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PRESS RELEASE

**ARCTIC SUNRISE ARBITRATION
(NETHERLANDS V. RUSSIA)**

THE HAGUE, 24 AUGUST 2015

Arbitral Tribunal Renders Award on the Merits

The Tribunal constituted under Annex VII of the United Nations Convention on the Law of the Sea (the “**Convention**”) in the matter of the *Arctic Sunrise Arbitration* has rendered its *Award on the Merits* (“**Award**”) in respect of the dispute between the Netherlands and Russia concerning the boarding, seizure, and detention by Russia of the *Arctic Sunrise*, a vessel flying the Dutch flag, in Russia’s exclusive economic zone (“**EEZ**”) on 19 September 2013, and the subsequent measures taken by Russia against the *Arctic Sunrise* and the thirty persons on board the vessel (“**Arctic 30**”).

* * *

In its unanimous Award dated 14 August 2015, the Tribunal decided matters of jurisdiction that were not decided in its *Award on Jurisdiction* dated 26 November 2014, as well as matters of admissibility and the merits of the Netherlands’ claims. The Tribunal affirmed its jurisdiction over all the claims submitted by the Netherlands, all of which it found to be admissible. It found that by boarding, investigating, inspecting, arresting, detaining, and seizing the *Arctic Sunrise* without the prior consent of the Netherlands, and by arresting, detaining, and initiating judicial proceedings against the Arctic 30, Russia breached obligations owed by it to the Netherlands as the flag State under Articles 56(2), 58(1), 58(2), 87(1)(a), and 92(1) of the Convention. The Tribunal also found that, by failing to comply with the Order prescribing provisional measures (“**Order**”) issued by the International Tribunal for the Law of the Sea (“**ITLOS**”) in the arbitration, Russia breached its obligations to the Netherlands under Articles 290(6) and 296(1) of the Convention. In addition, the Tribunal found that, by failing to pay the deposits requested by the Tribunal in these proceedings, Russia breached its obligations under Part XV and Article 300 of the Convention.

The Tribunal found that the Netherlands is entitled to compensation (with interest) for material damage to the *Arctic Sunrise*, for material and non-material damage to the Arctic 30, and for the costs incurred by the Netherlands in connection with the issuance of a bank guarantee pursuant to the ITLOS Order. The Tribunal ordered Russia to return objects seized from the *Arctic Sunrise* and the Arctic 30 and, failing their timely restitution, to compensate the Netherlands for their value. The Tribunal also ordered Russia immediately to reimburse Russia’s share of the deposits paid on its behalf by the Netherlands. The Tribunal reserved questions of the quantum of compensation and interest to a later phase of the proceedings.

An expanded summary of the Award is set out below.

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SUMMARY OF THE AWARD

1. Factual Overview

The arbitration concerns the boarding, seizure, and detention by Russia of the *Arctic Sunrise*, a vessel flying the Dutch flag, on 19 September 2013, within Russia's EEZ, and the subsequent measures taken by Russia against the *Arctic Sunrise* and the Arctic 30.

In the morning of 18 September 2013, Greenpeace International, the charterer and operator of the *Arctic Sunrise*, used the vessel to stage a protest action at the Russian offshore oil production platform *Prirazlomnaya*, located in the Barents Sea in Russia's EEZ. The *Arctic Sunrise* had on board 30 persons of 19 nationalities. At dawn, Greenpeace informed Gazprom Neft Shelf LLC, the platform operator, of the forthcoming protest. Immediately thereafter, the *Arctic Sunrise* launched five inflatable boats, which approached the platform, allowing two campaigners to scale its side. Their climb was hampered by the platform's water cannons and the efforts of two inflatables launched from a Russian Coast Guard vessel—the *Ladoga*. Toward 6 a.m., the two climbers were forced to descend and were taken on board the *Ladoga*, while the *Arctic Sunrise*'s five inflatables returned to the ship. In the following hours, the *Ladoga* issued repeated orders to the *Arctic Sunrise* to stop and allow an investigation on board, while the *Arctic Sunrise* undertook evasive manoeuvres and maintained that it had no obligation under international law to follow the *Ladoga*'s orders.

In a *Note Verbale* addressed to the Netherlands later that day, Russia described the protest as “aggressive and provocative” and stated its intention to seize the *Arctic Sunrise*. At sunset on 19 September 2013, a Russian helicopter boarded the *Arctic Sunrise*. In the following days, the Russian Coast Guard towed the *Arctic Sunrise* to Murmansk (a northern Russian port city).

