

Mandates of the Working Group on the issue of human rights and transnational corporations and other business enterprises and 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,

We have the honour to address you in our capacities as Working Group on the issue of human rights and transnational corporations and other business enterprises and 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 35/7 and 36/15.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **alleged transboundary movement of an end-of-life ship owned by a partnership between a Danish and a Brazilian company and containing hazardous substances and wastes, which arrived in August 2016 in Chittagong, Bangladesh for dismantling**. A letter concerning this case was also sent to the Governments of Bangladesh, Brazil and United Kingdom and to the companies concerned.

According to information received:

The vessel named North Sea Producer (originally built as a tanker named Dagmar Maersk on 22 September 1983) operated as a Floating Production Storage and Offloading (FPSO) unit transporting and extracting oil from the UK continental shelf. In his last 17 years of operation, the North Sea Producer was owned by the UK registered North Sea Production Company, a single-ship joint venture between the Danish A.P. Moeller Maersk and the Brazilian Odebrecht.

The joint venture between A.P. Moeller Maersk and Odebrecht sold the North Sea Producer in April 2016. The companies reportedly informed authorities in the United Kingdom that the vessel was being purchased by a Saint Kitts and Nevis-based company, "Conquistador Shipping Corporation", to be further utilized in the Tin Can port in Nigeria. Despite this information, the ship left the United Kingdom on 17 May 2016 and was towed straight to Bangladesh, with only a few fuel stops on its way to be beached in Chittagong Bangladesh for dismantling on 16 August 2016. Allegedly, a fake attestation that the ship did not contain hazardous materials was provided to Bangladeshi authorities by Conquistador Shipping Corporation.

The Janata Steel yard in Bangladesh reportedly purchased the vessel from Global Marketing Systems (GMS) the world largest scrap dealer, also known as cash buyer, of ships for recycling. It is reported that GMS was involved in the setting

up of the post box company Conquistador Shipping Corporation for ship registration purposes. The North Sea Production Company thus sold the North Sea Producer to a well-known scrap dealer and must therefore have been aware that the tanker would not be further operationally used.

Non-governmental organizations raised serious concerns with regard to the contamination of the vessel structure by dangerous chemicals, oil and gases, as well as radioactive material. Once the ship arrived in Chittagong, and upon alerts issued by civil society, the Attorney General of the Department of Environment in Bangladesh set up a special committee to determine the presence of contaminated residues, and to investigate the ship's illegal import due to the alleged lack of necessary clearances and false claims that the ship was hazardous-free. A report on the ship's condition was released in June, 2017 indicating the presence of radioactive residues and noting the need for further surveys on the whole ship. Due to concerns on the risks posed by toxic component on the ship, an injunction on the breaking of the North Sea Producer was obtained until October and has been extended until further notice as the case is currently being dealt with in the Bangladesh Supreme Court High Court Division.

At the yard where the North Sea Producer was supposed to be dismantled, shipbreaking is accomplished without workers having access to necessary safety equipment as well as use of proper safety procedures. Work reportedly is carried out manually by workers with torch cutters. Oxygen and gas are pumped through a device that creates a 1500°C flame that can cut through steel coated with paints that contain hazardous substances such as heavy metals. Reports also indicate that workers do not use necessary protective clothing, some moving with bare feet and sandals in the tidal mudflat used as the dismantling area. Most workers live in unhealthy conditions in wood and sheet metal shacks right next to the walls of the shipyard. Coughs, headache and breathing problems are reported among workers in dismantling yards in the same area in Bangladesh.

The tidal beach area where dismantling takes place is also not adequately protected from pollution as hazardous materials are in direct contact with the soil and sea. Reports noted the presence of children from neighbouring communities playing on the beach where the toxic components of North Sea Producer are being kept today.

While we do not wish to prejudge the accuracy of these allegations, as stated at the conclusion of the visit of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes to Denmark in October, we are deeply concerned about the potential human rights violations caused by the dismantling of this ship in Chittagong. As stated by the then 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).

