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## NOTE & COMMENT

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# Russian Absence at the *Arctic Sunrise* Case: A Comparison with the Chinese Position in the South China Sea Arbitration

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*The MV Arctic Sunrise, a vessel bearing the flag of the Netherlands, was detained by Russian authorities. The Netherlands instituted Annex VII arbitral proceedings against the Russian Federation and requested the International Tribunal for the Law of the Sea to prescribe provisional measures for the immediate release of the vessel and its crewmembers. On January 22, 2013, the Philippines instituted arbitral proceedings to challenge China's claims over the South China Sea and the underlying seabed. Both China and Russia claim that the tribunal in question does not have jurisdiction, and neither of them appeared before the tribunal. This article offers an analysis of the facts and reasoning in the Arctic Sunrise case concerning Russia's declaration and its non-appearance. Furthermore, this article explores the relevant provisions of UNCLOS and relevant views, as well as attitudes of ITLOS towards certain issues.*

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Arctic Sunrise, UNCLOS, ITLOS, Jurisdiction, Default of Appearance, Declaration

**1. Overview**

The *MV Arctic Sunrise* (hereinafter *Arctic Sunrise*) is a ship bearing the flag of the Netherlands; she was used by Greenpeace International activists to protest against Russia's oil platform.<sup>1</sup> Later, the vessel and her crewmembers were detained by Russia in its EEZ.<sup>2</sup> In a subsequent exchange of *note verbale*, Russia asserted that the actions taken against the vessel and her crewmembers were in conformity with the UNCLOS.<sup>3</sup> However, the Netherlands contended otherwise.<sup>4</sup> Based on the different views of the two States and the urgent situation,<sup>5</sup> on October 4, 2013, the Netherlands initiated arbitration proceedings against Russia under Annex VII of UNCLOS.<sup>6</sup>

On October 21, 2013, pending the constitution of the Annex VII arbitral tribunal, the Netherlands requested the ITLOS to prescribe provisional measures for the immediate release of the vessel and her crewmembers.<sup>7</sup> In its *note verbale* sent to the ITLOS, on October 22, 2013, Russia, rejecting the arbitral proceedings brought against her, declared that she would not take part in the ITLOS proceedings.<sup>8</sup>

The primary purpose of this research is to compare the Russian stance in *Arctic Sunrise* case to that of China in the South China Sea Arbitration. The authors will mainly try to analyze the Russian Declaration on the ratification of the UNCLOS as laid down under Part XV, Section 2 of the UNCLOS and the default of

<sup>1</sup> Request for the Prescription of Provisional Measures under Article 290, Paragraph 5 of the United Nations Convention on the Law of the Sea, IV Statement of Facts, 6, ¶ 20, available at [https://www.itlos.org/fileadmin/itlos/documents/cases/case\\_no.22/Request\\_provisional\\_measures\\_en\\_withtranslations.pdf](https://www.itlos.org/fileadmin/itlos/documents/cases/case_no.22/Request_provisional_measures_en_withtranslations.pdf) (last visited on Oct. 30, 2015).

<sup>2</sup> *Id.* at 7, ¶ 21.

<sup>3</sup> *Id.* at 8, ¶ 26.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 9, ¶ 27.

<sup>6</sup> International Tribunal for the Law of the Sea, Press Release 201, Request for Provisional Measures Submitted Today to the Tribunal in the Arctic Sunrise Case (Oct. 21, 2013), available at [https://www.itlos.org/fileadmin/itlos/documents/press\\_releases\\_english/PR\\_201\\_E.pdf](https://www.itlos.org/fileadmin/itlos/documents/press_releases_english/PR_201_E.pdf) (last visited on Oct. 19, 2015).

<sup>7</sup> *Id.*

<sup>8</sup> Arctic Sunrise (Neth. v. Russ.), ITLOS Case No. 22 (2013), Order of Nov. 22, 2013, at 12 ¶ 46, available at [https://www.itlos.org/fileadmin/itlos/documents/cases/case\\_no.22/Order/C22\\_Ord\\_22\\_11\\_2013\\_orig\\_Eng.pdf](https://www.itlos.org/fileadmin/itlos/documents/cases/case_no.22/Order/C22_Ord_22_11_2013_orig_Eng.pdf) (last visited on Oct. 19, 2015).