

In the matter of the Arctic Sunrise Arbitration
Before an Arbitral Tribunal Constituted under Annex VII to
the 1982 United Nations Convention on the Law of the Sea
PCA Case No. 2014-02

Palais Niederosterreich
Herrengasse 13
Vienna, Austria

Day 1

Tuesday, 10th February 2015

Before:

JUDGE THOMAS A. MENSAH (President)

MR HENRY BURMESTER

PROFESSOR ALFRED SOONS

PROFESSOR JANUSZ SYMONIDES

DR ALBERTO SZÉKELY SÁNCHEZ

BETWEEN:

1
THE KINGDOM OF THE NETHERLANDS

-and-

THE RUSSIAN FEDERATION

PROF DR LIESBETH LIJNZAAD (Agent) and PROF DR RENÉ LEFEBER
(Co-Agent), with ERIK FRANCKZ, MARCO BENATAR, ANKE BOUMA,
TOM DIEDEREN, PETER POST and ANNEMARIEKE VERMEER, of
counsel, appeared on behalf of the Kingdom of the
Netherlands.

The Russian Federation did not appear and was not
represented.

REGISTRY: SARAH GRIMMER, Senior legal counsel, and EVGÉNIYA
GORIATCHEVA, legal counsel, appeared for the Permanent Court
of Arbitration.

Transcript by Claire Hill for Trevor McGowan
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ALSO PRESENT:

FOR THE KINGDOM OF THE NETHERLANDS:

HIS EXCELLENCY PETER VAN WULFFTEN PALTHE, Ambassador of the
Kingdom of the Netherlands in Austria

ELENA SAKIRKO, Interpreter

ROSANNE SCHARDIJN, Management Assistant

LUC SMULDERS, Alternate Permanent Representative of the
Kingdom of the Netherlands to the International Maritime
Organisation

INTERPRETERS:

IRINA VAN ERKEL

SERGEI MIKHEYEV

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<p>09:30 1 Tuesday, 10th February 2015 2 (9.30 am) 3 THE PRESIDENT: It is my pleasure to open the hearing in the 4 Arctic Sunrise arbitration, which was commenced by the 5 Netherlands against the Russian Federation under the 6 United Nations Convention on the Law of the Sea. On 7 behalf of the Tribunal, I welcome the distinguished 8 representatives of the Netherlands. As we are all 9 aware, no delegation is appearing on behalf of the 10 Russian Federation. 11 Yesterday evening, the Secretariat sent, on behalf 12 of the Tribunal, a series of questions for the 13 Netherlands. These questions arise from the second 14 supplemental submission of the Netherlands, which was 15 dated 12th January 2015. The Tribunal considers that it 16 would be helpful to bring these questions to the 17 Netherlands' attention at this stage, in the hope that 18 some at least of these questions may be addressed to 19 a certain extent during the hearing. 20 In addition to the questions conveyed yesterday, of 21 course the Tribunal or any of its members may pose 22 further questions to the Netherlands during the hearing. 23 I wish to stress that the Netherlands is under no 24 obligation to provide full and final answers to the 25 Tribunal's additional questions, which were submitted</p> <p style="text-align: center;">Page 1</p>	<p>09:38 1 witnesses or their counsel about the testimony that they 2 give at this hearing, and this continues until the 3 hearing is concluded. I will admonish each witness 4 accordingly before they give their testimony. 5 You have all received the provisional hearing 6 schedule for the hearing today and tomorrow. Unless 7 there are housekeeping matters that the Netherlands 8 would like to raise before the hearing, I propose that 9 the hearing should begin now. Are there any such? In 10 the absence of any such questions, I will give the floor 11 to the Agent of the Netherlands to commence their 12 presentation by also introducing their delegation. 13 Thank you very much. 14 PROFESSOR LIJNZAAD: Thank you, Mr President. I understand 15 that the idea is that we stay seated, or would you want 16 us to stand? I note there is no -- 17 THE PRESIDENT: No, that is alright, you can sit down. 18 PROFESSOR LIJNZAAD: Thank you. Mr President, members of 19 the Tribunal, good morning. It is a true honour for me 20 to appear again before this Tribunal representing the 21 Kingdom of the Netherlands. 22 A number of documents, memorials and pleadings have 23 been exchanged between the Netherlands and the Tribunal, 24 and the Tribunal has raised questions to us about the 25 case, most recently last night. So today, the time has</p> <p style="text-align: center;">Page 3</p>
<p>09:36 1 yesterday evening, at this hearing, although of course 2 it is welcome to do so if it finds it possible or 3 convenient. The Netherlands is free, for example, to 4 reply to any of these questions in writing following the 5 hearing, if that is what appears to be convenient to 6 them. 7 In light of the fact that the Russian Federation is 8 not participating in the Tribunal proceedings today and 9 tomorrow, of course at this hearing the Tribunal must 10 seek as much clarification as possible from the 11 Netherlands, and I hope that this is understood by the 12 Netherlands. The Tribunal or any of its members may 13 also have questions for the witnesses presented by the 14 Netherlands at this hearing. The Netherlands will be 15 given an opportunity to pose questions to the witnesses 16 in re-direct examination after any questions from the 17 Tribunal. We may also require witnesses to return to 18 answer questions after we have heard their evidence. We 19 will therefore request all witnesses who will be in 20 Vienna in person at this hearing, either today or 21 tomorrow, to remain available to testify in future if 22 that becomes necessary. 23 I wish to emphasise and I would like to use the 24 opportunity to every witness to tell them that the 25 witnesses should avoid speaking to any other of the</p> <p style="text-align: center;">Page 2</p>	<p>09:40 1 come to present this case to this Arbitral Tribunal in 2 person. We value this opportunity, gentlemen. We do 3 hope to be able to respond to your questions, whether in 4 writing or orally, whether during this hearing or at 5 a later stage. But let me begin with our pleadings. 6 With your indulgence, I would like to first 7 introduce the delegation of the Kingdom of the 8 Netherlands. My name is Liesbeth Lijnzaad. I am the 9 Agent, and I am the legal advisor of the Ministry of 10 Foreign Affairs. With me is René Lefeber, who is the 11 deputy legal advisor of the Ministry of Foreign Affairs 12 and the Co-Agent. We both have already met you last 13 year, in Bonn. 14 Then there is Mr Erik Franckx, who is a professor of 15 law at the Vrije Universiteit, Brussels. And today we 16 also have the company of Mr Peter van Wulfften Palthe, 17 who is the Netherlands ambassador to Austria. 18 Then there are Mr Marco Benatar, who is a researcher 19 at the Vrije Universiteit, Brussels; Ms Anke Bouma, who 20 is a legal counsel with the Ministry of Infrastructure 21 and the Environment; Mr Tom Diederer, who is a legal 22 officer in the Ministry of Foreign Affairs; Mr Peter 23 Post, who is the transport advisor of the Ministry of 24 Foreign Affairs; and Ms Annemarijke Vermeer, who is also 25 a legal counsel at the Ministry of Foreign Affairs. And</p> <p style="text-align: center;">Page 4</p>

09:41 1 they are our advisers.
2 Opening Statement on behalf of the Netherlands
3 PROFESSOR LIJNZAAD: With your permission, I will briefly
4 introduce the case. The dispute underlying this case
5 relates to the authorities of the Russian Federation on
6 19th September 2013, without the prior consent of the
7 Kingdom of the Netherlands, boarding and detaining the
8 Arctic Sunrise, a vessel flying the Netherlands flag, in
9 the exclusive economic zone of the Russian Federation,
10 and thereafter detaining the persons on board the ship.
11 By acting in this way, without our prior consent,
12 the Russian Federation has violated the freedom of
13 navigation and the freedom of protest at sea of the flag
14 state of the Arctic Sunrise, and its right to exercise
15 jurisdiction over the vessel under the United Nations
16 Convention on the Law of the Sea and under customary
17 international law.
18 Mr President, members of the Tribunal, a coastal
19 state may respond to protest actions in its exclusive
20 economic zone, provided that any law enforcement actions
21 are in accordance with international law. Such law
22 enforcement actions can be reviewed on the basis of
23 a three-pronged test: first, the response actions to
24 prevent or end a protest action must have a legal basis
25 in international law; second, such response action is

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09:43 1 carried out in accordance with international law; third,
2 any subsequent law enforcement actions related thereto
3 are also in accordance with international law.
4 The law enforcement actions of the Russian
5 Federation following the protest action consisted of
6 ending the protest action on 18th September 2013, the
7 boarding of the Arctic Sunrise on 19th September 2013,
8 and the subsequent initiation of judicial proceedings
9 against the Arctic Sunrise and the persons on board. In
10 part, there was no proper legal basis for these actions,
11 and the way in which these actions were carried out also
12 raises serious questions of international law.
13 Mr President, members of the Tribunal, the present
14 proceedings brought against the Russian Federation were
15 not initiated lightly. The right to protest at sea is
16 not unrestricted, we are well aware of that. The
17 Netherlands recognises the legitimate interests of
18 coastal states to exercise sovereign rights in their
19 maritime zones. The Netherlands also recognises that
20 a coastal state may need to resort to law enforcement
21 measures to end a protest action in order to protect its
22 interests. The Netherlands has done so itself, as will
23 be illustrated by the Co-Agent later this morning.
24 The Netherlands cannot, however, acquiesce in
25 unreasonable response actions. This, we submit, is what

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09:45 1 happened in the present case. The actions taken against
2 the Arctic Sunrise and the persons on board fall outside
3 any margin of discretion the Russian Federation may have
4 had to respond to the protest action of
5 18th September 2013.
6 Mr President, our oral submissions are structured as
7 follows. After my introduction, counsel will discuss
8 the balancing of rights and duties of coastal states and
9 flag states in an exclusive economic zone.
10 In the second part of this morning, the Co-Agent
11 will discuss whether and how conflicts between
12 legitimate activities at sea can be reconciled.
13 In the afternoon session, we plan to give a short
14 update of the relevant facts, immediately followed by
15 the examination of the witnesses.
16 At this juncture, I would like to briefly go back to
17 the events leading up to the initiation of this
18 arbitration. On 18th September 2013 the Russian
19 Federation informed the Netherlands by diplomatic note
20 that the decision had been taken to seize the Arctic
21 Sunrise. In the following weeks, the Netherlands
22 requested the Russian Federation on several occasions to
23 release the vessel and the persons on board. As set out
24 in the memorial between 19th and 29th September 2013,
25 the Netherlands sent five diplomatic notes requesting

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09:46 1 information and expressing its concern about the
2 situation that had arisen.
3 In addition to these diplomatic notes, consultations
4 took place at the level of Ministers, Ambassadors and
5 other senior officials. The Ministers of Foreign
6 Affairs of the Kingdom of the Netherlands and the
7 Russian Federation discussed the dispute twice in this
8 period, namely on 25th September and 1st October.
9 On 25th September 2013, my government informed
10 parliament that, at different levels and on different
11 occasions, the Russian Federation had been requested to
12 provide information on the events of 18th and
13 19th September. The government indicated to parliament
14 that, in order for it to be able to decide what steps
15 would be taken next, it was necessary to first obtain
16 this information from the Russian Federation. Among the
17 steps indicated was the possible initiation of judicial
18 proceedings under the Law of the Sea Convention.
19 On 1st October 2013, the Russian Federation replied
20 to the Netherlands' diplomatic note of 23rd September of
21 that year. On the morning of 3rd October, the
22 Netherlands informed the Ambassador of the Russian
23 Federation to the Netherlands that it was considering
24 submitting the dispute to arbitration on 4th October at
25 the latest. Later that day, the Netherlands reiterated

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09:48 1 in a diplomatic note that it was considering initiating
2 arbitration as soon as feasible. The next day, the
3 Netherlands submitted the dispute to the arbitral
4 procedure provided for in Annex VII of the Convention.
5 In our Statement of Claim, the Netherlands requested
6 the Russian Federation to immediately release the ship
7 and the persons on board. The Netherlands indicated
8 that, if the Russian Federation would not meet this
9 request, it would ask the International Tribunal for the
10 Law of the Sea to prescribe provisional measure to this
11 effect.
12 Then, on 21st October 2013, the Netherlands indeed
13 asked the Tribunal for the Law of the Sea to order
14 provisional measures to the effect that the Russian
15 Federation immediately release the vessel and the
16 persons on board.
17 On 22nd November 2013, the Tribunal adopted
18 provisional measures prescribing that the Russian
19 Federation was to immediately release the Arctic Sunrise
20 and all persons who had been detained upon the posting
21 of a bond or other financial security by the Netherlands
22 in the amount of €3.6 million. Upon the posing of such
23 bond or financial security, the Russian Federation was
24 to ensure that the Arctic Sunrise and all persons who
25 had been detained were allowed to leave the territory

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09:50 1 and maritime areas under the jurisdiction of the Russian
2 Federation.
3 On 18th November 2013, and the following days,
4 shortly before the Tribunal issued its order, most of
5 the 30 individuals were granted bail. By 2nd December,
6 all of them were released on bail. And by
7 29th December, they were finally able to leave the
8 territory of the Russian Federation.
9 Six months later, on 6th June 2014, the Arctic
10 Sunrise was formally released. On 1st August, the ship
11 was at last able to leave the territory and maritime
12 zones of the Russian Federation.
13 Mr President, members of the Tribunal, the release
14 of the Arctic Sunrise and the persons who had been on
15 board, as well as their return to their respective home
16 countries, did not provide an adequate resolution of the
17 dispute. Not all claims, as reflected in the Statement
18 of Claim, had been satisfied by the Russian Federation.
19 Furthermore, since the initiation of this
20 arbitration, on 4th October 2013, the Russian Federation
21 has aggravated and extended the dispute. It did so in
22 particular by bringing serious criminal charges against
23 the persons on board the Arctic Sunrise, and by keeping
24 them in pre-trial detention for an extended period of
25 time. These acts of the Russian Federation had

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09:51 1 a chilling effect on the exercise of the freedom of
2 protest at sea. For this reason, the Netherlands
3 submitted an additional claim related to the conduct of
4 the Russian Federation with respect to the exercise of
5 the freedom of protest at sea.
6 The Netherlands also submitted second and third
7 additional claims. The second claim relates to the
8 failure of the Russian Federation to timely and fully
9 implement the order of the Law of the Sea Tribunal. The
10 third claim relates to the non-participation of the
11 Russian Federation in the present arbitral procedure.
12 The three additional claims all arose from conduct
13 of the Russian Federation that occurred subsequent to
14 the submission of the dispute to arbitration on
15 4th October 2013.
16 Mr President, members of the Tribunal, I finally
17 wish to reiterate once again that the Kingdom of the
18 Netherlands continues to regret that the Russian
19 Federation does not participate in these proceedings.
20 In this respect, my government welcomed your award on
21 jurisdiction of 26th November of last year. We had
22 hoped that the Russian Federation would reconsider its
23 position, but alas it has decided otherwise and is still
24 absent.
25 Mr President, members of the Tribunal, at this point

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09:53 1 may I request that you call on Mr Erik Franckx, our
2 counsel, who will discuss the balancing of rights and
3 duties of coastal states and flag states in an exclusive
4 economic zone. Thank you.
5 MR FRANCKX: Mr President, members of the Tribunal, it is
6 an honour for me to appear before you on behalf of the
7 Kingdom of the Netherlands. My task this morning leads
8 me to explore an important facet of the exclusive
9 economic zone, that is to say the balancing of competing
10 rights and duties.
11 The United Nations Convention on the Law of the Sea
12 signified the arrival in treaty form of a new and
13 important maritime area. Neither a belt falling under
14 state sovereignty, nor a water expanse fully beyond
15 states' jurisdictional reach, the exclusive economic
16 zone is an area in which the coastal state and other
17 states enjoy a number of rights and perform several
18 duties.
19 The legal positions of these two groups of states
20 are carefully balanced through the works of a fully
21 fledged regime fleshed out in Part V of the Convention.
22 While Part V provides a roadmap for coastal and other
23 states in general terms, each individual case of
24 contending rights and duties must be assessed on its own
25 merits.

