

Communication to the Aarhus Convention Compliance Committee

United Nations Economic Commission for Europe

Environment and Human Settlement Division

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II. Party concerned

Greece

III. Facts of the communication

A. Introductory facts concerning the operation to destruct the Syrian chemical weapons in international waters in the Mediterranean sea

We, the signatories of the present Communication, are the Cretan Clerical Authority, the Mayors of Cretan Municipalities, the Presidents of Local Cretan Authorities, Associations, Unions, *etc* and permanent residents of the island of Crete (Greece) that will be directly and seriously affected by the operation of the destruction of the Syrian chemical weapons in an unspecified location in the Mediterranean Sea.

Following the Framework Agreement between the Russian Federation and the United States of America for the elimination of the Syrian chemical weapons, dated 14 September 2013, the Executive Council of the Organization for the Prohibition of Chemical Weapons (OPCW) at its thirty-third Meeting, held on 27 September 2013, adopted a decision entitled "*Destruction of Syrian Chemical Weapons*" (EC-M-33/DEC.1, 27 September 2013), which established special procedures for the expeditious destruction of the Syrian Arab Republic's chemical weapons programme and called for its full implementation in the most expedient manner. This decision was followed by the adoption on the same day of Resolution 2118 (2013) by the United Nations Security Council, which endorsed the decision of the Executive Council.

In accordance with subparagraph 1(b) of EC-M-33/DEC.1, the Syrian Arab Republic declared possession of chemical weapons, chemical weapons production facilities (CWPFs), abandoned chemical weapons, riot control agents and other chemical weapons-related facilities. On 21 November 2013, the Syrian Arab Republic

submitted an amendment to its initial declaration increasing the total amount of declared munitions to approximately 1,260 items.

The Director-General reviewed the Syrian submission closely and concluded that *“the destruction of chemical weapons carried out **outside** the territory of Syria constitutes the **most viable option available** to fulfill the requirements established under the Council decision (EC-M-33/DEC.1) and UN Security Council Resolution 2118 (2013) for the safe and expeditious elimination of chemical weapons in Syria”* (EC-M-34/DG.14, dated 5 November 2013) [emphasis added]. In accordance with subparagraph 1(c) of EC-M-33/DEC.1, the Syrian Arab Republic is required to *“complete the elimination of all chemical weapons material and equipment in the first half of 2014”*.

On 22 and 23 June 2014, the final shipments of chemicals identified for removal from the territory of the Syrian Arab Republic took place and were transported for destruction in international waters in the Mediterranean Sea, on the south part of the Greek island of Crete. The only information about the location of the undertaken hydrolysis operation was provided by the official website of the US Department of Defence where it is explicitly mentioned that the operation will take place *“in an unspecified location in the Mediterranean Sea”*.¹ Since the submission of our initial Communication in July 2014 and even after the completion of this destruction operation this is the only information that we have become aware of about the approximate location of the disposal site.

B. The role of Greece and its material contribution to the process destruction of the Syrian chemical arsenal in the Mediterranean Sea

The Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (Chemical Waste Convention) was ratified by Greece in 1994 (Law 2254/94, FEK 194/ A /94) and entered into force in 2002 (Law 2991/2002, FEK 35/ A /27.02.2002). Greece is a member of the OPCW and takes an active part in the decisions taken during its

¹ http://www.defense.gov/home/features/2014/0114_caperay/

Sessions, including the decision about the destruction of the Syrian chemical weapons in the Mediterranean Sea using the method of hydrolysis onboard the US Vessel “Cape Ray”.

The Greek Foreign Minister has provided the public **only with general and vague information** by mentioning that the whole operation aiming to destruct the Syrian chemical arsenal is under the **operational supervision of Greece**,² at least to the extent that there is transit via our territorial sea. In particular, Greece offered one ship and one submarine from the Hellenic Navy to escort Cape Ray.³ Moreover, Prof. Seimenis, Secretary General of the National Authority of Chemical Weapons, has been appointed as the national expert and has already submitted an unpublished Report to the Ministry of Foreign Affairs concerning the condition of the Cape Ray vessel and other crucial details about its operational safety.⁴

In addition, Greek authorities have not informed the public about the aforementioned operation nor have they provided guidance to the public in seeking access to information and in facilitating participation in decision-making in these environmental matters.

