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**Sea — Hot pursuit — UNCLOS Article 111 — Violation of coastal State laws and regulations — Auditory or visual signal requirement — Continuity of pursuit requirement — Dangerous manoeuvring — UNCLOS Article 97 — No right to arrest or detain ship**

**Terrorism — Law enforcement at sea — Right to take preventive action on reasonable suspicion — Right to protect exercise of sovereign rights of the coastal State**

THE ARCTIC SUNRISE  
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THE ARCTIC SUNRISE<sup>1</sup>

(KINGDOM OF THE NETHERLANDS *v.* RUSSIAN FEDERATION)

*Arbitration Tribunal*<sup>2</sup>

(Mensah, *President*; Burmester, Soons,  
 Symonides and Székely, *Members*)

*Award on Jurisdiction.* 26 November 2014

*Award on the Merits.* 14 August 2015

SUMMARY:<sup>3</sup> *The facts:*—On 4 October 2013, the Kingdom of the Netherlands (“the Netherlands”) commenced arbitration proceedings under Annex VII of the United Nations Convention on the Law of the Sea, 1982 (“UNCLOS”) against the Russian Federation (“Russia”) concerning the boarding by Russia of the *Arctic Sunrise*, a Dutch-flagged vessel, and the seizure of the vessel and the detention in Russia of those who were on board.

On 18 September 2013, Greenpeace International (“Greenpeace”), a non-governmental organization, used the *Arctic Sunrise*, an icebreaker vessel, to stage a protest action against a Gazprom offshore oil production platform located within the Pechora Sea and within the exclusive economic zone (“EEZ”) of Russia. The protest action was part of a Greenpeace campaign aimed at securing a ban on offshore oil drilling in Arctic waters. After the *Arctic Sunrise* arrived in the vicinity of the oil platform on 17 September 2013, Greenpeace informed Gazprom officials of their planned course of action, which involved scaling the oil platform and establishing a camp at the site

<sup>1</sup> The representatives of the Netherlands for the proceedings on jurisdiction are listed in para. 1 of the Award on Jurisdiction. At the proceedings on the merits, the Netherlands was represented at the oral hearing by Professor Dr Liesbeth Lijnzaad, as Agent; Professor Dr René Lefeber, as Co-Agent; Professor Dr Erik Franckx, as Counsel; HE Peter van Wulfften Palthe, Ambassador of the Netherlands in Austria; Mr Marco Benatar, Ms Anke Bouma, Mr Tom Diederer, Mr Peter Post, Ms Annemarijke Vermeer, as Advisers; and Mr Luc Smulders, Alternate Permanent Representative of the Netherlands to the International Maritime Organization.

Russia did not appear before the Tribunal or appoint agents or representatives in either phase of the case.

<sup>2</sup> The Tribunal was constituted pursuant to Article 287 and in accordance with Annex VII of the United Nations Convention on the Law of the Sea, 1982 (“UNCLOS”). Because Russia did not participate in the proceedings, the President of the International Tribunal for the Law of the Sea appointed four of the five members of the Tribunal, pursuant to UNCLOS, Annex VII, Article 3(c-e).

The Permanent Court of Arbitration served as Registry, with Ms Sarah Grimmer, as Registrar, assisted by Ms Evgeniya Goriatcheva, as Legal Counsel.

For related proceedings, see *The Arctic Sunrise* (2013), 159 ILR 68 (International Tribunal for the Law of the Sea).

<sup>3</sup> Prepared by Mr M. Becker.

until various demands were met. Russia had declared a 500-metre zone, within which navigation was prohibited, around the platform.

At approximately 4.15 a.m. on 18 September 2013, five rigid hull inflatable boats were launched from the *Arctic Sunrise*, which itself remained more than three nautical miles from the platform. One of the *Arctic Sunrise* boats towed a “survival capsule”, which the activists intended to use as a shelter once they had scaled the platform. After the capsule’s towline snapped at a distance just within three nautical miles of the platform, the *Arctic Sunrise* retrieved it, despite orders from a nearby Russian coastguard vessel, the *Ladoga*, not to enter within three nautical miles of the platform.

After the inflatable boats from the *Arctic Sunrise* reached the base of the platform, two Greenpeace activists began climbing up the structure. Meanwhile, two rigid hull inflatable boats were launched from the *Ladoga* and took various actions to impede the activists from scaling the platform. Amidst the confrontation, the activists retreated out of fear for their safety. Water cannons on the platform were used to repel Greenpeace’s inflatable boats, such that the two Greenpeace activists instead descended from the platform onto one of the Russian coastguard’s inflatable boats, which transported them to the *Ladoga*. The Greenpeace inflatable boats returned to the *Arctic Sunrise*.

