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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

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

Summary

The present report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes is submitted to the Human Rights Council in accordance with Council resolution 21/17.

Recently appointed by the Council, at the end of June 2014, and having assumed the mandate on 1 August 2014, the Special Rapporteur, in his first report to the Council, provides a brief overview of the background, history, scope and context of the mandate, and presents his preliminary strategy for the mandate.

In order to enable the fulfilment of his mandate, which includes an analysis of gaps and ambiguities in international laws, as well as the development of a best practices guide, the Special Rapporteur will hold a number of consultations in the coming months and will undertake country missions as early as possible.

* The present report is submitted late due to the untimely passing of the former Special Rapporteur, Marc Pallemmaerts. Subsequently, the Human Rights Council appointed Baskut Tuncak as the new Special Rapporteur, at the end of June 2014, and Mr. Tuncak assumed the mandate on 1 August 2014.



I. Introduction

1. In 1995, the Commission on Human Rights (superseded by the Human Rights Council) affirmed that the illicit traffic and dumping of toxic and dangerous products and wastes constituted a serious threat to the human rights to life and health (resolution 1995/81). Accordingly, the Commission appointed a Special Rapporteur with a mandate to examine the human rights aspects of that issue.
2. In 2011, the Human Rights Council, at its eighteenth session, decided to strengthen and expand the scope of the mandate, affirming that the way hazardous substance and wastes were managed throughout their life cycle, including manufacturing, distribution, use and final disposal, may have an adverse impact on the full enjoyment of human rights (resolution 18/11). Accordingly, the title of the special rapporteur was changed to Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes.
3. At its twenty-first session, the Council appointed Marc Pallemmaerts as Special Rapporteur, and he took up the newly expanded mandate on 1 November 2012. However, due to the tragic loss of Mr. Pallemmaerts in May 2014, following several months of poor health, a new special rapporteur had to be appointed. At its twenty-sixth session, the Council appointed Baskut Tuncak as the new Special Rapporteur. He assumed the mandate on 1 August 2014.
4. In view of his very recent appointment under extraordinary circumstances, in this first report to the Council, the Special Rapporteur provides a summary of the scope of the current mandate and presents a brief outline of the strategy and methodology that will inform his work to fulfil the mandate, so as to enable a dialogue with the Human Rights Council that will allow him to refine his plans and approach.

II. Overview of the mandate

A. Scope of the current mandate

5. In its resolution 21/17, the Human Rights Council tasked the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, with a mandate to provide information on:
 - (a) The human rights issues raised by transnational corporations and other business enterprises in connection with the environmentally sound management and disposal of hazardous substances and wastes;
 - (b) The scope of national legislation relating to the human rights implications of the management and disposal of hazardous substances and wastes;
 - (c) The human rights implications of waste-recycling programmes and the transfer of polluting industries, industrial activities and technologies from one country to another and new trends therein, including e-waste and the dismantling of ships;
 - (d) Support and assistance to victims of human rights violations relating to the environmentally sound management and disposal of hazardous substances and wastes;
 - (e) The ambiguities in international instruments that allow the movement and dumping of hazardous substances and wastes, and any gaps in the effectiveness of international regulatory mechanisms;

(f) Human rights abuses and violations committed against human rights defenders owing to their activities relating to the environmentally sound management and disposal of hazardous substances and wastes.

6. Furthermore, the Council requested the Special Rapporteur to submit, at its twenty-fourth session, a progress report, with specific recommendations and proposals on the steps to be taken immediately to address the adverse effects on human rights of hazardous substances and wastes.

7. Additionally, the Council urged the Special Rapporteur to develop, in consultation with relevant stakeholders and with the support of the United Nations High Commissioner for Human Rights, a guide to best practices regarding the human rights obligations related to the environmentally sound management and disposal of hazardous substances and wastes, and to submit the guide together with his report to the Human Rights Council at its twenty-seventh session.

8. The Special Rapporteur is also tasked with undertaking country missions consistent with his mandate, investigating allegations of human rights abuses, and providing governments with the opportunity to respond.

9. The present mandate reflects current issues in both environmental and human rights laws. As described in the previous mandate holder's report to the Council, modern laws and policies have increasingly embraced a life-cycle approach to chemicals management, helping to reduce the human rights implications of hazardous substance and wastes.

10. Projections for the coming years show a continued growth of chemical production and use worldwide, including rapid acceleration in countries that may have less robust legal frameworks for chemicals management.¹ This trend has implications for the environmentally sound management of all types of waste. In addition, it underscores the importance of the mandate, in view of the potential implications of the expansion in chemical production and use both for the promotion and for the erosion of human rights.

