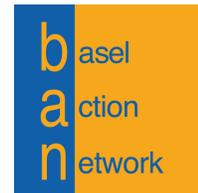


**OPEN RESPONSE LETTER of BASEL ACTION NETWORK to
IBAMA REGARDING EXPORT of the SHIP SÃO PAULO from
BRAZIL TO TURKEY**



3 August 2022

Dear Ms. Carolina Mariani, (Competent Authority of the Basel Convention for Brazil, IBAMA)

Thank you for sending us Official Letter No. 210/2022/ DIQUA responding to two of the letters of concern sent to you by our organizations -- the NGO Shipbreaking Platform and member organization of said platform, Basel Action Network. Below we have annotated your letter with our serious concerns which have unfortunately not been assuaged by your response. With these added notes, we hope Brazil will in fact reconsider before embarking on what we believe will be a non-compliant transboundary movement of a very large amount of hazardous waste in vessel NAE SÃO PAULO. First, however we will summarize these concerns.

It is clear that in light of the imminent departure date of the ship, that IBAMA is unwilling to absorb and consider the new information we have provided. Even when that information is legally very clear, we perceive an unwillingness to consider it with due care and precaution. We beg of you, in the spirit of protecting the environment and human health that you might not respond just defensively, but with careful consideration.

While Brazil has done a lot of very good work to comply with some of the obligations of the Basel Convention, in planning the export of the NAE SÃO PAULO, Brazil has still failed to realize fundamental requirements of the Convention.

First, we hope that you may realize that an export of hazardous waste to a Basel Party that has banned its import is not possible under the Convention regardless of the assurances made by of present Turkish authorities authorizing the export. A Party's treaty obligations include prior informed consent (PIC) but they require first and foremost that national prohibitions that have been registered with the Secretariat as per Article 4, 1, must be respected. This includes national prohibitions that are created due to other treaties and instruments recognized by the Basel Convention such as the Izmir Protocol.

Further, failure to notify and receive consent from transit states as required under Article 6, 4, is illegal traffic (Article 9,1,a) by definition. Brazil has not notified any transit states (e.g. Spain, UK, Morocco). There may be other transit states as well in the Mediterranean depending on the route. Where are the plans to do this?

Finally, we have raised serious concerns about the completeness and adequacy of the IHM

created by Grieg Green. Much of this concern came before receiving a letter from Mr. Justad, one of the technical team of Grieg Green who admitted the paucity of access and data means they could have easily underestimated by magnitudes the volume of asbestos. Following his letter we were even more shocked. This IHM is clearly inadequate to the task of informing the States Concerned of the nature of the TBM upon which the entire consent and Recycling Plan must depend. It is especially obvious that the radioactivity and PCB monitoring were not adequate. You can disparage Mr. Justad as being unrepresentative of the Grieg Green company but in fact he is one of 10 core members of the company. He is Project Manager. Just because his letter was inconvenient to an expedited export by Brazil, this cannot be a reason to disparage and ignore rather than process and absorb the new information we have provided.

Subsequently we have sent to IBAMA a comparison of the CLEMENCEAU IHM and the SAO PAULO IHM. Two sister ships of the same design. Again, new information to IBAMA and the world. You have not commented on this data. However, it speaks for itself. The massive discrepancy in the IHMs at least deserves an investigation until it is understood.

Should the SÃO PAULO move under tow to Turkey, without the alarms we have raised being addressed, as NGO watchdog of the Basel Convention, we will be forced to go public about what we see is clearly non-compliance on the part of both Brazil and Turkey. It remains our hope however, that we can work together to reshape this disposal plan to ensure compliance with the Basel Convention and especially its intent and purpose to protect the earth and human health.

Sincerely,



Jim Puckett, Executive Director
Basel Action Network



Brazilian Institute for the Environment and Renewable Natural Resources
ENVIRONMENTAL QUALITY BOARD

OFFICIAL LETTER NO. 210/2022/DIQUA

Brasília/DF, on the date of the digital signature.

To the Lord
Jim Puckett
Executive Director of Basel Action Network - BAN
jpuckett@ban.org

To the Lord
Nicola Mulinaris
Senior Communications and Policy Consultant at Shipbreaking Platform
Nicola@shipbreakingplatform.org

Subject: Basel Convention: Export of ex-ship.

Reference : If you respond to this Letter, expressly indicate Process No. 02001.019325/2022-03.

Dear sirs,

I refer to the emails sent to this Environmental Quality Board on 07/19 and 07/20/2022, with the subject "SBP/BAN - Letter of concern export Sao Paulo aircraft carrier - July 22" and "Grieg Green Admits Gaps in Inventory of Hazardous Waste on Board the São Paulo / Transit States not Notified". After a technical analysis of the points presented in these communications, we have set out what follows.

Preliminarily, we inform you that the administrative process that documented the procedures that led to the authorization of the export of the ex-ship is quite extensive, and it includes 6 (six) Technical Opinions prepared by the Ibama team, the first of which was produced in July 2021, and the last one on 06/03/2022. From now on, we make the entire content of the process available to BAN and the Shipbreaking Platform, as it is a public process.

