

The Right Honourable Paul Martin
Prime Minister
Office of the Prime Minister
80 Wellington Street
Ottawa
K1A 0A2

March 9th 2005

Cc. to Ministers of Environment, Transport and Foreign Affairs
Cc. to Embassies of India and Bangladesh

Re: URGENT: End Of life Vessel "Ferbec" on it's way to a shipbreaking yard

Dear Prime Minister,

We would like to bring to your attention the issue of shipbreaking and in particular a current case of illegal export of a waste ship leaving a Canadian port without controls under the Basel Convention.

We have recently learned that the Ferbec a Canadian ship owned and flagged by Canada Steamship Line (CSL) since 1977, left the port of Montreal on the 24th of January. According to the Montreal Port Authorities the ship left with an unknown shipbreaking destination. The ship, built in 1966, has belonged to CSL since 1977 and is said to have been sold to Liberian interests, renamed (Michalakis) and reflagged to the Mongolian flag shortly before its departure from the port of Montreal. According to the maritime magazine *Fairplay* the ore carrier was sold by CSL to unknown breakers for \$3.79M.¹ In a meeting between Greenpeace and CSL on March 4, CSL confirmed that the ship had been sold with a destination of India for breaking.

Greenpeace and the Basel Action Network (BAN) are extremely worried that the hazardous substances still on board this ship, documented in the Green Passport produced by CSL, will cause severe damage to the environment as well as to the workers in the shipbreaking yard and surrounding communities.

As witnessed and documented by Greenpeace and other concerned stakeholders over the past several years, the current practice of sending toxic old ships to developing countries is a carefully disguised form of the hazardous waste trade. The Basel Convention Conference of Parties a decision of 163 countries, of which Canada was a part, in October 2004 confirmed that ships can be waste under the Convention and that Parties are obligated to fulfil their Basel Convention obligations with respect to ships. VII/21 on the Environmentally Sound Management of ship dismantling states: "The Conference of the Parties*Reminds* the Parties to fulfil their obligations under the Basel Convention where applicable, in particular obligations with respect to *prior informed consent, their minimization of transboundary movements of hazardous wastes* and the principles of *environmentally sound management*;" (see appendix 1).

This is a clear call on Canada and other parties to finally start enforcing the Basel Convention for end of life vessels. To date Canada has failed to do this. Canada's obligation under the Basel Convention is clear regardless of the vessels current flag because Canada is the port of export. Your officials had direct knowledge that the ship was bound for shipbreaking, and this case involves toxic waste.

That the "Ferbec" (Michalakakis) is at this moment headed for shipbreaking is freely admitted by the Montreal Port Authorities, as well as CSL and those associated with the transfer of the "Ferbec" to its new owners. How is it possible that once the Port of Montreal (and maybe the Canadian Coast Guard) came to know about the intent to dispose of the ship, the competent authority was not immediately notified so that they could implement the provisions of the Basel Convention? This would seem to be a clear failure of the Canadian government to enforce the Basel Convention with respect to end of life ships.

Canada has a clear obligation under the Convention. When it becomes known that a cargo on a foreign flagged vessel, of unknown origin, is destined to be moved across Canadian borders to another country (transboundary movement), Canada is obliged to act. The same applies to the situation when a ship itself is the hazardous cargo. There is no legal distinction in these two cases.

On March 2nd a Greenpeace delegation met with senior officials of the Ministries of Environment, Transport, Human Resource Development and Foreign Affairs on the issue of shipbreaking. Despite a bureaucratic willingness to move the shipbreaking issue forward what seems to be urgently needed to tackle this issue is a ministerial mandate. In other words if the federal government of Canada is serious about the shipbreaking issue, then your office must get involved in addressing the loopholes that are being used by Canadian shipowners to circumvent their obligations under the Basel Convention, and to enforce the convention when companies choose to ignore it. To be clear the case of the "Ferbec" is a case of international obligations having been ignored and not of loopholes.

