



Ministry of Foreign Affairs

Note verbale

International Law Division

Min-BuZa.2024.20479-12

The Ministry of Foreign Affairs of the Kingdom of the Netherlands presents its compliments to the Secretariat of the International Seabed Authority and has the honour to enclose herewith the letter of the Director of Maritime Affairs of the Ministry of Infrastructure and Water Management of the Netherlands containing the investigation by the Human Environment and Transport Inspectorate into the events related to the actions by Greenpeace International carried out from the Dutch flagged vessel MV Arctic Sunrise in the vicinity and on board the Danish flagged vessel MV Coco, operated by Nauru Ocean Resources Inc (NORI), from 22 November to 4 December 2023.

The Ministry kindly requests the Secretariat to transmit and circulate the letter and the annexed report to the Council of the Authority for its consideration.

The Ministry of Foreign Affairs of the Kingdom of the Netherlands avails itself of this opportunity to renew to the Secretariat of the International Seabed Authority the assurances of its highest consideration.

The Hague, 14 March 2024



To the Secretariat of the International Seabed Authority



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Ministry of Foreign Affairs
Legal Affairs Department
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Bestuurskern

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Our reference

IenW/BSK-2024/81614

Date 4 March 2024
Subject Investigation into the activities of the *MV Arctic Sunrise*
in the NORI-D contract area from 22 November to 4
December 2023

Dear Madam, Sir,

With this letter and the report attached to it, I inform you of the findings of the investigation of the Human Environment and Transport Inspectorate of the Ministry of Infrastructure and Water Management into the actions of Greenpeace International carried out from the Dutch flagged vessel *MV Arctic Sunrise* in the vicinity of and on board the Danish flagged vessel *MV Coco* operated by Nauru Ocean Resources Inc (NORI) in the NORI-D contract area (Clarion Clipperton Zone) that took place from 22 November to 4 December 2023.

The investigation by the Human Environment and Transport Inspectorate was initiated following a request for clarification from the Danish Maritime Authority sent on 24 November 2023, and, upon your request, following the notification pursuant to Article 94, paragraph 6, of the United Nations Convention on the Law of the Sea (UNCLOS) contained in the letter of the President of the Republic of Nauru, H.E. Hon. David W. Radeang to the Prime Minister of the Netherlands, Mark Rutte, dated 18 December 2023.

The investigation is based on a statement of facts and video footage provided by the crew of the *MV Coco* through the Danish Maritime Authority on 29 November 2023. Additional information from or channeled through the Secretary-General of the International Seabed Authority, including from NORI and Tonga Offshore Mining Limited (TOML) and Greenpeace International has also been taken into account.

The investigation of the Human Environment and Transport Inspectorate focuses exclusively on aspects of safety of navigation and safety of life at sea in respect of the activities of the *MV Arctic Sunrise* between 22 November and 4 December 2023, and is without prejudice to the legality of the exercise of the right to protest at sea, which falls outside its remit and is subject to judicial review by the competent courts of the Netherlands. In this respect, reference is made to the Decision of the Amsterdam District Court of 30 November 2023 in which the Court upheld the right to peaceful protest, but ordered Greenpeace International to instruct its activists to leave the vessel *MV Coco* with immediate effect.

Attached to this letter is the report of the Human Environment and Transport Inspectorate of the Ministry of Infrastructure and Water Management. In its report the Inspectorate makes the following findings:

- 1) the Inspectorate found no (legal) basis, whether under the (provisions of the) 1972 Convention on the International Regulations for Preventing Collisions at Sea (COLREGs) or otherwise, for prescribing and maintaining a safety or operating zone of 500 meter around the *MV Coco*;
- 2) the Inspectorate, on the basis of the video footage analysed and other verifiable evidence, concluded that safety of navigation was not compromised and that the maneuvers of the *MV Arctic Sunrise* towards the *MV Coco* would not qualify as dangerous or unlawful;
- 3) the Inspectorate notes, as good seamanship dictates, that VHF radio communication had been established between the *MV Arctic Sunrise* and the *MV Coco*; and
- 4) the Inspectorate finds, on the basis of the video footage analysed, and in addition to the findings of the Amsterdam District Court in respect of safety hazards related to the (continued) presence of Greenpeace activists on board the *MV Coco*, that the presence of Greenpeace activists in kayaks at the stern of the *MV Coco* created safety hazards towards these persons; the Inspectorate considers that exposure of the persons in kayaks to these safety hazards should have been avoided by the crew on the *MV Arctic Sunrise* by instructing the kayaks not to position themselves behind the stern of the *MV Coco*.