11. For example, in its resolution 21/17, the Council requested the Special Rapporteur to provide information regarding the scope of national legislation relating to the human rights implications of the management and disposal of hazardous substances and wastes, to examine the transfer of polluting activities from one country to another, and to develop the guide to best practices mentioned above. Moreover, the inclusion of transnational corporations within the Special Rapporteur's mandate reflects the increasing role of such businesses in the sound management of substances and waste throughout their complete life cycle.

12. Given the global dimensions of hazardous substances and wastes, the Council encouraged the Special Rapporteur to carry out his mandate in close cooperation with the United Nations Environment Programme, relevant specialized agencies such as the World Health Organization and the International Labour Organization, and the secretariats of relevant international environmental conventions, with a view to mainstreaming human rights into their work and avoiding duplication.

13. The Special Rapporteur was requested to identify, in cooperation with these organizations and other relevant experts and stakeholders, gaps and ambiguities in international laws relating to hazardous substances and wastes that gave rise to adverse effects on human rights, and to provide specific recommendations to immediately address those gaps.

¹ United Nations Environment Programme, *Global Chemicals Outlook: Towards Sound Management of Chemicals* (2012).

14. Moreover, subsequent to resolution 18/11, the Council expanded the mandate further in resolution 21/17. Resolution 21/17 made provision for the Special Rapporteur to respond to the situation of human rights defenders who are subject to human rights abuses and violations owing to their activities relating to the environmentally sound management and disposal of hazardous substances and wastes.

B. Prior and ongoing work under the mandate

15. Since 1995, the Special Rapporteur's predecessors have investigated and reported on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights. These investigations have examined specific issues from a human rights standpoint, for example the troubling methods by which ships may be dismantled (shipbreaking) (A/HRC/12/26) and electronic waste (e-waste) may be disposed of (see E/CN.4/2004/46), while also surveying the human rights affected, to varying degrees, by a broader range of toxic and dangerous products and wastes. Country missions have been undertaken to a diverse group of countries, approximately twenty to date, with reports being made to the Human Rights Council (or the Commission on Human Rights) of relevant findings.

16. Rather than restating the substantial work undertaken in years past, which focused on downstream, disposal-related issues, the Special Rapporteur intends to focus his work particularly on the new dimensions added to the mandate since 2011, when it was strengthened to embrace a life-cycle approach to the environmentally sound management of hazardous substances and wastes.

17. In 2012, the first report under the new mandate as extended and amended in resolution 18/11 drew the Council's attention to extractive industries from the perspective of human rights, with a focus on toxic chemicals. More precisely, the report surveyed the human rights impacts from the unsound management of hazardous substances and wastes used in and generated by extractive industries. The report explored various techniques and emerging issues in extractive industries, and outlined the international normative framework for the sound management of hazardous chemicals and wastes as it relates to the extraction of raw materials. The report concluded with recommendations (A/HRC/21/48).

18. Marc Pallemmaerts, appointed Special Rapporteur by the Human Rights Council at its twenty-first session, presented to the Council at its twenty-fourth session a progress report which analysed the present international framework in the field of the mandate, from various legal perspectives. That report provides a useful overview of life-cycle stages and regulatory gaps in international law, and helps to establish a basis for identifying areas for future focus (A/HRC/24/39). The late Mr. Pallemmaerts was unable to complete the tasks outlined under various elements of the mandate.

III. Planning the programme of activities relating to the mandate

19. In this section, the Special Rapporteur outlines his preliminary plan for discharging the mandate given by the Council. This plan is tentative; it is subject to revision once he has had the opportunity to conduct broad consultations with relevant stakeholders, as well as in response to unforeseen events, and is also contingent upon the dialogue held in the Council on current and future reports and resolutions. It builds upon the plan outlined by the previous Special Rapporteur, and takes into account the extraordinary and unforeseen circumstances that prevented many of the elements of the previous Special Rapporteur's plan from being addressed over the past year.

20. The Special Rapporteur intends to continue the approach to the mandate whereby specific thematic issues cutting across various levels of governance are explored, as are the circumstances in particular countries or regions, with the latter entailing field visits to countries and relevant institutions involved in the management of hazardous substances and wastes. When choosing the issues on which to focus his thematic reports, criteria such as the extent and the gravity of actual or potential human rights violations arising from a particular issue, and whether an analysis from the perspective of victims of human rights violations could add impetus to international efforts to address a particular issue, will be applied.

