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PRESS RELEASE

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

THE HAGUE, 18 JULY 2017

Tribunal Renders Award on Compensation

The Tribunal constituted under Annex VII of the United Nations Convention on the Law of the Sea ("Convention") in the matter of the *Arctic Sunrise Arbitration (Netherlands v. Russia)* has rendered its Award on Compensation.

On 14 August 2015, the Tribunal had issued a unanimous Award on the Merits, in which it found that Russia breached its obligations under the Convention by boarding, investigating, inspecting, arresting, detaining, and seizing the *Arctic Sunrise*, a vessel flying the Dutch flag, without the prior consent of the Netherlands, and by arresting, detaining, and initiating judicial proceedings against the thirty persons on board that vessel ("Arctic 30"). The Tribunal also found that Russia breached the Convention by failing to comply with the order prescribing provisional measures issued by the International Tribunal for the Law of the Sea in connection with this arbitration ("ITLOS Provisional Measures Order") and by failing to pay the deposits requested by the Tribunal in the proceedings.

In its Award on Compensation dated 10 July 2017, the Tribunal unanimously determined the quantum of compensation owed by Russia to the Netherlands. The Tribunal decided that Russia shall pay to the Netherlands the following sums, with interest:

- (i) EUR 1,695,126.18 as compensation for damage to the *Arctic Sunrise*;
- (ii) EUR 600,000 as compensation for non-material damage to the Arctic 30 for their wrongful arrest, prosecution, and detention in Russia;
- (iii) EUR 2,461,935.43 as compensation for material damage resulting from the measures taken by Russia against the Arctic 30;
- (iv) EUR 13,500 as compensation for the costs incurred by the Netherlands for the issuance of a bank guarantee to Russia pursuant to the ITLOS Provisional Measures Order; and
- (v) EUR 625,000 as reimbursement of Russia's share of the deposits paid by the Netherlands in the proceedings.

A brief history of the proceedings and an expanded summary of the Award on Compensation are set out below.

HISTORY OF THE PROCEEDINGS

The arbitration concerns measures taken by Russia against the *Arctic Sunrise*, a vessel flying the Dutch flag, and the thirty persons on board that vessel. On 18 September 2013, Greenpeace International (“Greenpeace”), the charterer and operator of the *Arctic Sunrise*, used the vessel to stage a protest at a Russian offshore oil platform located in the Barents Sea within the exclusive economic zone of Russia. On 19 September 2013, in response to the protest, the *Arctic Sunrise* was boarded, seized, and detained by the Russian authorities. The vessel was subsequently towed to Murmansk (a northern Russian port city), where it was held despite requests from the Netherlands for its release. The Arctic 30 were initially arrested, charged with administrative and criminal offences, and held in custody. They were released on bail in late November 2013 and subsequently granted amnesty by decree of the Russian State Duma on 18 December 2013. The non-Russian nationals were permitted to leave Russia shortly thereafter. The arrest of the *Arctic Sunrise* was lifted on 6 June 2014 and the ship returned to Amsterdam on 9 August 2014.

The Netherlands commenced arbitral proceedings under the Convention on 4 October 2013.

In a *Note Verbale* to the Netherlands dated 22 October 2013, Russia referred to the declaration it made when ratifying the Convention (“Declaration”), in which it stated that it does “not accept ‘the procedures provided for in section 2 of Part XV of the Convention entailing binding decisions with respect to disputes . . . concerning law-enforcement activities in regard to the exercise of sovereign rights or jurisdiction.’”

On 26 November 2014, the Tribunal issued its Award on Jurisdiction, in which it unanimously held that Russia’s Declaration does not have the effect of excluding the present dispute from the compulsory dispute settlement procedures entailing binding decisions set out in Section 2 of Part XV of the Convention and, therefore, does not exclude this dispute from the Tribunal’s jurisdiction.

In its Award on the Merits dated 14 August 2015, the Tribunal decided remaining matters of jurisdiction, 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 ITLOS Provisional Measures Order, 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 the proceedings, Russia breached its obligations under Part XV and Article 300 of the Convention.

Finally, 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 Provisional Measures 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.

Following the issuance of the Award on the Merits, the Netherlands submitted an updated pleading on questions of the quantum of compensation and interest, and responded to specific questions put to it in writing by the Tribunal. Thereafter, having consulted the Parties, the Tribunal appointed an accounting expert and a marine surveying expert. Each expert produced a written report on specific issues identified by the Tribunal. The Parties were given an opportunity to comment on the experts’ reports.

SUMMARY OF THE AWARD ON COMPENSATION

1. Damage to the *Arctic Sunrise*

In the Award on the Merits, the Tribunal found that the Netherlands is entitled to compensation for “damage to the *Arctic Sunrise*, including physical damage to the vessel, resulting from the measures taken by the Russian Federation, and costs incurred to prepare the vessel for its return voyage from Murmansk to Amsterdam; as well as costs incurred due to loss of use of the *Arctic Sunrise* during the relevant period.” The Netherlands claimed a total of EUR 1,799,546 under this head of damage.

The Tribunal first considered whether the specific categories of costs claimed by the Netherlands under this head of damage are compensable in principle. It found that the costs of “mobilising public support for the release of the *Arctic Sunrise*” were too remote to be compensated.

The Tribunal then addressed the compensation sought by the Netherlands for the replacement cost of the six rigid hull inflatable boats (“RHIBs”) seized by the Russian authorities from the *Arctic Sunrise*. Referring to the report of its marine surveying expert, the Tribunal found that the replacement cost to which the Netherlands is entitled is that of boats of equivalent age, specification, and condition to the RHIBs of the *Arctic Sunrise*. In this case, at least two RHIBs were replaced by newer boats, such that the award of the full amount claimed by the Netherlands would create a windfall. Noting the lack of precise information regarding the residual value of the replacement RHIBs, the Tribunal determined that it was reasonable to award the Netherlands 50 percent of the amount claimed.

