

**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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**SUPPLEMENTARY WRITTEN PLEADINGS ON REPARATION FOR INJURY OF  
THE KINGDOM OF THE NETHERLANDS**

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**ARBITRAL TRIBUNAL:**

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

**REGISTRY:**

**Permanent Court of Arbitration**

**30 September 2014**

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## **1. Introduction**

1. On 22 August 2014, the Kingdom of Netherlands submitted a request for leave to submit supplementary written pleadings on reparation for injury caused to the Netherlands by the internationally wrongful acts of the Russian Federation indicated in the Memorial of the Kingdom of the Netherlands filed on 1 September 2014 (Memorial).<sup>1</sup> The Tribunal granted the leave requested on 30 August 2014, allowing the Netherlands to submit its supplementary written pleadings on or about 1 October 2014.<sup>2</sup>

2. These supplementary written pleadings present the Netherlands' request for reparation for injury. In these pleadings, an analysis of the legal basis of reparation for injury is provided (Section 2). In addition, the specific heads of damage suffered by the Netherlands are identified and quantified (Section 3).

3. These pleadings replace paragraphs 389 to 396 of the Memorial and are to be read in conjunction with the Memorial, in particular the other paragraphs of Section 2.7 on the content of the international responsibility of the Russian Federation for its internationally wrongful acts as specified in the Memorial. These supplementary written pleadings are an integral part of the Memorial. The award requested in Section VI of the Memorial and the reservation of rights in Section VII of the Memorial accordingly apply to these supplementary written pleadings.

## **2. Legal Basis of Reparation for Injury**

### *2.1 Introduction*

4. As set out in Section 2.7.1 of the Memorial, and as provided in Article 304 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS or Convention), the international responsibility of the Russian Federation which is entailed by the internationally wrongful acts

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<sup>1</sup> Letter of the Kingdom of the Netherlands to the Tribunal of 22 August 2014.

<sup>2</sup> Letter of the Tribunal to the Parties of 30 August 2014.

indicated in the Memorial involves the legal consequences, including reparation, set out in the Memorial. Article 304 UNCLOS provides that

“[t]he provisions of this Convention regarding responsibility and liability for damage are without prejudice to the application of existing rules and the development of further rules regarding responsibility and liability under international law”.

5. As alluded to in the Memorial, reparation may, in the present case, also be due under specific provisions of the Convention. Should the Tribunal find that the Russian Federation, through its law-enforcement actions, has not committed one or more of the internationally wrongful acts indicated in the Memorial, Articles 110.3, 111.8 and 106 UNCLOS constitute alternative grounds for reparation. These Articles were designed to prevent abuse of the additional powers that they attribute to States Parties. This Section elaborates these alternative grounds.

## 2.2 *Article 110.3 UNCLOS*

6. Pursuant to Article 110.1 UNCLOS, the right of visit may only be exercised when there is reasonable ground for suspecting that a foreign ship has engaged in one of the activities listed in subparagraphs (a) to (e) of that Article. Paragraph 3 of the Article provides that:

“[i]f the suspicions prove to be unfounded, and provided that the ship boarded has not committed any act justifying them, it shall be compensated for any loss or damage that may have been sustained”.

7. The present Article 110 UNCLOS was first drafted by the International Law Commission (ILC) and incorporated as Article 46 in its 1956 Articles concerning the Law of the Sea (ALS).<sup>3</sup> The largely unaltered reflection of Article 46 of the ALS in the UNCLOS demonstrates the acceptance by the States Parties to the UNCLOS of the content of the ILC draft. This also applies to Article 43 of the ALS discussed below. The text of Article 46.3 ALS was adopted without

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<sup>3</sup> ILC, ‘Articles concerning the Law of the Sea, with Commentaries’, II *Y.I.L.C.* (1956), pp. 283-284.

amendments in the 1958 Convention on the High Seas and the 1982 UNCLOS. The ILC's Commentary to this Article provides that compensation must be paid to the ship boarded "not only where the ship was stopped without reasonable grounds but in all cases where suspicion proves unfounded and the ship committed no act calculated to give rise to suspicion".<sup>4</sup>

8. The Article thus provides that compensation should be paid not only when there were no reasonable grounds to stop the ship, but also when there might have been reasonable grounds for suspicions, but the suspicions later prove to be unfounded. This is subject to the condition that the ship committed no act justifying the suspicions. In this connection, it has been observed that

"the intention was to make provision for two cumulative conditions. If a ship acted in a suspicious manner, it did not deserve compensation even if it had eventually transpired that no offence had been committed. Compensation was justified only where a ship had neither committed any offence nor given any reasonable grounds for suspicion".<sup>5</sup>

