



To:

Carolina Fiorillo Mariani  
Director, Department of Environmental Quality  
Brazilian Institute of Environmental and Renewable Natural Resources (IBAMA)

Brussels, 19 July 2022

Dear Ms Carolina Mariani,

As Brazil's Basel Convention Competent Authority we write today to alert you to our serious concerns with respect to the imminent export of the former Brazilian Aircraft Carrier SÃO PAULO (formerly French Naval vessel FOCH) from Brazil to Turkey. We wish to thank you for providing us with the internet file of the many documents used by Turkey and Brazil to justify the export. We have reviewed some of these documents and they have left us alarmed. The ship has not begun to be towed to Turkey but, as this could take place very soon, we write with a sense of urgency.

We have reviewed the Inventory of Hazardous Materials documents as well as the Recycling Plan used to justify the transboundary movement. Our initial review leads us to believe that the export of the SÃO PAULO to Turkey is likely illegal and the approval by Brazil will signify non-compliance with the Basel Convention.

### **1. National prohibitions must be respected**

Basel Convention, Article 4, para. 1 (a): "Parties exercising their right to prohibit the import of hazardous wastes and other wastes for disposal shall inform the other Parties of their decision pursuant to Article 13."

Basel Convention, Article 4, para. 1 (b): "Parties shall prohibit or not permit the export of hazardous wastes and other wastes to the Parties which have prohibited the import of such wastes, when notified pursuant to subparagraph (a) above."

Turkey has banned the import of hazardous wastes and has notified the Parties of that prohibition as per (a) above and registered this information with the Secretariat as reported on the Secretariat website as follows:

"Restrictions on import of wastes for recovery (Annex IV B)

"This Party restricts the import of hazardous wastes and other wastes for recovery (Annex IV A)

**(i) Nature of the restrictions:**

- Total prohibition

**(ii) Country or region covered by restrictions:**

- All countries

**(iii) Wastes covered by the restrictions:**

- Amber List OECD
- Amber List EU

**(iv) Specify relevant legislation and its entry into force:**

Article 13 of Environment Law No.2872 Importing hazardous waste is prohibited.

While the law is from 1983, it has been amended several times. The latest amendments (2017) continue to assert as follows:

"ARTICLE 11 – The first paragraph of Article 22 of the same Regulation has been amended as follows.

(1) Hazardous wastes are prohibited from entering the Customs Territory of the Republic of Turkey, including the free zones. Some Non-hazardous wastes may be allowed to be imported subject to control. The principles regarding these permits, the opinion of the Ministry determined by the regulations to be published by the Ministry of Economy."

## 2. National prohibition via the Izmir Protocol

Further to the national prohibition via national legislation, Turkey has also indicated in its report to the Secretariat of its adherence to the Barcelona Convention's binding rules and protocols. One protocol of the Barcelona Convention is known as the Izmir Protocol, or more officially as "The Protocol on the Prevention of Pollution of the Mediterranean Sea by Transboundary Movements of Hazardous Wastes and their Disposal". It was sponsored by Turkey, signed in Izmir, Turkey in 1996, and entered into force in 2011.

Article 5, paragraph 4 of the Izmir Protocol is found below:

**4. Subject to the specific provisions relating to the transboundary movement of hazardous wastes through the territorial sea of a State of transit, referred to in Article 6.4 of this Protocol, all Parties shall take appropriate legal, administrative and other measures within the area under their jurisdiction to prohibit the export and transit of hazardous wastes to developing countries, and Parties which are not Member States of the European Community\* shall prohibit all imports and transit of hazardous wastes.**

The last sentence being the critical one -- indicating that Turkey as a Party (not being a member state of the European Community) shall prohibit all imports and transit of hazardous waste.

As noted above, this Article 11 Agreement under Basel establishes an import prohibition for hazardous

wastes (including waste ships containing hazardous wastes in their construction such as asbestos, and toxic paints). Brazil cannot violate this agreement that Turkey is Party to, even if Turkey seems to have forgotten their own obligations.

