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URGENT ACTION REQUIRED BY BRAZILIAN NAVY and IBAMA

January 18, 2023

Dear Ms Silva and Mr Agostinho,

We first wish to congratulate you for your new appointment to your important post. We are a group of NGOs working together with the global coalition NGO Shipbreaking Platform. For many months now, we have been very concerned about the environmental fate of the ex-Naval Aircraft Carrier SÃO PAULO. Today, we write to you with an extreme sense of urgency regarding the most recent developments.

We have read the minutes (attached) of the meeting that took place between Brazilian agencies, including the Brazilian Navy and IBAMA, on 29 December. We have also read the January letter written by the lawyers of the company MSK concerning the planned abandonment of the ship on 10 January. Finally, we have seen the injunction filed by a Federal judge in Recife on January 11 to halt a potential abandonment of the ship. The information found in these documents is alarming in light of the continued inaction of the Brazilian government to secure the safe berthing of the SÃO PAULO in a Brazilian port.

We are especially alarmed by the following developments/facts:

1. On 28 September of last year the SÃO PAULO began its return to Brazil. Since then, the Brazilian Navy has not offered to secure the safe mooring of the vessel upon its reentry to Brazil despite this safe return is a legal requirement of the Basel Convention, despite the later report from the Salvage Master that the hull is in need of repair, and despite the fact that the ship can logically be docked precisely where it departed from in Rio De Janeiro at the Naval yard. The Navy's responsibility in this regard was not even raised as a possibility at the meeting on 29 December.

2. IBAMA, likewise, never properly fulfilled the Basel Convention requirement that the ship (hazardous waste) be brought safely and securely into Brazilian territory. Currently, the ship is not in Brazilian territorial waters and has never completed its mandatory return voyage. IBAMA failed to make this happen. Rather, the ship is being towed in circles between 12 and 16 nautical miles off the Brazilian coast. This cannot be described as "ensuring that the wastes in question are taken back into the State of export by the exporter (Basel Article 8)". As we write, the vessel is not safe and is not being managed in an environmentally sound manner. The issue of this being a failure to comply with the Basel Convention was likewise not mentioned at the meeting on 29 December. IBAMA's reference to Brazilian "jurisdiction" refers to the EEZ (economic zone) of Brazil, which is not relevant in the context of the Basel Convention.

3. The Navy, prior to any threats to abandon the ship made by MSK, has indicated during the meeting on 29 December that plans need to be made to respond to the "eventual request for the deliberate sinking of the hull, that may be requested by the owner or required in the case of abandonment in the Brazilian waters." This statement by the Navy is outrageous as such sinking is not nearly necessary, especially in light of the fact that the Navy could easily order this ship to be towed to one of their bases immediately.

4. Further, the intentional sinking of the ship would be a clear violation of the London Protocol, unless "material capable of creating floating debris or otherwise contributing to pollution of the marine environment has been first removed to the maximum extent and provided that the material dumped poses no serious obstacle to fishing or navigation."

5. MSK, who claims to be the rightful owner of the ship, and their lawyers are threatening to abandon the vessel at sea. Thus, it has become clearer that the Brazilian Government needs to move as a matter of extreme urgency to dock the ship.

6. The injunction just filed to prevent the abandonment of the ship does nothing to resolve the fact that the ship has no place to go. The injunction should have ordered the ship to go to a Naval base as the ship is the responsibility of the Brazilian government by law.

In light of the above, we the undersigned organisations call for the following actions by the Government of Brazil and stand ready to assist you in that regard.

1. The SÃO PAULO is ordered to sail to a designated and adequate Brazilian Naval facility as a matter of urgency.

2. The ship receives the needed repairs to make it seaworthy and watertight at a Naval shipyard.

3. A full, independent (not government, and not beholden to the ship's owners) and transparent inventory of hazardous materials (IHM) is conducted by naval marine experts, and, for the first time, with all compartments opened and assessed for hazardous wastes especially and including the presence of all asbestos, heavy metal-laden paints, PCBs and the possible presence of radioactive isotopes.

4. The ship is re-auctioned based on the results of the new IHM and recycled in accordance with best practices to ensure that the asbestos and other hazardous wastes are safely handled and properly disposed of.
5. The ship must not be allowed to return to Aliaga, Turkey, as it is clear the community there is opposed to the import and management of the ship. This opposition stems from ample evidence of irregularities around the import and violations of rights to environmental and workers' health.
6. The ship should only be recycled, managed or decontaminated in an EU-approved yard, in a supportive community. There are several such facilities in Europe and one in the US. Note that an export to the US, which is not a party to the Basel Convention, can only be accomplished through the signing of a Basel Article 11 agreement between the US and Brazil.
7. Under no circumstances should the ship be scuttled or sunk as a so-called artificial reef.
8. This time the ship's export for recycling must be properly notified not only to the importing state but to transit states as well (movement through their territorial waters), and Brazil must receive their full consent prior to export in accordance with the Basel Convention.

Sincerely yours,

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On behalf of the following organisations:

NGO Shipbreaking Platform, Basel Action Network (BAN), BAN Asbestos France, Henri Pézerat Association (Work, Health, Environment), İstanbul İSİG (İşçi Sağlığı ve İş Güvenliği) Meclisi, Brazilian ABREA (Associação Brasileira dos Expostos ao Amianto)

Annexes:

Minutes of December 29 Brazilian inter-agency meeting (Portuguese)

Letter by MSK lawyers threatening abandonment of ship (English)

Notification of Preliminary Injunction (Portuguese)

