

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

AWARD ON JURISDICTION

ARBITRAL TRIBUNAL:

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

REGISTRY:

Permanent Court of Arbitration

26 November 2014

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GLOSSARY OF DEFINED TERMS

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|-------------------------------------|--|
| Convention | United Nations Convention on the Law of the Sea, 1982 |
| Declaration | Declaration made by Russia upon ratification of the Convention |
| Greenpeace | Greenpeace International (Stichting Greenpeace Council) |
| ITLOS | International Tribunal for the Law of the Sea |
| ITLOS Order | Order prescribing provisional measures issued by ITLOS on 22 November 2013 in the “ <i>Arctic Sunrise</i> ” case (<i>Kingdom of the Netherlands v. Russian Federation</i>) |
| Memorial | Netherlands’ Memorial dated 31 August 2014 |
| the Netherlands | The Kingdom of the Netherlands, the claimant in this arbitration |
| Plea Concerning Jurisdiction | Russia’s plea concerning jurisdiction, first made in a <i>Note Verbale</i> dated 22 October 2013 and conveyed to this Tribunal by <i>Note Verbale</i> dated 27 February 2014 |
| PCA | Permanent Court of Arbitration |
| Parties | The Kingdom of the Netherlands and the Russian Federation |
| Russia | The Russian Federation, the respondent in this arbitration |
| Statement of Claim | The Netherlands’ Notification and Statement of the Claim and the Grounds on which it is Based dated 4 October 2013 |
| Supplementary Submission | The Netherlands’ Supplementary Written Pleadings on Reparation for Injury dated 30 September 2014 |

I. INTRODUCTION

1. The Kingdom of the Netherlands (“the Netherlands”) is the claimant in the arbitration. It is represented by Professor Dr. Liesbeth Lijnzaad (Agent), Legal Advisor of the Netherlands’ Ministry of Foreign Affairs, and Professor Dr. René Lefeber (Co-Agent), Deputy Legal Advisor of the Netherlands’ Ministry of Foreign Affairs.
2. The Russian Federation (“Russia”) is the respondent. Russia has not appointed agents or representatives in the proceedings.
3. The arbitration concerns actions taken by Russia against the *Arctic Sunrise*, a vessel flying the flag of the Netherlands, and persons on board the vessel. As recounted by the Netherlands, on 18 September 2013, Greenpeace International (Stichting Greenpeace Council) (“Greenpeace”), the charterer and operator of the *Arctic Sunrise*, used the vessel to stage a protest against the Russian offshore oil platform *Prirazlomnaya*, located in the Pechora Sea within the exclusive economic zone of Russia. On 19 September 2013, in response to the protest, the *Arctic Sunrise* was boarded and detained by Russian authorities. Subsequently, the *Arctic Sunrise* was towed to Murmansk (a Northern Russian port city) and detained there, in spite of requests from the Netherlands for its release. The persons on board were arrested, charged with criminal offences, and held in custody. They were released on bail in late November 2013 and were 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. On 6 June 2014, the arrest of the *Arctic Sunrise* was lifted and, on 1 August 2014, the ship departed from Murmansk, arriving in Amsterdam on 9 August 2014.
4. The Netherlands claims that, in taking the actions described above against the *Arctic Sunrise* and the persons on board, Russia violated its obligations toward the Netherlands under the United Nations Convention on the Law of the Sea (“Convention”),¹ the International Covenant on Civil and Political Rights,² and customary international law. The Netherlands also claims that Russia has violated the Convention by failing to fully comply with the Order of the International Tribunal for the Law of the Sea (“ITLOS”) prescribing provisional measures in the case, and by failing to participate in these arbitral proceedings. The Netherlands seeks, *inter alia*, a declaratory judgment confirming the wrongfulness of Russia’s conduct, a formal apology, and compensation for financial losses incurred as a result of Russia’s actions.

¹ 1982, 1833 UNTS 3.

² 1966, 999 UNTS 171.

5. Russia, in the only communication submitted to this Tribunal, referred to its declaration upon the ratification of the Convention (“Declaration”), in which it stated that it did not accept binding dispute resolution under the Convention with regard to disputes “concerning law-enforcement activities in regard to the exercise of sovereign rights or jurisdiction” (“Plea Concerning Jurisdiction”).
6. In this Award on Jurisdiction, the Tribunal will only decide on Russia’s Plea Concerning Jurisdiction.

II. PROCEDURAL HISTORY

A. INITIATION OF THE ARBITRATION

7. By Notification and Statement of the Claim and the Grounds on which it is Based dated 4 October 2013 (“Statement of Claim”),³ the Netherlands initiated this arbitration against Russia pursuant to Article 287 and Annex VII to the Convention.

