1. Introduction

1.1. At the Ninth Conference of the Parties to the Basel Convention, by decision IX/30, the Open-ended Working Group was requested:

(a) To carry out a preliminary assessment on whether the ship recycling convention, as adopted, establishes an equivalent level of control and enforcement as that established under the Basel Convention, in their entirety, after having developed the criteria necessary for such assessment, and, in doing so, to take into account:

   (i) The special characteristics of ships and international shipping;

   (ii) The principles of the Basel Convention and the relevant decisions of the Conference of the Parties; and,

   (iii) The comments submitted by Parties and other relevant stakeholders, as appropriate;

(b) To transmit the results of the assessment to the Conference of the Parties at its tenth meeting for consideration and actions, as appropriate; Invites Parties to that end, to provide comments on appropriate criteria to be used to the Secretariat, by 31 January 2009.

1.2. To this end, the NGO Platform on Shipbreaking, a coalition of environmental, and human rights organizations working on the urgent issue of the impact of shipbreaking on human health and the environment, provides the following comments on the “appropriate criteria to be used.” These criteria are presented in a table below following a discussion on the context for “equivalent level of control” and the criteria to be examined to determine it.
2. Basis for “Equivalent Level of Control”

2.1. At its Seventh Conference of the Parties, the Basel Convention laid down in Decision VII/26 entitled “Environmentally sound management of ship dismantling” (attached) its fundamental position with respect to the applicability of the Convention to end-of-life ships. At the same time it recognized the work being undertaken at the International Maritime Organization (IMO) to develop a legally binding instrument on the subject of ship recycling (referred to hereafter as the “IMO Convention”).

2.2. First, the Parties concluded that end-of-life vessels or ships are wastes. Therefore when a ship contains listed hazardous materials (Annex I) possessing listed hazardous characteristics (Annex III), the ships would be designated as hazardous wastes, subject to control under the Convention.

2.3. Decision VII/26 noted that: “a ship may become waste as defined in article 2 of the Basel Convention and that at the same time it may be defined as a ship under other international rules,” and therefore Decision VII/26, called upon Parties to: “fulfill their obligations under the Basel Convention where applicable, in particular their obligations with respect to prior informed consent, minimization of transboundary movements of hazardous wastes and the principles of environmentally sound management.”

2.4. The Basel Convention defines environmentally sound management 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.”

2.5. At the same time the Decision VII/26 recognized the work undertaken at the IMO. But the Parties made it clear that they expected that the new Convention under consideration would not represent a step backwards in international law with respect to controls on the international trade in hazardous wastes in the case of ships. The subtext of this message was a belief that the IMO would seek to supplant the Basel Convention with the IMO regime where ships were concerned. This is implicit in the final recital of the decision which states: “Noting that duplication of regulatory instruments that have the same objective should be avoided.”

2.6. The Parties thus 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 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.” (underlining added).
2.7. It is vital to note however that the concept of ‘equivalent level of control” is far more than simply a desire on the part of the Parties. Nor is the determination of such equivalency simply an intellectual exercise. Rather, the notion of equivalency of other instruments which might fall within the scope of the Basel Convention’s mandate, has a legal basis in the Convention itself – indeed it is a requirement of the Convention as embodied in Article 11 of the Convention.

2.8. Article 11 reads as follows:

*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.* [underlining added]

2.9. 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” and indeed provides the legal basis for the “equivalent level of control” which would exist even without Article VII/26.

2.10. For those countries that are Parties to the Basel Convention, any regime that governs the transboundary movement of hazardous wastes outside of the Convention will need to adhere to Article 11 of the Convention and its call for equivalency. Therefore the assessment of “equivalency” is vital, if the IMO regime is ever to be recognized by the Basel Convention as an acceptable legal instrument that its Parties can enter into by themselves or with non-Parties.

2.11. When we read Article 11 further and note that the equivalency 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 principles and obligations in the case of export of ships for scrapping – the vast majority of which takes place currently in developing countries.

2.12. Article 11 was, as was the Basel Convention itself, with its many references to the particular interests of developing countries, drafted with the aim of protecting developing countries from the impacts of economically motivated dumping of hazardous wastes via disposal or recycling. This environmental justice principle, regarding the special concerns and “interests of developing countries” due to their vulnerability to exploitation, is precisely the same concern applicable today with respect to the suffering of workers and poorer communities in developing countries.
currently involved in shipbreaking.

