

United Nations Failure: IMO Ship Scrap Treaty 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 clearly a tragedy of disastrous waste management practices and the injustice of externalizing the costs of industry on the backs of the environment of developing countries and the health of the poorest of the poor. This is precisely the scope and intent of the Basel Convention – a body that by consensus asserted that developed countries should no longer be allowed to export any hazardous wastes to developing countries.

But a powerful shipping industry, cynically assisted by their hosts **Norway, Japan and Greece**, and horrified that they might no longer be able to profit at will by such egregious environmental injustices and externalities, insisted that Basel was incompetent to manage the issue. Instead of allowing Basel Parties to close the loopholes available to ship-owners, they instead ran for the cover of their own United Nations clubhouse – the International Maritime Organization (IMO). It is now clear that the industry strategy intended to use one UN body (IMO) to undermine 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 has delivered precisely that. In so doing they have turned back the clock and discarded not only principles and obligations established in the Basel Convention but almost every long standing global principle relevant to human rights and hazardous waste management.

Breaking with Principle to Break Ships

The following well established principles of international policy and law have been 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 managing end-of-life ships properly are significant and 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 on earth, working in countries lacking an appropriate legal framework and waste management infra-structure.

- **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 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 embodied in Basel obligation (Article 4,2,b).

- **Substitution Principle / Waste Prevention Principle**

While waste management is not part of the scope or expertise of the IMO, shipbuilding rightfully is, and so the opportunity 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 activated in the binding text by a review process for ship materials.

- **Principle of Environmentally Sound Management**

While the Draft Convention purports to support Environmentally Sound Management, IMO declined to define it and to set mandatory criteria for what constitutes safe and sound ship recycling. Rather, they just expect 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 ensure the IMO, ILO and Basel Guidelines, and without mandatory criteria there is no reason this will suddenly change. Most telling, the IMO Convention even fails to condemn the disastrous **beaching** method -- a platform for operations that seeks to manage hazardous wastes without containment in the sensitive coastal zone. The IMO's continued "neutrality" with respect to beaching oil laden, toxic ships, is sadly telling of their commitment to ESM.

Basel Denied: Not an “Equivalent Level of Control”

In 2004, at its 7th 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...”

Basel and IMO: Equivalency?	
Basel Convention	IMO Convention
Scope includes all ships	NO. Government / small ships not covered
Establishes global definition of waste and hazardous waste.	NO. Refuses to recognize existent (Basel) definitions of hazardous wastes or wastes. Presence of hazardousness triggers no special trade control.
Illegal traffic is considered criminal	NO. Violations not necessarily criminal.
Enforcement/inspection possibility by port states not limited.	NO. Port state control severely limited to finding an inventory on board but cannot check the validity of inventory.
Valid contract needed before export.	NO. No contract required.
States allowed to impose stricter requirements. States allowed to prohibit import of any waste.	NO. No such provisions.
Obligation to minimize transboundary movement of hazardous waste, in particular to developing countries	NO. 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)	NO. 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.	NO. 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	NO. State-to-State communication (notification and consent) between port states, flag states and ship recycling states is not required.
ESM obligation cannot be transferred to States of import or transit.	NO. Places the burden of dealing with end-of-life vessels and ESM on the ship recycling state.
Defines Environmentally Sound Management	NO. Fails to define ESM and fails to prescribe mandatory criteria for achieving ESM for ship recycling.

Sadly, as can be seen from the non-exhaustive table above, the IMO has completely ignored the Basel Parties' concern for achieving an “Equivalent Level of Control” to that of the Basel Convention. Yet for Parties to the Basel Convention there is a legal basis for the necessity of such equivalence. Short of an amendment to the Convention altering its scope, any regime that governs the transboundary movement of hazardous waste ships outside of the Convention will need to adhere to Article 11 of the Convention. Article 11 however requires that “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.”

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 their responsibilities. 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 assured.

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 been unwilling to take action to significantly improve conditions at their ship recycling yards. They continue to authorize yards that are not conducting safe and sound management. Similar to flag states, the ship recycling industry is competitive on the basis of least cost recycling/greatest cost externalization. Yard owners exercise considerable influence politically and economically in ship recycling states and without third party audits and approvals there is no incentive for anything to change. The result will likely be that ship recycling states will not ratify the new Convention, or worse, will ratify and follow with institutionalized non-compliance – continued authorizations of yards.

Basel Parties Must Take Responsibility: The draft IMO Convention is tailored by and for the shipping industry to maintain business-as-usual. It is set to turn back the clock on long established global principles; it will fail to provide an “equivalent level of control” to the Basel Convention; and even on its own terms it will fail as there is little motivation by its “responsible parties” to change the very profitable enterprises in which they are engaged. Sadly, the IMO Convention has been designed as a “rubber stamping convention”, with certificates signed, sealed and ships delivered without any concern for veracity and rigor of such self-serving declarations while little changes on the ground. It is incumbent on Basel Parties to send a clear message to IMO that turning back the clock to abandon long Basel’s principles and control is *not acceptable*. There is still time to state clearly, what is now revealed plainly: *This emperor has no clothes!*

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