

DECLARATION OF JUDGE *AD HOC* ANDERSON

1. I have voted for the Order, including the provisional measures allowing for the release the ship and its crew so that they are allowed to leave Russia without further delay upon the posting of a bond. I would add the following points.

The non-appearance of the Russian Federation

2. In considering the request submitted by the Netherlands, the Tribunal did not have the benefit of receiving the Russian Federation's account of the facts, notably the events occurring on 18 and 19 September 2013 prior to the arrest of the *Arctic Sunrise*, as well as the Russian Federation's arguments on points of law. While the position of the Netherlands was made clear, the stance of the Russian Federation had to be taken from its diplomatic communications, legislation and the decisions of courts in the Russian Federation. Unfortunately, these materials were both incomplete and in places inconsistent, making the task of the Tribunal more difficult.¹ Thus, the decision of the Russian Federation not to appear in this case is to be regretted. Non-appearance does not serve the efficient application of Part XV of the Convention or, more widely, the rule of law in international relations.

Article 283 of the Convention

3. When a dispute arises concerning the interpretation or application of the Convention, article 283 calls for "an exchange of views regarding the settlement of the dispute by negotiation or other peaceful means". The emphasis is more upon the expression of views regarding the most appropriate peaceful means of settlement, rather than the exhaustion of diplomatic negotiations over the substantive issues dividing the parties. The main purpose underlying article 283 is to avoid the situation whereby a State is taken completely by surprise by the institution of proceedings against it. The Tribunal has rightly noted in paragraphs 73 and 74 of the Order that there were several diplomatic exchanges between the parties before legal proceedings were instituted. Of particular relevance in this regard was the note

¹ The ICJ experienced similar problems, including fact-finding, in the *Fisheries Jurisdiction* cases (*UK v. Iceland and FRG v Iceland*), *I.C.J. Reports 1974*, p. 3 and p. 175.

verbale dated 3 October 2013 in which the Netherlands expressed the views that “there seems to be merit in submitting this dispute to arbitration under the United Nations Convention on the Law of the Sea” and that the Netherlands was considering the institution of arbitration proceedings “as soon as feasible.”² Thus, the underlying purpose of article 283 appears *prima facie* to have been met: the question of admissibility will be for the Annex VII tribunal to determine finally.

(signed)

D.H. Anderson

² On this point, the Netherlands’ note of 3 October 2013 was similar in content to notes addressed by Australia and by New Zealand to Japan before the institution of the proceedings in the *Southern Bluefin Tuna Cases* (ITLOS Pleadings, Minutes and Documents 1999, Vol. 4, at pp. 15, 25 and 83).