2.13. It is clear then, that if Parties are to enter into the IMO Convention as an “agreement or arrangement regarding transboundary movement of hazardous wastes or other wastes (as defined by the Parties in Decision VII/26 to include ships), the IMO Convention must adhere to the language in Article 11 and “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.” (underlining added)

3. Why Determine “Equivalent Level of Control?”

3.1. The determination then of equivalency of the IMO regime to the Basel Convention is not simply an intellectual exercise. It is vital in two regards. First, the Parties must determine whether the IMO regime is legal for its Parties to enter into, with respect to fulfilling the legal requirements of Article 11 of the Convention. If it is not, Parties would not be able to enter into such agreements, as “Parties may enter into…provided….”, is the language of the Convention. (underlining added)

3.2. Second, many Basel Parties have postponed continued work on a legal or technical basis on the issue of the dismantling of ships as long as the IMO Convention was still being negotiated. Now that the IMO Convention is adopted, Parties need to know if they need to resume their work to fill gaps that may remain from the IMO Convention. That is, the Basel Convention may see fit to adjust or strengthen the Basel Convention (e.g. with amendments or guidelines) as well as strengthen national or regional law, in order to better control ships as waste if the IMO Convention falls short of the expectation of “equivalent level of control”.

3.3. Certainly, it would be inappropriate for any effort to be made to cede Basel’s established competence on ships as waste should the IMO Convention not at least provide an “equivalent level of control.” That would represent a turning back of the clock on global environmental governance and protection, in particular in regards to the needs of developing countries. Such an outcome would be an undermining of the Basel Convention itself.

3.4. Some have suggested that Parties may wish to seek an amendment to the Convention to exempt ships from its scope and thereby avoid the Article 11 equivalency question. However such a move, in the absence of an equivalent regime assuming the full competency, would not be acceptable under the Convention’s obligation to ensure environmentally sound management which is defined 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.” Surely taking less rigorous actions in one instrument while eliminating the other would not be “taking all
practicable steps” and thus the Parties would violate a fundamental obligation of the Convention.

3.5. Thus it is that an honest determination of equivalency is imperative. Such a determination must be made by the Basel Parties notwithstanding the political pressure that might be brought to bear to ignore the implications of the new Convention encouraged by a very powerful shipping industry which has a profound influence on governmental ministries charged with ensuring that shipping industry’s profitability. Many of these forces were in fact undeniably instrumental in pressing for seeking the alternate venue (the more shipping industry friendly IMO) than continuing to pursue the matter within the Basel Convention despite the fact that the Basel Convention is the venue that has to do with environmentally sound recycling and the shipbreaking crisis is fundamentally a crisis of waste management and not of ships. It would be naïve in the extreme to fail to recognize the significant political/economic forces of the global shipping industry as it would be a grave mistake for the global community to give way to them and accept anything less than “equivalent level of control” in regard to global migration of hazardous waste and their environmentally unsound management.

4. The Meaning of “Equivalent Level of Control”

4.1. It must be first understood that the language of VII/26 is a call to “ensure an equivalent level of control as established under the Basel Convention.” It is clear therefore that the IMO Convention is to be measured against the control obligations of the Basel Convention (the first treaty covering within its scope movement of waste ships across borders), and not the other way around. The exercise is clearly called for because the Basel Parties were concerned that any new treaty with overlapping scope and competency be “at least equivalent” to the obligations, decisions and principles of what was already international law (the Basel Convention). The context for this concern was the idea that the IMO Convention would replace the competency of the Basel Convention in the matter of ships as waste.

4.2. It is important to recall that the original intent of the IMO Convention was that it would go beyond the Basel Convention in order to close recognized loopholes and weaknesses in the Basel Convention with respect to control of ships. It was not envisaged that the IMO regime would open new loopholes and provide less control. To the extent that the IMO Convention has gone beyond the Basel Convention and covered areas needing control due to the special nature of ships that is to be applauded but cannot be part of the judgment of IMO providing the elements that are present in Basel which remain useful in controlling the movement and disposal of ships as waste.

4.3. But to the extent that this is not true, and that matters have become less controlled and less rigorous within the IMO then the text of the Basel Convention sets forth, in principles, decisions, scope, obligations,
objectives and rights, then that is clearly a cause for great concern. Indeed it is such a concern that is at the heart of the Basel Parties call for “equivalent level of control” assessment -- whether or not the IMO Convention accomplishes at least what the Basel Convention accomplishes and intends.

Diagram I

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<thead>
<tr>
<th>Not Equivalent Level of Control</th>
<th>Provides at least equivalent level of control</th>
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<tbody>
<tr>
<td>for Basel giving up competence on shipbreaking</td>
<td>for Basel giving up competence on shipbreaking</td>
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4.4. Below in “Diagram I” we can see acceptable and unacceptable relationships with the IMO and Basel Regimes with respect to the IMO regime supplanting Basel Convention competence in international law. Should the IMO regime include the levels of control that the Basel Convention supplies, then it is acceptable. If the regimes only partially overlap in control, then the IMO Convention cannot be seen as providing at least an "equivalent level of control."