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09:54 1 Mr President, members of the Tribunal, it is
2 precisely this balance that I ask you to strike in
3 weighing the legal positions of the Kingdom of the
4 Netherlands and the Russian Federation in the latter's
5 exclusive economic zone. I will demonstrate that in the
6 case before us, the scale of the balance tips in favour
7 of the Netherlands.
8 My address follows a three-part structure, setting
9 the stage for this balancing act. First, I will outline
10 the rights and duties of the Netherlands in the
11 exclusive economic zone of the Russian Federation. This
12 will be followed by a refutation of certain arguments
13 the Russian Federation has invoked to justify its
14 actions against Arctic Sunrise, and the persons on
15 board. I will conclude that the measures adopted by the
16 Russian Federation exceed what the balance permits.
17 With your indulgence, I propose to shed some light
18 on the rights of the Netherlands as a flag state in the
19 Russian exclusive economic zone, these rights under the
20 Convention and customary international law for which the
21 Russian Federation is required to have due regard in
22 accordance with Article 56.2 of the Convention.
23 As a ship flying the Netherlands flag, the Arctic
24 Sunrise was subject to the Netherlands' exclusive
25 jurisdiction. The exclusive jurisdiction of a flag

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09:56 1 state is a cornerstone of the Law of the Sea. This rule
2 of customary international law stands on firm footing in
3 the Convention. Article 92.1 of the Convention
4 enshrines exclusive flag state jurisdiction in the high
5 seas, while Article 58.2 extends this rule to the
6 exclusive economic zones.
7 I should stress that the exclusive flag state
8 jurisdiction is comprehensive, covering both legislative
9 and enforcement jurisdiction over the ship and
10 everything on it.
11 In addition to exclusive jurisdiction, the
12 Netherlands also enjoyed freedom of navigation, and
13 other internationally lawful uses of the sea related to
14 this freedom, in respect of the Arctic Sunrise and the
15 persons on board.
16 There can be no doubt as to the applicability of
17 this freedom and these uses in the exclusive economic
18 zone as a result of Article 58.1, with its further
19 reference to Article 87 of the Convention. The term
20 "other internationally lawful uses of the sea" warrants
21 some pause. Its open-ended formulation encompasses
22 a wide range of permitted uses of the sea. Among the
23 many potential uses covered by this term, let me
24 emphasise one in particular -- the freedom to protest at
25 sea -- for it is an essential consideration in this

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09:58 1 current case.
2 Suffice it to say that the Arctic Sunrise and all
3 persons on board were protected from third-state
4 interference by the legal provisions I have listed, and
5 they were so throughout the duration of their presence
6 in the Russian exclusive economic zone.
7 Exclusive flag state jurisdiction, coupled with
8 freedom of navigation, form a solid shield against
9 interference by third states. Such is their combined
10 effect that all states other than the flag state are
11 barred from exercising prescriptive and enforcement
12 jurisdiction over a ship.
13 This general prohibitive rule has long been a pillar
14 of the Law of the Sea and has maintained its resilience
15 to the present. Save in certain limited instances, only
16 the prior consent of the flag state can enable a coastal
17 state to exercise lawful jurisdiction over a ship.
18 Allow me to restate the factual record on this
19 crucial point: the Netherlands did not authorise the
20 Russian Federation to take action against the Arctic
21 Sunrise. Only an exception to the exclusive flag state
22 jurisdiction could consequently justify the Russian
23 Federation's law enforcement measures against the Arctic
24 Sunrise and the persons on board. Shortly I will
25 demonstrate that the path of exceptions is an untenable

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09:59 1 one for the Russian Federation to follow.
2 It would be remiss of me not to mention the
3 obligations that the Netherlands was subject to in the
4 Russian exclusive economic zone. Indeed, the corollary
5 of rights are duties. In the same vein, the corollary
6 of the Netherlands' rights in respect of the Arctic
7 Sunrise is the due regard obligation it owes to the
8 Russian Federation in the exercise of its rights and
9 duties.
10 This much can be deduced from Article 58.3 of the
11 Convention, which also requires the Netherlands to
12 comply with the Russian Federation's laws and
13 regulations. This duty of compliance with municipal law
14 only concerns law and regulations that are in accordance
15 with the Convention and other rules of international
16 law.
17 Mr President, members of the Tribunal, let me come
18 to the second part of my presentation. As I had alluded
19 to a few minutes ago, exclusive flag state jurisdiction
20 is a paramount rule, but it is not without exceptions.
21 In specific circumstances, a coastal state may take law
22 enforcement actions against a foreign-flagged ship
23 without the flag state's prior consent. The Russian
24 Federation has relied on these exceptions in an effort
25 to defend its action against the Arctic Sunrise and the

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10:01 1 persons on board. These are assertions which we have
2 refuted at length in the memorial. We have also
3 ventured to explain why other exceptions to exclusive
4 flag state jurisdiction cannot apply in the present
5 case.
6 I believe it would be somewhat unnecessary to
7 revisit all of these arguments before your Tribunal
8 today. Therefore, mindful of the time allotted to me,
9 I propose focusing on the three most relevant arguments.
10 These are in turn: first, Russian jurisdiction over the
11 Prirazlomnaya; two, the right of hot pursuit; and three,
12 the right of visit on reasonable suspicion of piracy.
13 Before embarking on this discussion, I would draw
14 your attention to two basic considerations to be borne
15 in mind when considering exceptions to flag state
16 jurisdiction. The first is that these circumstances are
17 of an exceptional nature, and should be construed
18 narrowly.
19 Secondly, any law enforcement measures taken in
20 pursuance thereof must be in accordance with the
21 Convention and other applicable rules of international
22 law. As the Agent indicated in her introduction,
23 a three-pronged test applies to law enforcement actions
24 under the Convention.
25 First, the response action to prevent or end the

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10:02 1 protest action must have a legal basis in international
2 law.
3 Second, such response action must be carried out in
4 accordance with international law.
5 Third, any subsequent law enforcement actions
6 related thereto must be in accordance with international
7 law.
8 Turning my focus to the requirement that law
9 enforcement actions must be carried out in accordance
10 with international law, I would like to recall the M/V
11 "Virginia G" case, in which the International Tribunal
12 on the Law of the Sea observed that:
13 "The principle of reasonableness applies generally
14 to enforcement measures under Article 73 of the
15 Convention. It takes the position that, in applying
16 enforcement measures, due regard has to be paid to the
17 particular circumstances of the case and the gravity of
18 the violation."
19 As stated in our memorial, this principle of
20 reasonableness should not only be applied under
21 Article 73 of the Convention, but to all law enforcement
22 actions under the Convention.
23 When the response action involves the use of force,
24 the International Tribunal on the Law of the Sea has
25 held that such force must be reasonable and necessary.

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10:04 1 In the M/V "Saiga" (No. 2) case, it observed that:
2 "The use of force must be avoided as far as
3 possible; and where force is unavoidable, it must not go
4 beyond what is reasonable and necessary in the
5 circumstances. Considerations of humanity must apply in
6 the Law of the Sea as they do in other areas of
7 international law."
8 Although this passage does not make explicit
9 reference to the principle of proportionality, we submit
10 that it is encompassed by the principle of
11 reasonableness. Where the use of force in law
12 enforcement is permitted under the Convention, it is
13 subject to the customary law principles of necessity and
14 proportionality.
15 Mr President, members of the Tribunal, I will start
16 by addressing the implications of Russian jurisdiction
17 over the Prirazlomnaya, as the Russian Federation has
18 given prominence to this argument.
19 The dispute submitted before your Tribunal is not
20 about the natural resources of the Russian Federation in
21 its exclusive economic zone or on its continental shelf.
22 The Netherlands acknowledges the Russian Federation's
23 exclusive rights to construct, authorise and regulate
24 the construction, operation and use of the
25 Prirazlomnaya. Articles 56, 60 and 80 of the Convention

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10:05 1 provide ample foundation for this purpose.
2 The Netherlands further recognises the safety zone
3 around the Prirazlomnaya up until a breadth of
4 500 metres, as Article 60.5 of the Convention and
5 present applicable international standards permit. The
6 memorial develops in more detail why extended safety
7 zones beyond the 500-metre limit lacked validity at the
8 time of the events.
9 Where then does the source of contention lie? The
10 crux of the disagreement between the parties relates to
11 Article 60, paragraphs 2 and 4, of the Convention.
12 Paragraph 2 allows the Russian Federation to take
13 measures derived from the jurisdiction it has over the
14 Prirazlomnaya. Paragraph 4 enables the Russian
15 Federation to take appropriate measures in the 500-metre
16 safety zone around the Prirazlomnaya to ensure the
17 safety both of navigation and of the platform.
18 The position of the Netherlands in this respect is
19 straightforward: the law enforcement powers of the
20 Russian Federation deriving from Article 60,
21 paragraphs 2 and 4, cannot serve as a basis for boarding
22 the Arctic Sunrise.
23 Allow me to elaborate on that point. Nobody was
24 formally arrested on the Prirazlomnaya, or in the safety
25 zone around it. This holds true for Mrs Saarela and

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10:07 1 Mr Weber, as well as the 28 other persons on board the
2 Arctic Sunrise. Following their unsuccessful attempt to
3 climb the outside structure of the Prirazlomnaya,
4 Ms Saarela and Mr Weber were taken on board the Russian
5 coastguard vessel Ladoga as guests. "Guests": this is
6 not the word of the Netherlands, but of the spokesperson
7 of the Russian coastguard, an organ whose conduct is
8 attributable to the Russian Federation.
9 This means that, in the present case, Article 60.2
10 does not come into play. The detention of Mrs Saarela
11 and Mr Weber by the Russian authorities only commenced
12 upon their return to the Arctic Sunrise. This has
13 a consequence: that Article 60.4 cannot be invoked
14 either with respect to the Arctic Sunrise, which was
15 located outside of the safety zone when it was boarded.
16 I should note that your Tribunal will be able to
17 take cognisance of Mrs Saarela's testimony of the facts
18 via videoconferencing tomorrow.
19 Should your Tribunal nevertheless conclude that
20 Ms Saarela and Mr Weber were arrested on the
21 Prirazlomnaya or in the safety zone around it, the
22 Netherlands argues that the actions of the Russian
23 Federation were contrary to the Convention.
24 Measures taken in pursuance of Article 60.4 of the
25 Convention must be "appropriate". A coastal state has

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10:09 1 some discretion to determine what such appropriate
2 measures may entail. However, this margin of
3 appreciation is: first, qualified by the principles of
4 necessity and proportionality; second, limited to the
5 pursuit of legitimate concerns; and third, subject to
6 international judicial review.
7 The peaceful protest did not at any time threaten
8 the safety of the Prirazlomnaya or navigation in the
9 safety zone. 30 persons were subjected to serious
10 criminal charges of piracy and hooliganism, and kept in
11 pre-trial detention for an extended period of time.
12 I submit to you the following question: can the Russian
13 response to the activities of the Arctic Sunrise and the
14 persons on board be considered as "appropriate", in the
15 sense of the Convention, or "reasonable", as required by
16 the International Tribunal for the Law of the Sea?
17 Mr President, members of the Tribunal, under
18 Article 111 of the Convention, a state may engage in hot
19 pursuit of a foreign ship when it has good reason to
20 believe that the ship, or one of its boats or other
21 craft working as a team and using the ship pursued as
22 a mother ship, has violated the laws and regulations of
23 that state. Those laws and regulations include rules
24 with respect to safety zones around artificial islands,
25 installations and structures.

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10:10 1 With your indulgence, I propose to take a closer
2 look at the safety zone regulations of the Russian
3 Federation. Nine days before the boarding of the Arctic
4 Sunrise, the Ministry of Transport of the Russian
5 Federation enacted an order entitled:
6 "On the determination of measures for securing the
7 safety of navigation in safety zones established around
8 artificial islands, installations and structures on the
9 continental shelf of the Russian Federation."
10 It prohibits all navigation in the safety zone,
11 except for a few types of vessels to which the Arctic
12 Sunrise did not belong. This order was registered with
13 the Ministry of Justice eleven days after the boarding,
14 and published in Rossiiskaia Gazeta another eleven days
15 later.
16 New legislative initiatives were launched in
17 May 2014 because the legislator had not immediately
18 provided penalties for non-compliance. A draft law
19 providing such penalties was provided on first reading,
20 and adopted during the month of September 2014, but not
21 followed up on afterwards.
22 On 29th January 2015, meaning only a couple of days
23 ago, a new proposal was discussed in a Committee of the
24 Duma, this time with much higher monetary sanctions, and
25 including the possible confiscation of the vessel.

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10:12 1 In providing this overview, my intention is not to
2 scrutinise the legality of such provisions and
3 accompanying penalties; rather, I would draw your
4 Tribunal's attention to the general picture that emerges
5 from the Parliamentary discussions. It is quite
6 apparent that safety zone regulations are being
7 developed in order to fill the lacunae existing at the
8 time of the Arctic Sunrise incident.
9 The implications of this finding are crucial to our
10 case. When the Russian Federation boarded the Arctic
11 Sunrise, it appears to have had no legislation in place
12 imposing sanctions if ships did not obey Russian safety
13 zone regulations. This omission calls into question
14 whether the Russian Federation had the legal basis to
15 even commence hot pursuit.
16 Even if the coastal state had good reasons to
17 believe that its laws and regulations had been violated,
18 its exercise of hot pursuit must comply with a set of
19 cumulative conditions. The Russian Federation failed to
20 meet a number of these essential requirements in
21 relation to the Arctic Sunrise.
22 First, I wish to emphasise that Article 111.4
23 requires the pursuing state to issue an order to stop
24 when the ship, boat or craft is within the relevant
25 maritime zone. In our case, the relevant maritime zone

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10:13 1 is the safety zone around the Prirazlomnaya. The facts
2 show that, by the time the initial order to stop was
3 given to the Arctic Sunrise, the rigid hull inflatable
4 boats -- or "RHIBs" -- of the Arctic Sunrise must be
5 deemed to have been well outside the safety zone of
6 500 metres around the Prirazlomnaya.
7 I should add that this signal to stop must be visual
8 or auditory. The initial order, over the wireless, was
9 given when the Ladoga was close to the Prirazlomnaya,
10 whereas the Arctic Sunrise was approximately three
11 nautical miles away. This casts doubt about whether
12 this order constitutes a signal "given at a distance
13 which enables it to be seen or heard by the foreign
14 ship", implying the proximity of the vessels concerned.
15 Such a visual signal was given at a later stage, it
16 is true. However, by that time, it was certain that
17 none of the RHIBs of the Arctic Sunrise were in the
18 500-metre safety zone.
19 Third, an exercise of the right of hot pursuit is
20 only lawful if uninterrupted. There are several
21 indications that the pursuit was in fact interrupted.
22 Approximately 36 hours had passed between the issuance
23 of the radio signal for the Arctic Sunrise to stop by
24 the Ladoga on 18th September 2013 at 6.20, and the
25 boarding of the Arctic Sunrise by a helicopter on

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10:15 1 19th September 2013 at 18.26.
2 Second, on 19th September 2013, at 11.22, the Ladoga
3 and the Arctic Sunrise entered into a discussion
4 concerning the potential release of the two persons who
5 had climbed the outside structure of the Prirazlomnaya.
6 Third, at 15.55, the Ladoga informed the Arctic
7 Sunrise that it was awaiting instructions from its
8 superiors regarding the transfer of the above-mentioned
9 persons.
10 All these elements point to a wavering stance on the
11 part of the Russian authorities, which cannot be
12 reconciled with the concept of a hot pursuit.
13 Fourth, the anonymity of the boarding party and the
14 aircraft used to pursue the Arctic Sunrise amounts to
15 a violation of the identification requirement under
16 Article 111.5 of the Convention, and also of customary
17 international law. The use of non-identified vehicles
18 and personnel for exercising and enforcement
19 jurisdiction is a worrisome development in contemporary
20 state practice that clearly surpasses the mere facts of
21 the present case. The importance of this particular
22 legal requirement for hot pursuit can hardly be
23 overestimated, and I would therefore request that your
24 Tribunal addresses this concern.
25 Mr President, members of the Tribunal, the right of

