

## Legal Shipwreck: IMO Convention Legalizes Toxic Ship Dumping

### Running from Basel to Turn Back the Clock

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 were designed to arrest.

After all, the tragedy of ship scrapping is not primarily a maritime issue at all. It is a tragedy of exploitation of impoverished communities and disastrous waste management all justified purely on economic terms the result of externalizing the costs of an industry on unsuspecting and desperate communities in developing countries. Instead of taking care of the risks and liabilities by ensuring that their end-of-life vessels are dismantled in countries possessing proper technologies, infrastructure and societal safety nets, the industry has done the very dangerous job of scrapping old ships on the cheap and on the backs of the worlds most vulnerable labor force – simply because they could. This is precisely the reason why the Basel Convention was born – to put an end to this form of exploitation, and why that body asserted in 1995 that developed countries should no longer be allowed to export any hazardous wastes to developing countries for any reason – even under the name of recycling.

But a powerful shipping industry, supported by large shipping nations such as **Norway, Japan and Greece**, saw that if the Basel Convention's principled view were to hold sway over their industry, then profit margins made possible by the injustice of cost externalization would be eroded. Once the Basel Convention began to take a serious look at the global shipbreaking crisis, this powerful gang claimed that Basel was incompetent to manage the issue. Instead of allowing Basel Parties to close the loopholes available to ship-owners, the industry, instead blocked all progress at the Basel Convention and ran to the cover of their own United Nations clubhouse – the International Maritime Organization (IMO). The industry strategy intended to use one UN body (IMO) to undermine the very purpose of another (Basel).

The IMO Shipbreaking Convention is the result of this cynical strategy. One conducted not because the industry expected a

*better* control regime under the IMO, rather because they sought a *weaker* one. And it is now clear that IMO is delivering precisely what industry ordered. In so doing they have turned back the clock and discarded not only landmark principles and obligations established in the Basel Convention but also scrapping a long list of long-standing principles, relevant to human rights and the environment.

### Breaking with Principle to Break Ships

The following well established principles of international policy have been ignored or turned on their head by the IMO Convention:

- **Polluter Pays / Producer Responsibility Principles**

Principle 16 of the Rio Declaration embodies the Polluter Pays and Producer Responsibility Principles when it demands that environmental costs not be externalized. The costs for properly managing end-of-life ships, loaded as they are with toxic waste, are significant. And yet these costs are conveniently avoided by ship-owners under the IMO Convention. They will be able to continue to have those costs born by some of the poorest, most ill-equipped workers working in one of the most dangerous jobs on earth.

- **Principle of Environmental Justice/Transfer no Harm**

The IMO Convention will do nothing to alter 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. This is the antithesis of Principle 14 of the Rio Declaration which calls on countries not to transfer harm and of the Principle of Environmental Justice that establishes that no peoples should receive a disproportionate burden of global harm. Indeed this is also an affront to the Principle of National Self-Sufficiency in waste management embodied in the Basel Convention (Article 4,2,b).

- **Substitution Principle / Waste Prevention Principle**

While waste management is not part of the core competency of the IMO, shipbuilding rightfully is and thus the challenge to ensure that future ships do not contain hazardous substances is but another missed opportunity for the IMO. The draft IMO Convention fails to ban or phase-out any more hazardous substances than what was already banned elsewhere (e.g. PCBs and asbestos). Even as the Convention cites the Substitution Principle in the preamble, it is not implemented in the binding text by a regular review process to examine hazardous ship materials and to always prefer safer alternatives to them

- **Principle of Environmentally Sound Management**

While the Draft Convention purports to support Environmentally Sound Management, IMO declined to define it, nor to set mandatory criteria for what constitutes safe and sound ship recycling. Rather, they aim to produce a guideline and leave it to ship recycling states to decide what to do. Yet, to date, ship recycling states have failed to implement the existing IMO, ILO and Basel Guidelines. Without mandatory criteria there's no reason this will suddenly change. The IMO Convention even fails to condemn the disastrous **beaching** method. A method of operations that "manages" hazardous wastes without containment in the sensitive intertidal zone and on shifting sands where it is impossible to rescue workers with emergency equipment or provide shipside cranes to lift heavy pieces of the cut ship. The IMO's continued "neutrality" with respect to beaching ships, is sadly telling of their commitment to ESM.

