

INTERCARGO Webinar

The Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships – Current Implementation and Future Challenges

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Dr Hiremath and Mr Kapoor have covered the basics of HKC and the progress it has made so far in upgrading the ship recycling industry. I will concentrate on a different convention, the Basel Convention, and on its relationship and conflicts with HKC.

I want to add two comments on what was said about HKC by the previous speakers:

(1) Mr Kapoor correctly said that the responsibilities assigned to the recycler by HKC outweigh those of the shipowner. Recyclers had to upgrade their facilities and equipment, provide training, systems, and audits, while the shipowner has to maintain the IHM, arrange a few extra surveys and certification, clean his end-of-life ship of cargo residues, and arrange for its recycling in an HKC authorised yard. It must however be noted that the requirement to recycle at an HKC yard is what makes the division of responsibilities equitable! Compliant yards have higher costs and therefore recyclers will offer lower payment for the ships they buy.

(2) As, year after year, Bangladesh, India, Pakistan, and Türkiye have been recycling over 95% of all tonnage that is recycled worldwide, and as all four are Parties to HKC, this means that there is no choice for shipowners but to recycle their ships according to HKC's standards, even if their ships fly the flags of non-HKC Parties (as already allowed by the Convention).

“The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal” (the Basel Convention, or BC here) was developed under the aegis of the United Nations Environment Programme, following the realisation that toxic wastes were being exported (dumped) from the developed to the developing world. It is operated with its own BC Secretariat. It was adopted in 1989, entered into force in May 1992, and presently has 191 Parties. Virtually all the world with the exception of USA.

The BC has two main aims:

1. to restrict the transboundary (i.e. from one State to another) movements of hazardous wastes, except where this is in accordance with the principles of environmentally sound management (ESM); and
2. to provide a regulatory system for when transboundary movements are permissible (this is known as the concept of the Prior Informed Consent – or PIC).

Furthermore, in an effort to strengthen the protection to developing countries, the 2nd Conference of the Parties, or COP 2 (the governing body of the Basel Convention) adopted in 1994 the “*Ban Amendment*”, banning outright the export of hazardous wastes from OECD to non-OECD countries. The amendment entered into force after 25 years, in December 2019 and it currently has 104 Parties.

Note that the Ban Amendment was unilaterally enforced from 2006 by the European Union, through the European Waste Shipment Regulation (EU WSR), which implements the Basel Convention and the Ban Amendment in EU law.

Towards the end of the 1990s ship recycling entered the agenda of the COPs of BC. In 1999 COP 5, instructed its technical working group to develop guidelines in collaboration with IMO for the environmentally sound management of the dismantling of ships and three years later, COP 6 adopted the Basel Convention's voluntary "*Technical Guidelines for the Environmentally Sound Management of the Full and Partial Dismantling of Ships*". Note however, guidelines are voluntary instruments, they are not regulations.

It is important to recognise that, while the Basel Convention may be successful in fighting illegal exports of hazardous wastes to countries that are unable to deal with them in an environmentally sound manner, on the other hand this Convention was never drafted with the intention to define standards and to regulate the recycling of ships and, not surprisingly, has proven to be unsuitable to regulate ship recycling (or “ship dismantling” in BC language).

A key problem is that BC is not cognisant of the concept of the flag State that is central to UNCLOS and to all maritime Conventions. Instead, the mechanism for achieving the Convention’s “Prior Informed Consent” relies on establishing communications between the *exporting* and *importing* countries. This, however, when applied to end-of-life ships, means the authorities of the *State from where the ship departs* for its last voyage* and the *authorities of the recycling State*. More often than not, the shipowner and/or ship manager have no connection with the, so called, *exporting* State. The ship would need to have a lengthy stay at that port, possibly extending for weeks, while paperwork is filed with the local Ministry of Environment, who then needs to seek the consent of the Ministry of the importing country.

Also, if the last voyage involves a call at a port of a “*transit State*” (eg for bunkering, or for discharging surplus spares and stores), the transit State would need according to the PIC procedure of the BC to provide its consent to the exporting State within 60 days of being asked, while the ship, the crew and the owner wait!

To make matters worse, the BC does not specify any requirements relevant to ships and to ship recycling facilities, nor does it address issues of workers’ safety. Its only practical requirement to ship recycling facilities being its generic requirement that the wastes should be managed in an environmentally sound manner.

The early experiences of implementing the BC's PIC procedure to ships on their final voyage were counterproductive. Shipowners avoided, or evaded, or were ignorant of the PIC procedure, while most exporting and importing countries did not attempt to enforce the PIC requirements.

These failures led BC's COP 7 to reach its decision VII/26 in 2004, when addressing the question on whether BC can regulate the movement of end-of-life ships.

Quoting from the decision: *“Noting that a ship may become waste as defined in article 2 of the Basel Convention and at the same time it may be defined as a ship under other international rules”*.

Importantly, the same decision VII/26 also: ***“Invites the International Maritime Organization to continue to consider the establishment in its regulations of mandatory requirements, including a reporting system for ships destined for dismantling, that ensure an equivalent level of control as established under the Basel Convention and to continue work aimed at the establishment of mandatory requirements to ensure the environmentally sound management of ship dismantling, which might include pre-decontamination within its scope”***.

IMO responded positively to this invitation by developing and adopting in 2009 the Hong Kong Convention which is specific to ship recycling. As we already heard today, the Convention has been successful, even before its formal entry into force, by transforming ship recycling facilities and their operations, first in India, and now in Bangladesh and Pakistan.

