Comments on Statement of French Government on Clemenceau by
the Basel Action Network on Behalf of the Greater Coalition
Demanding Return of Clemenceau to France for Decontamination
Prepared 24 January 2006

The following are annotated comments provided by the Basel Action Network on behalf of the large coalition of organizations committed to achieving environmental justice worldwide. The false assertions presented below by the Government of France in the infamous case of the Export of the Clemenceau demand a rebuttal. It is our hope that all fair-minded persons will reject untruthful statements no matter how oft repeated by powerful interests. It is our sincere hope that the truth will prevail despite the force behind the falsehood. These comments will not repeat all of the citations and arguments previously laid out in our previous documentation. Thus this annotated critique should be read in conjunction with the 16 page Summary of Violations which can be found at:


Sincerely,

Jim Puckett
Coordinator, Basel Action Network
www.ban.org

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Supreme Court Monitoring Committee on Hazardous Waste Management, Ministry of Environment & Forests, 547, Paryavaran Bhavan, C.G.O. Complex, Lodhi Road, New Delhi: 110003

Sub: CLEMENCEAU SHIP BEING EXPORTED FROM FRANCE FOR DISMANTLING AT ALANG GUJARAT.
WRITTEN STATEMENT ON BEHALF OF
GOVERNMENT OF FRANCE.

The French Government is filing this short statement of facts supported by official documents showing that the process of shipbreaking of Warship Aircraft Carrier “Clemenceau” is in consonance with national and international law, and the orders passed by the Hon'ble Supreme Court of India. There is no violation of any national or international norms, standards or Conventions. Clemenceau is not hazardous waste but a Warship.

Basel Action Network/Coalition: The idea that somehow within the framework of the Basel Convention and the Stockholm Convention, both treaties to which France is a full contracting Party, there exists an exemption for warships, is simply false. Under the Basel Convention if a material or object (including a ship) is to be disposed of, it is a waste.

This notion of a warship exemption is simply an invention of expedience by the French government. In the past at the London Convention, the international law governing ocean dumping, the French tried to likewise exempt warships from ocean dumping rules, but were rebuffed by the Parties to that Convention. This time France believes it can get away with this invention because India has asserted that a ship is not a waste. Yet the Basel Parties, including France and India, know full well that the only exemptions from the Convention are for materials that are covered under other Conventions – namely the two hazardous waste exemptions cited in Article 1 are radioactive wastes and wastes derived from the normal operations of ships (e.g. bilge waters, oils etc.)

The French Government is extremely conscious about the environmental impact of its operations and has therefore ensured that the entire project leading to dismantling of the Clemenceau Ship is in consonance with all environmental, safety and health norms.

Basel Action Network/Coalition: It begs credibility to understand how it is possible that the French government can claim that they are “extremely conscious of the environmental impacts” of its operations in this case when they have failed to do the most basic prerequisite of quantifying the amount of hazardous materials on board the ship prior to export.

They have failed to provide an accurate assessment of the amount of asbestos being exported and have failed to even test for what are likely to be many hundreds of tonnes of PCBs on the ship (not in transformers) but in solid form as part of the
paints, gaskets, insulation, wiring etc. on the vessel. Likewise we see no quantification of heavy metals.

1 **Background**

Aircraft-carrier Clemenceau was commissioned in 1961. After 36 years' service with the French Naval Operations, the ship was placed in special service on March 2nd 1998. She was then used as a source of spare parts for her sister ship, Sao Paolo (former aircraft-carrier Foch) sold to Brazil by France. As the contract between France and Brazil ended in 2002, the Minister of Defence decided to dismantle the ship on December 16th 2002. The hull's name was changed to Q 790 and entrusted to the care of Direction Nationale des Interventions Domaniales (DNID) (State-Property Interventions Directorate) to be sold as steel after asbestos removal and demolition through a contract established, after a publicly advertised tender call on April 14th 2003. The weight of the ship was estimated at 22,400 Tonnes. The said weight is the reference mass on the basis of original ship design. Copy of tender is Attachment 1.

An agreement was entered between the French Government and SDIC on 20 October 2003 to sell the steel of the Hull on completion of asbestos removal in France and shipbreaking in India. Copy of agreement is Attachment 2.