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10:17 1 visit, enshrined in Article 110 of the Convention,
2 offers a legal basis for boarding a foreign-flagged
3 ship. This applies in the exclusive economic zone by
4 virtue of Article 58.2 of the Convention, in so far as
5 it is not incompatible with Part V of the Convention.
6 This right of visit may only be exercised when there
7 is reasonable ground for suspecting that a foreign ship
8 has engaged in one of the activities listed in
9 sub-paragraphs (a) to (e) of Article 110. Most of the
10 grounds listed in this Article are not remotely relevant
11 to the facts of the present case and need not be
12 considered any further.
13 There is, however, one ground I should submit to
14 your consideration: piracy. Piracy is a serious crime
15 under international law of nations, and has been for
16 centuries. Any allegations of its commission cannot be
17 taken lightly. In view of the piracy allegations made
18 in connection with the protests at sea, the Netherlands
19 believes that the Tribunal would make an important
20 contribution by dealing with this issue.
21 Allegations of piracy were first made on
22 20th September 2013 by the Committee of Investigation of
23 the Russian Federation. Subsequently, on the grounds of
24 commission of the offence of piracy under Russian
25 domestic law, criminal proceedings were instituted

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10:19 1 against the persons on board the Arctic Sunrise. This
2 was communicated to the Netherlands in the Russian
3 diplomatic note of 1st October 2013.
4 I will limit my review of the crime of piracy under
5 international law as laid down in Article 101 of the
6 Convention, which reflects customary international law.
7 In several respects, the actions of the persons on board
8 the Arctic Sunrise related to the Prirazlomnaya fell far
9 outside the scope of acts intended by Article 101.
10 The first essential element of an act of piracy is
11 violence. Acts of violence cannot be ascribed to the
12 persons involved in the protest of the Prirazlomnaya.
13 At no point during the events of 18th and 19th September
14 2013 were any of the individuals armed; nor did any of
15 them resort to acts of violence against persons or
16 property.
17 A second element of the international crime of
18 piracy is that the acts in question must be committed
19 for private ends. The Arctic Sunrise is a ship
20 chartered by Greenpeace International,
21 a non-governmental organisation dedicated to the
22 protection and conservation of the environment. The
23 peaceful protests of the persons on board the Arctic
24 Sunrise, which commenced on 18th September 2013 in the
25 exclusive economic zone of the Russian Federation, was

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10:20 1 part of a campaign: "Save the Arctic". It is clear from
2 these goals that the persons on board the Arctic Sunrise
3 were acting out of their environmental beliefs, and that
4 the peaceful protest against the oil-drilling activities
5 of the Prirazlomnaya was politically motivated. Such
6 motivated acts lie outside the ambit of the "private
7 ends" requirement.
8 Finally, Article 101 of the Convention establishes
9 that an act constitutes piracy only if directed against
10 a ship, an aircraft, or against a person or property on
11 board such ship or aircraft. The facts show that this
12 two-vessel requirement was not met. Whereas the Arctic
13 Sunrise qualifies as a ship, the Prirazlomnaya does not.
14 At the time of the events giving rise to the current
15 dispute, the Prirazlomnaya was an offshore ice-resistant
16 fixed platform located on the continental shelf of the
17 Russian Federation.
18 It is in this respect noteworthy that a recent
19 correction was made to the caution note in the Russian
20 notices to mariners relating to the Prirazlomnaya of
21 2014. This replacement of the 2011 version, applicable
22 to the facts of the present case, specifically adds the
23 word "Stazionarnaya" to the description of the
24 Prirazlomnaya. This word can be translated as "fixed".
25 However, the English version of this 2014 issue of the

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10:22 1 notices to mariners remains identical, without any
2 explicit reference to the fixed nature of the
3 Prirazlomnaya.
4 For all these reasons, the claims that persons on
5 board the Arctic Sunrise had committed or could
6 reasonably have been suspected of having committed
7 piracy is entirely without merit.
8 As set out in our memorial, no other grounds apply
9 in the present case which could provide for an exception
10 to the general prohibitive rule protecting ships from
11 interference by states other than the flag state.
12 Mr President, members of the Tribunal, the protest
13 actions on 18th September 2013 consisted of a failed
14 attempt to deploy a survival capsule, and an aborted
15 attempt of two persons to scale the Prirazlomnaya. In
16 the course of these actions, neither the RHIBs nor the
17 persons on board the RHIBs at any point posed a threat
18 to the safety of the Prirazlomnaya, or the navigation in
19 the safety zone around it.
20 As soon as the persons who had climbed the outside
21 structure of the Prirazlomnaya had been removed, and all
22 RHIBs from the Arctic Sunrise had moved away from the
23 direct vicinity of the platform, any potential negative
24 impact on safety, public order or interest of the
25 operator of the platform had been averted.

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10:24 1 In response to the protest action, the Russian
2 Federation failed to strike a reasonable balance between
3 the rights and obligations of the flag state and its own
4 as a coastal state.
5 First, the Russian Federation ended the protest
6 action, following which it boarded the Arctic Sunrise.
7 Although it may have acted within its rights to end the
8 protest action, the boarding of the Arctic Sunrise did
9 not have a legal basis.
10 Second, the boarding was not carried out in
11 accordance with international law. In general, law
12 enforcement actions must be reasonable. Mr President,
13 members of the Tribunal, we have not argued in our
14 memorial that the force used by the Russian Federation
15 in its law enforcement action to end the protest at the
16 Prirazlomnaya, or the boarding of the Arctic Sunrise,
17 was unreasonable, not necessary or not proportional.
18 We are anxious about the reports on the use of
19 knives to damage the RHIBs of the Arctic Sunrise, and
20 the threat of use of force against the Arctic Sunrise
21 itself. Irrespective of evidence of such allegations,
22 we have refrained from formulating a claim to the effect
23 that the use of force by the Russian Federation was
24 unlawful.
25 However, the boarding was not carried out in

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10:25 1 accordance with international law, as it failed to meet
2 the requirements of Article 111.5 of the Convention.
3 Third, the subsequent law enforcement actions taken
4 by the Russian Federation in respect of the persons on
5 board the Arctic Sunrise constituted an interference
6 with the freedom to protest at sea. Even if
7 interference pursued a legitimate aim, the serious
8 charges of piracy and hooliganism brought against the
9 persons on board, and their extended period of pre-trial
10 detention, do not meet the requirements of necessity and
11 proportionality in this context. Therefore, they cannot
12 be justified as reasonable law enforcement actions taken
13 in the exercise of Russian jurisdiction over the
14 Prirazlomnaya.
15 Mr President, members of the Tribunal, this brings
16 me to the end of my intervention. I thank you for your
17 kind attention.
18 THE PRESIDENT: Thank you very much. What do you want us to
19 do? Because the schedule provides for the morning break
20 at 11.00. What do you propose that we do, between now
21 and 11.00?
22 PROFESSOR LIJNZAAD: Thank you. Of course, we are in your
23 hands. The next speaker is going to be the Co-Agent.
24 I think there might be some benefit in having him do his
25 whole presentation in one go, rather than have the

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10:27 1 coffee break in the middle, but then I am not sure about
2 the coffee arrangements. It is really in your hands,
3 sir.
4 THE PRESIDENT: What I think we will do is have the break
5 now, and then come back at 11.00 exactly so that you can
6 then have the Co-Agent make the presentation completely.
7 On that basis then, I will suggest that we break now and
8 resume at 11.00.
9 (10.28 am)
10 (Short break)
11 (11.00 am)
12 THE PRESIDENT: I will give the floor to the Co-Agent.
13 Thank you.
14 PROFESSOR LEFEBER: Mr President, members of the Tribunal,
15 it is a true honour for me to appear again before this
16 Tribunal representing the Kingdom of the Netherlands.
17 As the Agent indicated, in this part of our oral
18 submissions, I will address whether and how conflicts
19 between legitimate activities at sea can be reconciled.
20 Staging a protest action is a way to exercise
21 freedom of expression. One may have reservations as
22 regards a particular manner in which this freedom is
23 exercised, but such reservations may never be a reason
24 to take the law into one's own hands.
25 Such reservations may also not be a reason for

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11:03 1 a state to take law enforcement actions that have
2 a chilling effect on the exercise of this freedom. In
3 our memorial, we have demonstrated that the Russian law
4 enforcement actions subsequent to the boarding of the
5 Arctic Sunrise had such chilling effect, and were not in
6 accordance with international law.
7 In our oral submissions, we will demonstrate that
8 a coastal state may respond to protest actions in its
9 exclusive economic zone, provided that the three-pronged
10 test referred to by the Agent and counsel is met: first,
11 the response action to prevent or end the protest action
12 has a legal basis in international law; second, such
13 response action is carried out in accordance with
14 international law; and third, any subsequent law
15 enforcement actions related thereto are in accordance
16 with international law.
17 Mr President, members of the Tribunal, the Russian
18 Federation, like the Netherlands, is a flag state; and
19 the Netherlands, like the Russian Federation, is
20 a coastal state. In our memorial, we have focused on
21 the rights pertaining to the Netherlands as a flag
22 state. While developing our arguments, we were
23 conscious all the time of our rights as a coastal state.
24 We asked ourselves what we would have done if we had
25 been in the position of the Russian Federation, and we

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11:05 1 also asked ourselves what we have done in situations
2 that are comparable to the protest action of the Arctic
3 Sunrise against the Prirazlomnaya.
4 Today, we would like to share with you examples of
5 our recent practice in responding to demonstrations at
6 sea. Mr President, members of the Tribunal, I will
7 start with examples of my government's response to
8 recent protest actions by Greenpeace off the coast of
9 the Netherlands and in Dutch ports. This will be
10 followed by examples of our practice as flag state
11 [towards] vessels that are used by Greenpeace to stage
12 protest actions.
13 The first example is a protest action in the
14 exclusive economic zone of the Netherlands. In
15 June 2011, Greenpeace placed 27 stones on the bottom of
16 the Klaverbank. Wooden seahorses were attached to three
17 of these stones. The stones are similar to stones that
18 naturally occur in the area, and did not pose a threat
19 to the navigation or the environment.
20 The Klaverbank is an area in the North Sea with
21 a rich diversity in sedentary species. The purpose of
22 the protest action was to raise public awareness of the
23 opinion that the Netherlands does not adequately protect
24 the Klaverbank. Greenpeace was especially concerned
25 about damage caused by bottom trawling.

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11:06 1 The Minister for the Environment was of the view
2 that the placement of the stones on the bottom of the
3 Klaverbank amounted to dumping in violation of the Water
4 Act. Against the advice of an administrative review
5 committee, the Minister ordered Greenpeace not to repeat
6 such actions in the territorial sea and the exclusive
7 economic zone of the Netherlands. A penalty was imposed
8 in the event of non-compliance with this compulsory
9 measure.
10 Greenpeace applied for judicial review of this
11 decision and, on appeal, the Council of State decided
12 that the placement of the stones did not amount to
13 dumping and was not in violation of the Water Act. In
14 its reasoning, the Council of State considered relevant:
15 first, the harmless nature of the materials; second, the
16 fact that Greenpeace, for reasons of safety, had passed
17 on the exact co-ordinates of the stones to the competent
18 authorities; and third, the fact that Greenpeace had
19 made public the purpose of the protest action.
20 The case of the Klaverbank is an example of
21 a response to a protest action without the use of force.
22 To prevent the recurrence of similar protest actions,
23 the Minister adopted an administrative law enforcement
24 measure that was subject to judicial review. Due to the
25 particular circumstances of this case, the state lost.

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11:08 1 Different circumstances might have led to a different
2 result.
3 As for the stones, they are still standing on the
4 bottom of the Klaverbank, but the wooden seahorses have
5 gone with the wind.
6 Other recent examples involve protest actions in
7 Dutch ports. In May of last year, three vessels of
8 Greenpeace tried to delay the arrival of a Russian oil
9 tanker in the Port of Rotterdam, where it was scheduled
10 to discharge its cargo. Incidentally, the cargo
11 happened to be oil from the Prirazlomnaya.
12 Greenpeace activists ignored traffic instructions
13 from the port authorities, after which the police
14 intervened and ended the protest action. The police
15 boarded one of the vessels, the Rainbow Warrior III, and
16 ordered it to move away from the berth and allow the
17 tanker to dock. Several activists were arrested and
18 detained for approximately six hours.
19 The captain of the vessel, and a driver of one of
20 the Greenpeace RHIBs involved in the protest action,
21 were charged for non-compliance with traffic orders.
22 The public prosecutor is currently considering whether
23 to prosecute the captain and the driver on the basis of
24 these charges.
25 Later that month, there was another protest action

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11:09 1 in the Port of IJmuiden. Greenpeace sought to delay the
2 departure of a jack-up drilling rig under contract of
3 Gazprom. Divers chained the rig to the quay. After
4 five hours, the police made an end to the protest
5 action, seized property of the activists, and detained
6 several protestors, but not for more than six hours.
7 The public prosecutor has made an offer not to further
8 prosecute the offence after the payment of a penalty.
9 The protest actions in the Port of Rotterdam and the
10 Port of IJmuiden took place in internal waters. The
11 response actions illustrate that the Dutch authorities
12 also intervene to prevent or end protest actions if the
13 circumstances so warrant. In these cases, the legal
14 basis for the response action is derived from
15 territorial sovereignty. The subsequent law enforcement
16 actions were reasonable and cannot be said to have had
17 a chilling effect on the exercise of the freedom of
18 expression.
19 Mr President, members of the Tribunal, we also
20 reviewed our practice as a flag state of vessels that
21 are used by non-governmental organisations to stage
22 protest actions.
23 The Netherlands has a long history of protest
24 actions conducted by non-governmental organisations
25 using vessels flying the flag of the Netherlands. These

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11:11 1 organisations include Greenpeace, Sea Shepherd
2 Conservation Society and Women on Waves. With your
3 permission, I will limit myself to the actions of
4 Greenpeace.
5 Greenpeace has four ships flying the flag of the
6 Netherlands: the Rainbow Warrior III, the Esperanza, the
7 Argus and the Arctic Sunrise. The objective of
8 Greenpeace, as stated on its website, is:
9 "To ensure the ability of the earth to nurture life
10 in all its diversity."
11 In order to achieve these goals, the organisation
12 uses:
13 "Non-violent, creative confrontation to expose
14 global environmental problems, and to force the
15 solutions which are essential to a green and peaceful
16 future."
17 I will now turn to recent examples of protest
18 actions of Greenpeace involving such "non-violent,
19 creative confrontations" in the exclusive economic zones
20 of other states.
21 The first example is the protest action of the
22 Arctic Sunrise in the exclusive economic zone of Spain.
23 In November 2014, the Arctic Sunrise conducted a protest
24 action near Lanzarote and Fuerteventura in the
25 Canary Islands against oil exploration in the exclusive

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11:13 1 economic zone of Spain.
2 A mobile offshore drilling unit, the Rowan
3 Renaissance, was on its way to a drilling location.
4 Spain had declared a safety zone of one nautical mile
5 around the drilling location. The mobile offshore
6 drilling unit, flying the flag of the Marshall Islands,
7 was accompanied by the Spanish Navy. The protest action
8 involved the occupation of the drilling location by the
9 Arctic Sunrise, and the despatch of RHIBs to impede the
10 advance of the Rowan Renaissance to the drilling
11 location.
12 The Arctic Sunrise positioned itself within 500
13 metres from the drilling location, but the actions of
14 the RHIBs took place more than 500 metres from the
15 drilling location, and even outside the safety zone of
16 one nautical mile declared by Spain.
17 The Spanish Navy deployed several RHIBs that ended
18 the protest action with the use of force in a manner
19 that resulted in injury to one of the Greenpeace
20 activists and damage to one of the Greenpeace RHIBs.
21 The Greenpeace RHIBs returned to the Arctic Sunrise with
22 the injured activist. To enable the provision of
23 necessary medical care for the injured activist, the
24 Arctic Sunrise abandoned the drilling location and
25 docked in the Port of Lanzarote. Thus, the Arctic

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11:14 1 Sunrise voluntarily submitted itself to the jurisdiction
2 of Spain.
3 The Spanish authorities arrested the Arctic Sunrise
4 with the possibility of release on bail, and judicial
5 proceedings were initiated against the owner and captain
6 of the vessel. But the persons on board were not
7 detained. By the end of the month, the bill had been
8 paid and the vessel was released.
9 Spain requested the Netherlands to initiate
10 an investigation into the incident. After Spain had
11 furnished additional information at the request of the
12 Netherlands, the Dutch Shipping Inspectorate
13 investigated the incident. The preliminary observations
14 of the Inspectorate indicate, amongst other things, that
15 the RHIBs of the Spanish Navy had not exercised good
16 seamanship by intentionally causing collisions in
17 violation of the International Regulations for
18 Preventing Collisions At Sea, and that there was no
19 evidence of bad seamanship of the Arctic Sunrise.
20 I would like to emphasise at this point that these
21 observations are of a preliminary nature and subject to
22 further scrutiny.
23 In its request for additional information though,
24 the Netherlands already voiced concerns with respect to
25 the conduct of Spain in relation to the incident, in