9. In the words of the ILC, "[t]his severe penalty seems justified in order to prevent the right of visit being abused".<sup>6</sup> According to the ILC's first Special Rapporteur on international liability for injurious consequences arising out of acts not prohibited by international law, the exercise by States of the right of visit is an example of an activity that is "expressly conditioned by the liability to pay compensation for any loss or damage sustained by an innocent suspect".<sup>7</sup> "[T]hese liabilities are prudent measures to move the point of intersection between harm and wrong, so that the State accepting the commitment gains additional freedom to act lawfully, but does not charge the cost to other States".<sup>8</sup>

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<sup>4</sup> Ibid., p. 284.

<sup>5</sup> I *Y.I.L.C.* (1955), para. 13, p. 229 (Fitzmaurice).

<sup>6</sup> ILC, 'Articles concerning the Law of the Sea, with Commentaries', II *Y.I.L.C.* (1956), Commentary to Article 46, p. 284.

<sup>7</sup> Second report on international liability for injurious consequences arising out of acts not prohibited by international law, by Mr. Robert Q. Quentin-Baxter, Special Rapporteur, II(1) *Y.I.L.C.* (1981), para. 66, pp. 117-118.

<sup>8</sup> Ibid.

### 2.3 *Article 111.8 UNCLOS*

10. Article 111.8 UNCLOS provides that

“[w]here a ship has been stopped or arrested outside the territorial sea in circumstances which do not justify the exercise of the right of hot pursuit, it shall be compensated for any loss or damage that may have been thereby sustained”.

11. The right of hot pursuit was first codified at the 1930 Hague Codification Conference as Article 11 of the Annex to the Resolution on the Territorial Sea. At that time, however, it did not include a paragraph on compensation. The ILC has also not addressed the issue of compensation in relation to the right of hot pursuit in the ALS. Thus, Article 47 ALS does not include a paragraph on compensation.

12. At the 1958 Conference on the Law of the Sea, the United Kingdom proposed to add a paragraph on compensation. It explained that “[a] clause providing for the payment of compensation for loss or damage sustained in circumstances which did not justify the exercise of the right of hot pursuit was just as necessary in article 47 [right of hot pursuit] as in article 46 [right of visit]”.<sup>9</sup> The proposal of the United Kingdom was adopted and became Article 23.7 of the 1958 Convention on the High Seas.<sup>10</sup> Article 111.8 UNCLOS closely follows this provision.

### 2.4 *Article 106 UNCLOS*

13. Article 105 UNCLOS provides that

“[o]n the high seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft, or a ship or aircraft taken by piracy and under the control of pirates, and arrest the persons and seize the property on board. The courts of

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<sup>9</sup> United Nations Conference on the Law of the Sea, Official Records, vol. IV: Second Committee (High Seas: General Régime), Summary records of the 28th meeting (9 April 1958), p. 79; see also the similar proposal by Israel: *ibid.*, p. 82.

<sup>10</sup> United Nations Conference on the Law of the Sea, Official Records, vol. IV: Second Committee (High Seas: General Régime), Summary records of the 31st meeting (11 April 1958), p. 92.

the State which carried out the seizure may decide upon the penalties to be imposed, and may also determine the action to be taken with regard to the ships, aircraft or property, subject to the rights of third parties acting in good faith”.

14. Article 105 UNCLOS is a reflection of Article 43 ALS. The ILC’s Commentary to Article 43 explains that “[t]his article gives any State the right to seize pirate ships (and ships seized by pirates) and to have them adjudicated upon by its courts”. This right is conditioned by Article 106 UNCLOS, which provides that

“[w]here the seizure of a ship or aircraft on suspicion of piracy has been effected without adequate grounds, the State making the seizure shall be liable to the State the nationality of which is possessed by the ship or aircraft for any loss or damage caused by the seizure”.

15. Article 106 UNCLOS is identical to Article 44 ALS. The ILC’s Commentary to Article 44 ALS explains that

“[t]his article penalises the unjustified seizure of ships on grounds of piracy. The penalty applies to seizure in the circumstances described in article 43, and to all acts of interference as mentioned in article 46 (see the commentary on article 46), committed on the ground of suspicion of piracy”.<sup>11</sup>

16. In its comments on the ILC’s ‘Provisional articles concerning the régime of the high seas’,<sup>12</sup> the Netherlands inquired “why the wording of [Article 44 ALS] should be different from that used in [Article 46 ALS (right of visit)], paragraph 3, as probably the same is meant in both articles”;<sup>13</sup> The Special Rapporteur on the régime of the high seas affirmed this reading and stated in its conclusions that “[t]he wording of this article should be amended to bring it into

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<sup>11</sup> ILC, ‘Articles concerning the Law of the Sea, with Commentaries’, II *Y.I.L.C.* (1956), Commentary to Article 46, p. 283.