B. APPLICATION TO ITLOS FOR PROVISIONAL MEASURES

8. Pending constitution of the Tribunal, the Netherlands submitted, on 21 October 2013, an application to ITLOS for the prescription of provisional measures, pursuant to article 290(5) of the Convention.
9. By a *Note Verbale* dated 22 October 2013 addressed to ITLOS, Russia stated its position with respect to the arbitration in the following terms:

The investigative activities related to the vessel *Arctic Sunrise* and its crew have been and are being conducted by the Russian authorities, since under the [Convention], as the authorities of the coastal State, they have jurisdiction, including criminal jurisdiction, to enforce compliance with the legislation of the Russian Federation.

Upon ratification of the Convention on 26 February 1997 the Russian Federation drew up a declaration stating *inter alia* that it did 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 the basis of the above, the Russian Federation does not accept the arbitration proceedings proposed by the Kingdom of the Netherlands under Annex VII [of the

³ Annex N-1.

Convention] in the case of *Arctic Sunrise* and does not intend to participate in the hearing by the [ITLOS] of the request of the Kingdom of the Netherlands to prescribe provisional measures pursuant to article 290, paragraph 5 of the Convention.⁴

10. ITLOS sought the written views of the Parties on the Netherlands' application for provisional measures. The Netherlands provided its written views, but Russia did not provide any views. Having requested additional materials from the Netherlands, ITLOS held a hearing on the Netherlands' application. Both Parties were invited to the hearing. The Netherlands participated in the hearing, but Russia did not attend. On 22 November 2013, ITLOS issued an Order prescribing provisional measures ("ITLOS Order") as follows:

(a) The Russian Federation shall immediately release the vessel *Arctic Sunrise* and all persons who have been detained, upon the posting of a bond or other financial security by the Netherlands which shall be in the amount of 3,600,000 euros, to be posted with the Russian Federation in the form of a bank guarantee;

(b) Upon the posting of the bond or other financial security referred to above, the Russian Federation shall ensure that the vessel *Arctic Sunrise* and all persons who have been detained are allowed to leave the territory and maritime areas under the jurisdiction of the Russian Federation.⁵

11. According to the Netherlands, Russia did not fully comply with the provisional measures prescribed by ITLOS.⁶

C. CONSTITUTION OF THE TRIBUNAL

12. In its Statement of Claim, the Netherlands appointed Professor A.H.A. Soons, a Dutch national, as a member of the Tribunal, in accordance with Article 3(b) of Annex VII to the Convention.
13. Russia failed to appoint a second member of the Tribunal within 30 days of receiving the Statement of Claim. Consequently, on 15 November 2013, the Netherlands requested the President of ITLOS to appoint one member of the Tribunal pursuant to article 3(c) and (e) of Annex VII to the Convention.⁷

⁴ Reproduced here is the English translation (from the original Russian) of the *Note Verbale* from Russia to the Netherlands submitted by the Netherlands as Annex N-17. The *Note Verbale* from Russia to ITLOS (Annex N-18) contains the same text in a different English translation. Unless otherwise indicated, a reference hereafter to an Annex with a prefix N is a reference to an Annex to the Memorial of the Netherlands.

⁵ http://www.itlos.org/fileadmin/itlos/documents/cases/case_no.22/Order/C22_Ord_22_11_2013_orig_Eng.pdf.

⁶ Memorial, paras. 355-365.

⁷ Annex N-26.

14. On 13 December 2013, the President of ITLOS appointed Dr. Alberto Székely, a Mexican national, as a member of the Tribunal.⁸
15. By letter dated 13 December 2013, the Netherlands requested the President of ITLOS to appoint the three remaining members of the Tribunal and designate one of them as president pursuant to article 3(d) and (e) of Annex VII.⁹
16. On 10 January 2014, the President of ITLOS appointed Mr. Henry Burmester, an Australian national, Professor Janusz Symonides, a Polish national, and Judge Thomas A. Mensah, a Ghanaian national, as members of the Tribunal.¹⁰ On the same day, the President of ITLOS designated Judge Thomas A. Mensah as President of the Tribunal.

