

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. 4
(Bifurcation)**

ARBITRAL TRIBUNAL:

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

REGISTRY:

Permanent Court of Arbitration

21 November 2014

WHEREAS the Kingdom of the Netherlands (“**the Netherlands**”) commenced this arbitration on 4 October 2013 by submitting to the Russian Federation (“**Russia**”) a Notification and *Statement of Claim and the Grounds on Which it is Based*;

WHEREAS in accordance with Article 3 of Annex VII to the Convention, an 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 20(3) of the Rules of Procedure adopted by the Arbitral Tribunal provides that “[t]he Arbitral Tribunal shall rule on any plea concerning its jurisdiction as a preliminary question, unless the Arbitral Tribunal determines, after seeking the views of the Parties, that the objection to its jurisdiction does not possess an exclusively preliminary character, in which case it shall rule on such plea in conjunction with the merits”;

WHEREAS by *Note Verbale* dated 22 October 2013 addressed to the Embassy of the Netherlands in Moscow, Russia made the following statements:

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

Upon ratification of the Convention on 26 February 1997 the Russian Federation drew up a declaration stating *inter alia* that it did not accept “the procedures provided for in section 2 of Part XV of the Convention, entailing binding decisions with respect to disputes . . . concerning law-enforcement activities in regard to the exercise of sovereign rights or jurisdiction.”

On the basis of the above, the Russian Federation does not accept the arbitration proceedings proposed by the Kingdom of the Netherlands under Annex VII of the [Convention] in the case of ‘Arctic Sunrise’;

WHEREAS by letter dated 27 February 2014, the Netherlands informed the Arbitral Tribunal that:

it considers the diplomatic note of the Russian Federation of 22 October 2013 . . . - in which it notifies the Kingdom of the Netherlands “that it does not accept the arbitration procedure under Annex VII to the Convention initiated by the Netherlands in regard to the case concerning the vessel “Arctic Sunrise”- a plea concerning the jurisdiction of the Arbitral Tribunal;

WHEREAS by *Note Verbale* dated 27 February 2014 addressed to the Arbitral Tribunal through the Permanent Court of Arbitration, Russia referred to its *Note Verbale* dated 22 October 2013 and confirmed “its refusal to take part in this arbitration”;

WHEREAS at the First Procedural Meeting held on 17 March 2014, the Netherlands stated again that Russia’s *Note Verbale* dated 22 October 2013 constitutes a plea concerning the Arbitral Tribunal’s jurisdiction and requested that the Arbitral Tribunal bifurcate the present proceedings between “a separate stage on jurisdiction” and “a later stage on admissibility and merits”;

WHEREAS in its *Memorial* dated 31 August 2014, the Netherlands reiterated its request for bifurcation of the proceedings in the following terms:

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

WHEREAS on 30 September 2014 the Netherlands filed *Supplementary Written Pleadings on Reparation for Injury*;

WHEREAS by letter dated 8 October 2014, the Registrar of the Arbitral Tribunal informed the Parties that "the 15-day time period set in [Procedural Order No. 2] for Russia to indicate whether it intends to submit a Counter-Memorial runs from 30 September 2014, the filing date of the Netherlands' *Supplementary Pleadings on Reparation/or Injury*, and will therefore expire on 14 October 2014", and that "[s]hould Russia fail to provide an indication of its intention by 14 October 2014, the Tribunal will understand that Russia does not intend to submit a Counter-Memorial";

WHEREAS Russia has not indicated whether it intends to submit a Counter-Memorial;

WHEREAS by letter dated 6 November 2014, the Registrar of the Arbitral Tribunal invited Russia to comment on the request of the Netherlands for bifurcation of the proceedings;

WHEREAS Russia did not submit any comments on the request of the Netherlands;

WHEREAS by letter dated 14 November 2014, the Registrar of the Arbitral Tribunal notified the Parties of the Arbitral Tribunal's decision to rule on the plea concerning its jurisdiction made in Russia's *Note Verbale* dated 22 October 2013 as a preliminary question without holding a hearing, attaching a draft of this Procedural Order, and seeking the Parties' comments on that decision.

WHEREAS by letter dated 18 November 2014, the Netherlands informed the Arbitral Tribunal that it supported the draft of this Procedural Order;

WHEREAS Russia did not submit any comments on the decision of the Arbitral Tribunal or on the draft of this Procedural Order;

WHEREAS the Arbitral Tribunal considers that it has sufficiently sought the views of the Parties and given them a full opportunity to be heard on the matter; and,

WHEREAS the Arbitral Tribunal considers that the material in the *Memorial* of the Netherlands and the statement in the *Note Verbale* of Russia dated 22 October 2013 provides a sufficient basis for the Arbitral Tribunal to reach a decision on the issue of jurisdiction raised in Russia's *Note Verbale*;

THE ARBITRAL TRIBUNAL HEREBY ISSUES THE FOLLOWING PROCEDURAL ORDER:

1. The statement by Russia in its *Note Verbale* dated 22 October 2013, relying on the declaration it made upon ratification of the Convention, that it "does not accept" this arbitration, constitutes a plea concerning this Arbitral Tribunal's jurisdiction to which Article 20(3) of the Rules of Procedure applies, and such a plea possesses an exclusively preliminary character.
2. The Arbitral Tribunal will rule on this plea concerning its jurisdiction as a preliminary question without holding a hearing.

3. All other issues, including any other issues concerning jurisdiction and any issues concerning admissibility and the merits of the dispute are reserved for consideration and decision at a later stage of the proceedings.

For the Arbitral Tribunal:

A handwritten signature in black ink, appearing to read 'Thomas A. Mensah', written over a horizontal line.

Judge Thomas A. Mensah
President

21 November 2014