

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 COMPENSATION

ARBITRAL TRIBUNAL:

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

REGISTRY:

Permanent Court of Arbitration

10 July 2017

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THE NETHERLANDS

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THE RUSSIAN FEDERATION

No agents, counsel, advisers, or other representatives were appointed by the Russian Federation in this arbitration

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GLOSSARY OF DEFINED TERMS AND ABBREVIATIONS

Arctic 30	The thirty persons who were on board the <i>Arctic Sunrise</i> on 14-24 September 2013
Award on Jurisdiction	Award on Jurisdiction issued by this Tribunal on 26 November 2014
Award on the Merits	Award on the Merits issued by this Tribunal on 14 August 2015
Articles on State Responsibility	ILC Articles on Responsibility of States for Internationally Wrongful Acts, 2001
Convention	United Nations Convention on the Law of the Sea, 1982
Declaration	Declaration made by Russia upon ratification of the Convention
ECtHR	European Court of Human Rights
Fourth Supplemental Pleading	The Netherlands' Fourth Supplemental Written Pleadings (Replies to Questions Posed by the Arbitral Tribunal to the Netherlands pursuant to Article 25 of the Rules of Procedure) dated 14 March 2015
Greenpeace International	Greenpeace International (Stichting Greenpeace Council)
Greenpeace International Statement of Facts	Statement of Facts by Greenpeace International dated 15 August 2014, filed by the Netherlands in this arbitration as Annex N-3
Greenpeace Claim Statement	Claim Statement by Greenpeace International dated October 2015, filed by the Netherlands in this arbitration as Annex N-48
ICJ	International Court of Justice
ILC	International Law Commission of the United Nations
ITLOS	International Tribunal for the Law of the Sea
Larsen Report	Expert report of Mr. Allan Thomas Larsen dated 17 November 2016
Memorial	The Netherlands' Memorial dated 31 August 2014
the Netherlands	The Kingdom of the Netherlands, the claimant in this arbitration
Order	Order prescribing provisional measures issued by ITLOS on 22 November 2013 in " <i>Arctic Sunrise</i> " (<i>Kingdom of the Netherlands v. Russian Federation</i>)
PCA (or Registry)	Permanent Court of Arbitration

Potter Report	Expert report of Mr. Iain Potter dated 20 January 2017
Parties	The Kingdom of the Netherlands and the Russian Federation
<i>Prirazlomnaya</i>	Offshore oil production platform located in the Pechora Sea at 69° 15'56.88" N 57° 17'17.34" E, in Russia's exclusive economic zone
Registry (or PCA)	Permanent Court of Arbitration
RHIB	Rigid hull inflatable boat
Russian Federation (or Russia)	The Russian Federation, the respondent in this arbitration
Supplementary Submission	The Netherlands' Supplementary Written Pleadings on Reparation for Injury dated 30 September 2014
Tribunal's Questions	15 questions posed by the Tribunal to the Netherlands on 28 January 2016
Updated Pleading	The Netherlands' Updated Pleading on Reparation dated 28 October 2015
WEA Accountants	WEA Noord-Holland Accountants, an independent accounting firm

I. INTRODUCTION

1. The Kingdom of the Netherlands (“the Netherlands”) is the claimant in this arbitration. It is represented by Professor Dr. Liesbeth Lijnzaad, Legal Adviser of the Netherlands’ Ministry of Foreign Affairs, as Agent, and Professor Dr. René Lefeber, Deputy Legal Adviser of the Netherlands’ Ministry of Foreign Affairs, as Co-Agent.
2. The Russian Federation (“Russian Federation” or “Russia”, and together with the Netherlands, “Parties”) is the respondent. It has not appointed any agents, counsel, or other representatives.
3. The arbitration concerns measures taken by Russia against the *Arctic Sunrise*, a vessel flying the flag of the Netherlands, and the thirty persons on board that vessel (“Arctic 30”). On 18 September 2013, Greenpeace International (Stichting Greenpeace Council) (“Greenpeace International”), the charterer and operator of the *Arctic Sunrise*, used the vessel to stage a protest at the Russian offshore oil platform *Prirazlomnaya* (“*Prirazlomnaya*”), located in the Pechora Sea (the south-eastern part of 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). The *Arctic Sunrise* was held in Murmansk 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. On 6 June 2014, the arrest of the *Arctic Sunrise* was lifted. The ship departed from Murmansk on 1 August 2014 and arrived in Amsterdam on 9 August 2014.
4. In earlier stages of these proceedings, the Netherlands claimed that, in taking the measures described above against the *Arctic Sunrise* and the Arctic 30, Russia had violated its obligations toward the Netherlands under the United Nations Convention on the Law of the Sea (“Convention”)¹ and customary international law. The Netherlands also claimed that Russia had violated the Convention by failing to comply fully with the order on provisional measures (“Order”) prescribed by the International Tribunal for the Law of the Sea (“ITLOS”) and by failing to participate in these arbitral proceedings.

¹ 1982, vol. 1833, UNTS, p. 396.

5. In a *Note Verbale* to the Netherlands dated 22 October 2013,² Russia referred to the declaration it made when ratifying the Convention (“Declaration”). In the Declaration, Russia 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.’” By another *Note Verbale*, dated 27 February 2014 and addressed to the Permanent Court of Arbitration (“PCA” or “Registry”), Russia stated that “[t]he Russian side confirms its refusal to take part in this arbitration and abstains from providing comments both on the substance of the case and procedural matters.”³

6. On 26 November 2014, the Tribunal issued its Award on Jurisdiction (“Award on Jurisdiction”), unanimously deciding 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 have the effect of excluding the present 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.

7. On 14 August 2015, the Tribunal issued its Award on the Merits (“Award on the Merits”), deciding matters of jurisdiction that were not decided in the Award on Jurisdiction, as well as matters of admissibility and the merits of the Netherlands’ claims. The operative part of the Award on the Merits reads as follows:

For the above reasons, the Tribunal unanimously:

 - A. FINDS that it has jurisdiction over all the claims submitted by the Netherlands in this arbitration;
 - B. FINDS that all the claims submitted by the Netherlands in this arbitration are admissible;
 - C. FINDS 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, the Russian Federation 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;
 - D. FINDS that by failing to comply with Paragraphs (1) and (2) of the dispositif of the ITLOS Order, the Russian Federation breached its obligations to the Netherlands under Articles 290(6) and 296(1) of the Convention;
 - E. FINDS that by failing to pay its share of the deposits requested in procedural directions issued by the Tribunal to cover its fees and expenses in this arbitration, the Russian Federation has breached its obligations under Part XV and Article 300 of the Convention;
 - F. FINDS that the Netherlands is entitled to compensation for:
 1. 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

² Annex N-17. All references to an Annex with a prefix N are references to an Annex to the Memorial of the Netherlands.

³ Annex N-34.

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;

2. non-material damage to the Arctic 30 for their wrongful arrest, prosecution, and detention in the Russian Federation;

3. 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; and

4. the costs incurred by the Netherlands for the issuance of the bank guarantee to the Russian Federation pursuant to the ITLOS Order;

G. FINDS that the Netherlands is entitled to interest, at a rate to be decided by the Tribunal, on the amounts referred to in sub-paragraphs F and I of this paragraph;

H. ORDERS the Russian Federation to return to the Netherlands, by 14 October 2015, all objects belonging to the *Arctic Sunrise* and the persons on board the vessel at the time of its seizure that have not yet been returned, and, failing the timely restitution of these objects, to compensate the Netherlands for the value of any objects not returned;

I. ORDERS the Russian Federation immediately to reimburse the Netherlands the amounts of Russia's share of the deposits paid by the Netherlands;

J. DECIDES that the fees and expenses of the Tribunal incurred to date shall be borne by the Parties in equal shares;

K. DECIDES that each Party shall bear its own costs incurred to date (including the expenses referred to in paragraph 396 above); and

L. RESERVES all questions concerning quantum of compensation and interest to a later phase of these proceedings.⁴

8. In its Award on the Merits, the Tribunal also noted that Russia had not participated in this arbitration at any stage.⁵ Following the issuance of that Award, Russia has maintained its decision not to participate in this arbitration.

9. In the present Award, the Tribunal will give its findings on the questions that were not decided in the Award on the Merits, namely on all questions concerning quantum of compensation and interest.

II. PROCEDURAL HISTORY

10. A detailed history of this arbitration is set out in the Award on the Merits. In the present procedural summation, the Tribunal records only key developments subsequent to the issuance of that Award.

11. As noted above, the Award on the Merits was issued on 14 August 2015. It was sent by the PCA to the Parties by e-mail and courier. Hard copies of the Award were received by the Netherlands

⁴ Award on the Merits, para. 401.

⁵ Award on the Merits, para. 7. Regarding Russia's non-participation in these proceedings, see also Award on the Merits, paras. 8-19.

on 17 August 2015, by the Russian Ambassador to the Netherlands in The Hague on 17 August 2015, and by the Ministry of Foreign Affairs in Moscow on 19 August 2015.