<sup>12</sup> II *Y.I.L.C.* 1955, p. 19.

<sup>13</sup> II *Y.I.L.C.* 1956, p. 65.

conformity with [Article 46 (right of visit)], paragraph 3”.<sup>14</sup> For reasons unknown, the ILC never brought the wording of these articles in conformity, nor were these amendments made at the later Conferences on the Law of the Sea.

#### *2.5 Articles 110.3, 111.8 and 106 UNCLOS as Alternative Grounds for the Claims for Compensation and Damages*

17. In the present case, the Russian Federation is under an obligation to make full reparation for the injury caused by the internationally wrongful acts indicated in the Memorial. However, as alluded to in the Memorial, reparation may, in the alternative, be due under specific provisions of the Convention. Should the Tribunal find that the Russian Federation, through its law-enforcement actions, has not committed one or more of the internationally wrongful acts indicated in the Memorial, it is nevertheless required to pay compensation for the damage and loss caused by these actions under Articles 110.3, 106 and 111.8 of the Convention.

18. First, should the Tribunal, in accordance with Article 110 UNCLOS, find that the relevant law-enforcement authorities of the Russian Federation did have reasonable ground for suspecting that the *Arctic Sunrise* and the people on board were engaged in piracy, or in any of the other grounds listed in that Article, it is submitted that such suspicions have been proven to be unfounded, and that the *Arctic Sunrise* and the persons on board have not committed any acts justifying those suspicions. Consequently, the Russian Federation is under an obligation to provide compensation for the loss and damage sustained by the *Arctic Sunrise*.

19. Second, the Russian Federation appears to have invoked a provision of its national law to exercise the right of hot pursuit. The right of hot pursuit is laid down in Article 111 UNCLOS. As provided in this Article, the exercise of this right is subject to several cumulative conditions. As demonstrated in Section V.2.4.1.3 of the Memorial, the Russian Federation has not fulfilled these conditions rendering the exercise of the right of hot pursuit illegal.

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<sup>14</sup> Ibid., para. 138, p. 20.



20. In the alternative, should the Tribunal find that the Russian Federation has fulfilled the conditions for the exercise of the right of hot pursuit, it is submitted that there were no laws or regulations of the Russian Federation applicable in accordance with the Convention violated by the *Arctic Sunrise*. As held by the ITLOS in *The M/V “SAIGA” (No. 2) Case*, when no laws or regulations of the coastal State applicable in accordance with the Convention are violated, there is “no legal basis for the exercise of the right of hot pursuit”.<sup>15</sup> In the present case, the application by the Russian Federation of national legislation extending the breadth of safety zones around installations in its exclusive economic zone beyond the extent allowed under the UNCLOS as well as the application of national legislation relating to the crime of piracy was not in accordance with the UNCLOS. Also, the law-enforcement actions on these grounds did not lead to any criminal conviction. It follows that there was no legal basis for the exercise of the right of hot pursuit.

21. For the above reasons, the Russian Federation has boarded and arrested the *Arctic Sunrise* in circumstances which do not justify the exercise of the right of hot pursuit in accordance with the Convention. Consequently, on the basis of Article 111.8 UNCLOS, the Russian Federation is under an obligation to provide compensation for the loss and damage sustained by the *Arctic Sunrise*.

22. Third, as demonstrated in Section V.2.4.1.4 of the Memorial, the claim that the *Arctic Sunrise* and the persons on board have committed or could reasonably have been suspected of having committed piracy is without merit. Although the piracy charges have not been formally withdrawn, no criminal conviction has followed on this basis. It follows that the seizure of the *Arctic Sunrise* has been effected without adequate grounds. Accordingly, the Russian Federation, in accordance with Article 106 UNCLOS, is liable to the Kingdom of the Netherlands for any loss or damage to the *Arctic Sunrise* caused by the seizure.

23. In sum, even if the Russian Federation could justify its initial law-enforcement actions against the *Arctic Sunrise* and the persons on board, subsequent events, including the absence of

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<sup>15</sup> *The M/V “SAIGA” (No. 2) Case (Saint Vincent and the Grenadines v. Guinea)*, Judgment of 1 July 1999, para. 149.

any criminal conviction on the basis of the law-enforcement actions, have demonstrated that the suspicions were unfounded, that there were no adequate grounds, or that there were no circumstances justifying the conduct of the Russian Federation. Therefore, compensation is due for these actions under Articles 110.3, 106 and 111.8 UNCLOS.

