

№ 1733 /H

The Embassy of the Russian Federation to the Federal Republic of Germany presents its compliments to the Registrar of the International Tribunal for the Law of the Sea and with reference to the Request of Ukraine dated 16 April 2019 for the prescription of provisional measures under Article 290 (5) of the UN Convention on the Law of the Sea (UNCLOS) in respect of the Russian Federation regarding the detention of three Ukrainian naval vessels, has the honour to kindly request him to convey the following to the President and the Judges of the Tribunal.

The Russian Federation is of the view that the arbitral tribunal to be constituted under Annex VII of UNCLOS will not have jurisdiction, including *prima facie*, to rule on Ukraine's claim, in light of the reservations made by both the Russian Federation and Ukraine under Article 298 of UNCLOS stating, inter alia, that they do not accept the compulsory procedures provided for in section 2 of Part XV thereof entailing binding decisions for the consideration of disputes concerning military activities. Furthermore, the Russian Federation expressly stated that the aforementioned procedures are not accepted with respect

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to disputes concerning military activities by government vessels and aircraft. For this obvious reason the Russian Federation is of the view that there is no basis for the International Tribunal for the Law of the Sea to rule on the issue of the provisional measures requested by Ukraine.

Ukraine elected to submit its request for provisional measures before engaging in bilateral consultations with Russia. The only round of consultations took place in the Hague on April, 23<sup>rd</sup>. Ukraine chose to reject further bilateral consultations, despite the fact that the Russian Federation expressed its readiness to continue dialogue, and decided to insist on the hearings before the Tribunal. This demonstrates a lack of good faith in the approach of Ukraine, which has been continuously exploiting for political purposes the situation created by reckless behaviour of the Ukrainian naval vessels.

The Russian Federation wishes to underline its strong disagreement with the qualification, contained in the Request of Ukraine dated 16 April 2019, regarding the status of the Kerch Strait and the territorial sea adjacent to Crimea, which is absolutely inappropriate. In this regard the Russian Federation declares that such issues of sovereignty over Crimea can not be the subject of any proceedings before the Tribunal.

Taking into account the above, the Russian Federation has the honour to inform the International Tribunal for the Law of the Sea of its decision not to participate in the hearing on the provisional measures in the case initiated by Ukraine, without prejudice to the question of its participation in the subsequent arbitration if, despite the obvious lack of jurisdiction of the Annex

VII tribunal whose constitution Ukraine is requesting, the matter proceeds further.

However, in order to assist the International Tribunal for the Law of the Sea and in conformity with Article 90 (3) of the Rules, the Russian Federation intends to submit in due course more precise written observations regarding its position on the circumstances of the case.

The Russian Federation expresses the hope that the Tribunal will give due and thorough consideration to its arguments.

The Embassy of the Russian Federation to the Federal Republic of Germany avails itself of this opportunity to renew to the Registrar of the International Tribunal for the Law of the Sea the assurances of its highest consideration.



Berlin, April 30, 2019