C. Risks arising from the at-sea destruction operation of the Syrian chemical arsenal

The risks of the undertaken operation were underlined in a series of official documents submitted by the UN Secretary General, Ban Ki Moon, in his exchange of letters with the President of the Security Council and in his letters transmitting to the Security Council the required monthly reports of the Director-General of the OPCW.

In particular, the UN Secretary General in his letter addressing the President of the Security Council, explicitly expressed his concerns that *“in the extant circumstances the pressures associated with the destruction timelines will not only*

² Statement by the USA Ambassador, Robert P. Mikulak, at the Seventy-Sixth Session of the Executive Council of the OPCW, 8 July 2014, expressing “his deep gratitude” *inter alia* to Greece for “offering security support for the MV Cape Ray while it conducts neutralization in international waters”. See attached Annex B8.

³ See attached Annex E19.

⁴ *ibid.*

*enhance operational and security risks, but also potential public health and environmental risks ... The OPCW-UN Joint Mission will seek to conduct an operation the likes which, quite simply, has **never been tried before**. ... I am very mindful of the **potential public health and environmental risks** that may arise from the destruction of chemical weapons and related material”*.⁵ [emphasis added]

On 27 November 2013, the UN Secretary General in his letter transmitting to the President of the Security Council the Second Monthly Report of the OPCW Director-General stated that *“the UN and OPCW maintain that the States undertaking the removal and maritime transport should seek to agree among themselves on questions of possession, jurisdiction and control and the related questions of **liability for, and mitigation of, security and other risks including in respect of damage to public health and the environment**. ... Achieving these timelines will require an unprecedented effort and coordination from all stakeholders under **extremely challenging conditions**. ... Given the complexity of the mission and the unpredictable operating environment, many factors remain outside the control of the Joint Mission”*.⁶ [emphasis added]

Moreover, on 27 December 2013, the UN Secretary General, in his letter to the President of the Security Council that enclosed the Third Monthly Report of the OPCW Director-General highlighted that *“the Joint Mission is working to achieve **unprecedented objectives in a uniquely challenging environment and in an extremely short period of time**”*.⁷ [emphasis added]

Additionally, it is important to mention that the potential risks to humans and the environment which are inherent in the chemical weapons destruction process and are associated even with normal destruction operations,⁸ are aggravated by a series of factors that play a central role in the undertaken operation to destruct the Syrian chemical arsenal.

⁵ *Supra*, note 1, p.6.

⁶ Letter dated 27 November 2013 from the Secretary-General addressed to the President of the Security Council transmitting the Second Monthly Report of the Director-General of the Organisation for the Prohibition of Chemical Weapons, S/2013/700, p.5-7. See attached Annex A4.

⁷ *supra*, note 9, p.6.

⁸ <http://www.opcw.org/our-work/demilitarisation/environmental-concerns-and-provisions/> under the Heading “*Environmental Concerns*”.

First and foremost, the decision that the operation to destruct chemical weapons will take place at sea is unprecedented both with regard to the onboard nature of the destruction operation and with regard to the method deployed (Field Deployable Hydrolysis System – FDHS), thus testifying to the pilot character of the whole operation. Even the US Ministry of Defence acknowledges that *“it is the first time the United States will neutralize chemical materials at sea”*.⁹

Besides these two critical factors, it is worth adding that this process will take place on the US vessel Cape Ray. However, this vessel is not compartmentalised and is built with only a single hull. In other words, Cape Ray is totally inappropriate for such a high risk operation due to the increased likelihood of an accident. The consequences of a possible – even accidental – leak during the process have to be seriously taken into consideration, especially due to the risk of dispersal around the Mediterranean Sea, which is a highly uncontrolled environment.¹⁰

All these concerns about the risks of the undertaken operation demonstrate the actual **existence of a high degree of danger** of the onboard destruction operation of the Syrian chemical arsenal in the international waters of the Mediterranean Sea. The existence of such a risk, the absolute lack of access to reliable environmental information and the absence of any scientific proof thereof constitute direct violations of International Environmental Law and in particular of the precautionary principle, the right to environmental information and public participation in environmental decision-making in accordance with articles 3(2) and 5(1c) of the Aarhus Convention, the right to a healthy environment, the right to health, the right to safety and the right to life of the residents of the adjacent areas.