### **3. Headings of Reparation for Injury**

#### *3.1 Introduction*

24. In its Memorial, the Netherlands identified three headings for reparation: damage to the Netherlands, damage to the *Arctic Sunrise*, and damage to the persons on board the *Arctic Sunrise*.

25. The general rules on reparation for injury have been codified in the Articles on the Responsibility of States for Internationally Wrongful Acts (ARSIWA)<sup>16</sup> in Articles 31 (reparation), 35 (restitution), 36 (compensation), 37 (satisfaction) and 38 (interest).

26. All damage for which reparation is claimed is caused by the internationally wrongful acts of the Russian Federation indicated in the Memorial. These internationally wrongful acts caused material and non-material damage to the Netherlands, a ship flying its flag, the owner of the ship, the charterer and operator of the ship, and the persons on board the *Arctic Sunrise*. Considering the direct nexus between these internationally wrongful acts and the heads of damage specified below, the Netherlands is entitled to claim damage suffered by it as well as damage and other loss suffered by the *Arctic Sunrise*, including its owner and charterer and operator as well as the persons on board.

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<sup>16</sup> ILC, 'Articles on the Responsibility of States for Internationally Wrongful Acts, with Commentaries', II(2) *Y.I.L.C.* (2001), pp. 91-109.

### 3.2 *Damage to the Kingdom of Netherlands*

27. The breaches by the Russian Federation of the exclusive jurisdiction of the Netherlands over the *Arctic Sunrise*, of the freedom of navigation and the freedom of protest at sea, the Russian Federation's non-compliance with the Order of 22 November 2013 of the International Tribunal for the Law of the Sea (ITLOS) in *The "Arctic Sunrise" Case (Kingdom of the Netherlands v. Russian Federation)* (ITLOS Order), and the non-participation of the Russian Federation in this arbitral procedure have caused material and non-material damage to the Netherlands.

28. The non-compliance of the Russian Federation with its obligations under international law directly owed to the Netherlands and owed to the Netherlands as a member of the international community (obligations *erga omnes*) causes non-material damage to the Netherlands. In addition, the unlawful boarding of the *Arctic Sunrise* and subsequent law-enforcement measures constitute a violation of the sovereignty of the Netherlands. Finally, the non-participation of the Russian Federation in the proceedings before this Tribunal causes material damage to the Netherlands. The Netherlands considers that satisfaction, restitution and compensation constitute the appropriate forms of reparation to redress the damage suffered by it.

29. For the legal damage suffered as result of the non-compliance of the Russian Federation with its obligations under international law owed to the Netherlands, the violation of the sovereignty of the Netherlands, and the declaration of the safety zone beyond the extent allowed under the UNCLOS, the Netherlands requests satisfaction. As explained by the ILC in its commentaries to the ARSIWA, for "injuries [...] arising from the very fact of the breach of the obligation, irrespective of its material consequences", "violations of sovereignty" and "attacks on ships", satisfaction is the most appropriate remedy.<sup>17</sup> In its words, "[s]atisfaction [...] is the remedy for those injuries, not financially assessable, which amount to an affront to the State".<sup>18</sup>

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<sup>17</sup> ARSIWA, Commentary to Article 37, para. 3-4.

<sup>18</sup> *Ibid.*, para. 3.

30. Satisfaction may be provided in many ways. The most common form is, in the words of the ILC, “a declaration of the wrongfulness of the act by a competent court or tribunal”.<sup>19</sup> Another form of satisfaction frequently resorted to is a formal apology. Both are requested by the Netherlands: it requests a declaration of the wrongfulness of the conduct of the Russian Federation with respect to all five internationally wrongful acts indicated in the Memorial and a formal apology from the Russian Federation for its wrongful conduct in respect of all five internationally wrongful acts indicated in the Memorial.

31. Furthermore, the Netherlands considers that restitution is appropriate with respect to the application by the Russian Federation of national legislation relating to the *Prirazlomnaya* vis-à-vis the Netherlands, including ships flying its flag, in particular by extending the breadth of safety zones around installations in its exclusive economic zone beyond the extent allowed under the UNCLOS. The appropriate remedy is the issuance of a notice to mariners revoking existing notices to mariners relating to the *Prirazlomnaya*, including in particular Notices to Mariners No. 51/2011 and Notices to Mariners 21/2014,<sup>20</sup> and replacing them by notices to mariners that are in accordance with the UNCLOS.

