



# delegate alert

April 24, 2025

## Basel Parties Must Stand Firm Against Efforts to Deny Basel Competency over Waste Ships

### ***Hong Kong Convention Cannot Replace Basel Convention Obligations***

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

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, and culminating at COP10 in Cartagena, Colombia in 2011, the shipping industry, including the International Chamber of Shipping, has 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 (IMO), 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 someday replace the Basel Convention and in so doing, sidestep the strict requirements of international environmental law which considers end-of-life ships to be hazardous wastes which should not be exported to developing country beaches for dirty and dangerous scrapping operations.

While the Basel Convention Parties did not 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 requirement of Article 11 for agreements on the same subject matter as the Basel Convention, 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 has been hotly debated ever since the Hong Kong Convention was adopted. Legal scholars have weighed into the debate most recently with submissions to the European Commission. See [NGO Shipbreaking Platform](#), the [Centre for International Environmental Law \(CIEL\)](#) as well as [Dr. Ludwig Kramer](#) all explaining in detail why the two Conventions are far from equivalent in their levels of environmental control and protection.

For the Basel Parties the issue last 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 on that matter and so acknowledged that the *"Basel Convention should continue to assist countries to apply the Basel Convention as it relates to ships."*

## **The Debate Returns as Hong Kong Convention Enters Force**

Today this debate returns to the Basel Convention, as the Hong Kong Convention has fulfilled its requisite requirements for entry into force and will do so on 26 June 2025. And, with entry into force imminent, the shipping industry and some countries supporting them are once again preparing to take another run at the Basel Convention's competency over end-of-life ships.

In anticipation of the entry-into-force date, and without bothering to consult the Basel Secretariat about the legality or desirability of doing so, the IMO released a preliminary guidance document (IMO Circular HKSRC.2/Circ.1) that calls on Parties to both the Basel and the Hong Kong Conventions to notify the Basel Secretariat that they consider notifying the Basel Secretariat that "the provisions of the Basel Convention shall not affect transboundary movements which take place pursuant to the [HK] Convention." In other words one UN treaty is advising Parties to another UN treaty - without consultation or consensus - that they should consider abrogating their Basel responsibilities. Imagine if the Basel Convention were to advise its Parties to do the same -- that where ships are concerned Basel and only Basel must apply.

According to [legal experts](#) "such a unilateral assertion and notification cannot be considered as definitive as to the question of whether an arrangement or agreement under Article 11 is compatible with the Basel Convention but is rather ultimately one for a collective decision of the parties to the Basel Convention themselves." Just as the Basel Convention has denied individual countries the right to reserve on treaty application (Article 26, para. 1), one cannot unilaterally reserve on fulfilling obligations via Article 11. Such a decision must be made collectively by the Parties as an amendment or collective interpretation. The last time this was attempted at COP10, there was agreement among Parties that Basel should retain its competency. Today, with the entry into force of the Ban Amendment, it is even more likely that this should be the case.

## **Why is this Happening?**

The idea that one must comply with multiple laws at the same time should not be controversial. We do this every day of our lives, and such is common in international law. The only justification for having only one applicable law at a time be given precedence is when a true conflict exists -- when it is impossible to apply both laws at the same time. No such conflict exists between the Basel and Hong Kong Conventions. The examples given by shipping industry association BIMCO in their submission to the IMO, imply at best inconvenience to apply both Conventions, not conflict. We must be clear-eyed about why we are hearing such arguments against joint competency.

Sadly, the reason the shipping industry wants Basel to stand down, does not appear to hinge on the notion that the Hong Kong Convention 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 far more in that regard than they would like. The Basel Convention restricts hazardous waste trade -- the externalisation of real costs and harm to weaker economies -- and places 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 -- Weaker in Principle and Substance**

It is undisputable that end-of-life ships are hazardous waste, as Basel Decisions and recent legal precedents in Norway and the European Union for criminal liability have showcased.

And yet, against global legal precedent, the Hong Kong Convention does not seek to prevent exports of hazardous end-of-life ships. It ignores the fundamental right established by Basel to refuse or consent to import and export of hazardous waste via the prior informed consent procedure. This alone is a glaring lack of equivalency. The Hong Kong Convention further 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, more than 100 beaching yards in Alang, India, have already obtained so-called *Statements of Compliance with the Hong Kong Convention*. And yet none of these have impermeable flooring in the primary cutting zone, many not even in the secondary cutting zone. The Basel Convention's Technical Guidelines on the Full and Partial Dismantling of Ships calls for full containment to prevent hazardous materials from leaking into sensitive coastal environments. The Basel Convention also calls for the safe and environmentally sound disposal of hazardous wastes -- several yards in Bangladesh have received a *Statement of Compliance with the Hong Kong Convention* despite no capacity to manage and dispose of the hazardous wastes found on board end-of-life vessels.