2 **Asbestos in Clemenceau before decontamination in Toulon Military Harbour.**

In 2003, when the French State handed over Clemenceau's hull to Ship De-Commissioning Industry, the weight of asbestos and asbestos products was estimated at 215 Tonnes. A copy of the report is attached as Attachment 3. This figure was rounded to 220 Tonnes for safe margin. Initial phase of decontamination of the vessel showed that the funnel lagging was made of fibre glass and not asbestos product.

The tonnage of the asbestos and asbestos containing materials in Clemenceau was thus reduced at 160 Tonnes (220 Tonnes minus 60 Tonnes i.e. the weight of the funnel) before the asbestos removal operations took place in Toulon Military Harbour. Copy of Certificate is attached as Attachment 4.

The total amount of asbestos and asbestos containing materials in Clemenceau prior to asbestos removal in Toulon Military Harbour was of two categories:

- **1st category:** Thermal insulation composites, as blankets of very high asbestos content mainly laid on steam producing or conveying equipments and circuits, amounting to the essential part of asbestos on board due to the sizeable proportion of asbestos contained. A part of these products is inaccessible since they are included in the very structures of the ship.
• 2nd category: Surface coating materials (vinyl-asbestos, asphalt paints, adhesive...) or resistant materials (klingerite) with a part of very low-proportion encapsulated asbestos material to resist wear, heat or fire.

Basel Action Network/Coalition: The French government still has not provided an accurate quantification of the asbestos and the types of asbestos that remain on the vessel. A French court has in fact asked for an independent survey to be conducted, but this has been asked for after the ship has left France! This departure prior to inventory is absolutely inappropriate and illegal under all international norms including those obligated under the Basel Convention and the EU Waste Shipment Regulation.

The entire toxic material has been decontaminated prior to asbestos removal operations in Toulon. The hull was treated and no longer contains:

• Hydrocarbons. All the tanks containing or having contained hydrocarbons have been scrubbed/degassed between October, 1997 and January, 1998. These tanks were then filled with soft water;
• PCB/Pyralene. The ex-Clemenceau's transformers, like all those from the Navy's ships, were dry-type transformers and did not include any of these materials;

Basel Action Network/Coalition: This statement is shocking in its ignorance. It is very well known that ships of this vintage, and in particular military vessels contain massive amounts of PCBs, not in their transformers (liquid form) but far more PCBs are found in solid form in the gasketry, insulation, paints, and wiring etc. This fact has created a severe disposal and waste management problem in the United States and has prevented the US ex-naval vessels from being exported to countries such as India, China and Bangladesh.

In the United States Environmental Protection Agency Document “A Guide for Shipscrapers” located at http://www.ban.org/Library/scrap.pdf it is stated:

“As described below, PCBs are found throughout older vessels and it is likely your ship scrapping facility will be faced with managing large quantities of PCBs.”

Although no longer commercially produced in the United States, PCBs are found in solid (waxy) and liquid (oily) forms in equipment and materials on ships being scrapped. These equipment and materials which may contain PCBs in concentrations of at least 50 parts per million (ppm) include:

• Cable insulation
• Rubber and felt gaskets
• Thermal insulation material including fiberglass, felt, foam, and cork
• Transformers, capacitors, and electronic equipment with capacitors and transformers inside
• Voltage regulators, switches, reclosers, bushings, and electromagnets
• Adhesives and tapes
• Oil including electrical equipment and motors, anchor windlasses, hydraulic systems, and leaks and spills
• Surface contamination of machinery and other solid surfaces
• Oil-based paint
• Caulking
• Rubber isolation mounts
• Foundation mounts
• Pipe hangers
• Light ballasts
• Any plasticizers

The document goes on to describe the very strict conditions needed for managing PCB waste. None of these procedures outlined therein are being followed in India, and France has not made any plans for such proper management of PCBs on the Clemenceau. This fact is shocking especially while France pretends to be environmentally conscientious.

The law in the United States (the Toxic Substances Control Act) forbids such export of solid PCBs above concentration levels of 50 ppm. That is likewise the action level for PCBs in the Basel Convention. The above statement made by the French government makes it clear that France has not considered these PCBs in solid form, but rather they make the false presumption that if there are no PCBs in transformers then the don’t exist in the other materials on board the vessel. Yet nothing can be further from the truth.

