

Shipbreaking and the Legal Obligations Under the Basel Convention

Submitted by the Basel Action Network (BAN) and Greenpeace International*
for the Fourth Session of the Legal Working Group of the Basel Convention

10 January 2002

Findings/Conclusions

1. The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (“Basel Convention”) applies to the transboundary movement of ships destined for final disposal or recycling when they contain hazardous materials defined as hazardous wastes in the Convention. As such, the Convention imposes substantive obligations on all the Parties often irrespective of the Party’s status, to prevent the movement and disposal of these ships-as-hazardous-waste in contravention of the Convention.
2. A ship destined for shipbreaking is an obvious example of the kind of situation for which the objectives of the Basel Convention apply. The primary purpose of the Convention is to ensure Parties take responsibility for their own hazardous waste, establish hazardous waste disposal facilities (including recycling) within their country, minimize the generation and transboundary movement of hazardous waste, and ensure that they do not export the hazards, and damage to human health and the environment, to other countries. In most cases, ships exported for shipbreaking are a clear and convincing violation of these objectives. Therefore, it is incumbent upon the Parties to ensure that all ship sales are scrutinized to ensure that no attempted circumvention of the Convention exists.
3. The Basel Convention in its scope and obligations are not confined to prior-informed consent, but go far beyond this mechanical paperwork regime. We therefore disagree with the submission of Prof. Geir Ulfstein’s (“Prof. Ulfstein”) in its conclusion that port states have no jurisdiction over vessels destined for scrapping with regard to scrapping in other states; or that flag states are not responsible for the activities of their vessels. Indeed it is clear that many of the Basel obligations will apply to Parties holding jurisdiction over owners, brokers, captains, crew, etc.
4. We agree with the Canadian Government’s submission (“Canada”) in its conclusion that there is no need for the Basel Legal Group to propose the adoption of a new legal instrument to cover issues adequately and appropriately addressed by the Basel Convention. Rather what is needed is the adoption of a Guideline or Decision to clarify the effect of the Basel

Convention to ships. An example of needed clarification involves better defining at what point a ship will be deemed a waste and how that will be determined.

5. Similarly, much ambiguity will be overcome, and harmony with the OECD regime attained, if mirror listings in Annex VIII and IX of the Basel Convention with respect to ships-as-hazardous wastes, are added by amendment to those Annexes.
6. Pursuant to the substantive obligations of the Basel Convention, the Basel Ban has clear relevance to the issue of shipbreaking, and the importance of the Basel Ban is likewise certain. According to Decision III/1, all Annex VII countries, regardless of their status, e.g. State of Export, port state, etc., have obligations to take legal actions to prevent hazardous wastes, such as ships destined for disposal or recycling, from being exported and disposed (including recycling) in non-Annex VII countries.
7. We support any efforts to pursue open discussion to reach a common understanding on the interpretation of the Basel Convention on the issue of shipbreaking and a pragmatic approach that will ensure proper implementation.

I. Ships as Hazardous Waste: Within the Scope of Basel Convention

1. We concur with Canada in their review of Prof. Ulfstein's paper "that the Basel Convention applies to wastes that are disposed of, are required to be disposed of or are intended to be disposed of, including ships."
2. We also concur with Canada that in ascertaining the meaning of the phrase "intended to be disposed of" simply involves an interpretation of the Basel Convention's definition of waste to specific known facts. This can be established in many ways, a contract, for example, can be evidence of intent to dispose. Additionally, acts, such as facsimile, phone call, telex or electronic mail, which show an intention to dispose, are also sufficient evidence of such intent. Preparatory actions such as cancellation or modification of insurance, a notice of destination to a port or notices given to crew can all evidence intent to dispose.
3. If the owners intend to dispose of a ship-as-hazardous-waste prior to its arrival at the shipbreaking state, then the Basel Convention's obligations cannot be frustrated by simply signing an agreement, e.g. sale, charter, etc. that disguises intent to dispose, or that avoids establishing such intent prior to export by avoiding signing a written agreement.

However, illegal as this might be, it is far too easy to hide or obscure "intent to dispose". For example, a ship owner may simply not announce such intent until the ship in question is in the shipbreaking state, thereby avoiding the "waste" definition, the transboundary movement and eventually, most of the obligations of the Basel Convention. In this scenario the vessel's crew and others usually are well aware of the fate of the ship destined for breaking or disposal. Cases that fit this potential circumvention scenario could be uncovered but would need to be scrutinized by the relevant authorities to do so.