12. By letter dated 14 August 2015, the Tribunal invited preliminary comments from the Parties regarding the conduct of the compensation phase of these proceedings and, in particular, invited Russia to indicate whether it intended to participate in the compensation phase.
13. By letter dated 14 September 2015, the Netherlands requested that the Tribunal proceed with the compensation phase. Russia did not provide any comments.
14. On 2 October 2015, the Tribunal fixed a calendar for the first steps of the compensation phase. In earlier stages of these proceedings, the Netherlands had made submissions on the question of reparation, first, in its Memorial dated 31 August 2014 (“Memorial”), which it submitted together with, as Annex N-3, a “Statement of Facts” prepared by Greenpeace International (“Greenpeace International Statement of Facts”) and, second, in its Supplementary Written Pleadings on Reparation for Injury dated 30 September 2014 (“Supplementary Submission”). In the calendar for the compensation phase, the Netherlands was invited to update these pleadings on reparation by 2 November 2015 and the Russian Federation was invited to indicate, by 17 November 2015, whether it intended to submit a response to the Netherlands’ updated pleadings on reparation, which response would be due by 17 December 2015.
15. On 28 October 2015, the Netherlands submitted its Updated Pleading on Reparation (“Updated Pleading”), together with, as Annex N-48, a “Claim Statement” prepared by Greenpeace International (“Greenpeace Claim Statement”).
16. By letter dated 30 October 2015, the Netherlands, having received additional information from Greenpeace International, reduced the amount of the compensation claim stated in its Updated Pleading.
17. By letter dated 28 January 2016, the Tribunal posed 15 questions to the Netherlands arising from its Updated Pleading (“Tribunal’s Questions”). The Tribunal invited the Netherlands to respond to these questions by 14 March 2016 and indicated that, upon communication of the Netherlands’ responses to Russia, the latter would have 15 days to indicate whether it intended to submit any comments thereon, noting that if it did, it would have 30 days to submit such comments.
18. On 14 March 2016, the Netherlands submitted its Fourth Supplemental Written Pleadings, responding to the Tribunal’s questions of 28 January 2016 (“Fourth Supplemental Pleading”).
19. By letter dated 13 June 2016, the Tribunal noted that Russia had neither indicated an intention to submit nor submitted any comments on the Netherlands’ Fourth Supplemental Pleading within

the time periods granted, and informed the Parties that it was minded to appoint an accounting expert and a marine surveying expert pursuant to Article 24(1) of its Rules of Procedure.

20. On 4 July 2016, the Secretary-General of the PCA appointed Ms. Evgeniya Goriatcheva as Registrar for these proceedings, upon the conclusion of the term of employment with the PCA of the previous Registrar, Ms. Sarah Grimmer.
21. By letter dated 12 August 2016, the Tribunal invited the Parties to comment on the proposed appointment of Messrs. Iain Potter and Allan Thomas Larsen as Tribunal experts and on their draft Terms of Reference.
22. The Parties did not make any comments on the proposed appointment of Messrs. Potter and Larsen as Tribunal experts or on their draft Terms of Reference.
23. By letter dated 8 September 2016, noting that the Parties had provided no comments, the Tribunal informed them that it would invite Messrs. Potter and Larsen to sign their Terms of Reference.
24. On 12 September 2016, the Tribunal provided the Parties with copies of the signed Terms of Reference of Messrs. Potter and Larsen. Pursuant to their Terms of Reference, Messrs. Potter and Larsen were to report in writing to the Tribunal on certain accounting and marine surveying issues, respectively.
25. In the same letter, the Tribunal invited the Netherlands to provide certain additional documents to Mr. Potter by 26 September 2016, in accordance with his Terms of Reference. At the request of the Netherlands, the deadline for the submission of additional documents was subsequently extended to 17 October 2016.
26. On 25 September 2016, the Tribunal transmitted to the Parties a request from Mr. Larsen for certain additional information and documents, and invited the Netherlands to provide the requested information and documents by 17 October 2016.
27. On 17 October 2016, the Netherlands submitted additional information and documents pursuant to Mr. Potter's Terms of Reference and Mr. Larsen's request.
28. By letter dated 7 November 2016, Mr. Potter requested clarifications from the Tribunal regarding the scope of his assignment.
29. On 23 November 2016, the Tribunal transmitted Mr. Larsen's expert report dated 17 November 2016 ("Larsen Report") to the Parties and invited them to provide their comments thereon by

21 December 2016. At the request of the Netherlands, this deadline was subsequently extended to 1 February 2017.

30. Having sought the views of the Parties on Mr. Potter's letter of 7 November 2016, the Tribunal provided additional instructions to Mr. Potter on 2 December 2016.
31. On 24 January 2017, the Tribunal transmitted Mr. Potter's expert report dated 20 January 2017 ("Potter Report") to the Parties and invited them to provide their comments thereon by 21 February 2017.
32. By letters dated 31 January and 17 February 2017, the Netherlands provided its comments on the Larsen Report and the Potter Report, respectively.
33. The Russian Federation did not provide any comments on the reports of the Tribunal-appointed experts.

III. QUANTUM OF DAMAGES

34. As noted above, in its Award on the Merits, the Tribunal identified the heads of damages for which the Netherlands is entitled to compensation and reserved the question of the quantum of such compensation to a later phase of the proceedings. In this Section, the Tribunal determines the quantum of compensation to which the Netherlands is entitled under each head of damages identified in the Award on the Merits.

A. DAMAGE TO THE *ARCTIC SUNRISE*

1. The Netherlands' claim

35. In its 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."⁶ The Tribunal also ordered Russia to compensate the Netherlands for the value of "all objects belonging to the *Arctic Sunrise*" that were not returned to the Netherlands by 14 October 2015.⁷

⁶ Award on the Merits, para. 401(F)(1). Reproduced in full at paragraph 7 above.

⁷ Award on the Merits, para. 401(H). Reproduced in full at paragraph 7 above.

36. The Netherlands submits that the compensation to which it is entitled under this head of damages amounts to a total of EUR 1,799,546,⁸ composed of the following items:⁹

TABLE A

#	Category	Amount claimed (in EUR)
1.	Restitution/replacement of objects belonging to the <i>Arctic Sunrise</i>	269,037
1.1.	Moving and shipping of returned objects	26,889
1.2.	Replacement of rigid hull inflatable boats (“RHIBs”)	164,496 ¹⁰
1.3.	Replacement of other equipment	2,386
1.4.	Ship’s inventory	75,266 ¹¹
2.	Repair of damage and pollution caused to the <i>Arctic Sunrise</i> during the detention of the ship	367,078
2.1.	Mobilising public support for the release of the <i>Arctic Sunrise</i>	8,896
2.2.	Legal fees of Russian cases; postage/courier	96,558
2.3.	Relevant share of standby crew cost (rest in item 4 below)	62,723
2.4.	Relevant share of the costs of the Arctic 30/ <i>Arctic Sunrise</i> emergency response team (rest in item 3.1 of Table B below)	198,563
2.5.	Costs related to emergency response in Russia	338
3.	Resuming the operation of the <i>Arctic Sunrise</i>	197,353

⁸ The Netherlands last updated the total amount claimed under this head of damages in its letter to the Tribunal of 30 October 2015, in which the total was stated as EUR 1,824,121. However, the amount of one of the items composing this total was revised in the Netherlands’ Fourth Supplemental Pleading (pp. 2-3, paras. 6-7). When this revision is taken into account and all the amounts in Table A are summed up, the total amount claimed becomes EUR 1,799,546.

⁹ Updated Pleading, paras. 5-6; Greenpeace Claim Statement (Annex N-48); Letter from the Netherlands to the Tribunal dated 30 October 2015; Fourth Supplemental Pleading, pp. 2-3, 9-10.

¹⁰ Fourth Supplemental Pleading, pp. 2-3, paras. 6-7.

¹¹ See Letter from the Netherlands to the Tribunal dated 30 October 2015, explaining that an amount of EUR 7,646 should be deducted from the cost of the ship’s inventory, previously stated as EUR 82,912 in the Greenpeace Claim Statement (Annex N-48).

3.1	Condition Survey Report by Murmansk P&I Agency and MLC Inspection Survey, 2 July 2014	17,589
3.2	Crew related (outside of regular salary) cost (travel, accommodation, subsistence)	32,215
3.3	Telecommunications and rent/office use	12,097
3.4	Harbour (port) fees, agent, pilot, tug, dryer and van rental	18,862
3.5	a. Resupplying of the ship (fuel, oil and victual lost during the detention of the ship)	54,030
	b. Other resupplies including fire and safety items, radio, charts	12,721
3.6	Dry-docking and wood work	49,839
4.	Return voyage of the <i>Arctic Sunrise</i> from Murmansk to Amsterdam	161,413
4.1	Fuel	27,543
4.2	Crew	129,689
4.3	Crew travel/VSAT	4,181
5.	Loss of use of the <i>Arctic Sunrise</i>	804,665
5.1	Loss of hire for the period up to and including the detention of the ship in Murmansk (18 September 2013 until 6 June 2014)	556,699
5.2	Loss of hire for the period after release of the ship until return in the Netherlands (7 June until 9 August 2014)	140,274
5.3	Loss of hire for the period of repairs in the Netherlands (10 August until 27 September 2014)	107,692
	Total	1,799,546

2. The Tribunal's analysis

(a) Non-compensable categories of claim

37. Having found in the Award on the Merits that the Netherlands is entitled to compensation for damage to the *Arctic Sunrise* in principle, the Tribunal at this stage of the proceedings has considered whether the specific categories of damage set out in Table A above are compensable. For the reasons stated in Section III.C.2(a) below, the Tribunal finds that the Netherlands' claim

for compensation for the costs of mobilising public support for the release of the *Arctic Sunrise*, identified in Table A above as item 2.1, is not compensable.

(b) Replacement of the RHIBs

38. Under item 1.2 of Table A above, the Netherlands requests compensation in the amount of EUR 164,496 for the value of six RHIBs belonging to the *Arctic Sunrise*. Five of these RHIBs were used during the protest action of 18 September 2013. All six were seized by the Russian authorities when the vessel was boarded on 19 September 2013. They were returned on 12 May 2015.
39. The Netherlands arrives at the total value of the claim by subtracting the residual value of the returned RHIBs (EUR 87,350) from the cost of their replacement incurred by Greenpeace International (EUR 251,846).¹² While noting that the net book value of the RHIBs on 17 September 2013 was EUR 25,395.82, as a result of the practice of Greenpeace International of depreciating its RHIBs in five years, the Netherlands asserts that RHIBs continue to be used after five years and that, on 17 September 2013, the six RHIBs of the *Arctic Sunrise* were “fit for use in a protest action.”¹³ The Netherlands therefore concludes that the cost of replacement of the RHIBs is the “best estimate for the[ir] fair market value.”¹⁴
40. The Tribunal asked its maritime surveying expert, Mr. Larsen, to report on whether the amount claimed by the Netherlands for the replacement value of the RHIBs was well-founded and reasonable.¹⁵ As noted in the procedural history above, Mr. Larsen sought and received clarifications from the Netherlands in the course of the preparation of his report.
41. The key points of Mr. Larsen’s report are as follows. Mr. Larsen agreed with the Netherlands that the book value of the RHIBs would not reflect their fair market value.¹⁶ However, he concluded that the amount claimed by the Netherlands was “not fully supported” and therefore not “well founded”.¹⁷ Mr. Larsen stated, *inter alia*, that, given the evidence of earlier damage and repairs, the condition of the RHIBs on 17 September 2013 could not be considered “good” or “fit for use in a protest action.”¹⁸ He also noted that there is evidence of damage having been caused

¹² Fourth Supplemental Pleading, pp. 2-3, paras. 6-7.

