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Open letter to Gearbulk

London, Oslo, Wellington, 20 June 2008

Regarding Gearbulk's phosphate shipment from occupied Western Sahara

Dear Mr. Jebsen, Chairman of Gearbulk,

As you recall, Gearbulk's shipments of phosphate rock from occupied Western Sahara to New Zealand last year attracted a lot of attention from authorities, media and NGOs in several countries. Now, 10 months have passed, and we are surprised to find that a Gearbulk vessel is again involved in these kinds of shipments. We have learnt that on 20th of June, the vessel 'Simge Aksoy' is estimated to arrive in Northport, New Zealand. The vessel is chartered by Gearbulk.

We would like to underline that trade with and transportation of mineral resources from occupied Western Sahara is highly unethical and politically controversial.

The political and ethical implications are of serious concern, among others to the Norwegian government. The Norwegian Ministry of Finance issued a long statement on this matter in 2005¹. The Ministry stated the following, regarding oil exploration in Western Sahara:

"Morocco has for a number of years occupied Western Sahara despite strong UN condemnation. The [Pension Fund's Ethical] Council found that [the US petroleum company] Kerr-McGee through its exploration activities most likely will enable Morocco to exploit petroleum resources in the area. The Council regarded this as 'a particularly serious violation of fundamental ethical norms' e.g. because it may strengthen Morocco's sovereignty claims and thus contribute to undermining the UN peace process".

Exploiting of mineral resources – and its shipping – has of course the same effect.

As you know, Morocco is an illegal occupying power in Western Sahara. The Sahrawi population remaining in areas under Moroccan occupation is subjected to grave human rights violations, such as torture, forced disappearances and arbitrary detention. Most importantly, however, they have not been allowed to freely exercise their right to self-determination through a free, fair and transparent referendum. This right was established through UN General Assembly resolution 1514 (XV) (1960), and has since been supported by more than 100 UN resolutions.

The occupation of Western Sahara has resulted in enormous suffering and deprivation for the Sahrawi people, the rightful owners of the land and the natural resources of Western Sahara. Approximately 165,000 Sahrawis are languishing in refugee camps in the inhospitable

Algerian desert since 1975. A May 2008 report by Norwegian Church Aid (NCA) notes that 19% of children living in the Sahrawi refugee camps in Algeria are suffering from malnourishment. Just for comparison, the percentage among children in Darfur is 16%.

From what we have been told, it is probable that Gearbulk has shipped phosphates approximately twice a year for the last 7 years to New Zealand. If one estimates each vessel to contain an average of 35.000 tonnes of phosphates, and one tonne of phosphates to be worth 400 dollars, Gearbulk is responsible for a *196 million USD* loss for the Sahrawi people. This money is going directly to the Moroccan state owned company located in Western Sahara. In comparison, NCA emergency food aid to the malnourished Sahrawis, funded by the Norwegian government, amounts to “only” 3 million kroner annually. And NCA is considered one of the important donors in the refugee camps.

In light of the above facts, other corporate entities have responded appropriately. Yara, the world's biggest fertiliser company, terminated the imports to Norway in 2005, for ethical reasons².

The two Norwegian shipping companies Arnesen Shipbrokers³ (in November 2007) and R-Bulk⁴ (in May 2008) have both via the Norwegian national broadcaster NRK apologized for their involvement, and said they would never again carry out such shipments.

“Now that we understand the issue we will not directly contract any more business out of there,” said vice-president of the Chinese shipping company Jinhui Shipping to South China Morning Post on 11th of May 2008, after it had been discovered they had carried out a shipment with the same cargo, and to the very same New Zealand ports that Gearbulk is serving⁵.

In addition to these ethical concerns, the companies involved in this trade should be aware that the trade is most probably in violation of international law.

The International Court of Justice in its 1975 *Western Sahara Advisory Opinion* established that Morocco has no legal claim to Western Sahara. That same opinion affirmed that the Sahrawi population has a right to self-determination, which includes, inter alia, the right of permanent sovereignty over its natural resources. Permanent sovereignty over natural resources is a customary principle of international law⁶. Numerous resolutions of The United Nations Security Council and General Assembly and a legal opinion by the former UN Under-Secretary General of Legal Affairs, Mr. Hans Corell on 29 January 2002 affirm this position⁷. Because the Sahrawis have not been able to exercise their right to self-determination, and because they have not been properly consulted, trade with Morocco of natural resources emanating from Western Sahara is a violation of the Sahrawis' right to permanent sovereignty over their resources.

It appears that neither your company nor the phosphate importers in New Zealand have consulted either with Sahrawis or their internationally recognized representatives, the Polisario Front.

Morocco's control and exploitation of Western Sahara also hurts the Sahrawis' labour rights and their economic development, something which clearly underlines the legally controversial nature of this trade. According to a report by the French organisation France Libertés - Fondation Danielle Mitterrand, the Sahrawis have been systematically marginalised from the

phosphate industry in Western Sahara. In 1968, before Morocco took control over the phosphate mines, all 1600 workers in the industry were Sahrawis. Today, 1800 of 2000 workers are Moroccan settlers who have illegally been moved into the territory⁸.