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11:16 1 particular the use of force by the Spanish Navy, and the
2 establishment of a safety zone of one nautical mile.
3 Taking into account the results of the investigation of
4 the Shipping Inspectorate, my government is now
5 considering requesting Spain to investigate the
6 incident.
7 This protest action took place in an exclusive
8 economic zone. Spain did not take any law enforcement
9 action against the Arctic Sunrise before the vessel
10 voluntarily submitted itself to the territorial
11 jurisdiction of Spain. The subsequent law enforcement
12 actions appear to have been reasonable.
13 The response action against the RHIBs of the Arctic
14 Sunrise in the exclusive economic zone raises legal
15 questions though. Even if a legal basis can be found
16 for the response action, and the use of force, my
17 government is concerned that the use of force was not
18 reasonable, as it appears to have been neither necessary
19 nor proportional.
20 The second example: the protest action of the
21 Esperanza in the Barents Sea, south of the Spitsbergen
22 archipelago. Mr President, members of the Tribunal,
23 Greenpeace returned to the Barents Sea last year for
24 another protest action against mineral resource
25 activities in the Arctic. In May 2014, Norway informed

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11:18 1 the Netherlands. And I remember it well: it was
2 Ascension Day, and I took the call from my Norwegian
3 colleague late in the evening that the Esperanza, one of
4 the Greenpeace vessels flying the flag of the
5 Netherlands, occupied a position in a safety zone. The
6 safety zone had been established in connection with the
7 preparation and commencement of drilling operations.
8 The presence of the Esperanza prevented a mobile
9 offshore drilling unit from advancing to the drilling
10 location to commence its drilling activities.
11 Norway requested the Netherlands to direct the
12 vessel to leave the drilling location and not to hinder
13 the projected drilling. Pursuant to this request,
14 during the night Dutch authorities repeatedly conveyed
15 to Greenpeace, in vain, the urgent request to leave the
16 drilling location. The following day, after having
17 ordered the vessel to remove itself from the safety zone
18 and the subsequent refusal of the vessel's captain to
19 comply with the order, the Norwegian coastguard boarded
20 the vessel and towed it to a position approximately 40
21 nautical miles south of the drilling location. Neither
22 the vessel nor any person on board was arrested. All
23 persons on board the Esperanza remained on the vessel
24 throughout the operations, and the vessel was
25 subsequently released.

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11:19 1 Although Norway had not obtained the prior consent
2 of the Netherlands to board the Esperanza, the
3 Netherlands has not protested against the boarding. In
4 this case, Parts V and VI of UNCLOS provide the legal
5 basis for the response action. The occupation of the
6 drilling location made it impossible for Norway to
7 exercise its sovereign rights. The response action was
8 also reasonable, as the use of force to board the vessel
9 was necessary and proportional, and neither the vessel
10 nor any person on board was arrested.
11 The third example: information from Norway on
12 protest actions of Greenpeace in the Arctic. One month
13 later, Norway informed the Netherlands of possible
14 future protest actions of Greenpeace against
15 petroleum-related activities in the Arctic. Norway
16 requested the cooperation of the Netherlands as the flag
17 state of the vessels that were expected to be involved
18 in those protest actions.
19 In response to this information and the related
20 request, the Netherlands reassured Norway of its
21 readiness to co-operate in this matter. It also
22 promised that it would convey once more to Greenpeace
23 its view that the right to protest at sea should be
24 exercised in accordance with applicable law. At the
25 same time, the Netherlands emphasised that it:

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11:21 1 "... attaches great importance to the right to
2 peaceful protest, including the exercise of this right
3 at sea, as long as safety is ensured and applicable law
4 is adhered to. This view of the Dutch Government is
5 well-known to non-governmental organisations. The
6 government has repeatedly called on the masters of
7 vessels to ensure that safety of human life at sea is
8 not endangered and international collision avoidance
9 regulations are observed. The Netherlands condemns
10 dangerous and unlawful behaviour at sea, and confirms
11 its readiness to deal with unlawful activity in
12 accordance with applicable domestic and international
13 law. The lawfulness of any future protest actions will
14 be considered on a case-by-case basis. Any restrictions
15 on the right to protest peacefully have to be in
16 accordance with the obligations laid down in,
17 inter alia, the International Covenant on Civil and
18 Political Rights and the European Convention on Human
19 Rights, as well as related case law."
20 Mr President, members of the Tribunal, Greenpeace
21 has its headquarters in the Netherlands. Civil law
22 remedies in the Netherlands, including claims for
23 injunctive relief under a penalty, are available to
24 prevent or end protest actions. Several successful
25 civil actions have been brought against Greenpeace

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11:23 1 before courts in the Netherlands.
2 Two examples. The first example: in October 2014,
3 Greenpeace announced its intention to protest in the
4 Port of Rotterdam against the arrival of a Russian oil
5 tanker. The protest action was to follow the action
6 earlier that year against the same oil tanker in the
7 same port.
8 Blueward Shipping, the freighter for Gazprom,
9 requested a Dutch court to prohibit Greenpeace from
10 carrying out the protest action. The court reviewed the
11 protest action in light of the principles of necessity
12 and proportionality. With respect to necessity, it
13 considered that Greenpeace had already gained
14 substantial publicity in previous protest actions, and
15 that the planned action would, at best, yield more
16 public exposure. The court further considered that
17 Greenpeace had not made sufficiently clear that this
18 purpose could not be achieved by alternative means
19 without harming the interests of Blueward Shipping.
20 With respect to proportionality, the court
21 considered that, as it concerned a repeated protest
22 action, the interests of Blueward Shipping carried more
23 weight than those of Greenpeace. The court issued
24 an injunction to the effect that Greenpeace was not to
25 conduct the protest action under a penalty. Greenpeace

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11:24 1 complied.
2 A second example: in June 2011, the operators and
3 owners of two oil platforms located in the exclusive
4 economic zone of Greenland requested a Dutch court to
5 order Greenpeace to immediately end the ongoing campaign
6 against their platforms, and not to resume them for
7 a period of six months. The protest actions consisted,
8 among others, of attaching a survival capsule to the oil
9 platform Leiv Eiriksson, and the gaining of access of 18
10 activists to this platform.
11 The court reviewed the request by weighing the
12 interests of Greenpeace, that is to call attention to
13 the environmental dangers of drilling for oil in this
14 area, against the interests of the operators and owners
15 of the oil platforms, that is to carry out their
16 drilling activities unhindered.
17 After balancing these interests, taking into account
18 that, by the prior protest actions, Greenpeace had
19 already been able to attract considerable public
20 attention, the court concluded that the balance of
21 interests test worked out in favour of the operators and
22 owners of the oil platforms. The court issued
23 an injunction to the effect that Greenpeace was
24 prohibited, under a penalty, from entering a zone of 500
25 metres around the relevant platforms for a period of six

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11:26 1 months. Greenpeace complied.
2 Mr President, members of the Tribunal, we are not
3 arguing that the use of civil law remedies is
4 a condition before other response actions may be
5 resorted to in order to prevent or end a protest action.
6 But we are arguing that there are other effective means
7 to prevent or end a protest action.
8 What we would like to point out is that the Dutch
9 courts give weight to all interests in resolving
10 conflicts between legitimate activities at sea, and that
11 the recurrence of protest actions is relevant in
12 weighing these interests. What we also would like to
13 point out is that Greenpeace complies with court
14 decisions.
15 Mr President, members of the Tribunal, we are not
16 here today to defend an unrestricted freedom of
17 expression. We have illustrated that competent
18 authorities in the Netherlands, including the
19 government, the police and the courts, have taken
20 measures to prevent or end protest actions; and we have
21 also illustrated that the Netherlands has acquiesced in
22 law enforcement actions of other coastal states against
23 vessels flying its flag.
24 Mr President, members of the Tribunal, we are here
25 today to challenge, amongst others, an unlawful

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11:28 1 interference with the freedom of expression.
2 When a coastal state prevents or ends a protest
3 action in its exclusive economic zone, such response
4 action must be reviewed on the basis of the
5 three-pronged test: first, the response action must have
6 a legal basis in international law; second, such
7 response action must be carried out in accordance with
8 international law; and third, any subsequent law
9 enforcement actions related thereto must be in
10 accordance with international law.
11 In the case before you, first, the boarding of the
12 Arctic Sunrise by the Russian Federation did not have
13 a legal basis in international law. As demonstrated in
14 our memorial and by counsel, the boarding of the vessel
15 outside a safety zone of 500 metres around the
16 Prirazlomnaya was subject to the prior consent of the
17 Netherlands. This sets the case before you apart from
18 the other cases I have reviewed.
19 The response action by Spain against the RHIBs of
20 the Arctic Sunrise in the exclusive economic zone of the
21 Canary Islands in November 2014 took place outside the
22 safety zone of one nautical mile declared by Spain. The
23 actions of Spain would seem to have been directed at
24 preventing Greenpeace activists from climbing the Rowan
25 Renaissance; they did not involve the boarding of the

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11:29 1 Arctic Sunrise or any of its RHIBs. We are still
2 pondering the legal basis of these actions.
3 As for the subsequent arrest of the Arctic Sunrise
4 in a Spanish port, the legal basis can clearly be found
5 in the territorial jurisdiction of Spain.
6 The response action by Norway against the Esperanza
7 in May 2014 took place at a drilling location. Parts V
8 and VI of the Convention provide a legal basis for this
9 response action.
10 The response actions by the Netherlands against
11 Greenpeace vessels in the Port of Rotterdam and the Port
12 of IJmuiden in May 2014 took place in internal waters.
13 Territorial sovereignty provides the legal basis for
14 these actions.
15 Second, the boarding of the Arctic Sunrise by the
16 Russian Federation was not carried out in accordance
17 with international law. As demonstrated in our memorial
18 and by counsel, the boarding of the vessel was a law
19 enforcement action where the identification requirements
20 under the Convention were not met. This sets the case
21 before you apart from the other cases I have reviewed.
22 As for the response action by Spain, it did not
23 involve the boarding of a vessel. However, my
24 government has concerns about whether the law
25 enforcement action was carried out in accordance with

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11:31 1 international law, in particular whether the force used
2 to end the protest action was reasonable.
3 As for the response actions by Norway and the
4 Netherlands, they did involve the boarding of vessels.
5 We have no indications, however, that these law
6 enforcement actions may not have been carried out in
7 accordance with international law.
8 What we have demonstrated in our memorial, and what
9 we would like to re-affirm today, is, third, that the
10 Russian law enforcement actions subsequent to the
11 boarding of the Arctic Sunrise were not reasonable, as
12 they were neither necessary nor proportional. They had
13 a chilling effect on the exercise of the freedom of
14 expression. This sets the case before you apart from
15 the other cases I have reviewed.
16 Spain arrested the Arctic Sunrise, and has initiated
17 judicial proceedings against the vessel and the captain,
18 following the protest action off the coast of the Canary
19 Islands in November 2014. But it did not arrest the
20 persons on board, and it did provide for the release of
21 the vessel on bail.
22 Norway boarded the Esperanza following the protest
23 action in the Barents Sea in May 2014, and towed it away
24 from a drilling location. But it released the vessel
25 and the persons on board without arresting them or

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11:32 1 initiating judicial proceedings against the vessel or
2 the persons on board.
3 The Netherlands boarded the Rainbow Warrior III in
4 the Port of Rotterdam, arrested several activists, and
5 charged two of them with violation of traffic orders.
6 But the activists were released within a few hours.
7 Mr President, with your indulgence, I will now
8 return to the question I asked myself at the beginning
9 of my statement: what would we have done if we had been
10 in the position of the Russian Federation? What would
11 we have done?
12 It is, I admit, a matter of speculation. But it
13 would have been in line with my government's practice
14 that the Netherlands coastguard would have intervened to
15 prevent or end the protest action. It probably would
16 have tried to prevent the climbers from climbing the
17 platform. It probably would have arrested one or more
18 activists that succeeded in climbing the platform, and
19 possibly one or more activists in the safety zone. And
20 the law enforcement authorities of the Netherlands would
21 have investigated the incident and probably imposed
22 administrative sanctions.
23 But the coastguard would not have boarded a vessel
24 outside a safety zone without the prior consent of the
25 flag state in the absence of a clear and convincingly

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11:34 1 established internationally recognised justification.
2 And the law enforcement authorities of the Netherlands
3 would have released the activists within hours, unless
4 the incident had resulted in personal injury.
5 Mr President, members of the Tribunal, a coastal
6 state may intervene to prevent or end protest actions in
7 its exclusive economic zone, but it has to respect the
8 exclusive jurisdiction of a flag state over its vessels.
9 A response action may interfere with the freedom of
10 protest at sea, provided that the interference pursues
11 a legitimate aim and is necessary and proportional in
12 relation to that aim. In this respect, a coastal state
13 has a margin of discretion.
14 Nonetheless, the interference must be reasonable and
15 may not have a chilling effect on the exercise of the
16 freedom of protest at sea. In the present case, the
17 Russian Federation failed on both accounts.
18 Mr President, members of the Tribunal, this brings
19 me to the end of the first part of our oral submissions.
20 I thank you for your attention. Next I would like to
21 proceed with the examination of the witnesses.
22 Mr President, we could proceed immediately, after
23 a short adjournment, or after the lunch break. We are
24 resigned to your decision in this respect. Thank you.
25 THE PRESIDENT: Thank you very much. I think your first

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11:36 1 suggestion is more acceptable. We will proceed
2 immediately, but with a short adjournment of five
3 minutes, and then you can examine the witnesses. Thank
4 you very much.
5 (11.36 am)
6 (A short break)
7 (11.46 am)
8 MR DANIEL SIMONS (called)
9 THE PRESIDENT: Thank you very much for coming. Could you
10 identify yourself: give your name and profession?
11 THE WITNESS: Yes. My name is Daniel Simons. I am legal
12 counsel at Greenpeace International.
13 THE PRESIDENT: Before you are examined, you will have to
14 make the declaration that is before you. Please go
15 ahead and read it.
16 THE WITNESS: Thank you, Mr President. I solemnly declare
17 upon my honour and conscience that I shall speak the
18 truth, the whole truth and nothing but the truth, and
19 that my statement will be in accordance with my sincere
20 belief.
21 THE PRESIDENT: Thank you very much for that declaration.
22 Now you can examine the witness.
23 PROFESSOR LEFEBER: Thank you, Mr President. Mr President,
24 before I turn to the examination of this witness,
25 I would like to make a point for the record. That point

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11:49 1 is that there have not been any relevant developments
2 since the submission of the addendum and corrigendum to
3 the Greenpeace International statement of facts dated
4 9th January 2015. So there are no new facts to be
5 reported since that date.
6 Mr President, at this point, the Kingdom of the
7 Netherlands would like to introduce the witness
8 testimony of Mr Daniel Simons. Mr Simons is legal
9 counsel with Greenpeace International. His testimony
10 will be directed to the statement of facts provided by
11 Greenpeace International dated 15th August 2014, as well
12 as the addendum and corrigendum thereto.
13 These documents were annexed to the Netherlands'
14 memorial and its second supplemental written pleadings
15 respectively. Mr Simons is author of the statement of
16 facts, and the addendum and corrigendum thereto. The
17 account set out in these documents cover the period
18 between 18th September 2013 and 8th January 2015, and
19 I may say actually up until today, because there are no
20 new developments since 9th January 2015.
21 Direct examination by PROFESSOR LEFEBER
22 Q. Good morning, Mr Simons. Thank you for agreeing to
23 testify in these proceedings.
24 With the permission of the Tribunal, I would like to
25 give the witness a copy of the statement of facts, the

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11:50 1 addendum and corrigendum thereto, and the witness
2 statement of Mr Simons dated 30th August 2014.
3 (Handed).
4 Mr Simons, could you please take a look at the three
5 documents that were just put in front of you, and
6 confirm that you are the author of these documents?
7 A. Yes, I can confirm that.
8 Q. Thank you. Mr Simons, can you confirm that the contents
9 of the statement of facts, as supplemented by the
10 addendum and corrigendum thereto, are correct to the
11 best of your knowledge?
12 A. They are.
13 Q. Thank you. Could you explain the sources of the
14 information underlying the statement of facts and the
15 addendum and corrigendum thereto?
16 A. The statement of facts is based on a range of different
17 sources of information which are also referenced in the
18 witness statement. In the first place, during the
19 events, so between 16th and 19th September 2013, the
20 ship was in communication with our office, primarily via
21 telephone. Certain files were also sent, video files.
22 So that's one source.
23 Then, once communication with the ship was
24 interrupted, the statement relies on news reports; it
25 relies on documents from the domestic legal proceedings;

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11:52 1 it also relies, after the release of the Arctic 30, on
2 discussions that I have had with several of them --
3 sorry, when I say the "Arctic 30", I refer to the 30
4 crew members of the Arctic Sunrise. So after their
5 release, it has been possible to speak with them, and
6 that is another source for the statement of facts.
7 Finally, after the return of the Arctic Sunrise to
8 port, a number of different sources of information were
9 found on board: memory cards, from which files have been
10 extracted, and those are another source of the statement
11 of facts.
12 The addendum and corrigendum relies primarily on
13 information extracted from items returned by the
14 Investigative Committee of the Russian Federation to the
15 control of Greenpeace International. So again, we are
16 talking about memory cards, for example, which contain
17 audio -- video, audio. It also relies on documents that
18 have come into our possession relating to domestic legal
19 proceedings after the finalisation of the statement of
20 facts of 15th August 2014.
21 Q. Thank you, Mr Simons. Could you explain your personal
22 involvement in obtaining this information that you have
23 just described?
24 A. Yes. I was involved -- I am the legal adviser to the
25 Save the Arctic campaign at Greenpeace International.