32. In addition, the Netherlands suffered material damage, for which compensation is considered the appropriate form of reparation. This material damage consists of (a) the costs of the bank guarantee issued pursuant to the ITLOS Order and (b) the costs of the payments by the Netherlands of the Russian Federation's share of the Tribunal's fees and expenses.

33. As for the bank guarantee issued as bond or other financial security for the release of the *Arctic Sunrise* and all persons on board the ship pursuant to the ITLOS Order, the costs charged by the issuing bank as commission amount to EUR 13,500 (Annex N-43).

34. As for the costs of the payments by the Netherlands of the Russian Federation's share of the Tribunal's fees and expenses, the Netherlands requests the Tribunal to establish the amount at the time of the finalization of the arbitral procedure. Pursuant to Article 7 of Annex VII to the

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<sup>19</sup> Ibid., para. 5.

<sup>20</sup> Memorial, Annex N-37 and N-39 respectively.

Convention and Article 31 of the Tribunal's Rules of Procedure, the expenses of the Tribunal shall be borne by the parties to the dispute in equal shares, unless the Tribunal decides otherwise because of the particular circumstances of the case. The Kingdom of the Netherlands submits that no such particular circumstances warrant deviating from this provision in the present case. Hence, the Kingdom of the Netherlands requests the Tribunal to decide that the Netherlands and the Russian Federation shall bear the expenses of the Tribunal in equal shares.

35. At the request of the Tribunal, the Netherlands has paid the Russian Federation's portion of EUR 150,000 of the initial deposit of EUR 300,000 to secure the fees and expenses of the Tribunal.<sup>21</sup> The total of the Tribunal's fees and expenses may exceed or stay below the amount currently deposited. Accordingly, it is currently not possible to provide a definite quantification of the amount of compensation claimed. The amount will be the total of the Russian Federation's portions of deposits paid by the Netherlands except for any unused balance returned to the Netherlands in relation to those portions at the end of the arbitration.

36. In sum, the Netherlands demands the following as reparation for the damage suffered by it:

- A declaratory judgment on the wrongfulness of the conduct of the Russian Federation in respect of all internationally wrongful acts indicated in the Memorial;
- A formal apology from the Russian Federation for its wrongful conduct in respect of all internationally wrongful acts indicated in the Memorial;
- An order to the Russian Federation to issue a notice to mariners revoking existing notices to mariners relating to the *Prirazlomnaya*, including in particular Notices to Mariners No. 51/2011 and Notices to Mariners 21/2014, and replacing them by notices to mariners that are in accordance with the UNCLOS;
- Compensation of the costs of (a) the bank guarantee issued pursuant to the ITLOS Order and (b) the payments by the Netherlands of the Russian Federation's share of the Tribunal's fees and expenses.

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<sup>21</sup> Memorial, para. 373.

### 3.3 *Damage to the Arctic Sunrise*

37. The *Arctic Sunrise* was arrested on 19 September 2013, formally released on 6 June 2014 and allowed to leave the port of Murmansk on 31 July 2014. It departed from the Russian Federation on 1 August 2014 and arrived in Amsterdam on 9 August 2014. From the moment of the arrest of the *Arctic Sunrise* until its departure from the Russian Federation, considerable material damage was suffered by the ship, its owner, and its charterer and operator.

38. The various heads of damage suffered by the *Arctic Sunrise* are presented below. These heads of damage are described in the Claim Statement of 18 September 2014 and its accompanying appendices (Annex N-42), which was provided to the Netherlands by Greenpeace International. These are:

- The Audited Claims Statement by WEA Accountants of 17 September 2014 concerning damages related to the support and release of the persons who had been on board the *Arctic Sunrise* as well as the recovery of the ship (Annex N-42, Appendix 1);
- The Report of Survey by Halyard Survey BV of 21 August 2014 providing a damage survey estimating the cost for repair and recovery of missing equipment and goods after the return of the *Arctic Sunrise* to Amsterdam (Annex N-42, Appendix 2);
- The statement on fuel and victual loss (Annex N-42, Appendix 5);
- The Fuel Costs of the Return Voyage (Annex N-42, Appendix 6);
- The Loss of Hire Costs (Annex N-42, Appendix 7);
- Invoice for the procurement of the Halyard Survey Report of Survey (Annex N-42, Appendix 8);
- Invoice for the procurement of the Audited Claims Statement by WEA Accountants (Annex N-42, Appendix 9).

