

April 7, 2018

**UNITED NATIONS HUMAN RIGHTS  
OFFICE OF THE HIGH COMMISSIONER**

Attn: Mrs. Beatriz Balbin - Chief Special Procedures Branch – OHCHR

C/C: Anita Ramasastry – Chief Rapporteur of the Working Group on the issue of human rights and transnational corporations and other business enterprises

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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**Ref.** Joint Communication from Special Procedures – AL OTH 8/2018

Dear Mrs. Balbin, Mrs. Ramasastry and Mr. Tuncak,

We refer to your communication dated 7<sup>th</sup> February 2018 addressed to Mr Luciano Nitrini Guidolin – CEO of Odebrecht S.A (“Odebrecht”).

We are sincerely concerned on receiving your communication and would like to assure you and your associates in the United Nations (“UN”) that we have taken this matter very seriously.

As you probably know, some of Odebrecht’s affiliates are members of the Global Compact of the United Nations organizations (UN) and enrolled in the Business Pact for Integrity and Anti-Corruption of the Ethos Institute. Consequently, we are fully aligned with the UN objectives you have set out in this matter and work to constantly reinforce its pillars of sustainability so that we always act in step with principles to protect human rights, labor rights and environment.

In this sense, our affiliates and we have been internationally recognized with numerous awards for our good sustainability practices and some of the most relevant are mentioned below:

- Braskem:
  - Dow Jones Sustainability Index;
  - CDP (former “Carbon Disclosure Project”, current “Disclosure Insight Action”) Investor Global and CDP Supply Chain Global;
  - GE Ecoimagination
- Atvos:
  - Projeto Acreditar (“Project Believe”) acknowledged by UN Diversity;

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9

- Renewable Fuel Standard (RFS2) by United States' Environmental Protection Agency ("EPA")

We confirm that North Sea Production Company Limited ("NSPCL"), ex-owner of the ship named North Sea Producer FPSO, is indeed one of our affiliates, but it is co-controlled by one of our subsidiaries, Odebrecht Óleo e Gás S.A., in association with a A.P. Moeller – Maersk A/S subsidiary, Maersk Company Limited ("Maersk"). Therefore, the answers contained herein in relation to the specifics of the case have been provided to us by NSPCL, through Odebrecht Óleo e Gás S.A.. We are utterly dismayed and genuinely sorry with what has transpired from the scrapping, in Bangladesh, by the buyer, Global Marketing Systems, JLT ("Buyer"), of the North Sea Producer FPSO as a consequence of the Buyer totally disregarding certain and specific obligations in the sale agreement with NSPCL.

For the avoidance of doubt, it is absolutely unacceptable to Odebrecht that following what was very clearly a diligent approach taken by NSPCL to put in place contractual mechanisms that recognized the actual sale process of the FPSO for re-deployment and the buyer's environmental obligations to cater for the eventual end of life of the FPSO prior to and after the sale as contained in the sale agreement, that the buyer, GMS, totally ignored those provisions after the FPSO left UK waters.

Despite its clear obligations not to do so, the Buyer has facilitated the disposal of the FPSO to a facility in Bangladesh that did not comply with the requirements of the sale contract for Green Scrapping. NSCPCL tried, through its partner, Maersk and the eminent legal advisers Reed Smith of London UK, to vigorously prevent its beaching and dismantling and was thwarted in its attempts by the buyer.

Moreover, we are advised that despite these vociferous protestations to halt its beaching and scrapping the Buyer categorically stated, in communication, that the facility they had sold the FPSO to, did comply with the conventions for Green Scrapping contained within the sale contract and that they had complied fully with the terms of sale, and in doing so they had not breached the sale terms and that they were supporting the dismantling facility with the highest level of expertise to ensure environmentally sound recycling of the FPSO to meet the Hong Kong convention.

Clearly, what the Buyer has done and or is alleged to have done is contrary to what they stated to NSPCL in the sale process that they were intending to do by way of re-deployment and reuse.

