

**REQUEST FOR THE PRESCRIPTION OF PROVISIONAL  
MEASURES SUBMITTED BY THE KINGDOM OF THE  
NETHERLANDS**



**INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA**

**‘ARCTIC SUNRISE’**

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

**REQUEST FOR THE PRESCRIPTION OF PROVISIONAL MEASURES  
UNDER ARTICLE 290, PARAGRAPH 5, OF THE  
UNITED NATIONS CONVENTION ON THE LAW OF THE SEA**

**21 OCTOBER 2013**

**REQUEST FOR THE PRESCRIPTION OF PROVISIONAL MEASURES  
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UNITED NATIONS CONVENTION ON THE LAW OF THE SEA**

**CHAPTER 1  
INTRODUCTION**

1. Pursuant to Article 290, paragraph 5, of the 1982 United Nations Convention on the Law of the Sea (hereinafter ‘UNCLOS’ or the ‘Convention’), the Kingdom of the Netherlands hereby requests that the International Tribunal for the Law of the Sea (hereinafter the ‘Tribunal’) prescribe the provisional measures specified below in the dispute between the Kingdom of the Netherlands and the Russian Federation concerning the ‘Arctic Sunrise’, a vessel that flies the flag of the Kingdom of the Netherlands.
2. The dispute relates to authorities of the Russian Federation boarding and detaining the ‘Arctic Sunrise’ in the exclusive economic zone of the Russian Federation and detaining the vessel’s crew without the prior consent of the Kingdom of the Netherlands.
3. The Kingdom of the Netherlands submitted the dispute to the arbitral procedure provided for in Annex VII to UNCLOS by notification to the Russian Federation conveyed in a diplomatic note dated 4 October 2013. The ‘Statement of the claim and the grounds upon which it is based’ (hereinafter ‘Statement of Claim’) was annexed to this notification. A certified copy of the diplomatic note with the Statement of Claim is annexed to this request (Annex 1).
4. In the Statement of Claim (see paragraph 32), the Kingdom of the Netherlands requested the Russian Federation to adopt and implement provisional measures to the effect that, in sum, it immediately release the ‘Arctic Sunrise’ and its crew.
5. The Russian Federation did not respond to the request, and it did not adopt and implement the requested provisional measures. Instead, its authorities continued, *inter alia*, to detain the crew and formally seized the ‘Arctic Sunrise’, thereby aggravating and extending the dispute.
6. The time-limit of two weeks provided for in Article 290, paragraph 5, of the Convention has expired. Since the Russian Federation did not adopt and implement the requested provisional measures within this time-limit, the Kingdom of the Netherlands hereby submits to the Tribunal the present Request. This notwithstanding, the Kingdom of the Netherlands continues to be willing to settle the dispute amicably.

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## CHAPTER 2 STATEMENT OF FACTS

7. The events that gave rise to the dispute between the Kingdom of the Netherlands and the Russian Federation are set out in paragraphs 16-27 of the Statement of Claim.

8. In addition, the Kingdom of the Netherlands hereby submits to the Tribunal a factual account provided to it by the operator of the 'Arctic Sunrise' (Greenpeace International) (Annex 2).

9. Since 4 October 2013, when the Kingdom of the Netherlands notified the Russian Federation that it submitted the dispute to the arbitral procedure provided for in Annex VII to UNCLOS, the dispute has further aggravated and extended. First, the detention of the crew has been continuing.

10. Second, on 7 October 2013, the Leninsky District Court in Murmansk granted an application by the Interior Affairs Sector of the Investigation Department for the Northwestern Federal District of the Committee of Investigation of the Russian Federation of the same date and ordered (Annex 3)

“the seizure of the Dutch-flagged ship *Arctic Sunrise*, IMO number 7382902, belonging to 'Stichting Phoenix', Amsterdam, being used by 'Stichting Greenpeace Council', Amsterdam, under a ferryboat charter agreement concluded on 28 December 2012 and whose actual location is in the waters of Kola Bay, under which order the owner and possessor is prohibited from using or disposing of the ship.”

According to said order:

“The grounds for the application state that the seizure of the aforementioned property is necessary for the enforcement of the part of the judgment concerning the civil claim, other economic sanctions or a possible forfeiture order in respect of the property in accordance with article 104.1 CC RF”.