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11:53 1 I was involved in the run-up to the events of
2 18th September as a legal adviser, and continued that
3 involvement afterwards.
4 I was charged with assembling a defence team,
5 a legal defence team to represent the 30 persons of the
6 Arctic Sunrise in the Russian criminal proceedings, and
7 to instruct that team. As part of that role, I spent
8 some time in Murmansk, and I attended hearings of the
9 Leninsky District Court and the Murmansk Regional
10 Appeals Court. So in that capacity I gained some
11 personal knowledge of the manner in which the criminal
12 proceedings were conducted.
13 PROFESSOR LEFEBER: Thank you, Mr Simons.
14 This concludes my examination of this witness,
15 Mr President.
16 THE PRESIDENT: Thank you very much. I would like now to
17 ask the members of the Tribunal if they have any
18 questions to be directed at this witness.
19 Questions from THE TRIBUNAL
20 PROFESSOR SYMONIDES: Mr President, if I am allowed to,
21 I would like to ask the witness about a certain
22 discrepancy which I discovered between the effectual
23 statement by Greenpeace and this order of
24 24th September 2014. It deals with a number of
25 articles, because we understand that the Volga said that

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11:55 1 there is a danger of breach of some articles. And in
2 the Russian text they mention Articles 60, 147 and 259;
3 whereas in the Greenpeace statement, paragraph 14, you
4 are saying Articles 60, 17 and 260. Could you possibly
5 explain this small discrepancy?
6 A. I am not sure how the discrepancy arises. What I can
7 clarify is what the statement of facts is based on: it
8 is based on a note taken on the ship during the events,
9 which was written out and which was sent to me.
10 I remember being informed that these articles had been
11 read out. So it's possible that an error occurred in
12 making the notes, but that is just one possible
13 explanation. I couldn't say exactly what the reason
14 might be.
15 PROFESSOR SYMONIDES: I am satisfied with this answer.
16 THE PRESIDENT: In that case, do you have any questions in
17 re-direct?
18 PROFESSOR LEFEBER: No, we don't, Mr President.
19 THE PRESIDENT: As I said, you have the right to re-direct,
20 if necessary. But you don't?
21 PROFESSOR LEFEBER: Not at this stage, Mr President.
22 THE PRESIDENT: In that case, unless anybody else has
23 a question, the Tribunal will release you. But as
24 I have said earlier, we may want to ask you some further
25 questions, so if you happen to be here, we would like

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11:57 1 you to remain at our disposal.
2 THE WITNESS: I will remain at your disposal, thank you.
3 THE PRESIDENT: Thank you very much indeed.
4 MR ANDREY SUCHKOV (called)
5 (Evidence interpreted)
6 THE PRESIDENT: Good morning, and thank you very much for
7 coming. First of all, I would like you to make the
8 declaration which is on your desk.
9 THE WITNESS: Declaration for fact witness. I solemnly
10 declare upon my honour and conscience that I will speak
11 the truth, the whole truth and nothing but the truth,
12 and that my statement will be in accordance with my
13 sincere belief.
14 THE PRESIDENT: Thank you very much indeed. May I now ask
15 the Co-Agent to begin the direct examination?
16 PROFESSOR LEFEBER: Thank you, Mr President. Mr President,
17 the Kingdom of the Netherlands would like to introduce
18 the witness testimony of Mr Andrey Vladimir Suchkov.
19 Mr Suchkov is a lawyer specialised in criminal
20 defence, and retained by the Stichting Greenpeace
21 Council to provide legal services in connection with the
22 criminal investigation by the Investigative Committee of
23 the Russian Federation in the north-west federal
24 district.
25 His testimony will be directed to his involvement in

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12:01 1 the legal proceedings in the Russian Federation on
2 behalf of Greenpeace.
3 Direct examination by PROFESSOR LEFEBER
4 Q. Good morning, Mr Suchkov.
5 A. (In English) Good morning.
6 Q. Thank you for agreeing to testify in these proceedings.
7 With the permission of the Tribunal, I would like to
8 give the witness a copy of the statement of facts, the
9 addendum and corrigendum thereto, and his witness
10 statement dated 26th August 2014. (Handed).
11 Mr Suchkov, could you please take a look at the
12 three documents that were just put in front of you, and
13 confirm that you are the author of the witness
14 statement?
15 A. (Interpreted) I am familiar with these documents, and
16 I am indeed the author of the witness statement. I see
17 my signature on the copy of the document.
18 Q. Thank you, Mr Suchkov. In your witness statement, you
19 confirm that specific paragraphs of the statement of
20 facts are true and accurate. The addendum and
21 corrigendum thereto contains additional information and
22 adjustments. Can you confirm that the contents of the
23 statement of facts, as adjusted and supplemented by the
24 addendum and corrigendum thereto, are correct to the
25 best of your knowledge?

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12:03 1 A. Yes, the facts provided by these documents are known to
2 the best of my knowledge. In my witness statement,
3 I enumerate the paragraphs where it was the witness
4 myself. I also listed the paragraphs which are known to
5 me from the documents of the criminal case.
6 Q. Thank you. Could you explain your personal involvement
7 in the legal proceedings against the Arctic Sunrise and
8 the persons on board, following the protest action on
9 18th September 2013 against the Prirazlomnaya?
10 A. Yes, I will be happy to explain. I was invited to be
11 a part of the defence team, but not straight from the
12 beginning: from November 4th 2013.
13 My role was to organise the criminal defence, to
14 coordinate the work of the defence lawyers on the
15 Russian side who provided the defence for Arctic 30, and
16 I was also invited to represent the interests of
17 Greenpeace International. I also had individual
18 contracts with all the 30 activists, to represent them
19 and defend them in this case.
20 Q. Thank you. Could you describe in your own words the
21 facts that you have confirmed to be true and accurate?
22 A. As soon as I became part of the case, I familiarised
23 myself with the documents which were accessible to me at
24 that time. After that, I monitored the developments of
25 the case. I also monitored the work of the lawyers.

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12:05 1 And I had contacts with the majority -- and afterwards
2 with all -- of those Arctic 30 activists.
3 When I got involved in the case and studied the
4 documents, I found out that the vessel, Arctic Sunrise,
5 was very close to the Prirazlomnaya platform in the
6 Pechora Sea. And if I am not mistaken, on
7 September 18th 2013, the vessel was detained.
8 After that, the vessel and its crew was escorted to
9 Murmansk, after a week or so. And only after that, all
10 the necessary documents for the detention were executed.
11 After that, the crew were presented with the
12 charges. Two days later, the charges were made, and the
13 preliminary charges were in accordance with
14 Article 227.3 of the Criminal Code of the Russian
15 Federation. This is piracy. This is the exceptionally
16 heavy category of offence in the Russian Federation.
17 After the charges were made, all the Arctic 30
18 activists were in pre-trial detention. Some of them
19 were in a pre-trial detention facility in Murmansk, and
20 some in Apatity, which is about 180/200 kilometres off
21 Murmansk.
22 For the interviews and all the other necessary
23 steps, they were escorted to Murmansk. Allow me to say
24 that it was quite a hardship to bring them to Murmansk.
25 They had to be brought by car, and people were kept in

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12:07 1 cages, and the cars were extremely cold, so they had to
2 suffer that, they had to go through that. They were
3 kept in very cold circumstances, and under crowded
4 conditions, and under unsanitary conditions.
5 Later on, the decision was made to requalify their
6 activities. In essence, their activities were qualified
7 wrongly under the Criminal Code. There were no indicia
8 of piracy. Article 227 of the Criminal Code of the
9 Russian Federation envisages responsibility for actions
10 against a vessel, but the drill platform was not
11 a vessel.
12 And I found the previous court decisions, and there
13 were two of them, taken in different stages, in
14 Commercial Courts. There are quite different types of
15 courts in the Russian Federation dealing with commercial
16 cases.
17 If I am not mistaken, in the previous decisions the
18 case was about taxes: how do you pay taxes? Is
19 Prirazlomnaya platform a vessel or is it immovable
20 property? The decision was made that the platform
21 cannot be towed, so it was a part of the continental
22 shelf. So in fact, it was not a foundation to qualify
23 the actions of Arctic 30 as piracy.
24 That became obvious for the Russian authorities.
25 And I believe they were forced to change track and to

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12:08 1 invoke a mild article in the Criminal Code.
2 Nevertheless, the consequences are quite harsh,
3 including prison sentence. Therefore, the actions of
4 the Arctic 30 were requalified as hooliganism. This is
5 a grave violation of public order, demonstrating
6 disrespect to the public order.
7 Next, the Arctic 30 were charged with the use of
8 weapons. They had special contraptions to throw out the
9 towing lines; these were seen as weapons. They [were
10 also charged with] invoking religious and other types of
11 hatred. So hooliganism, with extra circumstances, was
12 applied until December 2013, when it was revoked.
13 After the investigative steps in Murmansk, the
14 investigative authority made a decision that all Arctic
15 30 activists were to be transferred to St Petersburg.
16 They were transported by railroad transport, which was
17 a very hard and unpleasant procedure. Upon arrival at
18 St Petersburg, they were placed in three different
19 pre-trial detention facilities.
20 Two months into the investigation, the question
21 arose as to prolonging the pre-trial detention period.
22 So two regional courts of the pre-trial detention
23 facilities where the Arctic 30 activists were kept,
24 being Primorsky and Kalininsky courts, looked into this
25 matter.

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12:11 1 The Primorsky court looked into the case of Colin
2 Russell, and his pre-trial detention was prolonged by
3 two months. In these proceedings, both in Kalininsky
4 and Primorsky courts, I was not a part of the defendant
5 team; I was a representative of Greenpeace
6 International. I had power of attorney, as somebody who
7 provides the bail. So the defendant team was basing its
8 position on the norms of law and the facts of the case.
9 Under the present legislation, they were not
10 supposed to apply any measures of pre-trial detention
11 because, if the facts are established, they need to
12 prove that this person will continue his unlawful
13 actions or that there is risk of absconding. Neither of
14 the facts were present, and neither of the facts were
15 proven. However, at this stage we insisted on replacing
16 the pre-trial detention by a lighter measure.
17 Moreover, the custody in this case was not the best
18 possible situation. I mean that the physical
19 circumstances were not optimal. The cells were crowded,
20 and they were not in line with the standards established
21 by the European Court of Human Rights, and they were not
22 in line with Russian legislation.
23 So Colin Russell had his pre-trial detention period
24 prolonged. However, all of a sudden the prosecutor's
25 office voiced its position, being against prolonging the

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12:13 1 pre-trial detention period, and all the remaining 29
2 activists were freed.
3 So in the beginning they demanded bail, and
4 afterwards I had to make arrangements for the bail. We
5 were also surprised by the fact that, at the Primorsky
6 court, Judge Yermolayeva -- who took the decision in the
7 first place to prolong the pre-trial detention of
8 Colin -- took a number of decisions in very similar
9 situations for other Arctic 30 activists, and they were
10 not prolonged.
11 I would like to attract your attention to the fact
12 that the courts in their decisions make no
13 differentiation between the roles of the Arctic 30. So
14 all the court decisions were rubberstamped decisions:
15 they just changed the surnames of the activists,
16 everything else was just a copy and paste exercise.
17 They had one general file, and all the decisions were
18 taken from there. So from the point of view of the law,
19 I cannot give any logical explanation for why the same
20 judge, using the same texts, took one decision in one
21 case, and completely the opposite decision in the
22 subsequent cases.
23 So in the three days when the measures were
24 considered, pre-trial detention or bail, I was facing
25 a very complicated situation. I commuted between the

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12:14 1 two courts, and sometimes I had to appeal to one of the
2 judges and say, could you please delay the sitting, just
3 to give me an opportunity to be present in all the
4 30 sittings.
5 But I managed, I coped. As a result, we had one
6 prolongation of the pre-trial detention, and 29 bails.
7 Later on, it took us several weeks to lodge appeals, and
8 in Colin Russell's case, the court decision was changed,
9 he was freed from pre-trial detention, and he was freed
10 on bail.
11 Subsequently, by halfway through December, the
12 amnesty -- it was a planned exercise, the amnesty in
13 connection with the anniversary of the Russian
14 Constitution, and up to the very last moment, I was
15 monitoring the development of the events, and on the
16 side of the state Duma of the Russian Federation, we did
17 not see any mention of the Arctic Sunrise case, so were
18 not sure that the amnesty will be applicable to the
19 Arctic 30 activist cases.
20 At the very end, Article 213.2, so hooliganism, was
21 included into the amnesty, thus including the Arctic
22 Sunrise activists.
23 Looking at the historical facts of similar
24 amnesties, I can conclude that amnesty for those
25 articles, for hooliganism, has never happened. I mean,

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12:16 1 this is the first case, it has never happened before.
2 So this criminal case was stopped first for each of the
3 30 activists separately, because of the amnesty.
4 So the conclusion is that the Russian Federation
5 state believes them to be guilty, however the amnesty
6 applies to them, and the Arctic 30, at the very end of
7 December of that year, received their belongings, and
8 they could go home.
9 The criminal proceedings went on for another year,
10 and on September 24th 2014 was stopped, so there had
11 been some investigative actions, and as far as I knew,
12 from my contacts with investigators, I received minimal
13 information, I understood that there were expert
14 opinions asked also concerning the equipment and
15 instruments, they received the expert's opinion about
16 USB sticks, telephones, and so on and so forth.
17 It took the time until the end of the criminal
18 proceedings, so I will reiterate that a year after the
19 proceedings were stopped, only one year, under the
20 Criminal Code of the Russian Federation, the term has to
21 be prolonged and the prolongation can take place under
22 certain conditions, so you need the explanation. So up
23 to a year, the prolongation can be done by the authority
24 that conducted the proceedings in the beginning, that is
25 the north-west department of the Investigative

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12:18 1 Committee.
2 After that, the prolongation was up to the central
3 authority of the Investigative Committee in Moscow.
4 Either Moscow did not want to take the responsibility,
5 or the north-western department did not dare to ask
6 Moscow; nevertheless, that was the end of the primary
7 proceeding. So I believe if it were not for the
8 necessity to prolong the investigative term, the case
9 would have been dragged out for longer.
10 If I have missed something, I would be happy to add.
11 So these are the facts which were stated in the
12 statement of facts, which I signed. However, there is
13 also the question of assessment of certain events.
14 Being the head of the lawyers' team, and being an expert
15 in the criminal law in the Russian Federation, I am
16 quite happy to give you my opinion on the legal aspect
17 of the mentioned events. Thank you.
18 Q. Thank you, Mr Suchkov. I think this suffices for now,
19 as an introduction of the events that you witnessed in
20 this case.
21 This concludes my examination of the witness,
22 Mr President.
23 THE PRESIDENT: Would any of my colleagues want to ask
24 a question?
25 Questions from THE TRIBUNAL