Thus, in our view the greatest obstacle to easily applying the Basel Convention to ships-as-hazardous-waste lies with the question of hiding "intent-to-dispose". It is therefore strongly

suggested that a solution such as that proposed by the European Commission (*see* Annex B) be seriously explored and established as part of a Guideline or Decision elaborating and clarifying this issue among Parties.

4. We agree with Prof. Ulfstein's assumption that the vessel itself should be considered "hazardous waste" under Art. 1(1) of the Basel Convention, and not only the individual hazardous substance that forms part of or that exists on board a vessel.
5. Similarly, we support Canada's opinion that a vessel or other floating structure that contains hazardous components be controlled as an amber waste under the OECD control system.

To eliminate any ambiguity in the Basel Convention, regarding hazardous waste definitions, we propose amending Annexes VIII and IX with mirror listings similar in terminology to the current OECD listing.

Add to Annex VIII of the Basel Convention:

"Vessels and other floating structures for breaking up, not properly emptied or decontaminated of any material considered as hazardous waste under the Convention."

Add to Annex IX of the Basel Convention:

"Vessels and other floating structures for breaking up, properly emptied or decontaminated of any material considered as hazardous waste under the Convention."

6. We agree with Prof. Ulfstein that full abandonment is disposal under Annex IV of the Basel Convention. Disposal such as scuttling is, of course, disposal according to Annex IV (D1, D6).

II. Obligations under the Basel Convention

1. Article 6 Procedural Obligations

Clearly if an State of Export has been established then it will need to comply with Article 6 and its "prior informed consent" (PIC) regime.

2. Overarching Substantive Obligations – Art. 4

Although Prof. Ulfstein provides a detailed elaboration of the procedural obligation of the State Parties under Art. 6 (1), it is important to note that the Basel Convention imposes several overarching substantive obligations that empower Parties to act upon the shipbreaking issue, aside from the mechanics of the PIC procedures outlined in Art. 6. The biggest error in Prof. Ulfstein's paper is that he ignores the clear Basel obligations on Parties outside of the Article 6 PIC regime:

- a) The Basel Convention obligates the Parties, irrespective of their status (e.g. State of Export, Import, Transit, flag or port state), to prohibit or not permit the export of hazardous and other wastes to Parties, which have prohibited the import of such wastes (Art. 4(1)(b)).
- b) The Basel Convention obligates the Parties, irrespective of their status, to prohibit or not permit such export where the State of Import does not consent in writing to the specific import (Art. 4 (1)(c)).
- c) Another overarching Basel obligation requires that Parties must ensure that the transboundary movement of hazardous waste and other wastes is reduced to the minimum consistent with the environmentally sound and efficient management of such wastes, and is conducted in a manner which will protect human health and the environment against the adverse effects which may result from such movement (Art. 4 (2)(d)).
- d) A Party, again irrespective of its status, is obligated not to allow the export of hazardous or other wastes if the Party has reason to believe that the wastes in question will not be managed in an environmentally sound manner (Art. 4(2)(e)).

The Basel definition of “environmentally sound management” (ESM) is “*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.*” (Art. 2(8)) (*Emphasis added*)

It must be noted that most shipbreaking operations around the world at this time *do not* meet this criterion. Ships destined for shipbreaking contain significant quantities of asbestos, polychlorinated biphenyls (PCBs), hydraulic fluids, paints containing lead and/or other heavy metals, tributyltin or TBT antifouling coatings, contaminated holding tanks, and other substances rendering them hazardous waste and extremely dangerous to human health and the environment when scrapped in existing shipbreaking yards. Most of the shipbreaking is taking place in Asia, e.g., India, where the conditions are documented to be exceptionally dangerous and damaging to the health of the workers, surrounding community, and the environment.

- e) Each Party, regardless of status, also has a legal obligation to prohibit illegal ship movements and must do so with respect to all persons, including corporations subject to its jurisdiction, including owners, charterers, brokers, shipping agents, and captains and crew, since under Art. 4(4), each Party must take appropriate legal, administrative and other measures, including measures to prevent and punish conduct in contravention of the Convention. This is a crucial provision too often overlooked.
- f) Moreover, the Convention allows each Party to take further action against hazardous wastes, as the Convention does not prevent any Party from imposing additional requirements beyond what is mentioned in the Convention, provided that any additional requirements are consistent with the provisions of the Convention, and is in accordance with the rules of international law, in order better to protect human health and the environment (Art. 4(11)).

g) The requirements of implementation and enforcement under Art. 4(4), and enhanced under Art. 4(11) recognize the Convention's respect for a Party's sovereignty, as these provisions require national legislation and national legal actions to operationalize their requirements. At the same time both articles unequivocally establish that Parties must proactively implement the Convention and that other appropriate measures of enforcement of the Basel Convention obligations are available to the Parties.