At approximately 6.15 a.m., the *Ladoga* contacted the *Arctic Sunrise* by radio and ordered the vessel to stop and to allow an investigation team to board. The *Arctic Sunrise* refused. Over the next several hours, the *Ladoga* reiterated its demand and informed the *Arctic Sunrise* that it was suspected of piracy and terrorism. Following further communications between the vessels, the *Arctic Sunrise* began circling the oil platform at a distance of four nautical miles on the evening of 18 September 2013. The *Ladoga* shadowed the *Arctic Sunrise* and positioned itself between the *Arctic Sunrise* and the platform.

On the evening of 19 September 2013, Russian officials approached the *Arctic Sunrise* by helicopter and boarded and seized control of the vessel. The next day, the *Ladoga* began towing the *Arctic Sunrise* to port in Murmansk, where it arrived on 24 September 2013. The Russian authorities formally arrested the thirty individuals on board the *Arctic Sunrise* (“the Arctic 30”) on suspicion of piracy. The Netherlands requested Russia to release the Arctic 30 and the *Arctic Sunrise*, but the detained individuals were instead sent to various detention centres in Russia and the Russian authorities undertook a further search of the vessel. Court proceedings in Russia formally authorized the seizure of the *Arctic Sunrise* and the detention of the Arctic 30, each of whom was charged with piracy committed by an organized group.

On 21 October 2013, the Netherlands filed a request for provisional measures with the International Tribunal for the Law of the Sea (“ITLOS”) pursuant to UNCLOS Article 290(5). That request sought, *inter alia*, the immediate release of the *Arctic Sunrise* and the Arctic 30. While the request was pending, the charge of piracy against the Arctic 30 was changed to hooliganism; subsequently, all but two of the Arctic 30 were released on bail during 20–22 November 2013.

On 22 November 2013, ITLOS granted the request for provisional measures and ordered Russia to release the Arctic 30, as well as the *Arctic Sunrise*, in exchange for payment of a EUR 3.6 million bond (159 ILR 68). Russian authorities released on bail the remaining two members of the Arctic 30 shortly thereafter. In late December 2013, the Russian State Duma granted an amnesty to the Arctic 30, who subsequently left the country.

The Netherlands informed Russia on 2 December 2013 that it had arranged a bank guarantee to secure release of the *Arctic Sunrise*. Russia did not authorize the vessel's release until 6 June 2014. After receiving essential maintenance, the *Arctic Sunrise* departed Murmansk on 1 August 2014 bound for Amsterdam.

In the arbitration commenced under UNCLOS Annex VII, the Netherlands claimed that Russia had breached various obligations under UNCLOS, the International Covenant on Civil and Political Rights, 1966 ("the ICCPR"),<sup>4</sup> and customary international law, including by its failure to have complied fully with the provisional measures indicated by ITLOS. The Netherlands' claims related to the lawfulness of the boarding and seizure of the *Arctic Sunrise* and the subsequent measures taken against the vessel and the Arctic 30, as well as the lawfulness of an alleged three-mile safety zone around the platform and Russia's non-payment of deposits in the arbitration proceedings. The Netherlands sought a declaratory judgment confirming the wrongfulness of Russia's conduct, a formal apology and financial compensation.

Russia did not participate in the arbitration proceedings, but made one communication to the Tribunal in which it referred to the declaration it had made upon its ratification of UNCLOS. In that declaration, Russia stated that it did not accept binding dispute resolution under UNCLOS with regard to disputes "concerning law-enforcement activities in regard to the exercise of sovereign rights or jurisdiction". At the request of the Netherlands, the Tribunal treated Russia's communication as a plea concerning jurisdiction and ruled on that plea as a preliminary question, before turning to the merits in a second phase.

### *Award on Jurisdiction (26 November 2014)*

*Held* (unanimously):—The Tribunal had jurisdiction to hear a dispute concerning law enforcement activities in regard to the exercise of sovereign rights or jurisdiction.

(1) As States Parties to UNCLOS, the Netherlands and Russia were bound by the dispute settlement provisions of UNCLOS Part XV. The exchange of diplomatic notes between the Netherlands and Russia immediately prior to

<sup>4</sup> In subsequent pleadings, the Netherlands clarified that it did not necessarily seek a determination by the Tribunal on alleged breaches of the ICCPR if the Tribunal were to interpret the UNCLOS in light of the content of the relevant ICCPR provisions (Award on the Merits, paras. 193-5).

the initiation of the arbitration by the Netherlands demonstrated the existence of a dispute concerning the interpretation and application of UNCLOS, including Articles 56, 60 and 80. Since the Netherlands and Russia had elected different methods of dispute settlement pursuant to UNCLOS Article 287, the default mechanism for the settlement of disputes between them was arbitration in accordance with Annex VII (paras. 59-64).