11. On 15 October 2013, the seizure order was implemented against the vessel and an official report was drawn up (Annex 4). On 18 October 2013, the Kingdom of the Netherlands lodged a formal protest against the seizure of the 'Arctic Sunrise' and once more urged the Russian Federation to immediately release the vessel and its crew (Annex 5).

12. Third, by judgment of 8 October 2013 (Annex 6), the Federal Security Service of the Russian Federation, Coast Guard Division for Murmansk Oblast, found the captain of the 'Arctic Sunrise' guilty of an administrative offence, and imposed a fine of 20,000 roubles, for failing to comply with a coast guard order to stop the 'Arctic Sunrise' and allow an inspection.

### CHAPTER 3 JURISDICTION

13. Article 290, paragraph 5, of UNCLOS provides that the Tribunal may only prescribe provisional measures if it considers that, *prima facie*, the arbitral tribunal to be constituted in accordance with Section 2 of Part XV of UNCLOS would have jurisdiction. The Kingdom of the Netherlands submits that the requirements for jurisdiction in Articles 288 and 286, in conjunction with Article 283, of UNCLOS are met.

14. With respect to Article 288, paragraph 1, of UNCLOS, first, by notification of 4 October 2013 (Annex 1), the Kingdom of the Netherlands submitted the dispute with the Russian Federation to the arbitral procedure in accordance with Section 2 of Part XV of UNCLOS and Article 1 of Annex VII thereto. The arbitral tribunal, once constituted, has jurisdiction over the dispute pursuant to Article 287, paragraph 5, of the Convention, as set out in paragraphs 8-13 of the Statement of Claim.

15. Second, the dispute concerns the interpretation and application of UNCLOS with respect to the rights and obligations of the Russian Federation as a coastal state in its exclusive economic zone, and notably its right to board, investigate, inspect, arrest, detain and seize vessels flying the flag of a third state. The dispute concerns in particular the interpretation and application of Part V and Part VII, notably Article 56, paragraph 2, Article 58, Article 87, paragraph 1(a), and Article 110, paragraph 1, of UNCLOS. In this connection, the Kingdom of the Netherlands refers to the award requested in paragraph 37 of the Statement of Claim, as substantiated in paragraphs 28-31 of the Statement of Claim.

16. With respect to Article 286 of UNCLOS, as set out in paragraphs 16-27 of the Statement of Claim, the dispute has rapidly escalated and, as set out in paragraphs 9-12 above, it continues to aggravate and extend. In this regard, the Kingdom of the Netherlands and the Russian Federation have exchanged several diplomatic notes, as set out in the Statement of Claim and the present Request. Furthermore, the Ministers of Foreign Affairs of the Kingdom of the Netherlands and the Russian Federation discussed the dispute thrice: twice before its submission to arbitration (25 September 2013 and 1 October 2013) and once before the submission of this Request (17 October 2013).

17. The possibilities to settle the dispute by negotiation or otherwise have been exhausted, entitling the Kingdom of the Netherlands to submit the dispute to the arbitral procedure provided for in Annex VII to UNCLOS (*Southern Bluefin Tuna (New Zealand v. Japan; Australia v. Japan), Provisional Measures, Order of 27 August 1999*, paragraph 60; *MOX Plant (Ireland v. United Kingdom), Provisional Measures, Order of 3 December 2001*, paragraph 60).

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**CHAPTER 4  
STATEMENT ON LEGAL GROUNDS**

**I. Provisional measures requested**

18. The Kingdom of the Netherlands requests that the Tribunal prescribe as provisional measures that the Russian Federation:

- (i) Immediately enable the 'Arctic Sunrise' to be resupplied, to leave its place of detention and the maritime areas under the jurisdiction of the Russian Federation and to exercise the freedom of navigation;
- (ii) Immediately release the crew members of the 'Arctic Sunrise', and allow them to leave the territory and maritime areas under the jurisdiction of the Russian Federation;
- (iii) Suspend all judicial and administrative proceedings, and refrain from initiating any further proceedings, in connection with the incidents leading to the boarding and detention of the 'Arctic Sunrise', and refrain from taking or enforcing any judicial or administrative measures against the 'Arctic Sunrise', its crew members, its owners and its operators; and
- (iv) Ensure that no other action is taken which might aggravate or extend the dispute.