### 3. Inventory of Hazardous Materials (IHM) discrepancies

Article 6, para. 1 of the Basel Convention requires documentation accompanying a shipment describing in detail the waste in terms of quality and quantity. This requirement is part of the information to be supplied in the form found as Annex V A. Today with respect to ships, this description of wastes found on board is more commonly known as an IHM, and, while that term or acronym is not used in the Convention, it is nevertheless a legal requirement of the Convention to characterize the waste subject to transboundary movement. We have reviewed the IHM prepared by Grieg Green and serious questions are raised by it which must be re-reviewed by IBAMA to ensure its accuracy. We outline some of the questions that need to be examined below.

**a) Asbestos:** The Sao Paulo was called the Foch when it was a French naval vessel. It was a sister ship of the infamous asbestos-laden CLEMENCEAU, built just two years earlier with the same design. In 2006, Greenpeace commissioned Mr Aage Bjorn Andersen, an expert in the field of hazardous material surveys on marine vessels and who was closely involved in the development of the ILO, Basel Convention and IMO guidelines on ship recycling, to determine how much asbestos and other hazardous materials were likely to remain on the CLEMENCEAU. His estimate was 760 metric tons of asbestos. Mr Andersen cited other vessels of even smaller size than the CLEMENCEAU that were useful in developing the extrapolated estimates, and, while he settled on the 760 figure, he was quite confident that the actual quantity of asbestos onboard the SÃO PAULO was between 500 and 1000 tons. In contrast, the recent IHM prepared by Grieg Green estimates just 9.6 tons! How is this even close to being possible? Some could have been removed, but it is very difficult to remove high quantities and have the ship still capable of being towed. Is it possible that whole areas of the ship, such as the accommodation areas, or the internal cabling were not considered by Grieg Green? The disparity in these estimations must in fact be investigated. And it is not difficult to do so. One can simply requisition the records of those that dismantled the CLEMENCEAU eventually, the Able Shipyards in the UK. Why was this not done by Grieg Green originally?

**b) PCBs:** For a ship built in 1957, well before PCBs were banned in the mid 1970s and at the height of their common usage in ship flooring, cabling, gaskets, rubber parts, insulation, paints etc., it is quite difficult to believe that it was not possible to detect them on the ship at the indicated level of 5ppm. As noted by Mr Andersen, a comparison to a similar aircraft carrier built in 1946, the Oriskany, led to an estimate that the CLEMENCEAU contained 165 tons of PCBs in material with levels higher than 50/ppm concentrations. Again, there is something very wrong with this disparity for a sister ship built just two years after the CLEMENCEAU. Again, there is no need to engage in this kind of guessing game when we have the records of the wastes that were removed from the CLEMENCEAU. Those will tell you what is in the construction of the SÃO PAULO.

**c) Radioactivity:** We are very surprised to see that the only examination of a warship that could have been clad with Uranium armor, or having residual fallout from its days when it was intimately involved with atmospheric nuclear bomb testing in the Pacific, was a visual one: "Smoke / Heat detectors were visually checked and no radioactive substances were found." Radioactivity testers (Geiger Counters) are

not expensive. Why was the obvious not done?

**d) Other statements from the IHM:** Even if we assumed confidence in the findings of the IHM, we learn from it that there are 10.000 mercury laden fluorescent light tubes. What will happen to these in Turkey? Are the ballasts of these light fixtures not of the type that commonly used PCB liquid as coolant? We learn also that the report estimates that there is about 644 tons of heavy metals e.g. lead in the paints used. This is a massive amount of leaded paint. 20 tons of highly toxic organotin compounds are also estimated. Amounts such as these would create a very serious waste management challenge for any ship recycling yard, even in countries with very sophisticated waste management infrastructure. Turkey is not such a country.