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12:20 1 MR BURMESTER: Mr Suchkov, thank you for that information,
2 it was very valuable. Can I ask you a couple of things?
3 The charge of piracy was changed to a charge of
4 hooliganism. I think you at one stage said that it was
5 a mild article, or a less serious offence than piracy.
6 Is hooliganism the sort of offence that protestors are
7 regularly charged with, or is it an unusual offence, in
8 your experience, for conduct like this?
9 A. Well, yes, my first answer is hooliganism is a less
10 grave offence than piracy. This is the conclusion
11 I make judging from the possible consequences: talking
12 about piracy, we are talking ten years in prison, while
13 hooliganism, we are talking about five years in prison.
14 Frequently, the article is applied -- well, yes, you are
15 quite right, this is the article which is used in
16 uncertain cases. This is the article applied to
17 activists, and different protests in connection with
18 political or economic protests, or strikes.
19 Talking about not applicability but the legal
20 science, I would say that this article is a point of
21 contention among criminal scientists, and if you forgive
22 me, sometimes they say that this is the bin of the
23 Criminal Code, because they throw everything in it which
24 you cannot bring under something else.
25 MR BURMESTER: Thank you for that. Can I ask you a further

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12:22 1 question? You have mentioned some of the conditions in
2 terms of transporting the Arctic 30. We have a fairly
3 full account of the Russian authorities' investigation
4 and some of their decisions and so on. Is there
5 anything that struck you at the time as particularly
6 unusual in the way in which the Arctic 30 were being
7 processed? There was certainly a lot of them, and so
8 that no doubt imposed certain additional complexities.
9 But is there anything unusual that you would
10 particularly draw attention to in the way in which the
11 Arctic 30 were processed? Thank you.
12 A. You know, the case was unusual, because it was the
13 centre of attention of the press and the mass media. At
14 the time, it was the most frequently commented case,
15 commented by the authority, including the President and
16 the President's administration. Almost on a weekly
17 basis, the commentary was provided by the Investigative
18 Committee, by the PR department of the Investigative
19 Committee.
20 I can state that this had an impact on the case.
21 I talked to the investigators, and you know, I used to
22 be an investigator myself in extremely grave cases, and
23 I investigated serious crimes, and I can say that the
24 investigators were not free to take their own decisions.
25 They were in constant expectation of what Moscow will

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12:24 1 order, even simple things, like scheduling the
2 interviews. So these are the decisions which
3 an investigator takes independently himself, in a swift
4 manner.
5 In this case, investigators asked for delays, asked
6 for breaks, and sometimes, a decision could have been
7 taken in a split second, but it still took them several
8 days to take this decision.
9 I will repeat myself, the final steps of the case
10 are also very unusual, and the last stages of the
11 amnesty were quite unusual, and the list of the articles
12 on which the amnesty would apply, including hooliganism,
13 was unusual.
14 MR BURMESTER: Thank you. I have nothing further.
15 PROFESSOR SYMONIDES: Mr President, if I am allowed, I would
16 like to ask the witness for his comment. This is
17 exactly with a date, when this area, zone, closed to the
18 navigation, extending 500m around Prirazlomnaya, was
19 established. Because in the order of
20 24th September 2014, we are having a statement, and
21 I quote:
22 "Pursuant to the notice to marines no 6623 dated
23 10th December 2011 by the Department of Navigation and
24 Oceanography of the Russian Federation, Ministry of
25 Defence, an area deemed dangerous for navigation had

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12:26 1 been established within the radius of three miles from
2 Prirazlomnaya, including the establishment of a zone
3 closed to navigation extending 500m from the platforms."
4 In your opinion, really this notice created such
5 a zone or not? I would be very grateful for your
6 reaction to this question.
7 A. Right, thank you very much for your question. To my
8 opinion, the zone prohibited to navigation was not
9 established. This particular document was meant to
10 ensure the safety for the navigation, and I know what
11 I am talking about, because my first education is the
12 marine education, and I served in the commercial fleet.
13 This document has a role of recommendation. The
14 third miles were determined by the nature of the
15 vessels, I mean the inertia of a seafaring vessel
16 prescribes three miles, so this is the so-called good
17 seamanship. This is something you need to do to ensure
18 the safety and security.
19 500m is not something you need, something that will
20 prohibit navigation. There are no sanctions envisaged
21 for entering this zone. There are still no sanctions
22 for that. The state Duma of the Russian Federation is
23 discussing this bill and they are planning to introduce
24 this law, and prescribe sanctions for violating the law.
25 As far as I remember, the Arctic Sunrise was

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12:28 1 navigating around the platform, trying not to break the
2 three mile boundary. Talking about the RHIBs, if they
3 entered the 500m area, well, we need to consider the
4 issue of the security and safety of the platform. We
5 shouldn't be looking at whether they entered the zone or
6 not, we need to be looking at the issue of safety, did
7 they violate the safety of the platform or not?
8 We are talking about inflatable boats, so this is in
9 fact a big inflatable -- RHIBs, so potentially they
10 couldn't have been of any danger to the platform. It is
11 like one of those inflatable rubber bumpers between the
12 boat and the quay. So the protest action of some of
13 those Arctic 30 activists were not a threat to the
14 safety of the platform. There was no real damage.
15 There was no threat and the threat did not materialise.
16 DR SÁNCHEZ: I would like to ask the witness if what he just
17 said about the situation of the 500m area, and the fact
18 that there were no sanctions in force provided by the
19 legislation up to that time, were these arguments that
20 were used in the criminal proceedings by the Arctic 30
21 through their lawyers?
22 A. These arguments were used, and these arguments were
23 voiced, and the arguments were reiterated, they were
24 repeated in our pleadings, when we voiced the protest
25 against the arrest of the people and against the seizure

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12:30 1 of the vessel.
2 They were not the first line arguments, I must say.
3 The first line arguments said that the jurisdiction of
4 the Russian Federation did not apply to this particular
5 area. This was outside the waters of the Russian
6 Federation, the sovereignty of the Russian Federation
7 ended there, because the sovereignty of the Russian
8 Federation is valid for a certain area.
9 The exclusive economic zone is governed by
10 a dedicated regime and this is what we said. There is
11 just one article envisaging very minor sanctions, and
12 this is the violation of the order in the exclusive
13 economic zones. It is prohibited to fish, it is
14 prohibited to hunt on sea animals, it is prohibited to
15 conduct scientific research, and to mine underground
16 resources.
17 So under Russian criminal court, there are sanctions
18 for these violations. Everything else falls under the
19 jurisdiction of the international law, and the
20 international law is applicable in that area. This is
21 something we wrote in our appeals, and anyway we should
22 apply a different order than what was being applied at
23 the time.
24 DR SÁNCHEZ: Thank you very much.
25 THE PRESIDENT: Thank you. Can I ask you if you have any

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12:32 1 other questions in the light of the answers that he has
2 given to these questions?
3 PROFESSOR LEFEBER: Thank you, Mr President. No, at this
4 stage, we don't have any further questions for this
5 witness. Thank you.
6 THE PRESIDENT: Thank you very much indeed. So we can then
7 ask you to step down, but as I have said before, we
8 would like you -- are you going to be around in Vienna
9 or are you going to go away?
10 A. I have to leave, and I would like to request the court
11 to relieve me. I will be available to provide
12 additional clarifications by video conference.
13 THE PRESIDENT: Yes. If necessary, we will ask you further
14 questions by video conference. But for the moment, you
15 can stand down. Thank you very much.
16 A. Thank you.
17 THE PRESIDENT: Does that bring us to the end of your
18 presentation this morning? We are a little ahead of
19 time, but I think we have all ended, so I would suggest
20 that we break for lunch, and come back at 2.00 and
21 hopefully we will be able to make progress, to continue
22 with the examination of witnesses?
23 So we break now for lunch, and come back at 2.00.
24 Thank you very much.
25 (12.34 pm)

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14:03 1 PROFESSOR LEFEBER: Thank you.
2 Direct examination by PROFESSOR LEFEBER
3 Q. Good afternoon, Mr Vasilyev. Thank you for agreeing to
4 testify in these proceedings.
5 With the permission of the Tribunal I would like to
6 give the witness a copy of the statement of facts, the
7 addendum and corrigendum thereto, and his witness
8 statement dated 29th August 2014. (Handed).
9 Mr Vasilyev, could you please take a look at the
10 three documents that have just been put in front of you
11 and confirm that you are the author of the witness
12 statement?
13 A. Yes, I confirm that I am indeed the author.
14 Q. Thank you, Mr Vasilyev. In your written statement, you
15 confirm that specific paragraphs of the statement of
16 facts are true and accurate. The addendum and
17 corrigendum thereto contain additional information and
18 adjustments. Can you confirm that the contents of the
19 statement of facts, as adjusted and supplemented by the
20 addendum and corrigendum thereto, are correct to the
21 best of your knowledge?
22 A. I confirm the accuracy of the paragraphs indicated in my
23 statement of facts, with all the qualifications and
24 reservations made by me at the time I signed that
25 statement.

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12:34 1 (Adjourned until 2.00 pm)
2 (2.00 pm)
3 THE PRESIDENT: I open the session again. Could you please
4 call the next witness?
5 MR SERGEY VASILYEV (called)
6 (Evidence interpreted)
7 PROFESSOR LEFEBER: Thank you, Mr President, and good
8 afternoon. The Kingdom of the Netherlands would like to
9 introduce the witness testimony of Mr Sergey
10 Aleksandrovich Vasilyev. Mr Vasilyev is an associate
11 with the Sokolov, Maslov and Partners law firm in Moscow
12 that provided legal services to Stichting Greenpeace
13 counsel in connection with the arrest of the Arctic
14 Sunrise in the Russian Federation. His testimony will
15 also be directed to his involvement in the legal
16 proceedings in the Russian Federation on behalf of
17 Greenpeace.
18 THE PRESIDENT: I will ask you, please, to read the
19 declaration which is on your desk.
20 THE WITNESS: I solemnly declare upon my honour and
21 conscience that I will speak the truth, the whole truth
22 and nothing but the truth, and that my statement will be
23 in accordance with my sincere belief.
24 THE PRESIDENT: Thank you very much. Yes, you may please
25 proceed.

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14:05 1 Q. Thank you. Could you now please explain your personal
2 involvement in the legal proceedings against the Arctic
3 Sunrise and the persons on board following the protest
4 action on 18th September 2013 against the Prirazlomnaya?
5 A. Thank you. As a lawyer of the legal law firm Sokolov,
6 Maslov and Partners, at the request of Greenpeace
7 International, together with my colleagues in the law
8 firm I provided legal assistance for the early release
9 of the Arctic Sunrise vessel. Our firm and Greenpeace
10 International were limited solely to maritime matters,
11 because our company specialises in the area of maritime
12 law.
13 In the framework of this activity, we conducted
14 a number of legal actions that were laid down in the
15 statement of facts, and I confirm them subsequently.
16 Q. Thank you. Could you describe in your own words the
17 facts that you have confirmed to be true and accurate?
18 A. First of all, I have to confirm the fact that on
19 October 7th 2013 there was a decision passed on the
20 seizure of the vessel by Judge Krivososov. In addition
21 to that, our company -- and I am providing comments in
22 the framework of paragraph 83 -- analysed the decision
23 to initiate administrative punishment for the captain of
24 the vessel.
25 Regarding the subsequent paragraphs, we repeatedly

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14:08 1 made efforts using our powers as representatives for the
2 company, Stichting Phoenix, which is the owner of the
3 vessel. We sent numerous applications and papers to the
4 Investigative Committee to ensure an early release of
5 the vessel.
6 In addition to that, at the request of our client we
7 put together an appeal drawing the attention of a number
8 of governmental bodies to the fact that the Arctic
9 Sunrise vessel held at the Murmansk port is there
10 without proper technical assistance, creating a risk to
11 the environment.
12 Also in the framework of our activity, we interacted
13 with the Investigative Committee to ensure an early
14 release of the Arctic Sunrise vessel.
15 PROFESSOR LEFEBER: Thank you, Mr Vasilyev. This concludes
16 my examination of the witness, Mr President.
17 THE PRESIDENT: Thank you very much. May I ask if my
18 colleagues have any questions?
19 Questions from THE TRIBUNAL
20 MR BURMESTER: Mr Vasilyev, in some of the paragraphs of the
21 statement of facts, there are references to the attempts
22 to secure the release of the vessel, and applications
23 which were unsuccessful. The attitude of the
24 Investigative Committee was to reject access for
25 surveying and maintenance purposes, and they indicated

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14:10 1 that safety would be assured by the Russian authorities,
2 and that there was therefore no reason for access for
3 surveying and maintenance.
4 In your experience as a maritime lawyer, was this
5 the sort of attitude you would have expected where ships
6 have been detained for criminal investigation purposes,
7 that the Russian authorities would normally assume
8 responsibility for maintaining safety and not allow
9 access by the owner for those purposes? Or was this
10 unusual in your experience?
11 A. Mr President, members of the Tribunal, I would like to
12 specifically emphasise the fact that I am appearing here
13 as a witness -- that is to say as a physical person --
14 who can confirm a statement of certain facts contained
15 in this statement of facts. My procedural status is
16 a witness; I am here in this capacity. And sir, in this
17 capacity, I don't take it upon myself to provide
18 comments [on] inappropriateness of the behaviour of any
19 persons in the framework of the Russian legislation.
20 And I am not authorised to provide any advice or
21 consultations regarding Russian law.
22 MR BURMESTER: Thank you for that, I understand your answer.
23 THE PRESIDENT: Nevertheless, I think that the question you
24 were asked was whether this was a regular thing, a usual
25 thing, from your practice, from your knowledge. You are

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14:12 1 not being asked to give an opinion. We are asking you
2 whether you found that this was regular or usual, in the
3 circumstances of the case.
4 A. One second, I have to give some thought to your
5 question. (Pause). Mr President, thank you very much
6 for your question. Regarding the accuracy of the facts
7 contained in the statement of facts, I do confirm that
8 we made efforts to ensure early access to the vessel by
9 the technical personnel or surveyors who would be
10 authorised to establish the technical state of the
11 vessel.
12 It is true that on the part of the Russian
13 authorities we received answers that the safety of the
14 vessel was provided for to the full extent necessary.
15 I would like to emphasise once again that, from
16 a legal point of view, I cannot [testify as to whether]
17 non-access to the vessel is a typical or unusual
18 practice. The question that you asked to me, I believe
19 that this is a question that pertains to the case
20 itself, because this is not a typical case, and that is
21 why any generally acceptable facts cannot be used and no
22 assessment can be made of them.
23 THE PRESIDENT: Thank you very much for that answer. I will
24 ask whether, in the light of this, you want to ask any
25 other questions by way of re-direct.

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14:15 1 PROFESSOR LEFEBER: Thank you, Mr President. At this stage,
2 we don't have any further questions for this witness.
3 THE PRESIDENT: Thank you very much then.
4 THE WITNESS: Thank you very much.
5 THE PRESIDENT: In that case we will ask you, if you are
6 going to be in Vienna, to be available for the
7 possibility that we may ask you any further questions.
8 THE WITNESS: Mr President, you mean in the course of
9 tomorrow? Is this my understanding?
10 THE PRESIDENT: Yes.
11 THE WITNESS: Thank you, this is not a problem for me.
12 THE PRESIDENT: Thank you very much then.
13 Do you intend to call any further witnesses?
14 MR PETER WILLCOX (called)
15 THE PRESIDENT: Thank you very much for your presence.
16 I would like to ask you to kindly make the declaration
17 which is on your desk.
18 THE WITNESS: I solemnly declare upon my honour and
19 conscience that I shall speak the truth, the whole truth
20 and nothing but the truth, and that my statement will be
21 in accordance with my sincere belief.
22 THE PRESIDENT: Thank you very much indeed. Please could
23 you ask him to identify himself for the record?
24 PROFESSOR LEFEBER: Thank you, Mr President. I will do
25 that.