In Murmansk, the Arctic 30 were arrested, charged with the criminal offence of piracy, later requalified as hooliganism, and remanded in custody. The master of the *Arctic Sunrise* was charged with administrative offences, while the *Arctic Sunrise* was searched and formally seized. In several diplomatic notes, the Netherlands requested the release of the vessel and crew. On 4 October 2013, the Netherlands commenced the present arbitration. On 21 October 2013, the Netherlands applied to ITLOS for the prescription of provisional measures. On 22 November 2013, ITLOS issued an Order requiring the immediate release of the *Arctic Sunrise* and the Arctic 30 upon the posting of a bond by the Netherlands. The Netherlands posted the required bond on 2 December 2013.

The Arctic 30 were released on bail by 29 November 2013 and were granted amnesty by Decree of the Russian State Duma in respect of the crime of hooliganism on 18 December 2013. The non-Russian nationals were permitted to leave Russia by 29 December 2013. On 6 June 2014, the arrest of the *Arctic Sunrise* was lifted. The ship departed from Murmansk on 1 August 2014. The criminal case against the Arctic 30 was formally terminated by the Russian authorities on 24 September 2014.

2. The Netherlands' Claims

In the arbitration, the Netherlands requested that the Tribunal find that Russia violated the Convention and/or customary international law by:

- establishing a three-mile “safety” zone around the *Prirazlomnaya*;
- taking the measures described above against the *Arctic Sunrise* and the Arctic 30 without the Netherlands's prior consent;
- failing to comply fully with the ITLOS Order; and
- failing to pay deposits in this arbitration.

3. Jurisdiction, Admissibility, and Applicable Law

Prior to addressing the merits of the Netherlands' claims, the Tribunal addressed issues of jurisdiction and admissibility that were not decided in its Award on Jurisdiction of 26 November 2014.

First, the Tribunal confirmed that there is an ongoing dispute between the Parties concerning the interpretation and application of the Convention.

Second, the Tribunal found that the requirement for an "exchange of views" set out in Article 283(1) of the Convention was satisfied prior to the commencement of the proceedings.

Third, and finally, the Tribunal found that the Netherlands' standing to invoke the international responsibility of Russia derives from its status as the flag State of the *Arctic Sunrise* and, based on the Convention's unitary conception of persons and property on board vessels, extends to claims in respect of the crew, all persons and objects on board, as well as the ship's owner and each person involved or interested in its operations, regardless of the nationalities of such persons.

With respect to the applicable law, the Tribunal noted that it is entitled to have regard, to the extent necessary, to all applicable rules of customary international law, including international human rights standards, in the interpretation and application of the provisions of the Convention that authorize the arrest or detention of a vessel or persons. However, the Tribunal recognized that it does not have jurisdiction to apply, or determine breaches of, the International Covenant on Civil and Political Rights.

4. The Merits of the Netherlands' Claims

a. Russia's Establishment of a Safety Zone

The Tribunal first considered the Netherlands' submission that Russia breached the Convention by applying national legislation establishing a safety zone of three nautical miles around the *Prirazlomnaya*. The Netherlands referred to Article 60(5) of the Convention, which provides that the breadth of safety zones established by a coastal State around "artificial islands, installations, or structures" in its EEZ "shall not exceed ... 500 metres," except in the cases specified in that provision.

After examining the relevant Russian notices to mariners, various statements made by Russia concerning safety zones, and the relevant Russian laws and regulations, the Tribunal concluded that Russia has not at any time established a safety zone of three nautical miles around the platform.

b. The Lawfulness of the Measures Taken against the Arctic Sunrise and its Crew

The Tribunal next addressed the lawfulness of the measures taken by Russia against the *Arctic Sunrise* and the Arctic 30. At the outset, the Tribunal described in general terms the legal regime applicable to the *Arctic Sunrise* in the EEZ of Russia. The Tribunal observed that protest at sea is an internationally lawful use of the sea related to the freedom of navigation, but it also noted that the right to protest is not without limitations.

The Tribunal then considered the possible legal bases for Russia's boarding, seizure, and detention of the *Arctic Sunrise*. First, the Tribunal addressed the law enforcement measures that may have been available to Russia, under the Convention or otherwise. Second, it examined other possible legal bases for the measures taken by Russia, which do not involve law enforcement in the strict sense, but more broadly relate to the protection of Russia's rights and interests in the EEZ.