3. Port State / Flag State Jurisdiction and Navigational Rights

We, like Canada, strongly dispute Prof. Ulfstein's conclusion that port states would have no jurisdiction over foreign flag vessels to protect the environment, in light of the above provisions. Prof. Ulfstein's conclusion is based on an inappropriate extension of the "flag doctrine" to the exclusion of other applicable provisions such as Articles 4(7)(a) which applies to "*all persons under its national jurisdiction*", and Articles 4(4) and 4(11).

Furthermore, it is well established that a state has jurisdiction over its territorial waters with respect to the preservation of the environment, prevention, reduction, and control of pollution, and protection of human health. The exception cited by Prof. Ulfstein in Article 4(12), relating to navigational rights and freedom of States, applies to navigation and will not oust jurisdiction while the ship is in port. An appropriate example of port state jurisdiction referred to above, is Article 23 of the 1995 Straddling Stocks Convention, which provides that a port state has the right and the duty to take measures, in accordance with international law, to promote the effectiveness of sub-regional, regional and global conservation and management measures.

A port state may inspect documents, fishing gear and catch on board fishing vessels, when such vessels are voluntarily in its ports or at its offshore terminals and States may adopt regulations empowering the relevant national authorities to prohibit landings and transshipments where it has been established that the catch has been taken in a manner which undermines the effectiveness of sub-regional, regional or global conservation and management measures on the high seas.

Also, note that Art. 4(12) first acknowledges the sovereignty of State Parties over their territorial sea. Sole emphasis on the navigational rights and freedoms of ships without considering the sovereignty of State Parties in the interpretation of Art. 4(12) will inevitably result in an imbalanced perspective. Thus, navigational rights and freedom can be tempered by State actions to protect and preserve the environment. A contrary interpretation of Art. 4(12) would completely undermine all control measures found in the Basel Convention, as the Basel Convention is clearly designed to control certain navigation that is in contravention of the Convention

The tentative suggestion by Prof. Ulfstein citing restrictions on the port state's jurisdiction based on the "temporary presence of foreign ships in ports" is irrelevant. There is nothing to prevent a port state, in the exercise of its sovereignty and in the observance of its obligation under the Basel Convention, from requiring such consent - such a requirement is applicable to the vessel while it is in port. It need not extend to the ship after the ship has left its territory, which is the issue Churchill and Lowe are addressing in their rather tentative

suggestion. Port state jurisdiction is widely recognized in the law of the sea context, for instance in the 1995 Straddling Stocks Convention. Just as States Party to that Convention recognize port state jurisdiction, Professor Ulfstein is absolutely correct in observing that States Party to the Basel Convention have consented to restrictions imposed under the Basel Convention.

We also take issue with Prof. Ulfstein's conclusion that flag states have no obligation under the Basel Convention to ensure the existence of consent from the Importing State. Article 4(7)(a) binds flag states that are Parties to the Basel Convention. Furthermore, Article 94(1) of United Nations Convention on the Law of the Sea (UNCLOS) requires that every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag. Article 94(2)(b) of the UNCLOS also requires that States shall assume jurisdiction under its internal law over each ship flying its flag and its master, officers and crew in respect of administrative, technical and social matters concerning the ship.

In sum, port states have jurisdiction over foreign vessels under the Basel Convention to require that the consent be obtained from the state where the vessel will be disposed of, and other obligations under the Convention such as ascertaining that ship-as-hazardous-waste will be destined to environmentally sound management etc., and such jurisdiction is recognized in international law.

2. Party Obligation under the Basel Ban Amendment (Decision III/1)

The Basel Ban obligation states that all Annex VII Parties have a special obligation to “prohibit all transboundary movements of hazardous wastes which are destined for operations according to Annex IV A to States not listed in Annex VII.”

