Ship Recycling Alliance non-paper

On the need to tackle the conflicting requirements of the Basel and the Hong Kong Conventions

Executive Summary

The interplay between the Basel Convention (BC) and the Hong Kong Convention (HKC) will result in significant challenges for ship recycling once HKC enters into force. This document examines the conflicting requirements of these two Conventions and proposes solutions for harmonizing their approaches.

The BC, established in the late 1980s, focuses primarily on controlling the transboundary movements of hazardous wastes and their disposal. It aims to protect human health and the environment from the adverse effects of these wastes. However, when applied to ship recycling, the Convention encounters several limitations, in particular regarding the transboundary movement of end-of-life ships. The global nature of the shipping industry and the complexity of managing end-of-life ships pose challenges in implementing the BC's Prior Informed Consent (PIC) procedure.

On the other hand, the HKC, adopted in 2009 by IMO following a request by COP 7 of the BC, provides a comprehensive regulatory framework specifically designed for the safe and environmentally sound recycling of ships. This Convention seeks to address the gaps identified in the BC by introducing mandatory requirements and a robust reporting system specific for ships. The HKC aims to ensure that ship recycling is conducted in a manner that protects both the environment and the health and safety of workers involved.

Despite the strengths of the HKC, its implementation is not without challenges. One major issue is the overlap and conflict with the provisions of the BC. The HKC relies on the concept of the flag State and the recycling State, which can contradict the BC's procedures that focus on exporting and importing States. This misalignment creates practical difficulties for shipowners and recycling facilities in complying with both Conventions simultaneously.

While Article 11 of the BC allows for Parties to enter into bilateral, multilateral, or regional agreements that ensure environmentally sound management of hazardous wastes, it is not considered a viable solution for ship recycling.

The HKC along with its guidelines will enter into force in June 2025 and represents a significant advancement in harmonizing global standards. The HKC not only addresses the gaps identified in the BC PIC procedure but also includes an improved reporting system for ships destined for dismantling. In addition, it not only addresses end-of-life ships but will apply throughout ships' entire lifespan.

A. Background

Towards the end of the 1990s, ship recycling entered the agenda of the Conference of the Parties (COPs) of the Basel Convention (BC). In December 1999, COP 5, in its decision V/28, instructed its technical working group to develop guidelines - in collaboration with IMO - for the environmentally sound management of the dismantling of ships. **COP 6, in 2002, adopted the BC's voluntary "*Technical Guidelines for the Environmentally Sound Management (ESM) of the Full and Partial Dismantling of Ships*"**.

At the same time, the growing international interest in ship recycling also resulted in the publication by the International Labour Office (ILO) of a further set of voluntary guidelines in 2004 on: "*Safety and Health in Shipbreaking Guidelines for Asian countries and Turkey*".

The BC is focused on tackling the illegal exports of hazardous wastes to countries that are facing difficulties to manage them in an environmentally sound manner. However, its Secretariat has **acknowledged that given the global nature of the shipping industry and the practices associated with sending end-of-life ships for recycling, there has been difficulty in applying the provisions of the BC** to ship recycling.

The early experiences of implementing the BC's Prior Informed Consent (PIC) procedure to ships on their final voyage were not productive. It was noticed that the shipowners avoided, or evaded, or were ignorant of the PIC procedure, while the majority of exporting and importing countries did not even attempt to enforce these requirements. These experiences led BC's COP 7 to reach its decision VII/26 in October 2004, by addressing the question on whether BC can regulate the movement of end-of-life ships, stating "*Noting that a ship may become waste as defined in article 2 of the BC and at the same time it may be defined as a ship under other international rules*": "*Invites the IMO 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 BC** and to continue work aimed at the establishment of mandatory requirements to ensure the ESM of ship dismantling, which might include pre-decontamination within its scope*".

The IMO met the request of the BC COP 7 by developing and **adopting in 2009 the Hong Kong Convention (HKC)**, which is specific to ship recycling, and by developing the six (6) associated sets of guidelines to the Convention by the end of 2012. The HKC will enter into force on 26 June 2025 and is a well-thought-out set of regulations intended to serve as the global standard for shipping and ship recycling. Furthermore, the four (4) main ship recycling States (namely Bangladesh, India, Pakistan and Türkiye) are consistently recycling around 95% of the tonnage. These 4 States lead this sector on a global scale. The HKC includes mandatory requirements and a reporting system for ships destined for dismantling and replicates, improves, and strengthens the PIC procedure. The HKC procedure relies on consent between the ship's flag State and the recycling State, with enforcement carried out by Port State Control (PSC) officers. Furthermore, the HKC's Regulation 3 explicitly acknowledges the relationship with other standards, including those developed under the BC.