Particularly, with regard to your specific questions - It is important to mention that NSPCL has reviewed and answered questions 1-5 from your communication as detailed in the attached letter.

Moreover, we have been informed that the UN's Special Rapporteur, that is also co-signatory to your communication, Mr. Baskut Tuncak, visited the Maersk organization in October 2107 together with

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Mr. Marcelo Daher where, amongst other topics, this matter was discussed. We have also been advised that an open, transparent and co-operative offer of immediate and fully informed dialogue, with the knowledgeable persons within NSPCL, was tabled to Mr. Tuncak and Mr. Marcelo Daher.

In order to provide you with the most accurate information, we would highly recommend that this immediate and open offer by NSPCL, rendered in a true spirit of co-operation and transparency, is followed through or pursued by either Mr. Tuncak or Mr. Daher.

As aforementioned, those in NSPCL as more fully demonstrated in the frank and full disclosure process undertaken with the competent authorities, particularly in the United Kingdom Environment Agency ("UKEA"), have to hand all the facts surrounding this matter up until the point of sale to GMS, they were and still are, fully willing to provide the UN with any factual information they possess that is requested.

In respect to the remaining points 6 to 10, we stress that it was the Buyer of the Vessel, not NSPCL, that exported it from the UK, took it Bangladesh, arranged with others its subsequent beaching for recycling to a standard, stated by you from information received in a manner that is disputed by the buyer. As we are not and never have been, a party to these proceedings we are not in a position to answer them to the extent required by the UN.

*Point 6 - Please indicate if Odebrecht adopted or plans to adopt new measures to prevent the recurrence of similar incidents.*

Whilst we have set out and confirmed to you that this incident was and is as a result of the FPSO Buyers actions and not Odebrecht and/or its affiliates, it is our intention to always do the highest level of due diligence and care to avoid any similar incidents in the future.

*Point 7 - Please provide monitoring data for water pollution, food contamination, air pollution or occupational exposures arising from the dismantling of Odebrecht ships on beaches since 2000.*

We confirm that Odebrecht has never dismantled or has been party to any dismantling activities of any ships on any beach since 2000.

*Point 8 - Please indicate measures taken by Odebrecht to identify and close protection gaps created by the Hong Kong Convention, especially with regards to (i) the minimization of exports of hazardous wastes to developing countries, (ii) the containment of pollutants, including paints, during cutting of the ship, and (iii) the environmentally sound management and disposal of hazardous wastes.*

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9

Odebrecht complies, and in this particular case for the North Sea Producer, through NSPCL, has complied, with all required UK legislative requirements as advised and instructed by the UKEA prior to the FPSO sale, including the full disclosure, pre-sale, as confirmed by the buyer, for the IHM and radiation certification of the Vessel, the response letter from NSPCL identifies further details in that regard.

*Point 9 - Please provide information as to what human rights due diligence has been undertaken by Odebrecht to identify, prevent, mitigate and address adverse human rights impacts related to this case, in accordance with the United Nations Guiding Principles on Business and Human Rights.*

Odebrecht nor NSPCL, was not and is not responsible for the actions taken by the Buyer of the Vessel, we had absolutely no prior or post knowledge of the buyer's intent up and until the Buyer beached the Vessel in August 2016 at a facility that is stated to be non-compliant with the contract of sale placed with the buyer.

*Point 10 - Please indicate any measures taken by the company to ensure that workers and communities impacted by the contaminated vessels have access to effective remedies, in accordance with the United Nations Guiding Principles on Business and Human Rights.*

Odebrecht nor NSPCL, was not and is not responsible for the actions taken by the buyer of the Vessel, we had absolutely no prior or post knowledge of the buyer's intent up and until the buyer beached the Vessel in August 2016 at a facility that is stated to be non-compliant with the contract of sale placed with the buyer, we can therefore not answer your question as it does not relate to us.

Finally, you have urged us to take interim measures to halt the alleged violations, we understand that the matter is in the hands of the competent authorities in Bangladesh and is undergoing due process between the parties that are involved.