To give an idea of the amount of PCBs on board typical military vessels of this age, the table below provides such information from the United States. Use of PCBs was global and not limited to the United States:

France must not be allowed to continue to ignore the issue of PCBs on board the Clemenceau!
The radioluminescent plates have been removed before the asbestos removal operations.

3 **Asbestos removal operations in Toulon Military Harbour.**

115 Tonnes of asbestos were removed in Toulon Military Harbour by two companies. Friable asbestos which is directly visible and accessible not involving cutting or dis-assembly work affecting the integrity of the ship has been removed. Technopure removed 106 Tonnes. Since Technopure raised disputes and did not complete the assignment, the work was entrusted to another company called Prestosid which removed approximately 8.5 Tonnes of asbestos. Consequently, 114.5 tonnes rounded to 115 Tonnes of asbestos were removed, leaving behind a balance of only 45 Tonnes of mostly non-friable asbestos/asbestos-containing products and residual in the structure of the ship.

**Basel Action Network/Coalition:** Even if the above characterization is accepted (despite being in serious dispute), the idea that 45 tonnes (“only”) of asbestos is not a problem for human health and the environment demonstrates a most callous disregard for the environment and health of Indian citizens.

### Comparative Table of Vessels with their Asbestos and Materials Containing non-liquid PCBs

<table>
<thead>
<tr>
<th>Name of US Vessel</th>
<th>Vessel Type</th>
<th>Year Commissioned</th>
<th>Lightweight (Tonnes)</th>
<th>Asbestos (Tonnes)</th>
<th>Materials Containing PCBs (Tonnes)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Oriskany</td>
<td>Aircraft Carrier</td>
<td>1950</td>
<td>25,129</td>
<td>500-600*</td>
<td>894**</td>
</tr>
<tr>
<td>Calooshatchee</td>
<td>Oiler</td>
<td>1945</td>
<td>15,184</td>
<td>61</td>
<td>34.1</td>
</tr>
<tr>
<td>Canisteo</td>
<td>Oiler</td>
<td>1945</td>
<td>14,705</td>
<td>61</td>
<td>34.1</td>
</tr>
<tr>
<td>Donner</td>
<td>Landing Ship Dock</td>
<td>1945</td>
<td>5,910</td>
<td>75</td>
<td>13.7</td>
</tr>
<tr>
<td>Protector</td>
<td>Radar Station Ship</td>
<td>1957</td>
<td>6,194</td>
<td>85</td>
<td>23.8</td>
</tr>
<tr>
<td>Compass Island</td>
<td>Auxiliary Ship</td>
<td>1953</td>
<td>15,057</td>
<td>252</td>
<td>47.3</td>
</tr>
<tr>
<td>Canopus</td>
<td>Submarine Tender</td>
<td>1965</td>
<td>12,618</td>
<td>252</td>
<td>286</td>
</tr>
</tbody>
</table>
Removal of 115 Tonnes of asbestos is confirmed by an independent authority called SITA, and autonomous company which received the waste asbestos. Copy of the certificate issued by SITA is attached as Attachment 5.

Three independent authorities have examined and verified that the hull has been decontaminated. IS, (WELDING) INSTITUTE and ISODIAG have certified on inspection that the ship has been decontaminated.

**Basel Action Network/Coalition:** Given that the dispute over asbestos has yet to be resolved, we would like to know if the above surveys sampled paints, gasketry, insulation and wiring etc. for the presence of solid matrix PCBs. We are very much afraid the answer is no. Thus how can it be verified that the ship is decontaminated?

Another independent institute namely ITGA has technically inspected the ship for the concentration of asbestos dust in the ship after decontamination. ITGA has certified that all the asbestos dust has been removed from the ship after decontamination.

These Institutes have divided the ship into 10 parts and carried out inspection of each part. As per three independent reports on each part of the ship, it is confirmed that the ship has been decontaminated of friable asbestos which are visible and accessible not involving cutting or dis-assembly work affecting the integrity of the ship. The certificate issued by IS (WELDING) Institute is attached as Attachment 6. The certificate issued by ISODIAG is attached as Attachment 7. The certificate issued by ITGA is attached as Attachment 8.