39. On the basis of these documents, the Kingdom of the Netherlands claims a total of EUR 1,364,113 as compensation for damage suffered by the *Arctic Sunrise*. This amount is excluding EUR 295,000 which must be added if restitution of the objects belonging to and removed from

the *Arctic Sunrise* is not possible. The amount includes the costs for the procurement of the Report of Survey by Halyard Survey BV and the Audited Claims Statement by WEA Accountants.

40. While the ship was in the custody of the authorities of the Russian Federation, persons unknown removed various objects belonging to the *Arctic Sunrise* which have not yet been returned. These objects have been reported in the Halyard Survey Report (Annex N-42, Appendix 2). The Netherlands requests restitution of these objects in their original state. The shipping and handling of the objects to be restituted will cost EUR 16,000 as indicated in the Claim Statement of 18 September 2014 under A1.1 (Annex N-42).

41. Should restitution of the objects in their original state be impossible, compensation is claimed. The value of these objects amounts to EUR 295,000 as detailed in the Halyard Survey Report (p. 16) and indicated in the Claim Statement of 18 September 2014, A1.2 (Annex N-42). This amount will replace the shipping and handling costs of EUR 16,000 indicated in the previous paragraph.

42. The *Arctic Sunrise* suffered considerable physical damage. Due to its treatment by the authorities of the Russian Federation, the ship itself was damaged and polluted by coal dust and/or iron ore dust originating from nearby stored bulk cargo. The extent of this damage and the pollution is reported in the Halyard Survey Report (Annex N-42, Appendix 2). Upon the formal release of the *Arctic Sunrise*, substantial costs were incurred for the preparation of the ship for its return voyage to Amsterdam. Replacements and resupplying, including the resupplying of fuel and victual, were required in order for the ship to be seaworthy and for the return voyage to be possible. In addition, harbor dues and agent costs were charged by the authorities of the Russian Federation in the period between the formal release of the *Arctic Sunrise* and its departure to Amsterdam. Compensation is claimed for these costs in the amount of EUR 303,764 as indicated in sections A3 and A4 of the Claim Statement of 18 September 2014 (Annex N-42).

43. Furthermore, the lengthy detention of the *Arctic Sunrise* in the harbor of Murmansk Oblast itself caused physical damage to the ship due to lack of maintenance as well as staff costs

related to the stand-by crew and legal assistance and fees. Compensation is claimed for these costs in the amount of EUR 268,903 as indicated in sections A2 of the Claim Statement of 18 September 2014 (Annex N-42).

44. Finally, during the entire period of detention until the return of the *Arctic Sunrise* in Amsterdam, the ship was unavailable to its owner and its charterer and operator, resulting in a loss of profits. This loss of profits was due to the unavailability of the ship during its detention and the fee paid by the charterer, Greenpeace International, to the owner, Stichting Phoenix. International law recognizes that compensation for loss of profits is part of the obligation to make reparation.<sup>22</sup> Compensation is claimed for these costs in the amount of EUR 767,630 as indicated in section A5 of the Claims Statement of 18 September 2014 (Annex N-42).

#### 3.4 *Damage to the Persons on Board the Arctic Sunrise*

45. Due to the unlawful boarding of the *Arctic Sunrise* and the subsequent law-enforcement measures, material and non-material damage has been suffered by the persons on board the ship.

46. The persons who were on board the *Arctic Sunrise* were initially charged with piracy and hooliganism. While the later request for extension of their detention did not include the piracy charge and while they were later granted an amnesty for the charge of hooliganism, there was no formal dismissal of the charge of piracy insofar as this charge was based on international law. Although the persons who were on board the *Arctic Sunrise* may in practice no longer face piracy charges, the charges have not been formally withdrawn, causing discomfort for the persons concerned. Restitution is therefore required in the form of the formal dismissal of the charge of piracy insofar as it is based on international law.

47. The various heads of damage suffered by the people on board the *Arctic Sunrise* are presented below. They are described in the Claim Statement of 18 September 2014 and its relevant Appendices. These are:

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<sup>22</sup> See Article 36.2 ARSIWA.



- The Audited Claims Statement by WEA Accountants of 17 September 2014 concerning damages related to the support and release of the persons who had been on board the *Arctic Sunrise* as well as the recovery of the ship (Annex N-42, Appendix 1);
- The Crew Cost Overview (Annex N-42, Appendix 3a);
- The Rules and Regulations for ships' crew on board of vessels operated by Stichting Greenpeace Council (Annex N-42, Appendix 3b);
- The Staff Cost Overview (Annex N-42, Appendix 4a);
- The Staff Grade Spread (Annex N-42, Appendix 4b);
- The Greenpeace International Staff Reward Scheme (Annex N-42, Appendix 4c);
- List of missing personal belongings (Annex N-42, Appendix 10);
- Invoice for the procurement of the Audited Claims Statement by WEA Accountants (Annex N-42, Appendix 9).

