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## ANY OTHER BUSINESS

### Comments on document MEPC 81/15/1 on implementation of the Hong Kong Convention

Submitted by Bangladesh, India, Norway, Pakistan, ICS and BIMCO

#### SUMMARY

*Executive summary:* This document comments on document MEPC 81/15/1 and invites the Committee to consider the legal inconsistencies that may arise between the requirements of the *Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships, 2009* (HKC) and those under the *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal* (BC). It calls for legal certainty and assurance that any data reported as presented in document MEPC 81/15/1 serves the purpose identified in the HKC and that operating in compliance with the HKC will not be sanctioned as a violation of the BC.

*Strategic direction,* 7 and 8  
*if applicable:*

*Output:* 7.1 and 8.1

*Action to be taken:* Paragraph 15

*Related documents:* MEPC 81/15/1 and resolution A.1191(33)

## Introduction

1 This document is submitted in accordance with the provisions of paragraph 6.12.5 of the *Organization and method of work of the Maritime Safety Committee and the Marine Environment Protection Committee and their subsidiary bodies* (MSC-MEPC.1/Circ.5/Rev.5). It comments on document MEPC 81/15/1 (Secretariat) on the Implementation of the Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships, 2009 (HKC).

## Background

2 The HKC will enter into force on 26 June 2025. States that are Parties to it will be required to report relevant information to the Organization for dissemination to the Members of the Organization. Such States will be required to report, for each ship flying their flag destined for recycling to which the HKC applies, the ship's name and its IMO number, the

names and addresses of the shipowner and of the ship recycling facility, the flag State concerned and the Competent Authority which has issued the Statement of Completion. This data will then be made available via GISIS, if the Committee agrees with the proposals set out in paragraph 12 of document MEPC 81/15/1. The co-sponsors appreciate the work undertaken by the Secretariat as contained in document MEPC 81/15/1 and support the proposals therein.

3 In some jurisdictions contravention of the *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal* (BC) as applied to ship recycling has resulted in sanctions against shipowners and masters. The enforcement and sanctions applied in these cases are not questioned. However, it should be recognized that the entry into force of the HKC will change the global legal framework for ship recycling and consequently should lead to a change in what will be legally compliant practices. Once a ship has received an International Ready for Recycling Certificate (IRRC) under the HKC, it may at the same time be considered a hazardous waste<sup>1</sup> under the provisions of the BC. During the entire validity period of the IRRC (up to three months), the ship could therefore be at risk of being arrested for being in breach of the BC requirements while still trading. Hence, it is of the utmost importance that complying with the HKC shall not result in sanctions under the BC.

#### **Legal inconsistencies between two UN conventions**

4 The co-sponsors welcome and support the increased transparency and rising standards brought about by the HKC and deem such transparency as an important and positive component for consistent implementation of the HKC. At the same time, the co-sponsors highlight the need to consider and tackle the legal uncertainty facing the shipping and ship recycling industries, owing to the possible conflicting requirements of the HKC and the BC.

5 The overarching objective of the BC is to protect human health and the environment from the adverse effects of hazardous wastes. The aim of the BC is twofold:

- .1 the restriction of transboundary movements of hazardous wastes except where it is perceived to be in accordance with the principles of environmentally sound management; and a regulatory system applying to cases where transboundary movements are permissible; and
- .2 the reduction of hazardous waste generation and the promotion of environmentally sound management of hazardous wastes, wherever the place of disposal.

6 At the seventh meeting of the Conference of the Parties (COP) to the BC in 2004, the Conference of the Parties invited<sup>2</sup> the IMO to continue work aimed at the establishment of mandatory requirements to ensure the environmentally sound management of ship dismantling. This was an important decision because the Parties to the BC identified the need for a new and dedicated global regime on ship recycling. After the successful adoption of the HKC, at the tenth COP, the following decision<sup>3</sup> was taken: "The Conference of the Parties... encourages parties to ratify the HKC to enable its early entry into force". This is a strong and undisputed message, which should be noted in the efforts to provide legal clarity prior to the entry into force of the HKC.

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1. Wastes are 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.

2. Decision VII/26 on Environmentally sound management of ship dismantling.

3. Decision BC-10/17 on Environmentally sound dismantling of ships.

7 The co-sponsors are of the opinion that the decisions mentioned in paragraph 6 above provide a good foundation to obtain legal clarity prior to 25 June 2025. Among the issues which may provide confusion is article 2 of the BC which can result in a ship being defined as waste. This means that both the HKC and the BC can apply to end-of-life ships and result in shipowners being prosecuted even if they have sent their ships for safe and environmentally sound recycling under the provisions of the HKC in one of the four major recycling states, namely Bangladesh, India, Pakistan and Türkiye. The co-sponsors take the view that this is not an acceptable situation after 25 June 2025.