4.5. Japan has argued in a previous submission that the objectives and scope of the two Conventions differ and therefore they cannot be compared at all. This is a very surprising statement. Certainly the objectives and scope are very much part of what needs to be compared if the difference results in a lack of an “equivalent level of control.” Certainly while nobody expects the scope and objectives of the IMO regime to be identical, in the area where the IMO wants to supplant competence, (i.e. the sale and transfer of ships for environmentally sound ship recycling) it is essential that it possesses at least the same objectives and scope as the Basel Convention. It is hard to understand how the IMO proceeded to accomplish its work without ensuring that this was the case, unless they expected all along that both regimes would need to apply to ships simultaneously.

4.6. Further, it has been argued by Japan that an “equivalent level of control” can be achieved by a variety of different means. However, it must be born
in mind that the Parties did not simply call for another control regime, rather it called for a regime with an “equivalent level of control”. And the use of the word “level” indicates that an analysis of the two texts to determine, the relative rigor (level) of the latter instrument to the former, will be necessary. The notion then that “equivalent level of control” is some vague concept that any laws or regime can claim by various means is not legally accurate. There are very specific things that the Basel Convention does, is designed to do and has reasons for doing so. Such things can not be swept aside simply because of political expediency or the supposed overall good intentions of another regime to “control” things.

4.7. The Basel Convention and the IMO Convention can certainly be compared and must be if one intends to consider the very serious matter of replacing the other’s competence in a matter of international law. If two parallel regimes are the goal, then a comparison is not essential, but if one is sought for the issue of ship recycling, then it is imperative.

4.8. It is also important to note that the word “control” cannot be confined alone to strictly the mechanics of the “prior informed consent” requirements as laid out in Articles 5, 6 and 8 of the Convention as others have implied. “Control” does not translate to “control mechanism” or “reporting procedure” but must be taken in the sense of that single word. Thus it is a concept encompassing the entire set of obligations, rights, objectives and principles from which control is derived.

4.9. Indeed, the controls of the “control mechanism” found in Article 6 of the Basel Convention alone have very much to do with decisions made by competent authorities based on the principles and objectives of the Convention. The decision for consent made by competent authorities, for example, must draw upon the general principles and obligations found in the Basel Convention such as the principle of environmentally sound management. Certainly it can be argued that all aspects of a legally binding treaty have to do with “control” of the problem it was designed to deal with. Even capacity building, training, communications and funding mechanisms can be considered very much a part of effective control.

4.10. Next we shall briefly examine the word “equivalent”. Certainly the term “equivalent” is not meant to apply in the mathematical sense of “equal to”. We are not expecting “identical” regimes as there would be no point in exact copies being created. However neither is the other extreme acceptable – that is, obscuring the comparison under the cloak of vague overarching goals claiming “equivalence” because “both regimes improve the environmentally sound management of shipbreaking” while perhaps begging for patience to determine the efficacy of the newer regime while the older regime is replaced. In the absence of a critical analysis of equivalency that would be a potentially disastrous leap of faith.

4.11. Indeed, a comparison of general real world outcomes is impossible because neither the Basel Convention nor the IMO regime has had adequate real world experience in controlling end-of-life ships such that
their success can be measured. This is due in large part to the fact that the Basel Convention, despite being in force since 1992, has not as yet turned its attention to properly resolving the issue of determining when a ship becomes a waste as well as the matter of what is the equivalent of “exporting state” as applied to ships. These known “loopholes” and purported “weaknesses” of the Basel Convention were not by any means insurmountable but work was forestalled on these matters due to the push to move discussions to the IMO.

4.12. Nevertheless, even within the arena of clear Basel Convention application, there is already significant case law examples of applying the implementation of the Basel Convention and the Basel Ban Amendment for ships, particularly within the European Union. These court decisions can certainly be part of the evidence in a comparison that can be made today but by no means can they be seen as the full extent of Basel control should the Parties turn their attention to the issue at hand.

4.13. In any case, a reading of Decisions VII/26 and IX/30 does not lead one to believe that the idea of evaluating general good will or waiting for real life experience to make a determination is what the Basel Parties had in mind. Rather the Parties are seeking an analytical assessment of legal elements including principles, scope, rights and obligations to determine whether those found in the Basel Convention are replicated, if not in their actual requirements, then in the overall practical effect of those requirements.

5. Methodology to Determine “Equivalent Level of Control”

5.1. In our view in the question of how to judge equivalence, there is a hierarchy of importance with respect to the various elements calling for two levels of conformity. Some areas in our view are so fundamental that the need for them to be replicated very closely is vital in order to achieve “equivalence”. We will call these “fundamental elements.” Clearly it is impossible to imagine that equivalence can ever be considered if the scope of the latter instrument does not include the vast majority of the range of the former. Likewise it is very difficult to imagine that equivalence can be achieved if the fundamental principles, rights of parties, and fundamental objectives of the latter instrument does not include those of the former. However with respect to specific obligations and requirements which seek to implement the objectives and principles and which may be necessary to be altered to take into account the special nature of ships while staying true to the principles, it is quite possible that only the net practical effect needs replication. These elements we will call “non-fundamental elements”.