We are glad to see that Canada acknowledges the notion that a flag state can be considered an exporting state of end of life ships and as such be the equivalent of an exporting state under the Basel Convention Regime. Annex 2 attached to this letter describes the Canadian position on this point, which has also been confirmed by the Canadian officials we met on March 2nd. However under the convention "Exporting State" clearly also includes the port state, or waste generating state, which in the case of the "Ferbec" means Canada.

The case of the Ferbec should have been used by Canadian officials to enforce the Basel Convention as they have been urged to do. Unfortunately no action was taken and it seems likely that yet another Canadian ship will end up on one of the shipbreaking beaches to be broken under hazardous conditions. This is illegal traffic and a criminal act under the Convention.

It is not too late for you to take action. As the ship is presumably on its way to a shipbreaking yard now, we urge you to find immediately whether all required obligations and related procedures under the Basel Convention have been complied with. Canada should alert the recipient country that a ship export has likely taken place illegally without the required prior notification and consent. We urge you to act immediately and take action to halt further passage of the "Ferbec" on its way to a breaking yard until all relevant procedures have been complied with.

Summarising, we urge you to:

1/ Immediately examine the legal means at your disposal to halt the transboundary movement of the “Ferbec” in its present state until all relevant obligations and procedures of the international regulation on ship recycling have been complied with.

2/ Take a political decision to actively enforce the Basel Convention for Canadian flagged ships or ships leaving Canadian ports, and start closing the loopholes being used by shipowners to circumvent the obligations under Basel.

Since the “Ferbec” is now on its way for shipbreaking we would request that you urgently look into this matter.

We look forward to hearing from you very soon. Furthermore, we request an urgent meeting to discuss the issue of shipbreaking and on how Canada could play a leadership role on this file.

Sincerely

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Appendix 1

The Basel Convention Decision VII/21 & VII/23 of October, 2004

Decision VII/21 on the Environmentally Sound Management of ship dismantling

The Conference of the Parties,

Aware of the risk of damage to human health and the environment caused by hazardous wastes and other wastes and the transboundary movement thereof,

Recognizing that many ships and other floating structures are known to contain hazardous materials and that such hazardous materials may become hazardous wastes as listed in the annexes to the Basel Convention,

Concerned that ships and other floating structures may pose a threat to the environment and human health if they are not, when pre-decontaminated or dismantled, managed in an environmentally sound manner,

Noting the need to improve the standards of ship dismantling worldwide and the importance of international cooperation in achieving this goal,

Recognizing the importance of the environmentally sound management of dismantling of ships,

Noting that a ship may become 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,

Recognizing the important role that concerned States, ship owners, recycling facility operators and other stakeholders have to play in developing mechanisms to ensure the environmentally sound management of ship dismantling,

Further recognizing the need to ensure effective enforcement of such mechanisms, including a reporting system, for ships destined for dismantling,

Recalling decision V/28 on the dismantling of ships, which mandated the Technical Working Group to collaborate with the International Maritime Organization on the subject of the full and partial dismantling of ships and, together with the Legal Working Group, to discuss the legal aspects of the subject under the Basel Convention,

Further recalling decision VI/24 on technical guidelines for the environmentally sound management of the full and partial dismantling of ships,

Noting that the Governing Body of the International Labour Office has adopted guidelines on safety and health in ship breaking, that the International Maritime Organization has adopted guidelines on ship recycling and that the Basel Convention has adopted technical guidelines for the environmentally sound management of the full and partial dismantling of ships,

Noting the importance of promoting the implementation of the above-mentioned guidelines,

Further noting that the International Maritime Organization and the International Labour Organization, together with the Conference of the Parties to the Basel Convention, have agreed to establish a joint working group on ship scrapping and have agreed to terms of reference and working arrangements governing its activities,

Affirming that elements of prior informed consent as elaborated in the Basel Convention enable the minimization of the impact to human health and the environment associated with dismantling of ships, recognizing the particular issues that arise in the unique context of ships,

Noting the progress made at the fifty-second session of the International Maritime Organization's Marine Environment Protection Committee toward the possible development of a mandatory scheme for ship recycling, including a reporting system for ships destined for recycling,