8 The BC is a convention of general application to "hazardous wastes" and thus not ship-specific which, presumably, is the reason why the flag State concept is not used in this convention. Instead, the BC puts the responsibilities on the State of export (i.e. the State of jurisdiction from where a ship commences its voyage to the recycling State); any transit State; and the State of import (in this case the recycling State). Under the BC requirements, ships heading for recycling will need to abide by one of the following rules, depending on the State of export (and presumably a State of transit):

- .1 In the case a ship commences its last voyage from a State that is a Party to the BC, the shipowner will need to apply for permission to export the ship, under the Prior Informed Consent procedure (PIC). Both the State of export and import (and where applicable the State of transit) need to give their consent before the transboundary movement can take place. This can take up to 60 days, a period during which the ship will need to remain idle in the State of export.
- .2 In the case where a ship commences its last voyage from an OECD State that is Party to both the BC and the Basel Ban amendment, it is prohibited to export that end-of-life ship to a non-OECD State.<sup>4</sup> This applies even if all States involved are Party to the HKC and act in accordance with its provisions.

9 To better understand the legal implications of the matters explained above, the co-sponsors provide three scenarios that are likely to occur after entry into force of the HKC.<sup>5</sup> In the scenarios, the same Japanese-flagged ship has been used and Japan 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.

- .1 Case 1 – Location of the ship: 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 apply 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.

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4. The Ban Amendment provides for the prohibition of exports of all hazardous wastes covered by the Convention that are intended for final disposal, reuse, recycling and recovery from countries listed in annex VII to the Convention (Parties and other States which are members of the OECD, EC, Liechtenstein) to all other countries.

5. It should be noted that possible national regulations, that may also apply, are not taken into consideration.

- .2 Case 2 – Location of the ship: Chile, to be recycled in India. A ship in a Chilean port heading for recycling is prohibited from going to India and can be arrested in Chile, because Chile is an OECD State and Party to the BC including the Basel Ban amendment.
- .3 Case 3 – Location of the ship: France, to be recycled in Bangladesh. A ship in a European port heading for recycling is prohibited from going to Bangladesh and can be arrested because France, along with all European Union Member States, is a Party to the BC including the Basel Ban amendment.

## Discussion

10 Given the practical and legal consequences illustrated above, there is a risk that some ships intended for recycling will consider changing jurisdiction with a view to obtaining legal certainty by ensuring that only the HKC applies. In this context, it is important to recall that the HKC imposes a clear obligation on Parties to apply the requirements of the Convention to ensure that no more favourable treatment is given to ships flying the flag of non-HKC Parties. The HKC is thus intended and has been developed as a "one-stop-shop" ensuring safe and environmentally sound recycling of all ships.

11 There is a clear need to respond to the legal uncertainty and the potential severe consequences for the industry which makes it difficult for the world fleet to comply on a level playing field. In addition, recycling States that have made tremendous efforts to become a Party to the HKC, still face legal uncertainty as to whether they may receive ships that have been issued an IRRC by their competent flag State.

12 The co-sponsors recall the recent adoption of the IMO Assembly resolution A.1191(33) on Implementation of the HKC, which in its operative paragraph 3 states: "ALSO RECOMMENDS that Member Governments, especially the Governments of States with ship owning and registration interests, take initiatives, in cooperation with the shipping industry, to increase the number of ships recycled at HKC compliant ship recycling facilities". This clear recommendation by the Assembly should not be hindered by potential unintended legal barriers in the BC.

13 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, the HKC could take precedence. It is noted that COP 17 of the BC is due to meet in April/May 2025, just a few weeks before the entry into force of the HKC.

14 To conclude, the co-sponsors appreciate the work undertaken by the Secretariat as contained in document MEPC 81/15/1 and support the proposals therein. Further, taking into account the importance of legal clarity, unified understanding, and robust enforcement when the HKC enters into force, the co-sponsors propose that the Committee consider how to best ensure that possible uncertainties can be clarified prior to the entry into force of the HKC. The co-sponsors further propose that the Committee request the Secretariat to continue and strengthen the cooperation with the Secretariat of the BC to cater for any information and assistance needed to ensure clear and robust implementation of the HKC.

## Action requested of the Committee

15 The Committee is invited to consider the information and proposals of this document and take action as appropriate.