European Commission Turns its Back on Basel Convention

Proposal to Unilaterally Stop Controlling Ships under Basel is Illegal and Unnecessary

“The Commission Proposal constitutes a unilateral departure from the provisions of the Basel Convention that is not allowed by the Convention. The adoption of the Commission Proposal by the European Parliament and the Council would thus constitute a breach of the EU’s obligations under the Basel Convention and would therefore be illegal.”

-- Prof. Dr. Ludwig Kraemer, noted European Community jurist

The EU’s Turning Away from Environmental Justice

Ever since its adoption in 1989, the European Union has been a champion of the Basel Convention. Since 1994 (COP2) the European Union has been a champion of the Basel Ban Amendment. Since that time the now 27 member state European Union has stood in solidarity with developing countries and countries with economies in transition to ensure that such countries are not used as a dumping grounds. Are not used as repositories for a disproportionate burden of the world’s hazardous and dangerous to recycle waste. At COP7, once again, it was the European Union that pushed the compromise decision that asserted that a ship could be a ship and a waste at the same time and that if it contained hazardous material, a waste ship would be under the control of the Basel Convention (Decision VII/26).

At COP10, the EU once again celebrated with the global community as the rusty chains holding the Basel Ban hostage were thrown aside with the adoption of the “fixed time approach” and the Basel Ban Amendment was readied for rapid entry into force.

It is shocking therefore to discover what the European Commission is now proposing in their new legislation regarding the transboundary movement of Europe’s old toxic ships. Following pressure from the maritime and shipping industry, and the IMO secretariat, they are calling for an about-face with respect to preventing toxic dumping on developing countries whenever such dumping involves ships.
In the Proposal for a Regulation by the European Parliament and Council on Ship Recycling, the European Union abandons more than 20 years of promoting environmental justice and proposes to unilaterally remove ships from their Basel Convention implementation legislation commonly referred to as the Waste Shipment Regulation. The reasons they give for this is that there is not enough green ship-breaking capacity in Europe.

**Green Capacity Exists**

First, this rationale conveniently ignores the massive and sufficient capacity for green ship recycling in Europe, Turkey, Mexico, and especially the United States. The Commission did not bother to look in North America for capacity. They would much rather serve the interests of the major shipping lines and use the cheap labor of China or India.

Second, the proposal is a complete and total derogation from the Basel Convention’s obligation for national self-sufficiency regarding the generation of hazardous wastes found in Article 4.2.b of the Convention.

Finally, the move by the European Commission is in fact a reservation or exception from the Basel Convention’s provisions (ie. the definitions of hazardous waste). Article 26 of the Convention states: “No reservation or exception may be made to this Convention.”

**EU move clearly illegal**

The definitions of hazardous waste in the Basel Convention clearly include ships as has been asserted in Decision VII/26. Under the Basel Convention countries can add hazardous wastes to the Basel Annexes based on national definitions but they cannot subtract them.

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.” It was primarily developing countries at COP10 that could not agree that the Hong Kong Convention provided adequate protections which led to the this conclusion in Decision 10/17:

“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.”

It was for all of the above reasons that well known Community jurist Prof. Dr. Ludwig Kraemer stated in a prepared report:

“The Commission Proposal constitutes a unilateral departure from the provisions of the Basel Convention that is not allowed by the Convention. The adoption of the Commission Proposal by the European Parliament and the Council would thus constitute a breach of the EU’s obligations under the Basel Convention and would therefore be illegal.”

**There is no reason Hong Kong and Basel Cannot Coexist**

There is no reason whatsoever that the Hong Kong Convention and the Basel Convention cannot co-exist. The legal regimes are not duplicative. Further, there is no guarantee that the Hong Kong Convention will ever go into force, and if it does that date of entry may be far-off. Action to stem the tide of toxic ships to Asia is urgently needed now. Basel is the active instrument and was responsible already for preventing toxic ships like the Clemenceau from being dumped in Asia. Further, the courts in countries like Bangladesh and India are implementing the Basel Convention for ships now and requiring them to be pre-cleaned prior to entry into their territories. The EU move is cynical and a slap in the face to such efforts.

Clearly more work is needed to better implement the Basel Convention and that is called for in Decision 10/17 as well. But to abandon Basel is not only illegal, and unnecessary, but far worse,
hugely irresponsible in this moment in history when thousands of ships will be scrapped on South Asian beaches in the next few years, should we not act.

The European Union is urged to strike out the illegal section of their ships dismantling proposal that seeks to remove ships from the EU's Waste Shipment Regulation and begin at once to assist in making the Basel Convention and the Hong Kong Convention work together effectively and seemlessly.

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