Realizing that States have distinct obligations as Parties to the United Nations Convention on the Law of the Sea and relevant International Maritime Organization conventions, including obligations of States in their capacities as flag States, and as Parties to the Basel Convention, including obligations of States in their capacities as States of Export, and that States should be able to meet these obligations in a consistent manner,

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

1. *Reminds* the Parties to fulfil their obligations under the Basel Convention where applicable, in particular their obligations with respect to prior informed consent, minimization of transboundary movements of hazardous wastes and the principles of environmentally sound management;
2. *Invites* Parties, other States, ship owners and other stakeholders to assist in the improvement of the environmentally sound management of ship dismantling worldwide;
3. *Invites* Parties, especially developed States, to encourage the establishment of domestic ship recycling facilities;
4. *Encourages* Parties to ensure their full and effective participation in the deliberations of the joint working group of the International Maritime Organization, the International Labour Organization and the Basel Convention, either through their representatives or as observers;
5. *Invites* the International Maritime Organization to continue to consider the

establishment in its regulations of mandatory requirements, including a reporting system for ships destined for dismantling, that ensure an equivalent level of control as established under the Basel Convention and to continue work aimed at the establishment of mandatory requirements to ensure the environmentally sound management of ship dismantling, which might include pre-decontamination within its scope;

Requests the Open-ended Working Group to consider the practical, legal and technical aspects of the dismantling of ships in the context of achieving a practical approach to the issue of ship dismantling, to report on developments and to present any proposals, as appropriate, to the Conference of the Parties at its eighth meeting on a legally binding solution, taking into consideration the work of the International Maritime Organization and the work of the joint working group.

Appendix 2

Canada positions at Basel Convention OEWG-III (26-30 April 2004)

The position of Canada during the Open Ended Working Group III of the Basel Convention concerning the Flag State responsibility in the Ship recycling issue:

1. Official Submission

Canada sent a submission on the issue of item 7 of the agenda (dismantling of ships). Canada formulated in this submission its comments on the set of questions and issues concerning "the Legal aspects of the full and partial dismantling of ships.", which are set out in the decision OEWG-II/4.

See Doc UNEP/CHW/OEWG/3/INF/5 on pag 11 & 12.

In this document Canada proposes to consider 'on the short term' the Flag State of an End of Life Ship as the equivalence of the Exporting State under the Basel Convention. (see in Attachments in the submission document paragraph 7, and 9) .

Text of paragraph 7 includes: *'The only State in the position to carry out export State obligations or requirements (notification of export to the importing State, ensuring vessels are only exported to States where they can be dismantled in an environmentally sound manner and where the health of workers and others are protected) is the State with the direct legal authority over the vessel (and its owner): the flag State of the vessel.[...]. **Canada strongly encourages the IMO, ILO and the Parties to the Basel Convention to work in a constructive manner to ensure that the flag State of the vessel both have and carry out export State obligations.'***

Text of paragraph 9 includes: *'Canada proposes that the Parties to the Basel Convention recognize and accept that the obligations on the exporting State in the Basel Convention fall on the flag State of a vessel to be dismantled and that the flag State undertake to implement those obligations.'*

Draft Decision proposal of Canada, Denmark and Netherlands

During the negotiations Canada proposed together with Denmark and The Netherlands

a draft OEWG-III Decision on the issue of Flag State responsibility under the Basel Convention Regime.

The recommendation of Canada in that document is: 'State Parties understand that, where a vessel is a waste, the definition of "State of export" in Article 2(10) of the Convention means the flag State of that vessel and the obligations in the Convention that exist on the "State of export" are on the flag State of the vessel that is a waste'

See the Doc in Attachment

Attachments

Submission document of Canada to the OEWG-III

Document UNEP/CHW/OEWG/3/INF/5 Page 11: Canada - 20 January 2004

Canada's Submission to the Basel Secretariat Regarding Ship Dismantling
Introduction