#### **4. Requirement to ensure export does not take place if there is reason to believe that the wastes will not be managed in an environmentally sound manner.**

Article 4, para. 2 (e) of the Basel Convention requires Brazil to not allow the export of the SÃO PAULO if there is any reason to believe the management of the hazardous and other waste found on board will not be subject to ESM. This obligation cannot be allayed by the consent of the importing country. Indeed, at COP15 the Parties adopted a new Guideline found in the Annex to UNEP/CHW.15/5/Add., specifying a check list of what kind of information IBAMA, in this case, needs to collect to be satisfied that the export to the yard in Turkey satisfies this obligation. Firstly, as noted above, the exporting state must be absolutely sure that the notification documentation (e.g. IHM) is correct -- that is completely the responsibility of Brazil. And currently, as noted, there are huge questions unanswered by the Grieg Green's IHM. Secondly, Brazil also must ascertain whether the information provided in the Recycling Plan is correct and that it includes all of the downstream residual management.

These two issues (IHM and Recycling Plan) are very much related -- if the IHM is incorrect in terms of massively underestimating the hazardous materials involved, both in quality and quantity, then the Recycling Plan is not going to be correct either as it is based on the size and difficulty of the recycling job to be performed vis a vis the capacity of the yard and the local infrastructure.

In this case, even if we assume that the IHM is correct, the recycling plan provided is very weak in real information, including the kinds of information required in the Guideline noted above. There is scant information in particular with respect to knowing who is actually going to manage residual wastes downstream and what that operation entails. The only reference to a downstream company provided is the Asbestos contractor. But, we do not know how that asbestos will be disposed of by that contractor, whether the facilities involved (e.g. landfill) use proper methodology, and we have little record of proper management and compliance. Likewise, the information about what will become of the paint involved is not specified, including whether the paint that remains on the steel going to smelter will be properly managed at the steel smelting furnaces (e.g. pollution control devices). In one place the Plan states that paints that are "chips" will be incinerated. However, we do not learn anything about that incinerator, how its own emissions will be monitored, and whether its own residues (e.g. ashes and collected particulates) will be properly managed. Nor do we learn about the fate of the paints that will not be incinerated, but rather smelted or swept away. The actual ship recycling yard in this case is going to dismantle the ship -- they are NOT the final destination and manager of the hazardous materials. The fate of these residual wastes is not clear when reading the Recycling Plan. A disposal plan must always be a major part of any recycling plan, and yet it is largely missing. And regardless of what is in that plan, can Brazil agree with the plan and its capacity to fulfill ESM obligations which are the legal requirement

of the exporting state? Are you able to accurately assess this capacity based on what you have been provided?

While the fact that the yard involved is on the EU list of approved ship recycling yards can provide a level of confidence, this cannot replace Brazil's responsibility to make its own determinations. An EU-approved yard does not ensure that the EU follow-up monitoring will take place for a non-EU flagged ship as required by the EU legislation. Further, the listing on the EU list does not give an exporting state confidence that this EU-approved yard is capable of managing ships in all cases. This ship is far larger than the normal ships dismantled in Aliaga, Turkey. It is quite possible that an approved yard and its landing method might not be able to handle the scale and difficulty involved in the very large vessel SÃO PAULO.

## 5. Towing

Our quick visit to the website of the company contracted to take care of the towing of the vessel provided little confidence. What is the track record of this company? Towing such a large parcel of toxic waste is very dangerous in terms of losses and accidental beachings at sea. Are the tugs well inspected and ready to do such a job? Is the proper insurance in place? Unless Brazil is sure of the towing plan and those doing this job, you may be asking for trouble.

## Conclusion

BAN and the NGO Platform on Shipbreaking are far from confident that the export of the SÃO PAULO is in compliance with the Basel Convention. We believe that a large part of the problem is due to the fact that Turkey has not been entirely forthcoming as to their own national and local situation. But the legal obligations of the Basel Convention are placed first and foremost on the exporting state. The fact that Turkey seems to be saying "don't worry, we consent" is not at all good enough to legally justify the export. From merely the standpoint of violation of national import bans from legislation or via the Izmir protocol, Brazil must halt the export. We urge Brazil to do so.

Yours sincerely,



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NGO Shipbreaking Platform



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Basel Action Network