

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

**PROCEDURAL ORDER NO. 2
(Rules of Procedure;
Initial Procedural Timetable)**

ARBITRAL TRIBUNAL:

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

REGISTRY:

Permanent Court of Arbitration

17 March 2014

WHEREAS the Kingdom of the Netherlands (“**the Netherlands**”) has invoked Article 287 and Annex VII of the United Nations Convention on the Law of the Sea (“**Convention**”) with regard to a dispute concerning the boarding and detention of the vessel *Arctic Sunrise* in the exclusive economic zone of the Russian Federation (“**Russia**”) and the detention of the persons on board the vessel by the Russian authorities, as set out in the Notification and *Statement of the Claim and the Grounds on Which it is Based* submitted by the Netherlands to Russia on 4 October 2013;

WHEREAS by *Note Verbale* dated 22 October 2013, Russia notified the Dutch Embassy in Moscow that Russia “does not accept the arbitration procedure under Annex VII to the . . . Convention proposed by the Kingdom of the Netherlands in relation to the case of ‘Arctic Sunrise’”;

WHEREAS in accordance with Article 3 of Annex VII to the Convention, by 10 January 2014 the Arbitral Tribunal composed of Mr. Henry Burmester, Professor Alfred Soons, Professor Janusz Symonides, Dr. Alberto Székely, and Judge Thomas Mensah (President) was constituted;

WHEREAS Article 5 of Annex VII to the Convention provides that “[u]nless the parties to the dispute otherwise agree, the arbitral tribunal shall determine its own procedure, assuring to each party a full opportunity to be heard and to present its case”;

WHEREAS on 11 February 2013, the Permanent Court of Arbitration, acting on behalf of the Arbitral Tribunal, sent Draft Rules of Procedure to the Parties and invited the Parties’ written comments;

WHEREAS by letter dated 27 February 2013, the Netherlands provided their comments on the Draft Rules of Procedure;

WHEREAS by *Note Verbale* dated 27 February 2013, 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.”

WHEREAS pursuant to Article 9 of Annex VII to the Convention, the Netherlands has requested the Arbitral Tribunal to continue the proceedings and to make its Award;

WHEREAS the Arbitral Tribunal held a First Procedural Meeting at the Hotel Maritim in Bonn, Germany on 17 March 2014, which both Parties were invited to attend;

WHEREAS in attendance during the First Procedural Meeting were the Agent and Co-Agent of the Netherlands, without any representation from Russia;

HAVING CONSIDERED the written comments of the Netherlands dated 27 February 2014 as well as the discussions at the First Procedural Meeting,

THE ARBITRAL TRIBUNAL HEREBY ISSUES THE FOLLOWING PROCEDURAL ORDER:

1. Rules of Procedure

- 1.1 The rules of procedure appended to this Order (“**Rules**”) shall apply in these proceedings, subject to the Convention (including Annex VII thereof), Procedural Order No. 1 (Terms of Appointment) dated 17 March 2014, and any subsequent procedural orders of the Arbitral Tribunal.

- 1.2 To the extent that any question of procedure is not expressly governed by the Convention (including Annex VII thereof), these Rules, or other procedural orders issued by the Arbitral Tribunal, the question shall be determined by the Arbitral Tribunal after consultation with the Parties.

2. Procedural Timetable

- 2.1 The procedural timetable shall be as follows:

2.1.1 The Netherlands shall submit a Memorial by 31 August 2014. In its Memorial, the Netherlands shall fully address all issues including matters relating to jurisdiction, admissibility, and the merits of the dispute.

2.1.2 Russia shall indicate, within 15 days from electronic receipt of the Memorial, whether it intends to submit a Counter-Memorial;

2.1.3 If Russia indicates that it intends to submit a Counter-Memorial, it shall do so by no later than 15 February 2015;

2.1.4 In accordance with Article 25(2) of the Rules of Procedure, if Russia does not indicate that it intends to submit a Counter-Memorial within the period provided in Paragraph 2.1.2, or fails to submit its Counter-Memorial as provided under Paragraph 2.1.3:

2.1.4.1 The Arbitral Tribunal shall pose to the Netherlands, within 45 days from the indication of Russia's intention, any questions it may have regarding specific issues which the Arbitral Tribunal considers have not been canvassed, or have been inadequately canvassed, in the Memorial.

2.1.4.2 The Netherlands shall make a supplemental submission in reply to the questions posed by the Arbitral Tribunal within 45 days from the issuance of the Tribunal's questions.

2.1.4.3 Russia shall indicate, within 15 days of the Netherlands' supplemental submission, whether it intends to submit any comments on the supplemental submission of the Netherlands.

2.1.4.4 If Russia indicates that it intends to submit comments on the supplemental submission of the Netherlands, it shall do so within 30 days of its indication of intention.

- 2.2 The Arbitral Tribunal will determine the need for, and scheduling of, any further written submissions and hearings at an appropriate later stage, after seeking the views of the Parties.

3. Non-Participation of Russia

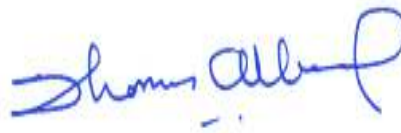
- 3.1 The Tribunal notes that Russia has expressed by *Note Verbale* to the PCA dated 27 February 2012 its "refusal to take part in this arbitration." The Tribunal also takes note of Russia's non-participation in the Tribunal's First Procedural Meeting in Bonn on 17 March 2014.

- 3.2 Nonetheless, it remains open to Russia to participate in these proceedings at any stage, in the manner that the Arbitral Tribunal deems appropriate to preserve the integrity and fairness of the proceedings.
- 3.3 Pursuant to Article 12(2) of the Rules of Procedure, Russia shall continue to receive a copy of all written communications between the Parties and the Tribunal in these proceedings. Russia will also receive a copy of the verbatim transcript of any hearing produced pursuant to Article 23(9) of the Rules of Procedure.

4. Leave to Apply

- 4.1 Any Party has leave to apply to the Arbitral Tribunal for a variation of this Order, giving particulars of the variation sought and the reason for it.
- 4.2 Any Party may, at any point in these proceedings, request that the Arbitral Tribunal convene a conference with the Parties to address any procedural aspect of these proceedings. The Arbitral Tribunal will arrange to confer with the Parties in person or by teleconference, according to the circumstances.

For the Arbitral Tribunal:



Judge Thomas A. Mensah
President

Dated: 17 March 2014