D. FIRST PROCEDURAL MEETING; ADOPTION OF TERMS OF APPOINTMENT, RULES OF PROCEDURE AND TIMETABLE

17. By letter from the Permanent Court of Arbitration (“PCA”) to the Parties dated 11 February 2014, the Tribunal proposed to hold a first procedural meeting with the Parties in March 2014, and invited the Parties to comment on draft Rules of Procedure and the draft Procedural Order No. 1 (Terms of Appointment) attached to the letter.
18. On 27 February 2014, the Netherlands provided comments on the draft Rules of Procedure and the draft Procedural Order No. 1. The Netherlands noted, *inter alia*, that it considered the statement of Russia in its *Note Verbale* dated 22 October 2013 to be “a plea concerning the jurisdiction of the Arbitral Tribunal.”
19. On 3 March 2014, by *Note Verbale* dated 27 February 2014, Russia referred again to its *Note Verbale* of 22 October 2013 and confirmed its “refusal to take part in this arbitration.”
20. By letter from the PCA dated 12 March 2014, the Tribunal informed the Parties that the first procedural meeting would take place on 17 March 2014 in Bonn, Germany, and conveyed to them revised drafts of the Rules of Procedure and Procedural Order No. 1 (Terms of Appointment) for consideration in advance of the meeting.
21. The first procedural meeting was held on 17 March 2014 in Bonn, Germany. The five members of the Tribunal participated in the meeting (with Mr. Burmester participating by teleconference). The Netherlands was represented by Professor Lijnzaad (Agent) and

⁸ Annex N-29.

⁹ Annex N-29, Letter from the Netherlands to ITLOS, 13 December 2013; Annex N-30, Letter from the President of ITLOS to the Netherlands, 10 January 2014.

¹⁰ Annex N-30.

Professor Lefeber (Co-Agent). Russia was not represented at the meeting. The PCA was represented by Dr. Aloysius P. Llamzon (participating by teleconference), Ms. Evgeniya Goriatcheva, and Ms. Yanying Li.

22. The PCA subsequently circulated a full transcript of the meeting to the Tribunal and the Parties.
23. At the first procedural meeting, the Tribunal adopted the Rules of Procedure and Procedural Order No. 1 (Terms of Appointment), as well as the initial procedural timetable for the proceedings. With the concurrence of the Netherlands, the Tribunal decided that Vienna would be the venue of the arbitration. It was also confirmed that the International Bureau of the PCA would act as Registry for the arbitral proceedings and that the Secretary-General of the PCA would appoint a legal officer of the PCA as Registrar.
24. Referring to article 9 of Annex VII to the Convention and to article 25(1) of the Rules of Procedure of the Tribunal, the Netherlands requested the Tribunal “to continue with the proceedings and to make its award.” This request was subsequently formalised by a letter dated 31 March 2014 from the Netherlands.
25. The Netherlands also referred to article 20(3) of the Rules of Procedure and requested that the Tribunal bifurcate the proceedings, with “a separate stage on jurisdiction” and “a later stage on admissibility and merits.”
26. By letter dated 18 March 2014, the Secretary-General of the PCA appointed Dr. Aloysius P. Llamzon as Registrar for the proceedings. Upon the conclusion of Dr. Llamzon’s term of employment with the PCA, the Secretary-General appointed Ms. Sarah Grimmer as Registrar by letter dated 16 October 2014.
27. By letter dated 21 March 2014, the PCA on behalf of the Tribunal forwarded to the Parties final signed copies of Procedural Order No. 1 (Terms of Appointment) and Procedural Order No. 2 (Rules of Procedure and Initial Procedural Timetable). Procedural Order No. 2 provided, *inter alia*, that: (i) the Netherlands would submit a Memorial on “all issues including matters relating to jurisdiction, admissibility, and the merits of the dispute” by 31 August 2014; (ii) Russia would indicate within 15 days of receipt of the Memorial if it intended to submit a Counter-Memorial; and (iii) should Russia wish to submit a Counter-Memorial, it would do so by 15 February 2015.
28. On 10 April 2014, pursuant to article 4 of the Rules of Procedure, the Netherlands formally notified the Tribunal of the appointment of Professor Lijnzaad and Professor Lefeber as the Netherlands’ Agent and Co-Agent, respectively, for the purposes of the arbitration.

29. On 14 May 2014, the PCA sent to the Parties “Declarations of Acceptance and Statements of Independence and Impartiality” duly completed and signed by each member of the Tribunal, together with the *curriculum vitae* of each member.

E. DEPOSIT FOR THE COSTS OF ARBITRATION

30. Article 33 of the Rules of Procedure states that the PCA may from time to time request the Parties to deposit equal amounts as advances for the costs of arbitration. Should either Party fail to make the requested deposit within 45 days, the Tribunal may so inform the Parties in order that one of them may make the payment.
31. By letter dated 3 March 2014, the PCA on behalf of the Tribunal requested the Parties to each make an initial deposit of EUR 150,000. On 11 March 2014, the PCA acknowledged receipt of EUR 150,000 from the Netherlands.
32. By letter dated 13 May 2014, the Tribunal noted that Russia had not paid its share of the initial deposit and invited the Netherlands to pay the outstanding amount of EUR 150,000. On 27 May 2014, the PCA acknowledged receipt from the Netherlands of EUR 150,000, representing Russia’s share of the initial deposit.