(i) Law enforcement measures

First, the Tribunal recalled that Russia initially charged the Arctic 30 with piracy. While noting that the Convention allows a coastal State to visit a ship on suspicion of piracy, the Tribunal also noted that the Convention defines piracy as an act directed “against another ship.” Since the *Prirazlomnaya* is not a ship, the Tribunal concluded that Russia’s measures could not be considered as an exercise of that right.

Second, the Tribunal recalled that Russia also charged the Arctic 30 with hooliganism, based on the entry of some of them into the 500-metre zone prohibited for navigation around the *Prirazlomnaya*. The Tribunal indicated that the boarding, seizure, and detention of a vessel in the EEZ on suspicion of such offences finds a basis in international law only if the requirements of hot pursuit are satisfied. The Tribunal found that, in the present case, at least one of these requirements—that the pursuit remain uninterrupted —was missing.

Third, the Tribunal recalled that the Russian authorities accused the *Arctic Sunrise* of terrorism. The Tribunal recognized that a coastal State is entitled to seize or board a vessel in its EEZ that is suspected of a terrorist offence in a manner authorised by the Convention, for example through the exercise of hot pursuit. However, the Tribunal concluded that such an entitlement did not apply here.

Fourth, the Tribunal considered whether Russia’s actions could have been taken in an exercise of the right of a coastal State to enforce its laws regarding non-living resources in the EEZ. The Tribunal found that such a right exists, but that there was no basis to conclude, on the evidence available, that the *Arctic Sunrise* had violated any relevant Russian laws.

Fifth, recalling statements made by Russia in diplomatic exchanges and the media regarding the potential adverse environmental impact of the protest, the Tribunal considered whether the measures taken by Russia could have been based on the enforcement jurisdiction of the coastal State with respect to the protection of the marine environment. However, the Tribunal found that the relevant provisions of the Convention (Articles 220 and 234) could not justify the measures taken by Russia.

Sixth and finally, the Tribunal recalled that Russia had alleged that the *Arctic Sunrise* initiated dangerous manoeuvring in contravention of international rules and standards. The Tribunal found that these rules and standards do not permit States other than the flag State to board a vessel in the EEZ or commence judicial proceedings, as confirmed by Article 97 of the Convention.

(ii) Other possible legal bases for taking measures to protect coastal State rights and interests in the EEZ

The Tribunal next considered other possible legal bases for the measures taken by Russia that more broadly concern a coastal State’s protection of its rights and interests in the EEZ.

First, the Tribunal considered Article 221 of the Convention, which allows coastal States to “take and enforce measures . . . to protect their coastline or related interests from pollution or threat of pollution following upon a maritime casualty . . . which may reasonably be expected to result in major harmful consequences.” The Tribunal found that this provision did not provide a legal basis for the measures taken by Russia.

Second, the Tribunal observed that one of the rights of a coastal State in its EEZ that may justify some form of preventive action against a vessel would derive from circumstances when there is a reasonable belief that the vessel may be involved in a terrorist attack on an installation or structure of the coastal State. The Tribunal concluded that there was no reasonable basis for Russia to suspect that the *Arctic Sunrise* was engaged in or likely to engage in terrorist acts.

Third, and finally, the Tribunal noted that a coastal State has the right to take measures to prevent interference with its sovereign rights for the exploration and exploitation of the non-living resources of its EEZ. However, the Tribunal found that at the time it was boarded, the actions of the *Arctic Sunrise* did not constitute an interference with Russia's sovereign rights.

c. Compliance with the ITLOS Order

The Tribunal next considered the Netherlands' claim that Russia violated the Convention by failing to fully comply with the ITLOS Order. It found that Russia had failed to satisfy the "promptness" requirement of the ITLOS Order due to the delay in releasing the *Arctic Sunrise* and enabling the vessel and the Arctic 30 to leave the country. The Tribunal concluded that this amounted to a breach of Russia's obligations under the Convention.

d. Russia's Failure to Pay Deposits in this Arbitration

The Tribunal next considered the Netherlands' claim that Russia breached the Convention by failing to make deposits requested by the Tribunal to cover its fees and expenses. Recognizing that Russia had not made the requested payments, the Tribunal found that it thus breached an obligation inherent under Part XV and Article 300 of the Convention.