⁹ http://www.defense.gov/home/features/2014/0114_caperay/

¹⁰ See Joint Statement by 62 Scientists and Environmental Organizations addressed to the President of the European Commission [J.M.Barroso], “At-sea destruction of Syrian Chemical Arsenal threatens the Mediterranean”, 18 March 2014, http://archipelago.gr/wp-content/uploads/Joint_Statement_Syrian_Weapons_in_Med.pdf. See attached Annex K48.

D. Contradictory information and non transparency during the design and implementation of the whole operation to destruct the Syrian chemical arsenal in the Mediterranean Sea leading to violation of the Aarhus Convention

On 27 November 2013, the UN Secretary General addressed a letter to the President of the Security Council, stating that “**full clarity** regarding the plan for the removal and the destruction of chemical material outside Syrian territory is critical, including the location for destruction”.¹¹ [emphasis added]

The Specialist Factsheet “Environmental and Health Protection” that the Communication Centre of the OPCW-UN Joint Mission has issued, acknowledges that “neutralizing chemical material at sea will be the **fastest** way to destroy the chemical materials given the tight timelines established by the OPCW Executive Council and UN Security Council decisions”.¹² [emphasis added]

However, this explicit and unquestionable statement comes in clear contradiction with the statement issued by the Ministry of Foreign Affairs of Greece, according to which the onboard hydrolysis process of the Syrian Chemical Weapons was chosen as the **one and only viable** method given the technical inability to hydrolyse these weapons on land.¹³

All these contradictions prove beyond any reasonable doubt the lack of clarity regarding the process of the onboard destruction of the Syrian Chemical Weapons in the international waters in the Mediterranean Sea, thus distorting the real sequence of facts. In essence, they deprive the public of their right to have access to reliable information and they put in danger their interests, thus violating in this way the right to have access to reliable environmental information pursuant to articles 3(2) and 5(1 a and b) of the Aarhus Convention.

In addition to these contradictions, the mere expression of an estimation by the OPCW Spokesperson, Martin Luhan, about the adherence of the destruction

¹¹ *supra*, note 17.

¹² *ibid.*

¹³ Announcement of the Ministry of Foreign Affairs of Greece on the issue of the destruction of the Syrian chemical arsenal, 22 January 2014, available online at: <http://www.mfa.gr/en/current-affairs/news-announcements/foreign-ministry-announcement-on-the-issue-of-the-destruction-of-the-weapons-in-syrias-chemical-arsenal.html>. See attached Annex G24.

operation with the highest safety standards of the Chemical Weapons Convention by no means appease the concerns raised.¹⁴

In essence, these two statements illustrate the absence of any clear and cogent assurance by the OPCW and Greece that all necessary precautions not only have not been taken, but also not applied in practice.

IV. Provisions of the Convention relevant for the Communication

Article 3 (2)

Article 4 (1 a, b, i, ii)

Article 5 (1 a, b, c and 7 a, b, c)

Article 6 (2, 4, 8)

Article 7

Article 8

V. Nature of the alleged non-compliance

Violations of the Aarhus Convention by Greece

The Aarhus Convention was adopted on 25 June 1998 in the Danish city of Aarhus. As the European Union is a contracting party, the Convention also applies to the EU institutions. Greece became a Party to the Aarhus Convention in 2005.

We, the hereby applicants are deprived of any access to general or specific information on the details of the undertaken hydrolysis. As a result our fundamental environmental rights are being violated and we are not capable of further informing our fellow citizens. All these bear evidence to the fact that Greece has failed to comply with the Aarhus Convention in accordance with articles 3(2) and 5(1 a and b).

Moreover, due to fact that we are not aware of the exact cargo of the Cape Rey (insufficient and incomplete information provided by the State) and assuming

¹⁴ See the article on which the answers of the OPCW Spokesperson were published: <http://www.neakriti.gr/?page=newsdetail&DocID=1151208&srv=94>. See attached Annex K62.

that the hydrolyzed cargo of the Cape Ray contained chemical substances which have significant impact to the environment, we have to state that these substances fall under the scope of Annex I (4) of the Aarhus Convention. As a result, the above decision should have been subject to public participation; the absence of this resulted in a violation of the Articles 6, 7 and 8 of the Aarhus Convention.

However, the burden of proof has to be shifted to the State to provide adequate and reliable information as regards the exact kind of the hydrolyzed cargo, the existence of any environmental impact assessment and in general the scientific and operational planning followed by the State organs.

