Settlement of the Dispute concerning the Arctic Sunrise – A belated recognition of the relevance of the award on the merits in the Arctic Sunrise case?

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Document commented upon: Joint statement of the Russian Federation and the Kingdom of the Netherlands on scientific cooperation in the Russian Arctic region and the settlement of a dispute (Joint statement)

In the fall of 2013, the detention of the vessel Arctic Sunrise and its crew by Russian security forces was breaking news. The detention followed a protest action of Greenpeace activists against the rig Prirazlomnaia, which planned to begin the commercial production of oil in the Pechora Sea in the exclusive economic zone of the Russian Federation. The Russian Federation accused the activists of engaging among others in piracy and hooliganism. The activists faced criminal charges entailing long-term prison terms. The detention of the vessel and its crew prompted the Netherlands, the flag State of the Arctic Sunrise, to start arbitral proceedings against the Russian Federation under the United Nations Convention on the Law of the Sea (Convention), to which both States are parties. The Russian Federation immediately rejected that the arbitral tribunal had the jurisdiction to deal with this dispute and abstained from participating in the proceedings. However, the non-participation of the Russian Federation did not stop the arbitral procedure. Prior to the constitution of the arbitral tribunal, the International Tribunal for the Law of the Sea (ITLOS), in an order indicating provisional measures to protect the rights of the Netherlands, had already ordered the Russian Federation to release the Arctic Sunrise and its crew. Although the Russian Federation did not comply with the order of the ITLOS, it did release the crew of the Arctic Sunrise as part of an amnesty in connection with the 20\textsuperscript{th} anniversary of the Russian constitution in December 2013. The bill introduced in the State Duma was amended at the last moment to include the charges that had been brought against the crew members. This probably did much to defuse media attention for the Arctic Sunrise incident in the Western press. The Arctic Sunrise itself was eventually allowed to leave the Russian port of Murmansk in June of 2014.

The arbitral tribunal issued three awards. In a 2014 award, the tribunal concluded that it had jurisdiction to deal with the dispute. The Convention provides that this is a determination to be made by the tribunal concerned (Convention, article 288(4)), and not unilaterally by one of the parties, as in this case by the Russian Federation. On 14 August 2015, the tribunal issued an award on the merits, finding among others that the Russian Federation had acted in breach of the Convention in arresting the Arctic Sunrise and detaining its crew. A further award, in 2017 determined that the Russian Federation had to pay to the Netherlands € 5.4 million in damages. The Russian Federation maintained that it had acted in full conformity with its rights under international law and that the illegal action of the Arctic Sunrise had infringed the rights of the Russian Federation over the economic resources of its exclusive economic zone. The Russian Federation rejected the decision of the tribunal and refused to comply with it. As recently as April 2018, the Press Department of the Russian Federation in connection with a working visit of the Dutch Minister of Foreign Affairs to the Russian Federation in a comment observed that Russian-Dutch relations were ‘overshadowed’ by a number of issues, including “the arbitral proceedings initiated by the Netherlands against Russia on the Arctic Sunrise case”.

In light of the Russian Federation’s forceful rejection of the arbitration and its outcome, it might come as a surprise that the Netherlands and the Russian Federation recently reached a settlement of the dispute. On 17 May 2019, they issued a Joint statement, in which they set out the terms of
The Joint statement not only is concerned with the dispute, but also announces the wish of both States to enhance joint scientific research in the Russian Arctic. As may be noted in its title the Joint statement explicitly refers to that cooperation and euphemistically refers to “the settlement of a dispute”. The fact that both issues are addressed jointly signals that both States not only want to close a chapter in their Arctic relations, but also want to look to ahead. The Joint statement moreover provides a number of understandings concerning the rights and obligations of the coastal State in the exclusive economic zone and those of the other States in exercising the freedom of navigation, the parameters of the right to protest at sea, and the rights and obligations of the flag State in relation to vessels flying its flag.

The remainder of this post is concerned with a discussion of the Joint statement’s understandings on these legal issues. After this discussion, the post will consider how these understandings relate to the findings of the arbitral tribunal on the merits in Arctic Sunrise. Next, the post will look at the position paper ‘On certain legal issues highlighted by the action of the Arctic Sunrise against Prirazlomnaya platform’ (Position paper), which was issued by the Ministry of Foreign Affairs of the Russian Federation on 5 August 2015, just over a week before the tribunal issued its award on the merits in Arctic Sunrise. Finally, the post offers some concluding thoughts on the significance of the Joint statement and its relation to the award on the merits in Arctic Sunrise and the Position paper.