**II. The reasons for which the request is made**

19. The principal reason for requesting provisional measures is that the Russian Federation's actions constitute internationally wrongful acts having a continuing character. This causes injury to the rights of the Kingdom of the Netherlands in its own right, its right to protect a vessel flying its flag, its right to diplomatic protection of its nationals, and its right to seek redress on behalf of crew members of a vessel flying its flag. These rights concern the freedom of navigation and other internationally lawful uses of the sea related to this freedom, such as those associated with the operation of ships, as well as the exercise of jurisdiction under UNCLOS and customary international law. Furthermore, they concern the right to liberty and security of the crew members, and their right to leave the territory and maritime areas under the jurisdiction of a coastal state under the 1966 International Covenant on Civil and Political Rights and customary international law.

20. The Kingdom of the Netherlands argues that the Russian Federation, in boarding, investigating, inspecting, arresting and detaining the 'Arctic Sunrise' in its exclusive economic zone as well as in subsequently seizing the vessel in Murmansk Oblast, without the prior consent of the Kingdom of the Netherlands, breached its obligations owed to the Kingdom of the Netherlands in regard to the freedom of navigation and its right to exercise jurisdiction over the 'Arctic Sunrise'. These actions are prohibited under the Convention, in particular Part V and Part VII, notably Article 56, paragraph 2, Article 58, paragraph 2, and Article 110, paragraph 1, as well as customary international law. Any exceptions to this general prohibitive rule to exercise enforcement jurisdiction over foreign vessels are explicit and cannot be implied. Furthermore, the interpretation and application of such exceptions must be narrowly construed.

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21. In the Convention, such exceptions can be found in Article 110, paragraph 1(a) to 1(e), in conjunction with Article 58, paragraph 2. Additional exceptions can be found in Article 73 of UNCLOS related to living resources and Article 220, paragraphs 3-8, in conjunction with Article 226, paragraph 1, of UNCLOS related to the marine environment. These provisions corroborate that any exception to the general prohibitive rule set out in the preceding paragraph must be narrowly construed. The boarding, investigating, inspecting, arresting, detaining and seizing of a vessel by a coastal state under these provisions is subject to a number of conditions. These conditions include specific requirements providing for the prompt release of the vessel.

22. Indeed, concern over the broad assertion of jurisdiction, notably enforcement jurisdiction, by coastal states prompted the Kingdom of the Netherlands to address this matter in a declaration upon ratification of the Convention. In this Declaration, the Kingdom of the Netherlands “objects to any declaration or statement excluding or modifying the legal effect of the provisions of the United Nations Convention on the Law of the Sea”. This particularly concerns the matters set out in the Declaration, which includes a section pertaining to the exclusive economic zone. This section concerns limits to the exercise of jurisdiction by the coastal state in the exclusive economic zone, including with respect to “Installations in the Exclusive Economic Zone” and the absence of any “Residual rights”. Several other states have made similar declarations.

23. None of the exceptions to the general prohibitive rule to exercise enforcement jurisdiction over foreign vessels apply in the present instance. The Russian Federation has made various inconsistent attempts to justify its authorities boarding and detaining the ‘Arctic Sunrise’:

- In its diplomatic note of 18 September 2013 ([Annex 1](#) (Statement of Claim, annex 2)), the day before the boarding and detaining of the ‘Arctic Sunrise’, the Russian Federation informed the Kingdom of the Netherlands that the decision had been made to “seize” the vessel. In that connection, having stated that the actions by Greenpeace “bore the characteristics of terrorist activities”, the note continued: “The actions of the ship Arctic Sunrise can only be interpreted as a provocation, which exposed the Arctic region to the threat of an ecological disaster with unimaginable consequences”;
- In its diplomatic note of 1 October 2013 ([Annex 1](#) (Statement of Claim, annex 7)), the Russian Federation stated that “on the basis of Articles 56, 60 and 80 of [UNCLOS], and in accordance with Article 36(1(1)) of the Federal Law ‘On the Exclusive Economic Zone of the Russian Federation’, a “visit to to [*sic*] the vessel ‘Arctic Sunrise’ was carried out”;
- The court order of 7 October 2013 ([Annex 3](#)) to seize the vessel referred to Article 19 of the 1958 Convention on the High Seas with respect to piracy and stated that it was on the basis of that Convention that the coastguard “took control of the aforementioned ship *Arctic Sunrise* and took it to the waters of Kola Bay, since there was a reasonable suspicion that this ship was engaged in piracy”;
- The judgment of 8 October 2013 ([Annex 6](#)) by which the captain of the ‘Arctic Sunrise’ was found guilty of an administrative offence stated that “the ship increased its speed and continually changed course, thereby manoeuvring dangerously and posing a real threat to the safety of the naval ship and its crew. Eventually the *Arctic Sunrise* was forced to stop for inspection on 19 September 2013.”