Finally, please be advised that NSPCL, in particular, and our affiliate Odebrecht Óleo e Gás S.A. and Odebrecht S.A. remain at your full disposal to openly discuss the matter along with disclosure, as we have done with other authorities, such as UKEA, in order to assist you. It is our firm intention to always do highest level of due diligence and comply with all the requirements requested by the authorities in this case, having the highest respect and admiration for the work done by the United Nations.

Yours sincerely,



Luciano Nitrini Guidolin  
CEO of Odebrecht S.A.

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# North Sea Production Company Limited

The Maersk Company Limited &  
Odebrecht Oil Services Limited

As Shareholders of North Sea Production Company Limited  
(the Company)

9<sup>th</sup> March 2018

By e-mail

Dear Sirs,

## UNHR – JOINT COMMUNICATION FROM SPECIAL PROCEDURES

We would refer to the letter from Beatrice Balbin, Chief of the UN Special Procedures Branch, which you have passed to us for comment.

At the outset we would state that the Company, incorporated on 13<sup>th</sup> March 1995, is a limited company incorporated under the laws of England & Wales, not a ‘partnership’ as stated. As a limited company it is a legal person in its own right, with the capability and capacity to exercise full decision-making powers in accordance with its constitution.

In considering the letter, we believe it is appropriate that we respond in connection with matters 1-5 (on page 4) and our response also captures the allegations raised by the UN on pages 2 and 3 in so much as they relate, in whole or at least in the main, to matters within the ownership of the Company.

Herewith our response

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

We note that the allegations made in the letter relate to “*information received*” however we have no knowledge of what information the allegations are based nor from where it was received. It is understood Mr Tuncak visited the Maersk Offices in Copenhagen in October 2017, and during the meeting raised this issue. He was provided with the contact details for the Company directors at that time, however Mr Tuncak did not contact either of the contacts to obtain information directly. This is clearly an opportunity which was missed, had Mr Tuncak contacted the Company it is possible that many of the misunderstandings, inaccuracies and errors contained in the letter would have been clarified. That serious allegations are now being made without the Company having had the opportunity to provide information is both disappointing and somewhat concerning.



However, turning to the content of the letter, we comment here on the mentioned allegations. We have extensive contemporaneous correspondence which supports and evidences the comments we make, our offer to meet with Mr Tuncak to explain in detail the circumstances surrounding this matter, to go through the documentation which supports everything we state herein and to answer any questions which may then arise remains open.

Dagmar Maersk was purchased in 1995 by the Company, converted into a floating production storage and offloading unit (FPSO) before commencing operations for ConocoPhillips (UK) Limited in 1997. She remained on station until May 2015. At that point it is not correct to characterise North Sea Producer as being at the end of her useful life.

The Company commissioned studies through Dundas Consultants in the UK for the potential of the vessel's continued operating profile which, amongst other findings assessed a further 15/20 years of useful operation from future oil and gas fields remained feasible for it following upgrade for redeployment.

The Dundas Consultants screening criteria identified over 200 potential opportunities, the results of the study indicated that redeployment opportunities existed for 11 North Sea projects, in addition 30 further opportunities were identified globally.

Furthermore, a number of similar aged FPSO units have been removed from existing UKCS oil and gas fields, upgraded, refurbished and redeployed. We would therefore confirm that North Sea Producer was independently scrutinized and assessed by competent persons and deemed entirely suitable as a reusable and re-deployable FPSO. For clarity the vessel did not transport or extract oil, rather it received oil from subsea wells, extracted gas from it, then stored it as necessary before transferring the oil through a pipeline owned by ConocoPhillips (UK) Limited.

On completion of operations in May 2015 the unit was brought to Middlesbrough, and the Company considered various options as to its future, including stacking the unit, recycling or selling for redeployment. The Company undertook extensive data gathering exercises, including discussing with the UK Environment Agency (UKEA) as to what would be required in each case to comply with applicable national and international legislation. In addition, a number of experts were instructed, including an independent specialist radiation protection adviser, it being known that there was NORM on board the vessel. International reputable ship brokers were also appointed to assist in understanding the market options available.