The Joint statement indicates that it is without prejudice to the legal positions of both States in regards of the dispute involving the Arctic Sunrise and the Prirazlomnaya. In other words, the Joint statement does not imply that the Russian Federation accepts the outcome of the arbitration or that the Netherlands accepts the Russian position in this regard. At the same time, this non-prejudice statement does not detract from the significance of the award on the merits in Arctic Sunrise as an authoritative statement on the law (see further below).

According to press reports (see e.g. Miljoenenschikking Nederland en Rusland over enteren Greenpeace-schip Arctic Sunrise), the Russian Federation will make a payment of at least € 2.7 million to the Netherlands as part of the settlement. The figure of € 2.7 million amounts to half of the damages awarded to the Netherlands by the arbitral tribunal. As the Joint statement indicates, the details of the settlement remain confidential.

The first understanding of the Joint Statement provides that “Friendly relations and cooperation between the two countries are maintained and further developed in the spirit of the United Nations Charter as well as of the 1982 United Nations Convention on the Law of the Sea.” Perhaps understandably, the Joint Statement does not make any specific reference to Part XV of the Convention and its provisions on compulsory dispute settlement, which the Netherlands employed to submit the dispute involving the Arctic Sunrise to arbitration. The understanding’s reference to cooperation arguably could be said to favor negotiations over other compulsory dispute settlement in relation to disputes over the interpretation and application of the Convention. However, Part XV, including its provisions on compulsory dispute settlement, is an essential aspect of the Convention. Maintaining and further developing friendly relations and cooperation in the spirit of the Convention would sit uncomfortably with the rejection of an essential aspect of that same Convention. This is confirmed by the preamble of the Convention, which expresses the belief that “the codification and progressive development of the law of the sea achieved in this Convention will contribute to the strengthening of peace, security, cooperation and friendly relations among all nations”. This preambular provision of the Convention does not exclude any part of the Convention, but is applicable to the Convention as a whole. And as was observed by the Permanent
Court of International Justice in an order in *Free Zones of Upper Savoy and the District of Gex* “the judicial settlement of international disputes […] is simply an alternative to the direct and friendly settlement of such disputes between the Parties”. Part XV of the Convention is based on this complementarity of different mechanisms available to States to resolve their disputes. Compulsory dispute settlement can assist in furthering cooperation by resolving issues that are complicating bilateral relations.

The Joint statement recognizes the freedom of navigation of other States in the exclusive economic zone and the rights of the coastal State over the natural resources of the zone and installations in the zone. As is also provided for in the Convention (article 56(2)), the Joint statement observes that both sides in this connection must have “due regard” to the rights and duties of the other.

The Joint statement provides a significant elaboration as regards the right of protest actions at sea. In this connection, it refers to work of the International Maritime Organization (IMO), without explicitly referring to individual documents. However, in an IMO context particular reference may be had to resolution MSC.303(87) of the IMO’s Maritime Safety Committee on Assuring safety during demonstrations, protests or confrontations on the high seas, which was adopted on 17 May 2010. The focus of the resolution is on safety of navigation, security and safety of life at sea and ensuring compliance with the relevant IMO instruments, including the Convention on the International Regulations for Preventing Collisions at Sea, 1972 (COLREG), the International Convention for the Safety of Life at Sea, 1974 (SOLAS) and the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and its Protocol for the Suppression of Unlawful Acts against Fixed Platforms Located on the Continental Shelf.

However, the preamble of the resolution affirms the “rights and obligations relating to legitimate and peaceful forms of demonstration, protest or confrontation”. The preamble also recalls the relevant provisions of the Convention related to activities of vessels on the high seas. The resolution does not further specify these provisions. Article 87, which recognizes the freedom of navigation on the high seas, is the key provision in this respect. The other provisions of the high seas regime contained in Part VII of the Convention dealing with ships are premised on the existence of the freedom of navigation. These other provisions are concerned with among others the nationality and status of ships and the duties of the flag States and the condition under which States may take enforcement action against foreign-flagged vessels.

As the title to the resolution indicates, it is concerned with the high seas, raising the question whether it also applies to the exclusive economic zone. Article 58 of the Convention provides that all States enjoy the freedom of navigation and other internationally lawful uses of the sea related to that freedom in the exclusive economic zone. The view that resolution MSC.303(87) is also relevant to the exclusive economic zone, is implied by the Position paper of the Russian Federation’s Ministry of Foreign Affairs on the incident involving the *Arctic Sunrise* and the *Prirazlomnaya*. In assessing the actions of the *Arctic Sunrise* in the Russian exclusive economic zone, the Position paper invokes resolution MSC.303(87) as part of the relevant legal framework (see Position paper, para. 8.5).