We will now present the answers to the questions raised by your communications:

"The national hazardous waste import ban must be enforced, even though Turkey says 'don't worry about it.' Turkey informed the BRS of this ban. Unless they rescind it with the BRS, Brazil must honor it. "

The legal text of the Basel Convention determines, in its Article 4 – General Obligations, the following provision:

"(c) Parties shall prohibit or disallow the export of hazardous wastes and other wastes if the State of importation does not give written consent to the specific

importation, in the event that the State of importation has not prohibited the importation of such wastes."

IBAMA has chosen to cite Article 4, para 1 (c) only, which must follow (b) which very clearly states: *"Parties shall prohibit or shall 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."*

This could not be more clear. (c) says that in the case of states that have not banned the import of hazardous waste, then there must be written consent. However in the case of Turkey we can consider (c) because (b) applies.

Brazil must follow the letter of Article 4, 1, b. This export is a clear violation of the Basel Convention.

Item 12 of the same Article determines the following:

***12 – Nothing in the present Convention shall in any way affect the sovereignty of States over their territorial sea, established in accordance with international law and sovereign rights and the jurisdiction that States exercise over their exclusive economic zones and continental shelves in accordance with the international law, as well as the exercise of the rights and freedoms of navigation by ships and aircraft of all States, as provided for in international law and as established in relevant international instruments."* (no emphasis in the original).**

We do not see the relevance of this paragraph to your argument. Nobody has claimed that states do not have sovereignty over their seas. In fact, on the contrary we have made it clear that hazardous waste shipments that move through the national waters of States are transiting under the definition provided in Basel. Article 2, paragraph 12.

Although the Basel Convention does not deal with ships, or restrictions on their freedom of navigation, upon losing their ship status, it is proposed that the hull of the former NAE SAO PAULO be sent to an environmentally appropriate final destination in Turkey, and it must be treated as a "waste" (and that, therefore, it is proposed to proceed with the final disposal) ; therefore, it is under the aegis of the Basel Convention. Under this legal aspect, the definition of "waste" in the Basel Convention is transcribed below:

Actually earlier, the Basel Convention determined that a ship can be a ship and a waste at the same time. However, it is not clear why the above waste

determination is important in our argumentation or your response. We agree that the NAE SÃO PAULO is a waste and in fact, a hazardous waste and it therefore needs to follow all of the rules of the Basel Convention.

“ARTICLE 2

Definitions

For the purposes of this Convention:

*1 - By 'Waste' is understood the substances or objects, the deposit of which proceeds, **proposes to proceed** , or is obliged to proceed under the provisions of national legislation.” (no emphasis in the original).*

The requirement that the exporting country notify the importing country, and that the importer issue its consent to the cross-border movement, is set out in Article 6 of the Basel Convention:

"ARTICLE 6

Cross-border movement between the Parties

1 - The exporting State shall notify or require the producer or exporter to notify, in writing, through the competent authority of the exporting State, the competent authority of the States involved in any proposed transboundary movement of hazardous wastes and other wastes. This notification will contain statements and information described in Annex VA, written in language understandable to the State of importation. A single notification must be sent to each State involved.

In the English Version of the Convention the term used in the above paragraph is "States Concerned" and it is a defined term (Article 2, para 13) and includes transit States. Therefore, it was not appropriate for Brazil not to have notified one or more of the potential transit states of Spain, Morocco, and UK as the ship passes through the Strait of Gibraltar.

2 - The State of import will respond to the notifier in writing, consenting to the movement with or without conditions, denying permission for the movement or requesting additional information. A copy of the final response from the State of importation will be sent to the competent authorities of the respective States concerned that are Parties.

3 - The exporting State will not authorize the producer or exporter to initiate the cross-border movement until it receives written confirmation that:

(a) the notifier has received the written consent of the State of importation; and

b) The notifier has received from the State of importation confirmation of the existence of a contract between the exporter and the disposer, specific to the environmentally safe and rational management of the waste in question."

IBAMA seems to have forgotten the next paragraph of Article 6 which describes the rights and obligations of the States of transit and the obligations of the exporting state vis a vis the transit state. To quote the most pertinent sentence of this paragraph with respect to Brazil's non-compliance:

"The state of export shall not allow the Transboundary Movement to commence until it has received the written consent of the State of Transit."

Brazil has apparently not received the written consent of Spain, Morocco or the UK. As such Brazil cannot commence the export of the Nae Sao Paulo. If they fail to do so it is illegal traffic by definition.

IBAMA carried out the Prior Notification and Consent (PIC) procedure, in accordance with Article 6, having received, on 05/30/2022, the consent by the State of Import (Turkey) in the Notification form (SEI nº 12767575) and letter with conditions of consent (SEI nº 12767581). Only after receiving the consent, did Ibama authorize the export of the former NAE SAO PAULO (SEI nº 12786706 and 12804299), thus complying with the provisions of Article 6. It must be assumed, therefore, that the official manifestation of acceptance by the competent authority of Turkey brings with it the consideration of its own national legislation as well as any bilateral or multilateral agreements to which Turkey is a party **(Reason 1)** .

