PERMANENT MISSION OF DENMARK
TO THE
UNITED NATIONS OFFICE AT GENEVA

Misc. enclosures

Ref.: 2015-13385

The Permanent Mission of Denmark to the United Nations Office at Geneva presents its compliments to the Office of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, Special Procedures Branch, and has the honour to refer to the Special Rapporteur's letter dated 13 January 2015, ref. UA DNK 1/2015 regarding a joint urgent appeal from Special Procedures.

The Permanent Mission of Denmark has the honour to enclose herewith a letter from the Danish Ministry of Foreign Affairs enclosing the response to the special Rapporteur.

The above-mentioned letter and enclosures were transmitted by electronic mail to the Office of the Special Procedures Branch on 4 March 2015.

The Permanent Mission of Denmark avails itself of this opportunity to reiterate to the Office of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, Special Procedures Branch, the assurances of its highest consideration.

Geneva, 04 March 2015

MISSION PERMANENTE DE DANEMARK AUPRÈS DE L'ONU

Mr. Baskut Tuncak
Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes,
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**Response to Urgent Appeal**

Dear Mr. Baskut Tuncak

Attached please find the response to your urgent appeal to the Government of Denmark regarding the dismantling in India of the ship Clipper Concord, which operated under the flag of Bahamas.

Mette Nørgaard Dissing-Spandet
Head of Department

Copenhagen, March, 4th, 2015

**Response from the Government of Denmark to an urgent appeal from the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes.**

**The dismantling in India of the ship Clipper Concord, operating under the flag of Bahamas.**

The Special Rapporteur has posed the following questions:

1. Please provide any additional information and any comment you may have on the above mentioned allegations.

2. Please explain, if any, what actions the Government of Denmark took to ensure decontamination of Clipper Concord before leaving Denmark to India for dismantling.

3. Please explain why the export of this ship containing hazardous wastes is not in violation of the Basel Convention and its Ban Amendment.

4. Please provide information of the plans of the Government to ban exportation of end-of-life vessels containing hazardous substances and wastes to be beached for dismantling outside the territory of Denmark.

5. Please explain what measures, including policies, legislation, regulations and adjudication, the Government of Denmark has taken to prevent, investigate, punish and redress human rights violations by Danish business enterprises engaged in shipbreaking outside the territory of Denmark.

6. What policy, legal, regulatory, and/or adjudicatory measures has the Government of Denmark taken to encourage and require that business enterprises domiciled in its territory or jurisdiction, including Clipper Group, meet their responsibility to respect human rights throughout their operations? In addition so such measures, has the Government provided guidance to business enterprises on how to respect human rights throughout their operations? This may include measures and/or guidance on, inter alia, conducting human rights due diligence, meaningful consultations with potentially affected stakeholders, and addressing and mitigating any negative impacts. Please note measures taken as a result of the Government of Denmark's National Action Plan on Business and Human Rights.

Response to question 1:
The Danish Minister of Environment does as a member of the Danish Government share your Excellency's concern for the prevention of adverse effects on human health and the environment. The Ministry of Environment has previously and recently made initiatives, including legislation and policies, to improve the protection of human health and the environment both nationally and internationally and is highly committed to do so in the future.

The Danish Ministry of Environment participated in shaping the Hong Kong Convention. Danish Government supports the Convention and its principles. The Minister of Environment has stated to the Danish daily press that she is of the opinion that shipowners ought to follow the principles of the Convention even though it has yet to enter into force. This statement has been quoted by several international NGO's. Furthermore, the Danish Shipowners' Association has continuously advised its members to follow the principles of the Hong Kong Convention.

The Danish Ministry of Environment has carried out an investigation of the allegations. All merchant ships are obligated to be registered in the Danish official Ship Register, if they want to sail under the flag of Denmark. The Danish Maritime Authority, which is a government agency under the Danish Ministry of Business and Growth and responsible for the registration of ships in the Danish Ship Register, has informed the Danish Ministry of Environment that Clipper Concord has never sailed under the Danish flag. Furthermore, the Danish Maritime Authority has informed the Danish Ministry of Environment that Clipper Concord has not been ported in a Danish port in years. Hence, Clipper Concord has in fact not been exported from Denmark to India.

Therefore, the Danish authorities have little information of the ship. The Ministry of Environment has asked the Danish Shipowners' Association to investigate the matter of Clipper Concord on their behalf and the Danish Shipowners' Association has had a dialogue with Clipper Group. The information below has been gathered by the Danish Shipowners Association as presented to the Ministry of Environment.

As your Excellency knows, Clipper Concord has sailed under the flag of Bahamas. The Danish Shipowners Association has informed the Ministry of Environment that the ship, Clipper Concord, was last in Demark in November 2009 and was last ported in an OECD country in 2012.

