

SUBMISSION OF DISPUTE TO ARBITRATION

'ARCTIC SUNRISE'

THE KINGDOM OF THE NETHERLANDS

v.

THE RUSSIAN FEDERATION

4 October 2013

**STATEMENT OF THE CLAIM
AND THE GROUNDS ON WHICH IT IS BASED**

I. INTRODUCTION

1. On 19 September 2013, authorities of the Russian Federation boarded, took control over and detained the 'Arctic Sunrise', a vessel that flies the flag of the Kingdom of the Netherlands, without the prior consent of the Flag State in the exclusive economic zone of the Russian Federation. The 'Arctic Sunrise' is an icebreaker operated by Greenpeace International. The vessel was brought to Murmansk Oblast in the Russian Federation and the detention is continuing.

2. Following the boarding of the vessel, authorities of the Russian Federation arrested and detained the crew, and initiated judicial proceedings against them. The detention of these persons and the judicial proceedings are continuing.

3. On 28 September 2013, authorities of the Russian Federation again boarded the 'Arctic Sunrise' in Kola Bay in Murmansk Oblast, without the prior consent of the Kingdom of the Netherlands, to investigate the vessel. The investigation continued over a period of several days.

4. The acts referred to in the paragraphs above constitute violations by the Russian Federation of the 1982 United Nations Convention on the Law of the Sea (hereinafter "UNCLOS" or the "Convention"), the 1966 International Covenant on Civil and Political Rights, and customary international law.

5. Said violations prevent the Kingdom of the Netherlands, the vessel and the crew members from exercising and enjoying their rights, notably the freedom of navigation, and human rights and fundamental freedoms. The Kingdom of the Netherlands thereby suffered and continues to suffer injuries both in its own right and in the form of injuries to the vessel and the crew members.

6. The Kingdom of the Netherlands has repeatedly requested the immediate release of the vessel and its crew in an effort to vindicate its rights and those of the vessel and its crew. Notwithstanding these efforts, the Russian Federation has failed to comply with these requests depriving the Netherlands, the vessel and the crew of the opportunity from exercising their rights under the international law of the sea and international human rights law. Accordingly, a dispute has arisen between the Kingdom of the Netherlands and the Russian Federation related to the rights and obligations of the Russian Federation as the Coastal State in its exclusive economic zone.

7. In accordance with Section 2 of Part XV of UNCLOS and Article 1 of Annex VII to the Convention, the Kingdom of the Netherlands hereby submits the dispute between the Kingdom of the Netherlands and the Russian Federation set out in this Statement to the arbitral procedure provided for in Annex VII to the Convention.

II. JURISDICTION

8. Both the Kingdom of the Netherlands and the Russian Federation are Parties to UNCLOS. The Convention entered into force for the Kingdom of the Netherlands on 28 July 1997, having ratified it on 28 June 1996. The

Convention entered into force for the Russian Federation on 11 April 1997, having ratified it on 12 March 1997.

9. Upon signature of the Convention, the Russian Federation declared, *inter alia*, that

“under article 287 of the United Nations Convention on the Law of the Sea, it chooses an arbitral tribunal constituted in accordance with Annex VII as the basic means for the settlement of disputes concerning the interpretation or application of the Convention. It opts for a special arbitral tribunal constituted in accordance with Annex VIII for the consideration of matters relating to fisheries, the protection and preservation of the marine environment, marine scientific research, and navigation, including pollution from vessels and dumping.”

10. Upon ratification of the Convention, the Kingdom of the Netherlands declared

“that having regard to article 287 of the Convention, it accepts the jurisdiction of the International Court of Justice in the settlement of disputes concerning the interpretation and application of the Convention with States Parties to the Convention which have likewise accepted the said jurisdiction.”

11. Article 287, paragraph 5, of the Convention provides:

“If the parties to a dispute have not accepted the same procedure for the settlement of the dispute, it may be submitted only to arbitration in accordance with Annex VII, unless the parties otherwise agree.”