¹³ Fourth Supplemental Pleading, pp. 1-2, paras. 1, 4-5.

¹⁴ Fourth Supplemental Pleading, p. 3, para. 7.

¹⁵ Terms of Reference of Mr. Allan Larsen, para. 4.1.

¹⁶ Larsen Report, p. 132, lines 1466-1467.

¹⁷ Larsen Report, p. 134, lines 1537-1538.

¹⁸ Larsen Report, p. 131, lines 1435-1436.

to five of the RHIBs during the protest action of 18 September 2013.¹⁹ Further, Mr. Larsen opined that the replacement cost of the RHIBs should be “based on a like for like basis,” in respect of “age, specification and condition of each RHIB.”²⁰ He observed that, here, two of the RHIBs, each 18 years old, were replaced by new RHIBs, such that the full reimbursement of the replacement cost would create a financial gain for Greenpeace International.²¹ Regarding the other RHIBs, Mr. Larsen indicated that the Netherlands did not provide him with the requested specification details, making it impossible to determine whether they were replaced on a like for like basis.²²

42. In its comments on Mr. Larsen’s report,²³ the Netherlands submitted that he had exceeded the scope of his assignment by commenting on the lawfulness of the events of 18 September 2013 and dismissing certain facts already established in the Award on the Merits. To the extent that Mr. Larsen’s conclusions were affected by this dismissal of previously established facts, the Netherlands requested the Tribunal not to take these conclusions into account in its decision.
43. Additionally, the Netherlands argued that the criteria employed by Mr. Larsen in respect of the condition and fitness for use of the RHIBs on 17 September 2013 were “too stringent” and “not in line with marine surveying practice.” In the view of the Netherlands, the photo and video evidence of the protest action of 18 September 2013 demonstrates that the RHIBs were fit for use. The Netherlands further argued that it would have been appropriate for the expert to address the likelihood of possible aggravation of the damage to the RHIBs caused during the protest action as a result of the lack of maintenance during their detention. With respect to the replacement cost of the RHIBs, the Netherlands indicated that it “subscribes to the conclusion that replacement should be on a ‘like for like’ basis,” but asked the Tribunal to take into account that, during the period when the RHIBs were held by the Russian authorities, Greenpeace International was “required to replace the RHIBs in a timely manner in order to be able to continue its operations.” Some RHIBs were replaced by new RHIBs due to the unavailability of adequate replacements on the second-hand market. Finally, the Netherlands argued that Mr. Larsen should have provided an estimate of the fair market value of equivalent RHIBs and that, in the absence of such estimate, the Tribunal should award the amount as claimed by the Netherlands.

¹⁹ Larsen Report, pp. 87-89.

²⁰ Larsen Report, p. 134, lines 1517-1518.

²¹ Larsen Report, p. 134, lines 1499-1500, 1506-1507.

²² Larsen Report, p. 133, lines 1502-1504.

²³ Letter from the Netherlands to the Tribunal dated 31 January 2017.

44. Having carefully reviewed the report of Mr. Larsen and the submissions of the Netherlands, as well as the supporting documentation, the Tribunal observes, as an initial matter, that whereas in its claim the Netherlands submitted that the cost of replacement of the RHIBs was EUR 251,846, this figure was later corrected to EUR 246,070 in a letter dated 17 October 2016 from Greenpeace International, which was provided to the expert by the Netherlands in response to a clarification request. Although the Netherlands did not formally amend its request for relief, it appears that the correct figure of its claim for the RHIBs is EUR 158,720 (the replacement cost of EUR 246,070 minus the residual value of the returned RHIBs of EUR 87,350).
45. Further, the Tribunal notes that, insofar as Mr. Larsen may have exceeded the scope of his mandate by commenting on certain issues of fault pertaining to the events of 18 September 2013 or on issues already decided in the Award on the Merits, the Tribunal has disregarded such comments. In any event, they are not pertinent to the assessment of the quantum of compensation owed by Russia to the Netherlands in respect of the RHIBs.
46. Extraneous comments aside, Mr. Larsen's report has confirmed the appropriateness of resorting to replacement cost as an indicator for the fair market value of the RHIBs, while also bringing to light an important weakness of the Netherlands' claim.
47. In his report, Mr. Larsen made the sound observation that the replacement cost of the RHIBs should be assessed on a like for like basis. The Tribunal agrees with Mr. Larsen in this respect and finds, more specifically, 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* as they were before Russia's first breach of its obligations under the Convention—that is, as they were before the boarding, seizure, and detention of the *Arctic Sunrise* on 19 September 2013.²⁴
48. In comparing the replacement RHIBs with the RHIBs of the *Arctic Sunrise*, Mr. Larsen opined that at least two older RHIBs were replaced by newer ones, whereas insufficient information was submitted by the Netherlands to assess whether the other RHIBs of the *Arctic Sunrise* were replaced with equivalent boats. Mr. Larsen further observed that prior to the protest action of 18 September 2013, the RHIBs of the *Arctic Sunrise* may not have been in perfect condition. Additionally, it is plain from the materials in the record that some damage was caused to the RHIBs during the action of 18 September 2013.²⁵

²⁴ Award on the Merits, paras. 333, 401.

²⁵ See Award on the Merits, para. 90. See also Larsen Report, pp. 90-92, Table 10, listing collisions between the RHIBs on 18 September 2013 based on video evidence in the record.

49. The Netherlands recognized both that replacement should be on a like for like basis and that in the present case some of the replacement RHIBs were newer than the RHIBs of the *Arctic Sunrise*.²⁶ Regarding the latter point, the Netherlands explained that new RHIBs had to be acquired due to the unavailability of adequate replacements on the second-hand market.²⁷ While this may be so, in the view of the Tribunal the explanation proffered by the Netherlands fails to address the crux of the issue, namely, that the award of the full amount claimed by the Netherlands would create a windfall. If the Tribunal were to make such an award, the Netherlands would receive monetary compensation equivalent to the full replacement value of the RHIBs (minus the residual value of the RHIBs of the *Arctic Sunrise*), while Greenpeace International would also keep the replacement RHIBs themselves, which, based on the Netherlands' own submission,²⁸ no doubt retain a certain residual value after only a few years of use. This result is not acceptable. The Netherlands is entitled to full compensation of the loss directly caused by Russia's unlawful conduct; it is not, however, entitled to be put in a better position than that in which it would have been absent such unlawful conduct. Accordingly, the Tribunal's award of damages must reflect the fact that the replacement RHIBs will remain in the possession of Greenpeace International after this Award is rendered.
50. As noted by the Netherlands, Mr. Larsen has not quantified the changes that should be made to the claim submitted by the Netherlands to account for the deficiencies in its methodology. It does not follow, however, contrary to the submission of the Netherlands, that the claim should be granted as made. Mr. Larsen was only asked to opine on *whether* the claim is reasonable. In contrast, it was for the Netherlands to *prove* that its claim is reasonable and well founded.
51. In light of the information provided by the Netherlands and the expert's report, the Tribunal considers that the Netherlands is entitled to compensation for the costs arising from the seizure of the RHIBs of the *Arctic Sunrise*, but that the amount claimed is disproportionate. In the absence of precise information regarding the residual value of the replacement RHIBs and given the circumstances of the case, the Tribunal finds that it is reasonable to award 50 percent of the amount claimed (as identified in paragraph 44 above).

²⁶ Letter from the Netherlands to the Tribunal dated 31 January 2017.

²⁷ Letter from the Netherlands to the Tribunal dated 31 January 2017.

²⁸ For the assertion of the Netherlands that RHIBs continue to be used after five years, see Fourth Supplemental Pleading, p. 2, para. 5.

(c) Categories of claim audited by WEA Accountants

52. In support of the claims identified in Table A above as items 1, 2.1, 2.2, 2.5, 3.1-3.4, 3.5(b), 3.6, and 4.3 (as well as certain other claims addressed in Section III.C.2(c) below), the Netherlands submitted two costs overviews audited by an independent accounting firm, WEA Noord-Holland Accountants (“WEA Accountants”).²⁹
53. These overviews set forth amounts for broadly identified categories of costs, but did not include an itemized list of costs or supporting documentation. Additionally, the categories in the costs overviews were different from those in the Greenpeace Claim Statement (and reproduced in Table A above).
54. In view of the format of the Netherlands’ submission, the Tribunal requested its accounting expert, Mr. Potter, to “review the costs overviews prepared by WEA Accountants . . . and issue a report on whether the amounts claimed are, in the Expert’s opinion, reasonably based.”³⁰ The Tribunal specified that “a reasonable approach would be for the Expert to limit his review to the items with values exceeding EUR 1,000.”³¹ The Tribunal also requested the Netherlands to provide the expert with “an itemized list and supporting documentation for all the amounts claimed in the costs overviews.”³² As noted in the procedural history above, while preparing his report, the expert sought and received further clarifications from the Netherlands.
55. In his report, Mr. Potter first categorized the transactions with values exceeding EUR 1,000 that were listed in the costs overviews prepared by WEA Accountants as “supported”, “unsupported”, and “uncertain”, based on the documentation made available to him.³³ He then determined what percentage of transactions set forth in each costs overview was supported, unsupported, or uncertain,³⁴ and applied these percentages to transactions with values below EUR 1,000.³⁵ In the first of the two costs overviews, Mr. Potter also identified a number of transactions involving expense claims for which he was unable to reconcile the amounts shown on the itemised list submitted by the Netherlands and the supporting documentation. Noting that it “would likely be time-consuming to investigate these individually and seek Greenpeace’s assistance with

²⁹ See Greenpeace Claim Statement (Annex N-48), appendices 1 and 2.