Note that the obligation is not solely that of the Annex VII State of Export, but would also include Annex VII port states, flag states, transit states, etc. as having an obligation to uphold the prohibition. Thus, Annex VII port states must prohibit the departure of any ships within its territory destined for shipbreaking in non-Annex VII States, and Annex VII flag states must do all they can to legally prohibit the transboundary movement of such ships. If any intention to dispose has been formed prior to departure from any Annex VII port state, the departure should be banned, and the moment any intention has been formed, Annex VII flag states must likewise prohibit the movement of the ship. Finally, those Annex VII states that have jurisdiction over, persons, including corporations, owners, charterers, brokers, shipping agents, captains and crew, to prevent/prohibit the export to non-Annex VII states also must take action to prohibit the ship-as-hazardous-waste from moving to a non-Annex VII country.

III. Other Outstanding Issues

1. We take exception to the argument made by industry on certain occasions, that a ship cannot be a ship and a hazardous waste at the same time, while the ship can sail under its own power. The Basel Convention defines “hazardous wastes” as those “[w]astes that belong to

any category contained in Annex I, unless they do not possess any of the characteristics contained in Annex III....”. The Convention does not hinge its definition on whether the waste is capable of operating under its own power or is incapable of any type of functionality or ability to float, operate etc., nor does the Convention exempt a waste based on its possible subsequent economic reutilization. Interpretations that attempt to include these non-existent criteria are without foundation.

2. We also take exception to the argument that if the hazardous waste is in the structure of the ship, the ship itself cannot be considered a hazardous waste, particularly if the hazardous material is a small concentration (by weight) of the total weight of the vessel. Again, the Basel Convention looks at “hazardous waste” whether it belongs to any category contained in Annex I, and whether it possesses any characteristics contained in Annex III. With the notable exception of PCBs (50 ppm) the Convention does not set concentration levels for when a material will or will not exhibit a hazardous characteristic.

The Basel Convention supplies an intelligent definition in this regard, given that some highly toxic substances are disproportionately light in weight or concentration as compared to a ship’s total weight and mass, but are undiminished in their toxicity to humans and the environment, e.g. asbestos, tributyl tin, dioxins etc.

3. Finally, we take note that Art. 1(4) provides that “[w]astes which derive from the normal operation of a ship, the discharge of which is covered by another international instrument, are excluded from the scope of this Convention.” This article does not apply to ships destined for shipbreaking nor to their construction materials and components. Rather it excludes operational discharges such as ballast water releases, oil losses during voyage, etc. because such operational discharges from ships in operation are covered by the International Convention for the Prevention of Pollution from Ships (MARPOL), an International Maritime Organization legal regime.

Annex A – Scenarios

Scenario 1. The “Sandrien” Case - A ship that has become waste containing hazardous materials sails or announces the intention to sail from the port of a Party to a third non-Annex VII state for shipbreaking.

The Sandrien, a Mauritius owned vessel, flying Bolivian flag, and built in 1974 was detained in Amsterdam since it was found by Dutch authorities to be in an unsafe condition – i.e., the hull was badly corroded and cracking. The owners of the Sandrien convinced the Dutch harbor authorities to let the vessel go for a final voyage to Alang, India where it was to be scrapped. At that point the Dutch environment Ministry stepped in, and discovered that among other hazardous materials, the Sandrien contained about 5,000 kg of asbestos.

“Intent to dispose” was established when it was determined that the vessel was destined for disposal, thus, invoking the Basel Convention’s definition of waste. Since asbestos was on board, this qualifies the vessel as hazardous waste – placing it clearly within the rubric of the

Basel Convention and the EU Waste Shipment Regulation. Notably, the EU Waste Shipment Regulation has implemented the Basel Ban, thus, forbidding export of hazardous wastes to non-OECD countries.

In this case, the State of the first port, after the intention to break the ship is formed, is the Party from which the movement is planned to be initiated or is initiated, and thus, the State of Export by definition. There is a clear “transboundary movement” of the ship, in this case. It does not matter whether the ship docked in an intermediary port before reaching the final destination, as long as the vessel’s status as waste is ascertained and a subsequent transboundary movement is involved.

Under the Basel obligations, the Netherlands is therefore, legally competent and obliged to halt the movement of the Sandrien, if it has reason to believe that the ship will not be managed in an environmentally sound manner, or if notification and consent procedures are violated.

Further, under its obligations under the EU waste shipment regulation, which includes implementation of the Basel Ban, the Netherlands is obliged to prohibit all export to non-OECD countries. As a port state, the Netherlands in accordance with international law and the Basel Convention has full jurisdiction over the ship, regardless of its flag, due to its control over its territorial waters and due to its Basel Convention and EU obligations.

Note that irrespective of a determination of “transboundary movement”, other Parties such as flag state Parties, Parties with jurisdiction over owners, brokers etc., which could impact the trade of the ship also have obligations to act to prevent the export/import of ships in contravention of the Convention (*See Part II above*).