Let us consider how HKC fulfilled the original request by the Basel COP:

1. HKC has specific requirements on what materials must not be used on existing and on new ships and defines a procedure for any Party to propose amendments to the lists of restricted materials. It has also introduced the useful Inventory of Hazardous Materials. On the other hand, the BC requirements are not ship specific.
2. Environmental sound management of hazardous wastes is addressed in HKC by its Regulation 20 which requires the identification, labelling, packaging and removal of all hazardous materials from the ship and their ESM at the facility. It also requires that these are only transferred to a waste management facility that is authorised to deal with their treatment and disposal in an ESM manner (in explicit recognition that the BC requirements continue to apply to these wastes outside the gates of the recycling yard).

3. Regulation 16 of the HKC addresses the process and the requirements for the authorisation, and for the suspension or withdrawal of authorisation, for a recycling facility to operate by the Party (the “importing country”). Any limitations on the size or type of ships to be recycled, and any restrictions on the allowed types of hazardous materials and their quantities, are included in the official authorisation document, namely on *the Document of Authorisation to conduct Ship Recycling* (DASR for short). In comparison, BC simply requires compliance to the generic Prior Informed Consent process which seeks to confirm to the exporting country the acceptance by the relevant authority of the importing country.

HKC replicates the PIC, but unlike BC, it relies in the consent being agreed between the ship’s flag State and the recycling State. The process involves: surveys, certification, the Inventory of Hazardous Materials, the ship specific Ship Recycling Plan, and communications between the shipowner, the flag State, the ship recycler, and the recycling State. In addition, port State control provides any transit States with the ability to monitor the ship’s compliance.

I believe that any reasonable person will agree that, whereas Basel Convention which has been in force for over 30 years without leading to any improvements in standards in ship recycling, on the other hand the results of the implementation of HKC, even prior its entry into force, have been impressive, regardless of what the critics of the Convention may be saying.

In 2011, at COP 10 there was an attempt by Parties to the BC to agree that the newly adopted HKC can be deemed equivalent to the BC and therefore ships falling under its scope would not come under the scope of the BC. Due to objections raised by two countries (Cameroon and Dominican Republic) COP 10 did not reach consensus and the subject was left unresolved. As expected with HKC's entry into force in June 2025, we have found ourselves with two distinct international Conventions in force aiming to regulate the same subject, with some critical conflicting requirements.

The main conflict arises when a State that is Party to BC and the Ban Amendment decides to enforce these instruments to an end-of-life ship that flies the flag of a Party to HKC and which, in line with HKC, has fulfilled all requirements and is ready to go for recycling to a non-OECD country. This ship will be detained.

In general, the lack of recognition of HKC by BC creates uncertainties, complications, wasteful expenditure and a patchwork on the world map of ports from where a ship can legally commence its final voyage, or where the voyage is deemed to be illegal.

IMO's MEPC recently attempted to deal with the problem by issuing a Provisional Guidance that requests a State that is a Party to both Conventions *"in accordance to BC's Article 11 should consider notifying the BC Secretariat that it will apply HKC's requirements in respect of transboundary movements of ships intended to be recycled at a ship recycling facility that has been authorized in accordance with the HKC and is situated under the jurisdiction of a Party to HKC"*.

This however will only create a patchwork of different national and/or regional regimes for the shipping and ship recycling industry to comply with. To avoid being sanctioned, a shipowner would need to consider the position of every competent authority involved in all the TBMs of his end-of-life ship to ascertain whether the respective authorities have declared their preference or not, and if they have, whether they would apply BC or HKC requirements.

Even more practically, IMO's Provisional Guidance would at best provide clarification of the position of its current 24 Parties. However, 12 of these are EU Member States who are bound by the EU WSR (BC+Ban Amendment); 4 are recycling (importing) States; 4 are not likely to make any difference to the issue (Congo, Ghana, Sao Tome & Principe, and Serbia); 3 are open registers (Liberia, Marshall Islands, and Panama); and lastly only Japan is both, a major port State and a flag State.

COP 17 (May/2025) at the request of IMO considered the Provisional Guidance. It agreed to invite Parties and Observers to submit comments on the Guidance and *“any other additional comments from the perspective of the Basel Convention on the implementation of the Hong Kong and Basel conventions with respect to the transboundary movement of ships intended for recycling”* by 15 November. These will then be considered by the BC’s “Open Ended Working Group” that will meet in summer 2026, and who will then revert to COP 18 in 2027.

In summary: The moment a shipowner decides to recycle his ship, this intent is deemed by BC to have made the ship become hazardous waste. If the ship is discharging its last cargo at a port of a Party to the Ban Amendment prior to going for recycling to a non-OECD country (Bangladesh, India, or Pakistan) then the ship will be detained if the authorities enforce BC to end of life ships. If it is not a Party to the Ban Amendment and the authorities enforce BC to end-of-life ships, then the ship will face a lengthy delay while completing and filing the PIC paperwork to the ministries of Environment of the Export, Import, and any Transit States.

Most participants to the BC COPs are representatives of Ministries of Environment and while they may have expertise in relevant fields, they cannot be expected to understand the governance and the way international shipping operates. Added to this, a very active group of NGOs who have opposed HKC from the very first beginning of its development are very influential in the circles of the BC (as they also are influential in Brussels). The danger therefore is that, unless the BC COP can be made to understand the significant advancements made under the HKC and its guidelines, the COP may most likely default to offering no solution for ship recycling for the foreseeable future.

In conclusion I note that this is not a subject that can be covered well in the allocated 15 minutes that I had. I will be happy to try and elaborate on any points or questions you may wish to raise.

Thank you for your attention!