First, Brazil fails to follow the Article 6 PIC procedure for all of the States Concerned including Transit States. Second, the consent of a state does not trump or supersede the requirement stated above of Article 4,1,b. The consent issue a subsequent requirement that is to be considered in 4,1,c only after 1,1,b is considered. The national ban supersedes the consent of an importing state.

The process of disposal of the former NAE SAO PAULO, carried out through the Bidding Notice No. 043/2019 (10318411) and Disposal Notice No. 67/2020 (10319439), aimed at the sale of the former NAE SAO PAULO, belonging to to the

Brazilian Navy, for the final, sole and exclusive destination of Safe and Environmentally Sound Recycling of Ships (*Safe and Environmentally Sound Recycling of Ships*), in accordance with Resolution MEPC.210 (63) - 2012, of the International Maritime Organization (IMO) and the requirements set out in the Basel Convention on the Control of Transboundary Movements of Hazardous Waste and its Disposal.

The aforementioned Notice provided for the participation of foreigners in the event, provided they had legal representation in Brazil (item 2.N). After the Accreditation stages (SEI nº 10319493) and the Qualification of the companies (SEI nº 10319518), on 05/03/2021 the sale was made to the company SOK DENIZCILIK TIC LTD STI, represented in the auction by its attorney, Jorge Wilson de Azevedo Cormack, from Empresa Cormack Marítima Ltda., CNPJ No. 01.956.427/0001-20 (10319551). Subsequently, the legal representative was changed to OCEANS PRIME OFFSHORE AGENCIAMENTO MARÍTIMO LTDA., CNPJ 19.356.964/0001-03 (11276112), which appears as the Brazilian exporter.

The bidding company SOK DENIZCILIK TIC.VE LTD. STI owns a shipyard in Turkey that is recognized by the European Union for dismantling ships in an environmentally sound manner. The company has several certificates for environmentally sound ship dismantling and ship recycling, having presented the list of these to Ibama, namely (SEI nº 10464085): Norms ISO 9001:2015, 14001:2015, 30000:2009, 45001:2018, and certificate of Compliance from Lloyd's Register, IMO Hong Kong Convention, HKC & EUSRR. Such certifications are also listed on their private website (<http://sokdenizcilik.com.tr/environmental-safety/>). It is, therefore, a Turkish company that is involved in the export process and that will be an importer of the former NAE SAO PAULO, whose intention is to have a final destination in its own shipyard, located in Turkey. **(Reason 2)**.

The company SOK DENIZCILIK TIC.VE LTD. STI is also the company that appears as the importer of the hull. Therefore, those interested in the cross-border movement of the hull are aware of the environmental legislation of Turkey, as they are registered in that country. **(Reason 3)** .

It is not correct that just because a company resides in a country, means that they are aware of their national laws or those of international law. That is an obligation placed by the Convention on Brazil, not on any Turkish private firm that stands to gain great profit on the completion of the sale and transboundary movement.

It is important to remember that the vessel will be dismantled and, in its recycling process, generating thousands of tons of steel, metals and recyclable materials, including a comparatively small amount of hazardous waste. The vessel underwent a decommissioning process, with the removal of all non-essential materials for its navigability, leaving only inseparable parts of the vessel's structure. Therefore, there is no need to talk about the export of hazardous waste, but the export of **end -of-life Military Ops Vessel . (Reason 4)**.

This is not correct. The Basel Convention is an environmental treaty, not a commercial trade agreement. It has defined ships destined for recycling to be waste and when they contain materials such as asbestos and heavy metals then they are clearly hazardous wastes, regardless of the relative proportion of the materials on board. The export of the NAE SÃO PAULO is an export of hazardous waste and falls clearly under the scope of the Basel Convention.

"The same is true of the Izmir Protocol, of which the EU is also a party. Izmir is in force, it is Article 11 of the agreement that must be honored by all Basel Parties unless Turkey decides to annul its ratification of the same."

Brazil is not a signatory to the Izmir Protocol, only to the Basel Convention. The import and export of waste under the aegis of the Convention is not prohibited, but it is mandatory that the Parties communicate and previously authorize the transboundary movement, a fact determined by item 3 of Article 6 - Transboundary Movement between Parties . As informed in topic 1.6, IBAMA carried out the Notification and Prior Consent (PIC) procedure, in accordance with Article 6, having received, on 05/30/2022, the consent by the State of Import (Turkey) in the Notification form (SEI nº 12767575) and letter with the conditions of consent (SEI nº 12767581).

The point of the Izmir Protocol is that it is in fact reflected in the Basel Convention as a Basel Article 11 agreement. Further, it is an agreement that by its nature invokes Article 4, 1, b because Parties to Izmir have accept national prohibitions on import. Turkey is one such state. Further because the Izmir protocol and the national Turkish ban have been notified to the Basel Convention Secretariat, Brazil is obliged to respect these. So, the fact that Brazil is not a Party to Izmir is not relevant. Brazil is required to respect it in the first instance. Only if Turkey were to exit the Izmir Protocol and revoke their national hazardous waste import law, could Brazil be allowed to complete this transboundary movement.