5.2. For example, we would strongly argue that the right of any country involved in a movement of a ship toward a recycling facility, including transit, importing and exporting states, to forbid the movement of a ship and its subsequent recycling, if it had reason to believe the ship would not be managed in an environmentally sound manner, must be considered a
fundamental element of equivalency. On the other hand, the definition of “Exporting State” can be expected to be altered in the more specific, latter regime, to reflect the special nature of ships – their mobility of ships at sea and the special circumstances of flag states.

5.3. Another example would be to recognize the Basel Convention’s scope as covering all aspects of disposal of a waste, including recycling operations downstream of the initial facility as being a fundamental aspect of the Convention, without which a major portion of the former Convention’s scope is lost. However the Basel Convention requirement for a certain kind of movement document as described in the Convention that must accompany the waste to final disposition, can certainly be replaced with another type of documentation (e.g. Green Passport, and contract).

5.4. As depicted in Diagram II, an appropriate distinction then, in our view, to determine an “equivalent level of control” by comparing the equivalency of two instruments is to expect replication at the fundamental objectives, principles, rights, and scope of the Convention, but not to expect the same replication with respect to specific obligations designed to implement such rights, principles, objectives and scope, as long as the same net “practical effect” is accomplished even when the actual requirements might differ.
5.5. A general methodology of the exercise would be to first identify fundamental principles, objectives, rights and scope including those found in the relevant decisions of the Basel Convention. These should be replicated in the IMO regime if an “equivalent level of control” is to be achieved and thus a comparison of the IMO draft Convention to this list needs to be undertaken. Next one can compare obligations and requirements. If certain of these non-Fundamental Basel obligations and requirements are absent in the IMO Convention that are present in the Basel Convention, that would be acceptable as long as the different elements in the IMO regime replicate the “practical effect” (real-world effect) of those Basel obligations.

5.6. Unless the fundamental principles, rights, scope and objectives of the IMO Convention are aligned, in particular at least encompassing and possibly exceeding, the core principles, rights, objectives and scope of the Basel Convention and its key decisions, it will be impossible for it to be said to possess an “equivalent level of control.” Likewise for the other key obligations, unless the “practical effect” of the elements found in the newer regime are replicated the IMO regime cannot be seen as possessing an “equivalent level of control.”

5.7. Our next task then, to identify those fundamental elements of the Basel Convention which need to be replicated in actuality (including principles, objectives, scope and rights), and then a second list of obligations which need to be replicated in practical effect. Once the IMO Convention is completed, we can then compare these elements to those identified to see if it meets the standard of “equivalent level of control.”

6. Elements of Basel Convention to be Compared in the IMO Convention

6.1. Guidance for determining some of the elements the Parties are seeking in order to establish “equivalent level of control” can be found in three primary documents:

- Decision VII/26, where that terminology was first utilized,
- Decision IX/30 which mandated the current assessment exercise to be undertaken by the Open Ended Working Group,
- The language of Article 11, which provides a legal basis for this determination.

6.2. First, we must recall Decision VII/26 with respect to what it called upon the Parties to do with respect to controlling ships under the Convention. This is important because the Parties in this statement distilled what they felt were most important with the specific subject of ships as waste: “fulfill their obligations under the Basel Convention where applicable, in particular their obligations with respect to prior informed consent, minimization of transboundary movements of hazardous wastes and the principles of environmentally sound management.” (underlining added) Thus from Decision VII/26 we can determine that it is important to highlight the
following:

- Prior informed consent notification system
- Minimization of transboundary movements of hazardous wastes
- Principles of environmentally sound management

6.3. Likewise the Parties noted in Decision VII/26 that a “reporting system” was necessary as part of a package of “mandatory requirements” what it would take to ensure an “equivalent level of control”: “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.” It is important to note that requirements (obligations) are needed of which a reporting system is but one requirement. Thus from Decision VII/26 we can also determine that it is important to highlight the following:

- Mandatory Requirements
- A reporting system

6.4. Next it is important to recall that Decision IX/30 pointedly referenced that Parties need to take into account “the special characteristics of ships and international shipping…and the principles of the Basel Convention and the relevant decisions of the Conference of the Parties” (underlining added) The special characteristics of ships has to do with their mobility and their questionable jurisdiction under exporting states. This characteristic has led to circumvention of the Basel Convention’s obligations and principles by unscrupulous operators. It was hoped that the IMO Convention would close this loophole while retaining the principles of the Basel Convention. Second, by referencing the principles of the Basel Convention, the Parties realize that real control is derived from principle. Therefore it is appropriate to compare Basel principles with those of the Draft IMO Convention.