Scenario 2. An intention to break a ship containing hazardous materials is formed while a ship is on the high seas and then sails into a transit port prior to sailing to a state for shipbreaking.

The ship becomes a waste when the intention to dispose is formed. The signing of a contract often manifests this intention. Note, however, that there is no requirement of a signed contract in ascertaining intent to dispose. Intention to dispose could be evidenced by a fax, email, telex or phone call, for instance from the owner to the shipbreaker or a third party or communication to the ship’s master.

A transboundary movement would thus occur, even if intent to dispose occurred in the high seas, as soon as the ship moved “to or through an area not under the national jurisdiction of any State” and is destined for another port state. Upon coming under the jurisdiction of the port state, the port state becomes the “exporting state”. In this scenario this state if it is indeed a Party that first had port jurisdiction over the vessel after it becomes a waste, would be in the identical situation as the port state in Scenario 1 above.

Regardless of the establishment of “transboundary movement”, other Parties such as flag state Parties, Parties with jurisdiction over owners, brokers etc., which could impact the trade of the ship also have obligations to act to prevent the export/import of ships in contravention of the Convention. (*See Part II above*)

Scenario 3. An intention to break a ship containing hazardous waste is formed while a ship is on the high seas and then the ship sails directly to a state for shipbreaking without docking at another State or passing through any other Party's territorial waters.

The ship becomes a waste when the intention to dispose is formed. The signing of a contract often manifests this intention. Note that there is no requirement of a signed contract in ascertaining intent to dispose. Intention to dispose could be evidenced by a fax, email, telex or phone call, for instance from the owner to the shipbreaker or a third party or communication to the ship's master.

There would be no transboundary movement, since there is no movement of hazardous waste from an area under the national jurisdiction of one State to another. There is thus, no "State of Export". Note that if the ship docks at a third State, or, more likely, passes through the territory or EEZ of another State, then there *would be* a transboundary movement by definition as soon as the ship leaves that state's territory or EEZ and moves to another state. (See Scenario 2)

However, it is clear that the obligations of Parties extend beyond just the situations involving the strict Basel definition of transboundary movement. For example, many of the Basel obligations involve alternative language regarding export/import. Thus, there is an obligation to ensure that export (import implied) is prohibited when there is reason to believe that the wastes in question will not be handled in an environmentally sound manner. Therefore, *any* Party which may have jurisdiction over the ship, including the flag state; or a state with jurisdiction over the broker who facilitated the sale; or over the owners of the ship or generators, can subject these persons to legal actions, based on that Party's national law, that will effect the prohibition on the export/import due to the Party's reasonable belief that the ship-as-hazardous-waste will not be managed in an environmentally sound manner. Such Parties are obliged under the Convention's Art. 4(4) to act by preventing or not permitting violations of the Convention, and not just sit passively and watch the transaction occur.

Scenario 4. An intention to break the ship is formed while a ship is within the EEZ, territorial waters or internal waters of a state and then the ship is broken in the same State.

The ship becomes waste when the intention is formed. Clearly in this scenario there is no transboundary movement. Further, there is no export/import situation either. Thus, most of the obligations of the Convention can be circumvented by this situation.

However, due to the fact that ships are regularly in movement, and decisions to break ships are made weeks, if not months or years prior, almost all cases falling in this scenario there would be an intent to circumvent the letter and spirit of the Convention if the ship contains a hazardous material and it has not received for example the necessary consent, or is not destined for an ESM operation or is in fact destined to a non-OECD country. For this reason it is important for the Parties to make a more rigorous interpretation as to what is meant by "intent to dispose" such as the one proposed by the EU in Annex B of this submission.

Annex B: A Solution to Determining When a Ship Becomes Waste

The European Union is currently working on a review with an aim of revising their Waste Shipment Regulation 259/93/EEC (“WSR”). In June 2001 (adjusted 11 October) the Directorate-General for Environment, Directorate A (Sustainable Development and Policy Support) of the European Commission released a background paper discussing various issues of concern with respect to revising the regulation. Shipbreaking was highlighted as a concern. Recently, for example, the Dutch government has been faced with proving “intent to dispose” in the case of the vessel “Sandrien” (*see* Scenarios). To deal with the issue of “intent to dispose”, the EU has proposed the following:

“Favoured option: The WSR could be amended to ensure that:

i) a ship located in MS (member state) territorial waters which reveals through inspection that it is destined for ultimate recovery or disposal in a country to which the OECD Decision does not apply is to be regarded as waste and must be prevented from leaving the port until the owners can ensure ESM recovery/disposal; and

ii) a ship located in MS territorial waters which is 20 years of age will be deemed to be waste and must be impounded where there are reasonable grounds for suspecting that it will not be subject to ESM recovery/disposal in the immediate future. (The life of a steel vessel is usually 20 years; insurance becomes problematic after 20 years unless it has been subject to a major overhaul due to steel being overstressed. The IMO sets a 25 year lifetime limit.”

