



Beatriz Balbin
Chief
Special Procedures Branch
OHCHR
registry@ohchr.org

Ref. AL DNK 1/2018

Joint communication from special procedures

Thank you for your letter of 31 January 2018.

Please find the answers of the Danish Government below:

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

The Government of Denmark will like to clarify, that the Government of Denmark did not know of the North Sea Producer (NSP) departing from the United Kingdom to Bangladesh for dismantling in May 2016.

In 2016, when the sales contract between the North Sea Production Company (NSPC) and Conquistador Shipping Corporation (GMS) was signed, the NSP was docked in a British harbor, and the Government of Denmark was not informed of the sale.

Denmark was not country of dispatch according to the Basel convention and the EU Waste Shipment Regulation as the NSP departed from the UK. Therefore, it is the Government of the United Kingdom who is currently investigating whether the departure was in non-compliance with the EU Waste Shipment Regulation.

When knowledge of the sale was brought to the attention of the Danish Environmental Agency the NSPC was requested to share the details of this sale. The NSPC has stated that it was the company's opinion that the buyer had the intention of continuing to operate the NSP. Furthermore, the NSPC has stated that there was a clause in the sales contract demanding that if the buyer nevertheless wanted to recycle the ship, then the recycling must be responsible and in compliance with the Hong Kong Convention.

The Danish Environmental Agency has evaluated the information given by the NSPC and finds that there are not sufficient grounds to press charges against the company from a Danish point of view.

2. Please explain what actions, if any, the Government of Denmark has taken to ensure the safe and environmentally sound recycling of the North Sea

Producer or the decontamination of the North Sea Producer before the vessel left the United Kingdom and was sent to Bangladesh for dismantling.

As mentioned in the response to question no 1 above, the Government of Denmark did not know of the NSP departing from the United Kingdom to Bangladesh for dismantling.

Generally, The Government of Denmark strongly supports safe and environmentally sound ship recycling globally. The actions that Denmark has taken in that context can be described as follows:

Ships which constitute waste and which are subject to a transboundary shipment for recycling, are regulated by the Basel Convention and the EU Waste Shipment Regulation.

The EU Waste Shipment Regulation implements the Basel Convention as well as an amendment to that Convention, which has not yet entered into force, and which establishes a ban on exports of hazardous waste to countries that are not members of the OECD.

Ships are generally classified as hazardous waste and thereby prohibited from being exported from the Union for recycling in facilities in countries that are not members of the OECD.

The EU regulation is supported by the Danish Statutory Order on 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 Danish 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. Classification of a ship is done by the municipality for smaller ships (up to 1.500 tons) and by the Danish Environmental Protection Agency, for larger ships (more than 1.500 tons). For the use of this classification the competent authority (either the municipality or the Danish Environmental Protection Agency) requests a wide range of information on the ship, e.g. documentation of the ownership, registration of the ship and status on certificates and classifications. This procedure is laid down in the Danish Statutory Order on Waste.

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 Waste Shipment Regulation and the Danish Statutory Order on Waste.

Difficulties in enforcing the Basel Convention with regards to ships, as well as the European ban on export of hazardous waste outside the OECD led to the adoption of the Hong Kong Convention.

Denmark has acceded to the Hong Kong Convention becoming the seventh party to the convention.

The Hong Kong Convention has been implemented in the EU by the Ship Recycling Regulation.

The Ship Recycling Regulation sets more stringent requirements than the Hong Kong Convention, notably with regards to health, safety and the environment.

From a date to fall at the latest on 31 December 2018, EU flagged ships may only be recycled in listed facilities. A first list of 18 compliant facilities located in the EU was published in December 2016. It is expected that additional facilities located outside the EU will be added on the list in 2018. The Commission is currently reviewing 24 applications for inclusion on the List received from ship recycling facilities located in China, India, Turkey and the USA.

The Danish Government looks forward to the entry into force of the Convention and the full application of the Ship Recycling Regulation.

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.

3. Please explain why the export of this ship containing hazardous wastes would not be in violation of the Basel Convention and its Ban Amendment, both incorporated in the EU Waste Shipment Regulation.

The following statements are of a general nature. It is solely the Government of the United Kingdom who is the competent authority in the case of the NSP to investigate whether the departure of the NSP was in non-compliance with the EU Waste Shipment Regulation.

The Basel Convention does not prohibit parties to send waste to each other. It does not contravene the Basel Convention to export a ship for recycling in e.g. India, provided that the exporter is a party to the Basel Convention like India. However, if the exporting country is a party of the EU there are limitations.

The other large recycling states in Asia – China, Pakistan and Bangladesh – are parties to the Basel Convention and can – the same way as India - legally receive ships for recycling from other parties to the Basel Convention.

An amendment to the Basel Convention – the so called “Basel ban” - has not yet become effective in the Basel Convention since too few countries have ratified it. However, the ban is implemented in the EU Waste Shipment Regulation, which means that it is prohibited to export hazardous waste from EU to non-OECD countries (e.g. India, China, Pakistan and Bangladesh).

4. 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 business enterprises engaged in shipbreaking outside the territory of the Denmark in accordance with international human rights laws, including Guiding Principles on Business and Human Rights in its overseas operations.
5. Please indicate other additional measures taken by the Government to ensure the implementation of the UN Guiding Principles on Business and Human Rights, including requiring business enterprises domiciled in its territory or jurisdiction, such as A.P. Moeller Maersk, meet their responsibility to respect human rights throughout their operations, including any guidance provided to business enterprise on how to respect human rights throughout their operations.

As a result of the adoption of the UN Guiding Principles for Business and Human Rights and to accommodate the right to access to non-judicial remedy, the Danish Government has established a mediation and complaints-handling institution for responsible business conduct. To ensure that a non-judicial remedy has a maximum of legitimacy and authority, the institution was established by Danish law, which was passed through parliament and approved on June 12, 2012.

The purpose of the institution is to investigate cases involving potential adverse impacts by Danish companies on international CSR guidelines. The institution focuses on mediation to solve complaints - both on company level and if that is not possible, assisted by the mediation and complaints-handling institution. If mediation is not possible, the institution can initiate an investigation of the matter and based on the result, make a public statement.

The mediation and complaints-handling institution was established in accordance with the international effectiveness criteria for non-judicial mediation and grievance mechanisms as described in the UNGPs (GP 31). The institution can examine complaints involving not only Danish private companies but also public authorities and private organization, like NGO's. It can also take up cases on its own initiative, which will allow the institution to be proactive in cases of substantive importance.

Yours sincerely,

Hans Christian Karsten
Deputy Director