6.5. Due to the reference to “decisions” of the Parties, one would be negligent not to include as criteria the most significant and relevant decision with potentially great impact to the issue of transboundary movement of ships, and that is the Basel Ban Amendment (Decision III/1) and the precursor decisions II/12 and I/22. It was decision III/1 that has already decisively impacted attempts at transboundary movement of obsolete ships including the famous case of the Clemenceau which was forced to return to France when courts ruled its export to Indian breaking yards violated the Basel Ban Amendment implementation legislation of the European Union. Thus from Decision IX/30 we can determine that it is important to highlight the following:

- The special characteristics of ships and international shipping
- the principles of the Basel Convention
• The relevant Decisions of the Conference of the Parties (including III/1)

6.6. Finally, and we would argue, most importantly, the language of Article 11 must serve as the guidance for the Parties with respect to the issue of equivalency. Parties may enter into...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.” With this in mind we have highlighted some of the provisions of Basel of particular interest of developing countries. Thus it is important with respect to the Convention’s obligations under Article 11 to highlight the following:

• Provisions that do not derogate from the environmentally sound management of hazardous wastes as required in the Convention
• Concerns in particular regarding the interests of developing countries

6.7. With this in mind, below we have prepared a non-exhaustive checklist of key elements, broken into a first list of “Fundamental Elements” found in the Basel Convention that imply or indicate the control that must be replicated, in actuality (for principles, rights, scope and objectives) and a second list of key obligations (non-Fundamental” that need to be replicated in “practical effect” in the IMO Convention. Currently the exercise we are undertaking with this submission is that mandated by Decision IX/30 which is the list of criteria and not the analysis itself.

Nevertheless, we have presented these key elements as a table to encourage the Parties to make use of this matrix as a worksheet to make their own determinations later in the second column as to the level of equivalence achieved once the IMO regime is adopted in Hong Kong this May. The NGO Platform on Shipbreaking will similarly conduct such an analysis at that time.

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## Comparative Table of Key Elements Needed to Determine “Equivalent Level of Control”

<table>
<thead>
<tr>
<th>Fundamental Elements of Basel Convention</th>
<th>IMO Draft Convention (Replication Needed)</th>
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<tbody>
<tr>
<td><strong>Scope and Rights</strong></td>
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<td>The instrument text is legally binding in all aspects for all United Nations states without reservations. -- (Art. 26)</td>
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<tr>
<td>Has a comprehensive definition of hazardous waste/materials which includes all contaminated ships without limitation such as size or ownership etc. -- (Articles 1 and 2, Annexes I, III, IV, VIII and IX)</td>
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<tr>
<td>Obligation to establish and regulate waste management capacity nationally, including within its scope all downstream waste management, beyond initial shipbreaking facility -- Basel establishes a clear obligation that each state develop its own capacity for waste management throughout the entire waste management chain (Article 4.2.b, 4.2.c, 4.7.a, Article 6.9 describes completion of Basel regime as completion of disposal))</td>
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<td>Allows states to impose more rigorous requirements -- Basel allows States to impose additional requirements as long as they are consistent with the Convention and the rules of international law. (Article 4.11)</td>
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<td>Recognizes sovereign right of states to prohibit import. No export to those banning import -- Parties are prohibited from exporting to Parties who have prohibited the import of such wastes. (Article 4.1.b)</td>
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<tr>
<td><strong>Principles</strong></td>
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<tr>
<td>Source Reduction Principle -- by which the generation of waste should be minimized in terms of its quantity and its potential to cause pollution. This may be achieved by using appropriate plant and process designs. (Preamble: recitals 3, 10, 17, Art. 4.2.a., Art. 4.13)</td>
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<tr>
<td>National Self-Sufficiency/Minimizing Transboundary Movement of Hazardous Waste Principle -- States should ensure that the disposal of the waste generated within their territory is undertaken there by means which are compatible with environmentally sound management, recognizing that economically sound management of some wastes outside of national territories may also be environmentally sound. (Preamble recitals 1,2,7,8, 9,18, Art. 4.2.b, 4.2.d, Art. 4.9, Art. 15.7)</td>
<td></td>
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<tr>
<td>Polluter Pays Principle/Producer Responsibility -- by which the potential polluter must act to prevent pollution and those who cause</td>
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pollution pay for remedying the consequences of that pollution. (Preamble: Recital 5, Art. 4.2.c, Art. 7.a)

