

# Annotations and Commentary on Japanese Paper Regarding the Draft IMO International Convention for the Safe and Environmentally Sound Recycling of Ships in the Context of Decision VII/26

Provided to the Eighth Conference of the Parties to the Basel Convention  
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## Basel Action Network (BAN)

### BAN Introduction

What follows are BAN's annotations integrated into the Japanese Paper prepared for COP8. BAN provides these comments to articulate a divergent viewpoint and to point out that the development of the IMO Draft Convention in which Japan and Norway have taken a leadership role, has been undertaken without regard or consideration of Decision VII/26.

While the Japanese submission seems to indicate that the MEPC Correspondence Group charged with drafting the Convention, has gone to some effort to *consider or assess or in any way be concerned with* Decision VII/26 and the concerns of the Basel Convention, nothing could be further from the truth. Anybody that has attended the joint working group sessions or the Ship Recycling Correspondence Group know that the subject of the Basel Convention is rarely discussed, particularly in terms of legal obligations. At the most recent MEPC55 meeting in London in October for example, the crucial terms, that are vital to the Basel Parties of "equivalent level of control", or "environmentally sound management" were never mentioned, by Japan, Norway, Germany, USA or any other IMO regular draft Convention contributor. The same could be said for concern for the ILO and their Conventions. Certainly, this Japanese submission has not released to the MEPC or the correspondence group for discussion of any kind there.

It is clear, rather, that this paper is only for the consumption of the Basel Parties to provide them with some kind of assurances, that the MEPC and IMO Ship Recycling Correspondence group is concerned about the issues identified by the Basel Convention Parties. This paper then, as it appears to suddenly concern itself with the concerns of the Basel Convention and its Parties, coming as it has from Japan who has led the charge away from Basel principles, obligations and competency to the shipping industry friendly IMO, is in our view disingenuous.

But more unfortunately it contains many misleading statements which warrant in our view further comment and analysis. BAN welcomes your thoughts on these annotations. Please find BAN's paragraph by paragraph comments below, indicated in a gothic style font, and beginning with these arrows >>> and with **yellow highlighting**.

## **Development of the draft International Convention for the Safe and Environmentally Sound Recycling of Ships - Assessment in the Context of Decision VII/26**

**Submitted by Japan**

## I. Introduction

1. The seventh meeting of the Conference of the Parties to the Basel Convention adopted Decision VII/26 “Environmentally sound management of ship dismantling”. The purpose of this document is to report on how the International Maritime Organization has responded to this decision, in particular to operative paragraph 5 of decision VII/26, through its development of the draft Convention for the Safe and Environmentally Sound Recycling of Ships (“draft IMO Convention”, hereafter). This document is to elaborate a broader scope of the draft IMO Convention and relevant to decision OEWG-V/8 where the fifth session of the OEWG invited Parties “to make comparisons with the expected level of control and enforcement to be provided by the draft instrument on ship recycling in its entirety.”

## II. Towards an internationally mandatory regime on ship recycling

2. At the time when COP7 was held (25-29 October 2004), there was no international agreement to develop an international mandatory instrument on ship recycling.

>>> Actually while there was no specific agreement to develop an internationally mandatory instrument on ship recycling, there were various ILO treaties dealing with aspects of this issue, and of course the Basel Convention held and currently holds competence over ships at end-of-life if they are involved in transboundary movements.

It was not until the 5<sup>th</sup> December 2005 that States reached such an agreement at the IMO Assembly. The IMO Assembly adopted Resolution A.981(24) requesting the Marine Environment Protection Committee to

“...develop a new legally binding instrument on ship recycling that would provide regulations for:

- .1 *the design, construction, operation and preparation of ships so as to facilitate safe and environmentally sound recycling, without compromising the safety and operational efficiency of ships;*
- .2 *the operation of ship recycling facilities in a safe and environmentally sound manner;*  
*and*
- .3 *the establishment of an appropriate enforcement mechanism for ship recycling (certification/reporting requirements);”*

