

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

**QUESTIONS POSED BY
THE ARBITRAL TRIBUNAL TO THE NETHERLANDS
PURSUANT TO ARTICLE 25 OF THE REULES OF PROCEDURE**

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 January 2016

INTRODUCTION

The Tribunal has considered the Netherlands' submissions on reparation as set out in its Memorial dated 31 August 2014, its Updated Pleading on Reparation dated 28 October 2015, and its Supplementary Pleadings on Reparation for Injury dated 30 September 2014 as well as all supporting documentation submitted with these submissions.

Pursuant to paragraph 25 of the Rules of Procedure, the Tribunal poses the questions listed below to the Netherlands. These questions should not be taken to reflect any views held by or findings of the Tribunal.

QUESTIONS

1. In respect of **item 1.1.1** of the Netherlands' Updated Claim Statement (Annex N-48), the Netherlands is requested provide information to the Tribunal regarding the state and value of the RHIBs on 19 September 2013 prior to the boarding of the *Arctic Sunrise*.
2. In respect of **item 3.5** of the Netherlands' Updated Claim Statement (Annex N-48), the Netherlands is requested to clarify the quantity of lubrication oil that remained on board the *Arctic Sunrise* in July 2014. The Tribunal notes that the figure of 2,100 liters is stated in Appendix 7.1 to the Netherlands' Updated Claim Statement, while the figure of 2,900 liters appears in Appendix 7.2. The Netherlands is also requested to confirm that the calculations set out in Appendix 7.1 are correct and provide the sources for the figures cited for the cost of lubrication oil and petrol.
3. The Netherlands is requested to explain whether there is a difference between the cost of the “[r]eturn voyage of the *Arctic Sunrise* from Murmansk to Amsterdam” claimed under **item 4** of the Netherlands' Updated Claim Statement (Annex N-48) and the costs that would have been incurred for the return voyage of the *Arctic Sunrise* from the *Prirazlomnaya* to Amsterdam had the vessel not been boarded and detained by the Russian authorities?
4. The Netherlands is requested to explain why transactions post-dating the return of the *Arctic Sunrise* to Amsterdam on 9 August 2014 are included as costs of the “return voyage from Murmansk to Amsterdam” of the *Arctic Sunrise* under **item 4.3** of the Netherlands' Updated Claim Statement (Annex N-48)?
5. The Netherlands is requested to explain why it should be compensated for loss of hire of the *Arctic Sunrise* for the period from 10 August to 27 September 2015, as requested under **item 5** and Appendix 9 of the Netherlands' Updated Claim Statement (Annex N-48).
6. The Netherlands is requested to explain how the total figure of EUR 804,665 is arrived at under **item 5** of the Netherlands' Updated Claim Statement (Annex N-48).
7. The total amount claimed under **item 7** of the Netherlands' Updated Claim Statement (Annex N-48) (EUR 5,605) appears to pertain entirely to item 7.1.2—“shipping and handling of items that have been restituted.” The Netherlands is therefore requested to clarify whether any compensation is requested under item 7.1.1 of the Netherlands' Updated Claim Statement (Annex N-48)—“personal belongings that have not yet been restituted.”

8. The sum of the figures listed under **item 9** the Netherlands' Updated Claim Statement (Annex N-48) is not EUR 3,370,255. The Netherlands is requested to verify those figures and confirm the total amount claimed.
9. The Tribunal notes that, in **Appendix 4** to the Netherlands' Updated Claim Statement (Annex N-48), the salary costs for standby days of some crewmembers are included both in the costs listed under the heading "Crew transit from Murmansk to Amsterdam" and the heading "Standby Crew/Contract obligations." The Netherlands is requested to indicate whether there is any overlap between the salary costs set out under these two headings. If there is overlap, the Netherlands is requested to describe its extent. If there is no overlap, the Netherlands is requested to explain the difference between the salary costs for standby days set out under each heading.
10. The Netherlands is requested to explain the basis on which "15% empl costs" are added to the annual salaries of the *Arctic Sunrise* crew when calculating their salary costs in **Appendix 4** to the Netherlands' Updated Claim Statement (Annex N-48).
11. The Tribunal notes that, while the Netherlands claims compensation for crew salaries for certain days in 2013 (*see* Appendix 4 to the Netherlands' Updated Claim Statement (Annex N-48)), the "Rules and Regulation for ships' crew on board of vessels operated by Stichting Greenpeace Council" (Appendix 5 to the Netherlands' Updated Claim Statement (Annex N-48)) setting out the applicable salaries are valid only from 1 January 2014. The Netherlands is requested to provide the Rules and Regulations that applied during the relevant period in 2013.
12. The Netherlands is requested to confirm that the calculations set out in **Appendix 9.1** of the Netherlands' Updated Claim Statement (Annex N-48) are correct and, in particular, to explain how the number of days for each period is calculated.
13. The Netherlands is requested to describe precisely what the "emergency response" costs claimed under **items 9.1 and 9.2.1** of the Netherlands' Updated Claim Statement (Annex N-48) consist of and explain why it should be compensated for these costs.
14. The Netherlands is requested to provide an update on the status of the proceedings commenced by the Arctic 30 before the European Court of Human Rights.
15. At **paragraph 12** of its Updated Pleading on Reparation, the Netherlands submits that the interest it claims shall run "from the moment of the commission of the wrongful acts by the Russian Federation". However, at **paragraphs 13-15** of its Updated Pleading on Reparation, the Netherlands claims that "the payment of interest is due from the date when the princip[al] sum is due" which it defines as the date on which the Tribunal will issue its award on the quantum of compensation (or the date of the Award on the Merits, 14 August 2015, for interest on the payments the Netherlands made on behalf of the Russian Federation in the first stages of the proceedings). The Netherlands is requested to clarify its position.