| Environmentally Sound Management Principle | For those wastes that cannot be or could not be prevented from being generated, 'taking of 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'. **No transboundary movement of wastes can take place unless all Parties are convinced of environmentally sound management.** (Preamble: Recitals 4, 5, 9, 17, 23, 24, Art. 4.2.b, 4.2.c, 4.2.e, 4.2.g., 4.8, 4.10 Art. 8, Art. 9.a) |
| Environmental Justice Principle | Recognizing the special needs and vulnerabilities of developing countries and seeking to avoid disproportionately burdening any peoples with burdens of environmental harm. The Basel Convention and its Basel Ban Amendment recognizes very clearly differing economic levels in the world today. Free markets and globalization opens up numerous opportunities for all, but also opens up opportunities for exploitation of lower-wage communities and countries with hazardous waste and was the driving force behind the development of the Basel Convention.  (Preamble: Recitals 7, 20, Art. 4.13, Decisions II/12, III/1) |
| Principle of common but differentiated responsibilities | Recognizing that although a common global problem is shared (hazardous waste), nations and stakeholders have different responsibilities based on their relative wealth and role.  (Preamble: Recitals 21, Art.10.2.d, Art.10.3, Art.10.4) |
| Principle of prior informed consent | States have the right to be informed and to consent prior to any export of hazardous or other waste to their territories. **No export without prior informed consent can take place.** (Art. 4.1.c, Art. 6) |
| National sovereignty principle | States have the right to ban, imports and exports of hazardous waste and to take more stringent measures than those required under the Convention. (Preamble: Recitals 6, Art. 4.1, 4.2.e, Art.4.10, Art. 4.11) |

### Key Objectives

| To reduce the generation of hazardous wastes | (Article 4.2.a) |
| To reduce transboundary movement of hazardous waste to a minimum | This is seen as a vital obligation and one of the prime objectives of the Basel Convention. It goes hand in hand with the national self-sufficiency obligation mentioned next. (Article 4.2.b and d) |
| Obligation to establish waste management capacity nationally | Here is a clear mandate that each state should develop its own capacity for waste management as an alternative to export. |
Certainly while it is understood that not every state can do this, certainly wealthy nations of the OECD or collectively, the EU can do this. This is also part of the criteria that has to be weighed by a competent authority exercising a level of control under Basel. For example, if a country has the capacity to manage ships at home it should do so. (Article 4.2.b)

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<tr>
<th><strong>To establish environmentally sound management (ESM) of hazardous wastes wherever their disposal and prevent trade of wastes if there is reason to believe they will not be managed with ESM</strong> -- (see Article 4.2.b,c,d,e,g,h, 4.8, 4.10)</th>
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<th><strong>To take into account the special needs and vulnerability of developing countries</strong> -- (Preamble: recitals 7,20,21, and Article 4.2.e, 4.13, 10.3, 10.4, 11.1)</th>
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<th><strong>Establishment of capacity building mechanisms such as regional training centers and a revolving fund to assist in emergencies (e.g. abandoned ships)</strong> -- Basel clearly establishes these financial commitments to assist developing countries) (Article 14)</th>
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<tr>
<th><strong>No trade or transfer of ships between Parties and non-Parties absent a special Agreement as stipulated under Article 11</strong> -- Basel recognizes the pernicious effects of the trade of toxic wastes and has seen fit to prohibit trade between Parties and non-Parties. The goal of the prohibition is to force non-Parties to become part of Basel to ensure the application of a stringent global standard on toxic waste exports. (Article 4.5)</th>
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**Key Obligations – Basel Ban Decisions**

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<th><strong>No export of waste ships that contain hazardous materials to developing countries. If ships are sent to non-Annex VII countries they will need to be pre-cleaned of hazardous materials prior to delivery</strong> -- The decision IX/30 asks parties to take into account “relevant decisions” of the Convention in making the determination of “equivalent level of control.” No decision can be more relevant than Decision III/1. Indeed it was the “control” that has stopped numerous ships from being exported from Europe to date including the Clemenceau. (Decision III/1)</th>
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<th><strong>No import of ships from OECD countries by non OECD countries</strong> -- (Decisions I/22, II/12)</th>
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| **Non-Fundamental Elements of Basel Convention** | **IMO Draft Convention**  
(Replication of Practical Effect) |
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<tr>
<td><strong>Key Obligations -- Reporting System</strong></td>
<td><strong>Requirement that notification take place and consent be obtained prior to any export</strong> -- No shipment of waste should take place without all “States Concerned” being informed (including an inventory) and consenting to it. It is well known that this requirement can be circumvented by unscrupulous waste ship traders because they can declare a ship to be a waste only after it is in international waters or already at the shipbreaking state. It was hoped therefore that IMO Convention might close this loophole and not dispense with the intent of the reporting. (Articles 4.1.c and 6)</td>
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<tr>
<td><strong>Establishment of state to state responsibility for import, export and transit states</strong> -- Much of the effectiveness of the Basel Convention stems from the fact that all decisions for approving an export, import or transit of hazardous wastes must be scrutinized and consented to prior to initiation by national governments, not private sector actors. This state responsibility implies state liability over waste generator, thus there is special obligation placed upon the initiating entity – the exporting state – or state with jurisdiction over the exporter/owner/generator. (Article 2 and throughout the Convention)</td>
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<tr>
<td><strong>Transparency / full description of the owner, holder, hazardous materials, and waste must accompany the shipment as a movement document, fully transparent, and must be provided in advance to all states concerned</strong> -- (Articles 4.2.f, 4.7.c, and Annex V)</td>
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<td><strong>Existence of valid contract required</strong> -- (see Art. 6.3.b)</td>
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<tr>
<td><strong>Key Obligations -- Enforcement</strong></td>
<td><strong>Ability to conduct diligent enforcement not limited</strong> -- No limitations are placed with regard to enforcement. Indeed each Party is asked to take appropriate legal, administrative and other measures to implement and enforce the provisions of the Convention, including measures to prevent and punish conduct in contravention of the Convention. (Article 4.4)</td>
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<td><strong>Illegal traffic is considered criminal</strong> -- The Basel Convention defines “illegal traffic” and makes it a criminal act. Maintaining this level of punitive measure by states is very important. (Article 4.3)</td>
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<tr>
<td><strong>Duty to re-import</strong> -- When a movement cannot be completed in the terms of the contract or is deemed to be illegal traffic, a mechanism exists which includes a duty of the exporting state to take back the waste. (Article 8, Article 9.2)</td>
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<tr>
<td><strong>Key Obligations – International Cooperation, Information Exchange</strong></td>
<td><strong>Duty to Make Available Information,</strong></td>
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<td>cooperate in monitoring, research and development, technology transfer, technical guidelines development, helping developing countries in implementation etc. (Article 10)</td>
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<td>Duty to Transmit Information to Secretariat (Article 13)</td>
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<tr>
<td>Duty to Designate Competent Authorities and Focal Points (Article 5)</td>
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*The Conference of the Parties,*