48. On the basis of this documentation, the Kingdom of the Netherlands claims a total of EUR 5,854,213 as compensation for material and non-material damage suffered by the persons who were on board the *Arctic Sunrise*. This amount is excluding EUR 45,000, which must be added if restitution of the personal belongings of the persons on board the *Arctic Sunrise* and removed from the ship is not possible.

49. Upon their arrest and while the persons on board the *Arctic Sunrise* were in the custody of the authorities of the Russian Federation, personal belongings, such as cameras, laptops and documents were taken from them and have not yet been returned. The list of these personal belongings is attached to these supplementary written pleadings (Annex N-42, Appendix 10). The Netherlands demands restitution of these personal effects in their original state to their rightful owners. The shipping and handling of the personal belongings to be restituted will cost EUR 3,000 as indicated in the Claim Statement of 18 September 2014 under B7 (Annex N-42).

50. Should restitution of the personal belongings in their original state be impossible, compensation is claimed. The value of these objects amounts to EUR 45,000 as detailed in the

Halyard Survey Report (p. 16) and indicated in the Claim Statement of 18 September 2014 under B7 and Appendix 10 (Annex N-42). This amount will replace the shipping and handling costs of EUR 3,000 indicated in the previous paragraph.

51. The persons on board the *Arctic Sunrise* suffered non-material damage due to their lengthy wrongful detention in the Russian Federation. The number of days of all persons taken together amounts to 1,719 days of wrongful detention (see Memorial, Annex N-1, Appendix 29). The award of non-material damages in situations of wrongful detention is well-established under international law. Judicial precedents include *The M/V "SAIGA" (No. 2) Case*<sup>23</sup> and *Ahmadou Sadio Diallo*.<sup>24</sup> The quantification of the non-material damage is based on a sum of EUR 1,000 per person per day of wrongful detention. This sum is comparable to the sum of US\$ 1,180 granted by the International Court of Justice in *Ahmadou Sadio Diallo*. Compensation is accordingly claimed in the amount of EUR 1,719,000.

52. The material damages inflicted upon the persons on board of the *Arctic Sunrise* are listed in the Claim Statement of 18 September 2014 (Annex N-42). With the exception of the costs incurred as salary costs as lost funds (indicated under B9.2.4), they are also included in the Audited Claims Statement by WEA Accountants of 17 September 2014 (Annex N-42, Appendix 1).

53. The costs incurred as result of the material damages suffered by the persons on board the *Arctic Sunrise* are: a) the costs for having to provide bail (Claims Statement of 18 September 2014, under B8 (Annex N-42)); b) the costs incurred during the wrongful detention (Claims Statement of 18 September 2014, under B9 (Annex N-42)); c) the costs incurred between release from prison and departure from the Russian Federation (Claims Statement of 18 September 2014, under B10 (Annex N-42)); and d) the costs incurred for the procurement of the Audited Claims Statement by WEA Accountants (Claims Statement of 18 September 2014, under B11 (Annex N-42)). Compensation is claimed in the amount of EUR 4,135,215.

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<sup>23</sup> *The M/V "SAIGA" (No. 2) Case (Saint Vincent and the Grenadines v. Guinea)*, Judgment of 1 July 1999, para. 175.

<sup>24</sup> *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Compensation, Judgment, I.C.J. Reports 2012, p. 324, paras. 21-24.

### 3.5 *Interest*

54. In order to achieve full reparation, the award of interest is required. Following the decision of the ITLOS in *The M/V “Virginia G” Case*,<sup>25</sup> the interest rate should be based on the average annual Euro LIBOR (London Interbank Offered Rate) interest rate, running from the moment of the commission of the wrongful acts by the Russian Federation until the payment of the Award of this Tribunal. With respect to the costs incurred by the *Arctic Sunrise*, its owner, its charterer and operator, and the persons on board the ship, a markup of the LIBOR rate of 10% is requested to reflect the interest rates applied to private and commercial borrowing. The Netherlands requests the Tribunal to award interest for the following sums:

- Interest on the principle sum consisting of all payable sums awarded from the date when the principle sum should have been paid until the date the obligation to pay is fulfilled;
- Interest on the sums paid in advance by the Netherlands, the owner of the *Arctic Sunrise*, the operator of the *Arctic Sunrise*, the charterer of the *Arctic Sunrise* or entities associated with the operator of the *Arctic Sunrise* covering costs directly incurred by the internationally wrongful acts of the Russian Federation indicated in the Memorial from the date the payment was done until the date the obligation to pay the compensation is fulfilled.

