

Legal and Political Restraints on the Export of Waste Vessels Containing Hazardous Substances: A Critique of the Report of the US Interagency Panel on Ship Scrapping

Prepared by the
Basel Action Network and Greenpeace International

4 June 1998

Basel Action Network (BAN), Secretariat Telephone/Fax: 1.206.720.6426
c/o Asia Pacific Environmental Exchange E-mail: info@ban.org
1827 39th Ave. E. Seattle, WA. 98112 USA Website: <http://www.ban.org>

Greenpeace International Telephone: 1.31.20.523.6222
Toxics Campaign Fax: 1.31.20.523.6200
Keizersgracht 176 E-mail: mfurtado@dialb.greenpeace.org
1066 DW Amsterdam, Netherlands Website: <http://www.greenpeace.org>

Executive Summary

The Report of the Interagency Panel on Ship Scrapping failed to accurately and adequately describe existent legal and political obligations which restrict the trade in obsolete ships containing hazardous wastes, particularly those ships exported from the United States to developing countries for the purposes of scrapping.

First, the Panel Report was negligent in failing to state that obsolete ships contaminated with, or containing asbestos, PCBs and other dangerous substances are hazardous wastes under international law. Despite a lack of specific references to obsolete ships in the hazardous waste definitions found in the Basel Convention and Organization of Economic Cooperation and Development (OECD)

decisions, those instruments, never intended to solely define hazardous waste by specific listings of every possible waste mixture, configuration or containment. Rather the hazardous waste definitions are based on hazardous constituents of wastes and hazardous characteristics of those constituents. In both the Basel and OECD law, ships containing hazardous constituents such as asbestos and/or PCBs and certain other listed hazardous constituents, in the quantities known to be found on most ships destined for scrapping, *are without question, defined as hazardous wastes.*

Second, the Panel Report failed to mention that under existing legally binding OECD Decisions, the United States *must* notify and receive consent from non-OECD countries prior to export. And additionally, the United States is *required to prohibit* movements of such hazardous wastes to non-OECD countries unless the wastes are going to an "adequate disposal facility" which will perform the proposed disposal or recycling operation in an "environmentally sound manner."

Third, the Panel Report fails to note that the international community under the auspices of the Basel Convention, has *banned* the export of hazardous wastes for any reason, including recycling as of January 1, 1998, from OECD countries (and Liechtenstein) to non-OECD countries. While an amendment to adopt this ban as part of the Convention is not yet in strict legal force for all Basel Parties, it is considered morally binding among Parties to the Basel Convention by virtue of four decisions passed by a consensus of Parties to that treaty in 1992, 1994, 1995, and 1998. Further, the Panel Report failed to note that even under the pre-ban obligations of the Basel Convention, Parties are required to uphold obligations which make it impossible to trade in wastes with non-parties of the treaty absent a bilateral or multilateral agreement that is at least as environmentally sound. And Parties are obliged not to allow trade in wastes when there is any concern about a lack of environmentally sound management of the hazardous wastes in question.

While the United States is not yet a Party to the Basel Convention, the Panel failed to note that there is a strong push now by the State Department to ratify the Convention and pass implementing legislation. However, even if the United States does not ratify the Basel Convention, the obligations of potential recipient countries under the Basel Convention will prevent Basel Parties from being able to import obsolete ships from the United States. *Thus in any eventuality, the impact of the Basel Convention with respect to the export of hazardous ships is profound.*

The Panel Report briefly discusses the legal obligations under the Resource Conservation and Recovery Acts and more specifically the Toxic Substances Control Act. We find that both of these two bodies of US legislation on toxic wastes and substances have not properly implemented legal obligations required by the OECD decision mentioned above as they contain numerous possibly illegal or inconsistent loopholes with respect to that law.

With respect to political developments that we find extremely relevant to the Panel's decisions, we note that the Panel failed to report on the rather large and broad based protest that has been raised in the press and among labor and environmental organizations in India regarding the intent by the United States to export Navy and Maritime Administration (MARAD) ships containing toxic wastes to their shores for disposal.

And finally, we draw to the attention of the Panel, two developments which illustrate that despite the claim made at the time of the report, that the Panel knew of no other government which considered obsolete ships to be hazardous waste, recent events in India and Denmark have made that remark itself obsolete. India has just issued its first national guidelines with respect to shipbreaking and have deemed that the trade must take place under the hazardous waste legislation of the country.

Meanwhile in Denmark, Environment Minister Svend Auken has called for a police investigation of

Scandlines, a private ferry company, in regard to its plans to export obsolete ferries to Alang, India for breaking. Denmark considers these ships to be hazardous waste under the European Union legislation which implements both the Basel Convention and the Basel Ban. Thus accordingly, Denmark has made the first case that all such exports are now (since January 1, 1998) illegal if traded from any of the 15 EU member states to non-OECD countries.

In sum, once the proper attention is paid to the real effect of legally binding international law, on the issue of international trade in obsolete ships for scrapping, it will become increasingly clear that the United States is bound to rapidly phase-out the export of US ships to non-OECD destinations, unless they have been remediated or de-contaminated to the extent where they do not have any hazardous characteristics as defined by the OECD and Basel regimes. This will, by law, have to be done, regardless of the standards of operations found or promised in recipient non-OECD countries. *This will necessarily mean that additional funds will have to be found for scrapping to be done in OECD countries or most appropriately, done domestically.* Such operations will be substantially more expensive than previous exports to lowest-common denominator scrap yards where criteria and enforcement on the protection of human health and the environment is minimal.

Clearly, much work is needed to be done to ensure that the high risk operations of ship scrapping even when performed in OECD countries like the United States, proceed in much improved conditions. Proper funding, enforcement and strict liability regimes for such operations will be absolutely necessary to minimize risk to both the workers and the environment. We support all efforts toward this end.

The past practice of profiting by externalization the costs of pollution to poorer peoples and economies is unconscionable and must be ended at once. It was this form of global environmental injustice which prompted the international regimes of the OECD and the Basel Convention which were designed to make the continuation of such trade increasingly impossible. While the moral implications are obvious and compelling, it is this type of cost internalization which will ensure in future that only products with a minimum of potential risk become part of product design -- leading us down the path toward clean production.

Thus, it is now time that the United States advance with the rest of the world with respect to waste trade and move to retroactively apply the obligations dictated by legally binding OECD decisions and to ratify the Basel Convention *and* its 1995 amendment to ban the export of hazardous wastes of all kinds from OECD to non-OECD countries.

Legal and Political Restraints

"The purpose of the Panel was to review the Department of the Navy and US Maritime Administration programs to scrap vessels and to investigate ways to ensure that vessels are scrapped in an environmentally sound and economically feasible manner."

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"The "Environmental, health and safety standards and conditions in many of the countries where ship scrapping is performed are less stringent than those in the United States."

Listed as a factor which influenced the Panel's conclusion to continue to allow the export of ships for scrapping.

The Basel Action Network has carefully reviewed the Report of the Interagency Panel on Ship Scrapping (referred to here as the Panel Report) with respect to its recommendation to continue to allow the export of vessels contaminated with or containing hazardous wastes to developing countries. We find the conclusion to allow the continuation of export by the Panel insupportable from a legal, political, economic, environmental, and moral standpoint.