_Aware_ of the risk of damage to human health and the environment caused by hazardous wastes and other wastes and the transboundary movement thereof,

_Recognizing_ that many ships and other floating structures are known to contain hazardous materials and that such hazardous materials may become hazardous wastes as listed in the annexes to the Basel Convention,

_Concerned_ that ships and other floating structures may pose a threat to the environment and human health if they are not, when pre-decontaminated or dismantled, managed in an environmentally sound manner,

_Noticing_ the need to improve the standards of ship dismantling worldwide and the importance of international cooperation in achieving this goal,

_Recognizing_ the importance of the environmentally sound management of dismantling of ships,

_Noticing_ that a ship may become waste as defined in article 2 of the Basel Convention and that at the same time it may be defined as a ship under other international rules,

_Recognizing_ the important role that concerned States, ship owners, recycling facility operators and other stakeholders have to play in developing mechanisms to ensure the environmentally sound management of ship dismantling,

_Further recognizing_ the need to ensure effective enforcement of such mechanisms, including a reporting system, for ships destined for dismantling,

_Recalling_ decision V/28 on the dismantling of ships, which mandated the Technical Working Group to collaborate with the International Maritime Organization on the subject of the full and partial dismantling of ships and, together with the Legal Working Group, to discuss the legal aspects of the subject under the Basel Convention,

_Further recalling_ decision VI/24 on technical guidelines for the environmentally sound management of the full and partial dismantling of ships,

_Noticing_ that the Governing Body of the International Labour Office has adopted guidelines on safety and health in ship breaking, that the International Maritime Organization has adopted guidelines on ship recycling and that the Basel Convention has adopted technical guidelines for the environmentally sound management of the full and partial dismantling of ships,

_Noticing_ the importance of promoting the implementation of the above-mentioned guidelines,

_Further noting_ that the International Maritime Organization and the International Labour Organization, together with the Conference of the Parties to the Basel Convention,
The Basel Convention, have agreed to establish a joint working group on ship scrapping and have agreed to terms of reference and working arrangements governing its activities,

**Affirming** that elements of prior informed consent as elaborated in the Basel Convention enable the minimization of the impact to human health and the environment associated with dismantling of ships, recognizing the particular issues that arise in the unique context of ships,

**Noting** the progress made at the fifty-second session of the International Maritime Organization’s Marine Environment Protection Committee toward the possible development of a mandatory scheme for ship recycling, including a reporting system for ships destined for recycling,

**Realizing** that States have distinct obligations as Parties to the United Nations Convention on the Law of the Sea and relevant International Maritime Organization conventions, including obligations of States in their capacities as flag States and as Parties to the Basel Convention and including obligations in their capacities as States of Export, and that States should be able to meet these obligations in a consistent manner,

**Noting** that duplication of regulatory instruments that have the same objective should be avoided,

1. **Reminds** the Parties to fulfil their obligations under the Basel Convention where applicable, in particular their obligations with respect to prior informed consent, minimization of transboundary movements of hazardous wastes and the principles of environmentally sound management;

2. **Invites** Parties, other States, ship owners and other stakeholders to assist in the improvement of the environmentally sound management of ship dismantling worldwide;

3. **Invites** Parties, especially developed States, to encourage the establishment of domestic ship recycling facilities;

4. **Encourages** Parties to ensure their full and effective participation in the deliberations of the joint working group of the International Maritime Organization, the International Labour Organization and the Basel Convention, either through their representatives or as observers;

5. **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 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;

6. **Requests** the Open-ended Working Group to consider the practical, legal and technical aspects of the dismantling of ships in the context of achieving a practical approach to the issue of ship dismantling, to report on developments and to present any proposals, as appropriate, to the Conference of the Parties at its eighth meeting on a legally binding solution, taking into consideration the work of the International Maritime Organization and the work of the joint working group.

