

# LEAD Action NEWS

Featured Post: *Basel Convention Competency Over Ships Under Attack*



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*Basel Convention*  
**COMPETENCY  
OVER SHIPS  
UNDER ATTACK**



## ***Once Again Basel Must Stand Firm Against Efforts to Remove Basel Competency Over Waste Ships***

By Jim Puckett, Basel Action Network, 80 Yesler Way Suite 300, Seattle, WA 98104 US,

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*Hong Kong Convention is no replacement for Basel Convention Obligations*

### **Hong Kong v. the Basel Conventions**

From the moment the issue of end-of-life ships was first brought to the agenda of the Basel Convention at the 5th Conference of Parties in 1999, culminating at COP10 in Cartagena, Colombia in 2011, the shipping industry, including the International Chamber of Shipping, tried very hard to wrestle competency and control over end-of-life ships away from the Basel Convention.

This effort did not succeed, but the shipping industry which holds sway at the International Maritime Organization, did convince that UN body to create a separate treaty on the recycling of end-of-life vessels which became known as the Hong Kong Convention. The shipping industry hoped that the new treaty would replace the Basel Convention and in so doing sidestep international law which considers end-of-life ships to be hazardous waste for which the export to developing country beaches for dirty and dangerous scrapping is an international crime.

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While the Basel Convention Parties could do little to prevent the IMO from proceeding with their own convention on ship recycling, the Parties did insist in Decision VII/26 that the IMO do so in a manner which provided an "equivalent level of control" -- this phrase being an abbreviated way of referring to the requirements of Article 11 that require such agreements to include "provisions which are not less environmentally sound than those of the Convention in particular taking into account the interests of developing countries."

The issue of whether the Hong Kong Convention provides an equivalent level of control as that of the Basel Convention was hotly debated and many Parties weighed in at the time, as did international legal experts. See [NGO Shipbreaking Platform](#), the [Centre for International Environmental Law \(CIEL\)](#) as well as [Dr. Ludwig Kramer](#) in the most recent submissions to the European Commission, explaining in detail why the two Conventions are far from equivalent.

The issue came to a head in 2011 at COP10 in Cartagena, Colombia. As noted in Decision 10/17 of that meeting, the Parties could not agree and so acknowledged that the "Basel Convention should continue to assist countries to apply the Basel Convention as it relates to ships."



The Eide Carrier, arrested in Norway in 2017 to stop its illegal export to Pakistan for scrapping. The vessel changed name to Tide Carrier, then Harrier. Photo credit: NGO Shipbreaking Platform, 2017.

Several ship owners have since been held accountable for violating the Basel Convention after toxic ships were illegally exported from European ports to the infamous shipbreaking beaches in India, Pakistan and Bangladesh. While several criminal investigations remain ongoing, in Norway, a ship owner was

[sentenced to six month prison](#) for having attempted to export a ship to Pakistan for scrapping, and just two weeks ago, the Norwegian firm [Altera Infrastructure was fined](#) more than 700,000 US dollars for violating the Basel Convention. With more than one third of the end-of-life tonnage being owned by European shipping companies, enforcement officers across Europe have become increasingly aware of how the shipping sector seeks to circumvent obligations under the Basel Convention and are cracking down on the illegal trafficking of end-of-life ships.



Bangladesh shipbreaking yard. Photo credit: NGO Shipbreaking Platform, 2022.

## The Debate Returns as Hong Kong Convention Enters Force

Now, the Hong Kong Convention has fulfilled its requisite requirements for entry into force and will do so on 26 June 2025. As a consequence it is known that the shipping industry and countries supporting them are once again preparing to take another run at the Basel Convention's competency over end-of-life ships. A recent submission to the IMO MEPC 81 meeting requested the IMO to provide legal clarity to this regard stating the following:

*"[...] it should be recognised that the entry into force of the HKC will change the global legal framework for ship recycling and consequently should lead to a change in what will be legally compliant practices. Once a ship has received an International Ready for Recycling Certificate (IRRC) under the HKC, it may at the same time be considered a hazardous waste<sup>1</sup> under the provisions of the BC. During the entire validity period of the IRRC (up to three months), the ship could therefore be at risk of being arrested for being in breach of the BC requirements while still trading. Hence, it is of the utmost importance that complying with the HKC shall not result in sanctions under the BC."*

and further added the following:

*"When there is an overlap, such as with the HKC and BC, the HKC could take precedence."*

The idea that one must be compliant with multiple laws at the same time should not be controversial. We do this every day of our lives, and there can be no justification for having only one applicable law at a time be given precedence. We must be clear-eyed about why we are hearing such arguments.

Sadly, the reason the shipping industry wants Basel to stand down, does not appear to hinge on the notion that the Hong Kong does a better job of managing ships as waste or protecting the interests of vulnerable ecosystems, workers and communities in developing countries. Rather, their concern is that the Basel Convention does more than they would like. It restricts hazardous waste trade -- the externalisation of real costs and harm on weaker economies, putting human rights and global environmental justice at the heart of the Convention. As such, it is a direct threat to the profits garnered by the continued use of developing countries as cheap and dirty destinations for old ships laden with oily sludges, asbestos, PCBs and heavy metal wastes. Clearly, if the two treaties were in fact equivalent in terms of protecting developing countries from being disproportionately burdened by hazardous wastes from ships, it is doubtful any debate would exist at all.