Following completion of these activities a decision was made by the Company to sell it for redeployment, where it was subsequently sold under a Memorandum of Agreement (MOA) dated 1st March 2016 to a foreign buyer for further redeployment, with delivery to that buyer on 13<sup>th</sup> April 2016. Prior to delivery the vessel had been cleaned and prepared in accordance with all UKEA requirements for sale for redeployment, including in relation to hazardous materials on board.

Although this was not a sale for recycling, the MOA imposed very clear obligations on the buyer such that, if the redeployment options we understood they were working on did not materialise, any recycling would have to be carried out in compliance with any applicable environmental law, the 2009 Hong Kong convention or EU ship recycling regulations.

We would refute in the strongest possible terms the entirely unfounded allegation on page 2 of the letter that we *"must have been aware that the tanker would not be further operationally used"*. This is simply untrue. The Company was introduced to the buyer by its broker, we were absolutely clear in all correspondence with that buyer that this was a sale for redeployment, and it was understood the buyer was looking at a number of projects for redeployment of the vessel. We have detailed correspondence which clearly demonstrates this was the factual situation, rather than an allegation based on an entirely unsubstantiated assumption.

We cannot comment on the actions and decisions of the buyer post-delivery of the vessel, which left the UK on 17<sup>th</sup> May 2016, neither would it be appropriate to speculate, rather the buyer should be given the opportunity to speak for itself regarding this.

It is however noted that there is reference to redeployment in Tin Can Port in Nigeria. This is not something which originated from the Company, rather we received an e-mail from the UKEA on 31<sup>st</sup> May 2016, around 6 weeks after delivery by ourselves to the buyers, making reference to this location based on a report in a local newspaper in Middlesbrough, UK. We confirmed to the UKEA at this time that we had no definite information as to the intentions of the buyers in terms of final destination of the vessel, but again co-operated fully with the UKEA in providing details of the buyer, including contact details, to enable the UKEA to contact them and undertake whatever discussions or investigations with the buyer it considered necessary.

It must be noted again that it was the buyer, not the Company, which applied for and was granted the required permissions to take the vessel from the UK.

As soon as the Company was alerted to the imminent beaching of the vessel in Bangladesh, Maersk FPSO's wrote to the buyer on 17<sup>th</sup> August 2017, reminding them of the MOA requirements for recycling, advising that a high court injunction would be sought if there was no response from them, and strongly urging them to delay any further recycling action. The buyer responded on the same day stating that in its view the recycling was being carried out in accordance with the laws of Bangladesh and the Hong Kong Convention, hence they were in compliance with the contract, we understand this remains their stated position. Before any further action could be taken against the buyer the vessel was beached and recycling commenced.

It must be noted in connection with the sale that full documentation as would be required to enable upgrade and redeployment was provided by the Company, including a complete electronic record of all produced data comprising many thousands of documents, all of the technical details for the vessel, all operating manuals and drawings, the total maintenance record, full operating system manuals, mechanical and electrical condition reports and an Inventory of Hazardous Materials (the IHM). In particular this latter document clearly recorded the hazardous materials which were on board at delivery on 13<sup>th</sup> April 2016, thus this was in the full knowledge of the buyers. Any false claims regarding the presence or otherwise of hazardous materials to the Authorities in Bangladesh was not made by the Company which was very open regarding levels of such materials on board, including with the UKEA prior to sale as described above.

In summary we firmly believe, and have evidence to support the contention, that in this transaction the Company acted at all times as a responsible seller, and assumed it was dealing with a reputable buyer which would (i) honour the terms of the sale contract and (ii) in particular would fulfil its contractual obligations as regards responsible recycling.

After delivery to the buyer the Company was not involved in any decisions as to what was done with the vessel nor its final destination. The Company is very concerned that the buyer placed the vessel in a facility that, based on the advice of the UN in their letter and despite the buyer's assertion to the contrary, may not be capable of meeting the terms set out in the sale agreement.