The Joint statement defines the parameters within which protest actions have to take place, providing among others that they: “(i) do not violate legislation of the coastal State, adopted in accordance with international law; (ii) do not imperil human life, the marine environment, or property; and (iii) do not delay or interrupt essential operations.” Importantly, the reference to international law not only includes the legislation the coastal State may adopt on the basis of the sovereign rights and jurisdiction in enjoys in the exclusive economic zone or on the continental
shelf under the Convention, but also the applicable human rights standards, which require a balancing between the rights of the coastal State (and private interests) and the exercise of the freedom of expression. It may be noted that the Joint statement refers to the fact that “the coastal State should tolerate some level of nuisance from protest actions at sea”, while it has the right to prevent and respond to actions that do not meet the requirements set out under items (i) to (iii) above.

While the Joint statement recognizes that the coastal State may take enforcement measures where protest actions do not meet these requirements, the statement indicates that such enforcement measures must be in accordance with the applicable human rights standards. Interestingly, in light of the relevant case law of the European Court of Human Rights, the Russian criminal charges brought against the crew of the Arctic Sunrise, and which could have led to long-term prison sentences, were in all likelihood not in accordance with those standards. As I argued elsewhere, “a fundamental concern of the Court is the “chilling effect” that the fear of the imposition of sanctions may have on others” (see A.G. Oude Elferink “The Arctic Sunrise Incident: A Multifaceted Law of the Sea Case with a Human Rights Dimension” (International Journal of Marine and Coastal Law 29 (2014) 244–289 at 269. As the Court observed in Kudeskhina:

This effect, which works to the detriment of society as a whole, is likewise a factor which concerns the proportionality of, and thus the justification for, the sanctions imposed on the applicant, who, as the Court has held above, was undeniably entitled to bring to the public’s attention the matter at issue (para. 99).

The need for proportionality of measures to “prevent or respond, including where necessary to prosecute” protest actions is also explicitly recognized by the Joint statement, which in that connection refers to the tests of “reasonableness, necessity and proportionality, including applicable international human rights standards”.

The Joint statement also specifies the duties of the flag State in relation to vessels flying its flag engaged in protest action at sea. The requirement of the Convention that the flag State is to exercise effective jurisdiction and control is reaffirmed. The somewhat convoluted elaboration of these duties might suggest that the flag State should ensure that certain activities do not take place. However, on closer reading, the statement indicates that the flag State is required to exercise due diligence in taking enforcement measures against vessels flying its flag. The statement provides that “[a] flag State, in fulfilment of its responsibility to exercise effective jurisdiction and control, must adopt the necessary measures, including administrative measures, to ensure that vessels flying its flag are not involved in activities which will undermine the flag State’s responsibilities under international law”. The obligation of the flag State to “effectively exercise control and jurisdiction […] over ships flying its flag” is contained in article 94(1) of the Convention. The following paragraphs of article 94 identify specific measures a flag States is required to adopt in this respect. Article 94(6) entitles another State to address the flag State if the former “has clear grounds to believe that proper jurisdiction and control with respect to a ship have not been exercised”. The implications of article 94 have been considered by the ITLOS in its advisory opinion in Request for an Advisory Opinion Submitted by the Sub-Regional Fisheries Commission (SRFC). The ITLOS observed in this respect in language that is very similar to that of the Joint statement that:

It follows from the provisions of article 94 of the Convention that as far as fishing activities are concerned, the flag State, in fulfilment of its responsibility to exercise effective jurisdiction and control in administrative matters, must adopt the necessary administrative measures to ensure that fishing vessels flying its flag are not involved in activities which will
undermine the flag State’s responsibilities under the Convention in respect of the conservation and management of marine living resources. If such violations nevertheless occur and are reported by other States, the flag State is obliged to investigate and, if appropriate, take any action necessary to remedy the situation. (para. 119).

Subsequently, the Tribunal considered the implications of the expression “responsibility to ensure”. In this connection, the Tribunal relied on an advisory opinion of its Seabed Disputes Chamber, which had considered the relationship between mining entities and their sponsoring State. The Tribunal observed that although the relation between a sponsoring States and the sponsored entity was not completely comparable to that between a flag State and a fishing vessel it found that:

the view that the clarifications provided by the Seabed Disputes Chamber regarding the meaning of the expression “responsibility to ensure” and the interrelationship between the notions of obligations “of due diligence” and obligations “of conduct” […] fully applicable in the present case (para. 125).