In this report, however we will only focus on the legal and political implications in order to correct misinformation and provide new information found to be missing from the Panel Report. It is the legal and political information, in addition to powerful economic arguments that have been developed by other organizations concerned with domestic scrap operations which provides the most persuasive and powerful leverage to prevent the inappropriate and immoral export of contaminated ships to developing countries. We provide this information in the hopes that the Panel will reconsider its position, or failing that, that Congress will intercede to stop the administration from pursuing policies that perpetuate global environmental injustice.

In our view, the Panel Report was negligent in its omissions and inaccuracies with respect to the implications of Basel Convention, OECD Decisions, RCRA, TSCA, and other legal and political developments of relevance to the issue at hand. We will re-examine each of these in turn.

The Basel Convention and the Basel Ban

The Panel Report pointedly failed to consider or enter in the record very important facts with respect to the Basel Convention on the Transboundary Movement of Hazardous Wastes and Their Disposal. Foremost, there is no mention of the fact that the Basel Convention, which entered into force in 1992, banned the export of all hazardous wastes from member states of the Organization for Economic Cooperation and Development (OECD) to non-OECD countries in 1994.^[1] The United States is the only one of the 29 member states of the OECD that has failed to ratify the Basel Convention. Nevertheless, the United States signed the Convention in 1989 indicating support of the Convention's principles. Ever since that time, the United States has remained active within all Basel Convention meetings, particularly the Technical Working Group meetings which have among other things been intimately involved in discussions on the definitions of hazardous waste.

In 1995, the ban decision was transcribed into an amendment of the Basel Convention with the addition of Liechtenstein to the group of countries to which the export ban applied.^[2] In February 1998, the Basel Parties reaffirmed the Basel Ban (as we shall refer to it) without any further revisions and "strongly appealed to Parties to ratify the Amendment...as soon as possible."^[3] The Basel Parties also agreed this year on an elaboration of the definitions of hazardous waste under the Convention.

Ships Destined for Scrapping Are Hazardous Wastes

By any reading of the definitions of hazardous waste covered under the scope of the Basel Convention, it must be concluded that ships destined for scrapping are first considered *wastes*, and second considered *hazardous wastes* subject to the Basel Convention and the Basel Ban.

Article 1 of the Basel Convention defines *wastes* as any "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." Disposal is defined as "any operation specified in Annex IV to this Convention." Annex IV contains the following entry: R4 Reclamation of metals and metal compounds. Clearly then, the Basel Convention considers a ship destined for shipbreaking and eventual recovery of metals to be a waste. The next step is to determine whether that waste is indeed a *hazardous waste*.

Hazardous wastes are defined by the Convention as any waste appearing on a list of Categories of Wastes to be Controlled (Annex 1) unless they do not exhibit any of a list of hazardous characteristics (Annex III). On Annex 1 are the following entries:

- Y9 Waste oils/water, hydrocarbons/water mixtures, emulsions
- Y10 Waste substances and articles containing or contaminated with polychlorinated biphenyls (PCBs) and/or polychlorinated terphenyls (PCTs) and/or polybrominated biphenyls (PBBs)
- Y17 Wastes resulting from surface treatment of metals and plastics
- Y22 Copper Compounds
- Y23 Zinc Compounds
- Y29 Mercury Compounds
- Y31 Lead; Lead Compounds
- Y36 Asbestos (dust and fibres)
etc.

Annex III includes such characteristics as:

- H1 Explosive
- H3 Flammable liquids
- H6.1 Poisonous (Acute)
- H8 Corrosive
- H13 Toxic (delayed or chronic)
- H12 Ecotoxic
etc.

To ease the task of implementation and enforcement, the Basel Convention decided to add greater clarity to these original definitions by establishing working lists of wastes which technical experts agreed were likely to be hazardous (appear on Annex I and exhibit an Annex III characteristic) and those that are not likely to be hazardous. These lists do not replace Annex I and III but merely provide greater guidance for practical application of the Convention. These Lists A (hazardous) and B (not hazardous) have now after the last Basel meeting in February of 1998, been adopted as proposed Annexes VIII and IX respectively to the Convention.^[4] The United States was very much involved in the preparation of these lists and supported their adoption within the Basel Convention.

In the proposed Annex VIII (hazardous wastes) the following entries are found:

- A1010 Metal wastes and wastes consisting of alloys of any of the following: Antimony, Arsenic, Cadmium, Lead, etc.
- A1020 Waste having as constituents or contaminants, excluding metal waste in massive form, any of the following: Lead; lead compounds
- A1030 Waste having as constituents or contaminants any of the following: Mercury, mercury

compounds

- A1180 Waste electrical and electronic assemblies or scrap containing components such as accumulators and other batteries included on list A, mercury switches, glass from cathode-ray tubes and other activated glass and PCB-capacitors, or contaminated with Annex I constituents (e.g. cadmium, mercury, lead, polychlorinated biphenyl) to an extent that they possess any of the characteristics contained in Annex III. (PCBs at a concentration of 50 ppm [parts per million] or more)
- A2050 Waste Asbestos (dusts and fibres)
- A3040 Waste thermal (heat transfer) fluids
- A3180 Wastes, substances and articles containing, consisting of or contaminated with polychlorinated biphenyl (PCB), polychlorinated terphenyl (PCT), polychlorinated naphthalene (PCN) or polybrominated biphenyl (PBB), or any other polybrominated analogues of these compounds, at a concentration level of 50 ppm or more.
- A4060 Waste oils/water, hydrocarbon/water mixtures, emulsions
- A4080 Wastes of an explosive nature (but excluding such wastes specified on list B)

From this exercise we can clearly see that ships, as "objects" which are destined for reclamation and which contain any of the above items in concentrations where they exhibit hazardous characteristics, are indeed hazardous wastes under the Basel Convention and are therefore subject to all of the controls of that Convention by its Parties.

The Implications of the Basel Convention

Given the clear analysis that reveals that waste ships which are well known to contain the substances listed on the A list above, *are* Basel hazardous wastes, and therefore under the scope of the Basel Convention, the Interagency Report's statements (in italics) with respect to the implications of this international treaty are misleading:

"...recent changes clarifying the scope of the convention generally do not treat scrap metal as a hazardous waste unless it is contaminated with substances to an extent that renders it hazardous."

The implication here is that ships are usually or primarily just scrap metal, and that the wastes on board ships such as asbestos and PCBs etc. are of such insignificant quantities and concentrations as to render them non-hazardous. This is erroneous. It is well documented that the generation of ships that are being scrapped today contain very significant amounts of hazardous substances. A large vessel will contain several tons of asbestos.^[5] PCBs are also present in significant quantities depending on the age of the ship and the amount of electronics on board. Then there are other hazardous substances onboard obsolete ships including hydraulic fluids, lead, organo-tin and mercury based paints, treated bilge waters, etc.

"To date, the Parties to the Convention have not specifically classified obsolete vessels under the Convention."