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24. The foregoing illustrates the wavering legal stance of the Russian Federation as to the legal basis for its actions related to the 'Arctic Sunrise' and underscores the appropriateness for the Tribunal to prescribe the provisional measures requested.

25. Since by boarding, investigating, inspecting, arresting and detaining the vessel the Russian Federation breached its obligations to the Kingdom of the Netherlands in regard to the freedom of navigation and the flag state's right to exercise jurisdiction, the crew's arrest and detention cannot but constitute a further breach of the Russian Federation's obligations owed to the Kingdom of the Netherlands. Indeed, the authorities of the Russian Federation were only able to arrest and detain the crew members following the boarding of the vessel without the prior consent of the Kingdom of the Netherlands. Accordingly, the ongoing detention of the vessel and its crew, irrespective of its conformity with the domestic law of the Russian Federation, is an internationally wrongful act that continues in time.

26. The Kingdom of the Netherlands further notes that the flag state's right to exercise jurisdiction over vessels flying its flag is well-established under the Convention as well as customary international law. In this context, Article 94, paragraph 6, of UNCLOS provides for a procedure enabling other states to address the flag state if a vessel flying its flag has not complied with generally accepted international regulations, procedures and practices. Accordingly, when a state has clear grounds to believe that proper jurisdiction and control with respect to a ship have not been exercised, it may report the facts to the flag state. Upon receipt of such a report, the flag state is required to investigate the matter and, if appropriate, to take any action necessary to remedy the situation.

27. The Kingdom of the Netherlands reaffirms the importance it attaches to the safety of life at sea and the other issues referred to in Article 94, paragraph 4, of UNCLOS. It stresses that it will comply with its obligations upon the receipt of a report in accordance with Article 94, paragraph 6, of UNCLOS.

28. Even if the Russian Federation's diplomatic note of 18 September 2013 (Annex 1 (Statement of Claim, annex 2)) were to qualify as such a report, by boarding and detaining the 'Arctic Sunrise' the day after, the Russian Federation did not allow the Kingdom of the Netherlands any time to investigate the incidents leading to the boarding and detention of the 'Arctic Sunrise'. Irrespectively, the boarding and detention of the 'Arctic Sunrise' by authorities of the Russian Federation on 19 September 2013 remains internationally wrongful. The Kingdom of the Netherlands notes that the Netherlands Shipping Inspectorate of the Ministry of Infrastructure and the Environment has investigated the incidents preceding the boarding of the 'Arctic Sunrise' and concluded in an opinion, dated 18 October 2013, that (a) the 'Arctic Sunrise' did not cause any danger to ships, sea farers, navigation, the marine environment and the 'Prirazlomnaya' platform, and (b) there is no evidence of bad seamanship (Annex 7).

29. As long as the vessel and its crew remain detained, the Russian Federation's internationally wrongful acts continue in time. Thus, to prolong the detention pending the constitution of the arbitral tribunal and the resolution of the dispute would prejudice the rights of

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the Kingdom of the Netherlands. The ongoing detention of the vessel and its crew has irreversible consequences. Indeed, in *M/V Saiga*, the Tribunal ruled that

“the rights of the Applicant would not be fully preserved if, pending the final decision, the vessel, its Master and the other members of the crew, its owners or operators were to be subjected to any judicial or administrative measures in connection with the incidents leading to the arrest and detention of the vessel and to the subsequent prosecution and conviction of the Master” (*M/V Saiga, Provisional Measures, Order of 11 March 1998*, paragraph 41).