>>> Unfortunately these are not the same objectives of the Basel Convention. And unfortunately we believe that the draft text is too weak at present to accomplish even the three above. The Basel Convention first and foremost is an instrument to prevent developing countries from being victims of global movements of hazardous waste and being burdened disproportionately by them. The Basel Convention seeks to minimize transboundary movements of hazardous wastes and in particular to developing countries. And it places the ultimate responsibility with the polluter/producer of the waste. The IMO approach on the other hand believes it is fine to pretend that all countries are the same and that developing countries with cheaper labor can simply bear the environmental burdens of the effluent of the affluent. The approach above outlined by the IMO is devoid of the human rights aspects of the Basel Convention and the concept of producer responsibility and has reduced its objectives to naively simply seeking environmentally sound management once the ship arrives at the shipbreaking state in a very toxic form while providing no funding mechanism nor taps no economically motivated entity for this to be realized. Upstream obligations to minimize generation and transboundary movements are also considered a part of the definition of ESM in the Basel Convention and though the IMO draft purports to tackle green design, all that is being proposed in this regard is banning already banned substances. But even in the limited objective of combining a recycle-ready ship with a recycle-ready yard, the draft Convention is far from convincing that there are enough teeth and enforcement mechanisms to ensure that the disastrous status quo will not continue for a long time to come.

3. The target date for consideration and adoption of the instrument was set for the biennium 2008-2009 by this Assembly Resolution. Since then, the Marine Environment Protection Committee (MEPC) in the IMO has been rigorously negotiating the draft IMO Convention. The current text is contained in MEPC 55/WP.5, and this text is the basis for the considerations undertaken below.

4. In the Resolution A.981(24) and the draft IMO Convention, the term “ship recycling” is used. Therefore this term is being used throughout this document.

### III. Equivalent level of control

5. The Conference of Parties, by operative paragraph 5 of its decision VII/26, “*Invites the International Maritime Organization 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....*”. Before analysing the level of control to be established in the draft IMO Convention, the following observations should be duly noted:

1. The term “equivalent level of control” used in decision VII/26 is a political term reflecting an objective, and not a legal term defined in a legal instrument.

>>> While this term, prior to Decision VII/26 has had no legal reference as such, it is not without a legal basis. The legal basis is found in Article 11, the only mechanism short of amending the Convention that will allow for alternate agreements to be utilized to cover wastes under the scope of the Basel Convention. BAN has written extensively on this subject. See: [http://www.ban.org/Library/mepc\\_submission\\_long.pdf](http://www.ban.org/Library/mepc_submission_long.pdf) Article 11 states:

>>> “*Notwithstanding the provisions of Article 4 paragraph 5, Parties may enter into bilateral, multilateral, or regional agreements or arrangements regarding transboundary movement of hazardous wastes or other wastes with Parties or non-Parties provided that such agreements or arrangements do not derogate from the environmentally sound management of hazardous wastes and other wastes as required by this Convention. These agreements or arrangements 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.*” [emphasis added]

>>> The language “do not derogate from” and “provisions that are not less environmentally sound” echoes Decision VII/26 and its call for “equivalent level of control”. When we read further that this must be considered “in particular taking into account the interests of developing countries”, we are handed an even more explicit reminder or the importance of adhering to the Basel Convention’s provisions outlined above in the case of export of ships for scrapping – the vast majority of which takes place currently in developing countries. So we can see that the terms “equivalent level of control”, does in fact have a legal basis and indeed that legal basis is ignored almost immediately by the IMO’s refusal to recognize the special considerations for developing countries.

2. Furthermore, the Conference of the Parties should recall that the term “equivalent” was chosen on purpose to underline the thing which COP 7 did not seek for an identical system of control. Implicitly, it should be recognized that the control mechanisms in various regimes may vary conceptually.

