

## Hong Kong Convention Legalizes Toxic Ship Dumping

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 and as such has no place being under the International Maritime Organization (IMO) umbrella. It is a tragedy of exploitation of impoverished communities and disastrous waste management all justified purely on economic terms -- the result of externalizing the costs of an industry on unsuspecting and desperate communities in developing countries.

Instead of taking care of risks and liabilities by ensuring that their end-of-life vessels are dismantled in countries possessing proper technologies, infrastructure and societal safety nets, the shipping industry has decided to accomplish the very dangerous job of scrapping old ships on the cheap and on the backs of the world's most vulnerable labor force – simply because they could.

This is precisely the reason why the Basel Convention was created – to put an end to this form of exploitation, and why that body asserted in 1995 that developed countries should no longer be allowed to export any hazardous wastes to developing countries for any reason – even under the name of recycling.

But a powerful shipping industry, supported by large shipping nations such as Germany, Norway, Japan and Greece, saw that if the Basel Convention's principled view were to hold sway over their industry, then profit margins made possible by the injustice of cost externalization would be eroded. Once the Basel Convention began to take a serious look at the global shipbreaking crisis, this powerful gang claimed that Basel was incompetent to manage the issue.

Instead of allowing Basel Parties to close the loopholes available to ship-owners, the industry, instead blocked all progress at the Basel Convention and ran to the cover of their own United Nations clubhouse – the International Maritime Organization (IMO). The industry strategy sought to use one UN body (IMO) to undermine the very purpose of another (Basel) and the result of this cynical strategy is the Hong Kong Convention adopted in 2009. It is a strategy 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 the IMO delivered precisely what industry ordered. In so doing they have turned back the clock and discarded not only the obligations and principles established in the Basel Convention, but also scrapped an even longer list of long-standing human rights and environmental principles

## Hong Kong Convention Fails to Uphold Basel Principles and Obligations

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..."*

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

As the Hong Kong Convention so clearly departs not only in fundamental principles but in 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.

## Breaking with Principle to Break Ships

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

- **Polluter Pays / Producer Responsibility Principles**

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

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

The Hong Kong Convention will do nothing to alter the current state of affairs that finds just a handful of developing countries managing the hazards and risks of over 90% of the world's toxic waste ships – most owned in rich developed countries. This is the antithesis of Principle 14 of the Rio Declaration which calls on countries not to transfer harm and of the Principle of Environmental Justice that establishes that no peoples should receive a disproportionate burden of global harm. Indeed this is also an affront to the Principle of National Self-Sufficiency in waste management embodied in the Basel Convention (Article 4,2,b).

- **Substitution Principle / Waste Prevention Principle**

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

- **Principle of Environmentally Sound Management**

While the Draft Convention purports to support Environmentally Sound Management, the IMO declined to define it, or to set mandatory criteria for what constitutes safe and sound ship recycling. Rather, they are working on a non-binding guideline and then will leave it to ship recycling states to decide what to do. Yet, to date, ship recycling states still fail to implement the existing IMO, ILO and Basel Guidelines. Without mandatory criteria there's no reason this will suddenly change. The Hong Kong Convention even fails to condemn the disastrous beaching method. Beaching is a primitive method that "manages" hazardous and unwieldy ship wastes and cuttings without containment in the sensitive intertidal

zone and on shifting sands where it is impossible to rescue workers with emergency equipment or provide shipside cranes to lift heavy pieces of the cut ship. The Hong Kong Convention's "neutrality" with respect to beaching is sadly telling of their ESM commitment.

## IMO Places Foxes in Charge of the Hen House

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

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

**Ship Recycling States:** Despite many years of global concern, major ship recycling states have as yet been unwilling to press their rich and influential shipbreaking yard owners to take action to significantly improve conditions at their ship recycling yards. They continue to authorize yards that are not and cannot conduct safe and sound management operating on a tidal beach. Similar to flag states, the ship recycling industry is competitive on the basis of least cost recycling. Without a ban on beaching and a mandatory set of requirements, for which the new Convention does not require, the result will likely be that ship recycling states will be persuaded to ratify the new Convention, as they know they can forestall real meaningful reform for many years.

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**Sadly, the Hong Kong Convention is tailored by and for the shipping industry designed to merely put a green gloss on the horrific status quo. The treaty was designed to turn back the clock on long established global principles and provides little motivation for any of its "responsible" parties to change the very profitable but immoral ship dumping business model. As such it utterly fails to provide an "equivalent level of control" to the Basel Convention by any fair analysis. BAN calls for countries to avoid ratification of the Hong Kong Convention and instead seek to more diligently implement the Basel Convention rules as they apply to ships. Certainly Basel must never cede its vital role on ships to the Hong Kong Convention.**

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