**Basel Action Network/Coalition:** The issue of friable or accessible etc. is irrelevant in the context of the Basel or Rotterdam Conventions.

4 **Continuation of removal operations in India**

Clause 2 of the Agreement between the French Government and SDI provides -

"On completion of this operation, the hull shall be exported to the shipyard for asbestos removal and shipbreaking purposes. Technopure, the French asbestos removal company, shall transfer its technology and know-how to Luthra Group, the asbestos removal company, as part of which the Indian operators shall be trained during the major asbestos removal operation conducted in Toulon and be acquainted with equipment and techniques at European standards. The final asbestos removal operation shall be carried out under the oversight and supervision of the French asbestos removal company.

**Basel Action Network/Coalition:** It is our understanding that Technopure disputes the claims of the French Government and is not longer under Contract.

The buyer shall pay for transportation of asbestos waste to the disposal center at Pit No.2 in Adhav, India. A European expert appointed by the buyer shall certify
withdrawal of the asbestos pieces in compliance with the applicable European regulations. The buyer shall notify the Fleet Support Department of the performance of its asbestos removal obligation and provide it with a certificate prepared by the expert for this purpose.”

Engineers and Supervisors from two Indian companies (2 from Shree Ram Vessels and 3 from Luthra Group) received qualifying training of technical management in France in Mulhouse on the removal operations of friable asbestos product in March 2005. Certificate issued by Attestation De Capacities, a professional organization that five training heads from India have been trained on the methodology and know-how of asbestos removal are attached as Attachment 9. They also received practical training at the shipyard in Toulon, in August 2005 under the supervision of SDIC and Prestosid. There is an actual transfer of technology and know-how for the removal operations...

The removal and dismantling is to take place under the supervision of the French asbestos removal company Prestosid and SDIC in accordance with ISO 9001, ISO 14001 and OHSA 18001, applicable international standards. Copy of the certification is attached as Attachment 10 & 11.

**Basel Action Network/Coalition:** What is to happen to the asbestos, the PCBs, and the other hazardous materials? Is it going to magically disappear or will it be placed into disposal/storage on Indian soil, creating long-term environmental risk and management issues for India instead of France? This of course is an unacceptable export of harm and risk.

The ownership of the ship shall remain with the French Government till the process described in Article 2 and 3 of the agreement dated 20th October, 2003 between French Government and SDIC is completed. Therefore, the dismantling of the ship will be under the supervision and control of the French Government.

**Basel Action Network/Coalition:** However the European Waste Shipment Regulation forbids exports of any amount of asbestos waste from the EU to India for any reason. The idea that the French can somehow justify the export of toxic waste with the sugar coating of technology exports in order to justify the toxic trade is immoral and abhorrent. France should decontaminate the ship on its own soil prior to export in accordance with the Waste Shipment Regulation of the European Union which has incorporated the Basel Ban Amendment.

Again, nothing here is said of the management of the solid matrix PCBs. PCB are very persistent, cancer causing chemicals in a class known as persistent organic pollutants or (POPs). They are dangerous in both solid and liquid form. They have been banned from production in all areas of the world and are currently being subjected to a global phase-out as one of the 12 worst POPs. In 2002, a new treaty known as the Stockholm Convention was adopted to eliminate these chemicals from
the face of the earth and to ensure that they are destroyed by only using the most sophisticated destruction technology. India does not possess such technology and the ship-breaking yards in Alang have no capacity for dealing with PCBs at all. France has ratified the Stockholm Treaty, India has signed it.

For a description of how PCBs on ships are managed in the United States please see: [http://www.ban.org/Library/scrap.pdf](http://www.ban.org/Library/scrap.pdf)

5 **Permissions granted by Indian Authorities**

French Government had put SDIC under obligation ot obtain all the necessary permissions from the Indian Government before bringing the ship to India for dismantling.


- Letter dated 1.6.2004 issued by the Gujarat Pollution Board, which states that authorization had already been granted to M/s Shree Ram Vessel Scrap Pvt. Ltd.is attached as Attachment 12.