This is another very misleading statement. Under the Basel Convention, ships for scrap are considered contaminated scrap metal waste. The Parties to the Convention would have been foolish to mention every possible object, mixture, configuration, or containment that could be contaminated with, or by the wastes, that they do list as hazardous. Indeed if they had listed "obsolete vessels" as a definite hazardous waste, they would have wrongly included *all* vessels including those which hopefully, especially now, are or will be made without the use of toxic substances of any kind. Perhaps a certain

name brand of refrigerator contain dangerous chemicals and another does not.

Rather, the Basel Convention system of utilizing Annexes of Constituents (Annex I) and Hazardous Characteristics (Annex III) is meant to apply to a vast array of potential wastes that may exist in the past or in the future. The recent decision to adopt further elaborated lists states clearly in its preamble:

"Recognizing that List A and List B are not intended to be exhaustive...Annex I and Annex III shall remain the factors to characterize wastes as hazardous for the purpose of the Convention."

Clearly the Basel Convention has classified as hazardous any object which contains the amounts and quantities of toxic waste that the average ship contains.

"It appears that most countries are not applying Basel controls to obsolete vessels and the Panel is not aware of any country that has specifically classified obsolete vessels as a hazardous waste."

The Panel has failed to make reference to any survey conducted to make this determination. Nevertheless, it would be difficult for the Basel Convention Technical Working Group (TWG) to conclude that ships for scrap, built with substances such as PCBs and Asbestos are not hazardous wastes under the Basel Convention. But more importantly, relying on arguments that "everyone else is doing it" is morally and legally indefensible. This is particularly true of a global leader on environmental issues such as the United States.

"The United States is a signatory to the Basel Convention but is not a Party to the Convention."

This is a fact and as such the United States is not bound by the obligations of the Basel Convention. But as we shall see, other relevant facts have been singularly omitted, and the status of US ratification is becoming less and less relevant when a majority of countries in the world are Basel Parties and have made strong decisions with respect to trading in hazardous wastes with OECD or non-OECD countries and/or Parties and non-parties.

First, the Panel Report fails to mention that the US State Department is currently pursuing ratification of the Basel Convention while refusing to likewise ratify the Basel Ban Amendment to the Convention. Second, and most significantly, the Panel Report also fails to mention that most of the potential shipbreaking country export destinations *are* Basel Parties, with obligations to uphold the Basel Convention including its ban decision. We will explore the implications of these issues in further detail.

In 1992, the US Senate gave its advice and consent to ratify the Basel Convention. The State Department is now pushing to ratify the Convention as they have received support for doing so by Industrial Associations as well as Republicans in Congress.[\[6\]](#) In order to ratify the Convention however, implementing legislation will first have to be passed. Specifically, the Resource Conservation and Recovery Act will have to be amended to conform to the Basel Definitions and provisions.

The State Department wishes to ratify the Convention selectively (without ratifying the Ban Amendment). The Environmental Protection Agency on the other hand is said to be urging ratification of the whole package, and all environmental organizations active on the issue are calling for the United States to ratify the whole package or to stay out of the Convention altogether.[\[7\]](#)

With respect to the Basel Convention the Administration has three options. They can ratify the Basel

Convention and the Basel Ban. They can ratify only the 1989 Convention, or they can take no action at all. However, as we shall see, each of these options (including that of no action) will require that the United States pays serious attention to obligations required by Parties under the Basel Convention.

The Interagency Panel noted certain countries as likely foreign shipbreaking destinations. With respect to each of the US Basel options, we have provided tables of these countries showing which countries would be able to legally receive ships containing hazardous wastes from the United States in the various options. Countries indicated by shading in the table indicate that hazardous waste trade to that country from the United States would be illegal under the Basel convention.

Option 1: Ratify the Basel Convention (1989) and the Basel Ban (1995)

If the United States chooses this option they will *not* be able to export ships containing hazardous wastes in hazardous quantities to non-OECD countries.

Option 2: Ratify only the 1989 Basel Convention

Such an option has already been condemned by environmental groups working on the Basel Convention as a cynical manipulation of the Basel Convention,[\[8\]](#) and will be viewed by many throughout the world, as a continuation of many acts of bad faith with respect to the Basel Convention by the United States. However, even if this route is taken, the United States would still have to adopt the Basel definitions and all of the provisions of the Basel Convention. Some of these provisions of the Basel Convention read as follows:

Article 4, paragraph 2 (b): "Each Party shall take the appropriate measures to ensure the availability of adequate disposal facilities, for the environmentally sound management of hazardous wastes and other wastes, that shall be located, to the extent possible, within it, whatever the place of disposal."

Article 4, paragraph 2 (c): "Each Party shall take the appropriate measures to ensure that the transboundary movement of hazardous wastes and other wastes is reduced to the minimum consistent with the environmentally sound and efficient management of such wastes, and is conducted in a manner which will protect human health and the environment against the adverse effects which may result from such movement."

Article 4, paragraph 2 (e): "Each Party shall take the appropriate measures to not allow the export of hazardous wastes or other wastes to a State or group of States belonging to an economic and/or political integration organization that are Parties, particularly developing countries, which have prohibited by their legislation all imports, or if it has reason to believe that the wastes in question will not be managed in an environmentally sound manner, according to criteria to be decided upon by the Parties at their first meeting."

Despite the fact that exact criteria for environmentally sound management have not been drawn up, the Convention has defined "environmentally sound management" as:

Article 2, paragraph 8: "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."

Given this definition and the facts as they are known regarding shipbreaking operations in places such as Alang, India, there is simply no way that any Basel Party can call the situation "environmentally sound management." And, it is clearly incumbent on each Basel Party to ensure that environmentally

sound shipbreaking operations are located within their own borders and that these alternatives are pursued "to the extent possible" in order to minimize the transboundary movement and moreover to ensure that in any case, the trade will be conducted in a manner which will protect human health and the environment. If this is not the case then Parties must take measures not to allow the export or to decontaminate ships prior to export.

Furthermore, due to the fact that increasing numbers of countries will ratify the Basel Ban Amendment and thus implement it into their own national legislation (national prohibitions) it will be incumbent on all OECD Basel Parties (as shown in the above extracts), to forbid exports to those countries that have ratified the Basel Ban Amendment and to those which already have a hazardous waste import ban in their legislation. Already over 100 countries are either parties to regional waste agreements or possess national legislation or policies which forbid the import of hazardous wastes.^[9]

Even in lieu of actual ratification and entry into force of the Basel Ban, it is well understood that Parties have an obligation to uphold the ban on the basis of the consensus decisions leading to it (Decisions I/22, II/12 and III/1).

Decision I/22 inter alia "requests developing countries to prohibit the import of hazardous wastes from industrialized countries." And Decision II/12 prohibited all transboundary movements of hazardous wastes from OECD to non-OECD countries for final disposal (effective immediately) and for recycling or recovery destinations, by 31 December 1997. Decision III/1 adopted the Basel Ban as an amendment.

On the basis of the above information, it is highly unlikely that a non-OECD country would accept hazardous waste from the United States even if the United States were to ratify the Basel Convention.