>>> The definition of “equivalent” can be debated of course. If it was equivalent in a mathematical sense it would be identical. However we concur that the word used with the word “level” does imply that the control experienced in one regime can be replicated by various means *but it does need to be replicated in its specific intent and effect.*

3. The term “equivalent level of control” does not refer only to the reporting system, but to the entire mandatory IMO ship recycling regime to be developed. The logic behind this wording in decision VII/26 was that the approach to be chosen in a mandatory IMO ship recycling regime may be different from that of the Basel Convention.

>>> We would of course agree that far more than just a reporting system needs to be at equivalent level and indeed VII/26 gave that as *one example*. However the notion that some vague metric of equivalency can be applied toward the total probable possible future effect is not acceptable. A comparison of real world outcomes is impossible because the Basel Convention nor the IMO regime has had significant real world experience as applied to controlling end-of-life ships as waste that can be measured. Rather what has to be compared is the actual objectives and obligations on Parties and other entities and their legal ability and rights to control ships-as-waste and the entities controlling those ships with a view to achieving the objectives of *both* Conventions. Already it is abundantly clear that the obligations and rights and abilities of Parties to control ships as waste is vastly diminished in the Draft IMO Convention.

4. An evaluation on the “the level of control” is an evaluation on the expected functioning of the control mechanisms of the Convention. However, the effects of the Convention after it enters into force would be the real test of the control mechanisms established in the Convention, and it is for future consideration. Such evaluation should be based on how it achieves the policy objectives to develop the Convention (“outcome”), and the “comparison” with other legal instruments which do not have identical policy objectives is not necessarily useful.

>>> Again this notion of evaluating expectations or waiting for the real life experience and then measuring it against what the objectives were is not at all what the Basel Parties had in mind. The equivalent level of control must be self evident in the text of the Convention and what its objectives are and what it requires of the Parties or does not require. Finally the last sentence of the above paragraph is really inappropriate as it basically seems to admit that the objectives of the IMO Convention and that of the Basel Convention are not the same. We maintain that this is fundamentally the problem with the IMO Convention. While they were entirely within their rights to add objectives (e.g. to foster green shipbuilding) they were not within their rights to throw out the fundamental obligations of the Basel Convention (e.g. to minimize transboundary movement). Unless its objectives are in better alignment it will be difficult if not impossible for it to have an equivalent level of control and as such Basel could never cede its competence without ceding its *raison d'être*. And this it must not do.

6. The first observation in analysing “the level of control” in the draft IMO Convention is that the scope of the Conventions is different. The draft IMO Convention, the draft Convention for the Safe and Environmentally Sound Recycling of Ships, is about life cycle of ships, while the Basel Convention primarily focuses on the transboundary movement of hazardous wastes and their disposal.

>>> This is largely correct. It is understood that most of the comparison will be on the mechanisms that take place after a ship becomes a waste. However the Basel Convention does call for a minimization of the generation of hazardous waste which would be consistent with a treaty that sought green design and ship longevity. Unfortunately the Draft IMO Convention does very little beyond the expected (e.g. banning banned substances) with respect to Greening Shipbuilding.

The second observation is that the draft IMO Convention applies equally to all parties, while the Basel Convention differentiates developed and developing countries.

>>> It is telling that the author here describes the IMO Convention as if it were not a work in progress but is already decided as to what it will cover. There is no reason why the IMO Convention cannot still address issues of environmental justice as does the Basel Convention. There is no reason it cannot be changed right now to incorporate Basel Convention objectives. It is true that the Basel Convention, as did most of the global community, recognises the principles of human rights, environmental justice, producer responsibility and the principle of common but differentiated responsibility and from this basis stemmed its control mechanism. It is true that the fundamental flaw of the IMO Convention is that it naively proceeds as if the economic and political world were made up of equal parties in terms of wealth and capacity and rights. Without a basis in human rights which recognizes the exploitation of cost externalizations made possible by the forces of globalization, the IMO Convention will not achieve an equivalent level of control. It is the reality of the world that the world is not on an equal footing and that is precisely why international law is necessary to prevent free trade dictates from equating to exploitation. The IMO Convention fails to address these fundamental and long established principles and the need to prevent those responsible for producing wastes from disproportionate dumping of toxic waste ships on developing countries. IMO wishes to turn back the clock to a time where discussions of social responsibility and human rights were hushed.