One of the governments that have elaborated on the legal aspects of such trade is the Norwegian one. Despite the fact that your company is registered in Bermuda, headquartered in UK, 60% Norwegian owned and 40% Japanese owned, the activities still remain in violation of advice from the Norwegian Ministry of Foreign Affairs.

As you surely know, the Norwegian advice was published 12th of September 2007, as a response to a Gearbulk shipment to New Zealand, on the same day as the Gearbulk vessel 'Bulk Jupiter' arrived in New Zealand's Port of Tauranga.

"Norway sees it as important to refrain from actions that can be seen as a legitimization of the situation in Western Sahara. In order to prevent trade, investments, resource exploitation and other forms of business that are not in accordance with the local population's interests and accordingly can be in violation of international law, the Norwegian authorities discourage such activities", the advice reads⁹.

The Gearbulk phosphate shipment is in the interest of Morocco, an illegal occupier, and clearly lends legitimacy to the illegal Moroccan occupation of the territory. This kind of support makes Morocco less inclined to contribute in finding a solution to the occupation, and makes delaying tactics and attempting to profit from the existing situation more attractive. The phosphate trade in Western Sahara therefore increases the risk of further armed conflict, destabilisation and suffering in the region. This increased tension actively undermines the hard work of the United Nations to solve the conflict in Western Sahara.

We, the undersigned, hereby appeal to Gearbulk to do the same as Yara, Arnesen, R-Bulk and Jinhui. We urge you to demonstrate your attachment to International Legality, Human Rights and basic standards of Corporate Social Responsibility by reconsidering your involvement in shipping phosphate of Western Sahara origin.

We urge Gearbulk to issue a statement that your company intends to no longer ship phosphates from occupied Western Sahara.

We will be more than happy to provide you with any additional information that you may require to study this matter more closely.

Any reply could be sent to the international coordinator of Western Sahara Resource Watch, Mr. Javier García Lachica, at j.g.lachica@gmail.com.

Sincerely,

Jeremy Corbyn
MP, Labour Party, UK, Chair of Associate Parliamentary Group on Western Sahara.

Mark Williams
MP, Liberal Democrats, UK, Vice-Chair of Associate Parliamentary Group on Western Sahara.

David Drew
MP, Labour Party, Secretary of Associate Parliamentary Group on Western Sahara.

Jill Evans
MEP (Member of European Parliament), Pleyd Cymru, UK

Jean Lambert
MEP, Greens, UK

Alyn Smith
MEP, Scottish Nationalist Party, UK

Cathy Jamieson
MSP (Member of the Scottish parliament), Labour Party

Marlyn Glen
MSP, Scottish Nationalist Party

Eirin Sund
MP, Labour Party, Norway

Anette Trettebergstuen
MP, Labour Party, Norway

Eva Kristin Hansen
MP, Labour Party, Norway

Truls Wickholm
MP, Labour Party, Norway

Gorm Kjernli
MP, Labour Party, Norway

Anne-Margrethe Larsen
MP, Liberal Party, Norway

Trine Skei Grande
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Centre Party, Norway

Johannes Rindal
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MP, Socialist Left Party, Norway

Inga Marte Thorkildsen
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Ågot Valle
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Rolf Reikvam
MP, Socialist Left Party, Norway

Akthar Chaudhry
MP, Socialist Left Party, Norway

Gordon Copeland
MP, independent, New Zealand

Copy:

- Norwegian Ministry of Foreign Affairs
- UK Foreign Office
- The Ministry of Foreign Affairs of Japan
- New Zealand Ministry of Foreign Affairs and Trade
- Mitsui O.S.K. Lines
- Akmar Shipping & Trading SA
- Lightwave Marine Co Ltd
- Ballance Agri-Nutrients

¹ For the complete text by the Norwegian Ministry of Finance, see www.vest-sahara.no/files/pdf/kmg_analysis_norway_2005.pdf and press release: www.vest-sahara.no/files/pdf/kmg_divestment_norw_min_finance_release_05.pdf. The statement was made upon the Norwegian government's divestment from US oil company Kerr-McGee due to ethical reasons.

² See for instance Dagens Næringsliv, 5 July 2005 www.dn.no/forsiden/naringsliv/article547859.ece

³ See NRK, 9 November 2007 www.nrk.no/nyheter/distrikt/sorlandet/1.3991898

⁴ See NRK Hordaland, 30 May 2008, www.vest-sahara.no/index.php?parse_news=single&cat=1&art=941

⁵ Read South China Morning Post, 11 May 2008, here: vest-sahara.no/index.php?parse_news=single&cat=49&art=950

⁶ This was recently affirmed by the International Court of Justice in its 2005 judgment of *Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda.)*

⁷ Read the 29 January 2002 Legal Opinion of the UN Under-Secretary General of Legal Affairs here: www.arso.org/Olaeng.pdf

⁸ See for instance France Libertés, Fondation Danielle Mitterrand, International Mission of Investigation in Western Sahara, January 2003. www.vest-sahara.no/files/pdf/France_Libertes_occupied_2003.pdf

⁹ See advice from the Norwegian Ministry of Finance at www.regjeringen.no/nb/dep/ud/tema/norgesfremme-og-kultursamarbeid/Norges-omdomme/Bedrifters-samfunnsansvar/Vest-Sahara.html?id=480822.