In sum, if Option 2 is exercised by the United States, all export options for ships containing hazardous wastes will be suspect unless the United States has a good reason for not recycling these ships at home. Furthermore, the US will *not* in any case, due to the requirement for "environmentally sound management," be able to export ships containing hazardous wastes to common shipbreaking destinations such as Alang, India. And finally, regardless of the above points, it is highly unlikely that any Basel Party, unless they are a member state of the OECD, will accept ships containing hazardous wastes from the United States.

Table I: Options 1 and 2

Only unshaded countries would be able to receive US hazardous wastes

Shipbreaking Country	Basel Party	OECD Member
Bangladesh	Yes	No
China	Yes	No
India	Yes	No
Indonesia	Yes	No
Korea	Yes	Yes

Mexico	Yes	Yes
Pakistan	Yes	No
Philippines	Yes	No
Portugal	Yes	Yes
Spain	Yes	Yes
Taiwan	No	No
Vietnam	Yes	No

Option 3: No Action. No ratification of Basel Convention or the Basel Ban.

Under ordinary circumstances the Basel Convention does not allow Basel Parties to trade in hazardous wastes with non-Parties.^[10] An exception is allowed however, if the Party establishes a bilateral or multilateral agreement that has provisions that are no less environmentally sound than the Convention.^[11] The United States has concluded bilateral agreements with Mexico, and Canada individually which cover imports to those countries of hazardous wastes. They have also concluded a multilateral agreement with all of the member states of the OECD for recyclable wastes within the OECD.^[12]

Thus, because the United States is a non-Party to the Basel Convention, other Basel Parties will not be allowed to receive wastes from it unless they are part of the agreements mentioned above.

Furthermore, it is not possible to circumvent the Basel Ban which prohibits the export of hazardous wastes from OECD to non-OECD countries via a multilateral or bilateral agreement under the Convention.^[13] And, as noted above, Basel Parties have obligations to adhere to the provisions of the Basel Ban, even when they have not yet ratified it. In conclusion, it is highly unlikely that non-OECD Basel Parties will accept hazardous waste from the United States because the United States is an OECD country, with or without a bilateral agreement.

Thus, if the United States maintains its current non-Basel ratification status, the only countries that would be allowed to accept hazardous wastes from the United States would be either a country that is not a Party to the Basel Convention, or a member state of the OECD.

Table III: Option 3

Only unshaded countries would be able to receive US Wastes

Shipbreaking Country	Basel Party	OECD Member
Bangladesh	Yes	No
China	Yes	No

India	Yes	No
Indonesia	Yes	No
Korea	Yes	Yes
Mexico	Yes	Yes
Pakistan	Yes	No
Philippines	Yes	No
Portugal	Yes	Yes
Spain	Yes	Yes
Taiwan	No	No
Vietnam	Yes	No

In sum, we can see that with respect to the Basel convention, US export of waste ships containing hazardous wastes is seriously impacted by the Basel Convention whether the United States ratifies the Convention or not. The primary distinction being which country would bear the legal and political onus. If, the United States ratifies the Convention and in particular if they ratify the Basel Ban, the legal onus falls on them as potential exporter. If not, the legal responsibility falls on the importing Basel Party. But in either situation, such trade to countries indicated on the tables (shaded), must come to a halt. Indeed in the three countries that are now offering the best prices for obsolete vessels due to their use of the cheaper beaching method -- India, Pakistan and Bangladesh, each of these countries as Basel, non-OECD countries, would be off limits in each of the three option scenarios.

Stated US Policy on Hazardous Wastes Trade

Even though the United States has taken a backwards, recalcitrant stance in the Basel Convention by consistently working against the overwhelming global majority in support of the Basel Ban, they have nevertheless claimed all along that their policy was to ensure environmentally sound management in the recipient country prior to export. In February of 1994 the Administration adopted and publicly announced waste trade principles. These administration principles have not been rescinded. These principles are summed up in a "Contingency Q and A on Basel" (See Annex) drafted by US officials in 1994 following the adoption of the Basel Ban:

"In February, President Clinton announced that he would seek authority to ban all waste exports outside North America except in extremely limited, environmentally sound, circumstances (and only if the wastes would be managed as least as environmentally protectively as would be the case in the U.S.)"

As far as we know this position is still the position of the United States with respect to hazardous waste trade. Thus it is difficult to understand why this policy is not reflected in the Panel's Report. If the United States only agrees that exports should be allowed in very limited circumstances and *only* to

environmentally sound facilities, why wasn't even adherence to this policy reflected in the Panel Report?

OECD Decisions -- Ignored Obligations

While the United States has failed to ratify the Basel Convention or the Basel Ban Amendment to that Convention, they have not failed to agree to certain OECD Decisions which are legally binding on the United States.[\[14\]](#)

Inexplicably though, the Panel Report mentions only OECD Decision [C(92)39(Final)] which applies only to trade in hazardous wastes for recycling *between* the 29 member countries of the Organization of Economic Cooperation and Development. However with respect to countries such as India, Pakistan, Bangladesh etc. and other non-OECD countries, the OECD decisions that are relevant are [C(86)64(Final)] and [C(88)90(Final)].

These two agreements preceded the Basel Convention but contained similar definitions and provisions. In Decision-Recommendation C(86)64 (Final)[\[15\]](#) annexed to this report, on Exports of Hazardous Wastes from the OECD Area, which contains both decisions (legally binding) and recommendations (not legally binding), the United States is legally obliged among other things to:

Paragraph 1, (iii): Prohibit movements of hazardous wastes to a final destination in a non-Member country without the consent of that country and the prior notification to any transit to any transit countries of the proposed movements.

Paragraph 1 (iv): Prohibit movements of hazardous wastes to a non-Member country unless the wastes are directed to an adequate disposal facility in that country.

Excerpted from Paragraphs 3-6: Member countries should require, with respect to any export of hazardous wastes to a final destination outside of the OECD area, that the measures set out below be taken by the exporter or by the competent authorities of the exporting country.

The exporter should:

b) inform the competent authorities of the importing country of any specific disposal methods legally required or forbidden for such wastes in the exporting country.

c) provide to the competent authorities of the exporting country:

I) the information used by the exporter to assure himself that the proposed disposal operation can be performed in an environmentally sound manner.

The competent authorities of the exporting country should:

a) before any final decision is taken, inform the competent authorities of the importing country when they have specific environmental concerns regarding the proposed disposal operation.

b) prohibit the export of hazardous wastes whenever:

I) they are not satisfied with the information provided...above.

In Decision on Transfrontier Movements of Hazardous Waste C(88)90(Final) the OECD defined hazardous wastes for the purpose of the previous Decision-Recommendation. These definitions were later basically adopted by the Basel Convention with some minor exceptions which are not relevant to the issue at hand. With respect to these definitions, clearly, as in the Basel Convention, ships adulterated with asbestos and PCBs in hazardous amounts that are destined for reclamation operations *are* hazardous wastes.