³⁰ Terms of Reference of Mr. Iain Potter, para. 4.1.

³¹ Letter from the Tribunal to the Parties dated 2 December 2016.

³² Terms of Reference of Mr. Iain Potter, para. 4.2.

³³ Potter Report, Sections 3 and 4.

³⁴ Mr. Potter determined that 94 and 95 percent of transactions were supported in the first and second costs overviews, respectively. Potter Report, paras. 3.35, 3.36, 4.8.

³⁵ Potter Report, paras. 3.36, 4.8.

reconciling each one,” Mr. Potter assumed that “these transactions [were] likely to be supported to the same extent as the others which [he had] reviewed” and applied the percentages of supported, uncertain, and unsupported transactions in the same manner as for transactions with values below EUR 1,000.³⁶ Having done so, Mr. Potter arrived at total figures for transactions that he considered (i) supported and hence reasonably based; (ii) unsupported and therefore not reasonably based; and (iii) uncertain, in the sense that he could not formulate an opinion on them without additional information from the Netherlands.³⁷ Overall, expressed in percentage, Mr. Potter’s conclusion was that 94.5 percent of the costs claimed on the basis of the overviews prepared by WEA Accountants were supported and therefore reasonably based.³⁸

56. In its comments on Mr. Potter’s report,³⁹ the Netherlands sought to justify some of the transactions that he had designated as “uncertain”, for a total value of EUR 94,563.92. Specifically, the Netherlands submitted that the VAT charges questioned by Mr. Potter represent a “genuine unrecoverable cost” for Greenpeace International because it is registered in the Netherlands as a charitable organization and is not entitled to reimbursement of VAT or reverse charges. In respect of amounts claimed for hotel accommodation that were supported only by template invoices, the Netherlands explained that “due to the circumstances at the time no individual invoices could be collected,” such that the costs “were collected in advance and approved by the Deputy Programme Director of Greenpeace.” In support, the Netherlands submitted a copy of an e-mail containing this approval. Finally, the Netherlands drew the attention of the Tribunal to two invoices in the record supporting another transaction identified as uncertain by Mr. Potter.
57. Having carefully reviewed Mr. Potter’s report, the Tribunal is satisfied that it may be used as a basis for the Tribunal’s determination regarding the categories of costs supported by the overviews of WEA Accountants. The expert fulfilled his mandate of verifying the costs overviews, in the process clearly describing his methodology, as well as any areas of doubt arising from the lack of supporting documentation. In his approach to transactions with values below EUR 1,000 and unreconciled expense claims, he struck a reasonable balance taking account of his mandate to verify the claims and the time and cost involved in such verification. Accordingly, the Tribunal accepts Mr. Potter’s methodology. The Tribunal also notes that the Netherlands did not object to or make any comment on Mr. Potter’s methodology.

³⁶ Potter Report, paras. 3.34, 3.35.

³⁷ Potter Report, para. 6.6.

³⁸ See Potter Report, para. 6.5.

³⁹ Letter from the Netherlands to the Tribunal dated 17 February 2017.

58. At the same time, the Tribunal is unable to directly adopt the specific percentage of supported claims arrived at by Mr. Potter, because the Netherlands has provided additional explanations and supporting documentation since the filing of his report. On the basis of these additional explanations and documents, the Tribunal concludes that transactions in the total amount of EUR 94,563.92 should be moved from the expert's "uncertain" category to his "supported" category.
59. Having thus re-categorized certain transactions and applying Mr. Potter's methodology, the Tribunal has recalculated the percentage of supported transactions with values exceeding EUR 1,000, arriving at the figures of 98.3 and 99.7 percent in the first and second costs overviews prepared by WEA Accountants, respectively.⁴⁰ Once these percentages are applied to transactions with values below EUR 1,000 as well as to unreconciled expense claims, it emerges that, overall, 98.6 percent of the costs claimed by the Netherlands on the basis of the costs overviews prepared by WEA Accountants are supported.⁴¹
60. Accordingly, the Tribunal will apply this percentage (98.6) to each category of claim supported by the costs overviews that it considers compensable in principle, in order to obtain the amount of compensation to which the Netherlands is entitled.
61. Of the categories of claim set out in Table A that are supported by the costs overviews, the Tribunal considers that items 1.1, 1.3-1.4, 2.2, 2.5, 3.1-3.4, 3.5(b), 3.6, and 4.3 are in principle compensable as elements of damage to the *Arctic Sunrise*. As stated in paragraphs 37 and 51 above, the Tribunal considers that the claim under item 2.1 of Table A is not compensable and that only 50 percent of the claim identified under item 1.2 is compensable.
62. The total amount of the compensable items is therefore EUR 428.301,⁴² which, multiplied by 98.6 percent, yields EUR 422,304.79 as the amount of compensation owed by Russia to the Netherlands for the part of the damage to the *Arctic Sunrise* that is claimed on the basis of the costs overviews prepared by WEA Accountants (items 1, 2.1, 2.2, 2.5, 3.1-3.4, 3.5(b), 3.6, and 4.3 of Table A above).

⁴⁰ For the basis of this calculation, see Potter Report, paras. 3.35 and 4.8.

⁴¹ For the basis of this calculation, see Potter Report, paras. 3.35, 3.36, 4.8, 6.3, 6.4, and 6.5.

⁴² EUR 26,889 (item 1.1) + (0.5 * EUR 158,720 (item 1.2, as corrected in para. 44 above)) + EUR 2,386 (item 1.3) + EUR 75,266 (item 1.4) + EUR 96,558 (item 2.2) + EUR 338 (item 2.5) + EUR 17,589 (item 3.1) + EUR 32,215 (item 3.2) + EUR 12,097 (item 3.3) + EUR 18,862 (item 3.4) + EUR 12,721 (items 3.5(b)) + EUR 49,839 (item 3.6) + EUR 4,181 (item 4.3)

(d) Other categories of claim

63. In support of the remaining claims, identified in Table A above as items 2.3, 2.4, 3.5(a), 4.1, 4.2, and 5, the Netherlands submitted detailed supporting documentation.
64. With respect to item 4, the Tribunal asked the Netherlands to explain whether there is a difference between the amount claimed as the cost of the return voyage of the *Arctic Sunrise* from Murmansk to Amsterdam and the costs that would have been incurred for the return voyage of the *Arctic Sunrise* from the *Prirazlomnaya* to Amsterdam had the vessel not been boarded and detained by the Russian authorities.⁴³ The Netherlands replied that “a difference is made between a regular onward or return voyage of the *Arctic Sunrise*, and th[is] particular return voyage.”⁴⁴ According to the Netherlands, a Greenpeace ship manager will seek to ensure that each voyage serves a business purpose and the return costs incurred during a voyage serving a business purpose will be attributed to that particular purpose. However, in the present case, “due to the damages inflicted to the *Arctic Sunrise* during boarding and detention, it was unfit for any normal business activity and the entire voyage was undertaken solely for the purpose of a return to dock for repairs.”⁴⁵ Accordingly, “[t]he costs of the return voyage could . . . not be attributed, or partly attributed, to another business purpose.”⁴⁶
65. With respect to item 5, in response to a question from the Tribunal,⁴⁷ the Netherlands explained that it should be compensated for the loss of hire of the *Arctic Sunrise* for the period following its return to Amsterdam on 9 August 2014, because at the time the vessel was “not fit for service” and had to remain at the dock for repairs until 27 September 2014.⁴⁸
66. On the basis of these explanations and having carefully reviewed the supporting documentation, the Tribunal finds that the categories of claims identified in Table A above as items 2.3, 2.4, 3.5(a), 4.1, 4.2, and 5 are compensable in principle.
67. At the same time, the Tribunal’s review of the documentation shows that small adjustments must be made to the amounts claimed. With respect to the amounts claimed under items 2.4 and 5.1, the Netherlands calculated costs arising from crew salaries and the loss of hire of the *Arctic*

⁴³ Tribunal’s Questions, Question 3.

⁴⁴ Fourth Supplemental Pleading, p. 4, para. 1.

⁴⁵ Fourth Supplemental Pleading, p. 4, para. 2.

⁴⁶ Fourth Supplemental Pleading, p. 4, para. 2.

⁴⁷ Tribunal’s Questions, Question 5.

⁴⁸ Fourth Supplemental Pleading, p. 5. *See also* p. 10.

Sunrise starting from 18 September 2013.⁴⁹ However, in the view of the Tribunal, the only costs that may be compensated are those incurred after Russia first breached the Convention by boarding, seizing, and detaining the *Arctic Sunrise*, starting from 19 September 2013. Accordingly, the amount claimed under item 2.4 must be reduced by EUR 2,071.95⁵⁰ and the amount claimed under item 5.1, by EUR 2,024.66.⁵¹ A further downward adjustment of EUR 295 must be made to item 5.3 to correct for a minor mathematical error.⁵²

68. Having made the adjustments described in the preceding paragraph, the Tribunal concludes that the amount of compensation owed by Russia to the Netherlands for the part of the damage to the *Arctic Sunrise* claimed under items 2.3, 2.4, 3.5(a), 4.1, 4.2, and 5 of Table A above is EUR 1,272,821.39.⁵³

(e) Conclusion

69. In light of the conclusions set out at paragraphs 62 and 68 above, the Tribunal finds that Russia owes the Netherlands EUR 1,695,126.18 in compensation for damage to the *Arctic Sunrise*.

