



turn back the toxic tide

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Basel Non-Compliance Notification Report

prepared by the Basel Action Network

January 31, 2006

Country Violation: FRANCE

Urgent Action Required

Due to recent alarming instances of certain states acting in violation of their obligations under the Basel Convention, and due to the weak response by the international community and the Basel Convention Secretariat to take actions to address such violations, BAN has initiated an NGO driven non-compliance reporting mechanism for the Basel Convention. This NGO non-compliance mechanism is made all the more necessary due to the fact that the Basel Convention's formal non-compliance mechanism officially adopted by the Conference of the Parties (COP6), does not allow any triggering mechanism for civil society, and likewise lacks any accountability or enforcement provisions.

It is our hope that these notifications will foster a climate of better accountability and respect for multilateral environmental agreements, in general, and for the legal obligations under the Basel Convention, in particular. We also hope to place pressure on those states that are in non-compliance or are abetting non-compliance to cease at once. Timely reporting of the violations will help rectify the immediate case in question.

The BAN notifications will be published as Basel Non-Compliance Notification Reports whenever we have gathered compelling evidence of either -- a) a Party acting out of compliance with the Basel Convention's obligations; or b) a state otherwise encouraging, aiding or abetting non-compliance of the Basel Convention. This report is the sole property and statement of the Basel Action Network (BAN). Each such notification will be posted on the BAN website in a special section and at the same time will be forwarded to:

1. The Foreign Affairs and Environmental Ministries of the States Concerned;
2. The UNEP Executive Director;
3. The Basel Convention Secretariat;
4. Office of the United Nations High Commissioner for Human Rights;
5. The United Nations Human Rights Special Rapporteur on Illegal Traffic of Hazardous Waste;
6. Basel Action Network's Mailing List; and
7. Relevant News and Trade Media.

BASEL NON-COMPLIANCE NOTIFICATION

Case Title: French Vessel "Clemenceau" Toxic Waste Export

Case Number: 2006-1

Violating State: France

Treaty Sections Violated: Articles 1, 4, 6, etc.

Date: January 2006

Documentation:

1. French Official Statement to Supreme Court Monitoring Committee of India annotated by BAN, 24 January 2006; http://www.ban.org/pdfs/statement_of_french_government_on_clemenceau.pdf
2. "France's Export of Decommissioned Aircraft Carrier *Clemenceau* to India in Violation of International, and National Law", prepared by BAN, 12 January 2006. http://www.ban.org/pdfs/ban_clemenceau_summary_of_violations.pdf
3. "The French Deception: PCBs and the *Clemenceau*", BAN, 31 January 2006 http://www.ban.org/pdfs/the_french_deception.pdf

Case Description: France Disposes of PCB and Asbestos Laden Vessel to India

On December 31, the shell of what once was France's mightiest vessel, the aircraft carrier *Clemenceau* was towed out of the port of Toulon after a French court declared that it was exempt from the Basel Convention due to the fact that the ship is a "warship". This allowed the *Clemenceau* to be exported from France to India in what can only be seen as a clear violation of the Basel Convention. Indeed all of the 5 categories outlined in Article 9 (Illegal Traffic) of the Convention have been violated, making the export of the *Clemenceau* illegal traffic and a criminal act.

The French action is shocking, for up to this point, France had joined in all of the Basel Convention decisions, including Decision VII/26 which concluded that a ship can be a waste as defined in the Convention and be a ship at the same time, and called on all Parties to fulfill their obligations under the Convention with respect to ships destined for dismantling. Further, France had ratified the Basel Ban Amendment forbidding exports of hazardous wastes to developing countries.

The exact nature and quantity of the hazardous materials on board the *Clemenceau* is difficult to ascertain, as the French government has failed to accomplish even the basic requisite step of completing a hazardous waste inventory prior to export. In the case of asbestos while the amount remaining on board is disputed and unclear, and is currently being subject to a court ordered independent review, the French have admitted they have left as much as 45 tonnes of asbestos on board but call this amount "miniscule".