The United States has failed and is failing to implement and enforce the OECD decisions in the applicable United States laws -- the Resource Conservation and Recovery Act (RCRA) and the Toxic Substances Control Act (TSCA). Specifically, by failing to require the notification and receipt of consent from competent authorities in both the export and importing countries for obsolete ships laden with toxic substances destined for export, ie. to prohibit exports when such concerns are not addressed to their satisfaction (as well as numerous other recyclable wastes which have been made exempt from RCRA) the United States has, since 1986 failed to properly implement and act upon OECD Decision-Recommendation C(86)64.

Resource Conservation and Recovery Act (RCRA)

Under the Resource Conservation and Recovery Act (RCRA) exporters of hazardous waste are required to notify the Environmental Protection Agency (EPA) of an intended export before such waste is scheduled to leave the United States. Among other information, in the notification a description of the manner in which the hazardous waste will be treated, stored or disposed of in the receiving country is required. In conjunction with the State Department, EPA then is to provide a complete notification to the receiving country and any transit countries. If the receiving country consents to the receipt of the hazardous waste, EPA then forwards an EPA Acknowledgment of Consent to the primary exporter and the shipment moves forward. If the receiving country objects to receipt of the hazardous waste or withdraws a prior consent, EPA will notify the primary exporter in writing and the export will not be allowed to take place.[\[16\]](#)

It appears that the EPA has so far not required the above obligation with respect to ships for scrapping. This is likely due to two reasons:

First, the two best known hazardous ship ingredients, asbestos and PCBs are regulated under other laws. Asbestos is not considered a RCRA waste. But asbestos is regulated under the Clean Air Act and under the Toxic Substances Control Act or TSCA (see below). PCBs are regulated under the Toxic Substances Control Act largely for historic reasons. However it must be noted that other wastes found on board ships such as toxic paints and finishes, used oils and hydraulic fluids, lead, fuel oils, etc. should logically still be regulated under RCRA.

Second, ships have, in the past, been subject to numerous exclusions in RCRA. Namely, until the materials are removed from the ship, they are generally not regarded as having been "discarded" and thus not considered to be a solid waste.[\[17\]](#) Although the Panel Report claims that "the US Environmental Protection Agency...has not determined whether RCRA export controls should apply to ships that are partially dismantled and towed for scrapping abroad," it certainly appears that there is a preponderance of exemptions within RCRA which would allow exports to proceed unimpeded or

controlled by RCRA's export notification requirements.

We find reference to three such exclusions under RCRA. First, "a product or raw material transport vehicle or vessel" is not subject to regulation under certain RCRA sections including those sections governing export.^[18] Next there is an exemption from the RCRA solid waste definitions for scrap metal wastes (processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal) that is being recycled.^[19] Finally, for all other forms of scrap metal there is yet another exemption with respect to export notification requirements as long as the material is destined for recycling. This appears to be the case, even if the material in question contains hazardous contaminants (ie. containing lead, cadmium, dioxins).^[20]

The recycling exemptions from RCRA create enormous, dangerous loophole in RCRA and are improper manifestations of the obligations and definitions of the OECD Decision-Recommendation of 1986 with respect to exports, which RCRA or some other US law is obliged to implement. According to the 1986 OECD Decision-Recommendation, the *recyclability* of hazardous wastes *should not* be considered a factor in the scope of the obligations of that decision. In that decision, Prior-Informed Consent and the requirement to ensure environmentally sound management is applied to both final disposal and recycling destinations.

Whereas RCRA does not include asbestos or PCB wastes it does include other toxics substances which are known to be onboard ships. However, the EPA has created a series of loopholes which can be seen to apply to the export of ships for scrapping. Of particular note, are the loopholes for scrap metals as long as they are destined for recycling operations. These recycling loopholes are an improper implementation of the 1986 OECD Decision-Recommendation which the United States is obliged to uphold.

Toxic Substances Control Act (TSCA)

The Toxics Substances Control Act (TSCA) controls certain substances that are, for historical reasons separate from the Resource Conservation and Recovery Act. These substances include the hazardous materials asbestos and PCBs which feature so prominently in old ships.

Asbestos

With respect to asbestos, TSCA requires that the exporter notify the EPA of intent to export. Notice is then sent to the receiving country. However this notice usually follows the export and thus cannot be used as a means to prevent or control export regardless of the wishes of a receiving country.^[21] For some reason EPA has not to our knowledge required notifications to be sent for asbestos onboard ships bound for scrapping operations even though they do require it for ships with PCBs on board. This appears to be a breach of the TSCA rules.

But TSCA itself embodies another improper implementation of existing obligations of the 1986 OECD Decision-Recommendation mentioned above, in that Prior Informed Consent provisions (rather than simply after the fact notification) for asbestos and other hazardous wastes are ignored as are the requirements that the waste in question be bound for an "adequate disposal facility" or else be prohibited from export.

In one famous case in 1992-1993, Greenpeace activists begged EPA to halt the export of a US flagged

ship containing what is believed to be the most asbestos ever used in a vessel (300,000 square meters) to Turkey. The SS United States, was allowed to be exported to first Turkey and then the Ukraine, where, in both countries it was dismantled by hand with workers wearing no protective clothing, with no particle/fiber control tent and ventilation mechanisms. The EPA took no action to stop this shipment or to require the notification of the US company involved in the export. This export took place despite the fact that under the 1986 OECD regime the EPA clearly had the legal authority/obligation to halt the shipment.[\[22\]](#)

PCBs

Under the present TSCA, no person may export PCBs or PCB items at or above concentrations of 50 ppm (parts per million) for disposal without an exemption.[\[23\]](#) According to the interagency panel report, the EPA does treat the export of a vessel as the export of PCBs if the vessel contains any materials that may contain or may be contaminated with PCBs at regulated concentrations.[\[24\]](#) In 1994 the EPA proposed a rule which would allow the export of PCBs for disposal in certain circumstances. This proposed rule is substantially weaker than the existing law in that it allows the export on a case by case basis as long as the US has a bilateral or other international agreement with the importing country, and unless the US has reason to believe that the PCBs in question will not be properly managed.[\[25\]](#) However, according to the Panel Report these proposed rules are still in the process of negotiation and that process is expected to take two more years to complete.

In the meantime, EPA entered into interim export agreements in 1997 with the Department of Navy and the US Maritime Administration (MARAD) in order to allow the Navy and MARAD to be able to export their vessels abroad. The basis for the interim rules can be found in this statement found in the "Statement of Facts" section of those interim rules:

"Sales of vessels that may be exported for scrapping tend to bring higher prices than vessels scrapped within the United States and improve the United States' foreign trade balance."[\[26\]](#)

These interim rules require the removal of liquid PCBs from transformers, capacitors, and removal of hydraulic and heat transfer fluids containing PCBs. However the interim agreement ignores other hazardous substances such as asbestos, and allows the export of solid PCBs above the 50 ppm level if they are not "readily removable and their removal does not jeopardize the structural integrity of the ship or the ability of the ship to be operated in a seaworthy manner for delivery to the location where it will be scrapped." With respect to exempting solid PCBs even above the accepted cut off concentration of 50 ppm, it can be seen that these interim rules are proposed as an exemption to the normal PCB export ban, simply to facilitate the export of toxic ships to cheaper and dirtier recycling destinations abroad allowing the US government to make more revenue. Further, it is interesting to note that nowhere does the caveat "unless the USEPA has reason to believe that the wastes will not be properly managed" exist in the interim proposal.