5. Reparation

The Tribunal addressed the Netherlands' specific requests for satisfaction, restitution, and compensation as follows:

- a. It declared that Russia violated the Convention by the measures it took against the *Arctic Sunrise* and the Arctic 30, by failing to comply fully with the ITLOS Order, and by failing to pay deposits in this arbitration.
- b. It declined to order Russia to issue a formal apology or provide assurances of non-repetition.
- c. It ordered the restitution of property seized from the *Arctic Sunrise* and the Arctic 30 that has not yet been returned, and indicated that compensation is the most appropriate alternative in the event that the timely restitution of objects in their original state should prove impossible.
- d. It did not consider it necessary to make any order for the formal dismissal of the charges of piracy and hooliganism brought against the Arctic 30, noting that all criminal charges against them had been dismissed by the Russian authorities.
- e. It indicated that the Netherlands is entitled to compensation, with interest, for:
 - i. damage to the *Arctic Sunrise*, costs incurred to prepare the vessel for its return voyage from Murmansk, and costs incurred due to loss of use of the vessel during the relevant period;
 - ii. non-material damage to the Arctic 30 for their wrongful arrest, prosecution, and detention;
 - iii. damage resulting from the measures taken by Russia against the Arctic 30, including the costs of bail paid as security for their release from custody, expenses incurred during their detention, and costs in respect of the persons detained between their release from prison and their departure from Russia; and
 - iv. the costs incurred by the Netherlands for the issuance of the bank guarantee pursuant to the ITLOS Order.

The Tribunal reserved questions concerning the quantum of compensation and interest to a later phase of the proceedings.

6. Other Matters

In its Award, the Tribunal noted that Russia did not participate in the arbitration. Accordingly, throughout the proceedings, the Tribunal took a number of steps (set out in the Award) to safeguard the integrity of the proceedings, including Russia's procedural rights. For example, the Tribunal provided Russia with all case materials, gave notice of procedural steps, and reiterated Russia's right to participate in the arbitration at any time. On 7 August 2015, six months after the hearings in the case, Russia communicated a "position paper" to the Tribunal. The Tribunal notified the paper to the Netherlands. The Netherlands made no formal application in response to the paper. In forwarding the paper to the Tribunal, Russia stated that its communication "shall in no way be interpreted as . . . acceptance of or participation in the arbitration." Given this statement and the fact that the paper was brought to the Tribunal's attention at a very late stage, the Tribunal took no formal action in respect of the paper. The Tribunal considered that, in any case, the relevant issues are addressed in the Award.

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The members of the Tribunal are Mr. Henry Burmester (Australia), Professor Alfred Soons (the Netherlands), Professor Janusz Symonides (Poland), and Dr. Alberto Székely (Mexico). The President of the Tribunal is Judge Thomas Mensah (Ghana).

The following documents are available on the PCA's website at:

<http://www.pcacases.com/web/view/21>

The Netherlands

- Netherlands' diplomatic note instituting arbitral proceedings, including its Statement of Claim
- Memorial dated 31 August 2014, including all supporting documents
- Supplementary Written Pleadings on Reparation for Injury dated 30 September 2014, including all supporting documents
- Second Supplemental Written Pleadings (Replies to Questions Posed by the Tribunal to the Netherlands pursuant to Section 2.1.4.1 of Procedural Order No. 2) dated 12 January 2015, including all supporting documents
- Transcripts from the Hearing held on 10-11 February 2015
- Third Supplemental Written Pleadings (Replies to Further Questions from the Tribunal Arising out of the Netherlands' Second Supplemental Submission dated 12 January 2015) dated 25 February 2015, including all supporting documents

Russian Federation

- Russia's *Note Verbale* to the PCA dated 27 February 2014

Arbitral Tribunal

- *Procedural Order No. 1 (Terms of Appointment)* dated 17 March 2014
- *Procedural Order No. 2 (Rules of Procedure; Initial Procedural Timetable)* dated 17 March 2014
- *Rules of Procedure* dated 17 March 2014

- *Procedural Order No. 3 (Greenpeace International's Request to File an Amicus Curiae Submission)* dated 8 October 2014
- *Procedural Order No. 4 (Bifurcation)* dated 21 November 2014
- *Award on Jurisdiction* dated 26 November 2014
- Tribunal's questions to the Netherlands dated 28 November 2014
- Tribunal's questions to the Netherlands dated 9 February 2015
- *Award on the Merits* dated 14 August 2015

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Background on the Permanent Court of Arbitration: The PCA is an intergovernmental organization established by the 1899 Hague Convention on the Pacific Settlement of International Disputes. Headquartered at the Peace Palace in The Hague, the Netherlands, the PCA facilitates arbitration, conciliation, fact-finding and other dispute resolution proceedings among various combinations of States, State entities, intergovernmental organizations, and private parties.

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