- (2) Please provide information on the details provided to authorities in the United Kingdom, Denmark and Brazil on the sale of the North Sea Producer to Global Marketing Systems, on the situation of the ship, including an overview of the hazardous materials within its structure, and on its claimed future use at the Tin Can Port in Nigeria. Please explain why A.P.Moller-Maersk refused to provide the precise identity of the buyers of the ship in 2016 .**

As we have stated above, prior to the sale and delivery of the vessel to the buyers, the Company was in communication with the UKEA, directly and through its instructed subject matter experts, to understand precisely what was required in order to comply with all applicable laws and regulations regarding the extent of NORM decontamination required to enable a buyer to export the vessel from the UK for redeployment. This included providing details of the hazardous materials on board, in particular the NORM, in terms of both its nature and location. As the vessel was in the UK and owned by an English company at that time, the advice and requirements of the UKEA were paramount as regards compliance.

On those UKEA advices the vessel was extensively cleaned in order to remove all traces of NORM from its storage tanks in full satisfaction of the requirements set by the UKEA. Once the NORM removal had been completed the Company was able to sell North Sea Producer to the buyer in the knowledge that the Company had fully complied with the stated requirements of the UKEA for redeployment. The total process was documented with the buyer including the steps that had been completed in terms of the actual cleaning and decontamination to enable the sale process, along with all required documentation required by the MOA to be provided to the buyer prior to the vessel departing the UK.

Following the beaching for recycling of the vessel, the Company received a Notice Requesting Information under the Transfrontier Shipment of Waste Regulations 2007, dated 30<sup>th</sup> November 2016 from the UKEA. A full and extremely detail response, including with supporting documents, was made to the UKEA on 23<sup>rd</sup> December 2016, with a supplemental submission, which contained further details of the buyer, following the UKEA review of the first bundle, provided on 20<sup>th</sup> February 2017. We have maintained contact with the UKEA throughout, and have offered to meet with them at any time if that would help in this matter to explain any issues arising, and we continue to stand ready to provide whatever assistance we can possibly deliver to the UKEA.

In this connection, it can be noted that in late 2016 the Danish Secretary of State for Environment and Food, Esben Lunde Larsen communicated the Danish Governments findings to the United Kingdom Secretary of State for the Environment, Food and Rural Affairs, the Rt Hon Andrea Leadsom, stating



*“From the information available to us, it is our preliminary conclusion that Maersk most likely did not violate the Regulation on shipment of waste ..... The buyer however, may have acted in violation of the Regulation if the decision to scrap the FPSO was taken while the vessel was still in a British port”*

To further corroborate the full co-operation and openness rendered by the Company to the UKEA in its investigations, in late December 2016 the United Kingdom Secretary of State for the Environment, Food and Rural Affairs stated in a ministerial communication to her counterpart in Denmark

*“At the present time we believe the vessel left the UK as a working vessel... .. The Environment Agency is in contact with lawyers from Maersk who are co-operating fully with their enquiries”*

At all times therefore the Company has been entirely transparent and honest in its dealings with the UKEA and will continue to conduct itself accordingly.

With reference to the query regarding media requests for identification of the buyer, the sale contract contained specific confidentiality provisions, wherefore we were not prepared to break our contractual obligations to tell the media who the buyer was (as opposed to the UKEA which had full knowledge of the buyer). Subsequently it became relatively public knowledge, and not through the Company's release of the information, at which point we were then prepared to confirm the buyer's details.

Finally, we confirm that we have not communicated with any Brazilian authorities, since it was not necessary to do so.

**(3) Please explain, the specific measures taken by A.P.Moller-MaerskOdebrecht to ensure that the North Sea Producer's dismantling would be conducted in accordance with relevant International standards.**

For clarity it was the Company which conducted the sale of North Sea Producer to the buyers, rather than either of its shareholders as noted above, therefore this response is drafted accordingly. We would further confirm that the Company, nor indeed either of its shareholders, was aware that the buyer had made a decision to sell the vessel for recycling until Maersk learnt of its intent to do so on or around 17<sup>th</sup> August 2017.