B. NON-MATERIAL DAMAGE TO THE ARCTIC 30

1. The Netherlands' claim

70. 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.”⁵⁴

71. In respect of this head of damages, the Netherlands requests compensation at a rate of EUR 1,000 per person per day of detention. Submitting that the Arctic 30 were wrongfully detained for a combined period of 1719 days, it claims compensation in a total amount of EUR 1,719,000.⁵⁵

⁴⁹ Greenpeace Claim Statement (Annex N-48), Appendix 6.1; Fourth Supplemental Pleading, p. 9.

⁵⁰ For the basis of this calculation, see Greenpeace Claim Statement (Annex N-48), Appendix 6.1, p. 2.

⁵¹ For the basis of this calculation, see Fourth Supplemental Pleading, p. 9.

⁵² In calculating the loss of hire of the *Arctic Sunrise* for the period from 10 August until 27 September 2014, the Netherlands carries out the following calculation: 49 days * EUR 800,000/365 days. It arrives at a total of EUR 107,692, instead of EUR 107,397. Fourth Supplemental Pleading, p. 10.

⁵³ EUR 62,723 (item 2.3) + (EUR 198,563 - EUR 2,071.95) (item 2.4) + EUR 54,030 (item 3.5(a)) + EUR 27,543 (item 4.1) + EUR 129,689 (item 4.2) + (EUR 804,665 - EUR 2,024.66 - EUR 295) (item 5)

⁵⁴ Award on the Merits, para. 401(F)(2).

⁵⁵ Updated Pleading, para. 7; Supplementary Submission, para. 51, referring to Greenpeace International Statement of Facts, Appendix 29.

72. Without explicitly stating so, the Netherlands appears to calculate the duration of detention from the various dates on which the Arctic 30 were remanded into custody by court order (26, 27, or 29 September 2013) to the dates of their release on bail (between 20 November and 2 December 2013).⁵⁶

2. The Tribunal's analysis

73. With respect to the award of non-material damages, the Netherlands refers the Tribunal to two cases, namely the ITLOS judgment in *M/V "SAIGA" (No. 2)* and the decision of the International Court of Justice ("ICJ") in *Ahmadou Sadio Diallo*.⁵⁷ Specifically, the Netherlands submits that its claim for non-material damages in the amount of EUR 1,000 per person per day of wrongful detention is "comparable" to the daily sum of USD 1,180 granted in the *Diallo* case.⁵⁸

74. The Tribunal is mindful of Judge Greenwood's comments in his Declaration in the *Diallo* case. In that case, Judge Greenwood noted that a tribunal seized of the task of assessing non-material damages ought not merely select an arbitrary figure but apply principles that are "capable of being applied in a consistent and coherent manner, so that the amount awarded can be regarded as just, not merely by reference to the facts of [the] case, but by comparison with other cases."⁵⁹ This Tribunal also considers it proper to compare the facts of the present case with the cases cited by the Netherlands and other relevant cases where non-material damages have been awarded for injuries of a similar nature.

75. Taking the *Diallo* case as a starting point, the Tribunal observes that the ICJ awarded USD 85,000 to Mr. Diallo as compensation for non-material damages. The Netherlands arrives at the sum of USD 1,180 per day as its comparator by dividing the total amount of compensation awarded to Mr. Diallo for non-material damages (*i.e.*, USD 85,000) by the number of days Mr. Diallo was held in detention (*i.e.*, 72). However, such a calculation ignores an important element of the *Diallo* case. In arriving at the sum awarded for non-material damages, the ICJ not only took the length of Mr. Diallo's detention into account, but also considered the significant psychological suffering and loss of reputation caused by the Congo's wrongful conduct, as well as the fact that

⁵⁶ See Greenpeace International Statement of Facts, Appendix 29; Award on the Merits, paras. 109, 126, 128.

⁵⁷ Supplementary Submission, para. 51, referring to *M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines v. Guinea)*, Judgment of 1 July 1999, ITLOS Reports 1999, p. 10; *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Compensation, Judgment of 19 June 2012, ICJ Reports 2012, p. 324.

⁵⁸ Supplementary Submission, para. 51.

⁵⁹ *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Compensation, Declaration of Judge Greenwood, ICJ Reports 2012, p. 391, para. 7.

following his detention Mr. Diallo was expelled from the Congo despite having lived there for over 30 years.⁶⁰

76. In this respect, the circumstances of the *Diallo* case are more extreme than the circumstances in the present case where the members of the Arctic 30 were detained for approximately two months each but later released and granted amnesty by the Russian authorities. Those members of the Arctic 30 possessing Russian nationality were not expelled from Russia. There is also no suggestion that they suffered a loss of reputation. At most, the Arctic 30 can be said to have been held in conditions that were, to use the words of one of their Russian lawyers who observed the situation first-hand, “not optimal”.⁶¹ In this respect the Tribunal accepts the witness testimony that the Arctic 30 were:

generally confined to cold and unsanitary cells for 23 hours per day, the remaining hour consisting of solitary exercise in a small concrete box. Most [were] unable to speak to their families. Requests for telephone calls [were] not granted until several weeks later. The members of the [Arctic 30 were] held separately from one another; some [were] alone, others share[d] their cell with Russian inmates, but communication [was] often difficult due to lack of a common language.⁶²

77. Taking these circumstances into account, the Tribunal considers the injury suffered by Mr. Diallo to be of a higher order than the injury suffered by the members of the Arctic 30. Accordingly, the Tribunal considers the compensation awarded in the *Diallo* case as an upper limit, rather than a direct comparator, on the compensation to be awarded in this case. In fact, Judge Greenwood in his Declaration noted that even the *Diallo* case:

is very far from being one of the gravest cases of human rights violations. If US\$85,000 is an appropriate sum to compensate for Mr. Diallo’s moral damage, the sum which is required in a case where, for example, a person has been tortured or forced to witness the murder of family members would have to be several magnitudes higher.⁶³

78. The Tribunal does note, however, that the non-Russian nationals among the Arctic 30 were not granted exit visas until the end of December 2013, thereby preventing them from leaving Russia for an additional month following their release from prison.⁶⁴ The Tribunal recalls its earlier finding that through this delay Russia breached the part of the ITLOS Order requiring it to

⁶⁰ *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Compensation, Judgment of 19 June 2012, ICJ Reports 2012, p. 324, para. 21.

⁶¹ Hearing Tr., 10 February 2015 at 66 (examination of Mr. Andrey Suchkov).

⁶² Greenpeace International Statement of Facts, para. 76, as confirmed by the witness statements of Mr. Peter Henry Wilcox, Mr. Dimitri Litvinov, Mr. Frank Hewetson, Mr. Philip Edward Ball, Ms. Sini Annuka Saarela, and Mr. Andrey Suchkov.

⁶³ *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Compensation, Declaration of Judge Greenwood, ICJ Reports 2012, p. 391, para. 11.

⁶⁴ See Greenpeace International Statement of Facts, Appendix 29; Award on the Merits, paras. 132-133.

promptly “ensure that . . . all persons who have been detained are allowed to leave the territory and maritime areas under the jurisdiction of the Russian Federation” following the posting of a bank guarantee by the Netherlands on 2 December 2013.⁶⁵ The Tribunal considers the impairment of the Arctic 30’s ability to leave Russian territory in violation of the ITLOS Order to be an aggravating factor in determining Russia’s liability for non-material damages in this case.

79. In the second case to which the Netherlands refers, *M/V “SAIGA” (No. 2)*, Guinea detained the vessel *SAIGA*, its master, 21 members of crew, and three painters who were on board the vessel. The master of the vessel was detained for approximately 123 days while the other members of crew and the painters were detained for different periods ranging from 20 to 123 days.⁶⁶ ITLOS awarded USD 17,750 for the detention of the master (equating to USD 144 per day) and USD 76,000 for the entire period of detention of the crew and painters.⁶⁷ The Tribunal observes that no reasons were given for the basis on which the amount awarded was calculated and that the outcome is different from that of the *Diallo* case.
80. In addition to the cases cited by the Netherlands, the Tribunal has considered other jurisprudence, including, in particular, decisions of the European Court of Human Rights (“ECtHR”) dealing with non-material damage for wrongful detention in the Russian Federation. In these cases also, the sums awarded vary significantly.
81. For example, in *Frumkin v. Russia*, a case dealing with the arbitrary arrest and detention of the applicant in Russia for approximately 16.5 days following the dispersal of a political rally, the ECtHR awarded the applicant EUR 25,000 (or EUR 1,515 per day of detention).⁶⁸ By comparison, in *Chukayev v. Russia*, the applicant was detained for approximately 498 days in what the ECtHR considered to be inhumane and degrading conditions on remand and was only awarded EUR 9,800 (or EUR 20 per day of detention).⁶⁹
82. The different outcomes reached by the ICJ, ITLOS, and the ECtHR suggest that there is no identifiable consistent practice among international courts and tribunals in respect of the

⁶⁵ Award on the Merits, paras. 349-350.

⁶⁶ *M/V “SAIGA” (No. 2) (Saint Vincent and the Grenadines v. Guinea)*, Judgment of 1 July 1999, ITLOS Reports 1999, p. 10, para. 33.

⁶⁷ *M/V “SAIGA” (No. 2) (Saint Vincent and the Grenadines v. Guinea)*, Judgment of 1 July 1999, ITLOS Reports 1999, p. 10, Annex.

⁶⁸ *Frumkin v. Russia* (Application no. 74568/12), ECtHR, Judgment of 5 January 2016.

⁶⁹ *Chukayev v. Russia* (Application no. 36814/06), ECtHR, Judgment of 5 November 2015, para. 145.

calculation of the award of non-material damages for wrongful detention, certainly not one that could be mechanically applied to any given case.