With the December 2019 entry into force of the Basel Ban Amendment (Article 4a), the long list of reasons why the Hong Kong Convention is not the equivalent of Basel has become even longer, and certainly now 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 authorisation scheme for ship recycling facilities could somehow project an equivalent control system. Today, following the entry into force of the Ban Amendment, the newly recast EU Waste Shipment Regulation cited the Ban Amendment as a reason it had to reverse the previous exemption of ships flying the EU flag from being wastes subject to Basel control.

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 from developed to developing countries. And that is also why, along with the many other differences already outlined in the aforementioned legal analyses between the two Conventions, that Basel Parties must not give credence to the idea that the Hong Kong Convention can be considered a valid Article 11 Basel agreement.

### **Conflict Clauses Negate Recourse to "Lex Posterior" or "Lex Specialis"**



Recently the shipping industry has resorted to seek arguments in Article 30 of the Vienna Convention on the Law of Treaties (VCLT). Article 30 is meant to be used when there is a true conflict between Conventions and where the text of the Conventions themselves do not provide guidance on what to do about potential overlaps or conflicts. Yet, as we have noted, the Basel Convention recognises and allows for other treaties or agreements to exist covering the same subject matter as Basel. However it stipulates that Basel can only be "replaced" in competency by virtue of the rules of Article 11 -- that is, the alternate arrangement must provide an "equivalent level of control." Despite knowing that such equivalency was necessary in order to have Basel stand down, and after receiving the clear marching orders from the Basel Convention to do so, the Hong Kong Convention failed to meet that bar.

Article 15 of the Hong Kong Convention provides another conflict clause that is also important. The Hong Kong Convention indicates in Article 15(2) that *"Nothing in this Convention shall prejudice the rights and obligations of Parties under other relevant and applicable international agreements."* This provision is clearly not an assertion of priority of the Hong Kong Convention over prior treaties, such as the Basel Convention. Rather, as has been argued by Professor James Harrison in [a recent legal analysis](#) of the application of both conventions, it asserts the opposite -- that the rights and obligations in other treaties will prevail over the Hong Kong Convention. Article 15 is an acknowledgement that other international rules, such as the Basel Convention, will continue to apply in the case of overlap and the new rules in the Hong Kong Convention will not *prejudice* or take precedence over such other rules.

As we have seen, the text of both conventions provide strong clauses with respect to any potential conflicts, and, as is argued by Professor Harrison, it is only in the absence of such clear guidance that it may be necessary to resort to Lex Posterior (precedence for later treaties) or Lex Specialis (precedence for more specific treaties).



## **Dual Competency is Not Conflict, nor 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 Basel and Hong Kong Conventions do very different things, with very different purposes and requirements. As such, they are not redundant. Further, they are not in conflict, as fulfilling one Convention's requirements does not in fact contradict or make impossible fulfilling the other's. The notion that its either one or the other is not supported by a careful reading of each. In fact both can co-exist very well and together could provide the best levels of international environmentally sound management.

Indeed when looking at the life-cycle of a ship, the Hong Kong Convention could be amended to do even more to cover green ship design and build, as well as minimising hazardous wastes during the operational life of a vessel. Basel is then best suited to manage ships from the moment they are intended to be disposed of, including implementation of the Ban Amendment (Article 4a), and the PIC procedure (Article 6), giving Parties their Basel asserted sovereign 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) 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).

## **But What About the Loopholes?**

Finally, it is well known that there exists a dangerous loophole for application of the Basel Convention to ships. Due to their mobility, 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 national (port state) consent for export and import or to apply the Basel Ban Amendment. The Hong Kong Convention is likewise fraught with loopholes of its own. For example flag of convenience states have demonstrated little capacity to be incentivised to concern themselves with issues of human rights and sustainability. In reality, 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 ship owning hubs by the beneficial owners of ships.