B. Identifying the difficulties and overlaps between BC and HKC

In general, the BC works around two main pillars. On the one hand, it introduces requirements and procedures related to the Transboundary Movement (TBM) of hazardous and other wastes. On the other hand and equally important, the BC focusses on the reduction of hazardous waste generation and the promotion of ESM of hazardous wastes, wherever the place of disposal.

B.1. The Transboundary Movement

A key problem is that **BC is not cognisant of the concept of the flag State** which is central to UNCLOS and to all maritime related conventions. Instead, the mechanism for achieving the BC's PIC relies on establishing communications between the **exporting and importing countries, including potential transit States**. This, however, when applied to end-of-life ships, means the authorities of the State from where the ship departs for the last voyage and the authorities of the recycling State. More often than not, the shipowner, the charterer (if any) and/or ship manager have no direct connection with the, so called, *exporting* State. The ship would need to have a lengthy call at that port, possibly extending for weeks or even months, while paperwork is filed with the Ministry of Environment, that would then seek the consent of the Ministry of the importing State. Furthermore, if the last voyage involves a call at a port of a **"transit State"** (e.g. for bunkering, for discharging spares and stores, etc), 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. During this entire time, the ship must remain in the port of the exporting State until consent is given by all States concerned.

In addition, enforcement against the BC procedures, in most States, is carried out by the **Environmental Inspectorate**, and not by the authorities familiar with enforcing the shipping industry, namely the **Port State Control (PSC) officers.** In this regard, it must be noted that last year, for example, the Paris MoU approved the incorporation of the HKC within its scope. The Paris MoU will enforce this instrument as of 1 July 2025.

The HKC replicates, improves and strengthens the PIC, but unlike BC, it relies in the consent being agreed between the ship's flag State and the recycling State, with enforcement on the ship side being carried out by the PSC. Both flag and port State control are the usual shipping regulators for other IMO Conventions. In this regard, it must be noted that IMO Conventions have a high compliance rate. The process involves: surveys; certification; the Inventory of Hazardous Materials (IHM); and communications between the shipowner, the flag State, the port State (in case enforcement), the ship recycler, and the recycling State.

The **HKC PIC process, referred to as International Ready for Recycling Certificate (IRRC),** which is comprehensive and effective, has not been, and cannot be, implemented prior to 26 June 2025, as no international statutory certificates under HKC can be issued before the Convention's entry into force.

The PIC process of HKC (namely, obtaining the IRRC) has not yet been implemented between flag and recycling States. However, the technical requirements for the **authorisation of ship**

recycling facilities contained in the Convention and in its Guidelines have been implemented on a voluntary basis by a large number of ship recycling facilities (especially in India over 110 out of 120 operating) and by a smaller number of shipowners. Furthermore, India has upgraded its facilities for the storage treatment and disposal of hazardous wastes, while Bangladesh is working on establishing such facilities. Pakistan is working in the same direction. Regulation 16 of the HKC addresses the process and the requirements for the authorisation for a ship recycling facility to operate. It also addresses how the recycling State (the "importing country"), which is Party to the HKC, handles the suspension or withdrawal of the authorisation. 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). This license to operate must be issued by the recycling State's competent authority.

The implications of both UN Conventions to an example end-of-life ship, and **the conflicting requirements of the two Conventions related to the TBM of that ship**, are highlighted through a few examples in the Annex to this document.

B.2. The reduction of hazardous waste generation and the promotion of ESM of hazardous wastes, wherever the place of disposal

The environmentally sound management (ESM) of hazardous wastes is addressed in the HKC by its Regulation 20.4, which requires that: "*All wastes generated from the recycling activity shall be kept separate from recyclable materials and equipment, labelled, stored in appropriate conditions that do not pose a risk to the workers, human health or the environment and only transferred to a waste management facility authorized to deal with their treatment and disposal in a safe and environmentally sound manner.*"

Regulation 3 of the HKC explicitly addresses the relationship of HKC with other UN standards. For the authorisation of the downstream waste management and disposal, the relevant United Nations regulation is the BC (while for worker safety, this would involve the ILO). Therefore, an effective implementation and enforcement of both the appliable ILO and BC requirements will ensure the overall safe and environmentally sound recycling of ships.