F. THE NETHERLANDS’ INITIAL WRITTEN SUBMISSIONS; GREENPEACE’S APPLICATION TO MAKE *AMICUS CURIAE* SUBMISSIONS

33. On 30 August 2014, at the request of the Netherlands and after having sought the views of Russia, the Tribunal granted the Netherlands an additional month to submit supplementary pleadings on reparation for injury, in addition to its Memorial.
34. On 1 September 2014, the Netherlands submitted its Memorial dated 31 August 2014 (“Memorial”), in accordance with Procedural Order No. 2.
35. On 16 September 2014, Greenpeace sent to the Tribunal a letter requesting permission to file an *amicus curiae* submission “addressing the legal issues relating to international human rights law which may arise in the proceeding.” A copy of the submission was attached to the letter.
36. On 19 September 2014, the PCA on behalf of the Tribunal transmitted to the Parties the letter of application and the submission from Greenpeace, and invited the Parties’ comments. Pending the Tribunal’s decision on the application of Greenpeace, the *amicus curiae* submission of Greenpeace was not transmitted to the members of the Tribunal.

37. On 30 September 2014, the Netherlands filed its Supplementary Written Pleadings on Reparation for Injury (“Supplementary Submission”).
38. By letter dated 3 October 2014, the Netherlands advised the Tribunal that it had informally notified Greenpeace that it had no objections to the application of Greenpeace to file an *amicus curiae* submission.
39. On 8 October 2014, the Tribunal unanimously decided that it did not find sufficient reason to grant the application of Greenpeace to file an *amicus curiae* submission in the proceedings. The Tribunal issued Procedural Order No. 3 (Greenpeace International’s Request to Make an *Amicus Curiae* Submission) which determined that Greenpeace’s application to file an *amicus curiae* submission in the proceedings was denied.
40. On 8 October 2014, the Tribunal informed the Parties that due to the 30-day extension granted to the Netherlands to submit the Supplementary Submission, “the 15-day time limit set in Procedural Order No. 2 for Russia to indicate whether it intends to submit a Counter-Memorial would expire on 14 October 2014.”

G. BIFURCATION

41. In paragraph 59 of its Memorial, the Netherlands re-iterated its request for a bifurcation of the proceedings in the following terms:

The Kingdom of the Netherlands remains hopeful that the Russian Federation will reconsider its position and participate in these arbitral proceedings. For this reason, the Netherlands considers it vitally important that the Tribunal bifurcates the proceedings, considers the Russian Federation’s diplomatic notes of 22 October 2013 (Annex N-17) and 27 February 2014 (Annex N-34) as a plea concerning jurisdiction, and rules on the plea as a preliminary question in accordance with article 20.3 of the Tribunal’s Rules of Procedure.

42. By letter dated 6 November 2014, the Tribunal invited Russia to comment on the request of the Netherlands for a bifurcation of the proceedings.
43. No response was received from Russia.
44. On 14 November 2014, the Tribunal sent to the Parties a draft Procedural Order No. 4 (Bifurcation), and requested comments thereon. The draft Procedural Order No. 4 stated, *inter alia*, that the Tribunal would rule on Russia’s Plea Concerning Jurisdiction as a preliminary question, without holding a hearing.

45. By letter dated 18 November 2014, the Netherlands stated that it supported the draft Order.
46. No comment or response was received from Russia.
47. On 21 November 2014, the Tribunal issued Procedural Order No. 4 (Bifurcation) which stated, *inter alia*, that the Tribunal would rule on Russia's Plea Concerning Jurisdiction as a preliminary question, without holding a hearing.

III. THE PARTIES' SUBMISSIONS ON RUSSIA'S PLEA CONCERNING JURISDICTION

A. SUBMISSIONS OF RUSSIA

48. Russia's Plea Concerning Jurisdiction, conveyed to the Tribunal by *Note Verbale* dated 27 February 2014, is set out in full at paragraph 9 above.

B. SUBMISSIONS OF THE NETHERLANDS

49. Before addressing Russia's Plea Concerning Jurisdiction, the Netherlands notes that the Convention entered into force on 11 April 1997 for the Netherlands and on 28 July 1997 for Russia.¹¹ Russia, upon signing the Convention, chose "an arbitral tribunal constituted in accordance with Annex VII" as the means for the settlement of disputes under the Convention, while the Netherlands, upon ratification, chose the International Court of Justice as the means for the settlement of disputes under the Convention.¹² The Netherlands submits that, pursuant to article 287(5) of the Convention, which provides that "[i]f 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," this Tribunal has jurisdiction over the present dispute between the Parties.¹³
50. Further, the Netherlands submits that the Declaration made by Russia upon ratification of the Convention does not affect the Tribunal's jurisdiction.¹⁴
51. The Netherlands recalls that, upon ratification, Russia declared that:

in accordance with article 298 of the [Convention], it does not accept the procedures provided for in section 2 of Part XV of the Convention, entailing binding decisions with

¹¹ Statement of Claim, para. 8; Memorial, para. 60.