However, to cater for the eventual end of life obligations and/or in the event that none of the projects we were advised the buyer was working on came to fruition, a clause was included in the MOA which placed obligations on the buyer to comply with all applicable national and international laws, international conventions and in accordance with good international standards.

As previously stated the vessel had extensive decontamination and cleaning works carried out prior to the sale, in accordance with directions given by the UKEA, entirely based on sale for redeployment. It was the buyer who applied for and was granted permission by the UK Authorities to sail the vessel from UK waters. The Company had previously provided the buyer a fully documented IHM that made the condition of the vessel and its hazardous material status very clear along with NORM clearance certification and gas free tank certificates. It was after the sale process and without the Company's prior knowledge, that the vessel was delivered to the recycling facility in Bangladesh.

**(4) Please provide information on the collaboration extended by A.P.Moller-Maersk/Odebrecht with authorities in the United Kingdom and in Bangladesh who are investigating the beaching and dismantling of the North Sea Producer**

The UKEA are dealing solely with the Company concerning its investigation into the sale process of North Sea Producer. In this respect the UKEA requested a significant amount of information from the Company to ascertain and corroborate the factual circumstances in relation to the sale process, and the Company has co-operated in full with these requests in an entirely open and honest manner. As noted above, the UKEA have commented both at UKEA and UK HM Government ministerial level that full and open co-operation has been provided by the Company.

We would therefore restate our position that the Company was not involved, whatsoever and at any time both prior to and post-sale of the vessel, in any of the decision making of the buyer or the process entered into with the recycling facility or others when beaching the vessel for dismantling.

In respect to Bangladesh the Company was not a party to, nor was it involved in any aspect of, the vessel being delivered to that country. However, again in the spirit of full and open co-operation, we have confirmed that all requested documentation which has been provided to the UKEA can be shared with the Bangladeshi authorities if the UKEA wishes to do so.

The obligations in the sale contract covering recycling were clear on what type of facility was to be used and how any recycling was to be conducted, it was the buyer who made the decision to recycle the vessel in Bangladesh, the Company was simply not involved in any of the events that unfolded save to provide immediate assistance to the UKEA when requested.

The buyer has stated in correspondence that the facility in Chittagong meets the Hong Kong convention and that as a result of the buyer's expertise (they were providing "*one of their green specialists to be in attendance during the vessel's recycling*") the vessel would be dismantled in accordance with the contractual provisions of the MOA.

**(5) Please indicate if the sale process of the North Sea Producer was submitted to internal independent audit and if these assessments indicated relevant standards utilized by A.P. Moller-Maersk/Odebrecht were observed.**

It is not clear what is meant by an '*internal independent audit*', however we have explained the process followed in response to the various answers above. Whilst the Company, as a single ship operator, did not have specific procedures for the sale of the vessel, it was, and remains, a good corporate citizen, committed to compliance with applicable laws, and operated with the highest standards of business ethics. This is indeed a prerequisite to operate in the market in which the Company was active, being minimum levels which the oil majors require when considering who they use as their business partner.

As noted above the Company sold North Sea Producer for re-deployment, following a process which involved detailed market intelligence, use of external experts, extensive correspondence with the UKEA, significant work in removal of contaminants from the vessel, and use of reputable brokers and legal advisers, all leading to full transparency with the relevant authorities prior to and since the transaction was concluded

We therefore believe and understand that the process for the sale followed usual processes in the prevailing circumstances in that we have always acted with transparency using our best endeavours.

As stated earlier, we are available, at any time, to take face to face discussions here in the UK with the UN in respect of this matter if it serves a useful purpose to the UN process in Special Procedures.

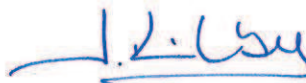
Yours faithfully,  
For and on behalf of

**NORTH SEA PRODUCTION COMPANY LIMITED**



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