30. In regard to the requested release of the vessel and its crew, the Kingdom of the Netherlands would recall that, in its diplomatic note to the Russian Federation dated 26 September 2013 (Annex 1, Statement of Claim, annex 4), it reiterated its request for the immediate release of the vessel and its crew, and inquired as to

“whether such release would be facilitated by the posting of a bond or other financial security and, if so, what the Russian Federation would consider to be a reasonable amount for such bond or other financial security.”

31. The Russian Federation did not respond to this inquiry. In this respect, the Kingdom of the Netherlands notes that the notion of release upon the posting of reasonable bond or other financial security is a well-known feature of UNCLOS, for which the ‘prompt release’ procedure in Article 292 of UNCLOS has been specifically designed. An example is the arrest of a vessel and its crew by a coastal state in connection with the exercise of its sovereign rights over the living resources in its exclusive economic zone under Article 73 of UNCLOS. By requiring release upon the posting of a reasonable bond or other financial security, the Convention reconciles the coastal state’s sovereign right to protect the living resources in its exclusive economic zone with the flag state’s freedom of navigation and right to exercise jurisdiction over a vessel flying its flag. It would be inconsistent with this rationale if in cases such as this - in which the Kingdom of the Netherlands argues that the Convention does *not* allow for the boarding of a vessel, and the subsequent arrest and detention of that vessel and its crew - the posting of a bond or other financial security would not facilitate the release of the vessel and its crew.

32. The detention of the ‘Arctic Sunrise’ continues to preclude the exercise of the freedom of navigation by a vessel that flies the flag of the Kingdom of the Netherlands and the exercise of jurisdiction by the Kingdom of the Netherlands over such a vessel. Moreover, the vessel is at risk of perishing since authorities of the Russian Federation took over control of the vessel. In particular, the operator has been unable to carry out adequate maintenance and servicing of the vessel.

33. In a letter, dated 27 September 2013 (Annex 8), the operator of the vessel, Greenpeace International, requested the assistance of the Netherlands Shipping Inspectorate

“to seek permission from Russian maritime administration in Murmansk to reactivate the vessel immediately as we consider any delays will seriously affect the seaworthiness of

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the vessel. We are particularly concerned of fire, flooding, pollution, security and health risks keeping a vessel unmanned for extended periods in cold weather with possible damage to machinery.”

As of yet, the Russian Federation’s authorities have not yet given such permission.

34. Furthermore, the Netherlands Shipping Inspectorate observed in its opinion, dated 18 October 2013 (Annex 7), that an operational vessel cannot be deactivated without creating a risk of damage, unless appropriate measures are taken to preserve its operability. If such measures are not taken, the operability of the vessel may be adversely affected when the vessel is reactivated, considering in particular the prevailing local weather conditions.

35. The ‘Arctic Sunrise’ must therefore be allowed to depart in order to prevent further deterioration of its condition.

**III. The possible consequences, if the request is not granted**

36. It appears from the reasons for which this Request is made that, if it were not granted, the internationally wrongful acts set forth in the Statement of Claim and this Request having a continuing character would add to the injury already caused.

37. As a result of the continued detention of the ‘Arctic Sunrise’ in Kola Bay, Murmansk Oblast, its general condition is deteriorating. As the vessel is an aging icebreaker, it requires intensive maintenance in order to maintain its operability. The deterioration results from the impossibility to carry out the scheduled maintenance of its systems, which compromises the vessel’s safety and seaworthiness. This may, amongst others, create a risk for the environment, including the release of bunker oil. This reality is compounded by the prevailing harsh weather and ice conditions in the fragile Arctic region.

38. The present case concerns a dispute between two states with respect to the rights and obligations of a coastal state in its exclusive economic zone affecting the rights and obligations of a flag state regarding vessels flying its flag and navigating in this zone. As a consequence of the actions taken by the Russian Federation in connection with the boarding and detention of the ‘Arctic Sunrise’, the crew would continue to be deprived of their right to liberty and security as well as their right to leave the territory and maritime areas under the jurisdiction of the Russian Federation. The settlement of such disputes between two states should not infringe upon the enjoyment of individual rights and freedoms of the crew of the vessels concerned.