21. The Special Rapporteur plans to undertake two full-fledged country visits per year. As was the case with his predecessor, the Special Rapporteur will strive for a proper balance in the choice of destinations for country visits, in order to visit all regions of the world and all categories of countries. The Special Rapporteur hopes that his first such visit will be made in response to an invitation extended to his predecessor that the latter was unable to take up. The Special Rapporteur will also take advantage of country visits to visit the headquarters of relevant international organizations.

22. In executing the mandate, the Special Rapporteur will visit the headquarters and/or governing meetings of a number of international and intergovernmental organizations, within or outside the United Nations system, that play a key role in the regulation of hazardous substances and wastes. He will seek closer collaboration with the United Nations Environment Programme, the International Labour Organization and the World Health Organization. In addition, he will seek input from other participants in the Inter-Organization Programme for the Sound Management of Chemicals, such as the Food and Agriculture Organization of the United Nations and the United Nations Institute for Training and Research, as well as from other relevant organizations and actors identified in previous reports to the Council or as otherwise necessitated by the mandate.

23. The Special Rapporteur emphasizes that he will strive to provide opportunities for all interested stakeholders to submit evidence that falls within the scope of the mandate. The Special Rapporteur agrees with his predecessor that the method applied by the World Commission on Environment and Development (the Brundtland Commission) in the mid-1980s, which enabled the popularization of the concept of sustainable development, could provide a useful model (A/HRC/24/39, para. 55). To that end, the Special Rapporteur would like to hold a series of consultations during the term of his mandate in order to give an opportunity to all stakeholders — including governments, national human rights institutions, scientists, research institutes, the business community, civil society, and the general public, as well as experts and practitioners of environmental, human rights, and chemicals management laws — to submit any and all evidence relevant to his mandate.

24. Such meetings will allow the identification and consideration of existing problems and gaps in chemicals management that carry human rights implications. Specific proposals and recommendations for lasting solutions to existing problems and gaps will be discussed with stakeholders, as they emerge. In addition, attention will be drawn to cases involving the management of hazardous substances that require immediate intervention in order to address adverse effects on human rights.

25. The Special Rapporteur will report to the Council at its thirtieth session on progress made in connection with the guide to best practices, which will reflect all the experience gained and evidence gathered during the course of his work pursuant to the mandate. He notes, however, that he expects to need more than a year of work to complete a draft for consideration by the Council. As envisioned by his predecessor, the Special Rapporteur will consider existing global and regional instruments for the protection and promotion of human rights, and for protection of the environment, workers and consumers. He will also consider the case law and practice of relevant human rights treaty courts and other

supervisory bodies, and the work undertaken by other special procedures, including his predecessors on this mandate.

26. For his next thematic report, the Special Rapporteur is considering carrying out a study on the right to information in the context of the environmentally sound management and disposal of hazardous substances and wastes. The Universal Declaration of Human Rights (art. 19) and the International Covenant on Civil and Political Rights (art. 19), among other human rights instruments, stipulate that the right to freedom of expression includes the freedom “to seek, receive and impart information”. The right to information is also ensured through a number of international and regional environmental instruments.² As noted by the then Special Rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights, access to, and the communication of, information about hazardous substances and wastes and their effects on the environment “are essential to guarantee certain other rights, such as the rights to life, to health and to adequate food” (A/HRC/7/21, para. 5). In order to avoid duplicating earlier work, the report will focus on aspects of particular relevance to the tasks mandated under Council resolutions 18/11 and 21/17.

27. The Special Rapporteur looks forward to comments and suggestions from the Council on his plans as outlined in the present document, and particularly to any feedback on methodological issues and the organization of country visits. Furthermore, he looks forward to receiving invitations for country visits from as wide as possible a range of countries, in all regions of the world, and to receiving suggestions in that regard from all stakeholders. The Special Rapporteur welcomes opportunities for collaboration with other relevant mandate holders within their respective mandates.

28. The Special Rapporteur concludes the present report by launching a first appeal to States, relevant United Nations entities, non-governmental organizations, sectoral actors and any other stakeholders to provide him with information and evidence relevant to his mandate, including on situations of particular human rights concern, at their earliest convenience and on an ongoing basis. In addition, he will solicit more specific information on relevant trends and issues as he prepares specific thematic reports and country visits.

² For example, treaties such as the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (art. 15), the Stockholm Convention on Persistent Organic Pollutants (art. 10), the United Nations Framework Convention on Climate Change (art. 6 (a)) and the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention), as well as other instruments, such as Principle 10 of the Rio Declaration on Environment and Development.