Bestuurskern
Dir. Maritieme Zaken
Afdeling Zeevaart

Date
4 March 2024

Our reference
IenW/BSK-2024/81614

On the basis of the findings of the Human Environment and Transport Inspectorate and in light of the Decision of the Amsterdam District Court of 30 November 2023 the Ministry of Infrastructure and Water Management deems it appropriate to continue to discuss with Greenpeace International the safety aspects of the right to protest at sea and the necessity to observe relevant international standards in that respect, in particular on the high seas in accordance with the Resolution of the Maritime Safety Committee of the International Maritime Organization MSC.303(87) adopted on 17 May 2010 on assuring safety during demonstrations, protests or confrontations on the high seas.

Yours sincerely,

DIRECTOR MARITIME AFFAIRS,



Michiel van Kruiningen



Human Environment and Transport
Inspectorate
*Ministry of Infrastructure
and Water Management*

Investigation M.V. Arctic Sunrise

investigation into the activities of the *MV Arctic Sunrise* in the NORI-D contract area
from 22 November to 4 December 2023

Version	1.0
Date	27 february 2024
Status	Final

Colophon

	ILT Surveillance Safe Mobility
	Zwijndrecht
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Version	1.0

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Introduction

1. The investigation contained in this report concerns the actions of Greenpeace International carried out from the Dutch flagged vessel *MV Arctic Sunrise* in the vicinity of and on board the Danish flagged vessel *MV Coco* operated by Nauru Ocean Resources Inc (NORI) in the NORI-D contract area (Clarion-Clipperton-Zone) that took place from 22 November to 4 December 2023.
2. This investigation was initiated following a request for clarification from the Danish Maritime Authority sent on 24 November 2023 and, subsequently, upon the request of the Ministry of Foreign Affairs of the Kingdom of the Netherlands, following the notification pursuant to Article 94, paragraph 6, of the United Nations Convention on the Law of the Sea (UNCLOS) contained in the letter of the President of the Republic of Nauru, H.E. Hon. David W. Radeang to Prime Minister of the Netherlands, Mark Rutte, dated 18 December 2023, in which Nauru seeks, amongst others, "an immediate investigation by the Netherlands of the conduct of the *MV Arctic Sunrise* and for all necessary action to be taken by the Netherlands to ensure compliance by the *MV Arctic Sunrise* with the immediate measures and any future measures issued by the Authority."
3. This investigation reviews the conduct of the *MV Arctic Sunrise* and its crew in the period mentioned above, in particular with respect to compliance with the applicable international Regulations for Preventing Collisions at Sea (COLREGs) and the observance of good seamanship.
4. This investigation report is issued in the English language, with a view to its possible distribution outside the Netherlands.

1. Incident summary

5. On 22 November 2023 the *MV Arctic Sunrise* (IMO 7382902), registered in the Netherlands as a non-commercial vessel and possessing a valid Certificate of Registry, arrived at the location of the *MV Coco* (IMO: 9755153) in the NORI-D contract area in Clarion-Clipperton-Zone in the Pacific Ocean and notified NORI of its intention to undertake a peaceful protest at sea against the Danish flagged vessel *MV Coco* conducting exploration activities under the auspices of the International Seabed Authority in that area.

6. Based on information received from multiple sources, including a statement of facts and video footage provided by the crew of the *MV Coco* through the Danish Maritime Authority on 29 November 2023, a summary of key elements submitted by NORI and information from Greenpeace International, the major events that took place between 22 November and 4 December 2023 were the following:
 - a) From 23 November 2023 Greenpeace kayakers deployed from the *MV Arctic Sunrise* followed and sailed around the *MV Coco*, including in close proximity of the stern of the vessel, leading on one occasion to the capsizing of one of the kayakers in the *MV Coco*'s propeller wash.

 - b) On 25 November 2023, four Greenpeace activists boarded the *MV Coco* without permission of the Master of the vessel, and held up on the A-frame.

 - c) On 26 November *MV Arctic Sunrise* was reported to sail directly towards *MV Coco*, allegedly on collision path with that vessel.

7. In response to the protest actions by Greenpeace International carried out from the *MV Arctic Sunrise*, NORI filed summary proceedings against the owners of the *MV Arctic Sunrise* in the Amsterdam District Court in the Netherlands. The Court delivered its decision 30 November 2023, in which it upheld the right to peaceful protest, but ordered Greenpeace International to instruct its activists to leave the

vessel with immediate effect. The Greenpeace activists who boarded the *MV Coco* complied with this order.

8. On 4 December 2023, at sunset, Greenpeace International ended the protest and the *MV Arctic Sunrise* communicated to *MV Coco* that it was leaving the area.