- Letter dated 25.5.2004 by the Embassy of India to Ministry of External Affairs, Government of India certifying that permission for dismantling would be granted by GPCB. Copy of the letter is attached as Attachment 13.

- Letter dated 9.5.2005 issued by Gujarat Pollution Control Board withdrawing its earlier order dated 2.5.2005 thereby permitting the ship to enter the Country. Copy of the letter is attached as Attachment 14.

- It appears that requisites permissions from the concerned authorities certified that bringing of ship to India for dismantling is as per the rules and regulations and Court orders.

**Basel Action Network/Coalition**: Clearly the matter would not now be before the Supreme Court of India if all of the permissions were in place. The so-called permissions above are made moot by the most recent ruling coming from India of 25 February 2005 when the Gujarat Pollution Control Board issued an order NO: GPCB/HAZ/Gen-66(12)/5826 referring to the Supreme Court ruling of 1995 which requires full decontamination prior to export, as well as a complete inventory of waste on board the vessel. This order has not yet been satisfied.

1) **No Permission shall be granted for beaching “Clemenceau” till direction given by Supreme Court in WP 657 of 1995 in its judgment dated 14th October 2003 are complied with regard to Hazardous waste including Asbestos and Radioactive substances, and in terms of other relevant direction there too.**
2) Further no beaching permission shall be granted without prior approval of this Board.

3) In the event the ship making its way to Alang after decontamination, if any Asbestos is generated during the breaking of the ship the same shall be re-exported and shall not be allowed to be disposed of in any TSDF in the state of Gujarat or anywhere else in Indian.

It is clear that the Clemenceau exporters have failed to adhere to point 1 above as the export scheme has failed to:

- Achieve consent based on a claim that there is no hazardous waste on board
- Properly decontaminate the vessel prior to export
- Provide a complete inventory of hazardous waste on board.

As required by WP 657.

6 Clemenceau brought to India in accordance ith international and national laws.


   Basel Action Network/Coalition: This is simply not true. Repeating it does not make it less false. Further, the lack of reference to the Article 16 ban on export to developing countries found in the Waste shipment regulation is shocking.

2. Rule 5 of Hazardous Rules, 1989 as amended, 2003 and para 55 of the Hon'ble Supreme Court Judgement in R.F.S.T.C. Vs. Union of Inida permits shipbreaking in India. This Hon'ble Committee has permitted shipbreaking in the past.

   Basel Action Network/Coalition: What has happened in the past in India is generally considered to be an international scandal that has prompted action at the Basel Convention, International Maritime Organization and the International Labor Organization. France can hopefully realize that what was acceptable in the past is no longer acceptable by the global community.

3. Clemenceau is not carrying any cargo and is a warship.

   Basel Action Network/Coalition: The fact that the ship carries no cargo is irrelevant and the French Government knows it. The Basel Convention Parties have asserted already that a ship itself can be a waste under the Convention regardless of cargo on
board. In fact the issue of cargo is a completely without relevance and has never even entered the international discussions on shipbreaking controls.

The fact that the ship was a warship is likewise irrelevant. These two “arguments” are without any legal merit whatsoever. They can only be seen as the most desperate and cynical attempts at economically motivated circumvention of international rules.

4. Clemenceau is not carrying any waste or hazardous waste.

**Basel Action Network/Coalition:** Nothing can be further from the truth. The ship itself contains hazardous wastes as defined in the Basel Convention.

5. All ships are built with asbestos. In the case of Clemenceau, asbestos is not being carried as cargo but is part of the ship. This does not constitute waste or hazardous waste as defined in the Basel Convention or the Hazardous Rules.

**Basel Action Network/Coalition:** It is false that all ships are built with asbestos. Currently this is not the case.

Neither the Basel Convention nor the Waste Shipment Regulation of the European Union has EVER claimed that only the cargo of a vessel is to be considered as a waste. France has never taken this position until now when it suddenly becomes expedient to do so. The case law, for example in the case of the Sandrien, in the Netherlands proved conclusively that a ship itself is a waste. Likewise, warships exported to the UK from the USA were obliged to follow the rules of the Organization for Economic Cooperation and Development (OECD) Council Decision on Recyclable waste because they were seen as waste.