PCBs which are not readily removable or for which removal does not make the ship difficult to transport, are just as dangerous as other PCBs which are removable. There is no justification for this exemption to the normal rules except an economic one. Put simply, the United States Government is willing to export harm to others simply to avoid a loss of profit. Reports and photographs from India have revealed that wiring and electronics from ships which contain solid PCBs are routinely burned on the beach, an activity known to generate and release extremely hazardous dioxins and furans.[\[27\]](#)

According to the Panel Report, in accordance with the interim agreement, the U.S. Government sent a first round of notices in August 1997 to various countries and only India requested additional time to

consider (see discussion of Indian Central Pollution Control Board Environmental Guidelines below). For some reason, even though the PCB rules have been in place since 1976, it was not until the 1990s that EPA began to take any form of control for the export of PCBs onboard waste vessels. Once they did start to look at the issue, they proposed exceptions to the PCB export ban rather than uphold it. And clearly, whereas the final TSCA rule change, once adopted may be consistent with the 1986 OECD Decision-Recommendation, the interim rules which do not stipulate that EPA can prohibit the export if it has reason to believe that the management may not constitute environmentally sound management, are certainly in violation of the OECD obligation.

TSCA, like RCRA, does not adequately implement the 1986 OECD Decision-Recommendation with respect to PCBs and asbestos. With respect to asbestos, the EPA has not yet considered the onboard waste asbestos for vessels bound for scrapping or refurbishment, as a controlled substance under TSCA. For PCBs they have just begun to be concerned with the export of onboard PCBs. Yet in the interim agreement with the Navy and MARAD, EPA will not concern itself with whether or not a destination disposal/recycling facility is environmentally sound. And in both the proposed rules and the interim agreement, EPA seems content to exempt certain waste PCBs from the existing TSCA PCB export ban, e.g. solid PCBs, simply because their removal prior to export entails less income for the United States Treasury.

Citizens Groups Protests in India

The Interagency Report failed to note that a large coalition of labor, political and environmental organizations in India have now on two occasions protested the United States plans to export hazardous wastes on board ships to India. On 21 January 1998, in a letter to the US Ambassador to India, spokespersons for the Basel Action Network of India, stated their opposition to the report that Navy and MARAD ships would be sent to Alang for breaking:

"The US decision exposes clearly the rationale behind the trade in hazardous wastes, and highlights the double-standards practised by the Governments of the industrialized world...The shipbreaking operations in Alang, Gujarat, are done under the most horrendous conditions. There are no environmental controls to speak of and even fewer worker safety controls. It is reported that 3-4 workers die every week due to mishaps or occupation-related ailments. The PCBs and leaded paints from your ships are dumped at sea and on the beach. The asbestos is stripped by workers aged 12 upwards with no safeguards....We believe that the worker's rights to a clean and safe work environment are inseparable from the rights of citizens and other living beings to a healthy living environment, and these rights know no borders." [28]

This sentiment was widely covered in the Indian national press at the time (see enclosed stories annexed to this report). This statement, is in our view highly significant in that it is signed by India's strongest shipyard's union, the Centre of Indian Trade Unions (CITU) as well as numerous environmental and human rights groups. It should especially be viewed in juxtaposition to the Panel's statement found in the report as follows:

"Recent concerns in the US have viewed this practice as equivalent to exporting one's worker safety and health and environmental problems, a perception that can impact the image of the United States abroad. The Panel recognizes, however that these perceptions

must be balanced against the economic realities of developing countries." Recognizing the importance of ship scrapping to these countries, while also recognizing the serious environmental and worker safety issues that exist, the goal of US policy should be to promote improvements in ship scrapping practices in those countries, particularly with respect to protection of workers and the environment."

The Panel Report is oblivious to testimony and information coming from the potential receivers of the waste ships, either from the public, government, or worker sectors. Such views were not listed among the factors which influenced the Panel's decision. Nor did the Panel make any effort to bring such views to the hearings or go themselves to India to witness opinion and conditions first hand.

The lack of concern shown by the Panel's failure to discover and reference the views of citizens and labor organization's abroad raises alarms. Without these views, the Interagency Panel's decision must be seen as flawed. It is our belief that in the age of globalization of commerce there is increased need to likewise globalize responsibility and an imperative to eliminate double standards with respect to our global neighbours. Decisions cannot be made in isolation to those effected by them regardless of national boundaries. These are the fundamentals of Environmental Justice which the administration has embraced domestically but seems prepared to ignore on a global stage.

Indian Pollution Control Board Decision

Earlier this year, the Indian Pollution Control Board issued that country's first rules with respect to ships destined for breaking operations (annexed to this report). With respect to the transboundary movements of ships the Guidelines had this to say:

From Section 2.0 -- "Transboundary Movements of Ships: Waste substances and articles consisting of or contaminated with toxic substances listed beyond a particular limit are classified as hazardous waste, under the recommendations of "Basel Convention." Polychlorinated Biphenyl (PCB) compounds at a conc. level of 50 mg/kg (ppm), waste asbestos (dust and fibre) as well as lead and lead compounds are covered under the Convention for regulation. Old vessels containing or contaminated with any of the above substances are accordingly classified as hazardous materials. The customs authority and/or the concerned State Maritime Board should ensure this and issue a certificate to this effect that the vessel is free from the prohibited materials."

This recent decision by the Indian government clearly shows that the government is concerned about the import of ships laden with toxics from other parts of the world. It appears from the statement above, that the government is prepared to apply the Basel Ban immediately and ensure that obsolete vessels that enter Indian territory must be free of Basel defined hazardous wastes. Thus ships that are exported from the United States to India laden with Basel hazardous wastes such as asbestos or PCBs will violate Indian rules.

Denmark -- Precedent for Action on Toxic Ships

More than once, the Panel Report makes the claim that they knew of no other government that has ever prohibited the transboundary movement of vessels as hazardous wastes. By this statement it remains unclear as to what lengths the Panel went to make this claim if any. In addition to the recent Indian Guidelines noted above, Denmark has recently been rocked with a scandal involving the past and future intended export of numerous obsolete passenger ferries owned by the private firm Scandlines which were destined to be exported to Alang, India. Following a journalist's exposé of the issue and the conditions in Alang, India, in a Television production entitled "Operation Whitewash," Denmark's environment Minister Svend Auken stated on national television that the Basel Convention (including the Ban Amendment) and the European Union's legislation implementing it was quite clear. The ships are hazardous wastes when containing hazardous wastes, and that what was needed was not new laws but rapid implementation of existing law. He informed police of the problem and pledged to bring the matter to the Environment Council of the European Union at the first opportunity to ensure EU wide implementation of existent law with respect to ship scrapping.[\[29\]](#)

It is clear now that at least one OECD country (Denmark) and a very key non-OECD country (India) now clearly considers obsolete ships containing hazardous substances to be hazardous wastes and stand ready to prohibit their export or import in accordance with the Basel Ban. As we have argued, Denmark and India's assertion, is the correct one.