In the case of PCBs the French have been even more deceptive. They have reported to both Egypt (transit state) and India that there are no PCBs on board. And yet they have failed to test for, or quantify the solid matrix PCBs that are expected to be found throughout the vessel in paints, cables, wiring, flooring, plastics, gaskets, insulation, etc. Naval vessels commissioned before 1976 contain massive quantities of PCBs, this has been known since 1989, and has presented serious problems for the United States military. It is not possible that the French government could be ignorant of this fact. It is certain that if the French had removed any solid PCB contaminated materials they would have noted the existence of PCBs in the *Clemenceau*. But instead they have remained eerily mute on the subject of solid matrix PCBs. Yet assertions of "no PCBs" are not credible without testing, and likewise it is not possible to adhere to all norms of the Basel, Rotterdam or Stockholm Conventions *vis-à-vis* PCBs without having first done testing to quantify the presence of these dangerous compounds.

According to US government data, a similar aircraft carrier, the former USS Oriskany (25,129 light weight tonnes, 278 meter) contained 890 tonnes of solid and liquid PCB contaminated materials onboard in concentrations above the Basel regulatory threshold of 50 parts per million. The solid PCB contaminated material that was more difficult to remove was 795 tonnes. The US study on the USS Oriskany concluded that 95% of PCB loading came from electrical cable insulation, followed by bulkhead insulation.¹

Extrapolating proportionally from the lightweight tonnage of the USS Oriskany and the *Clemenceau* and allowing a 10% margin of error we have computed that the *Clemenceau* (24,772 light weight tonnes, 265 meters) will contain PCB contaminated material above 50 ppm in solid matrix form in a range between 744 and 823 tonnes. And this is just the PCBs; as mentioned previously, there is also the issue of asbestos.

The French Government claims that altogether the ship contained no more than 160 tonnes of asbestos of which 115 tonnes have been removed. However, the head of the company that was originally retained to carry out the decontamination of the ship stated that the *Clemenceau* contains over 500 tonnes of asbestos, and that this amount could go up to 1,000 tonnes once dismantling begins. The fact that France is even willing to send asbestos to India is the height of hypocrisy, when the very same country went before to the World Trade Organization in 1997 to fight for its ban on the export of asbestos by Canada, and won a favorable ruling.

Basel Violations:

BAN has prepared a paper elaborating on the Basel Convention, international, European Union and Indian law violations of France's illegal export, this paper entitled "France's Export of Decommissioned Aircraft Carrier *Clemenceau* in Violation of International and National Law" is attached in this Notification.

The violations of the Basel Convention however can be summarized as follows:

First it must be understood that a lack of testing, cannot excuse France from its Basel obligations. Ignorance of the presence of PCBs is no excuse under the law. The Basel Convention requires that all waste exports be correctly characterized. The absence of pertinent data cannot be seen as: "a *transboundary movement of hazardous or other wastes conforming in a material way with the documents*" as required by the Convention.²

Thus when France reports that there are no PCBs in solid matrix form, unless they actually conduct tests to determine if that is indeed the case, they are not excused from the intent of the Basel Convention which requires a full characterization of waste in question prior to export.

Further, any transboundary movement of hazardous wastes or other wastes that obtain consent from "States concerned through *falsification, misrepresentation or fraud*" is illegal traffic under the Convention. It can be considered that claiming an absence of PCBs as France has done both to Egypt and to India is in fact "misrepresentation".

As PCBs above 50ppm concentrations fall within the scope of the Basel Convention when there is intent to dispose of these materials, the export outside of the Basel regime constitutes illegal traffic under the Convention if these PCBs do in fact exist on the vessel.

1. France's claim that a ship, being a military material, is somehow not a waste is without legal merit. The Basel Convention possesses *no exemption* for military ships or wastes of any kind and does not recognize any form of "sovereign immunity" for military vessels. Nor is it possible for Parties to make

¹ "Final Report: Polychlorinated biphenyls (PCB) Source Term Estimates for ex-Oriskany (CVA 34), Dec. 7, 2004. Prepared for the Program Executive Office (Ships) and Navy Inactive Ships Program, by L. Thomas Pape, available at: <http://www.epa.gov/region4/air/lead/documents/CVA34FinSrcTermReportrev4.pdf>

² Basel Convention, Article 9,1,d. Illegal Traffic,

such a reservation in the Convention. (France has misrepresented the fact by claiming an illegal non-existent exemption)