12. Consequently, since the Kingdom of the Netherlands and the Russian Federation have not accepted the same procedure for the settlement of the dispute, Annex VII to the Convention applies and an arbitral tribunal established thereunder has jurisdiction over this dispute.

13. The jurisdiction of the arbitral tribunal is not affected by the declaration of the Russian Federation upon ratification that

“in accordance with article 298 of the United Nations Convention on the Law of the Sea, 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”.

Under Article 298, paragraph 1(b), of the Convention, the optional exception in connection with disputes concerning law enforcement activities in regard to the exercise of sovereign rights or jurisdiction to the applicability of Section 2 of Part XV of the Convention only applies with respect to “disputes [...] excluded from the jurisdiction of a court or tribunal under article 297, paragraph 2 or 3”. Such disputes concern marine scientific research and fisheries, respectively, neither of which is at issue in the present case. Insofar as the Russian Federation intended the aforementioned declaration to apply to disputes other than those concerning marine scientific research and fisheries, this would be in contravention of Article 309 of the Convention, which provides: “No reservations or exceptions may be made to this Convention unless expressly permitted by other articles of this Convention”. Furthermore, the Kingdom of the Netherlands upon ratification declared that it “objects to any declaration or statement excluding or modifying the legal effect of the provisions of the United Nations Convention on the Law of the Sea”.

III. PROCEDURAL MATTERS

(a) Appointment of Arbitrator

14. In accordance with Article 3, paragraph (b), of Annex VII to UNCLOS, the Kingdom of the Netherlands appoints Professor Dr. Alfred Soons as its arbitrator, whose contact details are as follows:

Professor Dr. Alfred H.A. Soons
Blikkenburgerlaan 83
3703 CV Zeist
The Netherlands
e-mail: a.h.a.soons@uu.nl

(b) Appointment of Agent and Co-agent

15. The Minister of Foreign Affairs of the Kingdom of the Netherlands has designated Professor Dr. Liesbeth Lijnzaad, Legal Adviser of the Ministry of Foreign Affairs, as agent and Professor Dr. René Lefeber, Deputy Legal Adviser of the Ministry of Foreign Affairs, as co-agent.

IV. STATEMENT OF FACTS

The 'Arctic Sunrise' and its crew

16. The 'Arctic Sunrise' is owned by *Stichting Phoenix*, whose address is as follows:

Stichting Phoenix
Dorpsstraat 3
1151 AC Broek in Waterland
The Netherlands

17. The vessel is operated by Greenpeace International, whose address is as follows:

C/o Stichting Greenpeace Council
Otto Heldringstraat 5
1066 AZ Amsterdam
The Netherlands

18. The 'Arctic Sunrise' is flying the flag of the Netherlands. The details of the vessel are as follows:

- IMO number: 7382902
- Gross tonnage: 949
- Category of Ice Strengthening: 1A1 Icebreaker (for max draught 4.7 m) E0 Recyclable (Det Norske Veritas classification certificate)
- Port of registry: Amsterdam, Netherlands
- Type of ship: Motor Yacht
- Call sign: PE 6851

19. According to the Crew List ([Annex 1](#)), the number of persons on board the 'Arctic Sunrise' was 30. In addition to two Dutch nationals, the members of the crew are nationals from Argentina, Australia, Brazil, Canada, Denmark, Finland, France, Italy, Morocco, New Zealand, Poland, Russian Federation, Sweden, Switzerland, Turkey, Ukraine, United Kingdom and United States.

The events giving rise to the dispute

20. On 18 September 2013, Greenpeace International used the 'Arctic Sunrise' to stage a protest directed against the offshore ice-resistant fixed platform (OIRFP) 'Prirazlomnaya' in the Barents Sea. In connection with this protest, in a *note verbale*, dated 18 September 2013 ([Annex 2](#)), the Russian

Federation informed the Kingdom of the Netherlands that it had been decided "to seize the *Arctic Sunrise*."