(2) Russia's declaration upon ratification of UNCLOS stated that in accordance with UNCLOS Article 298 it did not accept binding dispute settlement for disputes concerning, *inter alia*, law enforcement activities in regard to the exercise of sovereign rights or jurisdiction. Russia's declaration could not, under the terms of UNCLOS Article 298(1)(b), exclude every dispute relating to law enforcement activities. Rather, Russia's declaration could exclude only disputes concerning law enforcement activities that were also excluded from dispute settlement by UNCLOS Article 297(2) and (3) (paras. 65-72).

(3) The disputes concerning law enforcement activities in regard to the exercise of sovereign rights or jurisdiction that UNCLOS Article 297 excluded from compulsory dispute settlement were those arising from the exercise by the coastal State of a right or discretion with respect to marine scientific research in the EEZ and on the continental shelf, disputes arising from a decision by the coastal State to order suspension or cessation of marine scientific research, and disputes arising from the exercise of a coastal State's rights with respect to living resources in the EEZ. The dispute between Russia and the Netherlands did not relate to marine scientific research or fisheries. Accordingly, Russia's declaration did not exclude the dispute concerning the *Arctic Sunrise* from the compulsory procedures of dispute settlement set out in UNCLOS Part XV, Section 2 (paras. 73-8).

### *Award on the Merits (14 August 2015)*

*Held* (unanimously):—(1) The Tribunal had jurisdiction over all of the claims submitted by the Netherlands in the arbitration, each of which was also admissible (paras. 142-98).

(a) There was an ongoing dispute between the Parties, notwithstanding the grant of amnesty to the Arctic 30 by the Russian Duma and the vessel's release prior to the completion of the arbitration proceedings. Pending proceedings by the Arctic 30 against Russia at the European Court of Human Rights did not preclude the Tribunal from considering the Netherlands' claims (paras. 143-8).

(b) The Netherlands had satisfied the requirement in UNCLOS Article 283(1) that parties to a dispute engage in an "exchange of views" concerning its settlement prior to commencing arbitration. The Netherlands had informed Russia on 3 October 2013 that it was considering arbitration, and it was not necessary for Russia to have responded. UNCLOS Article 283(1)

was not intended to preclude or unduly delay the resolution of a dispute. For reasons of urgency and because the Netherlands had already engaged in high-level diplomatic contacts with Russia that had failed to secure the release of the *Arctic Sunrise* and the Arctic 30, it was reasonable for the Netherlands to conclude that further negotiations were unnecessary (paras. 149-56).

(c) The Netherlands had standing to invoke the international responsibility of Russia for alleged breaches of obligations owed by Russia to the Netherlands under UNCLOS. The Netherlands was entitled to bring claims in respect of alleged violations of its rights under UNCLOS which resulted in injury or damage to the ship, the crew, all persons and objects on board, and every person involved or interested in the ship's operations, regardless of nationality. The thirty individuals on board the *Arctic Sunrise* were properly considered part of the unit of the ship (paras. 157-86).

(d) Regard could be given to general international law in relation to human rights to determine whether the boarding, seizure and detention of the *Arctic Sunrise* were reasonable and proportionate. There was no requirement to determine whether Russia had breached any provision of the ICCPR. UNCLOS Article 293 authorized the Tribunal to have regard to the extent necessary to rules of customary international law, including international human rights standards, not incompatible with the Convention, in order to assist in the interpretation and application of the relevant UNCLOS provisions, but the Tribunal could not act as a substitute for the enforcement regime of the ICCPR (paras. 187-98).

(2) By boarding, investigating, inspecting, arresting, detaining and seizing the *Arctic Sunrise* without the prior consent of the Netherlands, as the flag State, and by arresting, detaining and initiating judicial proceedings against the crew members, Russia had breached its obligations under UNCLOS Articles 56(2), 58(1) and (2), 87(1)(a) and 92(1). The law enforcement measures taken by Russia against the *Arctic Sunrise* had no basis in international law (paras. 199-333).

(a) The three-nautical-mile zone established by Russia around the oil platform did not contravene UNCLOS Article 60(5), which provided that a safety zone around an artificial island, installation or structure should not exceed a distance of 500 metres. Notices to Mariners issued by Russia regarding the three-nautical-mile zone did not establish a safety zone within the meaning of UNCLOS Article 60. The notices constituted recommendations which described the three-nautical-mile zone as an area "dangerous to navigation" and did not impose mandatory rules on foreign ships (paras. 202-20).