The Basel and Hong Kong shortcomings that are unique to the subject of ships, should be addressed together as part of the global agenda by both Conventions, not working to deny each other's existence, but working to find ways to better implement the intent and purpose of both Conventions. If coherency of both is really the goal, it is logical, protective and efficient for both conventions to be amended to combine regimes in the most streamlined way. For example, Basel export status for ships should be placed on the state where the beneficial owner of the vessel is headquartered. Likewise, the all-important Basel clause "intent to dispose" is in need of being better defined, and the procedure created by the Hong Kong Convention to obtain the Ready-to-Recycle Certificate, including preparing the vessel for recycling, could be tweaked to require it be registered at the State of Beneficial Ownership in advance of the actual last voyage to the ship-recycling facility. In this way, transparency about the movement of ships towards a ship recycling facility would be improved and the Basel Convention's PIC procedure and Ban Amendment readily applied. This is but one example of what should be the goal for a better planet -- making both regimes work well together, not seeking to negate one's competency and authority.



Asbestos from scrapped ships torn apart by hand. Copyright: Asbestos - The Never Ending Story, ARTE, 2022.

## Conclusions

- 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.
- The Hong Kong Convention 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).
- Therefore 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.
- Certainly no such declarations of using Article 11 in this way can be asserted without joint concurrence by the Parties of the Basel Convention.
- Oft repeated arguments that the two Conventions are in conflict or redundant should be refuted as untrue.
- 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 most legally correct and protective way forward.



- Consideration should be given to conducting future work to find ways to close loopholes that persist in both Convention approaches and to create guidance between the two Conventions as to how such cooperation and dual implementation can be best accomplished nationally and internationally.

## What is needed at COP17

**1. Revise Draft Decision:** The IMO's "guidance" document advising Parties to the Basel Convention to ignore their Basel obligations when it comes to managing end of life ships is on the agenda of COP17 under 5 (b) -- International cooperation and coordination with other organizations.

In the Draft Decision for this subject, the Secretariat has proposed the following:

*20. Takes note of the information provided by the secretariat of the International Maritime Organization, including the provisional guidance on the implementation of the Hong Kong and Basel Conventions with respect to the transboundary movement of ships intended for recycling, approved by the Marine Environment Protection Committee of the International Maritime Organization at its eighty-second session;*

*21. Invites Parties and observers to submit to the Secretariat, by 31 July 2025, comments on the provisional guidance referred to in paragraph 20 above;*

*22. Requests the Secretariat, subject to the availability of resources, to reflect the comments received on the provisional guidance referred in paragraph 20 above and to submit the updates to the provisional guidance for consideration by the Open-ended Working Group of the Basel Convention at its fifteenth meeting;*

In our view, while it is appropriate for the Secretariat to seek the opinion of the Parties on the IMO's provisional guidance, it is not appropriate to leave such an important debate to just passing judgement on one very biased opinion alone. The IMO does not have the exclusive privilege of dictating the terms of the debate and the obligations of Basel Parties. Certainly, they do not have the right to tell one Convention to stand down, in particular when doing so will likely violate the terms of Article 11 as well as Article 26 of the Basel Convention, which disallows Parties from reserving or taking exception to any part of the Convention.

We therefore strongly assert that the Parties should call for amending paragraph 21 and 22 of the Draft Decision as follows to make things far more balanced and provide more time for debate:

**>> Revised Paragraph 21:** *Invites Parties and Observers to submit to the Secretariat, by 31 December 2025, comments on the IMO's provisional guidance to Basel Parties referred to in paragraph 20. Further, invites Parties and Observers to also submit any alternative guidance to that of the Hong Kong Convention from the perspective of Basel Parties, especially in light of Articles 11 and 26, and other considerations as may be relevant to the discussion;*

**>> Revised Paragraph 22:** *Requests the Secretariat, subject to the availability of resources, to reflect the comments referred to in paragraph 21 above and to submit these comments for consideration by the Open-ended Working Group of the Basel Convention at its fifteenth meeting;*

**2. Speak out in Plenary:** On this important matter it would be very useful for all Parties concerned about the effort to erode the competence of the Basel Convention, to make their views known loud and clear during the plenary.

**3. Speak out at the two Side Events:** Likewise come to both the IMO and the NGO Side Events on this topic and make your views known there as well.

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**For more information:** see the [new legal analysis](#) on the relationship between the Hong Kong and Basel Conventions by Professor James Harrison, University of Edinburgh.

**>>> For more information: Please attend the [side event](#) taking place on Friday 2 May at 18:15-19:45 in Room 2 and online/webex.** The side event is sponsored by the Basel Action Network and the NGO Shipbreaking Platform, featuring the Center for International Environmental Law the Center for International Environmental Law (CIEL), the UN Special Rapporteur on Toxics and Human Rights, Norwegian Public Prosecutor with National Authority for Investigation and Prosecution of Economic and Environmental Crime, Human Rights Watch and Government of Bangladesh.



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

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