¹² Statement of Claim, paras. 9-10; Memorial, paras. 62-63.

¹³ Statement of Claim, paras. 11-12; Memorial, paras. 64-65.

¹⁴ Statement of Claim, para. 13; Memorial, para. 66.

respect to . . . disputes concerning law-enforcement activities in regard to the exercise of sovereign rights or jurisdiction.¹⁵

52. The Netherlands also refers to articles 297, 298, 309, and 310 of the Convention. Article 297(1)(a) provides that a dispute shall be subject to binding dispute resolution when it is alleged “that a coastal State has acted in contravention of the provisions of this Convention in regard to the freedoms and rights of navigation . . . or in regard to other internationally lawful uses of the sea specified in article 58.”¹⁶
53. Article 298 permits State parties to exclude from binding dispute settlement a “limited number of categories of disputes.”¹⁷ According to article 298(b) of the Convention, “disputes concerning law enforcement activities in regard to the exercise of sovereign rights or jurisdiction excluded from the jurisdiction of a court or tribunal under article 297, paragraph 2 or 3” are a category of disputes that may be excluded from the jurisdiction of the procedures in Section 2 of Part XV of the Convention.¹⁸
54. Article 309 of the Convention states that “[n]o reservations or exceptions may be made to the Convention unless expressly permitted by other articles of this Convention.”¹⁹ Article 310 provides that:

Article 309 does not preclude a State, when signing, ratifying or acceding to this Convention, from making declarations or statements, however phrased or named . . . provided that such declarations or statements do not purport to exclude or modify the legal effect of the provisions of this Convention in their applications to that State.²⁰

55. The Netherlands submits that, in the light of these provisions, there are only two possible ways to interpret Russia’s Declaration.²¹
56. First, Russia’s Declaration can be interpreted as being in conformity with the Convention. In that case, the scope of the exception to Russia’s acceptance of binding dispute settlement is confined to what is allowed by article 298(1)(b), *i.e.*, the exception is limited to disputes listed in article 297(2) and (3). These are disputes concerning marine scientific research and fisheries,

¹⁵ Statement of Claim, para. 13; Memorial, para. 66.

¹⁶ Memorial, para. 70.

¹⁷ Memorial, para. 71.

¹⁸ Memorial, para. 72.

¹⁹ Memorial, para. 69.

²⁰ Memorial, para. 74.

²¹ Memorial, para. 73; *see also* Memorial, para. 79.

neither of which is, in the view of the Netherlands, at issue in the present case. Accordingly, under this interpretation, Russia's Declaration does not apply to the present case.²² The Netherlands notes that this interpretation was adopted in the ITLOS Order.²³

57. Second, Russia's Declaration can be interpreted as purporting to exclude from binding dispute settlement under the Convention all disputes concerning "law-enforcement activities in regard to the exercise of sovereign rights or jurisdiction," whether or not they concern marine scientific research or fisheries. The Netherlands argues that, under this interpretation, Russia's Declaration is in fact a "reservation" or "exception" that is prohibited by articles 309 and 310 of the Convention.²⁴ The Netherlands recalls that the prohibition of reservations and exceptions in articles 309 and 310 of the Convention was recognised and emphasised by both the Netherlands and Russia in their respective declarations upon ratification of the Convention.²⁵
58. The Netherlands concludes that, depending on the interpretation chosen, Russia's Declaration either does not apply to the present dispute or is not allowed under the Convention. In either case, the Declaration has no effect on the Tribunal's jurisdiction.²⁶

IV. THE TRIBUNAL'S ANALYSIS

A. CERTAIN MATTERS PERTAINING TO JURISDICTION

59. As noted above, the purpose of the present Award is to decide on Russia's Plea Concerning Jurisdiction. Accordingly, the Tribunal will, in this Award, not decide on any question of fact which is not necessary for deciding on Russia's Plea Concerning Jurisdiction; and it will not decide on any other questions concerning jurisdiction, admissibility, or merits that may arise in the arbitration. But before dealing with Russia's Plea Concerning Jurisdiction, the Tribunal wishes to call attention to certain matters pertaining to jurisdiction.
60. Both the Netherlands and Russia are State parties to the Convention. Accordingly, both are bound by the provisions on dispute settlement in Part XV of the Convention in respect of any dispute between them concerning the interpretation and application of the Convention.
61. In the present case, the Tribunal is satisfied that there is a dispute between the Parties concerning the interpretation and application of the Convention, as is apparent from the Parties'

²² Statement of Claim, para. 13; Memorial, para. 73.

