BAN believes that the Basel Convention, this week, this month, is at a very critical crossroads. In the matter of how we deal with ships that have become waste, we are being tested like never before on whether we as an institution really believe in our own mission and whether we are willing to uphold it.

Our mission is found in the text of our treaty, now legally binding on the governments of over 160 countries. That text says that:

- hazardous wastes, whether they be found in barrels, in bags, or in the walls of obsolete ships, become the responsibility of those that create them.
- It says that the obligation to properly manage hazardous wastes may under no circumstances be transferred to the importing states, but rather lies with the generating state.
- The treaty says that impoverished communities, low-wage, developing countries do not become the dumping grounds of the rich countries or rich industrialists, simply because they are poor.
- It says that all Parties are obligated to minimize the transboundary movement of hazardous waste.
- It calls for national self-sufficiency in hazardous waste management.
- It calls for clean production and waste minimization at source.
- For wastes that cannot be minimized, or eliminated as yet, then ESM is called for.

At a time, this week, when the world has a new awareness of the inequity and horror of poverty, the Basel Convention has a role to play. We must never force those in our human family, already suffering the ravages of poverty to have to make a choice between poverty and poison. We must never ask anybody, particularly not those that are most desperate for a job of any kind and least able to deal with more problems, to bear a disproportionate burden of the world’s toxic waste laden ships.

Export sustainable jobs yes, but poisons no. Export pre-cleaned ships, not tons of asbestos, PCBs, and explosive hydrocarbons.

The situation today with respect to the global shipping industry, where about 95% of the world’s toxic laden ships at end of life are exported without any decontamination or pre-cleaning to a handful of some of the world’s poorest communities in developing countries, simply for profit, is precisely the type of exploitation the Basel Convention was meant to remedy.

And the situation on the ground in many shipbreaking countries appears to be getting worse. Recent news stories out of India report that the Indian Defence Department is
now investigating mafia like activities in the shipscrapping industry, while more and more ships are said to be moving for scrapping in Bangladesh and Pakistan, driven by even greater profits to be found there. And looming very large is the single hulled tanker phase out. All of these ships with nowhere to go....

And so what are we as an institution that was created to deal with this precisely this type of issue going to do about it?

Are we going to roll up our sleeves and get to work, or are we simply going to accommodate the bullying of a powerful but irresponsible industry and pass the matter to another institution which has demonstrated that it clearly lacks the inclination or mandate to prevent further exploitation. An institution that appears to only be concerned about very quickly hammering a green label on an any kind of ship scrapping agreement so they can try to claim competence for the issue and wrest it away from the Basel Convention to continue the brutal business as usual.

Yes, the 7th Conference of the Parties of the Basel Convention invited 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 and 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;”

As has been pointed out very clearly in the Secretariat’s note to this meeting as well as in BAN’s commentary on that paper, that what is being proposed at the IMO regime and very likely to be adopted by the MEPC this month is very very far away from an “equivalent level of control” as established under the Basel Convention even for a very small part of the Basel Convention – the obligation of prior informed consent.

And it must be remembered that the Basel Convention did not invite IMO to only provide equivalency with reporting, but invited mandatory requirements including reporting. We all know that reporting alone without the rest of the Convention’s obligations, principles and decisions will not ensure that ships are pre-cleaned, that exports are minimized, this reporting as envisaged by the IMO will not prevent one ounce of hazardous waste from being exported.

BAN and Greenpeace have produced a significant paper entitled “Obligations and Opportunities for a mandatory alternate or additional instrument to the Basel Convention for End-Of-Life Ships” – presented here as INF/20, which makes it clear that the requirement of “equivalent level of control” is not merely a wish and a dream, we would hope for, and have asked for in Decision VII/26, but in fact is a legal requirement under Article 11 of the Convention to which over 160 countries are bound. Any alternate multilateral agreement that governs transboundary movement of hazardous wastes must stipulate provisions which are not less environmentally sound than those provided for by the Convention in particular taking into account the interests of developing countries.

Likewise the definition of Environmentally Sound Management requires all Parties to “take all practicable steps” which must include the steps outlined as obligations under the
Convention. Therefore, Basel Parties that are also Parties to IMO treaties, must heed these legal requirements if they are to conceive of entering into another agreement or arrangement outside of the Basel Convention or else risk running afoul of compliance with the Basel Convention.

Our paper makes it clear that any future regime, whether in Basel or elsewhere, must be one that provides for more specificity and rigor to what currently exists in the Basel Convention and retains respect for the fundamental principles under which the Convention was created.

Our paper makes it clear that while it is recognized that workers need jobs, and developing countries need steel, they do not need the poisons along for the ride. The proper application of Basel with respect to this issue then is to fully recognize the economic disparities in the world and ensure that all ships are pre-cleaned at OECD/EU certified facilities prior to final delivery to shipbreaking states. Nothing short of that can be considered an equivalent level of control as established and required under the Basel Convention and the Basel Ban Amendment.

To date however, there is no indication that the IMO work has any intention or inclination to achieve anything close to an equivalent level of control to the Basel Convention and this presents a serious legal crisis.

Fortunately COP7 has not left matters solely in the hands of IMO. Rather the idea was always to work on parallel tracks with an aim to try to add the necessary rigor to the existing Basel regime by providing better mechanisms for transparency on when a ship becomes a waste and by determining State of Export equivalency for ships.

Indeed COP7 called on Parties to fulfill their existing obligations with respect to ships as waste including ensuring ESM, prior informed consent, AND minimization of transboundary movement. Some Parties have done this even since COP7 and we applaud them.

Finally COP7 also called on the Open Ended Working Group to continue its work on these legal questions and consider making proposals.

Indeed we have had an intercessional group formed on this subject which at OEWG3 had created a workplan including 6 bodies of work. This work has not been completed and despite budgetary shortfalls we cannot afford to have this crucial issue stalled.

It is our hope therefore that the mandate of the intercessional group be extended, that the workplan be updated, and that our decision coming out of OEWG4 repeats the requirement that any new regime must have an “equivalent level of control” with respect to the entire Convention not just pieces of it.

It is our fundamental duty to improve the Basel regime. It is quite normal for international law to evolve as new situations come to be known. What is not normal is to throw away a law, and its reason for being, simply because some loopholes are discovered. Such an outcome would have devastating consequences not only for the people on the ground in shipbreaking beaches around the world, but for Convention and international law.
Distinguished delegates, at a time when the world this week is taking a close look at the devastation caused by poverty, let us not allow further injury to impoverished communities to be perpetuated by industrialists, all too willing to exploit the poor and desperate to pad their profits. Instead, with respect to hazardous waste ships, let's roll up our sleeves and get to work to uphold the principles and mandate of the Basel Convention.

Thank you.

END