

12 February 2008
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Dear Mr. Michel,

I write with reference to your letters of 11 December 2007 and 17 January 2008 seeking contributions to the Secretary-General's report to the sixty-third session of the General Assembly on oceans and law of the sea, including a particular request for information relating to the assistance available to and measures that may be taken by developing States, in particular the least developed countries and small island developing States, as well as coastal African States, to realise the benefits of sustainable and effective development of marine resources and uses of the oceans within the limits of national jurisdiction.

The Basel Convention deals with the transboundary movements of hazardous wastes, that is, the regulation of land based sources of pollution. Thus, the Secretariat regrets that it does not have any information which specifically relates to the sustainable and effective development of marine resources and uses of oceans. Nevertheless, I am pleased to provide herein some more general information on activities of the Convention which are of some relevance to oceans and the law of the sea, so as to contribute to the development of the Secretary-General's report.

In the Secretariat's last letter to you in respect of this matter of 17 January 2006, information was provided on the outcome of the eighth meeting of the Conference of the Parties to the Basel Convention. Accordingly, the present letter seeks to apprise you of relevant subsequent developments, including the outcome of the sixth session of the Open-ended Working Group of the Basel Convention, which met from 3 to 7 September 2007.

Cooperation between the Basel Convention and the International Maritime Organisation (IMO)

As you may recall the eighth meeting of the Conference of the Parties was "mindful of the need to reinforce the cooperation between the Basel Convention and the IMO with regard to the latter's regulation on regulations on the prevention of pollution from ships" in light of the tragic incident which took place in Abidjan, Côte d'Ivoire in August 2006. To this end, the sixth session of the Open-ended Working Group reiterated a call for information and views from Parties and others on:

- (a) the respective competencies of the Basel Convention and the International Convention for the Prevention of Pollution from Ships 1973 as modified by the Protocol of 1978 related thereto (MARPOL 73/78) in respect of hazardous wastes and other wastes;

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- (b) Any gaps between those instruments;
- (c) Any options for addressing those gaps; and
- (d) Any other relevant information.

The comments which have been received thus far have been placed on the Basel Convention website (<http://www.basel.int/legalmatters/index.html>), and will be compiled for presentation to the ninth meeting of the Conference of the Parties which is due to convene from 23 to 27 June 2008.

Environmentally sound management of ship dismantling and the abandonment of ships on land or in ports

Noting the negotiations presently underway under the auspices of the Marine Environment Protection Committee of the International Maritime Organisation for the development of a draft International Convention for the Safe and Environmentally Sound Recycling of Ships, the sixth session of the Open-ended Working Group of the Basel Convention invited Parties to provide comments on issues such as roles and responsibilities in the draft ship recycling convention and those relevant to the Basel Convention. Such issues might include:

- (a) an assessment of the level of control and enforcement established by the Basel Convention in its entirety;
- (b) An assessment of the expected level of control and enforcement to be provided by the draft ship recycling convention in its entirety and its comparison with the findings of the assessment described in [subparagraph (a) above];
- (c) Exploring and discussing the possibilities for effective short- and medium- term measures.

The comments which have been received thus far have been placed on the Basel Convention website (<http://www.basel.int/ships/index.html>), and will be compiled for presentation to the ninth meeting of the Conference of the Parties.

In addition, the sixth session of the Open-ended Working Group approved an information note providing guidance on the abandonment of ships. This information note is attached hereto as Annex 1 for ease of reference. Parties and others were invited to supplement such information as appropriate.

I hope this information is of use for the preparation of the Secretary-General's report. Please do not hesitate to contact me should you require further information or explanations in respect of the above.

Yours sincerely,



Katharina Kummer Peiry
Executive Secretary

Annex

Guidance on dealing with abandonment of ships on land or in ports

The Conference of the Parties at its seventh meeting in Decision VII/27 requested submissions from Parties regarding the abandonment of ships on land or in ports. The responses made have been reviewed by the Conference of the Parties at its eighth meeting. The information contained in the submissions was considered to represent a reasonable cross section of the overall population and types of cases of abandoned ships. This information indicates that while a wide range of sizes of ships appears to be involved, small ships are the most dominant. Many of these appear to be ships involved in domestic trade. It is further noted that there is a wide variety of causes leading to abandonment, including: confiscation in response to illegal activities, abandonment due to financial difficulties and also abandonment following a maritime casualty.

Furthermore, the Conference of the Parties at its eighth meeting, by its Decision VIII/13, recognized the need for guidance on how best to deal with ships that are abandoned on land or in ports. This Decision also requested the information to be forwarded to the International Maritime Organisation and the International Labour Organisation for their consideration.

Accordingly the following points are noted:

(i) The Legal Committee of the International Maritime Organization has considered the issue of abandonment of ships in relation to decision VII/27 of the Basel Convention and the outcome of the first session of the ILO/IMO/BC Working Group on Ship Scrapping. The result of this consideration is found in document (LEG 91/11) of the Legal Committee a copy of which is on the Basel Convention website (*link to be inserted*). The general view expressed is that acts of abandonment of ships on land or in ports (internal waters of a State) should be addressed in the national laws of the State concerned. The 1996 Protocol to the London Convention 1972 may cover the dumping of a ship in the internal waters of a State if that State has chosen to apply the “opting-in” provisions of the Protocol to its internal waters (Article 7.2).

(ii) The Nairobi International Convention on the Removal of Wrecks, 2007, which was adopted in May 2007, has relevance to some cases of abandoned ships. This Convention applies to wrecks, either posing a danger or impediment to navigation or which may be expected to result in major harmful consequences to the marine environment or damage to the coastline or related interests of one or more States. A wreck is defined as a sunken or stranded ship consequent to a maritime casualty. This Convention provides the legal basis for States to remove, or have removed, shipwrecks that may have the potential to affect adversely the safety of lives, goods and property at sea, as well as the marine environment and which are located beyond the territorial sea. It also includes an optional clause enabling State Parties to apply certain provisions to their territory, including their territorial sea. The Convention incorporates gross tonnage (GT) as the unit of measurement of ships required to maintain compulsory insurance. The figure of 300 GT was the agreed threshold for ships to be included under the compulsory insurance provisions. The Nairobi International Convention on the Removal of Wrecks may address some cases of abandoned ships at sea, when these ships are wrecks consequent to a maritime casualty and when they present an identifiable hazard. Furthermore, the wreck must be in the geographic area of application of the treaty, which under an opt-in provision of the Convention might extend to a State Party’s territory, including its territorial sea.

This information note may be updated from time to time as new information becomes available.