### Basel Denied: Not an "Equivalent Level of Control"

In 2004, at its 7<sup>th</sup> Conference of Parties, the Basel Convention Parties passed decision VII/26 that clearly noted that the Basel Convention does apply to end-of-life ships and further, invited the IMO 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..."*

<b>Basel and IMO: Equivalency?</b>	
<b>Basel Convention</b>	<b>IMO Convention</b>
Scope includes all ships	<b>NO.</b> Government / small ships not covered
Establishes global definition of waste and hazardous waste.	<b>NO.</b> Refuses to recognize existent (Basel) definitions of hazardous wastes or wastes. Presence of hazardousness triggers no special trade control.
Illegal traffic is considered criminal	<b>NO.</b> Violations not necessarily criminal.
Enforcement/inspection possibility by port states not limited.	<b>NO.</b> Port state control severely limited to finding an inventory on board but cannot check the validity of inventory.
States allowed to prohibit import of any waste including ships.	<b>NO.</b> No such provisions.
Obligation to minimize transboundary movement of hazardous waste, in particular to developing countries	<b>NO.</b> No such provision / no notion of pre-cleaning prior to final voyage to avoid developing countries getting disproportionate burden of toxic waste.
Obligation to provide national capacity for waste management of all wastes (e.g. ships)	<b>NO.</b> Not even on a regional basis are countries expected to achieve any kind of self-sufficiency.
Obligation to ensure that exports do not take place unless exporting state is convinced of ESM in ship recycling state.	<b>NO.</b> No right exists for any state to impede the export/final voyage of a ship and the entry if it has reason to believe ESM is not assured.
Requires state-to-state notification and consent of exporting, importing and transit countries prior to export	<b>NO.</b> State-to-State communication (notification and consent) between port states, flag states and ship recycling states is not required.
Defines Environmentally Sound Management	<b>NO.</b> Fails to define ESM and fails to prescribe mandatory criteria for achieving ESM for ship recycling.

As the IMO Convention so clearly departs not only in fundamental principles but in actual control mechanisms and obligations, it will be impossible for the Basel Parties to conclude that it achieves an "equivalent level of control". But even when confined to looking at its own terms and expectations, the Convention is doomed to

failure because the responsibility for its control mechanisms and implementation rests with entities (described below) that have little self-interest to undertake such controls.

### IMO Places Foxes in Charge of the Chickens

**Flag States:** It is well known that many Flag State administrations are unwilling or unable to fulfill what little responsibilities they will have under the new Convention. This is especially the case with the so-called "flags of convenience" [FOC] states. The FOCs promise lower costs by keeping taxes, fees, and regulatory burdens light. Even when some FOC states have ratified IMO conventions, they often lack the resources or the will to enforce them. The entire marketplace for FOC open-registries is, in effect, a bidding game for least accountability, least responsibility. Clearly this bodes disastrously as it relates to the issue of Convention ratification as well as to compliance if ratification is accepted.

**Port States:** With respect to some IMO regimes, port state controls can be used as a remedy to the problem with flag states described above. However, this model falters when there is little self-interest for the port state concerned. Why would a port state have an interest in determining whether or not a ship carries an inventory of structural hazardous materials, as this requirement will not impact the local port environment now or in future?

**Ship Recycling States:** Despite many years of global concern, major ship recycling states have as yet been unwilling to press their rich and influential shipbreakingyard owners to take action to significantly improve conditions at their ship recycling yards. They continue to authorize yards that are not and cannot conduct safe and sound management operating on a tidal beach. Similar to flag states, the ship recycling industry is competitive on the basis of least cost recycling. Without a ban on beaching, a mandatory set of requirements, and 3<sup>rd</sup> Party audits, none of which the new Convention requires, the result will likely be that ship recycling states will be persuaded to ratify the new Convention, as they know they can forestall real meaningful reform for many years.

---

**OFF the BEACH: Last Chance for IMO** Sadly, the draft IMO Convention is tailored by and for the shipping industry as a "rubber stamping convention" designed to merely put a green gloss on the horrific status quo. If adopted as is, the treaty is set to: turn back the clock on long established global principles; fail to provide an *"equivalent level of control"* to the Basel Convention; and provide little motivation for any of its "responsible parties" to change the very profitable and immoral ship dumping business model. For years now Civil Society has implored the shipping powers such as Norway, Japan and Greece to make a meaningful treaty and to date they have utterly failed. The IMO's last chance to prevent what can only be seen as a legal shipwreck is to condemn the unsafe and unsustainable practice of scrapping ships on ocean beaches. This May, in Hong Kong, IMO must join us in saying: *Off the Beach!*

---

**The Basel Action Network**  
 122 S. Jackson St., Suite 320  
 Seattle, WA, 98104  
 USA

Phone: 1.206.652.5555  
 Fax: 1.206.652.5750  
 E-mail: [inform@ban.org](mailto:inform@ban.org)  
 Website: [www.ban.org](http://www.ban.org)