Furthermore, despite the fact that **we have constantly asked State officials** to arrange for meetings that would enable our participation in decisions that would directly or indirectly affect our lives and the environment, the latter **have not even replied or reacted to the numerous Resolutions, Declarations and Letters from the local municipalities, associations and institutions in Crete** that addressed them and that are annexed in the present Communication.¹⁵ Because of these acts and **omissions** from the State officials, we have been deprived of our right to have access to informed decision-making and more specifically, we, as representatives of local authorities, institutions, *etc* have been prevented from participating in any decision related to the undertaken operation and from expressing our own point of view pursuant to article 4(1) of the Aarhus Convention.

In this regard, it is important to mention that the Deputy Foreign Minister, Mr. D. Kourkoulas, at the Plenary Session of the Hellenic Parliament dated 11 April 2014 admitted that *“there is a great information deficit”* as regards the destruction operation of the Syrian chemical weapons. In the same parliamentary session, during the correspondence with the MPs and as regards the choice of the Cape Ray vessel, the Deputy Foreign Minister answered that *“I am not an expert; I cannot give you any answer”* and acknowledged that he was not aware of the exact location where the hydrolysis operation will take place. Additionally, during the same session when answering the questions of the MPs about the details and the process of the operation Mr. D. Kourkoulas *“recommended that the MPs should seek their*

¹⁵ See Annex 31-66

requested information on the internet". Furthermore, he admitted that *"he has no information by any scientific expert about what was going to happen if an earthquake or tsunami occurred"*.¹⁶ In essence, his statements proved the absence of any Environmental Impact Assessment that would prevent or mitigate any potential environmental harm. All these acknowledgements by the Deputy Foreign Minister demonstrate that we have a direct violation of the Aarhus Convention and that Greece does not comply with its obligations arising under the Convention and in particular under article 4(1) of the Convention.

It is therefore evident that Greece has not ensured that its officials and authorities have actually assisted and provided guidance to the public in seeking access to information and in facilitating participation in informed decision-making in environmental matters pursuant to article 3(2) of the Aarhus Convention.

Greece has not ensured that its public authorities possess and have updated environmental information which is relevant to their functions about the hydrolysis operation in accordance with article 5 (1 a and b) of the Convention. Mandatory systems are not established so that there would be an adequate flow of information to public authorities about the planned and existing activities which may significantly affect the environment, such as the operation for the destruction of the Syrian chemical arsenal in the Mediterranean Sea.

Greece has not ensured that all information which could enable the public to take measures to prevent or mitigate harm arising from the risks of the undertaken operation of the aforementioned destruction and which is held by a public authority is disseminated immediately and without delay to members of the public who may be affected and it has also not published information and facts about the aforementioned operation in accordance with article 5(7) of the Convention.

Greece has not provided pursuant to article 5(7c) in an appropriate form information about the performance of public functions relating to the environment at all governmental levels about the operation of the destruction of the Syrian chemical weapons due to the fact that this operation is highly likely to affect the life

¹⁶ See attached Annex E 19.

and health of the inhabitants of the island of Crete and the quality of the environment.

Greece has not taken any precautionary measures to prevent or mitigate the potential harm of the aforementioned operation in accordance with the generally recognised precautionary principle under International Environmental Law.

Greece has not drafted any risk assessment analysis or Environmental Impact Assessment, thus violating the precautionary principle and the customary rule to conduct Environmental Impact Assessments (EIAs).

Ultimately, Greece has violated the International Environmental *acquis* in general and the specified provisions of the Aarhus Convention in particular.

FOR ALL THESE REASONS

we, the undersigned the Cretan Clerical Authority, the Mayors of Cretan Municipalities, the Presidents of Local Cretan Authorities and the residents of the island of Crete, Greece,

ask from the Aarhus Convention Compliance Committee to take all the appropriate measures so that the Aarhus Convention will be fully respected and implemented by Greece in order to prevent unpredictable and irreversible damage to the enjoyment of all kinds of human rights and to the environment.

VI. Use of domestic remedies

We have signed and submitted a petition to the Public Prosecutor of the Supreme Court dated 7 April 2014¹⁷ regarding the violations of international and national law during the process of transportation, provisional stockpiling, re-transportation of Syrian chemical weapons within the EU borders, the management of the Syrian chemical weapons and the operational standards of the onboard the Cape Ray hydrolysis unit and regarding in general the destruction of the chemical

¹⁷ See attached Annex I29.

weapons in international waters in the Mediterranean Sea. In this context, we have met several times with the public prosecutors of the island, the regional and local authorities of Crete in order to express our concerns and denounce the continuing violations of human rights during the destruction of the chemical arsenal in the closed Mediterranean Sea. However, the Public Prosecutor did not reply to our petition and the above mentioned meetings and our numerous Resolutions, Declarations and Letters from the local municipalities, associations and institutions did not produce any result, thus rendering our efforts futile.