This finding no doubt implies that these clarifications may be equally applied in considering the relationship between a flag State and a ship flying its flag engaged in protest actions at sea, due to the greater similarity between that case and that of a fishing vessel as compared to a sponsored entity.

The Tribunal also subscribed to the Seabed Disputes Chamber on the obligation to ensure, quoting paragraph 110 of the Chamber’s opinion to the effect that:

it is an obligation to deploy adequate means, to exercise best possible efforts, to do the utmost, to obtain this result. To utilize the terminology current in international law, this obligation may be characterized as an obligation “of conduct” and not “of result”, and as an obligation of “due diligence” (para. 128).

In case a vessel acts in contravention of the measures that have been adopted by a flag State in fulfilling its due diligence obligation of exercising effective control and jurisdiction, the flag State will have to take appropriate action to secure compliance with those measures (Request for an Advisory Opinion Submitted by the Sub-Regional Fisheries Commission (SRFC), Advisory opinion, para, 138). In the case of protest actions at sea, the flag State will have to take into account the relevant human rights law in determining appropriate sanctions. As was mentioned above, those sanctions for instance should not have a ‘chilling effect’ on future exercises of the freedom of expression.

Like the Joint statement, the award on the merits in Arctic Sunrise addresses the legal framework applicable to peaceful protest action at sea. Also in light of the Russian Federation’s prior rejection of the arbitration, it is of interest to consider to what extent the Joint statement and the award are aligned and to what extent they may differ. Like the Joint statement, the award refers to the due regard obligations the coastal State and the flag State owe each other in exercising their rights and obligations as defined in the Convention (paras 228-229).

While the Joint statement recognizes the “rights relating to peaceful protest” at sea, the award seems to provide a slightly different emphasis by referring to protest at sea as an “internationally lawful use of the sea” (para. 227), which language is borrowed from article 58 of the Convention. A notable difference between the statement and the award is that the latter provides that this lawful use is related to the freedom of navigation (ibid). The Joint statement fails to make this explicit link between the freedom of navigation and the rights relating to peaceful protest, which are mentioned
in two consecutive understandings. The possible implications of this difference between the award and the Joint statement are considered further below.

The award on the merits and the Joint statement display a significant similarity in defining the limits for coastal State measures to prevent or end protest actions at sea. They both provide that the coastal State “should tolerate some level of nuisance” from protest actions at sea (para. 328). Like the Joint statement, the award observes that the measure a coastal State takes to protect its legitimate interests in the exclusive economic zone have to meet “the tests of reasonableness, necessity, and proportionality” (para. 325). The Joint statement also largely follows the language of the award in defining the conditions under which the coastal State may take measures. The Joint statement refers to the “importance to ensure that protest actions at sea: (i) do not violate legislation of the coastal State, adopted in accordance with international law; (ii) do not imperil human life, the marine environment, or property; and (iii) do not delay or interrupt essential operations.” The award observes that “it would be reasonable for a coastal State to act to prevent: (i) violations of its laws adopted in conformity with the Convention; (ii) dangerous situations that can result in injuries to persons and damage to equipment and installations; (iii) negative environmental consequences [...] and (iv) delay or interruption in essential operations (para. 327).

The Joint statement refers to the understanding of the Joint statement dealing with responsibilities of the flag State is largely identical to paragraph 119 of the advisory opinion in Request for an Advisory Opinion Submitted by the Sub-Regional Fisheries Commission (SRFC) dealing with the implications of article 94 of the Convention as quoted above. The only differences are stylistic in nature or explained by the fact that the opinion was concerned with fishing vessels and the interpretation of the Convention, while the understanding is concerned with ships in general and refers to general international law. The understanding does not refer to the second sentence of paragraph 119, which is concerned with the duty of the flag State to investigate incidents reported to it by other States and the need to take appropriate action. One suspects that the Netherlands may not have agreed to this specific reference due to the specifics of the dispute involving the Arctic Sunrise and not on legal grounds, as the second sentence of paragraph 119 paraphrases article 94, paragraph 6, which is binding upon the Netherlands as treaty law. In justifying its actions against the Arctic Sunrise, the Russian Federation claimed that the Netherlands had not acted in accordance with its obligations as a flag State in relation to (preventing) earlier actions of the Arctic Sunrise (see e.g. Position paper, 13). Inclusion of the reference to the language of article 94, paragraph 6, in the understanding might have created the impression that the Russian claim had merit. It may be noted that paragraph 6 does not accord additional enforcement powers for other States against foreign flagged vessels.