1. It is the view of Canada that the international problem of ships being dismantled in a non-environmentally sound manner and in a manner that puts the health of workers and others at risk is a serious one. Canada applauds the work that has been undertaken by the International Maritime Organization (IMO), the International Labour Organization (ILO), and under the Basel Convention in dealing with this international problem. Canada notes that it is reviewing its relevant domestic laws to better deal with Canadian flag vessels that are leaving Canadian ports on their way to be dismantled.
2. Canada seeks to meet three objectives in addressing this issue:
 - to ensure that ships be dismantled in an environmentally sound manner;
 - to ensure that ships be dismantled in manner that does not put the health of workers at risk;
 - to ensure that the responsibility for ships to be dismantled in an environmentally sound manner, and in a manner that does not put the health of workers at risk, falls upon those States with the legal responsibility for and authority over the vessels.
3. In pursuing these objectives, it must be noted that the ship dismantling business is inherently international, with diverse States and players involved. Moreover, any laws, structures and processes developed or applied should

not lead to environmentally or socially harmful side-effects. For example, care must be taken to discourage making the abandonment and/or the illegal scuttling of vessels an attractive alternative to ship dismantling and to discourage ship dismantling in unregulated environments. Care must also be taken to ensure that States do not become burdened with obligations respecting vessels of other States destined for dismantling, over which they have little or no control.

4. It is understood that once a ship ceases being a ship, it may fit the definition of a waste under the Basel Convention, and thus be subject to the Basel Convention in the same manner as any other waste. However, there is no internationally agreed upon criteria or law respecting when a ship ceases to be a ship. When a ship ceases to be a ship is one of the questions that was posed by the Basel Convention First Open-Ended Working Group. The Convention and Protocol on the Prevention of Pollution from Ships (MARPOL) defines a ship as Aa vessel of any type whatsoever operating in the marine environment and includes ... floating craft and fixed or floating platforms.@ The report from the 47th session of the Maritime Environment Protection Committee (MEPC) of the IMO not ed this definition and commented that there are no criteria as to when a ship ceases to be a ship Aother than when a ship no longer meets the provisions of the definition above@[para. 3.23]. The UN Division for Ocean Affairs and the Law of the Sea (DOALOS) in its comments to the Basel Convention Legal Working Group noted that Aa ship ceases to be a ship when it ceases to operate as a ship@ and that this is likely to be Athe point at which it is no longer registered as a ship@ [para. 14]. However, the DOALOS comments noted specifically that the Law of the Sea Convention does not address the issue of when a ship ceases to be a ship. The MARPOL definition of a ship is broader than that proposed by DOALOS with the result that when a ship ceases to be a ship is more restrictive under MARPOL than under the comments of DOALOS.
5. As regards a ship that is destined for dismantling (and has not ceased to be a ship, however that point may be defined), the issues divide into two categories: (a) ensuring that vessels are dismantled in an environmentally sound manner and that the health of workers and others are protected – point of dismantling issues ; and (b) ensuring that importing States are notified of vessels that are soon to arrive for dismantling, and that vessels are exported only to States where they can be dismantled in an environmentally sound manner and where the health of workers and others are protected B point of export issues .

Point of Dismantling Issues

6. The ILO and the Basel Convention have all adopted voluntary guidelines that are directly or indirectly related to ensuring that vessels are dismantled in an environmentally sound manner and that the health of workers and others are protected. Efforts need to be made to encourage States engaged in ship dismantling to apply the relevant guidelines and part of this encouragement is assistance to States to increase their capacity to apply the relevant guidelines. International work, particularly through the ILO and the United Nations Development programme, has begun to examine and support capacity-building in ship dismantling countries to apply ILO and Basel Convention Guidelines.

Point of Export Issues

7. The only State in the position to carry out export State obligations or requirements (notification of export to the importing State, ensuring vessels are only exported to States where they can be dismantled in an environmentally sound manner and where the health of workers and others are protected) is the State with the direct legal authority over the vessel (and its owner): the flag State of the vessel. IMO has developed voluntary guidelines for shipowners to minimize the presence of hazardous materials on board and to properly prepare ships destined for dismantling. Canada strongly encourages the IMO, ILO and the Parties to the Basel Convention to work in a constructive manner to ensure that the flag State of the vessel both have and carry out export State obligations.
8. The obligations in the Basel Convention on exporting States regarding prior informed consent and exporting only to States where wastes will be dealt with in an environmentally sound manner are important ones to apply to vessels that may be exported for dismantling. It must be recognized, however, that the Basel Convention was not developed with the issue of vessels as waste in mind, and other options that could provide a more workable approach towards prior informed consent and environmentally sound management should be considered.