**IV. The urgency of the situation**

39. In *MOX Plant*, the Tribunal stated that:

“Considering that, according to article 290, paragraph 5, of the Convention, provisional measures may be prescribed pending the constitution of the Annex VII arbitral tribunal if the Tribunal considers that the urgency of the situation so requires in the sense that action prejudicial to the rights of either party or causing serious harm to the marine environment

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is likely to be taken before the constitution of the Annex VII arbitral tribunal” (*MOX Plant (Ireland v. United Kingdom), Provisional Measures, Order of 3 December 2001*, paragraph 64).

40. In the present case, action prejudicial to the rights of the Kingdom of the Netherlands is not only likely to be taken by the Russian Federation before the constitution of the arbitral tribunal, but such action has already been taken and has been continuing since the boarding and detention of the ‘Arctic Sunrise’ on 19 September 2013. Furthermore, since the initiation of the arbitral procedure, the dispute has further aggravated and extended as set out in this Request.

41. In *Straits of Johor*, the Tribunal held that

“the urgency of the situation must be assessed taking into account the period during which the Annex VII arbitral tribunal is not yet in a position to ‘modify, revoke or affirm those provisional measures’” (*Land Reclamation in and around the Straits of Johor (Malaysia v. Singapore), Provisional Measures, Order of 8 October 2003*, paragraph 68).

42. Although the Kingdom of the Netherlands is confident that the Russian Federation will timely appoint its arbitrator, and will cooperate in the further constitution of the arbitral tribunal as well as the organization of the arbitral procedure, it will take considerable time before the arbitral tribunal can exercise its judicial function.

43. In conclusion, the Kingdom of the Netherlands submits that the urgency test has been met. In light of the possible consequences set forth above, the prescription of provisional measures cannot endure any further delay.

## CHAPTER 5 JUDGE AD HOC

44. The Kingdom of the Netherlands chooses Judge David Anderson to participate as a member of the Tribunal pursuant to Article 17 of the Statute of the Tribunal. A United Kingdom citizen, Judge Anderson is a former judge of the Tribunal.

## CHAPTER 6 APPOINTMENT OF AGENT AND ADDRESS FOR SERVICE

45. Pursuant to Article 56, paragraph 2, of the Rules of the Tribunal, the Kingdom of the Netherlands appoints Professor Dr. Liesbeth Lijnzaad and Professor Dr. René Lefeber, Legal Adviser and Deputy Legal Adviser, respectively, of the Netherlands Ministry of Foreign Affairs, as its Agent and Co-Agent, respectively, for the purpose of all proceedings in connection with this Request. The Agent and Co-agent’s contact details are as follows:

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Netherlands Ministry of Foreign Affairs  
 C/o Legal Affairs Department, International Law Division (DJZ/IR)  
 Tel (+31) (0)70 3486724  
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46. The address for service to which all communications concerning the case are to be sent in accordance with Article 56, paragraph 1, of the Rules of the Tribunal is as follows:

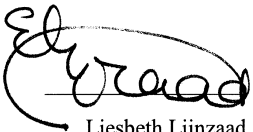
Botschaft des Königreichs der Niederlande in Berlin  
 Klosterstraße 5010179 Berlin  
 Deutschland

**CHAPTER 6**  
**SUBMISSIONS**

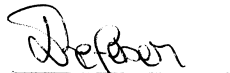
47. For the reasons set out above, the Kingdom of the Netherlands requests that the Tribunal prescribe as provisional measures that the Russian Federation:

- (i) Immediately enable the 'Arctic Sunrise' to be resupplied, to leave its place of detention and the maritime areas under the jurisdiction of the Russian Federation and to exercise the freedom of navigation;
- (ii) Immediately release the crew members of the 'Arctic Sunrise', and allow them to leave the territory and maritime areas under the jurisdiction of the Russian Federation;
- (iii) Suspend all judicial and administrative proceedings, and refrain from initiating any further proceedings, in connection with the incidents leading to the boarding and detention of the 'Arctic Sunrise', and refrain from taking or enforcing any judicial or administrative measures against the 'Arctic Sunrise', its crew members, its owners and its operators; and
- (iv) Ensure that no other action is taken which might aggravate or extend the dispute.

The Hague, 21 October 2013



Liesbeth Lijnzaad  
 Agent for the Kingdom of the Netherlands



RENÉ LEFEBVRE  
 Co-Agent for the Kingdom of the  
 Netherlands