The HKC does have 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 (IHM), while the BC requirements are not ship specific.

In addition, an **IHM may provide the potential to evaluate beyond recycling and towards a more sustainable cradle-to-cradle approach**. By adhering to principles of the circular economy, it could facilitate ships being built in the future with a view to better recycling. Materials, such as steel, may then be upcycled, thereby extending their lifecycle and preventing downcycling. This could also encourage the design and construction of ships with future recycling in mind, promoting a more environmentally responsible and economically viable industry. Whether or

not more circularities will find their entry into the shipbuilding and recycling industry will depend on concerted efforts among stakeholders to adopt these sustainable practices.

C. Addressing legal uncertainties and aligning Conventions

To allow for global safe and environmentally sound recycling, for a more transparent shipping and ship recycling industry, both the HKC and the BC need to co-exist and regulate the industry each within their area of competence. Importantly, this would allow for a robust implementation and strict enforcement of the rules and regulations, by, on the one hand port State control for everything related to the ship in line with HKC and, on the other, the national environmental inspectorate, for everything related to environmentally sound management of hazardous wastes in line with the ESM standards of the BC. Therefore, the following matters need to be resolved and/or addressed with a sense of urgency:

1. **Legal uncertainties** caused by overlaps on requirements related to the TBM of ships after the entry into force of HKC (see the Annex to this document for typical example cases). In accordance with HKC, ships can trade for up to three months from the issuance of the IRRC and until recycling commences. In that period such ships, acting in accordance with the IMO HKC, could be detained in ports of Parties to the BC for violating the PIC conditions of the BC. This could have the unintended consequence of ships changing flag from HKC Parties to evade enforcement at the end of life, as well as IMO Members avoiding ratifying the HKC until these issues are resolved. The consequence of such foreseeable outcomes would be to counteract efforts to establish a global level playing field and could lead to a potential failure of the HKC.

   It must be noted that under the current BC interpretation, the moment a shipowner even intends to discard of the ship, it becomes hazardous waste. This means the ship's ability to trade becomes restricted, prohibiting it to fulfil its main purpose of being a ship. The BC decision that "*a ship may become waste as defined in Article 2 of the BC and at the same time it may be defined as a ship under other international rules*" is not suitable to apply to ships that are fully certified with valid international certificates to operate and trade.

   In comparable industries such as aviation and automotive, "vehicles" are classified as waste when they are declared a total loss, reach a recycling facility, or lose their operational licenses and/or certificates. There are no known precedents where a fully operational truck or airplane is deemed waste, even if the owner plans to dispose of "the vehicle" in the near future.

   Looking at aviation, there is a clear split between the "aerospace domain", which comprises all process steps while aircraft components are still certified for airworthiness, and the "non-aerospace waste domain", which includes the process

steps after components have lost their airworthiness certification[1]. Similarly, ships that are trading, fully certified in accordance with IMO rules, should not at the same time be classified as hazardous waste under the BC. This is because once classified as hazardous waste by the BC, ships may be directly prohibited and/or restricted to freely trade in line with IMO rules (ie operate as ships).

2. Legal certainty is also what is needed to provide for a sustainable business climate and for more investments to take place in the shipping and ship recycling industry. Most recent BIMCO data predicts that over 15,000 ocean going ships globally will need to be recycled in the next decade, which is more than twice the amount recycled globally in the ten years up to 2025. Addressing this capacity issue is crucial for the global shipping industry to comply with environmental and safety regulations. **Deploying new HKC compliant capacity** will demand extra time, money and effort as dedicated infrastructure will need to be in place to ensure a better protection of the environment and worker safety. Furthermore, expanding ship recycling capacity will necessitate hiring and training new workers, as well as modifying the current waste management capacity to accommodate the requirements of ship recycling facilities.

3. Looking towards future implementation of the HKC, **an experience building phase (EBP), both at the level of the IMO as well as UNEP's BC**, could help facilitate the implementation and a robust enforcement of the HKC, while allowing the BC to update and align its existing Guidelines (2002) to the more recent Guidelines by the IMO.

   As a practical example, under an EBP, a workstream could improve accidents and incidents reporting and experience sharing, by building upon the requirements of regulation 23 (Reporting of incidents, accidents, occupational diseases and chronic effects) and the information sharing provisions of article 12 (Communication of information) of the HKC. Although the HKC addresses these areas, enhancing transparency through an EBP will facilitate learning and could help to prevent similar accidents from occurring elsewhere.

