

**PCA Case N° 2014-02**

**IN THE MATTER OF THE ARCTIC SUNRISE ARBITRATION**

**- before -**

**AN ARBITRAL TRIBUNAL CONSTITUTED UNDER ANNEX VII TO  
THE 1982 UNITED NATIONS CONVENTION ON THE LAW OF THE SEA**

**- between -**

**THE KINGDOM OF THE NETHERLANDS**

**- and -**

**THE RUSSIAN FEDERATION**

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**QUESTIONS POSED BY  
THE ARBITRAL TRIBUNAL TO THE NETHERLANDS  
PURSUANT TO SECTION 2.1.4.1 OF PROCEDURAL ORDER NO. 2**

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**ARBITRAL TRIBUNAL:**

**Judge Thomas A. Mensah (President)  
Mr. Henry Burmester  
Professor Alfred Soons  
Professor Janusz Symonides  
Dr. Alberto Székely**

**REGISTRY:**

**Permanent Court of Arbitration**

**28 November 2014**

## INTRODUCTION

Pursuant to Section 2.1.4.1 of Procedural Order No. 2, the Tribunal poses the questions listed below to the Netherlands.

These questions are posed without prejudice to the Parties' respective cases. They should not be taken to reflect any views held by or findings of the Tribunal regarding the subject-matter of this dispute.

Pursuant to Section 2.1.4.2 of Procedural Order No. 2, the Netherlands "shall make a supplemental submission in reply to the questions posed by the Arbitral Tribunal within 45 days from the issuance of the Tribunal's questions." Given the issuance of these questions on today's date of 28 November 2014, the Netherlands is invited to make its supplemental submission by **12 January 2015**.

The Tribunal has considered all of the pleadings and supporting documents submitted by the Parties to date, including audio and video footage. Accordingly, in answering the Tribunal's questions, there is no need for the Netherlands to repeat any statements or information already provided. However, the Netherlands is encouraged to include precise references to the record when relevant to the Tribunal's questions.

The Netherlands is also invited to submit, together with its written answers, all documentary, witness, expert and other evidence upon which it intends to rely, in accordance with Article 18.1 of the Rules of Procedure.

At this stage of the arbitration, the Tribunal does not consider it useful to pose any questions regarding compensation. The Tribunal will determine the need to pose such questions at a later stage.

## QUESTIONS

1. The Tribunal understands that the "Arctic 30" have made applications before the European Court of Human Rights ("ECtHR"), "asking it to find that their apprehension and detention by Russian authorities constituted a breach of their rights under Articles 5 and 10 of the European Convention on Human Rights" (Greenpeace Statement of Facts, Exhibit N-3, para. 127). The Tribunal also notes that the Netherlands does not request the Tribunal to interpret or apply the European Convention for Human Rights (Memorial, para. 170). The Netherlands is invited to provide the Tribunal with information concerning:
  - (i) the current status of the claims brought by the "Arctic 30" before the ECtHR;
  - (ii) the scope of those claims; and,
  - (iii) the extent to which those claims would overlap with the claims brought by the Netherlands in this arbitration.
2. The Netherlands is invited to clarify the grounds upon which it considers that the determination of alleged breaches of international human rights law, as set out in paragraph 397(1)(c) of the Memorial, involves the interpretation or application of the UNCLOS.
3. The Netherlands is invited to comment on the relevance, if any, of the decision in the ICJ *Case Concerning the Application of the International Convention on the Elimination of all Forms of Racial Discrimination (Georgia v. Russian Federation)* for the interpretation and application of Arts. 283.1 and 286 of the UNCLOS.

4. The Netherlands is invited to clarify the specific conduct of the Russian Federation towards the “Arctic 30” that it considers constituted a breach of their human rights under Arts. 9 and 12 of the International Covenant on Civil and Political Rights and/or customary international law.
5. With respect to the claims of the Netherlands arising out of the treatment by the Russian Federation of the “Arctic 30,” the Netherlands is invited to comment on any legal consequences of the distinct factual circumstances concerning Mr. Marco Paolo Weber and Ms. Sini Annuka Saarela.
6. The Netherlands is invited to elaborate on its position that Greenpeace’s planned and actual actions vis-à-vis the *Prirazlomnaya* would not have any adverse impact (Memorial, paras. 271, 299, 313-314, 325), in particular with respect to:
  - (i) the safety of persons and property;
  - (ii) the operations of the *Prirazlomnaya*; and,
  - (iii) the environment (*see e.g.*, Russia’s *Note Verbale* of 18 September 2013, Annex N-5, referring to an “ecological disaster of unimaginable consequences”).
7. The Netherlands is invited to comment on the relevance, if any, of the doctrine of constructive presence with respect to the *Arctic Sunrise* and its rigid hull inflatable boats (“RHIBs”), and the events of 18 September 2013.
8. The Netherlands is invited to comment on the apparent discrepancy in the accounts of the facts concerning the location of the *Arctic Sunrise*’s RHIBs when the *Ladoga* first requested the *Arctic Sunrise* to stop, having regard to, *inter alia*:
  - (i) Greenpeace Statement of Facts, para. 32: “At about 6:20, the *Ladoga* orders the MYAS not to pick up its RHIBs and to stop or heave to . . .”
  - (ii) Memorial, para. 277: “The pursuit commenced on 18 September 2013 at 06:20 hrs UTC, when the *Ladoga* contacted the *Arctic Sunrise* via radio with an order to stop or heave to. By the time this signal to stop was given, the RHIBs of the *Arctic Sunrise*, which were previously located within the safety zone of 500 metres around the *Prirazlomnaya*, had already returned to the *Arctic Sunrise* . . .”
  - (iii) Greenpeace Statement of Facts, Exhibit N-3, Annex 8, Witness Statement of Nikolai Marchenkov: “At 06:23, our ship’s commanding officer instructed me to prepare our AK-230 gun mounts No 1 and No 2 for the firing of a warning shot. At this point, the master of the ‘*Arctic Sunrise*’ was ordered once again to either stop or heave about or we would fire a warning shot, to which the master responded once again that he hadn’t broken any Russian Federation laws, that he was refusing to admit our inspection group onboard, that our demands were unlawful, and that their vessel was located in international waters. It was during this period of time that both we and the ‘*Arctic Sunrise*’ had hoisted our respective inflatables back onboard.”
  - (iv) Greenpeace Statement of Facts, Exhibit N-3, Annex 8, Witness Statement of Ivan Solomakhin: “. . . the ‘*Arctic Sunrise*’ inflatables began returning to their vessel, and A. S. Sokolov and I began heading back to coastal patrol ship ‘*Ladoga*,’ hoisting our cutters onto the ship once we arrived. At that point, it was roughly 07:00. . . . When we arrived at our ship, the ship’s commander sounded the alarm and issued the command ‘Seize the vessel.’ By radio communications, the ‘*Arctic Sunrise*’ was ordered to stop and heave about.”

9. The Netherlands is invited to indicate whether there are, in its view, circumstances where prior consent of a flag State is not required for a coastal State to take enforcement measures against a foreign ship located outside the coastal State's territorial sea.
10. The Netherlands is invited to elaborate on why, in its view, the circumstances precluding wrongfulness recognized in the law of State responsibility do not apply in this case.
11. The Netherlands is invited to indicate its views on the responsibilities, if any, of the Netherlands, as the flag State, in respect of the actions of the *Arctic Sunrise* in this case.
12. The Netherlands is invited to provide to the Tribunal any materials documenting Russian criminal or administrative proceedings related to the subject-matter of this dispute that have not yet been filed in this arbitration but that the Netherlands has in its possession or could obtain.