83. Nevertheless, as noted by the umpire in the *Lusitania* cases before the Mixed Claims Commission (United States/Germany), non-material injuries “are very real, and the mere fact that they are difficult to measure or estimate by money standards makes them none the less real and affords no reason why the injured person should not be compensated therefore as compensatory damages.”⁷⁰
84. Having said that, one consistent characteristic of the cases referred to above is that none of the ICJ, ITLOS or ECtHR decided to award non-material damages on the basis of a *per diem* calculation for days in detention. Rather, it was deemed appropriate in each of those cases to award a lump sum having taken into account all the circumstances of the case. For example, the Tribunal in *M/V SAIGA (No. 2)* awarded a single lump sum for the detention of the entire crew and painters whose individual lengths of detention varied from 20 to 123 days.⁷¹ This Tribunal does not propose to deviate from the practice of awarding a lump sum, rather than a *per diem* amount, in its award of compensation for non-material damages.
85. Having previously determined that the circumstances of the present case entitle the Netherlands to the award of non-material damages in relation to the arrest, detention, and prosecution of those on board the *Arctic Sunrise*, and bearing in mind the facts of this case, including the aggravating factor of Russia’s non-compliance with the ITLOS Order, the Tribunal finds that an award of non-material damages in a total amount of EUR 600,000 is appropriate in this case.
86. Finally, the Tribunal notes that while the Arctic 30 have filed individual applications in the ECtHR, asking for a finding that their apprehension and detention by the Russian authorities constitutes a violation of their rights under Articles 5 and 10 of the European Convention on Human Rights and Fundamental Freedoms,⁷² the Netherlands has informed the Tribunal that those applications remain pending.⁷³ The Tribunal need therefore not consider the possibility of double compensation.

⁷⁰ Opinion in the *Lusitania* cases, 1 November 1923, United Nations, Reports of International Arbitral Awards Vol. VII, p. 32, at p. 40.

⁷¹ *M/V “SAIGA” (No. 2) (Saint Vincent and the Grenadines v. Guinea)*, Judgment of 1 July 1999, ITLOS Reports 1999, p. 10, para. 33.

⁷² Award on the Merits, para. 134.

⁷³ Fourth Supplemental Pleading, p. 12.

C. DAMAGE RESULTING FROM THE MEASURES TAKEN BY RUSSIA AGAINST THE ARCTIC 30

1. The Netherlands' claim

87. 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.”⁷⁴ The Tribunal also ordered Russia to compensate the Netherlands for the value of all objects belonging to the Arctic 30 that were not returned to the Netherlands by 14 October 2015.⁷⁵
88. The Netherlands submits that the compensation to which it is entitled under this head of damages amounts to a total of EUR 3,998,881,⁷⁶ composed of the following items:⁷⁷

TABLE B

#	Category	Amount claimed (in EUR)
1.	Restitution of personal belongings	5,605 plus lump sum
1.1.	Shipping and handling of returned personal items	5,605
1.2.	Value of personal items not returned	lump sum to be determined by the Tribunal at its discretion ⁷⁸
2.	Costs of obtaining Russian bail (legal costs; exchange costs)	81,312
3.	Costs incurred during the wrongful detention of the Arctic 30	3,365,414

⁷⁴ Award on the Merits, para. 401(F)(3). Reproduced in full at paragraph 7 above.

⁷⁵ Award on the Merits, para. 401(H). Reproduced in full at paragraph 7 above.

⁷⁶ The Netherlands last updated the total amount claimed under this head of damages in its Updated Pleading (para. 8), in which the total was stated as EUR 4,003,722. However, the amount of one of the items composing this total was revised in the Netherlands' Fourth Supplemental Pleading (p. 8, para. 1). When this revision is taken into account, the total amount claimed becomes EUR 3,998,881.

⁷⁷ Updated Pleading, para. 8; Greenpeace Claim Statement (Annex N-48); Fourth Supplemental Pleading, pp. 6, 8.

⁷⁸ Fourth Supplemental Pleading, p. 6.

3.1	Salary costs related to emergency response team; relevant share (85%); rest under item 2.4 in Table A above	1,125,191
3.2	Emergency response support: supply of goods and services, including support to detainees	2,240,223
3.2.1	Emergency response support	891,988
	a. Emergency response global	240,547
	b. Emergency response support in Murmansk	196,464
	c. Support to detainees as necessary in Russia-Murmansk	85,351
	d. Mobilisation of public support across the world in countries with Greenpeace presence for the release of the Arctic 30	369,626
3.2.2	Legal costs related to arrest and detention of the Arctic 30	690,916
3.2.3	Costs incurred for Arctic 30 support: contact with, and visit by, next of kin	133,086 ⁷⁹
3.2.4	Salary costs having become due during detention	524,233 ⁸⁰
4.	Costs incurred between the release from prison of the Arctic 30 and their departure from the Russian Federation	EUR 546,550
4.1	Emergency response support in St. Petersburg	196,464
4.2	Support to detainees as necessary in Russia - St. Petersburg	85,351
4.3	Costs of the support team set up to aid Arctic 30 upon release from prison	264,735
	Total	3,998,881

2. The Tribunal's analysis

(a) Non-compensable categories of claim

89. Having found in the Award on the Merits that the Netherlands is entitled to compensation for damage resulting from the measures taken by Russia against the Arctic 30 in principle, the

⁷⁹ This item is stated as EUR 133,277 in the Greenpeace Claim Statement (Annex N-48). In its Fourth Supplemental Pleading (p. 6), the Netherlands explains that EUR 191 should be subtracted from this amount.

⁸⁰ This item, stated as EUR 529,075 in the Greenpeace Claim Statement (Annex N-48), is amended to EUR 524,233 in the Fourth Supplemental Pleading (p. 8, para. 1).

Tribunal at this stage of the proceedings has considered whether the specific categories of damage set out in Table B above are compensable. For the reasons set out below, the Tribunal finds that the categories of damages identified as items 3.2.1(a) and 3.2.1(d) in Table B above are not compensable and that only 31.6 percent of the amount claimed under item 3.1 is compensable.

90. The Tribunal recalls that only direct damages may be compensated. Thus, Article 31 of the Articles on Responsibility of States for Internationally Wrongful Acts (“Articles on State Responsibility”)⁸¹ of the International Law Commission of the United Nations (“ILC”) provides:

1. The responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act.
2. Injury includes any damage, whether material or moral, caused by the internationally wrongful act of a State.

91. The ILC commentary to the Articles on State Responsibility further explains that Article 31(2) is “used to make clear that the subject matter of reparation is, globally, the injury resulting from and ascribable to the wrongful act, rather than any and all consequences flowing from an internationally wrongful act.”⁸²

92. With respect to items 3.1 and 3.2.1 in Table B above, the Tribunal asked the Netherlands to explain precisely what these costs consist of and why it should be compensated for these costs.⁸³ The Netherlands explained that the costs claimed under item 3.1 consist of the “salary costs of the persons who were diverted from their ordinary functions, in order to work on securing the release of the *Arctic Sunrise* and the Arctic 30, and on supporting the Arctic 30 whilst they were released on bail,”⁸⁴ including: (i) a core team tasked with coordinating the support effort; (ii) a team prepared to offer psychological and practical assistance to the Arctic 30 and their next of kin upon the release of the Arctic 30 from detention; (iii) a ground support team tasked with making deliveries of necessary items to the Arctic 30 during their detention, liaising with consular staff, attending and reporting back on court hearings, and providing logistical support to the Arctic 30 and their next of kin after the release of the Arctic 30; (iv) a legal team working to secure the release of the Arctic 30 and update their next of kin; and (v) a team assigned to “reaching out to general audiences, politicians, celebrities and other influencers, embassies and the press in order to protest the detention and push for the release of the Arctic 30.”⁸⁵ According to the Netherlands,

⁸¹ “Draft Articles on Responsibility of States for Internationally Wrongful Acts,” ILC Yearbook 2001, vol. II(2).

⁸² “Draft Articles on Responsibility of States for Internationally Wrongful Acts,” ILC Yearbook 2001, vol. II(2), art. 31, para. 9.

⁸³ Tribunal’s Questions, Question 13.

⁸⁴ Fourth Supplemental Pleading, p. 10.

⁸⁵ Fourth Supplemental Pleading, pp. 10-11.

this response team was constituted pursuant to “a duty of care [of the ship manager] to take all reasonable steps within its power to support the Arctic 30,” arising from the “Security Principles” adopted by Greenpeace International.⁸⁶ While the Netherlands did not expressly state so, it appears that item 3.2.1 represents the expenses incurred by the staff whose salary is claimed under item 3.1.

93. Having carefully considered the explanation of the Netherlands, the Tribunal is of the view that a distinction must be drawn between the cost of steps taken by Greenpeace International that were immediately connected to the detention of the Arctic 30, such as the expenses incurred for the emergency support to the Arctic 30 in Murmansk (items 3.2.1(b) and 3.2.1(c) in Table B) and the cost of more remote steps such as global emergency support and the “mobilization of public support across the world in countries with Greenpeace presence for the release of the Arctic 30” (items 3.2.1(a) and 3.2.1(d) in Table B). Nothing in the Respondent’s actions forced Greenpeace International to mobilise the significant resources involved in the latter two categories of damages. Accordingly, the Tribunal finds that the latter two categories are too remote to be compensated.
94. Similarly, in light of the explanation provided by the Netherlands, it appears that item 3.1 of Table B above covers both salary costs that arose directly from the Respondent’s wrongful conduct (such as the costs of the ground support team tasked with making deliveries of necessary items to the Arctic 30 during their detention) and salary costs that are too remote to be compensable (such as the costs of the team assigned to “reaching out to general audiences, politicians, celebrities and other influencers, embassies and the press in order to protest the detention and push for the release of the Arctic 30”⁸⁷). As the Netherlands has not provided a specific breakdown identifying which salary costs correspond to which tasks carried out by the staff of Greenpeace International, and in view of the close connection between items 3.1 and 3.2.1, the Tribunal considers that it would be reasonable to award compensation for costs claimed under item 3.1 in the same proportion as for item 3.2.1. As the compensable parts of item 3.2.1 (items 3.2.1(b) and 3.2.1(c)) constitute 31.6 percent of item 3.2.1, the Tribunal finds that 31.6 percent of item 3.1 is compensable. Additionally, for the reasons explained in paragraph 67 above, a downward adjustment of EUR 11,741 must be made to item 3.1 to exclude salary costs

⁸⁶ Fourth Supplemental Pleading, p. 11, referring to Annex N-50, Appendix 11, “SGC Security Principles of 2005, para. 3.