Under the Basel Convention the ship is a material or an object that is to be disposed and that defines the ship itself as a waste. The idea that because the hull of the vessel somehow contains the waste in this case is no more relevant than somebody trying to claim that a barrel containing dioxin is somehow not a waste because the dioxins are in the barrel instead of on top of the barrel (cargo). It is a legal nonsense invented in an act of greed and desperation on the part of certain departments of the French and Indian governments in order to continue lucrative business-as-usual at the expense of poor laborers and the environment.

6. Clemenceau is not waste for the reasons:

   (a) It is a State owned ship.

**Basel Action Network/Coalition:** This is irrelevant and has never in any instance been relevant with respect to the definitions of waste.
(b) It will not be discarded but recycled. Clemenceau is indeed not intended to be
disposed of, but to be sold as steel after adequate removal of residual asbestos
and dismantling.

*Basel Action Network/Coalition:* This likewise is irrelevant. Even if the asbestos or
PCBs themselves were to be recycled, the Basel Convention defines disposal as both
recycling and final disposal destinations (see Basel Annex IV). Likewise the Basel
Ban from which the European Waste Shipment Regulation’s export prohibition to
non-OECD countries is derived, pointedly covers wastes destined for recycling. It
might make good sense for the French Navy, its Indian Ambassador and his
counselors to read the Convention and the EU Waste Shipment Regulation’s Article
16.

(c) Article 2.1. of the Convention defines “waste” as “substances or objects which
are disposed of or are intended to be disposed of or are required to be disposed
of by the provisions of National Law.”

*Basel Action Network/Coalition:* Precisely the reason why a ship, warship or
otherwise is a waste when destined for recycling or disposal.

(d) However, because of its specific nature as a warship, Clemenceau, is
considered as “weaponry” by the legislation of the exporting country, France,
and therefore not as “waste”.

*Basel Action Network/Coalition:* This statement is simply a legal nonsense.
Regardless of what France considers the ship to be by its own national legislation
that does not mean that it is not at the same time defined as a waste under
international rules to which France has signed onto as a Party. The Basel Convention
allows no instances of national reservations to its rules. All Parties must adhere to
what they have negotiated and ratified and at no time was there a negotiation within
the Basel Convention to exempt weaponry. It is a last minute invention and an
illegal one.

(e) Because it is weaponry, as mentioned above, the French State will remain
owner and responsible for the Clemenceau until it is completely dismantled.

*Basel Action Network/Coalition:* Ownership is irrelevant with respect to whether the
Basel Convention is being invoked. The fact is a transboundary movement as
defined in the Convention of a waste as defined in the Convention is occurring in the
case of the Clemenceau aqnd yet this transboundary movement is not adhering to the
obligations of the Basel Convention. As such it is illegal traffic under the
7. The Hon'ble Supreme Court Monitoring Committee has consistently taken the stand in I.A. No. 21/05 and has reiterated in an affidavit filed before the Hon'ble Supreme Court in I.A. No. 21/05 “That Government of India has determined that ship cannot be classified as waste within the scope of Article 2.1. of the Basel Convention. Further it has been stated “in fact Basel Convention has not defined “ship” destined for dismantling as hazardous wastes.”

Basel Action Network/Coalition: The mere fact that India was the first state to make the assertion that a ship cannot be a waste and a ship at the same time should be little encouragement for France when its own Waste Shipment Regulation forbids such export. Further, as India and France both know, Decision VII/26 of the Basel Convention laid to rest the contentions by India that a ship cannot be a ship and a waste at the same time. Rather that Decision was passed by a consensus of the Parties and stated very clearly:

“The contention that the ship itself is hazardous waste under the Hazardsdous Waste Rules, 1989 is entirely erroneous because under the Rules, a ship destined for breaking is not defined as hazardous waste and having some in-built insulation material which is part of the structure of the ship does not render the ship as hazardous waste.

Basel Action Network/Coalition: Saying this repeatedly does not make this fact. The Indian government and French government are engaged in a sad effort at revisionist history with respect to proper implementation of the Basel Convention.