We are especially concerned about the potential life-long health impacts that the hazardous substances and wastes may have on the communities residing in the affected area, particularly children. 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, Bangladesh, home States to corporations (in this case A. P. Moeller Maersk being a Danish corporation) 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.

Under the circumstances described, particularly considering the determining role of A. P. Moller Maersk in the management and selling of the North Sea producer, Denmark has international obligations even if the ship was registered by a joint venture based in the United Kingdom. In this regard, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and other additional standards relevant to these allegations.

It is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. We would therefore 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 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.
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.
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.

We would appreciate receiving a response within 60 days.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We may also intend to publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government to clarify the issue/s in question.

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 our highest consideration.

Anita Ramasastry
Chair-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

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your Excellency's Government's attention to applicable international human rights norms and standards, as well as authoritative guidance on their interpretation. These include:

We 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, we 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).

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 4 "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.

In this connection, we would like to draw your attention to General Comments of treaty bodies for the Covenants and Conventions mentioned, which note that extraterritorial obligations arise when a State party may influence situations located outside its territory by controlling the activities of corporations domiciled in its territory and/or under its jurisdiction. For example, General Comment No. 24 (2017) of the Committee of Economic, Social and Cultural Rights states that "the extraterritorial obligation to protect requires States parties to take steps to prevent and redress infringements of Covenant rights that occur outside their territories due to the activities of business entities over which they can exercise control." Furthermore, General Comment No. 16 (2013) of the Committee on the Rights of the Child states that "Home States also have obligations [...] to respect, protect and fulfil children's rights in the context of

businesses' extraterritorial activities and operations, provided that there is a reasonable link between the State and the conduct concerned. A reasonable link exists when a business enterprise has its centre of activity, is registered or domiciled or has its main place of business or substantial business activities in the State concerned."

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, we would like to draw your Excellency's Government's attention that the movement of North Sea Producer 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 radioactive materials 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 trans-boundary movements of hazardous wastes that are destined for final disposal operations from Denmark (an OECD country) to Bangladesh (a non-OECD country) in accordance with Regulation (EC) No. 1013/2006 on shipments of waste.

Furthermore, we 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".

We would like to highlight the UN Guiding Principles on Business and Human Rights, which were unanimously endorsed by the Human Rights Council in its resolution (A/HRC/RES/17/31) in 2011. These Guiding Principles are grounded in recognition of:

- a) "States' existing obligations to respect, protect and fulfil human rights and fundamental freedoms;
- b) "The role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and to respect human rights; and

- c) “The need for rights and obligations to be matched to appropriate and effective remedies when breached.”

All States have a duty under the international human rights legal framework to protect against human rights abuse by third parties. Guiding Principle 1 clarifies the State duty “to protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises.” This obligation requires that a State takes appropriate steps to “prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.” In addition, this requires, *inter alia*, that a State should “enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights...” (Guiding Principle 3). The duty applies to all internationally recognized human rights as set out in the International Bill of Human Rights and the fundamental labour rights as set out in the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work. The Guiding Principles also require States to ensure that victims have access to effective remedy in instances where adverse human rights impacts linked to business activities do occur.

The Guiding Principles also clarify that business enterprises have an independent responsibility to respect human rights.

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).

Finally, we would like to recall that the Committee on the Economic, Social and Cultural Rights in its General Recommendation N° 24 (2017) states that “extraterritorial obligation to protect requires States Parties to take steps to prevent and redress infringements of Covenant rights that occur outside their territories due to the activities of business entities over which they can exercise control, especially in cases where the remedies available to victims before the domestic courts of the State where the harm occurs are unavailable or ineffective- This obligation extends to any business entities over which States Parties may exercise control, in accordance with the Charter of the United Nations and applicable international law. Consistent with the admissible scope of jurisdiction under general international law, States may seek to regulate corporations that

are domiciled in their territory and/or jurisdiction: this includes corporations incorporated under their laws, or which have their statutory seat, central administration or principal place of business on their national territory. States Parties may also utilize incentives short of the direct imposition of obligations, such as provisions in public contracts favoring business entities that have put in place robust and effective human rights due diligence mechanisms, in order to contribute to the protection of economic, social, and cultural rights at home and abroad.”