"It appears that Brazil forgot to inform the transit states. Spain and possibly Morocco, depending on the route needs to be notified and consented, as the Strait of Gibraltar is within the 12-mile limit codified in the Law of the Sea Treaty."

When filling in the Notification Form BR 231121, the exporter left blank the fields referring to the countries of transit, in the case of direct navigation, without any stop or passage through organized ports. It was informed that the route to be used is through the passage of the Strait of Gibraltar, towards Aliaga-Turkey (pg. 6 of document 10464089). With this, it is clarified that **there was no lapse** in the notification of transit authorities, but an indication by the proposed route that there would be no stops or passages through organized ports. **(Reason 5)** .

First, it is not an obligation of the exporter to notify transit States, it is Brazil's obligation as exporting State (see Article 6, para 4). The towing plan indicates the ship will move through the Strait of Gibraltar. Brazil's competent authority must know the route as well as the definition of State of Transit, the definition of transboundary movement and the definition of "Area under the national jurisdiction of a State", all found in the Convention. These definitions do not concern matters you have raised such as the notion of stopping or lapse or passages through ports. The definition of transit state under the Basel Convention Article 2 para 12: "State of transit" means any State other than the State of export or import, through which a movement of hazardous or other wastes is planned or takes place." The area which the "Through" applies to is the "Area under the national jurisdiction of a State which is defined in Article 2, 9 as: "any land, marine area, or airspace within which a State exercises administrative and regulatory responsibility in accordance with international law in regard to the protection of human health or the environment." Thus, it is that unless Spain or Morocco have notified the Secretariat as per Article 6 paragraph 4, and Article 13 that they do not exercise transit authority over their territorial waters, (they do not, as we have checked) then they need to be notified as transit states when a ship is towed through their waters. Therefore, as such notification has not taken place by Brazil is out of compliance with the Basel Convention for failing to notify transit states prior to export. And in fact has caused criminal trafficking in waste as defined in Paragraph 1, A of Article 9.

"Grieg Green admits they only took a few samples for PCBs. The fact that this ship is seen as devoid of PCBs is just plain wrong. They didn't look at the ballasts in the light fixtures, the paints, and the insulation in the cabling."

In its email, the NGO BAN presented a response received from an alleged representative of Grieg Green, Mr. Andreas Malm Justad, Project Manager, by email dated 07/20/2022 (SEI No. 13153537). It is important to note that much of the information provided by Mr. Andreas were already included in the technical report that accompanies the HMI. The technical opinions of a single representative may not represent the opinion of the company's technical staff, or the company's management, and should be used with reservations, because, if such information were considered relevant and pertinent to the work of the HMI, it would appear in the final report submitted. In this sense, unless Grieg Green expressed reservations about its own technical documentation presented, the new information presented by Mr. Andreas cannot be considered as complementary to the documentation already analyzed and approved by IBAMA, even more so since they were not officiated by the informant or by the exporter with the process. **(Reason 6)** .

First, Mr. Andreas Malm Justad is not an alleged principal at Grieg Green. If you visit the Grieg Green website you will see he is one of 10 of the core principals at the organization of Grieg Green. He does represent their technical staff. It is very surprising that you would not even connect with him to confirm that he wrote the letter and no doubt stands by it. What Mr. Justad reveals is very alarming and one would think that Brazil should be concerned about potential for a vast underestimation of the asbestos and PCBs etc. on board. IBAMA's job as a competent authority is to uphold the Basel Convention's intent and principles. It is not to assist the Brazilian Navy in removing a ship from its stockpile.

The Hong Kong Convention, adopted in 2009, has not yet entered into force worldwide, and Brazil is currently not a signatory. Despite this, the process of disposal of the former NAE SAO PAULO, carried out through Bidding Notice No. 043/2019 (10318411) and Disposal Notice No. 67/2020 (10319439), aimed at the sale of the former NAE SAO PAULO, belonging to the Brazilian Navy, for the final, sole and exclusive destination of Safe and Environmentally Sound Recycling of Ships (*Safe and Environmentally Sound Recycling of Ships*), in accordance with Resolution MEPC.210 (63) - 2012, of the Maritime Organization (IMO) and the requirements set out in the Basel Convention on the Control of Transboundary Movements of Hazardous Waste and its Disposal.

The IHM Part I, version 2.0 (SEI nº 12433248), of 05/13/2021, states in its Executive Summary (page 3) the following:

"Grieg Green has developed the Inventory of Hazardous Materials Part I for the vessel upon request from vessel owner.

The methods and procedures applied by Grieg Green for developing IHM Part I for the compliance with the regulations set down in IMO's Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships, 2009 (SR/CONF/45), taking into account the updated Guidelines for the Development of Inventory of Hazardous Materials (MEPC. 269(68)) developed by IMO, and the EU Ship Recycling Regulation (EU SRR) (Regulation (EU) No 1257/2013 of The European Parliament and of The Council of 20 November 2013 on ship recycling and amending Regulation (EC) No 1013/2006 and Directive 2009/16/EC) and EMSA's Best Practice Guidance on the Inventory of Hazardous Materials."

