



**INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA
TRIBUNAL INTERNATIONAL DU DROIT DE LA MER**

Press Release

**THE “ARCTIC SUNRISE” CASE
(KINGDOM OF THE NETHERLANDS v. RUSSIAN FEDERATION)**

**TRIBUNAL ORDERS THE RELEASE OF THE ARCTIC SUNRISE AND THE
DETAINED PERSONS UPON THE POSTING OF A BOND**

The International Tribunal for the Law of the Sea delivered its Order today in *The “Arctic Sunrise” Case (Kingdom of the Netherlands v. Russian Federation)*. It ordered that the vessel *Arctic Sunrise* and all persons detained in connection with the dispute be released and allowed to leave the territory and maritime areas under the jurisdiction of the Russian Federation upon the posting of a bond in the amount of 3.6 million euros.

THE DISPUTE

A request for the prescription of provisional measures under article 290, paragraph 5, of the United Nations Convention on the Law of the Sea was submitted to the Tribunal on 21 October 2013 by the Kingdom of the Netherlands in a dispute with the Russian Federation concerning the arrest and detention of the vessel *Arctic Sunrise* and its crew by authorities of the Russian Federation. The *Arctic Sunrise*, which flies the flag of the Netherlands, is an icebreaker operated by Greenpeace International. The public hearing in the case was held on Wednesday, 6 November 2013. The Russian Federation informed the Tribunal by note verbale from the Embassy of the Russian Federation in Berlin dated 22 October 2013 that it did not intend to participate in the proceedings before the Tribunal.

THE ORDER OF 22 NOVEMBER 2013

Jurisdiction

In its Order, the Tribunal considers the declaration made by the Russian Federation upon ratifying the Convention, by which it “does not accept 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”. In the note verbale of 22 October 2013, the Russian Federation informed the Tribunal that, on the basis of the said declaration, it had notified the Netherlands that “it does not accept the arbitration procedure under Annex VII to the Convention initiated by the Netherlands”. In the view of the Tribunal, the declaration made by the Russian Federation with respect to law enforcement activities under article 298, paragraph 1(b), of the Convention *prima*

facie applies only to disputes excluded from the jurisdiction of a court or tribunal under article 297, paragraphs 2 and 3, of the Convention, i.e. those relating to marine scientific research and fisheries.

Concerning the non-appearance of the Russian Federation, the Tribunal considers that the absence of a party or failure of a party to defend its case does not constitute a bar to the proceedings and does not preclude the Tribunal from prescribing provisional measures, provided that the parties have been given an opportunity of presenting their observations on the subject. The Tribunal notes that the Russian Federation was given ample opportunity to present its observations but declined to do so. The Tribunal considers that the Netherlands should not be put at a disadvantage because of the non-appearance of the Russian Federation in the proceedings and that the Tribunal must therefore identify and assess the respective rights of the Parties involved on the best available evidence.

The Tribunal considers the arguments of the Netherlands that the dispute concerns the interpretation and application of certain provisions of the Convention, notably article 56, paragraph 2 (Rights, jurisdiction and duties of the coastal State in the exclusive economic zone), article 58 (Rights and duties of other States in the exclusive economic zone), article 60 (Artificial islands, installations and structures in the exclusive economic zone), article 87, paragraph 1(a) (Freedom of the high seas) and article 110, paragraph 1 (Right of visit). The Tribunal also considers the note verbale of the Russian Federation of 22 October 2013, in which it states that “[t]he actions of the Russian authorities in respect of the vessel ‘Arctic Sunrise’ and its crew have been and continue to be carried out as the exercise of its jurisdiction, including criminal jurisdiction, in order to enforce laws and regulations of the Russian Federation as a coastal state in accordance with the relevant provisions of the United Nations Convention on the Law of the Sea”. The Tribunal considers that a difference of opinions exists as to the applicability of the provisions of the Convention in regard to the rights and obligations of a flag State and a coastal State, and that the provisions invoked by the Netherlands appear to afford a basis on which the jurisdiction of the arbitral tribunal might be founded. The Tribunal therefore finds that the Annex VII arbitral tribunal would *prima facie* have jurisdiction over the dispute.

Prescription of provisional measures

The Tribunal considers that “under the circumstances of the present case, pursuant to article 290, paragraph 5, of the Convention, the urgency of the situation requires the prescription by the Tribunal of provisional measures”, and considers it “appropriate to order that the vessel *Arctic Sunrise* and all persons detained in connection with the present dispute be released upon the posting of a bond or other financial security by the Netherlands, and that the vessel and the persons be allowed to leave the territory and maritime areas under the jurisdiction of the Russian Federation”.

The Tribunal determines that the bond or other financial security should be in the amount of 3,600,000 euros, to be posted by the Netherlands with the competent authority of the Russian Federation, and that the bond or other financial security

should be in the form of a bank guarantee, issued by a bank in the Russian Federation or a bank having corresponding arrangements with a Russian bank.

The Tribunal recalls that, under article 290, paragraph 6, of the Convention, the Parties must comply promptly with the provisional measures prescribed by the Tribunal. In accordance with article 95 of the Rules of the Tribunal, the Tribunal further decides that each Party shall submit by 2 December 2013 a report and information on compliance with any provisional measure prescribed.

In its Order of 22 November 2013, the Tribunal:

“(1) By 19 votes to 2,

Prescribes, pending a decision by the Annex VII arbitral tribunal, the following provisional measures under article 290, paragraph 5, of the Convention:

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

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

FOR: *President* YANAI; *Vice-President* HOFFMANN; *Judges* MAROTTA RANGEL, NELSON, CHANDRASEKHARA RAO, AKL, WOLFRUM, NDIAYE, JESUS, COT, PAWLAK, TÜRK, KATEKA, GAO, BOUGUETAIA, PAIK, KELLY, ATTARD; *Judge ad hoc* ANDERSON;

AGAINST: *Judges* GOLITSYN, KULYK.

(2) By 19 votes to 2,

Decides that the Netherlands and the Russian Federation shall each submit the initial report referred to in paragraph 102 not later than 2 December 2013 to the Tribunal, and *authorizes* the President to request further reports and information as he may consider appropriate after that report.

FOR: *President* YANAI; *Vice-President* HOFFMANN; *Judges* MAROTTA RANGEL, NELSON, CHANDRASEKHARA RAO, AKL, WOLFRUM, NDIAYE, JESUS, COT, PAWLAK, TÜRK, KATEKA, GAO, BOUGUETAIA, PAIK, KELLY, ATTARD; *Judge ad hoc* ANDERSON;

AGAINST: *Judges* GOLITSYN, KULYK.”

Judge *ad hoc* Anderson appends a declaration to the Order, Judges Wolfrum and Kelly append a joint separate opinion to the Order, Judge Jesus and Judge Paik append separate opinions to the Order, and Judge Golitsyn and Judge Kulyk append dissenting opinions to the Order.

The text of the [Order](#) and a recorded [webcast](#) of the public sitting are available on the website of the Tribunal.

Note: The press releases of the Tribunal do not constitute official documents and are issued for information purposes only.

The press releases of the Tribunal, documents and other information are available on the Tribunal's websites (<http://www.itlos.org> and <http://www.tidm.org>) and from the Registry of the Tribunal. Please contact Ms Julia Ritter at: Am Internationalen Seegerichtshof 1, 22609 Hamburg, Germany, Tel.: +49 (40) 35607-227; Fax: +49 (40) 35607-245; E-mail: press@itlos.org