Between February 2013 and November 2014 Clipper Concord was chartered to operate outside the coast of Angola. At the end of the charter it was decided to sell the ship to a new owner in Asia for continued operation. On the last voyage of the ship it was ported in Congo, South Africa and Sri Lanka before arriving in India. The Danish Ministry of Environment has not been contacted by the authorities in any of these countries.

The Danish Shipowners Association has informed the Danish Ministry of Environment that most Danish companies only operate ships until they are about 15 years old and then sell them on for further operation abroad. However, the ships are designed and built to last for at least 25 years and can frequently be operated until they are about 30 years of age. Clipper Concord was built in 2000. Hence, it was only 14 years old when it was sent off to Asia to be sold. However, it turned out that no one was interested in buying the ship for a price higher than the price paid when recycled. Therefore the decision to have the ship recycled was made.

Clipper Concord was sold via the international cash buyer GMS. According to the homepage of GMS it is the world's largest cash buyer and the only cash buyer that has an ISO 9000 certification and a Green Ship Recycling Program to meet the highest standards of Corporate Social Responsibility (CSR) in the ship recycling industry. It was part of the sales agreement between Clipper Group and GMS that the recycling should be done in accordance with the principles of the Hong Kong Convention. Hence, BIMCO's standard contract for the Sale of Vessels for Green Recycling "Recyclecon" was used in the sale as recommended by the European Community Shipowners' Associations. An Inventory of Hazardous Materials (IHM) was carried out by the German company GSR Services Gmbh. The director is an IHM specialist and he has been involved in the work of IMO, including the Hong Kong Convention, and is chairman of the International Hazardous Materials Association. The IHM was carried out in accordance with IMO's Guidelines from 2011 for the Development of IHM's.

Clipper Group has stated that the Indian authorities physically inspected Clipper Concord before it entered Indian waters and approved its import to India for recycling. The Danish Shipowners' Association has informed the Ministry of Environment that Clipper Concord is already beached on Alang Beach. The Danish Shipowners' Association has evaluated that it is no longer possible to move the ship at this point, due to the fact that the ship has been beached.

Furthermore, Clipper Group has stated that the chosen recycling facility Leela Ship Recycling Pvt. Ltd has been approved by the Indian authorities. Clipper Group has inspected Leela personally. Leela is in the process of preparing a technical and operational plan for the recycling of Clipper Concord taking the IHM into account. Clipper Group will review the plan. Furthermore, Clipper Group will carry out unannounced inspections of Leela during the recycling process to ensure that the recycling takes place according to the recycling plan. The Danish Shipowners' Association will join Clipper Group at one of these unannounced inspections to Leela. The Danish Ministry of Environment will continue to follow the further developments in this case.

The Danish Shipowners' Association has informed the Ministry of Environment that Leela is certified by the German classification society Germanischer Lloyd in accordance with the requirements of ISO 9001, ISO 14001 and OHSAS 18001. Leela is also certified by International Certification Services Pvt. Ltd. in India according to ISO 30.000. According to the Danish Shipowners' Association's information Leela is keen to be included in the European List which is part of the upcoming 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 (the Ship Recycling Regulation).

The international ship classification society Nippon Kaiji Kyokai known as ClassNK is in the process of classifying Leela. On a technical workshop held on 27 January 2015 in the European Community Shipowners' Associations in Brussels, ship recycling lead specialist Mr Takeshi Naruse of ClassNK stated that Leela is amongst the 4 best ship recycling facilities in India.

The independent maritime environmental consultancy Litehauz, situated in Denmark, has in 2015 made an assessment of existing international ship recycling facilities in relation to requirements of international agreements. The aim of the assessment was to provide a list of shipbreaking yards acceptable for the recycling of ships operating under Danish flag in accordance with the principles of the Hong Kong Convention and the new EU Regulation on ship recycling. The assessment states that 4 Indian ship recycling facilities including Leela are candidates for recycling of ships operating under Danish flag under the requirements of the Hong Kong Convention and the new EU Regulation on ship recycling. According to the assessment, the reason that Leela is not included on the approved list is that the third party validations are pending. ClassNK has not finished its classification work yet as stated above. However, the assessment states that it is recognised that substantial efforts have been made at Leela to improve environmental and health and safety issues. It remains uncertain whether these efforts will be enough to make the company an acceptable ship recycler for ships operating under the Danish flag in accordance with the upcoming requirements of the Hong Kong Convention and the new EU Regulation on ship recycling. Uncertainty will remain until ClassNK has finished its work.

The Danish Minister of Environment remains of the opinion that shipowners ought to follow the principles of the Convention non-withstanding that it has not yet entered into force. The Danish Shipowners Association has informed the ministry that they will continue to advise its members to follow the principles of the Hong Kong Convention. The Ministry will continue the dialogue with the Danish Shipowners' Association to further stress the importance of Danish ship owners following the principles of the Convention to the extent practically possible until it enters into force.