Free translation: Grieg Green has developed the Hazardous Materials Inventory Part I for the vessel at the owner's request.

The methods and procedures applied by Grieg Green for the development of the HMI Part I for the vessel comply with the regulations set out in the IMO Hong Kong International Convention for the Safe and Environmentally Appropriate Recycling of Ships, 2009 (SR/CONF/45), taking into account the updated Guidelines for the Development of an Inventory of Hazardous Materials (MEPC. 269(68)) developed by the IMO and the EU Ship Recycling Regulation (EU SRR) (Regulation (EU) No. 1257/2013 of the European Parliament and of the Council of 20 November 2013 on ship recycling and amendment of Regulation (EC) No. 1013/2006 and Directive 2009/16/EC) and the Guide on Best Practices for the Inventory of Hazardous Material.

The technical assumptions made in the report (page 3) were as follows:

"The work has included the following steps:

- *Collecting and assessing the vessel information including drawings, plans and specification, etc.*
- *Preparation of Visual / Sampling Check Plan (VSCP) and Risk Assessment*
- *Onboard visual / sampling check*
- *Testing of samples by laboratory to identify whether the vessel contains any Hazardous Materials (HazMat) listed in the Hong Kong Convention and the IHM Guidelines (Appendix 1, table A & B) and EU Ship Recycling Regulation (Annex I and II)*
- *Developing IHM Part I based on laboratory testing results."*

Free translation: The work included the following steps:

- Collecting and evaluating vessel information, including drawings, plans and specifications, etc.
- Preparation of Visual Verification/Sampling Plan (VSCP) and Risk Assessment
- Visual verification/sampling on board
- Laboratory testing of samples to identify whether the vessel contains any HazMats (HazMat) listed in the Hong Kong Convention and Guidelines HMI (Appendix 1, Table A and B) and EU Ship Recycling Regulation (Annex I and II)
- Development of HMI Part I based on laboratory test results.

According to IHM Part I, version 2.0 (SEI n° 12433248), from this premise, collections and analyzes were carried out in places that could contain materials contaminated by PCBs, such as lamp reactors (page 20) and vinyl adhesion flooring (pages 37, 38, 40, 41, 43, 46, 48, 59). In these samples, all PCB and PBB laboratory

test results were negative (**Reason 7**) . Table in the Executive Summary - sheet 3 of the document).

The Recycling Plan of the former NAE SAO PAULO, prepared by the shipyard SOK DENIZCILIK TIC.VE LTD. STI (SEI No. 10464088), assumed that, according to IHM Report 2, there are no electrical cables containing PCBs, as per cutout on sheet 18 of the Plan:

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The Recycling Plan of the former NAE SAO PAULO, prepared by the shipyard SOK DENIZCILIK TIC.VE LTD. STI (SEI No. 10464088), assumed that, according to IHM Report 2, there are no electrical cables containing PCBs, as per cutout on sheet 18 of the Plan:

PCB (electrical cables) recycling must be carried out by a professional company. **Although there are none on board the ship as per the HMI report.**

However, even if there is any cable/material contaminated with PCBs, such waste would be sent to companies authorized to carry out its recycling. The companies selected to treat any waste containing PCBs or PBBs were presented on pages 30 and 31 of the Plan.

Even though samples of materials contaminated with PCBs and PBBs have not been identified, there are provisions for the removal and environmentally sound management of any PCB and PBB residues that exist in the materials or structure of the vessel, including electrical cables, if applicable. Therefore, it can be considered that, in compliance with the Recycling Plan, the environmentally adequate destination of PCB and PBB waste will be ensured. (**Reason 8**).

" The amount of asbestos appears to be off what is known about aircraft carriers by a factor of x10, if not x100."

The NGO BAN submitted a response received from an alleged representative of Grieg Green, Mr. Andreas Malm Justad, Project Manager, by email dated 07/20/2022 (SEI No. 13153537). It is important to note that much of the information provided by Mr. Andreas were already included in the technical report that accompanies the HMI. The technical opinions of a single representative may

not represent the technical opinion of the company's technical staff, or the company's management, and should be used with reservations, because if such information were considered important for the work of the HMI, they would appear in the final report. introduced. In this sense, unless Grieg Green expressed reservations about its own technical documentation presented, the new information presented by Mr. Andreas cannot be considered as complementary to the documentation already analyzed and approved by IBAMA, even more so since they were not officiated by the informant or by the exporter with the process. **(Reason 6)** .

About **9,641 kg** of asbestos were estimated at the IHM, mainly in the pipes of the ship's plumbing system. According to IHM Part I, version 2.0 (SEI nº 12433248), 97 samples were collected for asbestos testing, and 13 samples were tested positive, according to the Executive Summary (page 3).

