A Disturbing Manipulation of the COP10 Shipbreaking Decision

EU Funded Basel Project Introduces anti-Basel Concept of “Green Beaching”

At COP10 in Cartagena while we were all celebrating the Ban Amendment being freed to come into the force of international law, another important decision was concluded. The Parties passed Decision BC-10/17 on the dismantling of ships.

-- Ignoring the Parties’ Intent -- Failure to Act --

The decision was important in that it made it clear that many Parties did not agree that the IMO Hong Kong Convention provided an “equivalent level of control and enforcement” to that of the Basel Convention.

But further, in Paragraph 3 of that decision the Parties “acknowledged that the Basel Convention should continue to assist countries to apply the Basel Convention as it relates to ships.”

This was seen by many of the Parties at COP10 as an extremely important action item because Basel has a unique competency with respect to transboundary movements of toxic ships and in preventing their movement/export from disproportionately burdening developing countries. Certainly the Parties never signaled that this paragraph was not to be acted upon.

The understanding by many Parties at COP10 is that we cannot afford to stand idle and wait for the Hong Kong Convention to solve the shipbreaking toxic exposure crisis as it is likely not to succeed in doing so. As a legal instrument, the Hong Kong Convention is
currently incapable of prohibiting transboundary movements of toxic ships and that is just one of the many areas outlined by legal experts where the Hong Kong Convention falls short of the Basel Convention. In any case there is no guarantee that the Hong Kong Convention will ever enter into force and if it does, it may take many years to do so. Meanwhile the export of toxic ships to the beaches of South Asia is on the increase as is their damage to human health and the environment. Certainly we must move quickly to prevent more death and industrial disease.

We cannot understand therefore why the Secretariat did not act in any way on the vital call to action in Paragraph 3.

It is well understood that the Basel Convention has proven very useful at times to prevent transboundary movement of toxic ships to developing countries. The case of the French Aircraft Carrier Clemenceau being returned to France from India is a case in point. Likewise, the recent Supreme Court Decision in India as well as the court decisions in Bangladesh to bar ships into those countries that have not been first pre-cleaned were all based on implementation of the Basel Convention for ships. There is much to be learned from those cases.

It is also well understood that many unscrupulous ship-owners continue to send their ships to the beaches of India, Pakistan, Bangladesh and to China in contravention of the Basel Convention. They take advantage of loopholes that exist for ships and not for other wastes due to their mobility. The Basel Convention must take up the task of solving these problems, providing guidance to Parties on how to close those loopholes.

We must make sure that OEWG8 directs this work to begin, with a goal of having it available to the Parties by COP11. It is a serious oversight that this has not already been taken up. We cannot allow this paragraph from the COP to be ignored any longer. We recommend the following action items to implement paragraph 3 of 10/17:

-- Parties are asked to provide experiences they have had and recommendations and advice they would give for implementing the Basel Convention for ships.

-- Request the Secretariat to produce a paper on means by which Parties and the Basel Convention through guidelines, amendments or other means, improve the implementation of the Basel Convention to ensure that ships destined for movement to breaking yards fall within the control mechanisms of the Convention.

-- Twisting the Parties' Intent – “Green Beaching” --

While the Secretariat chose not to act on Paragraph 3 of the COP decision, we are very troubled to report that the actual activities that are being acted upon (and we have heard are funded by the EU) are being done in variance to and in contradiction of the COP mandate. These projects are described by OEWG8/12 in Paragraphs 5 and 6 and
also in a UNOG Request for Proposals (RFP) that has already gone out to solicit a consultancy for such activities.

First let's look at the COP mandate for the prescribed activity which in the Programme of Work in COP10/28. This includes activity #31 which is described in the table as follows:

"Develop a feasibility study to identify cost effective alternatives to the beaching method of ship dismantling; provide technical expertise to assist countries involved in ship dismantling to develop downstream capacity for the environmentally sound management of hazardous materials; facilitate exchanges of expertise and experiences between relevant stakeholders to promote safe and environmentally sound ship dismantling."

Note: We have enbolded the important language of which the original intent has been undermined and twisted.

Compare that language to the text found in the OEWG document OEWG8/12. There we find the introduction of a new very dangerous, contradictory parenthetical qualifier which was never what the Parties asked for, indicating that a new term of "green beaching" be explored as well. (see para. 6 of OEWG8/12):

“A feasibility study will also be produced in 2012 to identify cost-effective alternatives to the traditional beaching method of ship recycling (this may include consideration of “green” beaching methods currently employed in the industry). The following activities will form part of the study: (a) a review of current ship recycling methods and the identification of cost-effective and environmentally sound alternatives to beaching (or identification of “green” beaching methods).

These same notions have been used in the RFP found here:

It must be understood that the Basel Convention Parties have NEVER ever made an assertion that beaching can in any form be considered “green” or ESM. This is an invention that took place after COP10 and is a contradiction in terms. The Basel Convention Technical Guidelines on Full and Partial Dismantling of Ships state in multiple citations that impermeable surfaces are necessary to contain any work with paintings and coatings, cutting blocks, oils, fuels, PCBs, etc.

Similarly language found in the same OEWG8 document in paragraph 5 speaks of "identifying actions....at ship recycling facilities employing the beaching method to facilitate compliance with the two conventions." (see para 5 of OEWG8/12).

Yet it is a fact for the reasons stated above that compliance with the Basel Convention can NEVER be achieved on a beach.
-- Conclusion --

It is very disturbing that this very controversial and inappropriate language has arisen. The language is problematic not only because it is at variance with the COP mandate but also because the Basel Convention itself makes it very difficult to envisage any actions that can facilitate compliance with the Basel Convention when beaching operations are involved. Certainly the notion of "green beaching" is a contradiction in terms according to the Convention and its guidelines.

First, beaching of ships currently takes place only in non-OECD countries, and thus movements of ships containing hazardous materials towards these locations for disposal or recycling raises very major questions with regards to contradicting the Basel Ban Amendment which was just re-endorsed at the last COP.

If we were to put that geo-political fact aside and look solely at technological matters, we learn further that the Basel Technical Guideline make it fundamentally clear that beaching operations by definition do not include impermeable floor operational platforms. And in accordance with the Basel Technical Guideline most of the critical stages described in that guideline, call for impermeable floor platforms. Not doing so could not be considered "taking all practicable steps to ensure that hazardous wastes or other wastes are managed in a manner which will protect human health and the environment against the adverse effects which may result from such wastes," the definition of Environmentally Sound Management. Any disposal/recycling activity that is not ESM is illegal under the Convention. Thus the beaching method cannot be seen as ESM and is therefore not compliant with the Convention.

The Parties must insist that all decisions and documents emanating from OEWG8 revert back to the language of COP10 with respect to ship dismantling. If the EU wants to conduct their own studies outside of the Basel Convention they are free to do so but they cannot twist the Convention to their own wishes to justify further activities on Asian beaches.

Further, Paragraph 3 of Decision 10/17 must be revisited and implemented. It was not written to be ignored. Parties are called upon to act.

END