

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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Dear Ms Christensen,

I have the honour to address you in my capacity as 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 resolution 27/23.

In this connection, I would like to bring to the attention of Clipper Group information I have received concerning the **alleged transboundary movement of an end-of-life ship, owned by Clipper Group, containing hazardous substances and wastes, which has recently arrived and beached in India for dismantling**. A letter concerning this case has been sent to the Government of India on 30 December 2014 and to the Government of Denmark on 13 January 2015.

According to information received:

On 22 December 2014, an end-of-life ship, Clipper Concord (IMO No. 9232319), owned by Clipper Group, a company registered in Denmark, 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.

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/or 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 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 stated that 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).

While the principal obligation to respect, protect and fulfil human rights lies primarily with States, I wish to bring to your attention that private actors – including all business enterprises – also have responsibilities to respect human rights under international human rights laws and standards.

The Guiding Principles on Business and Human Rights (A/HRC/17/31), unanimously endorsed by the Human Rights Council in its resolution 17/4, affirm the foundational principle that “[b]usiness enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved” (Principle 11). The Guiding Principles have been established as the authoritative global standard for all States and businesses with regard to preventing and addressing the risk of business-related human rights impacts.

Principle 12 of the Guiding Principles states that the business responsibility to respect human rights covers the full range of rights listed in the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). I would like to draw your special attention to Article 3 of UDHR and Article 6 of ICCPR, which enshrine the right to life, and to Articles 7 and 12 of ICESCR, in which the rights to safe and healthy working conditions and health are guaranteed, respectively.

Moreover, business enterprises are expected to carry out human rights due diligence in order to identify, prevent, mitigate and account for how they address their impacts on human rights. Where a business enterprise causes or may cause an adverse human rights impact, it should take the necessary steps to cease or prevent the impact. Similarly, where a business enterprise contributes or may contribute to an adverse human rights impact, it should take the necessary steps to cease or prevent its contribution and use its leverage to mitigate any remaining impact to the greatest extent possible (commentary to Guiding Principle 19).

Furthermore, business enterprises should remedy any actual adverse impact that it causes or contributes to. Remedies can take a variety of forms and may include apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition. Procedures for the provision of remedy should be impartial, protected from corruption and free from political or other attempts to influence the outcome (commentary to Guiding Principle 25).

I further note that Denmark, in which Clipper Group is domiciled, is a member of the Organisation for Economic Cooperation and Development (OECD) and adheres to the

OECD Guidelines for Multinational Enterprises, which are consistent with the Guiding Principles on Business and Human Rights. The Guidelines also call on companies incorporated in OECD countries to respect human rights, carry out human rights due diligence, and ensure remedy when negative impacts do occur.

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 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. 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), Denmark, 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 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 this matter, I would appreciate response on the initial steps taken by Clipper Group to prevent all potential human rights violations, including measures taken to protect workers and community members from exposure to toxic chemicals that may be released from the dismantling of this ship.

As it is my responsibility, under the mandate 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, in detail, what actions has Clipper Group taken to ensure decontamination of Clipper Concord before leaving Denmark to India for dismantling.
3. Please explain why the export of Clipper Concord containing hazardous wastes is not in violation of the Basel Convention and its Ban Amendment.
4. What steps has Clipper Group taken to fulfill its responsibilities to identify, prevent, mitigate and account for how Clipper Group addresses impacts on human rights? Please be as detailed as possible.
5. Please provide, in detail, the result of the human rights and environmental impact assessment conducted by Clipper Group prior to choosing India as a venue for dismantling, including all information considered in reaching these conclusions of the possible impacts.
6. Please explain details on how Clipper Group plans to provide remedies, should the dismantling of Clipper Concord infringe human rights of the workers and residents of the affected area.
7. Please explain the steps Clipper Group intends to take to guarantee non-recurrence of a similar situation of transboundary movement of hazardous wastes.

While awaiting a reply, I urge that Clipper Group take 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.

This letter and your response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Me Christensen, 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