The third observation is that the nature of international shipping and transboundary movement of wastes differs substantially. These three observations indicate that there may be good reasons for having different control mechanisms under the two regimes.

>>> While this may well be true, the different nature of ships is being used as a justification for a full retreat from Basel Convention principles, objectives and obligations and this was never necessary to accommodate the differences in ships. It was hoped that the IMO would close the loopholes available to ships by their transient nature, not create a regime with far more loopholes than the one that was considered ineffectual. Where is the responsibility on shipowners as waste generators? Where is the Polluter Pays principle? Where is the concept of preventing movement of toxics to developing countries (e.g. by pre-cleaning)? Where is the concept that states concerned can refuse to allow a transit to a shipbreaking state to take place? Where is the notion that all wastes, government owned or otherwise will be covered. Where is the Substitution Principle? We could go on and on. These less rigorous aspects are NOT the result of the difference between ships and other wastes, they are the result of an industry that wants to continue to externalize its costs including environmental liabilities to low-wage countries that will for the foreseeable future lack the adequate infrastructure to maintain ideal technology to mitigate the disproportionate amounts of harm directed their way.

7. An example regarding the scope is the provision in the draft IMO Convention which controls the use of hazardous materials onboard (Regulation B-I-1). Through this provision, which prohibits or restricts the use of certain hazardous materials, the problem identified in the recycling process (the grave) can be solved in the cradle. Therefore, simply evaluating at the control mechanism at the end of life cycle is insufficient.

>>> This is hardly a compelling argument considering what the IMO Convention is planning to do with this section. They are willing at Japan's insistence only to ban that which has already been banned internationally! The notion of utilizing the substitution principle to constantly ratchet-up green ship design has been eliminated in all but rhetoric. Thus while it was hoped that IMO could solve the problem in the cradle, they are unwilling to do so. Finally, Even if strides were made in Green Design that cannot justify becoming weaker than Basel on end-of-life obligations.

8. In light of the above, an extensive comparison of the level of control in the draft IMO Convention and the Basel Convention will have methodological challenges.

>>> I think this argument is rather wishful thinking. If we are to confine the comparison to end-of-life and transboundary issues, and look at the objectives, and the abilities, obligations and rights of Parties to achieve those objectives, the job could be readily done. Indeed BAN/Greenpeace have already taken a first effort at this and it is illustrative and not difficult. Please see: [http://www.ban.org/Library/IMO\\_Draft\\_Convention\\_CritiqueFINAL.pdf](http://www.ban.org/Library/IMO_Draft_Convention_CritiqueFINAL.pdf)

Therefore, the approach to focus on the control mechanisms of the draft IMO Convention was taken since that was the primary issue addressed in Decision VII/26.

9. The draft IMO Convention contains several provisions which establish an extensive system of control mechanisms. Brief overview of the main mechanisms is presented below. Further details are given in the Annex to this document. The control mechanisms may be categorized as follows:

- **Control mechanism 1 – A Party and its ships (Flag State obligations)**  
A Party to the Convention shall take effective measures to ensure that ships flying its flag or operating under its authority comply with the requirements of the Convention. A survey and certification system is established throughout the operating life of ships, that means, from the design and construction stage to the phase of preparing for recycling.

>>> While such surveys and certifications systems are useful mechanisms, and can provide information, they do not allow for the prevention of the transfer of hazardous waste to developing countries even if an individual country authority wanted to prevent such a transfer because they had reason to believe it would not be conducted in an environmentally sound manner, or even if they simply believed it was an affront to human rights. Surveys and inventories and certificates are pieces of paper which are not at all guaranteed to change the status quo of environmental harm. This is particularly true without funding to change things on the ground and without independent auditing of operations and certificates. Further the monster in the closet which IMO refuses to address is the notorious lack of responsibility and accountability of many flag states often known as "flags of convenience" states that basically sell flags as if they were commodities rather than being able to provide any real authority over those flying the colors. Placing responsibility on these countries which are *in the business* of competing on the basis of minimal controls and who in any case have negligible powers over the flag fliers, would seem to guarantee that these countries would simply not ratify the Convention or perhaps choose to exploit what appears so far to by many loopholes in it so as to avoid losing their very lucrative flag customer base. Denial of these ugly realities of globalization is what will doom this Convention to failure.