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14:19 1 Mr President, the Kingdom of the Netherlands would
2 like to introduce the witness testimony of Mr Peter
3 Henry Willcox. Mr Willcox was the captain of the Arctic
4 Sunrise during the protest action on 18th September 2013
5 against the Prirazlomnaya. His testimony will be
6 directed to his overall responsibility as the master of
7 the vessel.
8 Direct examination by PROFESSOR LEFEBER
9 Q. Good afternoon, Mr Willcox. Could you please identify
10 yourself?
11 A. My name is Peter Willcox. I was captain of the Arctic
12 Sunrise at the time of the action.
13 Q. Thank you. Thank you for agreeing to testify in these
14 proceedings.
15 With the permission of the Tribunal, I would like to
16 give the witness a copy of the statement of facts, the
17 addendum and corrigendum thereto, and his witness
18 statement dated 26th August 2014. (Handed).
19 Mr Willcox, will you just take a look at the three
20 documents that were put in front of you and confirm that
21 you are the author of the witness statement?
22 A. Yes, sir, I am the author of the witness statement.
23 Q. Thank you, Mr Willcox. In your witness statement, you
24 confirm that specific paragraphs of the statement of
25 facts are true and accurate. The addendum and

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14:20 1 corrigendum thereto contain additional information and
2 adjustments. Can you confirm that the contents of the
3 statement of facts, as adjusted and supplemented by the
4 addendum and corrigendum thereto, are correct to the
5 best of your knowledge?
6 A. Yes, sir, the statements are correct to the best of my
7 knowledge.
8 Q. Thank you. Could you explain your personal involvement
9 in the protest action on 18th September 2013 against the
10 Prirazlomnaya?
11 A. Yes, sir. I was master of the Arctic Sunrise. I am
12 responsible for everything that happens on and off the
13 boat.
14 Q. Thank you. Mr Willcox, could you then describe in your
15 own words the facts that you have confirmed to be true
16 and accurate.
17 A. Excuse me, the question again, please?
18 Q. The question is whether you could describe, in your own
19 words, the facts that you have confirmed to be true and
20 accurate.
21 A. As in this statement here?
22 Q. The statement makes reference to the paragraphs that you
23 have confirmed to be true and accurate, and what I am
24 asking you to do is to describe in your own words what
25 is put in those paragraphs.

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14:22 1 A. So I should go paragraph by paragraph?
2 Q. You don't have to refer specifically to the paragraphs.
3 I would like you to give a description of the events as
4 you experienced them, and that then correspond with
5 those paragraphs.
6 A. Well, we approached the Prirazlomnaya, I believe, on the
7 morning of the 18th, at approximately 4.00 in the
8 morning. We sent five small boats to the rig, with the
9 intention of putting a banner up on the side of the rig.
10 It was an action very similar to what we had done the
11 year before. I was not there the year before, but we
12 were following a very similar plan.
13 We also had with us a pod, which was a fibreglass
14 shell that again we were going to try to hoist up on the
15 side of the rig, to offer the protestors protection from
16 the fire hoses and the metal objects that had been
17 thrown the year before. The pod never got within two
18 and a half miles of the rig before the tow line broke,
19 so it was never a part of the action at all.
20 The small boats approached the rig. They tried to
21 get lines up to various points. The climbers --
22 Miss Saarela went up one side, Mr Weber went up the
23 other side. Miss Saarela didn't -- came down again, and
24 then joined Mr Weber on the single side of the rig.
25 During this time, the reaction of the Russian forces

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14:24 1 was dramatically more aggressive than we had anticipated
2 or experienced the year before. I don't think that the
3 climbers spent more than 10 or 15 minutes on the side of
4 the rig.
5 I would like to emphasise again that it was never
6 our intention for the climbers to go on the rig. They
7 were to go up the side and unfurl a banner.
8 They came down, Miss Saarela and Mr Weber were
9 picked up by a coastguard boat from their lines, from
10 one of the small boats, and taken to the coastguard
11 cutter. The rest of the small boats returned to the
12 Arctic Sunrise, where we put them on board.
13 Later that morning, the Russian coastguard vessel
14 announced that they wished to board us for
15 an inspection. We declined the offer. They spent
16 an hour or so firing shots across our bow and
17 threatening us in other ways.
18 At about noon, we moved 20 miles off to the north,
19 away from the rig, with the idea of cooling the whole
20 situation down. We had been stunned by their aggressive
21 reaction. We weren't prepared or expecting it at all.
22 It seemed like a logical thing to do to calm the
23 situation down, also because we were interested in
24 getting our two colleagues back on board from the
25 Russian coastguard boat, which they had hinted in their

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14:25 1 discussion might be possible when we pulled away from
2 the rig.
3 We pulled away from the rig. After five hours the
4 Russian coastguard boat stopped answering the radio. So
5 we went back and circled the rig at a distance of
6 between three and four miles, until the following
7 afternoon, when at about 6.00 some troops rappelled out
8 of a helicopter on to the deck of the Arctic Sunrise and
9 took control of it.
10 The Arctic Sunrise the next day was towed to
11 Murmansk, when we were taken ashore and arrested for
12 piracy.
13 PROFESSOR LEFEBER: Thank you, Mr Willcox. This completes
14 my examination of the witness, Mr President.
15 THE PRESIDENT: Thank you very much. Do my colleagues have
16 any questions?
17 Questions from THE TRIBUNAL
18 PROFESSOR SOONS: Mr Willcox, I have two questions relating
19 to your part and the Greenpeace statement of facts that
20 you are a witness to. The first deals with what is
21 stated in paragraph 46 of the Greenpeace statement of
22 facts. My question to you is: did you, as master of the
23 vessel, have any uncertainty about the status of the
24 approaching helicopter and the people descending from
25 the helicopter, what their status and intent were?

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14:29 1 mate on watch at the time told me that we had been told
2 of an inspection team, but I honestly can't remember
3 what he said or not.
4 PROFESSOR SOONS: My second question concerns your position
5 as the master of the Arctic Sunrise, and of course also
6 in that position supervising the activities of the RHIBs
7 that had gone to the platform. Also based perhaps on
8 your previous experience, what were in your view the
9 known effects of such an action near and on trying to
10 climb the platform for the operations going on or the
11 activities going on on the platform? What would be the
12 effect of that happening for what was going on on the
13 platform?
14 A. Well, the effects of our demonstration would have no
15 effect on the activities of the platform. The climbers
16 were never intending to set foot on top of the platform.
17 They were going to restrict their location to the sides
18 of the platform. It had never been our intention to
19 disrupt the production in any way or approach any person
20 on the platform. It was simply to go on the side and
21 hang a banner. Because of our experience the year
22 before, we suspected that they would fire water hoses at
23 us, and a few other things like that, but we did not at
24 any time expect to actually disrupt the production on
25 the platform.

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14:27 1 A. No, absolutely no idea. At the time the helicopter
2 approached, I was down in the gym, trying to get some
3 exercise. I was called to the bridge. I got there,
4 I believe, shortly before the first person rappelled out
5 of the helicopter.
6 There were no markings on the helicopter that
7 I could see. We naturally suspected it was some sort of
8 Russian military helicopter, and the troops that came on
9 board the boat were completely unidentified, which
10 actually caused a bit of nervousness on our part at
11 first. They had no insignia whatsoever, so it was
12 very -- we could not identify who was coming on board.
13 Some of the crew suspected they were a private security
14 force. I am not sure I ever was told officially who
15 they represented, whether they were coastguard or FSB or
16 whatever.
17 PROFESSOR SOONS: In paragraph 46 it states that there was
18 a message from the Ladoga to heave to and to receive
19 an inspection team. Didn't you expect that the
20 helicopter was carrying this inspection team?
21 A. I would suppose so. I was not on the bridge when that
22 radio call was received. The first I knew about it was
23 when I was told that they were hovering overhead. And
24 it was within seconds after I got on the bridge that the
25 first soldier rappelled down. It's quite likely the

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14:31 1 MR BURMESTER: Mr Willcox, you say you were in charge of all
2 communications to and from the ship, and with the RHIBs
3 from the Arctic Sunrise. Were you in constant
4 communication with them and giving them instructions?
5 A. No, I actually was not giving instructions to the RHIBs;
6 that would have been the job of the action coordinator
7 at the scene. I have to okay the plan, and send them on
8 their way, but because the Arctic Sunrise was three
9 miles from the RHIB I did not try to direct the action
10 itself. It was too far for me to see. It was
11 impossible for me to know what was going on at the time.
12 It would be an illogical job role for me to try to
13 fulfil, from three miles away.
14 So I had a very good idea of what they were going to
15 do; I had worked with most of the people on board
16 before. But as to actually directing the action, it was
17 not my job. My responsibility, yes, but not my job.
18 MR BURMESTER: I understand that. In terms of having
19 an understanding of what they might do, there are
20 reports that there were obviously "clashes", if I can
21 put it that way, between Arctic Sunrise RHIBs and RHIBs
22 from the Russian ship, ramming and attempts to stop the
23 Russians preventing the people getting up. So there was
24 clearly an expectation that there could be
25 confrontations between the two groups of RHIBs?

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14:33 1 A. Well, I think yes, we would have the -- again, I will
2 say that we were surprised by the reaction of the
3 Russian forces, because of what had happened the year
4 before. Certainly they knew us, they had been on board
5 the boat two weeks before, this same coastguard vessel.
6 They knew who we were, they knew we didn't have weapons.
7 We expected water hoses and maybe a few things to be
8 thrown off the rig. We did not expect the Russian boats
9 to start cutting our RHIBs with knives or firing
10 machine-guns near our position. That was a complete
11 surprise.
12 Does that answer your question?
13 MR BURMESTER: Yes, thank you.
14 THE PRESIDENT: Mr Willcox, where exactly were you during
15 this whole exercise?
16 A. I was on the bridge of the ship at a distance of about 3
17 or 3.5 miles away.
18 THE PRESIDENT: So how were you able to see what was
19 happening?
20 A. I couldn't see what was happening. I was only listening
21 to the radio and trying to judge what was happening from
22 what I was hearing on the radio.
23 THE PRESIDENT: So what you are telling us is, according to
24 you, what you heard on the radio?
25 A. Yes, I was not able to see what was going on.

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14:34 1 THE PRESIDENT: You have already said that it was your
2 responsibility, but it was not your function, to ensure
3 that they were acting according to the plan that had
4 been approved by you?
5 A. That would be correct. We go through quite a rigorous
6 action proposal. That gets discussed in Amsterdam, it
7 gets discussed on the ship. In this particular case,
8 Amsterdam had requested or expected the ship to stay
9 outside the 500-metre area around the rig. I chose to
10 stay outside the three-mile area because I was hoping it
11 would keep the situation cooler. I was hoping that, if
12 we didn't get even close with the ships, the reaction
13 from the Russian forces would be more relaxed and not so
14 aggressive.
15 Obviously, that was a dramatic miscalculation on my
16 part. But that's why I stayed so far away.
17 THE PRESIDENT: If they were going to hoist something,
18 a banner, on the platform, how were they going to be
19 able to do that at the same time without crossing the
20 500-metre zone?
21 A. No, it was anticipated that the small boats would cross
22 the 500-metre limit. That was always the plan.
23 THE PRESIDENT: Alright.
24 DR SÁNCHEZ: Captain Willcox, I wanted to ask you: you said
25 at the beginning of your presentation here that you were

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14:36 1 responsible for everything that happens on and off the
2 boat.
3 A. Yes, sir, that's correct.
4 DR SÁNCHEZ: So I wonder whether you were then in touch
5 permanently with the five boats once they departed the
6 vessel.
7 A. I believe I was in touch with the three bigger boats.
8 The boats used two different sizes of radio. The bigger
9 boats have a 25-watt VHF radio which has a range --
10 given that antenna and situation -- of generally between
11 15 and 20 miles.
12 The smaller boats use a 5-watt radio and a much
13 smaller antenna. It is more than likely at a distance
14 of three miles, especially if they were on the back side
15 of the rig, I would not have communication with them.
16 But I certainly did have communication with most of the
17 boats at the site of the rig.
18 DR SÁNCHEZ: Were they under instructions to report to you
19 whatever happened?
20 A. No, not necessarily. They were keeping us loosely
21 appraised. We heard about the machine-gun fire. But
22 the job of the activists at the rig was to get the
23 climbers up and in position, and that's what they were
24 working on doing. They did not have a mandate to report
25 back to me at any specific time.

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14:38 1 DR SÁNCHEZ: Not even whatever reaction came from the
2 Russian authorities?
3 A. Well, they did let us know. I mean, I was aware from on
4 the ship that there was machine-gun fire, knives, guns
5 being pointed at people. So I was aware what was going
6 on.
7 DR SÁNCHEZ: You were aware of whatever communication the
8 RHIBs received from the Russian authorities?
9 A. If the message had been over the VHF radio, yes, I think
10 I would have known about it. I'm not aware of any such
11 messages. I honestly, sir, can't remember --
12 DR SÁNCHEZ: Or orders?
13 A. Yes, I don't remember any. But if it had come over the
14 radio, I probably would have heard it, but I wasn't
15 aware of one.
16 DR SÁNCHEZ: Were you making notations of everything that
17 was happening?
18 A. No, it's my practice not to do that. I generally write
19 it down shortly after the action, and do a description,
20 sent by email to the office, so that they know what's
21 going on. And I certainly did that in this case.
22 DR SÁNCHEZ: You did?
23 A. I would expect so.
24 DR SÁNCHEZ: With information about timing of when things
25 were happening, when things happened?

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<p>14:39 1 A. I can't remember what I put in the email, sir. 2 I suspect that I would have loosely estimated the time. 3 But a detailed record as to what happened when, I did 4 not keep written on the bridge. 5 DR SÁNCHEZ: Thank you very much. I am satisfied. 6 PROFESSOR SYMONIDES: I understand that the first contact 7 between Arctic Sunrise and the patrol boat Volga were 8 already established on the 16th and 17th, before the 9 18th, yes? 10 A. Yes, that's correct. 11 PROFESSOR SYMONIDES: The Russian officers from the patrol 12 ship Volga, in their testimony it is stated that they 13 received -- it is not clear when; presumably on the 14 17th -- certain information or assurance, it is not 15 clear also whether from you or personally or from the 16 ship as such, that you don't have any intention to 17 violate anything. Could you comment on this? 18 A. I don't think that was said by me. I wouldn't -- it 19 seems possible that it was said. When we were first 20 contacted by the Russian coastguard boat we were 21 50 miles away, and we weren't being honest about our 22 intentions: we were actually on course for the Northern 23 Sea route, and we were hoping to surprise them a little. 24 But with the equipment on board the boat, the 25 long-distance tracking devices that we voluntarily have</p> <p style="text-align: center;">Page 97</p>	<p>14:43 1 that things were said; I just don't have the detailed 2 information to know what was said between our RHIBs and 3 the Russian coastguard. 4 PROFESSOR LEFEBER: Thank you, Mr President. 5 THE PRESIDENT: Thank you very much. I think that we will, 6 as I said, ask you to be available, because we may want 7 to ask you any further questions. We may also not ask 8 you, but we just want you to be available. 9 THE WITNESS: Yes, sir. Thank you, Mr President. 10 THE PRESIDENT: Thank you very much indeed. 11 MR DIMITRI LITVINOV (called) 12 THE PRESIDENT: Thank you very much for coming. I ask you 13 to identify yourself, and then you will also have to 14 make the declaration which is on your desk. 15 THE WITNESS: Thank you, Mr President. My name is Dimitri 16 Litvinov. I am an employee of Greenpeace Nordic. In 17 this case I was a lead campaigner on board the Arctic 18 Sunrise on behalf of Greenpeace International. 19 THE PRESIDENT: Please read the declaration first. 20 THE WITNESS: Yes, sir. Declaration for witnesses. 21 I solemnly declare upon my honour and conscience that 22 I shall speak the truth, the whole truth and nothing but 23 the truth, and that my statement will be in accordance 24 with my sincere belief. 25 THE PRESIDENT: Thank you very much. Please, go ahead.</p> <p style="text-align: center;">Page 99</p>
<p>14:41 1 turned on all the time, it's virtually impossible to 2 surprise any government about the location of the boat. 3 We have a VHF AIS which has a range of 20-30 miles, and 4 we have the Arctic long-sea -- long-range -- I believe 5 it's called an "AIS", and that's received by 6 governments. So anybody knows where we are. 7 So we were a little bit ahead of schedule when we 8 got down near the rig, but it really didn't matter what 9 we did: we were not going to surprise anybody, with all 10 our tracking devices on. 11 PROFESSOR SYMONIDES: Thank you for your answer. 12 THE PRESIDENT: Thank you. Do you want to ask any further 13 questions? Yes, please. 14 Re-direct examination by PROFESSOR LEFEBER 15 Q. Thank you, I have two further questions. Mr Willcox, 16 you said you did not direct the action at the platform. 17 Could you please indicate who was responsible for 18 directing the actions at the platform? 19 A. Yes, that would be Frank Hewetson, who is expected to 20 testify shortly. 21 Q. Thank you. The second question is: are you aware, to 22 the best of your knowledge, of any orders being given by 23 the Russian coastguard to the RHIBs of the Arctic 24 Sunrise when the action was ongoing at the platform? 25 A. No, I wasn't aware of any such orders. I have no doubt</p> <p style="text-align: center;">Page 98</p>	<p>14:47 1 PROFESSOR LEFEBER: Thank you, Mr President. The Kingdom of 2 the Netherlands would like to introduce the witness 3 testimony of Mr Dimitri Litvinov. As Mr Litvinov 4 indicated, he was the lead campaigner on the Arctic 5 Sunrise during the protest in September 2013 against the 6 Prirazlomnaya. His testimony will be primarily directed 7 to his responsibility for planning and executing the 8 protest action. 9 Mr Litvinov remained on board the Arctic Sunrise 10 during the entire protest action. 11 Direct examination by PROFESSOR LEFEBER 12 Q. Good afternoon, Mr Litvinov. Could you please identify 13 yourself? 14 A. Yes, sir. My name is Dimitri Litvinov, and I am 15 an employee of Greenpeace Nordic. And I, as you have 16 stated, was on board the Arctic Sunrise on behalf of 17 Greenpeace International in the role of a lead 18 campaigner. 19 Q. Thank you, Mr Litvinov, and thank you for agreeing to 20 testify in these proceedings. With the permission of 21 the Tribunal, I would like to give the witness a copy of 22 the statement of facts, the addendum and corrigendum 23 thereto, and his witness statement dated 24 26th August 2014. (Handed). 25 Mr Litvinov, could you please take a look at the</p> <p style="text-align: center;">Page 100</p>