Response to question 2:

The Minister of Environment in her capacity as a member of the Danish Government shares your Excellency's concern for correct handling of hazardous materials and waste. On behalf of the Danish Ministry of Environment, the Danish Maritime Authority inspects both ships that operate under the flag of Denmark and ships that operate under the flag of foreign countries that port Danish ports. The inspection covers the applicable international legislation regarding ships and is implemented in Danish legislation. However, Clipper Concord had **not** been ported in a Danish port in years. Therefore, it has not been possible for the Danish authorities to inspect the ship, nor do we believe that we were obligated to do so according to applicable international or EU legislation.

The Ministry of Environment has both previously and recently made initiatives, including legislation and policies, to improve the handling of and to the extent possible the prevention of or restrictions for hazardous materials both nationally and internationally and will continue to do so in the future. Hence, the Minister of Environment has repeatedly advocated stricter rules regarding hazardous materials within the EU.

We believe that Danish law is in accordance with applicable international and EU legislation on hazardous materials and waste and international maritime law. Furthermore, we believe that Danish law and practice is in accordance with the current guidelines from United Nations and the EU.

The EU Regulation on shipments of waste, which implements the Basel Convention, is supported in Danish law by the Danish Statutory Order on Waste (No 1309 of 18 December 2012 with amendments). This includes rules regarding hazardous waste. Classification of a ship is done by the municipality for smaller ships (up to 1.500 tons) and by the Danish Environmental Protection Agency, which is a part of the Ministry of Environment, for larger ships (more than 1.500 tons). The classification firstly concerns whether a ship is waste and secondly whether the ship is hazardous waste. If it is presumed that a ship will be exported to a non-EU/EEA country and the age, the destination and the condition of the ship provide grounds for believing that the ship is waste or hazardous waste the authorities can decide that the ship cannot leave the Danish port. The ban remains until the classification has been made on whether the ship is waste or hazardous waste.

Furthermore, the Ministry of Environment has in 2011 published the current practical guideline regarding classification of green listed waste according to the EU Regulation on shipments of waste. The practical guideline states that a ship can be regarded as green listed waste. However, all hazardous cargo, materials and wastes must be removed from the ship, before it can be exported as green listed waste. Hence, a ship that contains asbestos, PCB or other hazardous materials cannot be regarded as green listed waste. Furthermore, the practical guideline states that operationally generated waste classified as hazardous generated during the last travel of the ship, i.e. the travel to place of recycling, shall be removed from the ship upon arrival at the final destination and returned to Denmark or another OECD country. Regarding electronic equipment the practical guideline states that on the last travel of the ship, i.e. the travel to place of recycling, the ship shall only have the electronic equipment necessary for the operating of the ship. This electronic equipment has to be able to function and has to be saleable as used equipment upon arrival at the recycling facility. Otherwise, the equipment shall be returned to Denmark or another OECD country. Finally, the practical guidelines states that if all hazardous materials and cargo is not removed from the ship prior to its export for recycling, the ship cannot be regarded as green listed waste. If the ship has to be regarded as hazardous waste, export to a non-OECD country is prohibited according to the EU Regulation on shipments of waste.

For an act committed by a Danish citizen or company to fall under Danish criminal jurisdiction it is generally a requirement that the act is criminalized in Denmark as well as the third country

where the act has taken place. According to the information available to the Ministry of Environment, the Indian authorities have approved the recycling of Clipper Concord at Leela, and no violation of Indian law has taken place at this point in time.

The Danish Government is aware of its obligations regarding human rights and is highly committed thereto. As part of the Danish Government's commitment, the Danish Government actively promotes the discussion on extraterritorial legislation in particular the need for joint solutions on both an EU and international level.

We refer to our answer to your Excellency's 6th question regarding a Danish inter-ministerial working group on extraterritorial applicability.

The Danish Government published its first national action plan on CSR in 2008. It encourages Danish companies to demonstrate responsible business conduct and apply internationally recognized guidelines for corporate responsibility such as the UN Global Compact and Principles for Responsible Investment, the UN Guiding Principles on Business and Human Rights, and the OECD Guidelines for Multinational Enterprises. The Danish Government's CSR policy is especially focused on developing knowledge and tools that are directly applicable to businesses, including tools with a direct focus on human rights.

The initiatives and policies by the Danish Government are further described in the "Danish National Action Plan – implementation of the UN Guiding Principles on Business and Human Rights".

Response to question 3:
Based on the information of the ship received by your Excellency, it seems plausible that the ship might have contained hazardous materials or waste upon arrival in India. The Ministry of Environment agrees with your Excellency that if the ship had sailed off from a Danish port to India with the intent of recycling in said condition, there quite possible would have been a violation of the Basel Convention, the EU Regulation of shipments of waste, and Danish legislation as described above.