- **Control Mechanism 2 – A Party and the ships flying the flags of other Parties (Port State control rights).**  
A port state control regime will provide for that ships of other Parties and non-Parties comply with the Convention in the operating life of a ship.

>>> If one reads this seeming ongoing compliance mechanism in the actual IMO Convention Draft one realizes that the port states *only* have the right to inspect to see if the ship has an onboard valid International Certificate for a ship Inventory of Hazardous Materials, and that is all. Indeed the draft goes out of its ways to intentionally severely limit the police powers of the port state and must accept any paperwork that is validated. They are not allowed to conduct spot checks to further determine the validity of the paperwork. Such a system places far too much attention on paperwork and unless there is an extremely rigorous third party conducting the certifications, it will be easy for fraud to occur. In the Basel Convention any State Concerned (exporting state, transit state, or importing state) can deny the transboundary movement not only if the shipment is lacking a movement document but also for a variety of other reasons including reason to believe there will not be environmentally sound management, lack of prior informed consent from all other states concerned, etc. The IMO port control is a rather weak and hardly equivalent control mechanism.

- **Control Mechanism 3 – A Party and its recycling facilities**  
Parties shall take effective measures to ensure that recycling facilities under its jurisdiction should comply with the requirements of the Convention. An authorization regime for ship recycling facilities is established under the Convention.

>>> Currently all facilities around the globe are supposedly licensed in accordance with the requirements of the law. However the norm in many shipbreaking operations in South Asia is that the facilities don't comply with the law but are still allowed to hold a license. The fact that this Convention might apply more rigor than the status quo as a standard gives little comfort unless there is third party independent auditing of the actual operations as a means of achieving compliance. In the Convention the audits indicated check as to whether administrative government systems are in place. They don't as yet audit actual operations. Thus there is no indication that the license to pollute will not simply continue as it has for many, many years.

#### **Control Mechanism 4 – Communication and exchange of information**

In order to ensure implementation of the Convention, a provision is established to give Party the rights to request the information on which basis another Party authorized specific facilities. Furthermore, Parties are required to submit to the Organization (IMO) a list of authorized recycling facilities and other information which are important in order to assist the implementation by Parties and to monitor implementation of the Convention.

>>> It is difficult to get too excited about a treaty really making a difference when all that it provides, as one of its most important obligations, is for what one would expect is a common courtesy of one state responding to another state when a trade inquiry is made. Note however that inquiries are possible but not consent or denial. It is also *not* extraordinary that when a Convention requires only authorized facilities be utilized that a list of such would be made available. The trouble again is that currently this list of licensed facilities in India, Bangladesh, Pakistan and China is available but that does not mean that they are operating in an environmentally sound manner. In fact they are not, and the draft Convention provides no funds for them to change, nor an adequate enforcement mechanism to ensure they do. Finally, it must be stated that exchange of information cannot be called a control mechanism.

- **Control Mechanism 5 – Reporting at the end of life**

The reporting system is established to ensure parties (Flag States and Recycling States) to exercise full control options through the relevant phases of recycling. It is designed for the Parties to make sure that the certified ships go only to the authorized recycling facilities. Prior informed consent in the precise Basel Convention sense is not used because the effect of other control provisions of the draft Convention makes it unnecessary.