⁸⁷ Fourth Supplemental Pleading, p. 11.

for the period preceding 19 September 2013.⁸⁸ On this basis, the Tribunal finds that an amount of EUR 351,850.20⁸⁹ is owed by Russia to the Netherlands under item 3.1 of Table B above.

95. The Tribunal further finds that the costs claimed under item 3.2.3 of Table B above (costs incurred for the Arctic 30 support—contact with, and visit by, next of kin) are not compensable. The Tribunal considers that in incurring these costs Greenpeace International went above and beyond the ordinary level of support an organization may be expected to provide to its employees in similar circumstances, notwithstanding the fact that its commendable reaction may have been required under its policies.

(b) Request for a lump sum in compensation for personal objects

96. Under item 1.2 of Table B above, the Netherlands requests the Tribunal to award a lump sum to be determined by the Tribunal at its discretion for each member of the Arctic 30 individually in compensation for personal objects seized from the *Arctic Sunrise* that have not been returned to the Netherlands.
97. In support of this request, the Netherlands provides a list of the objects that were not returned, enumerating items such as phones, laptops, cameras, wires, clothes, cash, and documents.⁹⁰ The Netherlands explains that “[s]ome of these objects are difficult to replace because of the emotional value they represent and for other objects it is difficult to calculate the appropriate amount of compensation.”⁹¹
98. While the Netherlands has not submitted any supporting documentation that would allow the Tribunal to specifically assess the value of individual personal objects, the Tribunal does not doubt that the Arctic 30 had personal belongings with them as they embarked on their voyage on the *Arctic Sunrise* and that the Respondent’s unlawful conduct caused material injury to the Arctic 30 with respect to their belongings. In such a situation, and in line with the approach adopted by other international courts and tribunals,⁹² the Tribunal considers it appropriate to award an amount of compensation on an equitable basis.

⁸⁸ This calculation is carried out on the basis of the spreadsheet in the Greenpeace Claim Statement (Annex N-48), Appendix 6.1.

⁸⁹ $(1,125,191 - 11,741) * 0.316$

⁹⁰ Greenpeace Claim Statement (Annex N-48), Appendix 10.

⁹¹ Fourth Supplemental Pleading, p. 5.

⁹² *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Compensation, Judgment, ICJ Reports 2012, p. 324, paras. 32-36; *Lupsa v. Romania*, ECtHR, Judgment of 8 June 2006, paras. 70-72;

99. Therefore, in view of the circumstances of the case and upon analysis of the list of objects provided by the Netherlands, the Tribunal awards the sum of EUR 5,000 under this head of damages, to be allocated by the Netherlands among the Arctic 30.⁹³

(c) Categories of claim audited by WEA Accountants

100. The claims identified in Table B above as items 1.1, 2, 3.2.1-3.2.3, and 4 were supported by the two costs overviews prepared by WEA Accountants.

101. As noted at paragraphs 57-60 above, having carefully reviewed the report of its accounting expert, Mr. Potter, and the submissions of the Netherlands, the Tribunal determined that 98.6 percent of the costs claimed by the Netherlands on the basis of the costs overviews prepared by WEA Accountants are supported. The Tribunal further stated that it would apply this percentage to each category of claim supported by the costs overviews that it considers compensable in principle, in order to obtain the amount of compensation to which the Netherlands is entitled.

102. Of the categories of claim set out in Table B that are supported by the costs overviews, the Tribunal considers that items 1.1, 2, 3.2.1(b), 3.2.1(c), 3.2.2, and 4 are compensable in principle as elements of damage resulting from the measures taken by Russia against the Arctic 30. As stated in paragraphs 93 and 95 above, the Tribunal considers that the claims under items 3.2.1(a), 3.2.1(d), and 3.2.3 of Table B are not compensable.

103. The total amount of the compensable items is therefore EUR 1,606,198,⁹⁴ which, multiplied by 98.6 percent, yields EUR 1,583,711.23 as the amount of compensation owed by Russia to the Netherlands for the part of the damage resulting from the measures taken by Russia against the Arctic 30 that is claimed on the basis of the costs overviews prepared by WEA Accountants.

Chaparro Alvarez and Lapo Iñiguez v. Ecuador, Judgment of 21 November 2007 (Preliminary Objections, Merits, Reparations, and Costs), Inter-American Commission on Human Rights, Series C, No. 170, paras. 240-242.

⁹³ The Tribunal notes that in its assessment of this amount it has disregarded items indicated as belonging to Greenpeace International on the list provided by the Netherlands.

⁹⁴ EUR 5,605 (item 1.1) + EUR 81,312 (item 2) + EUR 196,464 (item 3.2.1(b)) + EUR 85,351 (item 3.2.1(c)) + EUR 690,916 (item 3.2.2) + EUR 546,550 (item 4)

(d) Other categories of claim

104. In support of the remaining claim identified in Table B above as item 3.2.4 (salary costs of Arctic 30 having become due during their detention), the Netherlands submitted supporting documentation, which was carefully reviewed by the Tribunal.
105. In the view of the Tribunal, this category of claim is compensable in principle. However, as with certain categories of claim discussed in paragraph 67 above, a downward adjustment of EUR 2,859 must be made to exclude salary costs for the period preceding 19 September 2013.⁹⁵
106. Having made this adjustment, the Tribunal concludes that the amount of compensation owed by Russia to the Netherlands for the part of the damage resulting from the measures taken by Russia against the Arctic 30 claimed under item 3.2.4 of Table B is EUR 521,374.

(e) Conclusion

107. In light of the conclusions set out at paragraphs 94, 99, 103 and 106 above, the Tribunal finds that Russia owes the Netherlands EUR 2,461,935.43 in compensation for damage resulting from the measures taken by Russia against the Arctic 30.

D. COSTS INCURRED FOR THE ISSUANCE OF A BANK GUARANTEE

108. In its Award on the Merits, the Tribunal found that the Netherlands is entitled to compensation for “the costs incurred by the Netherlands for the issuance of the bank guarantee to the Russian Federation pursuant to the ITLOS Order.”⁹⁶
109. Under this head of damages, the Netherlands requests compensation in the amount of EUR 13,500, corresponding to the commission charged by the Royal Bank of Scotland for the issuance of the bank guarantee.⁹⁷ In support, the Netherlands submits proof of the relevant bank transfer.⁹⁸

⁹⁵ This calculation is carried out on the basis of the spreadsheet in the Greenpeace Claim Statement (Annex N-48), Appendix 6.1, p. 2.

⁹⁶ Award on the Merits, para. 401(F)(4). Reproduced in full at paragraph 7 above.

⁹⁷ Updated Pleading, para. 9; Supplementary Submission, para. 33.

⁹⁸ Annex N-43, Proof of Payment, Royal Bank of Scotland.

110. In view of its previous findings in the Award on the Merits and the filing of supporting documentation by the Netherlands, the Tribunal finds that the Respondent owes the Netherlands compensation under this head of damages in the requested amount of EUR 13,500.

IV. DEPOSITS FOR THE COSTS OF ARBITRATION

111. In the Award on the Merits, having decided that the expenses of the Tribunal should be borne by the Parties in equal shares, the Tribunal ordered the Russian Federation “immediately to reimburse the Netherlands the amounts of Russia’s share of the deposits paid by the Netherlands.”⁹⁹ When the Award on the Merits was issued, the total amount of Russia’s share of the deposits paid by the Netherlands was EUR 475,000.

112. Since then, the Netherlands has paid a further amount of EUR 150,000 in substitution for Russia’s share of a supplementary deposit requested by the Tribunal. For the avoidance of doubt, the Tribunal hereby confirms that the Russian Federation is under an obligation to reimburse the Netherlands the amounts of its share of all deposits paid by the Netherlands as at the date of issuance of this Award, minus half of any amount returned by the Registry to the Netherlands after the Award’s issuance.

113. The deposit has covered the fees and expenses of members of the Tribunal, Registry, and experts appointed to assist the Tribunal, as well as all other expenses, including for hearings and meetings, information technology support, catering, court reporters, deposit administration, archiving, translations, couriers, and communications. In accordance with Article 33(4) of the Rules of Procedure, the Registry will “render an accounting to the Parties of the deposits received and return any unexpended balance to the Parties” after the issuance of this Award.

V. INTEREST

114. In the Award on the Merits, the Tribunal found that the Netherlands is entitled to interest on all amounts referred to under the heads of damages discussed in Section III above, as well as on all amounts owed by Russia to the Netherlands in reimbursement of Russia’s share of the deposits paid by the Netherlands.¹⁰⁰ The Tribunal reserved its decision on the appropriate rate of interest and the method for calculating interest to a later phase of the proceedings.¹⁰¹ Below, the Tribunal first summarizes the Netherlands’ submissions on the remaining questions, before setting out its own conclusions.

⁹⁹ Award on the Merits, para. 401(I). Reproduced in full at paragraph 7 above.

¹⁰⁰ Award on the Merits, para. 401(G). Reproduced in full at paragraph 7 above.

¹⁰¹ Award on the Merits, paras. 397, 401(L).