Shipbreaking results in generation of steel which is re-used for manufacturing of value added products and in such cases, waste generation per tonne of steel production from dismantling ship is much lesser then the primary production of steel in factory. The latest thinking about waste management is moving away from “end or pipelines treatment” to the principle of 3R – Reduce, Recycle and Re-use”.

Basel Action Network/Coalition: The 3Rs are hardly, “latest thinking.” The 3Rs have been a concept for over 20 years and many activists have more recently
called for the 4Rs to encompass the “latest thinking”. The 4th R is for RESPONSIBILITY in terms of upholding the principles of “environmental justice” wherein recycling or any other form of waste management is not used as a justification for disproportionately burdening poorer communities with the global loading of toxic pollution simply because they are desperate for work. It is in affront to human rights to assume this posturing and pretence that France is somehow supporting the environment by this exploitive export. If France were truly interested in recycling and human rights they would pre-clean the vessel prior to export. Their refusal to do this is an international scandal.

8. French Courts have held that Clemenceau does not qualify as hazardous waste and/or waste. Judgements have been filed.

Basel Action Network/Coalition: The French courts have made a determination which is a legal nonsense under the European Waste Shipment Regulation.

9. The fact that Basel Convention does not apply to shipbreaking is evident from the fact that the International Maritime Organization (IMO) and ILO have a Joint Working Group to define common applicable to ship dismantling.

Basel Action Network/Coalition: The ILO is concerned about Shipbreaking as is the IMO. However the joint working group referred to is actually a joint working group between the Basel Convention, the IMO and the ILO. Far from any idea that this joint group somehow limits the competency of the Basel Convention for dealing with ships as waste is made clear from the mandate of the joint working group as established by the three organizations:

1. Consider the respective work programmes of the International Labor Organization (ILO), the International Maritime Organization (IMO), and the Conference of Parties to the Basel Convention, on the issue of ship scrapping in order to avoid duplication of work and overlapping of responsibilities and competencies between the three organizations, and identify further needs.

2. Facilitate the exchange of views between the three organizations in order to ensure a coordinated approach to all relevant aspects of ship scrapping

The further contention that the Basel Convention does not apply to ships should be erased in the mind of the French government by the 2004 consensus Decision VII/26 which called on all Parties to fulfill their obligations with respect to ships.
7 **Judgements of French Courts Upholding shipbreaking**

The Administrative Court of Paris on 30.12.2005 has rendered a decision rejection the arguments of the anti-asbestos groups who alleged that export of Clemenceau violates both the Basel Convention and European legislation. Copy of judgement is attached as Attachment 15.

A number of suits had previously been filed in Civil Courts of Paris by Greenpeace, Andeva and Ban Asbestos for banning the export of Clemenceau to India. As on date all the suits have been dismissed by the Civil Courts and the Appellate Courts. A summary of the litigation filed in France is attached as Attachment 16.

Basel Action Network/Coalition: The national courts of France cannot unilaterally annul the international legal obligations of France and the other Basel Parties involved in this case. No country is allowed to reserve action under the terms of the Convention.

Further, the Basel Convention does not allow unilateralism with respect to other States involved in a waste trade scheme. Under the Basel Convention, if either the importing state, exporting state or transit state (e.g. Egypt), considers the ship to be a hazardous waste under their national rules, then all States Concerned (importing, exporting or transit) must likewise consider the material to be a hazardous waste under the Convention (Article 1.1.b). Thus even if France and India both consider the ship as a non-waste, Egypt does consider it a hazardous waste and has asserted this fact in writing. Therefore the ship does fall under the Convention’s rules and France and India are obliged to treat it as such even if their national rules do not view it as hazardous waste.

8 **Action of Technopure malfride in nature**

The present proceeding appears to have been initiated on the statement of Technopure that only 70 Tonnes of asbestos have been removed and a minimum of 500 Tonnes of asbestos were still on the ship. The amount of asbestos removed by Technopure from the ship is 106 Tonnes which has been confirmed in writing by Technopure itself on a daily basis. These documents have been attached as Attachment 17. The total amount of asbestos/asbestos-containing material is 160 Tonnes minus 115 Tonnes, leaving a balance of only 45 Tonnes.