>>> What is missing is that competent authorities of ship recycling states are not in direct communication with each other with the ability to allow or disallow trade. It is almost as if the author's went out of their way to prevent one state from denying an onward movement of a ship. But at the same time bending over to ensure that private sector trade is not impeded at any cost. Nor is there any return-to-sender mechanism should the deal go wrong. The recent incident wherein Denmark asked India to return a ship and India refused would be institutionalized rather become a prominent example of Indian non-compliance. As would deliveries of ships to countries that did not want them, because while a state of course can deny their own company right of action, they can do nothing in terms of consent or denial extraterritorially. We foresee real problems with trade in hazardous materials taking place without the basic precepts of prior informed consent and return-to-sender being in place. Supposing a flag state has declared a ship ready for recycling and granted it such a certificate. And the ship sails toward the shipbreaking state. Then the competent authority of the shipbreaking state realizes that the ship cannot be adequately dealt with in the country. Then the ship arrives and becomes an environmental liability with little recourse for redressing the liability.

- **Control Mechanism 6 – Detection of Violations**

The draft Convention establishes extensive provisions for detection of violations, and how Parties shall cooperate on that issue. Furthermore, the draft Convention establishes requirements for investigation of alleged violations and sanctions.

>>> Actually the ability and provisions to detect violations appears limited as we have mentioned. However once a violation is detected, in the case of a violation of a ship, we wonder how a flag of convenience state will have the ability to sanction or punish the ship and what incentive they will have to do so as the violator can simply reflag elsewhere to avoid such punishment in future. Sanctions by those who have little power or authority over the sanctioned (e.g. shipowner involved) and are beholden to them in a highly competitive flag market, are bound to be fundamentally toothless. Likewise where is the incentive for a flag state to even look for violations?

- **Control Mechanism 7 – Auditing implementation**

An auditing scheme, which is to determine non-compliance and to treat Parties found to be in non-compliance, is envisaged in the Convention.

>>> The auditing described seems to be about having administrative systems in place rather than auditing to determine whether there is environmental or occupational harm. Lack of institutionalized third party audits is a major flaw in this draft Convention.

10. The draft IMO Convention establishes a survey and certification system for ships, and an authorization system for recycling facilities, and that international standards are the basis for such certification and authorization, so that a different reporting system than that of the Basel Convention is required in order to ensure full enforcement throughout the process. A Flag State cannot issue an International Ready for Recycling Certificate without having the Ship Recycling Plan and the finalized Inventory of Hazardous Materials, and a Recycling State has the possibility to take a control action prior to the start of the ship recycling process.

>>> But the recycling state cannot halt the sailing or the transfer of the ship to their territory even if they believe it constitutes an environmental injustice. They are forced to allow the private sector to dictate trade.

11. The basic philosophy has been to provide for sufficient control and enforcement mechanisms from cradle to grave, allowing for effective implementation of the Convention. It avoids systems which unnecessarily increases the administrative burden of Parties, and which may be an obstacle to effective implementation of the Convention. An excessively burdensome system will not increase the level of control but rather the opposite. The system build upon experiences gained in other Conventions.

>>> Another observer might see a basic philosophy of finding a way to continue to exploit cheap labor and the environments of developing countries with disproportionate amounts of hazardous waste from ships by mitigating the harm from the exploitation while still perpetuating it.

#### IV. The environmentally sound management and pre-decontamination

12. By paragraph 5 of its decision VII/26, the Conference invites IMO “...to continue work aimed at the establishment of mandatory requirements to ensure the environmentally sound management of ship dismantling, which might include pre-decontamination within its scope”. Regulations in Section C of the draft IMO Convention establishes the requirements for ship recycling facilities, which have been carefully drafted to include the principles of ESM, and will be reinforced by the IMO Guidelines for safe and environmentally sound ship recycling.

>>> The “principles of ESM” is really to be found in its definition. ESM is defined by the Basel Convention 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.”*

We will see that even without reference to VII/26, any regime purporting to promote environmentally sound management, will need to provide an equivalent level of control to that of the Basel Convention. That is because “taking all practicable steps” includes, but goes far beyond merely technical guidelines for downstream waste management. “Taking all practicable steps” includes following all of the obligations of international law found in the Basel Convention as well as taking national measures such as providing monitoring, enforcement, worker protections, training, medical and emergency response infrastructure, liability and compensation protections, rights of access to information regarding risk, downstream waste management infrastructure, occupational safety and health infrastructure etc. Very often these “practical steps” which can be far more important than technological levels or standards in terms of protecting human health and the environment, are lacking in developing countries due to a lack of resources.