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IX/30: Dismantling of ships

*The Conference of the Parties,*

**Recalling** its decision VIII/11 on environmentally sound ship dismantling,

**Recalling also** its invitation at its eighth meeting to the International Maritime Organization to ensure that the international convention on safe and environmentally sound recycling of ships to be adopted by it establishes an equivalent level of control as that established under the Basel Convention, noting that the duplication of regulatory instruments that have the same objective should be avoided.
Further recalling the principles of the Basel Convention, in particular to minimize the generation and transboundary movement of hazardous wastes, to ensure the environmentally sound management of such wastes and to prevent the export of hazardous wastes to countries without their prior informed consent,

Recalling also the encouragement to the International Maritime Organization to promote the substitution of harmful materials in the construction and maintenance of ships by less harmful or, preferably, harmless materials, without compromising the ships’ safety and operational efficiency,

Further recalling the encouragement to Parties to coordinate at the national level between their International Maritime Organization and Basel Convention representatives and to participate actively in the consideration of the draft ship recycling convention,

Acknowledging work carried out to develop programmes for sustainable ship recycling in collaboration with the International Maritime Organization and the International Labour Organization,

I. Draft international convention on the safe and environmentally sound recycling of ships

1. Welcomes the progress made in the development of an international convention on the safe and environmentally sound recycling of ships (“the ship recycling convention”) by the International Maritime Organization;

2. Invites the International Maritime Organization to continue to have due regard to the role, competence and expertise of the Basel Convention in matters related to ship dismantling and in particular with regard to the environmentally sound management and disposal of hazardous and other wastes;

3. Also invites the International Maritime Organization to continue to incorporate clear responsibilities of all stakeholders in ship recycling, including ship owners, ship recycling facilities, flag States and ship recycling States, with a view to achieving the safe and environmentally sound management of ship recycling, also taking into account the current capacity and the common but differentiated responsibilities and sovereign rights of the Parties;

4. Requests the Open-ended Working Group:
   (a) To carry out a preliminary assessment on whether the ship recycling convention, as adopted, establishes an equivalent level of control and enforcement as that established under the Basel Convention, in their entirety, after having developed the criteria necessary for such assessment, and, in doing so, to take into account:
      (i) The special characteristics of ships and international shipping;
      (ii) The principles of the Basel Convention and the relevant decisions of the Conference of the Parties;
      (iii) The comments submitted by Parties and other relevant stakeholders, as appropriate;
   (b) To transmit the results of the assessment to the Conference of the Parties at its tenth meeting for consideration and action, as appropriate;

5. Invites Parties to that end, to provide comments on appropriate criteria to be used to the Secretariat, by 31 January 2009;

6. Requests the Secretariat to continue to follow the development of the ship recycling convention and to report thereon to the Open-ended Working Group at its seventh session and to the Conference of the Parties at its tenth meeting;

7. Also requests the Secretariat to transmit this decision for submission to the International Maritime Organization for consideration by the Marine Environment Protection Committee at its fifty-eighth session;

II. International cooperation and technical assistance activities on the environmentally sound management of ship dismantling

8. Invites Parties and others to continue to transmit to the Secretariat relevant information that may assist stakeholders in developing measures to address, in the short and medium term, the potentially harmful consequences of ship dismantling on human health and the environment and requests the Secretariat to continue to make any such information received available on the Basel Convention website;
9. **Underlines** the importance of continued inter-agency cooperation between the International Labour Organization, the International Maritime Organization and the Basel Convention on issues related to ship dismantling, as appropriate;

10. **Welcomes** the development of implementation programmes relating to sustainable ship recycling and requests the Secretariat, subject to the availability of funding, to continue its work and to develop further the programmes for sustainable ship recycling in conjunction with other bodies, in particular the International Maritime Organization and the International Labour Organization, and to report thereon to the Open-ended Working Group at its seventh session for its consideration and for the Open-ended Working Group to report thereon to the Conference of the Parties at its tenth meeting;

11. **Calls upon** all Parties and other stakeholders in a position to do so to make financial or in-kind contributions to the implementation of activities under the relevant programmes;

12. **Requests** the Secretariat to report to the Open-ended Working Group and the Conference of the Parties on the outcome of the third session of the Joint Working Group of the International Labour Organization, the International Maritime Organization and the Basel Convention on Ship Scrapping.

END