21. On 19 September 2013, in the Russian Federation's exclusive economic zone, authorities of the Russian Federation boarded, took over control and detained the 'Arctic Sunrise', and proceeded to bring it to Murmansk Oblast.

22. By *note verbale*, informally communicated on 20 September 2013 receipt of which was acknowledged by the Russian Federation on the same day and formally communicated on 23 September 2013 ([Annex 3](#)), the Kingdom of the Netherlands, as the Flag State of the 'Arctic Sunrise', requested the Russian Federation to provide information, including answers to specific questions, concerning the actions by the Russian Federation's authorities against the vessel and its crew. In the *note verbale*, the Kingdom of the Netherlands also underlined the importance of the immediate release of the vessel and its crew. The Kingdom of the Netherlands requested the Russian Federation to reply by 23 September 2013.

23. On 24 September 2013, 08:42 hrs Coordinated Universal Time (UTC), as far as known, the 'Arctic Sunrise' was moored alongside the Russian Federation's coast guard vessel *Ladoga*, which is clearly marked and identifiable as being on government service, in position 69 04.3N 033 06.9E. As far as known, all crew members of the 'Arctic Sunrise' had been removed from the vessel to shore by 15:42 hrs UTC that day. The crew members have since been kept in detention in Murmansk Oblast pending judicial proceedings.

24. The Kingdom of the Netherlands' requests in its *note verbale* of 23 September 2013 remained unanswered and in a further *note verbale* to the Russian Federation, dated 26 September 2013 ([Annex 4](#)), the Kingdom of the Netherlands reiterated its request for information and urged a reply. In the *note verbale*, the Kingdom of the Netherlands also reiterated its request

that the Russian Federation immediately release the vessel and its crew. In this connection, the Kingdom of the Netherlands inquired as to

"whether such release would be facilitated by the posting of a bond or other financial security and, if so, what the Russian Federation would consider to be a reasonable amount for such bond or other financial security."

25. On 27 September, the Russian Federation informed the Consulate-General of the Kingdom of the Netherlands in St. Petersburg that, from 28 September 2013 to 2 October 2013, officials of the Committee of Investigation of the Russian Federation (Investigation Department for the Northwestern Federal District) would conduct investigations on board of the 'Arctic Sunrise' as part of the criminal investigations in case Nr. 83543 (Annex 5). It was suggested that a representative of the Consulate-General be present during these investigations. On 28 September 2013, authorities of the Russian Federation commenced an investigation of the vessel. The Kingdom of the Netherlands had denied its consent thereto and after the investigation, the Kingdom of the Netherlands recorded its formal protest in a *note verbale*, dated 29 September 2013 (Annex 6). To date, a report of the investigation has not been received by the Kingdom of the Netherlands.

26. On 1 October 2013, the Russian Federation sent a *note verbale* responding to the requests for information of the Kingdom of the Netherlands' *note verbale* of 23 September 2013 (Annex 7). According to the note, the boarding, investigation and detention of the 'Arctic Sunrise' and its crew were justified on the basis of general provisions in UNCLOS related to the exclusive economic zone and the continental shelf. In its *note verbale* of 3 October 2013, the Kingdom of the Netherlands expressed its view that these provisions did not justify the actions taken against the 'Arctic Sunrise' and its crew (Annex 8).

27. In its *note verbale* of 3 October 2013, the Kingdom of the Netherlands stated that it therefore appeared that the Russian Federation and the Kingdom of the Netherlands have diverging views on the rights and obligations of the Russian Federation as a Coastal State in its exclusive economic zone. It was indicated that, in view of the urgency of the matter, resulting from the detention of the vessel and its crew, the Kingdom of the Netherlands was considering to initiate arbitration as soon as feasible.

V. STATEMENT OF LEGAL GROUNDS

28. The Kingdom of the Netherlands notes that, pursuant to Article 293 of UNCLOS, the arbitral tribunal shall apply UNCLOS and other rules of international law not incompatible with UNCLOS.