Further, the Tribunal addressed certain claims in support of which the Netherlands had submitted audited costs overviews, which the Tribunal had asked its accounting expert to review. On the basis of the expert’s report, the Tribunal determined that 98.6 percent of the costs in question were supported and therefore recoverable.

Finally, the Tribunal reduced certain amounts claimed by the Netherlands to exclude costs incurred on 18 September 2013, before Russia’s first breach of its obligations under the Convention on 19 September 2013.

On the above basis, the Tribunal awarded the Netherlands EUR 1,695,126.18 for damage to the *Arctic Sunrise*.

2. Non-Material Damage to the Arctic 30

In its Award on the Merits, the Tribunal found that the Netherlands is entitled to compensation for “non-material damage to the Arctic 30 for their wrongful arrest, prosecution, and detention in the Russian Federation.” Under this head of damage, the Netherlands claimed EUR 1,719,000, comprising EUR 1,000 per person, per day of detention.

In determining the amount of compensation for non-material damages, the Tribunal compared the facts of the present case with cases cited by the Netherlands and other relevant international cases where non-material damages were awarded for injuries of a similar nature. In particular, the Tribunal observed that the circumstances of Mr. Diallo’s detention in the *Case of Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)* cited by the Netherlands were more extreme than the circumstances of the detention of the Arctic 30. Citing witness testimony, the Tribunal found that, at most, the Arctic 30 can be said to have been held in conditions that were “not optimal”. At the same time, the Tribunal considered that the fact that the non-Russian nationals among the Arctic 30 were prevented from leaving Russia for a month after their release from prison, in breach of the ITLOS Provisional Measures Order, constitutes an aggravating factor in this case.

Bearing in mind the facts of the case, including the above aggravating factor, the Tribunal awarded the Netherlands EUR 600,000 in compensation for non-material damages.

3. Damage Resulting from the Measures Taken by Russia Against the Arctic 30

In its Award on the Merits, the Tribunal found that the Netherlands is entitled to compensation for “damage resulting from the measures taken by the Russian Federation against the Arctic 30, including the costs of bail paid as security for their release from custody, expenses incurred during their detention in the Russian Federation, and costs in respect of the persons detained between their release from prison and their departure from the Russian Federation.” The Tribunal also determined that compensation would be due for objects belonging to the Arctic 30 that were not returned in a timely manner. The Netherlands claimed a total of EUR 3,998,881 under this head of damage.

The Tribunal first found that certain categories of costs claimed by the Netherlands are too remote to be compensable, namely the costs of Greenpeace’s “emergency response global”, the costs of “mobilisation of public support across the world in countries with Greenpeace presence for the release of the Arctic 30,” and a portion of the salary costs of Greenpeace’s “emergency response team”. The Tribunal further found that the costs of contact with, and visits by, the Arctic 30’s next of kin during their detention, is not compensable, as in incurring these costs, Greenpeace went above and beyond the ordinary level of support an organisation may be expected to provide employees in like circumstances.

Observing that the Netherlands requested compensation for the personal objects of the Arctic 30 seized from the *Arctic Sunrise* without submitting supporting documentation that would allow the Tribunal to specifically assess the value of individual objects, the Tribunal determined that it would be appropriate to award the Netherlands a lump sum of EUR 5,000 on an equitable basis.

As with the damages to the *Arctic Sunrise* (see section 1 above), the Tribunal considered that 98.6 percent of the costs claimed on the basis of audited costs overviews under this head of damage are recoverable, and reduced amounts claimed to exclude costs incurred before 19 September 2013.

On the above basis, the Tribunal awarded the Netherlands EUR 2,461,935.43 for damage resulting from the measures taken by Russia against the Arctic 30.

4. Costs Incurred for the Issuance of a Bank Guarantee

The Netherlands sought EUR 13,500 as compensation for costs incurred by it for the issuance of a bank guarantee to Russia pursuant to the ITLOS Provisional Measures Order. Having reviewed the supporting documentation, the Tribunal awarded the Netherlands the full amount claimed.

5. Deposits for the Costs of Arbitration

The Tribunal confirmed that Russia is under an obligation to reimburse to the Netherlands the amounts of Russia’s share of all deposits paid by the Netherlands as at the date of the Award on Compensation, minus half of any amount returned to the Netherlands by the Registry after the issuance of that Award.

6. Interest

Finally, the Tribunal decided that the Netherlands is entitled to simple interest on all sums awarded to it, at the following rates: (i) the Euro LIBOR annual rate plus six percent on the sums awarded for material damage to the *Arctic Sunrise* and the Arctic 30; (ii) the Euro LIBOR annual rate plus three percent on the sums awarded for non-material damages to the Arctic 30; and (iii) the Euro LIBOR annual rate (without mark-up) on the sums awarded for costs incurred by the Netherlands for the issuance of a bank guarantee and the payment of Russia’s share of arbitration deposits. The Tribunal determined that interest on all the sums awarded shall accrue from the date of the Award on the Merits, save that interest on Russia’s share of arbitration deposits paid by the Netherlands shall accrue from the dates on which those payments were made by the Netherlands.

* * *

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 Permanent Court of Arbitration (PCA) serves as registry in the proceedings.

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.

Additional information and documents pertaining to this arbitration, including the Award on Compensation, are available on the PCA's website at: <https://pca-cpa.org/en/cases/21/>.

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