(b) Whether the measures taken by Russia in response to the protest action within its EEZ were lawful depended on whether the measures (i) had a basis in international law, and (ii) were carried out in accordance with international law, including the principle of reasonableness. The enforcement measures were subject to general principles of necessity and proportionality (para. 222).

(c) Protest at sea was an internationally lawful use of the sea related to the freedom of navigation. The exclusive jurisdiction of the flag State over ships in



the EEZ meant that the coastal State could exercise jurisdiction, including law enforcement measures, over a ship only with the prior consent of the flag State, subject to certain exceptions. The Netherlands did not consent to the measures taken by Russia against the *Arctic Sunrise* (paras. 225-32).

(d) UNCLOS Article 110 provided that a coastal State might board a foreign ship if there were reasonable grounds to suspect the foreign ship was engaged in piracy. UNCLOS Article 110 required that the act of piracy be directed “against another ship”. Because the oil platform was a fixed structure, not “another ship”, the boarding, seizure and detention of the *Arctic Sunrise* were not justified as an exercise of the right of visit on grounds of suspected piracy (paras. 236-41).

(e) The alleged commission of hooliganism and unauthorized entry into the 500-metre safety zone surrounding the platform could not provide a basis under international law for boarding the *Arctic Sunrise* without the consent of the Netherlands, as the flag State, unless the requirements of hot pursuit, as set forth in UNCLOS Article 111, were met. Russian authorities had good reason to believe that the rigid hull inflatable boats launched from the *Arctic Sunrise* had violated the prohibition on navigation within the 500-metre zone, which constituted sufficient reason to commence hot pursuit. Russian authorities ordered the *Arctic Sunrise* to stop by VHF radio, which constituted a valid “auditory signal” that met the requirements of UNCLOS Article 111(4), and ensured the *Arctic Sunrise* was made aware of the pursuit. Russian authorities might have communicated the first stop order to the *Arctic Sunrise* a few minutes after the rigid hull inflatable boats from the *Arctic Sunrise* had exited the 500-metre zone, but this did not preclude a lawful commencement of hot pursuit. The location of the foreign vessels at the time of the first stop order was not to be evaluated with the full benefit of hindsight, but rather from the perspective of the pursuing ship, particularly given the relatively small size of the 500-metre safety zone. However, the pursuit of the *Arctic Sunrise* by the Russian authorities was not uninterrupted and thus failed to meet the requirement of continuity. Following an initial three-hour period of orders, threats and warning shots, the *Ladoga* shadowed the *Arctic Sunrise* for thirty-three hours. This was not consistent with continuous pursuit, which required Russia to seek to board the *Arctic Sunrise* as soon as possible. As the pursuit was interrupted and therefore not continuous, the right of hot pursuit under UNCLOS Article 111 did not provide a legal basis for the boarding, seizure and detention of the *Arctic Sunrise* (paras. 242-75).

(f) There was no right under international law to seize or board vessels in the EEZ in relation to possible terrorist offences where such action was not otherwise authorized by UNCLOS (for example, pursuant to the right of hot pursuit) (paras. 276-8).

(g) The enforcement measures taken by Russia against the *Arctic Sunrise* did not constitute a lawful exercise of Russia’s law enforcement powers concerning the exploration and exploitation of its non-living resources in the EEZ. UNCLOS Article 73(1) provided for coastal State enforcement of



laws relating to living resources in the EEZ, but no equivalent UNCLOS provision related to non-living resources, although such a right existed (paras. 279-85).

(h) Russia had no grounds to believe that the *Arctic Sunrise* had violated applicable international rules and standards for the prevention, reduction and control of vessel-source pollution in its EEZ. Accordingly, the boarding, seizure and detention of the *Arctic Sunrise* were not justified by UNCLOS Article 220, which authorized the coastal State to take enforcement action against a vessel within the EEZ only where there were “clear grounds” to believe that the vessel had committed such a violation. Nor was Russia’s enforcement action a lawful exercise of its rights to regulate ice-covered areas under UNCLOS Article 234, because the law and regulations adopted by Russia under that provision did not cover the location of the oil platform (paras. 286-97).

(i) Even if the conduct of the *Arctic Sunrise* were characterized as dangerous manoeuvring, this did not give Russia a legal basis to board, seize and detain the vessel. UNCLOS Article 97 provided that in the event of an incident of navigation giving rise to penal jurisdiction, no arrest or detention of the ship might be ordered, except by the flag State (paras. 298-305).