²³ Memorial, para. 73, referring to the ITLOS Order, para. 45.

²⁴ Statement of Claim, para. 13; Memorial, para. 74.

²⁵ Statement of Claim, para. 13; Memorial, paras. 75-77.

²⁶ Memorial, para. 79.

exchange of diplomatic notes immediately preceding the Netherlands' filing of its Statement of Claim. Following the boarding of the *Arctic Sunrise* by the Russian authorities, the Netherlands twice requested the release of the vessel and the persons on board.²⁷ On 29 September 2013, the Netherlands lodged a formal protest over the boarding and investigation of the *Arctic Sunrise* without the consent of the Netherlands.²⁸ By *Note Verbale* dated 1 October 2013, Russia stated that it did not require the Netherlands' consent "in view of the authority that a coastal State possesses in accordance with [articles 56, 60 and 80 of the Convention]."²⁹ By *Note Verbale* dated 3 October 2013, the Netherlands objected to Russia's interpretation of the Convention, stating that it did "not consider that these provisions justify the actions taken against the 'Arctic Sunrise'."³⁰

62. Although Russia has since released the *Arctic Sunrise* and granted amnesty to the persons on board, the Netherlands does not consider that the dispute between the Parties has been fully resolved. According to the Netherlands, the release of the vessel and the grant of amnesty to the persons on board do not satisfy all of its claims in the arbitration. As noted in paragraph 4 above, the Netherlands still seeks, *inter alia*, a declaratory judgment on the wrongfulness of Russia's conduct, a formal apology, and compensation for financial losses incurred as a result of Russia's actions against the *Arctic Sunrise* and the persons on board.³¹
63. Section 2 of Part XV of the Convention provides for compulsory procedures entailing binding decisions when a dispute arises between State parties concerning the interpretation and application of any provision of the Convention. Article 287 provides that States parties may by written declaration choose among several binding procedures for the settlement of disputes. Where the parties to a dispute have not accepted the same procedure for dispute settlement, the dispute may be submitted to arbitration in accordance with Annex VII of the Convention.
64. By their respective declarations, made pursuant to article 287 of the Convention, the Netherlands and Russia have chosen different procedures for the settlement of disputes between them.³² Hence, the present dispute has correctly been submitted to arbitration in accordance with Annex VII.

²⁷ *Note Verbale* from the Netherlands to Russia, 23 September 2013, Annex N-6; *Note Verbale* from the Netherlands to Russia, 26 September 2013, Annex N-7.

²⁸ *Note Verbale* from the Netherlands to Russia, 29 September 2013, Annex N-9.

²⁹ *Note Verbale* from Russia to the Netherlands, 1 October 2013, Annex N-10.

³⁰ *Note Verbale* from the Netherlands to Russia, 3 October 2013, Annex N-11.

³¹ Statement of Claim, para. 37; Memorial, para. 397; Supplementary Submission, para. 55.

³² The U.S.S.R.'s declaration upon signature of the Convention, 10 December 1982: "... under article 287 of the [Convention], [the U.S.S.R.] chooses an arbitral tribunal constituted in accordance with Annex VII as the

B. RUSSIA'S PLEA CONCERNING JURISDICTION

65. Russia's Plea Concerning Jurisdiction is based on the Declaration it made upon ratification of the Convention. The full Declaration reads as follows:

The Russian Federation declares that, in accordance with article 298 of the [Convention], 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 the interpretation or application of articles 15, 74 and 83 of the Convention, relating to sea boundary delimitations, or those involving historic bays or titles; disputes concerning military activities, including military activities by government vessels and aircraft, and disputes concerning law-enforcement activities in regard to the exercise of sovereign rights or jurisdiction; and disputes in respect of which the Security Council of the United Nations is exercising the functions assigned to it by the Charter of the United Nations.

The Russian Federation, bearing in mind articles 309 and 310 of the Convention, declares that it objects to any declarations and statements made in the past or which may be made in future when signing, ratifying or acceding to the Convention, or made for any other reason in connection with the Convention, that are not in keeping with the provisions of article 310 of the Convention. The Russian Federation believes that such declarations and statements, however phrased or named, cannot exclude or modify the legal effect of the provisions of the Convention in their application to the party to the Convention that made such declarations or statements, and for this reason they shall not be taken into account by the Russian Federation in its relations with that party to the Convention.