2. The ship is clearly a waste and a ship at the same time as it is a material or object and there is clearly intent to dispose – the requisites for defining waste in the Basel Convention. As a waste containing asbestos and likely PCBs over 50ppm, the *Clemenceau* falls under the Basel Convention's scope of hazardous waste. The following are the 5 listed Basel requirements found in its Article 9, the absence of which constitutes illegal traffic. France has likely failed on all counts:

- Prior to export, the transboundary movement must be notified to all transit states and the importing state prior to leaving the exporting state. (France failed to do this)
- Consent to import and allow transit of a Basel waste ship from the states concerned must be obtained prior to export (France failed to do this)
- Getting consent from an importing or transit state through falsification, misrepresentation or fraud is illegal traffic. (France got consent from Egypt to pass the Suez Canal after sending them a communiqué stating that the ship contained no PCBs, when in fact the ship had never been tested for solid PCBs.)
- Shipments of waste that do not conform in a material way with the documents (the documents refer to the fact that the waste must be fully characterized with a tool such as an inventory as required in the Convention in Article 6) (France has not tested the *Clemenceau* for likely contaminants such as PCBs in solid form, and thus the export does not conform with the documentation)
- The export cannot result in the deliberate disposal of hazardous wastes or other wastes in contravention of the Convention. (France's misrepresentation of the PCB problem and the capacity of India to manage this problem will result in deliberate disposal in a manner which is not environmentally sound management as required in the Convention)

3. The Basel Convention requires that no transboundary movement can occur without assurances that the destination facility is engaged in environmentally sound management as defined in the Convention. These requirements are laid out in Article 4; paragraph 2 (e) and (g). In this regard it is noteworthy to understand the internationally recognized fact that the shipbreaking yards in Alang do not constitute environmentally sound management as required under the Convention.

This is precisely why the Basel Convention produced Guidelines for the ESM for the full and partial dismantling of ships which specified steps by which the existing yards found in India and in other developing countries are to undertake in order to fulfill the objective of environmentally sound management. And the steps to date as delineated in the Basel Guidelines have not been accomplished in full. While it may not be politically correct to state it so bluntly, it is a well known fact that the beach shipbreaking yards of South Asia cannot be considered ESM under the Convention. The Convention defines ESM broadly as:

"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."

By any environmental and occupational health accounting, it cannot be seen that the yards in Alang are taking all practical steps to ensure protection of human health and the environment from the PCBs likely to be onboard the *Clemenceau*. (France has failed to ensure environmentally sound management for PCBs in Alang)

Recommended Actions:

As of this writing, the *Clemenceau* is still on course for the breaking yards in Gujarat, India. However, a small obstacle is in France's way. On January 16, 2006 India's Supreme Court Monitoring Commission (SCMC) has disallowed the entry of the *Clemenceau* in Indian waters, until the SCMC issues its final recommendations before February 13, 2006.

It is very unfortunate that developed nations such as France continue to take advantage of low-wage countries and export a disproportionate burden of their hazardous waste ships to these countries in contravention of international law, and environmental justice. The fact that France is perpetrating this unjust and abhorrent practice is shameful. A country that boasts of higher living, occupational and environmental standards should be part of the solution not a cause of the global problem. Based on the above we make the following recommendations for action:

1. India must never allow France to export the *Clemenceau* to them without first having fully quantified by independent survey, the presence and amount of solid PCBs, asbestos and other hazardous substances on the ship. If PCBs or asbestos are found then the export is a violation of either the Basel Convention or the Rotterdam Convention. If full testing does not occur the export is likewise illegal.
2. France must renounce its false claim that the ship is not a waste and must take the ship back to France at once as its export is a clear violation of Article 16 of the European Union Waste Shipment Regulation.
3. France must conduct a full and impartial independent survey of all expected contaminants on board the ship as part of its construction, and then explore ways to decontaminate the vessel in France prior to any onward export for steel recycling.
4. India must not allow itself to be bullied into accepting what is clearly an affront to international law and human rights. They have a long list of legal reasons to deny the shipment. If they fail to do so, they reveal themselves to be corrupted by an industry with a dismal track record for concern over human health and the environment or international law.
5. All Parties and NGOs must speak out against this clear violation of the Basel Convention on the Part of France. Direct protests to the Basel Secretariat, and French President Jacques Chirac <http://www.elysee.fr/>

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