(j) UNCLOS Article 221 provided that a coastal State could take preventive action against a foreign vessel with respect to marine pollution, but such enforcement measures were to be “proportionate to the actual or threatened damage” and required a reasonable belief of “major harmful consequences”. Russia could not have reasonably expected the protest action by Greenpeace to have had such an effect, and the protest action in fact did not have such an effect. UNCLOS Article 221 thus did not provide a legal basis for the boarding, seizure and detention of the *Arctic Sunrise* (paras. 307-13).

(k) Russia had no reasonable basis to suspect that the *Arctic Sunrise* was engaged in or likely to engage in terrorist acts, which could otherwise provide a legal basis to take preventive action against a vessel in the EEZ. Russian authorities were familiar with the *Arctic Sunrise*, its objectives, and the manner in which it had staged protest actions in the past, and the *Arctic Sunrise* and Greenpeace had communicated on 18 September 2013 the details of the planned protest action. It was not reasonable for Russia to claim that it had suspected that the “survival capsule” was, in fact, an explosive device. The delay in boarding, seizing and detaining the *Arctic Sunrise* also confirmed that Russia did not suspect the *Arctic Sunrise* of terrorism and that such a suspicion did not provide a legal basis for the enforcement action on 19 September 2013 (paras. 314-23).

(l) Russia, as the coastal State, was entitled to take appropriate and reasonable measures to protect its sovereign rights, including in response to protest actions if such actions threatened: to violate laws adopted in conformity with UNCLOS; to create dangerous situations that could result in injuries to persons or equipment and installations; to have negative environmental consequences; or to delay or interrupt essential operations. At the time it was

boarded, however, the *Arctic Sunrise* was no longer engaged in any action that potentially interfered with the exercise by Russia of its sovereign rights as a coastal State. As such, Russia's right to take measures to protect the exercise of its sovereign rights as a coastal State did not provide a legal basis for the boarding, seizure and detention of the *Arctic Sunrise* (paras. 324-32).

(3) By failing to comply with the provisional measures indicated by ITLOS, Russia had breached its obligations to the Netherlands under UNCLOS Articles 290(6) and 296(1). Pursuant to UNCLOS Articles 290 and 296(1), the provisional measures indicated by ITLOS were binding upon the Parties to the arbitration. As all members of the Arctic 30 were released from detention before or within seven days following the indication of provisional measures, Russia did not fail to comply with that aspect of the ITLOS order. However, twenty-seven days elapsed before Russia took the necessary steps to authorize the Arctic 30 to leave Russian territory, which breached the requirement that Russia act promptly to facilitate their departure. In addition, by not releasing the *Arctic Sunrise* until more than six months after the Netherlands had obtained the necessary bank guarantee, Russia had failed to comply with its duty under the ITLOS order to release the vessel immediately once that condition was met. Russia had also failed to act promptly, in violation of the provisional measures, in view of the fact that the *Arctic Sunrise* required maintenance work by the time of its release, and because the port State inspection incurred further delays, such that the *Arctic Sunrise* did not leave Russian territory and maritime areas until nearly eight months after the Netherlands had posted security. Russia's failure to comply with the provisional measures prescribed by ITLOS constituted a breach of Russia's obligation under UNCLOS Article 300 to fulfil in good faith the obligations assumed under UNCLOS (paras. 334-62).

(4) Russia had breached its obligations under UNCLOS Part XV and Article 300 by failing to pay its share of the deposits requested by the Tribunal to cover the fees and expenses of the arbitration. An UNCLOS party was not entitled to defeat the compulsory dispute settlement regime by withholding deposits necessary for a tribunal to function. Russia's non-participation in the arbitration did not relieve it of its obligation under Annex VII, Article 6, to facilitate the work of the Tribunal. The Tribunal's request that Russia make certain deposits gave rise to an obligation on Russia's part to pay those amounts (paras. 363-71).

(5) Russia was required to return to the Netherlands all objects taken from the *Arctic Sunrise* and the Arctic 30 that had not yet been returned, or to provide financial compensation for unreturned objects (paras. 383-6).

(6) Russia was required to pay compensation to the Netherlands for material damage arising from the costs of the bank guarantee issued pursuant to the ITLOS order and for the Netherlands' payment of Russia's share of the Tribunal's fees and expenses; for damage to the *Arctic Sunrise* and lost earnings from its time in detention; for non-material damage to the Arctic 30 for their wrongful arrest, prosecution and detention in Russia (in light of the case law of the International Court of Justice and ITLOS); and for material damage