Factors For Consideration -- Revisited

With the above information now part of the record, we revisit the "key factors" which the Panel considered before reaching their export decision:

Environmental, health and safety standards and conditions in many countries where ship scrapping is performed are less stringent than those in the United States.

This is a rather remarkable understatement made all the worse by the known fact that in the United States current rules and regulations in shipbreaking operations don't seem to prevent loss of life and limb and damage to the environment from domestic operations. Before the Panel can offer up such statements, they should be required to go and visit Alang, India first hand and include in the report the vivid evidence of the deplorable conditions for ship breakers there.

On a relative scale, the tonnage of US Government vessels is small compared to the available tonnage for the international market. The current backlog of vessels amounts to only 1 million light ship tons, with another 1 million tons available over the next 10 years, whereas the tonnage of obsolete vessels available for scrap in the global marketplace is expected to amount to nearly 68 million light ship tons over the next ten years.

The relevance of this statement is hard to understand. It sounds like another way of saying the developing world is already getting trashed, thus they will hardly notice more pain and suffering from our toxic wastes. Such a statement is morally bankrupt. One death in South Asia from a US ship is one death too many. But moral arguments aside, the authors of the Panel Report cannot be so naive as to think that the precedent of their decision in regard to these first 180 ships will not have repercussions around the world starting first with non-government owned ships that are exported from

the United States.

The US Maritime Administration has both a statutory mandate to sell ships and authority, under existing law, to sell them overseas. If the export option and the revenue it generates were not available, the statutory programs supported by US Maritime Administration sales would have to be funded through alternative means.

First a mandate to sell ships is *not* a license to kill. It is not a mandate to sell them without regard to health and safety of human beings. Second, authority to sell them abroad is tempered very strongly by the legal restraints described above regarding the proper implementation of the Basel Convention (which the United States now wants to ratify) and OECD Decisions (which they are already bound by). Finally, the last sentence is simply appalling coming from a panel which includes environmental policy specialists. Yes, internalizing the costs of pollution rather than externalizing them by exporting them abroad will cost money. Polluters must take responsibility and they must pay even if they are the United States Government. It is simply not acceptable to profit at the expense of poisoning others, particularly developing countries.

There appears to be no prohibition on the export of uncontaminated ships for scrapping in international law or export agreements to which the United States is a party. The Panel is not aware of any countries that prohibit the export of obsolete vessels on the basis that they may contain hazardous materials.

The first sentence, if the use of the word "uncontaminated" here is correct, is true. *If* the ships are clean of contamination then their export is not prohibited under known international laws. However, the entire subject matter of this report deals with ships that *are* known to be contaminated by hazardous substances and for these, prohibitions clearly exist. Even in the case of applying EPA's interim PCB procedure which requires removal of liquid PCBs and dual notification, the asbestos and other toxic substances on board still constitute contamination. The second sentence here does not follow the first as it speaks of obsolete vessels on the basis that they may be considered hazardous wastes. Whereas, this second statement is no doubt true, we wonder to what lengths if any the Panel has queried other countries of their interpretation with respect to such international norms such as the Basel Convention definitions. Since the report was released, both India and Denmark as noted above have claimed such ships to be hazardous waste. Denmark has gone a step further and has stated that they will deny future export of such vessels. In any case, the United States should be taking the lead on this issue and not looking to other countries to decide whether to do the environmentally, politically and legally correct thing.

The Panel recognizes the Department of the Navy and the US Maritime Administration have agreed to confer with the US Environmental Protection Agency and other interested agencies to discuss this report's implications before resuming the exporting of ships for scrapping."

Perhaps the agencies need to get their messages straight. Even though the United States has opposed the Basel Ban on exports of hazardous wastes to non-OECD countries, their stated policy today within the Basel Convention is that as long as a facility is conducting "environmentally sound management" of hazardous wastes then they should be allowed to receive it. Whereas in the Panel Report, the soundness of the facility hardly seems to be a consideration. If the United States claims that they have no legal basis from which to project this policy, we have shown above that exactly the opposite is true, indeed there is a strong legal basis as to why the United States cannot export ships containing hazardous wastes to countries such as Bangladesh, Pakistan and India. It is indeed time to confer and reconsider.

The Panel's Decision and Recommendations on Exports

The Panel's policy basis with respect to leaving the avenue of export an open one, is summed up in the Panel Report statement:

"Recent concerns in the US have viewed this practice as equivalent to exporting one's worker safety and health and environmental problems, a perception that can impact the image of the United States abroad. The Panel recognizes, however that these perceptions must be balanced against the economic realities of developing countries." Recognizing the importance of ship scrapping to these countries, while also recognizing the serious environmental and worker safety issues that exist, the goal of US policy should be to promote improvements in ship scrapping practices in those countries, particularly with respect to protection of workers and the environment."

This statement is revealing as to the priorities of the Panel. The very first concern that is expressed by the report is over the potential damage to the nation's image. This concern appears to take precedence over that for actual damage to human health and the environment. The second concern seems to be over the economic welfare of the receiving countries. Since when does the United States promote the economic welfare of foreign countries over that of its own? As has been pointed out in the testimony of the Institute of Scrap Recycling Industries, Inc. before the Panel on March 5, 1998, a report done in 1992 by Dr. Timothy Ryon illustrated that in terms overall economic benefit to the United States, domestic scrapping of ships would generate eight times more wealth than export sales.[\[30\]](#)

Even if this fact were not the case, it is simply unconscionable to practice double standards with respect to human health and the environment. This viewpoint is not a paternalistic one with respect to developing countries as we have seen from the immediate vocal protests from India when the export of the government ships was announced. A second moral principle that is being violated, regards that of environmental justice. One of the principles of environmental justice which has increasingly become embodied in administration policies, calls for prevention of society's more hazardous and dangerous enterprises from being located disproportionately in poorer communities.

Even beyond the moral question of double standards though, there is the principle of self-sufficiency with respect to hazardous waste management. This principle is founded on the belief that hazardous waste is not a "good" subject to free trade, but rather a problem, subject to minimization. This view is the very basis of the Basel Convention which the United States signed and helped negotiate.

The principle of self-sufficiency embodied in the Basel Convention which the United States has signed and is now seeking to ratify, calls for waste management to be accomplished "to the extent possible" within the states that generate the waste. This principle is crucial to driving the goal of hazardous waste minimization at source rather than continuing to allow hazardous waste generators to externalize the real costs of pollution by export to poorer national economies. Export of pollution problems to avoid costs, always equates to a disincentive to clean production and pollution prevention at home.

The recommendations given in the Panel Report then for possible criteria to be established for the continuance of the export option, which are largely predicated on the belief that the United States can influence improved worker and safety protection in shipyards such as that in Alang, besides revealing either an outsized naivete on the part of the authors or perhaps with respect to the perceived naivete of

their audience, does not address these vital principles of environmental justice and hazardous waste self-sufficiency. For, even if by some miraculous means, India for example, could implement standards for occupational health and environment on a par with the United States, and still be profitable based on lower labor costs alone, export of this waste disposal/recycling industry would still in our view be unacceptable as it would still entail the export of hazardous wastes and very risky and dangerous enterprises simply on the basis that a country is poorer.