66. The Tribunal must first determine whether Russia's Declaration has the effect of excluding the present dispute between the Parties from the compulsory dispute settlement procedures entailing binding decisions as set out in Section 2 of Part XV of the Convention and, consequently, from the jurisdiction of this Tribunal.
67. In its Declaration, Russia refers to the provision of the Convention that excludes from the jurisdiction of the procedures specified in Section 2 of Part XV of the Convention, "disputes concerning law-enforcement activities in regard to the exercise of sovereign rights or jurisdiction."³³ By this the Tribunal understands that Russia considers that the present dispute

basic means for the settlement of disputes concerning the interpretation or application of the Convention"; the Netherlands' declaration upon ratification of the Convention, 28 June 1996: "... having regard to article 287 of the Convention, [the Netherlands] 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."

³³ *Note Verbale* from Russia to the Netherlands, 22 October 2013, Annex N-17; *Note Verbale* from Russia to ITLOS, 22 October 2013, Annex N-18.

falls within that category of disputes and is, therefore, excluded from the jurisdiction of the Tribunal.

68. The Netherlands does not dispute that the present dispute concerns “law-enforcement activities in regard to the exercise of sovereign rights or jurisdiction.” However, it contends that Russia’s Declaration is either (i) prohibited under the Convention, as being too broad, or (ii), if properly interpreted with due regard to article 298(1)(b), can only exclude from the procedures in Section 2 of Part XV of the Convention those “law enforcement activities in regard to the exercise of sovereign rights or jurisdiction” that are “excluded from the jurisdiction of a court or tribunal under article 297, paragraph 2 or 3.”³⁴
69. The first question for the Tribunal, therefore, concerns the scope of Russia’s Declaration. In the view of the Tribunal, the Declaration cannot exclude from the jurisdiction of the procedures in Section 2 of Part XV of the Convention “every dispute” that concerns “law-enforcement activities in regard to the exercise of sovereign rights or jurisdiction.” It can only exclude disputes “concerning law enforcement activities in regard to the exercise of sovereign rights or jurisdiction” which are also “excluded from the jurisdiction of a court or tribunal under article 297, paragraph 2 or 3.” Accordingly, the Declaration cannot and does not exclude from the jurisdiction of the procedures in Section 2 of Part XV of the Convention any dispute that concerns “law-enforcement activities in regard to the exercise of sovereign rights or jurisdiction” unless the dispute is also excluded from the jurisdiction of a court or tribunal under paragraph 2 or 3 of article 297.
70. In the view of the Tribunal, Russia’s Declaration must be interpreted with due regard to the relevant provisions of the Convention. Article 309 of the Convention provides that no reservation or exception may be made to the Convention unless expressly permitted by its other provisions. Although article 310 states that article 309 does not preclude a State party from making declarations or statements, it adds the proviso that “such declarations or statements [should] not purport to exclude or to modify the legal effect of the provisions of this Convention.” It follows that a State party may only exclude the legal effect of a provision of the Convention when such exclusion is expressly permitted by a provision of the Convention. The second paragraph of Russia’s Declaration leaves no doubt that, when it ratified the Convention, Russia was aware of these provisions and considered them to be important.
71. The Convention expressly permits a State party, by means of a written declaration, to exclude certain categories of disputes from the procedures in Section 2 of Part XV of the Convention. This is set out in article 298 as follows:

³⁴ Statement of Claim, para. 13; Memorial, paras. 66-77.

1. When signing, ratifying or acceding to this Convention or at any time thereafter, a State may, without prejudice to the obligations arising under section 1, declare in writing that it does not accept any one or more of the procedures provided for in section 2 [of Part XV of the Convention] with respect to one or more of the following categories of disputes:

[. . .]

(b) disputes concerning military activities, including military activities by government vessels and aircraft engaged in non-commercial service, and disputes concerning law enforcement activities in regard to the exercise of sovereign rights or jurisdiction excluded from the jurisdiction of a court or tribunal under article 297, paragraph 2 or 3;

[. . .]

72. In the Tribunal's view, Russia's Declaration can only apply to an exception that is permitted under article 298. In this connection, the Tribunal notes that Russia stated that its Declaration was made "in accordance with article 298 [of the Convention]." Accordingly, the Declaration can only exclude "disputes concerning law-enforcement activities in regard to the exercise of sovereign rights or jurisdiction" to which article 298(1)(b) applies. The Tribunal notes that Russia's Declaration does not precisely track the language of article 298(1)(b). For example, it does not include the words "excluded from the jurisdiction of a court or tribunal under article 297, paragraph 2 or 3." Nevertheless, the Tribunal considers that Russia's Declaration cannot create an exclusion that is wider in scope than what is permitted by article 298(1)(b).
73. In the light of this conclusion, the Tribunal must determine whether the present dispute falls within the scope of the exception that is set out in article 298(1)(b) of the Convention; in other words, whether the present dispute is a dispute concerning "law enforcement activities in regard to the exercise of sovereign rights or jurisdiction" that is excluded from the "jurisdiction of courts and tribunals under article 297, paragraph 2 or 3."
74. Article 297 provides, in relevant parts, as follows:
2. (a) Disputes concerning the interpretation or application of the provisions of this Convention with regard to marine scientific research shall be settled in accordance with section 2, except that the coastal State shall not be obliged to accept the submission to such settlement of any dispute arising out of:
- (i) the exercise by the coastal State of a right or discretion in accordance with article 246;
- or

(ii) a decision by a coastal State to order suspension or cessation of a research project in accordance with article 253.