4. As all main recycling States are Parties to the BC for many years, there seems to be a need for BC to **provide more technical assistance to States that recycle ships in connection with the ESM of hazardous wastes** coming from the ship recycling process. In addition, aligning the BC Technical Guidelines (2002) to the most recent HKC Guidelines could help ensure a better overall implementation and a smoother ship-shore interface.

5. The **meaning and purpose of the Vienna Convention.** Article 30 of the Vienna Convention on the Law of Treaties allows States to give preference to the requirements of the most recent convention and the international regulation governing a specific subject matter (*lex specialis* and *lex posterior* principles). When there is an overlap, such as with the HKC and BC principles regarding TBM, the HKC could take precedence.

[1] Best Practices and Standards in Aircraft End-of-Life and Recycling – www.icao.int

D. The IMO Circular HKSRC.2/Circ.1 "*Provisional guidance on the implementation of the Hong Kong and Basel Conventions with respect to the transboundary movement of ships intended for recycling*"

The provisional guidance was approved by the Marine Environment Protection Committee's 82nd session (MEPC 82) in October 2024 as an initial step towards providing legal clarity with respect to the transboundary movement of ships intended for recycling. The meeting also noted that "*additional work was required to improve the guidance in order to provide further legal clarity and certainty, in cooperation with the Secretariat of the BC.*"

It is important to acknowledge that the provisional guidance in HKSRC.2/Circ.1 does not eliminate the risk of a patchwork of recycling regulations persisting even after the HKC's entry into force. Therefore, and in order not to pre-empt any solutions from the start, improvements are needed to ensure that the BC COP and its OEWG have broad enough Terms of Reference to work with.

The HKC's entry into force however presents a pivotal opportunity to eliminate regulatory fragmentation and foster a global level playing field. To ensure a clear and effective international regulatory landscape for ship recycling, national and international dialogue and cooperation must focus on resolving, as soon as possible, the inconsistencies arising from the BC and HKC's distinct governance' structures.

Conclusion

Mindful of the initial invitation by BC COP 7 to the IMO 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 BC*** *and to continue work aimed at the establishment of mandatory requirements to ensure the ESM of ship dismantling, which might include pre-decontamination within its scope*", it must be noted that IMO did deliver on that request by adopting and developing a Convention and six associated Guidelines which specifically addresses the subject matter of sending ships for safe and environmentally sound recycling.

The current unclear and contradictory regulatory landscape however leads to legal uncertainties and operational challenges for shipowners, potentially hindering the efficient and environmentally sound recycling of ships. Both shipping and ship recycling industries need a more harmonized approach that ensures a coherent set of regulations governing ship recycling, thereby providing greater clarity and consistency for all stakeholders involved.

The co-existence of UN Conventions needs to be better defined and the interplay between the ship (meaning a ship fully certified to trade and operate under IMO rules) and the shore (ship as a waste) also urgently needs to be further clarified. The aim is to better regulate, enforce and help improve ship recycling practices globally.

Annex

Examples of legal uncertainties

To better understand the legal implications, three scenarios are provided that may occur after the entry into force of the HKC. In the scenarios, the same example of a Japanese flagged end-of-life ship has been used. Japan, being a Party to the HKC has issued the IRRC for the ship. The ship is heading for a recycling facility in a non-OECD State in South Asia duly authorized as fulfilling the requirements of the HKC.

Case 1 – Ship departing from Panama, to be recycled in Pakistan

Panama is a Party to the BC and to the Ban amendment but is a non-OECD State. After the ship has obtained its IRRC, it may be considered as hazardous waste under the BC and therefore Panama may detain the ship for not having applied the PIC procedure to the transboundary movement of the ship. The same thing can also happen in any non-OECD transit State such as Singapore, even if the only intention of that port call is to conduct operations to minimize the amount of cargo residues, remaining fuel oil, and wastes remaining on board, in accordance with regulation 8 of the HKC.

Case 2 – Ship departing from Chile, to be recycled in India

A ship in a Chilean port heading for recycling is prohibited from going to India and can be detained in Chile, because Chile is an OECD State and Party to the BC including the Basel Ban amendment.

Case 3 – Ship departing from France, to be recycled in Bangladesh

A ship in a European port heading for recycling is prohibited from going to Bangladesh (non-OECD country) and can be detained because France, along with all European Union Member States, is a Party to the BC including the Basel Ban amendment.