The Joint statement does not address what most likely may be characterized as one of the most critical issues of law facing the tribunal in Arctic Sunrise: is the safety zone around an installation a separate zone under article 111 of the Convention dealing with the issue of hot pursuit, implying that infractions of legislation applicable on an installation or in its safety zone may only be enforced on the installation or inside its safety zone after a hot pursuit from that zone. The tribunal in Arctic Sunrise concluded that this was indeed the case (para. 247). The tribunal found that a hot pursuit had been started in accordance with article 111 (para. 252 and following). However, it was concluded that the hot pursuit had been interrupted, making the subsequent boarding and arrest of the Arctic Sunrise by the Russian coast guard without the consent of the flag State a breach of the obligations the Russian Federation’s owed to the Netherlands (para. 269 and following and para. 401(C)).
In its Position paper, the Russian Federation’s Ministry of Foreign Affairs on the other hand had maintained that there was no need to rely on the right of hot pursuit from the safety zone of the Prirazlomnaya in effecting the arrest of the Arctic Sunrise (paras 7.6 and 11.1). That position implied that the Netherlands’ claim that the arrest could only be affected with its consent would not have been successful. In light of the centrality of this issue to the dispute and these opposing views, it is understandable that the matter is not addressed in the Joint statement. At the same time, as was noted above, the tribunal in Arctic Sunrise did offer an interpretation of this aspect of article 111. Although the award is only binding on the parties, this finding as to the applicable law may be considered as an authoritative statement of the law that should be followed in subsequent cases. However, the tribunal on this point merely concluded that the safety zone is a separate zone for the purposes of hot pursuit (para. 247), without offering an explanation as to why that was the case. That might make the conclusion that this is a settled point of law somewhat premature.

As was observed above, the Joint statement does not link the right to protest at sea to the freedom of navigation of other States in the exclusive economic zone of the coastal State, while the award on the merits in Arctic Sunrise submits that protest at sea is a lawful use of the sea related to the freedom of navigation in the sense of article 58 of the Convention. It seems likely that the Russian Federation considered including the latter approach in the Joint Statement unacceptable. The Position paper of the Russian Federation’s Ministry of Foreign Affairs in fact had submitted that “[t]he so-called right to peaceful protest at sea which is often referred to as a legal basis for the “direct action”, is neither a part of freedom of high seas nor a part of freedom of navigation”. Elsewhere, I have argued that this position is unconvincing (A.G. Oude Elferink “The Russian Federation and the Arctic Sunrise Case: Hot Pursuit and Other Issues under the LOSC” at 400-401).

As regards the Joint statement, the above analysis of resolution MSC.303(87) of the IMO’s Maritime Safety Committee, to which the statement makes implicit reference, indicates a recognition on the part of the Russian Federation that the right of peaceful protest at sea is exercised in the context of the freedom of navigation.

The Russian position that “the rights to the freedom of expression and of peaceful assembly which may be manifested in the form of the peaceful protest are individual rights governed by a cluster of international law separate from the law of the sea” (Position paper, para. 8.1) seemingly might have critical implications for the availability of compulsory dispute settlement under the Convention. As article 288, paragraph 1, included in its Part XV, provides, courts and tribunals “have jurisdiction over any dispute concerning the interpretation or application of this Convention which is submitted to it in accordance with this Part.” At the same time, in this connection, courts and tribunals are required to “apply the Convention and other rules of international law not incompatible with [it]” (Convention, article 293(1)). There has been considerable debate concerning the implications of articles 288 and 293(1) (for a good overview see P. Tzeng “The Implicated Issue Problem: Indispensable Issues and Incidental Jurisdiction”). This matter was also considered in the award on the merits in Arctic Sunrise, where the tribunal observed that:

if necessary it may have regard to general international law in relation to human rights in order to determine whether law enforcement action such as the boarding, seizure, and detention of the Arctic Sunrise and the arrest and detention of those on board was reasonable and proportionate. This would be to interpret the relevant Convention provisions by reference to relevant context. This is not, however, the same as, nor does it require, a determination of whether there has been a breach of Articles 9 and 12(2) of the [International Covenant on Civil and Political Rights] as such. That treaty has its own
enforcement regime and it is not for this Tribunal to act as a substitute for that regime (para. 197; see also para. 198).