(b) A dispute arising from an allegation by the researching State that with respect to a specific project the coastal State is not exercising its rights under articles 246 and 253 in a manner compatible with this Convention shall be submitted, at the request of either party, to conciliation under Annex V, section 2, provided that . . .

3. (a) Disputes concerning the interpretation or application of the provisions of this Convention with regard to fisheries shall be settled in accordance with section 2, except that the coastal State shall not be obliged to accept the submission to such settlement of any dispute relating to its sovereign rights with respect to the living resources in the exclusive economic zone or their exercise, including its discretionary powers for determining the allowable catch, its harvesting capacity, the allocation of surpluses to other States and the terms and conditions established in its conservation and management laws and regulations.

(b) Where no settlement has been reached by recourse to section 1 of this Part, a dispute shall be submitted to conciliation under Annex V, section 2, at the request of any party to the dispute, when it is alleged that: . . .

75. According to article 297 of the Convention, the disputes “concerning law enforcement activities in regard to the exercise of sovereign rights or jurisdiction” that are excluded from the “jurisdiction of courts and tribunals under article 297, paragraph 2 or 3” are the following:

(i) disputes arising out of the exercise by the coastal State of a right or discretion with respect to marine scientific research in the exclusive economic zone and on the continental shelf (Articles 297(2)(a)(i) and 246);

(ii) disputes arising out of a decision by a coastal State to order suspension or cessation of a marine scientific research project (Articles 297(2)(a)(ii) and 253); and,

(iii) disputes related to a coastal State’s sovereign rights with respect to living resources in the exclusive economic zone or the exercise of such rights (Article 297(3)(a)).

76. It has not been argued that the present dispute falls within any of these categories of disputes, and the Tribunal finds nothing in the documents in the case to suggest that the present dispute has any connection with the exercise by Russia of any sovereign rights or jurisdiction that falls within any of these categories. The actions of Russia involved in the present dispute are not “law enforcement activities in regard to the exercise of sovereign rights or jurisdiction” within the scope of article 298(1)(b). They do not relate to marine scientific research or fisheries, *i.e.*,

the only areas in which the jurisdiction of a court or tribunal can validly be excluded pursuant to articles 297(2) and 297(3) read with 298(1)(b) of the Convention. In particular, the dispute does not “arise out of the exercise [by Russia] of a right or discretion in accordance with article 246” of the Convention or “a decision [of Russia] to order suspension or cessation of a research project in accordance with article 253” of the Convention; nor does it relate to the “interpretation or application of the provisions of [the] Convention relating to [Russia’s] sovereign rights with respect to the living resources in the exclusive economic zone or their exercise,” including the discretionary powers [of Russia] for determining the allowable catch, [Russia’s] investing capacity, the allocation of surpluses to other States and the terms and conditions established in [Russia’s] conservation and management laws or regulations.”

77. Accordingly, the Tribunal concludes that Russia’s Declaration does not exclude the present dispute from the compulsory procedures of dispute settlement entailing binding decisions set out in Section 2 of Part XV of the Convention.
78. The Tribunal, therefore, does not consider that the Declaration excludes the present dispute from its jurisdiction.

V. DECISION

79. For the above reasons, the Tribunal unanimously decides that:
 1. The Declaration of Russia upon ratification of the Convention does not have the effect of excluding the present dispute from the procedures of Section 2 of Part XV of the Convention and, therefore, does not exclude the dispute from the jurisdiction of the Tribunal.
 2. All issues not decided in this Award on Jurisdiction, including all other issues relating to jurisdiction, admissibility, and merits, are reserved for further consideration.

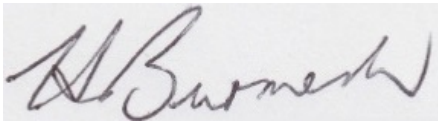
Dated: 26 November 2014



Professor Alfred H. Soons
Arbitrator



Dr. Alberto Székely
Arbitrator



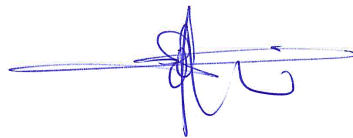
Mr. Henry Burmester
Arbitrator



Professor Janusz Symonides
Arbitrator



Judge Thomas A. Mensah
President of the Tribunal



Ms. Sarah Grimmer
Registrar