draft Convention regarding reporting involves ships notifying their flag state governments and ship recyclers notifying their government when they intend to receive a ship. Thus there is no state to state notification, let alone consent to export and import. For example, a Flag state sending its vessel for recycling to another state can not demand that the ship recycling state improve its operations or to refuse to allow the ship to be broken based on poor conditions in the ship recycling state. The Draft Convention is satisfied with the rudimentary reporting and inventory regime it has set up, and places the burden of dealing with end-of-life vessels with the ship recycling state.

	to “export state” under Basel	
Requirement that Notification take place and Consent be obtained prior to any export.	YES. (Articles 4.1.c and 6) No shipment of waste should take place without all “States Concerned” being informed and consenting to it. It is well known that this requirement can be circumvented by unscrupulous waste ship traders because they can declare a ship to be a waste only after it is in international waters or already at the shipbreaking state. Therefore it was hoped that the IMO Convention might provide some guidance here to close known loopholes.	NO. The Draft Convention turns prior and informed consent on its head, first by not requiring consent prior to the export of the vessels, second, only the flag state and shiprecycling state are notified, but are not placed in communication with each other. Only if Parties request for information from the ship-recycling state is this information exchanged (Art. 7) and there is no ability to halt a shipment should there be reason for concern. Considering that each vessel can contain various amounts of hazardous materials and wastes, and Parties, including transit states, need time and information to arrive at an informed decision about the toxics onboard the vessel, the Draft Convention denies states the two crucial elements of notification and consent.
Establishment of equivalent to Basel’s “state of export” for ships, which might be the state with jurisdiction over the owners or shipbuilding state.	INCOMPLETE. Due to the special nature of ships, which are in constant global motion throughout their life, the existing “State of Export” definition in Basel fails to capture the concept of state with <i>responsibility</i> over owners/waste generators/exporters. Yet this is necessary to fulfill the underlying principle of state responsibility in Basel. At times, the Basel Convention clearly applies (e.g. ex-naval government owned vessels, or where port states know of intent to dispose), but for many commercial vessels crossing national boundaries every few weeks or plying international waters, the definition, so crucial to determining the applicability of Basel does not serve well. It is necessary to close this loophole to properly apply the Basel Convention to ships.	NO. The Draft Convention could have supplemented Basel by defining “Exporting State” to include State Parties who have jurisdiction over the owners of the vessel, to the shipbuilding state, or to states who have jurisdiction over the vessel at the time the vessel was determined to be a waste. However the Draft Convention does not seem concerned with placing State responsibility on States other than recycling states or flag states. However such states have little incentive to diligently prosecute the principles of environmental justice found in the Basel Convention and will simply lead to business-as-usual.
Need to provide transparency regarding the identity of ship owners at all times, “chain of	INCOMPLETE. Although this is already mandated under Basel after a ship	INCOMPLETE. Although the Draft Convention has provisions in its reporting

<p>ownership” must be clear and made available to all.</p>	<p>becomes a waste, it must however be practiced for ships during their operational life as well. This becomes especially important if mechanisms for pre-cleaning during the life of the ship are required. Since the ownership of a vessel can quickly change and liabilities be evaded, it is important for regulatory purposes to track who the owners are during the entire life of the vessel.</p>	<p>system requiring the name of the present ship owner be included in the list of information passed on to the Administration of the recycling state, like Basel this cannot help during the life of the ship when pre-cleaning or funding requirements need to apply.</p>
<p>Full description of the owner, holder, hazardous materials, and waste must accompany the shipment as a movement document, fully transparent, and must be provided in advance to all States Concerned.</p>	<p>INCOMPLETE. (Articles 4.2.f, 4.7.c, and Annex V) This already is required under Basel once a ship becomes a waste, but is not being practiced usually for ships. Further it needs to be done throughout operational life of the vessel as well if lifetime requirements are imposed.</p>	<p>INCOMPLETE. Although the Draft Convention requires the recycling facility to notify its state Administration of certain information about the vessel, it nonetheless currently fails to require that this information accompany a ship. However it may very well be that the Ready for Recycling Certificate will fulfill this function after that section of the Draft Convention is developed. Another layer of inadequacy in the Draft Convention is in the area of information sharing where it is stipulated that relevant information only be given to Parties who requests for such information.</p>
<p>Totals</p>		
<p>24 Categories</p>	<p>Yes: 18 Incomplete: 4 No: 2</p>	<p>Yes: 2 Incomplete: 2 No: 20</p>

IV. Conclusion

As can be noted from the above, the Draft International Convention For Safe And Environmentally Sound Recycling Of Ships, currently falls far short of even coming close to what has been identified as necessary to control today’s shipbreaking crisis, which inter alia includes concerns over use of toxic materials in the construction of ships, minimizing transboundary movement of hazardous wastes on board ships, pre-cleaning ships prior to export, development of capacity for shipbreaking in developed countries, legally binding controls, and environmentally sound management of ships and in particular hazardous materials/wastes.

Likewise the Draft Convention falls far short of imposing an “equivalent level of control” to the Basel Convention. Without such an equivalent level of control it will be impossible for Basel Parties to accept this Convention as a valid Article 11 agreement under the Basel Convention.

As can be seen from the totals in the Table above, the IMO Draft Convention only accomplishes 2 of the 24 categories of key identified elements. Whereas the Basel Convention which was recognized as being insufficient to manage ships within its scope, on the other hand, adequately covers 18 of the 24 key elements. Indeed, of the 6 elements that Basel fails to provide or is seen as being incomplete, the IMO Draft Convention only provides a remedy for one of these. This begs the question as to precisely what is the true intent of the IMO exercise. Is the IMO process seeking to provide rigor where Basel is failing, or is this an exercise to create an alternative instrument that represents a major retreat from existing principles, norms and controls?

An impartial observer of this process would note that the best future outcome of the IMO effort if indeed control over ships as waste is the goal, would be in fact to adequately address these 6 elements where Basel is found lacking and have the IMO treaty designed to augment the Basel regime rather than intend or pretend to replace it.

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