Conclusion

By mischaracterizing or ignoring existent international and national law and developments around the world with respect to the transboundary movements of ships containing hazardous wastes, the Report of the Interagency Panel on Ship Scrapping, came to erroneous conclusions and recommendations. In our view there is already a very substantial legal, political, economic environmental and moral basis for ending the export of toxic ships to non-OECD countries. This report chose to investigate only the legal questions in depth as these crucial issues have been so badly represented in the Panel Report and are vital for quickly ensuring that the United States reverses its decision to continue to allow exportation of toxic ships to non-OECD countries. On the basis of that investigation, it is our view that the United States is not upholding its obligations under the letter and spirit of international law. Nor is the Panel decision consistent with stated US policy with respect to export of hazardous wastes abroad.

Whether or not the United States is a party to the Basel Convention, legal restraints exist either from the obligations imposed by recipient countries or through the existent OECD accords to which the United States is a party, that would prevent the trade in toxic ships from the United States to India, Bangladesh, Pakistan, China etc.

Already in Europe the Basel Ban has been implemented with the immediate implication that Europe will likely begin redeveloping domestic shipbreaking technologies on a large scale. This development will likely benefit the overall economy of Europe as it will for the United States if the Basel Ban is implemented in this country. Due to the rapidly increasing volume of ships available for scrap in the world,[\[31\]](#) it is unlikely that India's shipyards for example will lose supply even when all OECD countries implement the Basel Ban. There will likely still be a significant quantity of ships for scrap from non-OECD countries to keep existing scrap areas employed. However, it would be a very significant step forward for there to be no more environmentally damaging and hazardous shipyards such as that at Alang built. Likewise it is imperative that the hazards at existing shipyards are addressed and minimized on an urgent basis.

In view of the dual principles of hazardous waste self-sufficiency and environmental justice, and of the legal and political obligations and implications explored in this report, we urge that the United States affirm their stated principles and those of the international community embodied in the Basel Convention and its 1995 Basel Ban amendment -- to end the export of all forms of hazardous wastes, particularly to developing countries.

ANNEXES

1. OECD Decision C(86)64(Final)
 2. Central Pollution Control Board of India -- Environmental Guidelines for Ship-Breaking Industries
 3. Question and Answer Contingency
 4. Indian New Stories
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Notes

- [1] Decision II/12 of the Second Conference of Parties to the Basel Convention.
- [2] Decision III/1 of the Third Conference of Parties, established Annex VII, a list of countries to which the export ban applied. Annex VII is made up of: "Parties and other States which are members of the OECD, EC, Liechtenstein.
- [3] Decision IV/7 of the Fourth Conference of Parties to the Basel Convention.
- [4] Decision IV/9 of the Fourth Conference of Parties to the Basel Convention.
- [5] *Draft Report Assessing the Potential Environmental Impacts of Ship Recycling at Hunter's Point Naval Shipyard, Appendix A: Incorporating Necessary Precautions*, prepared by Arc Ecology, September 14, 1995.
- [6] This made clear by State Department's Deputy Director, Office of Environmental Policy, Robert J. Ford, to the Basel Action Network in a meeting called by the State Department to brief NGOs on 26 March 1998.
- [7] "Clinton Administration Split on International Waste Shipping Treaty" *Inside EPA's Waste Policy Alert*, Vol, 4, No. 7, April 3, 1998.
- [8] US Environmental groups signing the letter including the Basel Action Network, Greenpeace USA, Sierra Club, Essential Action, Asia Pacific Environmental Exchange, Friends of the Earth, Center for Health, Environment and Justice (CCHW), and Center for International Environmental Law.
- [9] Regional Agreements which forbid hazardous waste imports include the Bamako Convention, Lome IV Convention, Waigani Treaty, Central American Agreement, Barcelona Protocol. See BAN website: <http://www.ban.org> for country by country waste trade ban status under "Country Status" section.
- [10] Article 4, paragraph 5.
- [11] Article 11.
- [12] OECD Council decision C(92)39/Final.

[13] Article 11 of the Convention allows such agreements only if they are no less environmentally sound than the provisions of the Convention. The European Commission has undertaken a legal analysis and has concluded that Article 11 cannot be used to circumvent the Basel Ban (letter from Ludwig Kramer to Iwona Rummel Bulska, see <http://www.ban.org>).

[14] According to Article 5(a) of the Convention on the Organization for Economic Co-operation and Development, Dec. 14, 1960, 12 U.S.T. 1728, OECD decisions are binding on the signatory states, recommendations are not. The part of this agreement which is a "recommendation" and therefore not legally binding is not referred to in the text of this paper.

[15] OECD Council Decision - Recommendation on Exports of Hazardous Wastes from the OECD Area, June 5, 1986, OECD C(86)64 (Final), reprinted in 25 I.L.M. 1010 (1986). Australia abstained.

[16] 40 CFR, Section 262, Subpart E.

[17] This is stated in an August 5, 1994 EPA memo to Mr. Brian J. Donovan of the Law Offices of Jones and Donovan from Michael Shapiro, Director of EPA Office of Solid Waste. Available as a faxback document from RCRA hotline by calling 202-651-2060 and requesting document # 11862.

[18] 40 CFR 261.4 (c).

[19] 40 CFR 261.4 (a) (13).

[20] In 40 CFR 261.6 (a) (3) (ii). All other forms of scrap metal not excluded already in 261.4 (a) (13) but defined at 261.1 (c) (6) are exempted from RCRA export notification requirements.

[21] 40 CFR, Section 707.

[22] Greenpeace Toxic Trade Update, issues 6.2, 6.3, 6.4.

[23] Section 6(e) of TSCA, 15 U.S.C. Section 2605(e).

[24] According to the panel report, this position was upheld in United States District Court in a 1995 case involving the export of PCBs for disposal in a ship destined for scrapping overseas in US Cabot/Dedalo v. US Customs Service.

[25] Federal Register, Vol. 59, No. 233, Page 62854.

[26] Excerpted from Paragraph 6 (d), Agreement Between the Department of the Navy and the United States Environmental Protection Agency, Export of Naval Vessels that May Contain Polychlorinated Biphenyls for Scrapping Outside the United States.

[27] Copy of photograph 1993, GEO magazine; and eyewitness accounts Basel Action Network of India.

[28] Press release of the Basel Action Network of India and Greenpeace International, 21 January, 1998, New Delhi coalition member of the Basel Action Network that includes numerous trade unions, and environmental organizations.

[29] "Operation Whitewash" investigative documentary shown on DRTV at 20.00, local time, 20 May 1998, followed by fifteen minute interview with Svend Auken, Danish Minister of Environment.

[30] Testimony of Robin K. Weiner of the Institute of Scrap Recycling Industries, Inc., March 5, 1998.

[31] Life Cycle Management of Ships, December 1996, Master's Thesis of Karan J. Jankipersad, Technische Universiteit Delft. Concludes that the market for scrap ships will increase explosively in the next 5 years and that in 10 years time (i.e., by 2006) the global ship scrapping capacity will have to be doubled.

END