2. Investigation

9. Apart from the statement of facts, mentioned above, the investigation has been based on an analysis of video footage provided by the crew of the *MV Coco* through the Danish Maritime Authority on 29 November 2023, in particular the following:
 - a) Image of MV Arctic Sunrise crew on MV Coco's A-Frame;
 - b) Video of MV Arctic Sunrise protesters interacting with MV Coco's lifeline, tying an object to the line;
 - c) Video of kayaks engaging in MV Coco's propeller wash and subsequent capsizing of one them;
 - d) Videos of RADAR screens showing trails of MV Arctic Sunrise allegedly on collision path with MV Coco
10. The investigation did not cover the safety aspects of the presence of Greenpeace International protesters onboard the *MV Coco*, in particular on (top of) the A-frame of that vessel, since that aspect has already been the subject of judicial scrutiny by the Amsterdam District Court's Decision of 30 November 2023.
11. The Inspectorate has not been made aware of any danger of oil spills originating from the kayaks or other dangers to the marine life. In any event, it is very unlikely that an event could have unfolded as a result of these hazards, that would have had the severity or magnitude to cause a serious impact on the marine environment. Therefore, the Inspectorate will not include the danger to marine life or the environment in this investigation.
12. As part of the investigation a meeting (video-conference) was held with representatives of Greenpeace International on 11 December 2023, in which they were given the opportunity to provide clarifications and to react to the (preliminary) findings of the investigation.

3. Safety of navigation

1) Maneuvering of the *MV Arctic Sunrise*

13. Based on an analysis of the video footage provided by the Danish Maritime Authority and on other available verifiable evidence, the Inspectorate determines that the *MV Arctic Sunrise* was maneuvering close to the *MV Coco* upto a distance of 180 meters with low speed and in opposite direction. On the basis of this evidence, it cannot be concluded that the *MV Arctic Sunrise* steamed directly towards the *MV Coco* and subsequently, after altering its course, passed the stern of *MV Coco* with a distance of less than 80 meters, as the *MV Coco* has stated to the Danish Maritime Authorities. Under these circumstances and given the size of the vessels involved and in light of the stated intention of the *MV Arctic Sunrise* to undertake a peaceful protest at sea against the vessel *MV Coco* conducting exploration activities under the auspices of the International Seabed Authority, as notified to NORI, the Inspectorate concludes that safety of navigation was not compromised and that the maneuvers of the *MV Arctic Sunrise* towards the *MV Coco* would not qualify as dangerous or unlawful. Furthermore, the Inspectorate notes that, as good seamanship dictates, VHF radio communication had been established between the two vessels from the beginning of the protest actions.

2) Kayaking around and at the stern of the *MV Coco*

14. From the beginning of the protest actions on 23 November 2023 Greenpeace activists in kayaks have been sailing around the *MV Coco* interfering with the vessels operation. On 24 November 2023 the crew of the *MV Coco* expressed its concerns, through the Danish Maritime Authority, for the safety of the persons in the kayaks. As the video footage shows, Greenpeace activists have also been kayaking at the stern of the *MV Coco*, resulting in the capsizing of one of them in the *MV Coco*'s propeller wash.
15. On 11 December 2023 representatives of the Inspectorate, in the presence of representatives of the ministries of Infrastructure and Water Management and Foreign Affairs, held a videoconference with representatives of Greenpeace International in which the latter were given the opportunity to provide their views or any other clarification that they may have regarding the incident. According to Greenpeace International the risks involved in the actions had been carefully controlled and were considered limited – considering that a certain risk is inherent in every activity at sea – and the Greenpeace activists in kayaks had received extensive training (including sailing in the vicinity of a large vessel, what to do if they would capsize), wore protective clothing and life jackets and one of RHIBS of

the *MV Arctic Sunrise* was always nearby. It was further explained that when the incident occurred no prior warning had been communicated from the *MV Coco* to the *MV Arctic Sunrise* - as had been done on previous occasions - which may have surprised the kayakers.

16. The Inspectorate does not share these views. On the basis of the video footage analysed the Inspectorate finds that the presence of the Greenpeace activists in kayaks at the stern of the *MV Coco* created safety hazards towards these activists; the Inspectorate considers that exposure of the persons in kayaks to these safety hazards should have been avoided by the crew on the *MV Arctic Sunrise* by instructing the kayaks not to position themselves behind the stern of the *MV Coco*.

3) Compliance with the requirement to observe a 500 meter safety zone

17. With respect to the purported requirement of maintaining a safety or operating zone of 500 meters around the *MV Coco*, the Inspectorate found no (legal) basis, whether under the (provisions of the) 1972 Convention on the International Regulations for Preventing Collisions at Sea (COLREGS) or otherwise, for prescribing and maintaining a safety or operating zone of 500 meter around the *MV Coco*. It refers to the position of the Government of the Netherlands as expressed in its Note verbale to the Secretariat of the International Seabed Authority, MinBuZa.2023.20081-42 dated 15 December 2023.

4. Completion of the investigation

18. The Inspectorate's investigation into the actions of Greenpeace International carried out from the *MV Arctic Sunrise* in the vicinity of and on board the *MV Coco* operated by NORI in the NORI-D contract area (Clarion-Clipperton-Zone), was completed by issuance of this report dated 29 February 2024. The findings in this report, in particular those in paragraph 16 above, will be discussed with Greenpeace International.

This is a publication by the

Human Environment and
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