1. The Netherlands' claim

115. The Netherlands submits that the applicable rate of interest “should be based on the average annual Euro LIBOR (London Interbank Offered Rate) interest rate.”¹⁰² With respect to the amounts to be awarded for (i) damage to the *Arctic Sunrise*; (ii) non-material damage to the Arctic 30; and (iii) damage resulting from the measures taken by Russia against the Arctic 30, the Netherlands requests a mark-up of the LIBOR rate of 10% to “reflect the interest rates applied to private and commercial borrowing.”¹⁰³ With respect to the costs of the issuance of a bank guarantee and the payment of Russia’s share of deposits in this arbitration, the Netherlands claims the LIBOR rate without any mark-up.¹⁰⁴

116. With respect to the start date for the calculation of interest, the Netherlands submits that the general rule is that a right to an award of interest exists from the moment of the occurrence of the loss, but notes that “the complexities of the present case, such as the variety of heads of damage and the protracted course of events between the initial internationally wrongful conduct of the Russian Federation up and until the return of the *Arctic Sunrise* to Amsterdam and the restitution of objects, may be reasons for the Tribunal to find” that interest in the present case should be payable from a later date.¹⁰⁵ In this respect, the Netherlands submits the following dates are relevant:

- For the heads of damage related to the *Arctic Sunrise*, the date of the boarding of the ship and the date of the resumption of the use of the ship for operations;
- For the heads of damage related to the persons on board the *Arctic Sunrise*, the date of their detention on board the *Arctic Sunrise* and the date of their departure from the Russian Federation;
- For the heads of damage related to the payments the Netherlands made on behalf of the Russian Federation, the date of payment of each deposit.¹⁰⁶

117. The Netherlands concludes that:

interest should be payable no later than the date on which the Tribunal will issue its award on the quantum of compensation or the date of the Award on the Merits, 14 August 2015, for interest on the payments the Netherlands made on behalf of the Russian Federation in the first stages of these proceedings, but defers to the expertise of the Tribunal to determine, on the basis of international law, that the interest for any or all heads of damages should be payable from an earlier date.¹⁰⁷

¹⁰² Updated Pleading, para. 12.

¹⁰³ Updated Pleading, para. 12; Supplementary Submission, para. 54.

¹⁰⁴ Updated Pleading, paras. 12, 13.

¹⁰⁵ Fourth Supplemental Pleading, p. 13, para. 2.

¹⁰⁶ Fourth Supplemental Pleading, p. 13, para. 2.

¹⁰⁷ Fourth Supplemental Pleading, p. 13, para. 3.

2. The Tribunal's analysis

118. Neither the Convention nor the ILC Articles on State Responsibility provide specific rules regarding how interest should be determined. Moreover, as is noted in the ILC commentary on the Articles on State Responsibility, there is no uniform approach in the practice of international courts and tribunals.¹⁰⁸ Thus, as is well established, the Tribunal has a wide margin of discretion to determine questions of interest.¹⁰⁹
119. In the exercise of its discretion in this case, the Tribunal is guided by the principle that the injured State is entitled to such interest as will ensure full reparation for the injury it has suffered as a result of the internationally wrongful measures of the injuring State.¹¹⁰
120. Specifically, the Tribunal must determine the following four matters: (i) whether the same rate of interest should apply to the claims for material and non-material damages; (ii) at what rate (or rates) interest should be calculated; (iii) whether simple or compound interest ought to be awarded; and (iv) the date (or dates) from which interest begins to accrue.
121. First, the Tribunal determines that different rates of interest should apply to the sums awarded for non-material damage suffered by the Arctic 30 (as to which, see Section III.B above) and the sums awarded for material damage suffered by the *Arctic Sunrise*, its owner, charter, and operator, and the Arctic 30 (as to which, see Sections III.A and III.C above). This matter is one toward which different approaches have been taken in the case law. Of the two cases addressing non-material damages cited by the Netherlands, one (*Diallo*) features the application of the same rate of interest for both material and non-material damages, whereas the other (*M/V Saiga (No. 2)*) includes an award of different rates for different heads of damage.¹¹¹ As in *M/V Saiga (No. 2)*, the Tribunal considers that a distinction must be made between different types of damages. The amounts awarded for non-material damages constitute a monetary estimate of the value of non-financial losses, whereas the material damages addressed in Sections III.A and III.C above represent expenses actually incurred. Accordingly, the rate to be applied in respect of these material damages ought to be higher than that applied to the Tribunal's award of non-material damages.

¹⁰⁸ "Draft Articles on Responsibility of States for Internationally Wrongful Acts," ILC Yearbook 2001, vol. II(2), art. 38, para. 10.

¹⁰⁹ See e.g. *The Islamic Republic of Iran v. The United States of America*, Iran-U.S. C.T.R., vol. 16, p. 285, at p. 290 (1987).

¹¹⁰ See "Draft Articles on Responsibility of States for Internationally Wrongful Acts", ILC Yearbook 2001, vol. II(2), art. 38(1): "Interest on any principal sum due . . . shall be payable when necessary in order to ensure full reparation. The interest rate and mode of calculation shall be set so as to achieve that result."

¹¹¹ *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Compensation, Judgment of 19 June 2012, ICJ Reports 2012, p. 324, para. 56; *M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines v. Guinea)*, Judgment of 1 July 1999, ITLOS Reports 1999, p. 10, para. 175.

122. Second, the Tribunal determines that the interest rate applicable to the material damages addressed in Sections III.A and III.C above, under the headings of damage to the *Arctic Sunrise* and damage resulting from the measures taken by Russia against the Arctic 30, shall be the Euro LIBOR annual rate plus six percent. This rate is appropriate in light of the commercial conditions prevailing in the countries where the expenses were incurred and given that the expenses were for the most part incurred by Greenpeace International, a private foundation that borrows money at ordinary commercial rates.
123. Further, the Tribunal determines that the interest rate applicable to non-material damages shall be the Euro LIBOR annual rate plus three percent. In this respect, the Tribunal takes guidance from *M/V Saiga (No. 2)*, a factually comparable case where a rate of three percent was adopted for non-material damages.¹¹² Given the current Euro LIBOR annual rate, the rate selected by this Tribunal is similar to the rate applied in that case.
124. Additionally, the Tribunal determines that the interest rate applicable to the award of costs incurred by the Netherlands, namely the costs of issuance of a bank guarantee and the payment of Russia's share of arbitration costs, shall be the Euro LIBOR annual rate (without mark-up).
125. Third, the Tribunal determines that simple interest is to be awarded in this case. The Netherlands has not requested compounded interest.
126. Finally, the Tribunal determines that interest on all heads of damage shall accrue from the date of the Award on the Merits, that is, starting on 14 August 2015, 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, which are as follows:
- i. 15 May 2014 for the first payment in the amount of EUR 150,000;
 - ii. 27 March 2015 for the second payment in the amount of EUR 150,000;
 - iii. 22 April 2015 for the third payment in the amount of EUR 175,000; and
 - iv. 2 November 2015 for the fourth payment in the amount of EUR 150,000.
127. The Tribunal considers that it is fair and reasonable to award interest in the present case from the date on which the losses occurred, as suggested by the Netherlands. As the Netherlands has itself noted, however, "the complexities of the present case, such as the variety of heads of damage and

¹¹² *M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines v. Guinea)*, Judgment of 1 July 1999, ITLOS Reports 1999, p. 10, para. 175.

the protracted course of events between the initial internationally wrongful conduct of the Russian Federation up and until the return of the *Arctic Sunrise* to Amsterdam and the restitution of the objects” make it difficult to identify the dates on which the various losses occurred.¹¹³ In fact, the Netherlands has not sought to identify those specific dates. In view of these circumstances, the Tribunal considers that the date of the Award on the Merits constitutes an appropriate proxy. The start dates for the accrual of interest on Russia’s share of arbitration deposits paid by the Netherlands are treated differently because those dates are known to the Tribunal.

VI. DECISION

128. For the above reasons, the Tribunal unanimously decides that the Russian Federation shall pay to the Netherlands the following amounts:
- A. EUR 1,695,126.18 as compensation for damage to the *Arctic Sunrise*, with interest on this amount at the Euro LIBOR annual rate plus six percent, from 14 August 2015 to the date of effective payment;
 - B. EUR 600,000 as compensation for non-material damage to the Arctic 30 for their wrongful arrest, prosecution, and detention in the Russian Federation, with interest on this amount at the Euro LIBOR annual rate plus three percent, from 14 August 2015 to the date of effective payment;
 - C. EUR 2,461,935.43 as compensation for damage resulting from the measures taken by the Russian Federation against the Arctic 30, with interest on this amount at the Euro LIBOR annual rate plus six percent, from 14 August 2015 to the date of effective payment;
 - D. EUR 13,500 as compensation for the costs incurred by the Netherlands for the issuance of the bank guarantee to the Russian Federation pursuant to the ITLOS Order, with interest on this amount at the Euro LIBOR annual rate, from 14 August 2015 to the date of effective payment;
 - E. EUR 150,000 as reimbursement of the first part of Russia’s share of the deposits paid by the Netherlands, with interest on this amount at the Euro LIBOR annual rate, from 15 May 2014 to the date of effective payment;

¹¹³ Fourth Supplemental Pleading, p. 13, para. 2.

- F. EUR 150,000 as reimbursement of the second part of Russia's share of the deposits paid by the Netherlands, with interest on this amount at the Euro LIBOR annual rate, from 27 March 2015 to the date of effective payment;
- G. EUR 175,000 as reimbursement of the third part of Russia's share of the deposits paid by the Netherlands, with interest on this amount at the Euro LIBOR annual rate, from 22 April 2015 to the date of effective payment; and
- H. EUR 150,000, minus half of any amount returned by the Registry to the Netherlands after the Award's issuance, as reimbursement of the fourth part of Russia's share of the deposits paid by the Netherlands, with interest on this amount at the Euro LIBOR annual rate, from 2 November 2015 to the date of effective payment.

Dated: 10 July 2017

Professor Alfred H.A. Soons
Arbitrator

Dr. Alberto Székely
Arbitrator

Mr. Henry Burmester
Arbitrator

Professor Janusz Symonides
Arbitrator

Judge Thomas A. Mensah
President of the Tribunal

Ms. Evgeniya Goriatcheva
Registrar