The Recycling Plan of the former NAE SAO PAULO, prepared by the shipyard SOK DENIZCILIK TIC.VE LTD. STI (SEI nº 10464088), in view of the presence of asbestos, provides for a series of measures for its removal and management, as per page 18 of the Plan:

- Per the owner's HMI, potentially hazardous material parts will be confirmed first; if the potential to contain hazardous material cannot be confirmed, it will be considered to contain hazardous material, and the same treatment method for disposal must be applied.
- Personal protective equipment (PPE) and disassembly equipment will be used. Safety warning signs will be set and then protective clothing will be worn.
- Water will be sprayed on the asbestos prior to its removal.
- Asbestos/materials containing asbestos will then be collected in special double layer sealed packaging, labels attached and temporarily deposited in special collection boxes.
- Temporary storage of asbestos.
- Finally, it will be delivered to SÜREKO (Metropolitan Municipality Waste Management Center) for solidification and disposal in a landfill, in accordance with relevant IMO guidelines and national regulations.
- SÖK Shipyard will be responsible for safe transport from the shipyard to the company.

According to the Recycling Plan presented, workers will be subcontracted to carry out the removal of asbestos and materials containing asbestos, according to fl.3 of the Plan, which includes the name of the subcontracted company.

The companies that will carry out the disposal of asbestos waste were also informed, according to pgs. 31 and 33 of the Plan, including recovery/disposition methods.

Asbestos and asbestos-containing materials were inventoried, with an estimated **9,641 kg** of this hazardous material. In the Recycling Plan presented, there are provisions for the removal and environmentally sound management of any quantities of asbestos residues that exist in the materials or structure of the vessel. Therefore, it can be considered that, **in compliance with the Recycling Plan, the environmentally appropriate destination of asbestos waste will be ensured. (Reason 9) .**

"Grieg Green admitted that they did not have access to the entire ship and that they did not have access to the structure documents nor the Clemenceau's recycling data."

Again, in this item, the NGO BAN presented a response from an alleged representative of Grieg Green. The reservations made by Ibama to this answer have already been exposed in topics 4.1 and 5.1. **(Reason 6)**

The realization of an Inventory of Hazardous Materials (HMI) is a necessity for the identification of hazardous materials on board, and is considered a unique document for each vessel. In this sense, the information from the NAE-Clemenceau could have been used by Grieg Green for the purpose of improving the result of its HMI work, **which did not happen** . However, this comparison is not mandatory, and **there is no legal provision for IBAMA to require such a comparative methodology** with another vessel to issue its authorization act. **(Reason 10) .**

In all of the above IBAMA replies defensively to a decision they have already apparently made instead of doing what is right and prudent when given new information. We have since this document was drafted, sent you also a comparison between the IHM of the Clemenceau and that of the Sao Paulo. This is new information for you as a competent authority. It is your job to be competent enough to realize that new information should be looked at with a fresh eye of concern and precaution. The difference in the two IHM is shocking and should be enough for IBAMA to be very concerned. We never said that there is a legal provision that requires you to undertake a comparison, but there is a requirement in Basel to "take all practicable steps to protect human health and the environment" (see definition of Environmentally Sound Management, Article 2, 8). It is of course very practicable to learn of the HM by learning what the sister ship had on board.

About the former NAE SAO PAULO, in section 3.1 - Document Review (pages 8 and 9), of the document IHM Part I, version 2.0 (SEI nº 12433248), Grieg Green requested and had access to the following requested drawings and documentation:

- General Arrangement
- accommodation plan
- Arrangement in the Machine Room
- Rescue and fire control plan
- private sheets
- Main machine details
- International certification of the antifouling system
- IAPP certification
- Paint scheme Paint scheme

When consulting the document, the IHM Part I Report, version 2.0 (SEI nº 12433247), on pages 5 to 18, it appears that documents were consulted about the structure and facilities of the ship (floor plan), and that they were used for the visual inspection plan, sample collection and calculation of hazardous material estimates. **(Reason 11)** .

"They admitted they didn't use Geiger counters to determine radioactivity."

Again, in this item, the NGO BAN presented a response from an alleged representative of Grieg Green. The reservations made by Ibama to this answer have already been exposed in topics 4.1 and 5.1. **(Reason 6)**

In the authorization process by IBAMA, extensive documentation on the issue of radioactivity and radiation levels was considered, which are listed below:

Manifestation of the Turkish Nuclear Regulatory Authority (Nükleer Düzenleme Kurumu NDK), in English, Nº E-64279964-320.99-27861 , of 10/27/2021, listing the documents analyzed by them (documents from a) to e)), where the following is concluded: *"The aircraft carrier Nae São Paulo does not pose a risk of radiation during transport to our territory or being dismantled."* (SEI No. 12320549);

Demonstration of the Turkish Nuclear Regulatory Authority (Nükleer Düzenleme Kurumu NDK), in Turkish, No. E-64279964-320.99-27861 (SEI No. 12320550);

Supplementary Report of the ASI21-1010 Report (original of 10/11/2021), of 04/05/2022, by the company Alex Stewart Denetim ve Analiz Hizmetleri Ltd. Sti. (ASi), which presents data and information on the collection of radiation levels from different levels of the ex-ship, and a photographic report (SEI nº 12320551);

The measurement with a Geiger counter was carried out by the company Alex Stewart Denetim ve Analiz Hizmetleri Ltd. Sti. (ASi), in the document presented in paragraph c) above, where, **LITERALLY**, measurements were recorded using a Geiger counter. **(Reason 12)** .