## 4. **Conclusion**

55. In sum, the Kingdom of the Netherlands requests the Tribunal to award as reparation for injury caused to the Netherlands by the internationally wrongful acts of the Russian Federation indicated in the Memorial:

- In the form of satisfaction:

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<sup>25</sup> *The M/V “Virginia G” Case, Judgment (Panama/Guinea-Bissau), Judgment of 14 April 2014*, paras. 444-445.

- A declaratory judgment on the wrongfulness of the conduct of the Russian Federation in respect of all five internationally wrongful acts indicated in the Memorial;
- A formal apology from the Russian Federation for its wrongful conduct in respect of all five internationally wrongful acts indicated in the Memorial;
- In the form of restitution:
  - An order to the Russian Federation to issue a notice to mariners revoking existing notices to mariners relating to the *Prirazlomnaya*, including in particular Notices to Mariners No. 51/2011 and Notices to Mariners 21/2014, and replacing them by notices to mariners that are in accordance with the UNCLOS;
  - The return of the objects belonging to the *Arctic Sunrise* which have not yet been returned;
  - The return of the personal belongings of the persons on board the *Arctic Sunrise* which have not yet been returned;
  - The formal dismissal of the charge of piracy brought against the persons who were on board the *Arctic Sunrise*;
- In the form of compensation in the amount of EUR 7,381,828 plus interest as indicated in paragraph 54 subject to any amendments to this amount as may be necessary pursuant to paragraphs 35, 41 and 50:
  - The costs of the bank guarantee issued by the Kingdom of the Netherlands to the Russian Federation pursuant to the ITLOS Order;
  - The costs of the payments by the Netherlands of the Russian Federation's share of the Tribunal's fees and expenses;
  - The costs incurred during the detention of the *Arctic Sunrise*;
  - The costs incurred for resuming the operation of the *Arctic Sunrise*;
  - The costs incurred for the return voyage of the *Arctic Sunrise*;
  - The costs incurred due to loss of use of the *Arctic Sunrise*;
  - The costs incurred due to the necessary procurement of the reports of survey and audited claims;

- The non-material damage suffered by the persons who were on board the *Arctic Sunrise* during the wrongful detention in the Russian Federation;
- The costs incurred for the provision of bail for the persons who were on board the *Arctic Sunrise*;
- The costs incurred during the detention in the Russian Federation of the persons who were on board the *Arctic Sunrise*;
- The costs incurred between release from prison and the departure from the Russian Federation of the persons who were on board the *Arctic Sunrise*;
- The costs incurred due to the procurement of the reports of survey and audited claims.

The Hague, 30 September 2014



Liesbeth Lijnzaad

Agent for the Kingdom of the Netherlands

## LIST OF ANNEXES SUBMITTED BY THE KINGDOM OF THE NETHERLANDS

### Annex N-42

Claim Statement of 18 September 2014 with Appendices:

- **Appendix 1** – Audited Claim Statement by WEA Accountants of 17 September 2014
- **Appendix 2** – Report of Survey by Halyard Survey BV of 21 August 2014
- **Appendix 3A** – Crew Cost Overview of 17 September 2014
- **Appendix 3B** – Rules and Regulations for Ships' Crew on Board of Vessels Operated by Stichting Greenpeace Council 2014-2015
- **Appendix 4A** – Staff Cost Overview
- **Appendix 4B** – Staff Grade Spread April 2013
- **Appendix 4C** – Greenpeace International Staff Reward Scheme 2014
- **Appendix 5** – Statement on Fuel and Victual Loss
- **Appendix 6** – Fuel Costs of the Return Voyage July-August 2014
- **Appendix 7A** – Loss of Hire Costs September 2013-September 2014
- **Appendix 7B** – Charter Agreement Stichting Phoenix and Stichting Greenpeace Council *Arctic Sunrise* 2013
- **Appendix 7C** – Charter Agreement Stichting Phoenix and Stichting Greenpeace Council *Arctic Sunrise* 2013 Adjustment Letter
- **Appendix 7D** – Charter Agreement Stichting Phoenix and Stichting Greenpeace Council *Arctic Sunrise* 2014
- **Appendix 8** – Invoice for Report of Survey by Halyard Survey BV
- **Appendix 9** – Invoice for Audited Claim Statement by WEA Accountants
- **Appendix 10** – List of Missing Personal Belongings of Persons on Board the *Arctic Sunrise*

### Annex N-43

Proof of Payment Royal Bank of Scotland