### **Hong Kong Convention is Weaker than Basel in Principle and in Substance**

It is undisputable that end-of-life ships are hazardous waste, as Basel Decisions and recent legal precedents for criminal liability showcase. Significantly, the right to refuse or consent to import and export of hazardous waste via the prior informed consent procedure is a glaring lack of equivalency. But it has also become apparent that the Hong Kong Convention lacks equivalence in terms of ensuring the safe and environmentally sound management of end-of-life vessels. As witness to the weak standards set by the Hong Kong Convention, 100 beaching yards in Alang, India, have already obtained so-called Statements of Compliance with the Hong Kong Convention, when none have impermeable floors in the primary cutting zone, many not even in the secondary cutting zone, to prevent hazardous materials from leaking into the intertidal zone.

But a significant development that is going to make the industry's attempt to run away from Basel by using Article 11 even more legally impossible, is the December 2019 entry into force of the Basel Ban Amendment (Article 4a). With this new article in place, the long list of reasons why the Hong Kong Convention is not the equivalent of Basel has become even longer and certainly more irrefutable. As a case in point, prior to the Ban Amendment entering into force, the EU made the somewhat tortured argument that the Hong Kong system of permits and contracts could somehow project an equivalent control system, the newly recast EU Waste Shipment Regulation cited the Ban Amendment and reversed the previous exemption of ships flying the EU flag as being wastes subject to Basel control -- including the ban.

Nobody can make a serious legal argument that any form of national permitted facility can be the equivalent of a no-exceptions ban on the export of toxic waste ships from developed to developing countries. And that is also why, along with the many other less environmentally sound differences already outlined between the two Conventions, that the Basel Parties must not give credence to the idea recently insinuated in IMO documents, that the Hong Kong Convention can be considered a valid Article 11 Basel agreement.

## Dual Competency is Not Redundancy -- it is the Way Forward

We have already called out as false the notion that the Hong Kong Convention does a better job of protecting human health and the environment from ships as waste. Actually the two Conventions do very different things, with very different purposes and requirements. As such, they are not at all redundant, and further, fulfilling one Convention's requirements does not in fact contradict or violate fulfilling the other's. The notion that its either one or the other is not supported by a reading of each. In fact both can co-exist very well and together could provide the best level of international coherence, and environmentally sound management.

Indeed when looking at the life-cycle of a ship, Hong Kong could be amended to cover green ship design and build, as well as the operational life of a vessel. Basel is then best suited to manage ships from the moment they are declared as waste, including the implementation of the Ban Amendment (Article 4a), and the PIC procedure (Article 6), giving Parties their right to refuse to consent to importation, and exporting countries the right to not export if they fear there is no guarantee of environmentally sound management (ESM) all the way downstream. The actual operations of the recycling facility can be best done in accordance with both Conventions and the most rigorous aspects of their respective guidance documents, while Basel will then maintain its full competency over the offsite downstream management of residual waste (where Hong Kong currently has no obligations).

Finally, it is well known that ships can too easily be ordered to make legally convenient transboundary movements before they might be declared as waste as a way of circumventing the Basel Convention's obligations to obtain consent for export and import. Likewise flag states have little say in issues of human rights and sustainability. Decisions to scrap ships are not made by flag states or port states in most cases. They are taken in offices in Hamburg, Copenhagen, Tokyo and other shipping hubs. These Basel and Hong Kong shortcomings that are unique to the subject of ships, should be rectified and placed on the global agenda. It is logical protective and efficient for both Conventions to be amended to place export status on the state where the beneficial owner of the vessel is headquartered.

## Conclusion

- It is well established that the Hong Kong Convention does not represent an "equivalent level of control" as required by Article 11 in order for Basel Parties to recognize other agreements or arrangements.
- It does not meet the bar of a valid Basel Article 11 Agreement with "*provisions which are not less environmentally sound than those of the Convention in particular taking into account the interests of developing countries*".
- This has now become even more clear following entry into force of the Basel Convention's Ban Amendment (Article 4a).



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Therefore,

- Basel Parties must continue to assert and live by obligations to control hazardous waste ships in the spirit and to the letter of the Basel Convention.
- That means that in accordance with Article 1 of the Convention, and in the absence of proof to the contrary, ships must be assumed to be hazardous as long as they contain Annex I substances or materials.
- Efforts by shipping industry interests, or countries representing such, to declare the Hong Kong Convention as a valid Article 11 Agreement must be immediately rebuffed.
- And, certainly no such declarations of using Article 11 in this way can be asserted without joint concurrence by the Parties of both UN Conventions.
- Off repeated arguments that the two Conventions are contradictory or redundant should be refuted as patently false.
- Rather, because each instrument is different and each Convention adds its own layer of protection to the issue of a ship's life-cycle management, dual competency is in fact the way forward.

Consideration should be given to creating a guidance between the two Conventions as to how such cooperation and competencies can be best accomplished nationally and internationally.

**For more information:** Please attend the [side event](#) taking place on Thursday 27th at 13:15 at Room C, featuring the NGO Shipbreaking Platform and the Center for International Environmental Law (CIEL).

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2016 Volcano Art Prize (VAP) Entry.

Title: Dolphins and seaweed.

Lead-Safety Message: Our oceans and beaches need to be clean - not polluted by lead-painted scuttled ships or lost lead fishing sinkers.

Artist: Lola Hue

Age: 6

School: Creative Einstein.

Materials: Colouring pencils on paper.

<https://volcanoartprize.com/portfolio-item/dolphins-and-seaweed/>

Submit your entries into Volcano Art Prize – the only global lead-safety art/photo/film competition, at

<https://volcanoartprize.com/submitentry/>