VII. Use of other international procedures

On 9 September 2014, we, the hereby applicants, submitted a complaint before the European Court of Human Rights concerning the destruction operation of the Syrian chemical arsenal. The case has not been considered yet.

VIII. Confidentiality

We do not request confidentiality with regard to the content of the present Communication.

IX. Supporting documentation

Annexes

- A. UN Secretary-General's Correspondence with the President of the UN Security Council (Annex 1-7)**
- B. Statement by the USA at the OPCW Executive Council (Annex 8)**
- C. Correspondence of the *PanCretan Commission against the destruction of Syrian Chemical Weapons in the Enclosed Mediterranean Sea* (Annex 9-10)**
- D. Correspondence between the *PanCretan Commission against the destruction of Syrian Chemical Weapons in the Enclosed Mediterranean Sea* and the Vice President of the Greek Government and Minister of Foreign Affairs concerning the Neutralization of Syrian Chemical Weapons in International Waters in the Mediterranean Sea (Annex 11-12)**

- E. Minutes of the Parliamentary Sessions where the Deputy Foreign Minister acknowledges the absolute lack of information and of any Environmental Impact Assessment (EIA) as regards the destruction of Syrian Chemical Weapons in the Enclosed Mediterranean Sea (Annex 13-19)**
- F. Parliamentary Questions in the European Parliament (Annex 20-23)**
- G. Greek Ministry of Foreign Affairs – Announcements (Annex 24-26)**
- H. Expert View Opinion of Prof. Gidarakos, Technical School of Crete (27-28)**
- I. Communication before the Greek Supreme Court (Annex 29)**
- J. International Court of Justice Judgment (Annex 30)**
- K. Resolutions, Statements, Declarations, Letters and Press Releases from Municipalities, Associations, Institutions, etc. (Annex 31-66)**

X. Summary

The destruction of the Syrian chemical arsenal carried out in international waters in the Mediterranean Sea can potentially cause unprecedented damage to the marine environment and consequently to the health and lives of residents in the adjacent regions. No government agency has so far assured based on cogent scientific evidence or on an Environmental Impact Assessment that there is no risk to the environment and to the public.

The Aarhus Convention recognizes that every person has the right to live in an environment adequate to his/her health and well-being and the duty, both individually and collectively, to protect and improve the environment for the benefit of the present and future generations.

The scope of the potential damage, at a local and regional level, for the Mediterranean basin cannot be assessed as no data has been published and any installation of observation units by independent experts or any televised reproduction of the procedure has been prohibited in advance.¹⁸ Moreover, there is no Environmental Impact Assessment or at least it has not been made public.¹⁹

¹⁸ For further reference, see <http://www.mfa.gr/epikairota/aidiseis-anakoinoseis/sugklese-ethnikou-sumbouliou-exoterikes-politikes-14022014.html> and <http://www.econews.gr/2014/02/13/ypex-ximika-syria-111839/>

¹⁹ Letter dated 28 October 2013 from the Secretary-General addressed to the President of the Security Council transmitting the First Monthly Report of the Director-General of the Organisation for the Prohibition of Chemical Weapons, S/2013/629, p.5, where he refers to “an initial environmental protection and health and safety analysis”, conducted with support

However, it is certain that the quantity and quality of the cargo during the operation of the destruction of the Syrian chemical weapons, the multiple sea transfers, the instability of the natural environment and of the weather conditions in the region, the pilot nature of the onboard hydrolysis process, the incomplete standards of the ship, the absence of environmental risk assessment, the lack of an Environmental Impact Assessment, **the impossibility of accessing information, the absence of public participation that would take into account the interests of the residents of the island of Crete, the secrecy of the whole process, the lack of information**, the creation of a potential environmental and health risk, the co-decision making ability of Greece are factors that lead to direct violations by Greece of the international environmental *acquis* and of the Aarhus Convention in particular.

from the Health and Safety Branch of the OPCW and UNEP. However, this analysis has not been made public. See attached Annex A3.