In view of the fact that the tribunal concluded that the arrest and detention of the *Arctic Sunrise* had not been effected in accordance with the regime of hot pursuit, it did not need to consider further whether other aspects of the Russian Federation’s law enforcement actions were reasonable and proportionate. Had the tribunal been required to do so, it would have had to have reference to the relevant human rights context in determining whether e.g. the charges that had been brought were reasonable and proportionate in the light of that context. In view of the extensive case law of among others the European Court of Human Rights clarifying the generally worded treaty provisions dealing with the freedom of expression, it is submitted that the tribunal would have been able to deal with these issues by relying on the relevant human rights case law, without itself having to engage in an interpretation of the relevant human rights treaty provisions.

The above analysis indicates that the Joint statement provides some clarification of the right to protest at sea and the rights and obligations of the coastal States and flag States contained in the Convention. Interestingly, a number of the understandings of the Joint statement use language that reflects the language included in the award on the merits in *Arctic Sunrise* and in one instance an advisory opinion of the ITLOS.

At the same time, the Joint statement clearly is a compromise text and does not *expressly* consider a number of the critical legal issues that divided the Netherlands and the Russian Federation in the dispute concerning the *Arctic Sunrise*, such as the relationship between the law of the sea and human rights law, and the relationship between installations and their safety zones and the exclusive economic zone in the context of the taking of enforcement measures by the coastal State. In these instances, the Joint statement does recognize that these matters have to be assessed in accordance with international law. The award on the merits *Arctic Sunrise*, although it is only binding “between the parties and in respect of that particular dispute” (Convention, article 296(2)), provides an authoritative interpretation of the law, with which States and the judiciary will have to engage in future cases involving these same points.

The settlement concerning the *Arctic Sunrise* resolves one of the issues that in recent years have complicated the bilateral relations between the Netherlands and the Russian Federation. Other issues burdening these relations, the downing of flight MH17 and the Russian Federation’s annexation of Crimea and its involvement in eastern Ukraine and the subsequent sanction by the EU and its member States, including the Netherlands, are much more intractable. This raises the question why the Netherlands and the Russian Federation decided to resolve their dispute over the *Arctic Sunrise* at this point in time. A number of considerations may have played a role. First, to the extent that Arctic issues can be viewed in isolation from these other matters, settling the dispute involving the *Arctic Sunrise* gets rid of an issue that is a complicating factor in (bilateral) cooperation on Arctic matters (see also (Letter of the Minister of Foreign Affairs to the Chair of the House of Representatives of the Netherlands Parliament of 17 May 2019, 3). The Netherlands Ministry of Foreign Affairs has indicated that the recognition of the successful defense of the right to engage in peaceful protest at sea, including in the Arctic, is an important aspect of settling the dispute (*ibid.*). True as that may be, it remains to be seen whether any activists will be willing to test how the Russian Federation will deal with similar protest actions in the future.

The Russian Federation for its part likely considers that the Joint statement vindicates its position that it can take enforcement actions against activists who threaten its economic interests at sea. In that connection, it may also be noted that it could be said that the dispute, even more than being a
dispute over the applicable law, was a dispute concerning the framing of the facts, as is also apparent from the Russian Federation’s characterization of the actions of the *Arctic Sunrise* directed at the *Prirazlomnaja* and the Netherlands’ alleged inaction as the flag State of the *Arctic Sunrise* (see e.g. Position paper, *passim*).

It is highly unlikely that the settlement of the dispute concerning the *Arctic Sunrise* provides a template for resolving the dispute concerning the downing of flight MH17. That dispute involves the death of the 298 persons on board the aircraft and the criminal responsibility for those responsible for its downing. However, it could be said that the current settlement includes one aspect that is of primary importance for further discussions with the Russian Federation concerning the downing of flight MH17, namely the recognition that international law provides the framework for dealing with matters involving the bilateral relations of the Russian Federation and the Netherlands. Dealing successfully with the issue of the *Arctic Sunrise* may also have contributed to building personal relationships that play a role in dealing with a complex and sensitive issue like the downing of flight MH17.

This post is a significantly expanded version of A.G. Oude Elferink *Russian-Dutch settlement on Arctic Sunrise is a recognition of international law* posted on *Raam op Rusland*.

I would like to thank Hella Rottenberg and Jan Solski for their comments on an earlier version of the article posted on *Raam op Rusland* and Nigel Bankes for his comments on that version and an earlier version of the current post.