- Technopure has conflict of interest with SDIC as they wanted to procure the deal for dismantling of the ship.
- Since Technopure failed in their bid, they created every form of obstruction in the successful completion of the decontamination work.
- Technopure did not remove the entire asbestos as provided in Clause 2, as a consequence of which another company had to be appointed to perform the
balance work.

**Basel Action Network/Coalition:** The government of France alleges that the Company Technopure is lying and Technopure alleges France is lying. Yet the French government has failed to produce an independent survey of the ship for asbestos but had to be ordered by the court to do so. Further, they have failed to even begin to survey and quantify the PCBs on board the ship and have therefore lied to the Indian government and the Egyptian government when they asserted that the ship has no PCBs on board. These facts regarding transparency then in this case, beg the question as to who has the most credibility, a company, which if they had stayed quiet would have likely garnered many more governmental contracts, or the French government that has failed to produce even the most basic information regarding the hazards onboard this floating toxic timebomb.

9 **Shipbreaking at Alang**

Removal of asbestos at Alang will be in sealed chambers to be erected at the points of removal, the workers will have to wear special costumes including masks including filter for removal of any asbestos fibre and there will be a six chamber decontamination segment for the workers exiting from the removal chamber, water from decontamination chamber will be filtered for removal of any contamination.

The company, Shri Ram conducting the decontamination in India is an ISO-14001 company. Removal of asbestos will be monitored by GPCB and the GMB. Asbestos-removal operations will be performed under the control of an expert who will guarantee that all asbestos-containing parts have been removed; that they have been removed in accordance with the European legislation.

**Basel Action Network/Coalition:** Wrong. European legislation requires that this material should never have left EU territory (see Summary of Violations for a full description of the violation of EU law.)

The above mentioned provisions require the expert to be present all along the asbestos-removal process and, prior to this process, to be given the technical report. This independent European expert will be chosen based upon SDI's proposal, from the list of State-approved experts and with the State's approval.

This expert shall report to the State, as ship-owner. The French State will remain owner of the hull until the expert issues the certificates guaranteeing completion of asbestos removal and compliance with European legislation. In this respect, it must be underlined that the French State chose to retain ownership of the ship until the completion of asbestos removal and certification by an independent expert of the quality of the work performed, precisely in order to guarantee such quality with
regard to applicable standards on workers' safety and environmental protection.

**Basel Action Network/Coalition:** For France to pretend that the human rights affront of subjecting impoverished communities and desperate low-wage workers to cancer and disease is somehow made right by exporting technology along with the asbestos and PCBs is cynical in the extreme. The question is begged, why does France not pre-clean the ship thoroughly as called for by the Basel Convention Technical Guidelines and the mandates of the European Waste Shipment Regulation? The answer must simply be because they arrogantly believed they could get away with this and save a lot of money in the process. The costs instead will be translated as externalized costs of risk to human health and the environment of India. They will pay with their lives, and destruction of their environment. This is precisely the type of environmental injustice, the Basel Convention was designed to prevent. France is now sadly seen as a recalcitrant arrogant state driven by self interest alone.

10 **Submissions**

It is our submission that:

1. The ship is not hazardous waste or waste, as defined under the Basel Convention or the Hazardous Rules, 1989.

2. hon'ble Supreme Court does not ban shipbreaking activity from being carried out in India. The need is for environmentally sound practice to be followed for shipbreaking. The said guidelines have been adopted by India and the company involved with the dismantling of the Clemenceau fulfills all the criteria laid down by the said guidelines.

3. The Hull of the ship has been de-contaminated prior to departure of the ship from France leaving a balance of only about 45 Tonnes of asbestos/asbestos-containing material most of which is non friable asbestos and asbestos containing material which cannot be removed without affecting the seaworthiness, structure and buoyancy of the ship and which cannot be removed without dismantling the ship. This is confirmed by three independent authorities.

4. Removal of balance asbestos is to be carried out in alang strictly according to international standards and by people duly trained in the task with all possible safety and environmental protectio under strict monitored by independent European experts.

Dated: January, 2006, on behalf of the Government of France's

Through:

(Pinky Anand) (D.N. Goburdhun) & (Sanjeev Sahay), Advocates for Government of France

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