

Further Questions from the Arbitral Tribunal Arising out of the Netherlands' Second Supplemental Submission dated 12 January 2015

General

A. Throughout their answers the Netherlands appear to take the position that Greenpeace's actions did not in fact have an effect that could justify the measures taken by Russia, but it does not address the right of the coastal State to take preventive action. Could the Netherlands address this issue?

Question 2¹

B. Can the Netherlands further clarify the bases on which the Tribunal is invited to apply Articles 9 and 12.2 of the ICCPR? In particular, is the Netherlands inviting the Tribunal to:

- (i) determine that there has been a breach of these treaty provisions as requested in para. 397 of the Netherlands' Memorial; or,
- (ii) have regard to these provisions in the course of interpreting relevant provisions of the UNCLOS, in the same way that regard may be had to rules of international law, such as those relating to the use of force or State responsibility; or,
- (iii) both (i) and (ii)?

Question 5

C. In its answer to question 5, the Netherlands submits that the detention of Ms. Sini Saarela and Mr. Marco Paolo Weber only began upon their return to the *Arctic Sunrise* on 19 September 2013. However, in Appendix 20 to the Greenpeace Statement of Facts (as filed with the Netherlands' Memorial), it is indicated that the date of "factual arrest" of Ms. Saarela and Mr. Weber was 18 September 2013. Could the Netherlands comment on this apparent contradiction?

Question 6

D. What is the position of the Netherlands on the question of whether the response by Russia to Greenpeace's announced actions on 18 September 2013 was reasonable given that the Russian authorities could not know that the actions of Greenpeace would remain totally peaceful and would not pose a threat to (1) the safety of persons and property; (2) the operations of the *Prirazlomnaya*; and (3) the environment. See, for example, Appendix 39 to Annex N-44 (Addendum and Corrigendum to Greenpeace's Statement of Facts), page 8, para. 2:

"[From the report by the commander of coastal patrol ship "Ladoga" to the Border Department of the Russian Federal Security Service for Murmansk], the [Arctic Sunrise RHIBs], with unidentified individuals onboard, were heading in the direction of OIFP 'Prirazlomnaya,' thereby creating, in the opinion of [the commander] a real threat to a facility representing part of the oil-and-gas complex of the Russian Federation – a facility classified as a hazardous site."

¹ These question-number headings refer to the Questions Posed by the Arbitral Tribunal to the Netherlands Pursuant to Section 2.1.4.1 of Procedural Order No. 2.

Question 8

- E. In light of the Addendum and Corrigendum to Greenpeace's Statement of Facts (Annex N-44) and the most recent information available, could the Netherlands provide their best estimate of the exact moment when:
- (i) the last of Greenpeace's RHIBs left the 500-metre safety zone; and,
 - (ii) the first order to stop was given by the *Ladoga* to the *Arctic Sunrise*?

Question 9

F. In answer to question 9 concerning the circumstances in which a coastal State can take enforcement measures against a foreign ship, the Netherlands makes no reference to ensuring compliance with a coastal State's law. Having regard to the provisions of Article 73 of the UNCLOS in relation to laws concerning living resources in the EEZ, does the Netherlands consider that a similar right exists to ensure compliance with laws concerning the exploitation of non-living resources in the EEZ?

G. In paragraph 2, the Netherlands states that the first part of the two-pronged test is that it "must be established by plausible evidence that the conduct in question had . . . an adverse impact" (emphasis added). By this, does the Netherlands mean that it would only be appropriate for the coastal State to take action without the consent of the flag State where an adverse impact has actually occurred?

Question 11

H. Having regard to the memorandum of the Netherlands' Shipping Inspectorate (Annex N-45), which states that "an offence may have been committed when the [RHIBs] sailed to the platform and dropped the crew off at the platform" and suggests that the matter be submitted to the Public Prosecutor if a criminal investigation is desired, could the Netherlands clarify whether, in their view:

- (i) the RHIBs committed an offence under Russian law by entering the 500-metre safety zone;
 - (ii) the RHIBs committed an offence under Dutch law by entering the 500-metre safety zone; and,
 - (iii) if so, whether the Netherlands have, or should have, prosecuted the persons responsible for the violation of the 500-metre safety zone.
- I. The Netherlands consider that it is the responsibility of the flag State to take steps to prevent the violation of safety zones and to prosecute those responsible for such violations?