Indeed prudent and safe industry and insurance practice to consider ships within the 20-year time frame to be about ready for disposal, so this is really not a radically new proposition. Below we elaborate on the EU Commission concept as the basis for a discussion for an eventual interpretational Basel decision and potential annexed guideline:

The Parties agree to the following interpretation/mechanism regarding “intent to dispose” and when a ship becomes waste:

1. A ship is deemed to be a waste once it is determined to be destined for a Basel Annex IV disposal operation.
2. A ship will also be deemed to be a hazardous waste automatically once it reaches an age of 20 years, and it contains Basel Annex I hazardous substances, unless they do not possess any of the characteristics contained in Annex III. As such, those with jurisdiction over the ship must comply with the Basel Convention, its decisions and amendments, *unless* a hazardous waste exclusion agreement (“Exclusion Agreement”) is obtained from the International Maritime Organization (“IMO”) and/or Basel Secretariat by the ship owner.
3. This Exclusion Agreement is contingent on the ship owner filing a complete ship-end-of-life planning document which among other things will indicate to the flag state, the state of ownership, the IMO and the Basel Secretariat the following:

- a. The precise date, location of disposal and identity of disposer.
 - b. A full inventory of all onboard hazardous materials is prepared within 3 months from the 20-year reckoning date, and submitted to the IMO and Basel Secretariat. (This is fully consistent with Industry Code of Practice on Ship Recycling)
 - c. A guarantee that the ship and its on-board hazardous wastes will be disposed of in an environmentally sound manner. (This is fully consistent with Industry Code of Practice on Ship Recycling)
 - d. A guarantee that the ship will not be eventually disposed of in a non-OECD country unless all on-board hazardous waste has been removed in an OECD country to the extent feasible. A schedule for such removal should be attached. (This is consistent with Decision I/22, II/12 and III/1 of the Basel Convention.)
 - e. A guarantee that every effort has been made to remove and safely dispose of all hazardous materials on board prior to disposal. (This is fully consistent with Industry Code of Practice on Ship Recycling)
 - f. A guarantee that the ship meets the criteria established for “ready for recycling”. (This is fully consistent with Industry Code of Practice on Ship Recycling)
 - g. A guarantee that all other requirements of the Industry Code of Practice are met.
 - h. Six-months prior to actual disposal, the Basel Secretariat shall declare the ship hazardous waste, and all relevant Parties shall be notified of such declaration, including the final states of transit, port states, flag state, and state of ownership, as well as the IMO. A standard ship-recycling contract such as the BIMCO will be prepared. Additionally, full disclosure of “prior-informed consent” in accordance with Article 6 of the Basel Convention must be made.
2. The filing of the ship-end-of-life planning document with the IMO effectively establishes a global registry of ships destined for disposal.
 3. The Exclusion Agreement will be terminated one year prior to actual disposal. After which the ship will fall under the rules and obligations of all hazardous wastes under the Basel Convention, unless all qualifying hazardous substances have been removed.
 4. Wilful violation by a ship owner of the Exclusion Agreement shall be a basis for the denial of subsequent Exclusion Agreements.

END

**Prepared with the legal assistance of Duncan Currie, LL.B. (Hons.), LL.M., of Globelaw; Dr. Kevin Stairs of Greenpeace; and Richard Gutierrez, J.D., LL.M. of Basel Action Network*

Basel Action Network (BAN) -- Secretariat
c/o Asia Pacific Environmental Exchange
1305 Fourth Ave., Suite 606
Seattle, Washington 98101 USA
Phone: +1.206.652.5555
Fax: +1.206.652.5750
Email: info@ban.org
Website: <http://www.ban.org>

Greenpeace International
Keizersgracht 176
1016 DW Amsterdam
Netherlands
Phone: +31.20.523.6555
Fax: +31.20.523.6500
Website: <http://www.greenpeace.org>

This document is printed on 100% recyclable, 100% chlorine-free, and 100% tree-free paper made from the kenaf plant