

Mandate of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes.

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Excellency,

I have the honour to address you in my capacity as the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes pursuant to Human Rights Council resolutions 27/23.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning the alleged transboundary movement of an end-of-life ship containing hazardous substances and wastes, which has recently arrived in India for dismantling. A letter concerning this case has been sent to the Government of India on 30 December 2014.

According to information received:

On 22 December 2014, an end-of-life ship, Clipper Concord (IMO No. 9232319), owned by a company registered in Denmark, called Clipper Group, operating under the flag of the Bahamas, has arrived in Indian waters. The ship has been beached for dismantling (shipbreaking) on 4 January 2015 in Alang beach, Bhavnagar, Gujarat, India.

This end-of-life ship has reportedly not been decontaminated in the country of export, Denmark. The ship contains hazardous substances and wastes such as asbestos, Polychlorinated biphenyls (PCBs), oil fuels, and heavy metals, which have been exported to India and are expected to be disposed in an environmentally unsound manner.

The above listed substances are highly dangerous and may impose critical and irreversible adverse health effects on workers and nearby community members,

including children, as well as adverse impacts on the environment on which they depend.

Asbestos is a highly toxic substance that can cause lung cancer, mesothelioma, cancer of the larynx and ovary, and asbestosis (fibrosis of the lungs).

PCBs are persistent organic pollutants. They remain in the environment for long periods, accumulate in the fatty tissue of living organisms, and can also cause cancer, birth defects and reproductive and neurological damage. Like other chemicals with endocrine (hormone) disrupting effects, children are particularly vulnerable to adverse effects of PCBs when exposed at a young age.

Heavy metals such as lead, mercury, arsenic and cadmium are found in paints, coatings and electrical equipment of end-of-life vessels. These substances are often dumped or burnt on the beaches where ships are dismantled, adversely affecting both human health and the environment. Heavy metals build up inside living organisms, and exposure to these metals may lead to severe long-term effects, including cancer and damage to the nervous, digestive, reproductive and respiratory systems. Children are particularly vulnerable to the adverse effects of these toxic heavy metals.

As a result of shipbreaking, these unquestionably hazardous chemicals, together with oil, fuel, sludge and associated residues, are regularly released into the environment, mixing with soil and water on the beach. This, in turn, may lead to poisoning of marine organisms and other living organisms that people regularly consume as food. Workers, often children, are vulnerable to direct exposure to these hazardous substances as well.

According to the information received, the Clipper Group, owner of Clipper Concord, believes it is up to the ship owners to take on the responsibility of approving shipbreaking yards and processes because the Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships has not entered into force yet.

While I do not wish to prejudge the accuracy of these allegations, I am deeply concerned about the potential human rights violations caused by the dismantling of this ship. As stated by my predecessor Special Rapporteur on the adverse effects of the movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights, shipbreaking may have an adverse impact on “the enjoyment of several human rights, including the right to life, the right to the highest attainable standard of physical and mental health, and the right to safe and healthy working conditions” (A/HRC/12/26, para. 20). I am also concerned about the potential life-long health impacts

that the hazardous substances and wastes may have on children residing in the affected area.

While the principal obligation to respect, protect and fulfil human rights, and to ensure that operations of business enterprises within their territory or jurisdiction respect human rights lies with the concerned host State, India, home States to corporations also have an important role to play to protect human rights when such business enterprises engage in conduct that is alleged to violate or harm the enjoyment of human rights abroad. As further described below, Denmark has obligations under these circumstances.

In this regard, I would like to refer to your Excellency's Government that the Universal Declaration of Human Rights sets no explicit jurisdictional limitations and the International Covenant on Economic, Social and Cultural Rights (ICESCR) provides a basis for extraterritorial obligations through its Article 2, para. 1, which states that "[e]ach State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation [...] with a view to achieving progressively the full realization of the rights recognized in the present Covenant." Under the ICESCR, States Parties have legal obligations to realize the right to health and the right to safe and healthy working conditions as stated in Articles 12 and 7, respectively. The Government of Denmark ratified the Covenant on 6 January 1972.

With regard to the rights of the child, I would like to draw your attention to Article 24 of the Convention on the Rights of the Child, regarding your Excellency's Government's obligations to "recognize the right of the child to the enjoyment of the highest attainable standard of health [...] taking into account the dangers and risks of environmental pollution". The Committee on the Rights of the Child (CRC) recommended, in its concluding observations concerning the Government of Denmark in 2011, that "the State party provide a framework for reporting on child rights by Danish corporations, including multinational corporations headquartered in Denmark, and for the National Contact Point to address cases of non-compliance, including extraterritorially, by Danish multinational enterprises" (CRC/C/DNK/CO/4, para. 30).

Furthermore, the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment stated, "most of the sources reviewed [...] do indicate that States have obligations to protect human rights [...] from the extraterritorial environmental effects of actions taken within their territory" (A/HRC/24/53, para. 64). In his report to the Human Rights Council, the Special Representative of the Secretary-General on business and human rights urged States to do more to prevent corporations from abusing human rights abroad (A/HRC/14/27).

The Guiding Principles on Business and Human Rights (A/HRC/17/31), endorsed by the Human Rights Council in its resolution 17/4, affirm the foundational principle that

“States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations” (Principle 2), including their operations abroad.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

Furthermore, I would like to draw your Excellency’s Government’s attention that the movement of Clipper Concord is under scrutiny of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and its Ban Amendment, even if the Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships has not entered into force yet.

The seventh Conference of the Parties to the Basel Convention noted that “a ship may become a waste as defined in article 2 of the Basel Convention and that at the same time it may be defined as a ship under other international rules”. This means that a ship containing asbestos, PCBs or other hazardous substances may be considered as hazardous waste when destined for recycling or disposal. It should be noted that the Government of Denmark has been party to the Basel Convention since 6 February 1994.

Under the Ban Amendment of the Basel Convention, which has not yet entered into force, but has already been given effect within the European Union (EU), your Excellency’s Government, as a member of the EU, has a legal obligation to prohibit immediately all transboundary movements of hazardous wastes that are destined for final disposal operations from Denmark (an OECD country) to India (a non-OECD country) in accordance with Regulation (EC) No. 1013/2006 on shipments of waste.

Furthermore, I would also like to draw your Excellency’s Government’s attention that the Technical Guidelines for the Environmentally Sound Management of the Full and Partial Dismantling of Ships (Basel Convention series/SBC No. 2003/2). The Guidelines state that “[h]azardous wastes and materials such as asbestos, PCBs and TBT paints should, to the extent possible, be removed in best available facilities from the ship during its life cycle prior to its voyage for dismantling so that a minimal amount of this material will have to be dealt with during the breaking process”.

In view of the urgency of the matter, I would appreciate a response on the initial steps taken by your Excellency’s Government to prevent all potential human rights violations, including measures taken to protect workers and community members, especially children, from exposure to toxic chemicals that may be released from the dismantling of this ship.

As it is my responsibility, under the mandates provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would be grateful for your observations on the following matters:

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 on 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 or 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 to 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.

While awaiting a reply, I urge that your Excellency's Government takes all necessary measures to prevent dismantling of this ship and to prevent re-occurrence. In the event that the investigations support or suggest the allegations to be correct, international law requires the accountability for human rights violations.

I also wanted to bring to your attention that a letter regarding this case was sent to the Government of India on 30 December 2014, and that I may share this letter with the Government of the Bahamas, as well as the owner of the vessel, in due course.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of my highest consideration.

Baskut Tuncak
Special Rapporteur on the implications for human rights of the
environmentally sound management and disposal of hazardous
substances and wastes