Additionally, it must be understood that “management” of wastes includes upstream endeavors to prevent and reduce wastes at source and not just management of wastes once produced. Transboundary movement must be seen in this light. The transboundary movement of hazardous wastes to developing countries that takes place for economic reasons represents an externalizing of operating costs of the shipping industry and thus serves as a disincentive for upstream hazard and waste reduction. Any regime looking to ensure environmentally sound management of waste ships will need to reflect the Basel obligations to *minimize trade and generation of hazardous waste ships*, and moreover, will require all practical safeguards put into place by the national and local authorities for their management.

13. Regarding the possible inclusion of pre-decontamination, it should be noted that the basic approach in the draft IMO Convention is that a certified ship shall be recycled at an authorized facility. The issue of pre-decontamination is addressed in Regulation B-II-1(2) as follows: “*Prior removal of hazardous materials as identified in the Inventory shall not be required if the recycling facility chosen is fully authorized to manage the type or amount of the material [in accordance with the standards set forth in Section C, and with special reference to the standards for the control of hazardous materials under regulation C-6]*”

>>>Unfortunately that does not explain why IMO has not diligently pursued this option to avoid the transboundary movement of hazardous wastes moving from developed to developing countries as has been established in international law. Rather it appears they deliberately are opposed to the Basel Convention principles and obligations.

14. Furthermore, regulation C-6 of the draft IMO Convention establishes requirements for safe and environmentally sound removal and management of hazardous materials. In this regulation, it is clearly said what kind of actions should be taken on several hazardous materials prior to cutting. This regulation of the draft IMO Convention will be reinforced by the IMO Guidelines for safe and environmentally sound ship recycling. The arrangement for the prior material removal where required in accordance with the capability of the recycling facility to manage the type or amount of materials shall be specified in the Ship Recycling Plan (Regulation B-II-2)

>>>It is a myth that one can mitigate all harm from these types of operations through technology particularly in developing countries where they lack the resources and infrastructure to maintain that technology to state of art standards. In any case, people will be disproportionately harmed in India and Bangladesh and not in Norway and in Japan from this treaty. That is why we have been blunt and called this draft immoral.

## V. Conclusion

15. In the view of Japan, the draft IMO Convention meets the concerns raised in Decision VII/26,

>>>This expressed view is not surprising as Japan has been anti-Basel on numerous fronts in recent years. The efforts to undermine the Basel Convention by Japan find voice not only in an IMO Convention far removed from the principles of the Basel Convention but also in their creation of the 3R initiative to lift trade barriers to waste, and in demanding in bilateral trade agreements that countries like the Philippines lower tariffs on waste imports to zero. These as well as the IMO Draft Convention are an affront and attack on Basel principles, decisions and obligations.

and the developments at the IMO should be welcomed by the Conference.

>>>They are certainly not welcomed by the environmental and human rights community and they are likewise unwelcome from many of the Basel Convention Parties who have continually been rebuffed and ignored at the MEPC Correspondence Group and within the Joint ILO/Basel/IMO Working Group.

In the development, Parties should be encouraged to contribute further, and to include the relevant expertise in their contributions. The Conference of the Parties should also welcome the targeted date for the consideration and adoption of the draft IMO Convention, and encourage Parties to keep this date.

>>>We too were encouraged to participate and *not one of our suggestions* nor those of Basel affiliated representatives in the correspondence group have ever been heeded or accepted. At his juncture, while we sincerely hope for sweeping changes, the draft Convention represents an industry-led effort to pretend to address the current shipbreaking crisis while maintaining its fundamental exploitive, immoral basis.

## VI. Action requested by the Conference

16. The Conference is requested to consider the above comments and decide as appropriate.

END