Grieg Green admitted they did not test the entire ship for radioactivity. This is very problematic for a ship of its history undertaking open air nuclear test operations.

"The Recycling Plan is also flawed, as we have indicated, and cannot give Brazil any confidence in the proper management of painted steel, paints, asbestos and PCBs, TBT, etc."

In the authorization process by Ibama, extensive documentation was considered on the paints used on the ship, as well as other hazardous materials that were identified or removed from the vessel, listed below:

Waste Removal Certificate, dated 03/28/2022, of the removal of 106 Lâmpadas waste units from the former NAe São Paulo, and photographic report, issued by the company PREAMAR SERVIÇOS MARÍTIMOS LTDA., CNPJ 01.699.299/001-87 (12321168);

Type Approval Certificate No. 13863/D0 BV, issued by *International Paint Ltd.* for INTERSMOOTH 360 SPC, 365 SPC, 460 SPC, 465 SPC antifouling system products, valid through December 11, 2024, (12321360);

Certificate issued by Renner Herrmann, of 10/06/2015, stating that the NAe São Paulo was painted with anti- fouling paint " *Supermarine AF IONEX MB 870 Black, Tin Free Self Polishing Antifouling Paint*" (SEI nº 12321361);

Certificate issued by Renner Herrmann, of 10/06/2015, stating that the NAe São Paulo was painted with anti- fouling paint " *Supermarine AF IONEX MB 870 Red, Tin Free Self Polishing Antifouling Paint*" (SEI nº 12321362);

Certificate issued by Renner Herrmann, dated 03/31/2022, stating that the NAe São Paulo was painted with anti-fouling paint " *Supermarine AF IONEX MB 870 Black, Tin Free Self Polishing Antifouling Paint*" (SEI nº 12321364);

Certificate issued by Renner Herrmann, dated 03/31/2022, stating that the NAe São Paulo was painted with anti-fouling paint " *Supermarine AF IONEX MB 870 Red, Tin Free Self Polishing Antifouling Paint*" (SEI nº 12321366);

Dry Dock Coating Report , issued in 2003, by the International AkzoNobel company for the Basil's Navy, regarding the descaling and anti-fouling protection services provided in the NAe São Paulo, using INTERSMOOTH 360 SPC products and Intergard 269, 235 and 263 (SEI # 12321367);

IHM Part II and III (SEI No. 12320753);

Certificate of Final Destination No. 1138506/2021, of 08/12/2021, issued by the company HM SANEAMENTO LTDA, CNPJ 68.586.221/0001-27, to the company CORMACK MARÍTIMA LTDA, CNPJ 01.956.427/0001-20, referring to the receipt and respective final destination of 240 tons of residues containing hydrocarbons (Class I, 16 07 08*) (SEI nº 12320925).

The Recycling Plan of the former NAE SAO PAULO, prepared by the shipyard SOK DENIZCILIK TIC.VE LTD. STI (SEI nº 10464088), in view of the presence of approximately 644 tons of paints containing hazardous substances, informs which companies will carry out the disposal of paint waste, as per page 30 of the Plan, including recovery/disposition methods.

Paints and other hazardous materials from the vessel's operation were inventoried, estimated at approximately 644 tons. In the Recycling Plan presented, there are provisions for the removal and environmentally sound management of any amounts of waste paint, as well as other hazardous materials generated during the vessel's operation. Therefore, it can be considered that, **in compliance with the Recycling Plan, the environmentally appropriate destination of these hazardous waste will be ensured. (Reason 13)** .

The plan does not explain what happens to the paints in the steel mills. Do they have adequate controls for these to capture the inevitable pollution? Further, there is little information about the recycling plan for paint chips -- it implies that they will be burned in cement kilns. What confidence does Brazil have that these

cement kilns also have adequate operational procedures and pollution controls to prevent products of incomplete combustion?

"The export, as planned, is at odds with Basel, but it also puts Brazil at high risk including lawsuits."

When analyzing all the points presented by the NGO BAN and Shipbreaking Platform, it was found that all points of doubts and uncertainties pointed out have answers and clarifications in the documents and information already contained in the Authorization Process 02001.012028/2021-48 .

