

BAN Intervention at COP11 Plenary on the Issue of the European Union Attempting to Derogate from Basel Convention on End-of-Life Ships

BAN wishes take this opportunity to address the dangerous and inappropriate actions taken to date by the European Union. Until now the EU has been a recognized champion of the Basel Convention and the Basel Ban Amendment. Yet, in what could be a matter of critical Basel non-compliance for 27 countries and itself, the European Commission, on 23 March 2012, turned its back on the Basel Convention, the Basel Ban and international treaty law by proposing a new Ship Recycling Regulation which withdraws end-of-life ships from EU Basel implementation legislation, and does so unilaterally.

It is vital to remind the Parties that:

1. Never have the Basel Parties ever declared that ships are not a waste subject to the Basel Convention.
2. On the contrary, the Parties in Decision VII/26, declared ships as waste subject to the Convention when waste is hazardous.
3. At the last COP (10) the Parties agreed that not all Parties agreed that the Hong Kong Convention provided an equivalent level of control as that of the Basel Convention and that the Parties acknowledged that the Basel Convention should continue to assist countries to apply the Basel Convention as it relates to ships.
4. The Basel Convention does not allow unilateral actions to de-list certain hazardous wastes (only to add new hazardous wastes).
5. The Basel Convention's Article 30 allows no reservations or exceptions be made to the Convention (no unilateral exceptions).

The Commission's move to ignore the Basel Convention obligations for end-of-life ships was rubber stamped by a negligent European Parliament in an 18 April 2013 vote. Negligent is the proper word because there are clear and compelling expert legal opinions revealing that the Commission's action is illegal.

Dr. Ludwig Kramer, Brussels based jurist and expert on Community Environmental Law has concluded the move by Europe as illegal. The Center for International Environmental Law has also published a report outlining the illegality of the move.

Even the European Council's own Legal Services in a leaked document, highlighted the severe legal problems with regard to the European Commission's proposed regulation. The the most concerning issues raised were with regards to the Basel Ban Amendment and the EU's breach of its obligations under the Ban. The Council Legal Services opinion states with respect to the Basel Ban Amendment and the new Ship Recycling Regulation:

"Legal Service considers that there is a serious risk that the simple exclusion of ships from Regulation in the manner being proposed could amount to a breach of the obligation not to defeat the object and purpose of a treaty prior to its entry into force. As the Court has consistently held, "The European Union must respect international law in the exercise of its powers..."

Distinguished Delegates, The Hong Kong Convention is not expected to go into force until 2020 at the earliest. So far it has not garnered a single ratification. By 2020 much of the damage will have been done. We can extrapolate that by that time, 8,000 more ships will have been broken and 70% of these will be broken in devastating environmental and human health conditions on the beaches of South Asia. By 2020, 400 deaths will likely be suffered. By 2020 most of the PCBs and asbestos will no longer be on the ships. Expecting relief from Hong Kong therefore is a matter of too little – too late.

The Basel Convention is the only active international legal instrument currently applying to the transboundary movement and disposal of end-of-life ships.

The EU move to undermine Basel rather than improve its application, is a serious dereliction of duty. More work is clearly needed to better implement the Basel Convention. It is hoped that the EU will take the lead on this matter as a prime objective. With respect to EU legislation, there is a clear and rational way forward for creating practical and principled legislation that allows Hong Kong and the Basel Convention to rightly coexist, maintaining the integrity of both Conventions.

We urge the European nations to stop the illegal and misguided notion of unilaterally removing ships from their Basel Convention application and instead work proactively to meld the best of the two regimes Hong Kong and Basel.

THANK YOU.