29. Such other rules of international law include the 1966 International Covenant on Civil and Political Rights (hereinafter "ICCPR"). Both the Kingdom of the Netherlands and the Russian Federation are Parties to the ICCPR. The ICCPR entered into force for the Kingdom of the Netherlands on 11 March 1979, having ratified it on 11 December 1978. The ICCPR entered into force for the Russian Federation on 23 March 1976, having ratified it on 16 October 1973.

30. The Kingdom of the Netherlands claims that, pursuant to UNCLOS, in particular Part V and Part VII, notably Articles 56, paragraph 2, 58, paragraph 2, and 110, paragraph 1, and customary international law, the Russian Federation was and is under an obligation to the Kingdom of the Netherlands to obtain the latter's prior consent for:

- (1) the boarding, investigation, inspection, arrest and detention of the 'Arctic Sunrise' in the exclusive economic zone of the Russian Federation, and that the Russian Federation has breached these obligations by boarding, inspecting, arresting, investigating and detaining the vessel without the prior consent of the Kingdom of the Netherlands, thereby impairing the exercise of the freedom of navigation by a vessel flying the flag of the Kingdom of the Netherlands as provided by Articles 58, paragraph 1, and 87, paragraph 1(a), of UNCLOS, and under customary international law;
- (2) the boarding, investigation, inspection, arrest and detention of the 'Arctic Sunrise' in the exclusive economic zone of the Russian Federation, and that the Russian Federation has breached these obligations by boarding, inspecting, arresting, investigating and detaining the vessel without the prior consent of the Kingdom of the Netherlands, thereby impairing the exercise of jurisdiction of the Kingdom of the Netherlands over a vessel flying the flag of the Kingdom of the Netherlands, as provided by Article 58 and Part VII of UNCLOS, and under customary international law;
- (3) the boarding of the 'Arctic Sunrise' in the exclusive economic zone of the Russian Federation to arrest and detain the crew members and to initiate judicial proceedings against them, and that the Russian Federation has breached these obligations by boarding the vessel without the prior consent of the Kingdom of the Netherlands to detain and arrest the crew members, irrespective of their nationality, thereby depriving them of their right to liberty and security as well as their right to leave the territory and maritime zones of the Russian Federation as provided by Articles 9 and 12,

- paragraph 2, of the 1966 International Covenant on Civil and Political Rights, and under customary international law;
- (4) the subsequent transfer of the 'Arctic Sunrise' from its exclusive economic zone to Murmansk Oblast and boarding of the 'Arctic Sunrise' in this port to investigate the vessel, and that the Russian Federation has breached these obligations by boarding the vessel without the prior consent of the Kingdom of the Netherlands, thereby impairing the exercise of jurisdiction of the Kingdom of the Netherlands over a vessel flying the flag of the Kingdom of the Netherlands, as provided under customary international law.

31. Furthermore, the Kingdom of the Netherlands draws the attention to its declaration upon ratification that it "objects to any declaration or statement excluding or modifying the legal effect of the provisions of the United Nations Convention on the Law of the Sea". This particularly concerns the matters set out in the Declaration, which includes a section pertaining to the exclusive economic zone. This section concerns limits to the exercise of jurisdiction by the coastal state in the exclusive economic zone, including with respect to "Installations in the Exclusive Economic Zone" and the absence of any "Residual rights".

VI. PROVISIONAL MEASURES

32. Pending the constitution of the arbitral tribunal in accordance with Section II of Part XV of UNCLOS and Article 3 of Annex VII of UNCLOS, the Kingdom of the Netherlands requests the Russian Federation, pursuant to Article 290 of UNCLOS, to adopt and implement provisional measures to:

- (1) immediately enable the 'Arctic Sunrise' to be resupplied, to leave its place of detention and the maritime zones of the Russian Federation, and to exercise the freedom of navigation in said zones;
- (2) immediately release the crew members, and to allow them to leave the territory and maritime zones of the Russian Federation.