It should also be considered that the consent given by the Competent Authority of the Importing State (Turkey) has conditions for its effectiveness, as provided in the Letter (12767581) that accompanies Form **BR 231121** . Such conditions are presented below:

"As the competent authority of the country of importer, The Turkish Ministry of Environment, Urbanization and Climate Change has no objection to the planned shipment, as long as the provisions of Basel Convention are complied with, the vessel is free of waste as much as possible When the vessel comes to our territorial waters before docking permit is given, our institution will perform radiation measurements and authorized expenses of the measurements will be covered by Sök Denizcilik ve Tic. Ltd. Şti. If the results are determined below the background level as declared, the vessel will be docked to the ship recycling facility. If as a result of the measurements, a radiation contrary to the declaration is detected, the vessel will be sent back to the export country. "

Free translation:As the competent authority of the importing country, the Ministry of Environment, Urbanization and Climate Change of Turkey does not oppose the planned shipment, provided that the provisions of the Basel Convention are complied with, that the vessel is as free of waste as possible, that no radioactive material is found on the vessel and the radiation measurements are below baseline. When the vessel arrives in our territorial waters, prior to the berthing authorization, our authorized institution will carry out radiation measurements and the measurement expenses will be covered by Sök Denizcilik ve Tic. Ltd. Şti. If the results are determined below the declared base level, the vessel will be moored at the ship recycling facility. If, as a result of the measurements,

Ibama informed the Brazilian exporter OCEANS PRIME and the importing company SOK DENIZCILIK TIC.VE LTD. STI about the condition imposed by the Competent Authority of Turkey for the movement, **and that they should take any measures they deem necessary before the start of the trip, under the risk of incurring illegal traffic** . Therefore, unless there is a breach of these conditions, there are no indications that there was a breach of the Basel Convention at the time of the beginning of the trip of the former NAE SAO PAULO for its dismantling in Turkey. **(Reason 14)** .

It is incorrect to state that the only concern for compliance with Basel is the condition imposed by Turkey regarding radioactivity. Radioactivity is not even

under the scope of the Basel Convention. There are a great deal of obligations that unless followed carefully and in a precautionary way by the State of export will involve a breach of the Basel Convention. We find Brazil's consent to export the ship in light of technical and legal concerns to be a great concern.

towing

In their Letter (SEI nº 13151988), the NGOs raise their concern about towing and the company that will perform this service, as well as about the existence of insurance in case of accidents.

As already informed, the bidding company SOK DENIZCILIK TIC.VE LTD. STI owns a shipyard in Turkey that is recognized by the European Union for dismantling ships in an environmentally sound manner. The company has several certificates for environmentally sound ship dismantling and ship recycling, having presented the list of these to Ibama, namely (SEI nº 10464085): Norms ISO 9001:2015, 14001:2015, 30000:2009, 45001:2018, and certificate of Compliance from Lloyd's Register, IMO Hong Kong Convention, HKC & EUSRR. Such certifications are also listed on their private website (<http://sokdenizcilik.com.tr/environmental-safety/>). It is, therefore, a Turkish company that is involved in the export process and that will be an importer of the former NAE SAO PAULO, whose intention is to have a final destination in its own shipyard, located in Turkey. **(Reason 2)**.

The above certifications have nothing to do with the towing plan and its competency.

Regarding the topic of towing, a Towage Plan was presented, carried out by AWS, and an insurance policy was presented, in the amount of 100 million dollars (USD 100,000,000), according to the documentation below:

Attachment towage plan (SEI No. 10464089), referring to the NAE São Paulo Towage Plan, prepared by AWS Service;

Attached insurance policy (SEI nº 10464091), referring to the Insurance Certificate PC671X21A000, issued on behalf of SOK for the São Paulo A12 vessel, insured by Thomas Miller Specialty, basically covering the risks of towing from Rio de Janeiro to the recycling facility and, Aliaga, Turkey.

We have read the insurance policy and towing plan and remain concerned that the insurance policy has expired and if it is renewed we remain concerned that there

is only one tug being deployed for the ocean going part of the voyage including passage through the Strait of Gibraltar.

With the presentation of these documents, it was understood that the provisions of Article 6, item 11, of the Basel Convention were met, which states the following:

"ARTICLE 6

Cross-border Movement between Parties

(...)

11 - Any transboundary movement of hazardous wastes or other wastes shall be covered by insurance, suretyship or other security required by the State of import or any State of transit which is a Party."

With the exposition of this extensive list of information, **IBAMA reiterates that the export authorization process of the former NAE SAO PAULO was carried out in strict regularity and in compliance with the dictates of the Basel Convention** . The Competent Authority of Turkey for the Basel Convention exercised its sovereignty by giving consent for the importation to the Brazilian authority, in this case, Ibama's Directorate of Environmental Quality. The Executive Board, in turn, strictly complied with the applicable rules and, in the end, authorized the operation.

The administrative process that contains all the information related to the authorization act is public, being offered by the Brazilian government remote access, providing total transparency regarding the decision-making process and the documents that support it.

If there is any doubt or additional information is provided, we request that they be submitted to IBAMA through official means, preferably digitally. To this end, we request that the link <http://www.ibama.gov.br/sistemas/sei-ibama> be accessed and the electronic petition carried out. We emphasize that the information provided in the complaint will be presumed in good faith, however, whoever provides it in the criminal and civil spheres under Brazilian law, even if foreigners, will be responsible. If the information is being provided on behalf of a company or NGO, it is necessary to present documentation proving legal representation by the individual.

We remain at your service.

Yours sincerely,

CAROLINA FIORILLO MARIANI
Environmental Quality Director