A Way Forward: The Short-Term

9. Canada proposes that the Parties to the Basel Convention recognize and accept that the obligations on the exporting State in the Basel Convention fall on the flag State of a vessel to be dismantled and that the flag State undertake to implement those obligations. Related to this should be a

reiteration of the obligation on importing Parties to only accept vessels for dismantling from flag States that are Party to the Basel Convention. As well, environmentally sound management (ESM) criteria for ship recycling should be based on the concept of continuous improvements to recognize efforts made by countries in improving ship dismantling practices and moving towards the practices outlined in the Basel ESM Guidelines.

A Way Forward: The Long-Term

10. Canada is interested in exploring possible criteria that might be utilized for determining when a ship ceases to be a ship and may become a waste for the purposes of the Basel Convention.
11. Canada is interested in exploring within the Basel Convention and with the IMO and ILO, the possibility of developing appropriate measures to deal with issues related to ships to be dismantled, notably concerning point of export. This could include not only an instrument designed to address the issue of ships destined for recycling, but also practices, measures, guidelines and criteria that might be used to further the goals set out above.

Proposal by Canada/Denmark & Netherlands of 27 April 2004

DRAFT April 27, 2004

PROPOSAL BY CANADA/DENMARK/NETHERLANDS

The Conference of the Parties,

Recognizing the critical importance of minimizing the human health and environmental risks associated with the dismantling of vessels;

Desiring that vessels be dismantled in an environmentally sound manner;

Noting that the International Maritime Organization and the International Labour Organization have agreed to participate in the proposed Joint Working Group mandated to pursue issues respecting minimizing the human health and environmental risks associated with the dismantling of ships;

Recognizing that the ILO has adopted guidelines entitled "Safety and Health in shipbreaking: Guidelines for Asian countries and Turkey" and that the IMO has adopted "Guidelines on Ship Recycling";

Noting that the prior informed consent provisions of the Convention are important in minimizing the human health and environmental risk/impacts associated with the dismantling of vessels;

Recognizing that as a permanent solution will take time, there is a need to undertake interim action under the Basel Convention regarding the provision of notice to and the obtaining of consent from receiving States respecting vessels destined for dismantling;

Recommends that:

1. State Parties understand that, where a vessel is a waste, the definition of "State of export" in Article 2(10) of the Convention means the flag State of that vessel and the obligations in the Convention that exist on the "State of export" are on the flag State of the vessel that is a waste;
2. Paragraph 1 is without prejudice to any long-term solutions;
3. Paragraph 1 does not prevent any State from taking action under domestic law respecting a ship destined for dismantling;
4. In the carrying out their Convention obligations, the "State of export" of a vessel destined for dismantling (the flag State) and the "State of import" of a vessel destined for dismantling are invited to make use of and to recognize the need for State parties to demonstrate continuous improvement in implementing the Technical Guidelines for the Environmentally Sound Management of the Full and Partial Dismantling of ships adopted at COPVI as Decision VI/24;
5. Efforts be made by State Parties and the Secretariat to work towards a long-term solution that enhances the achieving of environmentally sound management of vessel dismantling, including by,
 - a. Participation by State Parties and the Secretariat in the Joint Working Group on Ship Recycling with the International Maritime Organization and the International Labour Organization;
 - b. The Open Ended Working Group adopting this as a priority agenda item for continued review, discussion and examination, as appropriate; and
 - c. The Open Ended Working Group and the Secretariat reporting to COPVIII on progress being made on a long-term solution and that this report should consider whether there is a need to amend the Convention or negotiate a Protixol to address the issue of ship dismantling.

¹ Fairplay, 13 januari 2005: "FERBEC (Ore Carrier) ex-Fugaku Maru: sold by The CSL Group, Canada, \$3.79M (\$355.00/ldt). 1966. 56,887dwt, 33,792gt. Built IHI" .