33. If such measures are not adopted and implemented within a period of 14 days from the date of this Statement, the Kingdom of the Netherlands will request the International Tribunal for the Law of the Sea to prescribe the measures set forth in the preceding paragraph, unless the Russian Federation and the Kingdom of the Netherlands agree to refer the request set forth in the preceding paragraph to any other court or tribunal, or reach agreement on this request by other means.

34. The crew members would not have been arrested, detained and subjected to judicial proceedings but for the Russian Federation's violation of the international law of the sea, as set out in this Statement. Pending arbitration proceedings during which the legality of the actions of the Russian Federation remains to be determined, it would cause irreparable prejudice to these persons to have to continue to undergo pre-trial detention and face criminal prosecution with potentially severe sentences being imposed, if found guilty.

35. As to the release of the vessel, its operator is currently unable to maintain it and ensure its proper servicing, which is imperative in particular considering the vessel's technological features as an icebreaker. There is concern of fire, flooding, pollution, security and related risks if the vessel were to remain unmanned for extended periods in cold weather with possible

damage to machinery. There is consequently a real risk of irreparable prejudice in connection with the state of the vessel. As a corollary, in order for the vessel to leave the place of detention and the maritime zones of the Russian Federation, its crew must necessarily be allowed to operate it.

36. As set out above, an arbitral tribunal established under Annex VII to the Convention has jurisdiction over this dispute and the *prima facie* test in Article 290, paragraph 5, of UNCLOS is consequently met.

VII. AWARD REQUESTED

37. The Kingdom of the Netherlands therefore requests the arbitral tribunal to adjudge and declare that:

(1) The Russian Federation:

- a. In boarding, investigating, inspecting, arresting and detaining the 'Arctic Sunrise' without the prior consent of the Kingdom of the Netherlands, as described in this Statement, breached its obligations to the Kingdom of the Netherlands, in its own right and in the exercise of its right to protect a vessel flying its flag, in regard to the freedom of navigation as provided by Articles 58, paragraph 1, and 87, paragraph 1(a), of UNCLOS, and under customary international law;
- b. In boarding, investigating, inspecting, arresting and detaining the 'Arctic Sunrise' without the prior consent of the Kingdom of the Netherlands, as described in this Statement, breached its obligations to the Kingdom of the Netherlands, in regard to the exercise of jurisdiction by a flag state as provided by Article 58

and Part VII of UNCLOS, and under customary international law;

- c. In boarding the 'Arctic Sunrise' without the prior consent of the Kingdom of the Netherlands to arrest and detain the crew members and initiating judicial proceedings against them, as described in this Statement, breached its obligations to the Kingdom of the Netherlands, in its own right, in the exercise of its right to diplomatic protection of its nationals, and its right to seek redress on behalf of crew members of a vessel flying the flag of the Kingdom of the Netherlands, irrespective of their nationality, in regard to the right to liberty and security of a vessel's crew members and their right to leave the territory and maritime zones of a coastal state as provided by Articles 9 and 12, paragraph 2, of the 1966 International Covenant on Civil and Political Rights, and customary international law;

(2) The aforementioned violations constitute internationally wrongful acts entailing the international responsibility of the Russian Federation;

(3) Said internationally wrongful acts involve legal consequences requiring the Russian Federation to:

- a. Cease, forthwith, the internationally wrongful acts continuing in time;
- b. Provide the Kingdom of the Netherlands with appropriate assurances and guarantees of non-repetition of all the internationally wrongful acts referred to in subparagraph (2) above;

- c. Provide the Kingdom of the Netherlands full reparation for the injury caused by all the internationally wrongful acts referred to in subparagraph (2) above.

VIII. RESERVATION OF RIGHTS

38. The Kingdom of the Netherlands reserves the right to modify and extend the terms of this statement of the claim and the grounds on which it is based.

The Hague, 4 October 2013

A handwritten signature in black ink, appearing to read 'E. Lijnzaad', written in a cursive style.

Professor Dr. E. Lijnzaad

Agent of the Kingdom of the Netherlands