However, as stated above the ship did not sail off from Denmark nor had it been in Danish waters for years. Hence, the Ministry of Environment do not believe that a violation of the Basel Convention, the EU Regulation of shipments of waste, nor Danish legislation has been committed in Denmark. We further refer to our answer regarding your Excellency's 2nd question.

Response to question 4:
As member of the Danish Government the Minister of Environment shares your Excellency's commitment to improve the global protection of the environment and human health and safety with regard to hazardous materials and wastes. The Minister of Environment also agrees with your Excellency that safe and environmentally sound recycling of ships is very important.

As a member of the EU the new EU Ship Recycling Regulation will become part of Danish law, when it is applicable. For the most part, the EU regulation will become applicable sometime between 31 December 2015 and 31 December 2018. This will include a legal obligation for ship owners to ensure that ships operating under the flag of an EU member state are only recycled at ship recycling facilities that are included in the European List of Ship Recycling Facilities. That is to say, either located in the EU and authorised by an EU member state in accordance with the requirements of the Regulation or located outside the EU and included on the list after application to the EU Commission. At a technical workshop held 27 January 2015 by the European Community Shipowners' Associations the EU Commission stressed that the EU Regulation on ship recycling does not ban beaching as a recycling method. However, a ship recycling facility will have to meet the requirements of the EU Regulation to be included on the European List.

The Danish Government welcomes the EU Regulation and looks forward to the full application thereof. The Danish Government also looks forward to the entry into force of the Hong Kong Convention. At the moment the Ministry of Environment is doing the preliminary work to prepare for accession of the Hong Kong Convention.

As stated above regarding your Excellency's 1st question, the Minister of Environment is of the opinion that shipowners ought to follow the principles of the Hong Kong Convention, even though it has not yet entered into force.

Danish Ministry of Environment knows that some Danish shipowners have stated that they will no longer use recycling facilities in Pakistan, India and Bangladesh. The Danish Shipowners' Association has informed the Danish Ministry of Environment that they are committed to help its members to formulate an official ship recycling policy. The Minister of Environment applauds this development.

We also refer to the "Danish National Action Plan – implementation of the UN Guiding Principles on Business and Human Rights", as mentioned above regarding your Excellency's 2nd question.
The Danish Government believes that an international line of business like shipping and recycling of ships requires international legislation, if the legislation is to be effective. Therefore, further initiatives by your Excellency or the UN as a whole or the EU will be met with interest by the Danish Ministry of Environment.

Response to question 5:
We refer to our answers above to your Excellency's 1st, 2nd and 4th question regarding current and up-coming legislation and policies, including the "Danish National Action Plan – implementation of the UN Guiding Principles on Business and Human Rights".
Denmark is a highly committed member of both the UN and the EU, and the Danish Government is an active member of European and international fora regarding both human rights and the environment. As a part hereof, the Danish Government through Danida, which is a part of the Ministry of Foreign Affairs, gives development aid to several developing countries in order to promote both human rights and protection of the environment and

human health and safety. Denmark is one of only 5 countries that meet the UN goal of giving 0,7 % of its BNI to development aid (based on 2013 data).

In cases where a ship is destined to be recycled abroad, and Denmark is the country of dispatch, the export of the ship will be dealt with by the Danish authorities as other cases of export of waste, i.e. according to the Basel Convention, the EU Regulation of shipments of waste and the Danish Statutory Order on Waste.

Response to question 6:

In 2012 the Danish Parliament adopted the Act on The Mediation and Complaints- Handling Institution for Responsible Business Conduct. The Institution deals with cases relating to non-compliance of the OECD Guidelines for Multinational Enterprises. The institution id the OECD National Contact Point (NCP) in Denmark and is responsible for raising awareness of what responsible business conduct entails. The aim of the OECD Guidelines is to minimize the adverse impacts arising from business-related activity. The NCP is a non-judicial mechanism that enables companies, organisations and public authorities to resolve disputes regarding adverse impacts linked to their activities on matters covered by the Guidelines e.g. human rights, employment and industrial relations, environment and anti-corruption. Parties who feel aggrieved by Danish Companies can a complaint concerning non-compliance with the Guidelines.

The Danish government has in the Danish National Action Plan - implementation of the UN Guiding Principles on Business and Human Rights (March 2014) planned the establishment of a working group to examine the need for and possibilities for legislation with extraterritorial effect.

In the action plan it is stated: "To further engage in the issue of extraterritorial legislation, the Danish Government has planned the following initiative:
– At national level the Government will put together an inter-ministerial working group which will discuss the need for and feasibility of legislation with extraterritorial effect in areas of particular relevance. The group will look at what other countries have done and are doing in this area with the purpose of learning what works and what does not work. Finally, the group will examine the need for judicial prosecution of severe human rights impacts as recommended by the Danish Council for CSR"