14:48 1 three documents that were just put in front of you, and
2 confirm that you are the author of the witness
3 statement?
4 A. Yes, sir, I hereby confirm that I am indeed the author
5 of the witness statement in front of me.
6 Q. Thank you. In your witness statement you confirm that
7 specific paragraphs of the statement of facts are true
8 and accurate. The addendum and corrigendum thereto
9 contains additional information and adjustments. Can
10 you confirm that the contents of the statement of facts,
11 as adjusted and supplemented by the addendum and
12 corrigendum thereto, are correct to the best of your
13 knowledge?
14 A. Yes, to the best of my knowledge, the contents of the
15 two documents are correct.
16 Q. Thank you. Could you explain your personal involvement
17 in the protest action on 18th September 2013 against the
18 Prirazlomnaya?
19 A. My primary role during that day was to remain on the
20 bridge of the ship, in consultation with the captain of
21 the ship, to coordinate receipt of information and
22 transmit information to the activists at sea, as well as
23 to communicate with the coastguard vessel and with
24 representatives of the Prirazlomnaya platform.
25 Q. Thank you. Then could you describe in your own words

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14:50 1 the facts that you have confirmed to be true and
2 accurate?
3 A. The sequence of events that is set out in this document,
4 starting with a period before, actually, the arrival of
5 the vessel at the area of the platform. Then the
6 contacts that we had from the ship with the coastguard
7 vessel before the arrival, as presented here, this is
8 exactly as I remember it being told.
9 At around quite early in the morning, around 4.30 or
10 so, on the 18th, we have already been at the site for
11 some time. And we were holding a pattern in a circle
12 around Prirazlomnaya, about a distance of a bit more
13 than three nautical miles.
14 At that point, we launched inflatables, who were
15 tasked with delivering climbers to the platform, where
16 they were to scale underneath the structure beneath the
17 helicopter pad and deploy banners that were designed to
18 communicate a protest against the dangerous practice of
19 oil drilling in the Arctic.
20 At that point also we called the Prirazlomnaya on
21 channel 16, and informed them of the fact that our boats
22 have been launched, and what we intend to do.
23 At the same time, I took contact via satellite
24 telephone with my colleagues, who assured me that
25 a message with the same text was sent via fax to the

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14:53 1 headquarters of Gazprom and to the operators of the
2 Prirazlomnaya platform.
3 Should I continue with the same level of detail?
4 Q. Yes.
5 A. After the inflatables left the Arctic Sunrise, we also
6 observed activity on board the Russian coastguard
7 vessel, and the boats that were in the water confirmed
8 to us or reported to us that they were witnessing
9 preparations and indeed the launch of RHIBs from the
10 coastguard vessel as well.
11 It's quite a distance to the platform from the
12 Arctic Sunrise, so I could not see very clearly what was
13 going on there. We were trying to observe it through
14 binoculars, but we did hear the reports on our radio
15 from our boats of the events.
16 Fairly soon, we heard the report from one of the
17 boats saying that the coastguard boats have arrived and
18 they are interfering with our boats, and pretty soon
19 after that we heard that there are guns drawn and being
20 pointed at us, knives being drawn. We tried to
21 ascertain whether or not our boats are being detained,
22 but we were assured no.
23 It was also approximately the same point that it was
24 reported to us via radio that an attempt has been made
25 to scale the rope that was deployed underneath the

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14:55 1 helicopter pad on the platform. It was not immediately
2 clear to what extent it was successful. We heard
3 a report that a climber is in the water, and then that
4 a climber has been retrieved from the water. After some
5 time, it was reported to us on the bridge that a climber
6 is going up on to a line that is attached to the mooring
7 lines on the other side of the platform.
8 There were further reports that there is a dangerous
9 activity being undertaken by the Russian coastguard
10 which is threatening the climbers, and we were asked to
11 communicate to the Russian coastguard vessel and to urge
12 them to stop any activities that are endangering the
13 activists. We did that: I called up the coastguard
14 vessel with that request.
15 Then we began receiving reports that there are shots
16 being fired, and that a climber or both climbers were in
17 the water, and then that the climbers were apprehended,
18 were in the boats, in the RHIBs of the coastguard.
19 A little bit before that time also at least one of
20 the boats returned to the ship with some of the photo
21 and video footage that was taken on the water. And then
22 at some point also, in consultation with -- we have
23 decided that, okay, there is not much more we can do, we
24 will call the boats back to the ship.
25 I apologise, I forgot one other sequence of events

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14:57 1 that took place earlier, which is that we also -- after
2 the first attempt to scale the side of the platform
3 began -- deployed a safety pod. That was a large --
4 it's a structure made of plastic that was being towed
5 behind one of the inflatable boats towards the platform.
6 The plan was to hoist it up on to one of the climbing
7 lines and use it as a shelter for the activists, as we
8 had from previous experience expected that fire hoses
9 and projectiles would be deployed against them, so as
10 a protective measure. However, we did not manage to
11 deliver the pod to the platform: very soon after leaving
12 the vicinity of our vessel, the towing line parted so we
13 had to retrieve the pod.
14 After the order was given to the boats to return, we
15 began the process of retrieving the boats, putting them
16 back on board and -- how shall I put it? -- "emergency
17 counselling", perhaps, for the crew. People were in
18 a bit of shock from having guns pointed at them. And
19 seeing what they felt was a very dangerous situation
20 that was created for some of their colleagues, for the
21 climbers, and having knives stuck into the inflatables,
22 people were quite shaken up.
23 But eventually the situation was stabilised. It was
24 clear that the action did not succeed, we did not manage
25 to do all we planned to do. We were kind of stable, but

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15:00 1 we had the situation where two of our number was on
2 board the coastguard vessel. So we were trying to think
3 about what will be the next step, what do we do. We
4 need to get the people back, and we were actually
5 preparing to call the coastguard vessel, to start the
6 discussion. We were called by the coastguard vessel at
7 some point, and they ordered us to heave to, or to stop
8 the vessel, to refrain from launching any inflatables,
9 to not scuttle the ship -- it seemed like they were
10 reading from a piece of paper -- and to stand by for
11 an inspection.
12 After consultation, we have called them back and
13 said that we do not believe that we have any reason to
14 accept an inspection from their vessel, and we have
15 asked them to return the detained members of the crew of
16 the Arctic Sunrise.
17 At this point we were back in the holding pattern
18 around Prirazlomnaya, the same distance as before, and
19 the coastguard vessel was pacing us, matching our course
20 and speed, fairly close, 50 metres, maybe 75, inside of
21 the circle between the Arctic Sunrise and the platform.
22 They repeated the order for us to stop our vessel and
23 accept the inspection a number of times. And at some
24 point they started saying that, unless we do this, then
25 they will use any means at their disposal, including

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15:02 1 preventive fire.
2 We responded that we felt that that was
3 a disproportionate threat, and I tried to argue on the
4 radio with the representative of the coastguard, saying
5 that for a vessel of a country to even threaten and
6 certainly to fire upon an unarmed vessel in
7 international waters is actually tantamount to an act of
8 war, and that -- I encouraged them very much to check
9 with their superiors and make sure that they are
10 actually allowed to do this, both to issue the threat
11 and to actually fire.
12 We could observe this -- I should say that this
13 threat was repeated on a number of occasions, and we
14 could observe that the coastguard vessel, while
15 maintaining the same course and the same distance from
16 us, pulled a little bit further ahead of us. And we
17 could see quite clearly that they were conducting
18 operations on the forward deck, removing the cover from
19 a gun, which was then swivelled in our general
20 direction; not pointing at the Arctic Sunrise as far as
21 we could see, but in the general direction of Arctic
22 Sunrise.
23 The threat was repeated again after the guns seemed
24 prepared. We replied in the same manner, saying that we
25 do not believe that they have the right to board us

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15:04 1 without invitation, we do not extend this invitation,
2 and that this threat of violence is completely
3 unacceptable. We also tried to impress upon them that
4 everything that's happening here is not happening in
5 secret, that everything that is being done is being
6 documented and sent back to land, in a near live regime,
7 going both to the authorities of the flag state, the
8 Netherlands, as well as to the mass media.
9 Then at some point they fired a volley. You could
10 very clearly see the muzzle flashes and hear the reports
11 of the guns.
12 I should also add that in practically all of the
13 responses to the demands from the Russian side, we would
14 also add that we are demanding that they return two of
15 the crew members that they had on board.
16 This pattern continued after the first volley was
17 fired. In other words, the coastguard would issue yet
18 again the threat and the order, we would reply that we
19 will not -- we do not believe that we are bound to
20 follow that order, and they do not have the right to
21 fire on an unarmed ship in international waters, and
22 that we want our crew members back, and then they would
23 fire. Altogether I believe we counted 11 volleys that
24 were fired across the bow of our ship. This whole
25 process took quite a number of hours.

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15:06 1 Towards the end -- or after this sequence of events,
2 at one point I was actually down in the mess, and I was
3 called back up to the bridge because yet another contact
4 was being requested by the coastguard. And this time
5 they issued a similar threat -- or a similar order,
6 rather. The threat was different: they said that,
7 unless we followed the order to heave to and accept
8 inspection, they would fire directly upon the ship; and
9 that we were advised to move the crew away from the
10 stern towards the forward section of our ship; and that
11 if we did not comply with this, and there were any
12 damage to any person, that it would be our own
13 responsibility.
14 We yet again tried to entreat with the Russian
15 coastguard that they do not do that, and that -- we
16 tried to appeal both to our understanding of their
17 obligation under law, but also just to their conscience,
18 and say, "You know who we are, we're not -- we're doing
19 this with open face. And you've been on board this ship
20 two weeks before: you know there is no weapons here.
21 You saw our boats, you saw the people in them. This
22 is -- how can you actually threaten to shoot at us?"
23 And they basically just repeated the threat.
24 At that point, I was requested by the captain to
25 inform them of the fact that on the aft deck, about

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15:08 1 halfway between the stern and the midships area, where
2 the hangar starts, are a number of barrels,
3 silver-coloured barrels that contained gasoline
4 petroleum, and to inform the coastguard of this and to
5 ask them to please do their best, if they do fire at the
6 ship, to avoid firing near those barrels, since that
7 could lead to an explosion, and fire, and very serious
8 damage and a very dangerous situation. I did that.
9 Then you could see that the coastguard vessel then
10 pulled back so that the guns were now lined up with the
11 stern, and the guns swivelled again. We were quite
12 nervous. The crew was ordered to evacuate the aft area
13 and move forward. We sent some crew members to make
14 sure that everyone was rounded up and indeed moved
15 forward. The whole time we tried to keep discussion
16 with the coastguard ship, trying to convince them to not
17 shoot at the ship. But their response was -- basically
18 just seemed like it was just being read from a piece of
19 paper. It was mainly the same thing: that we are
20 ordered to stop; if we don't, they will fire; and people
21 need to move, otherwise it will be our responsibility
22 for any damage.
23 We were also at the time quite feverishly
24 communicating with our land base, informing them of
25 these developments. As I am sure you can imagine, we

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15:10 1 were not sure what would happen, and we were quite
2 worried that -- we wanted to make sure that our support
3 team on land was aware of this in case there would be no
4 further communication later.
5 But eventually the Russian vessel, instead of
6 opening fire, actually pulled up again so they were
7 directly parallel with us, and then they resumed the
8 previous pattern of threatening to do warning fire
9 rather than direct fire on to the ship.
10 At a later point -- this became, as I said,
11 a pattern. But at a later point we were called up
12 again, and it seemed -- it was a different tone, and we
13 were asked if they were -- okay, we were informed that
14 the coastguard was willing to discuss the terms for the
15 return of our crew members. I think it was put
16 something like that they felt that the situation was
17 quite agitated so close to Prirazlomnaya so, if we
18 wanted to discuss this, they suggested that we proceed
19 away from Prirazlomnaya and we could discuss it there.
20 We immediately agreed. They provided us with a set of
21 co-ordinates 20 miles north of the position of
22 Prirazlomnaya. We proceeded there, and were accompanied
23 by the coastguard vessel the whole time.
24 When we arrived at the point, we called up the
25 vessel and asked them what will be the process. You

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15:11 1 know, we demanded again: we requested that our crew is
2 released to us. And we were told that, "Well, we are
3 not ready to discuss this now; we don't have orders yet
4 from Moscow."
5 We waited about an hour, I believe. We called up
6 again, and we received an identical answer.
7 So this pattern continued for a total of four or
8 five hours or so. And eventually we said, "Okay,
9 obviously this is not doing us any good." So we, in
10 consultation, decided we would go back to Prirazlomnaya,
11 in part because we felt that this perhaps would put
12 a bit of pressure on to the coastguard to actually
13 resolve the situation faster.
14 Basically at that point we were ready to go home,
15 the action was over. But we could not leave our people,
16 of course. So we wanted to just get the people back and
17 go back to Kirkenes.
18 The coastguard did become quite agitated on the
19 radio after we went back, and they followed us. And
20 then it sort of went back for a bit to the same pattern.
21 I don't believe that there were any more volleys fired,
22 but it was almost identical language of threat that was
23 being issued, and we would just respond saying that we
24 really want to talk about our people coming back.
25 I apologise again, there is one event that I forgot

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15:13 1 to mention before this. During the fairly early stage
2 of the pattern of threats/volleys, we also contacted the
3 coastguard with a specific request to deliver medicine
4 to Sini Saarela, who is one of the two climbers on board
5 the coastguard vessel. Sini Saarela has a medical
6 condition which requires her to take regular medication.
7 And I must say that the coastguard agreed immediately to
8 accept that, and they instructed us to lower a boat and
9 to deliver the package with medicine. We also
10 negotiated that we could deliver some vegan food and
11 some books to our crew on board their vessel.
12 In any event, going back to the sequence of events,
13 after we returned from the point 20 miles north, and
14 fell into the pattern around Prirazlomnaya, the
15 situation yet again went back to stability. We didn't
16 know what was going to happen. We were, I guess,
17 waiting for the events to develop, and hoping that
18 enough public pressure was being generated
19 internationally to speed the resolution of the problem
20 with our crew aboard the coastguard vessel.
21 There was quite a lull. Basically nothing was
22 happening; we were just in a pattern. And then at some
23 point I heard a lot of running around in the alleyways
24 outside. Again at that point I was in the mess, and
25 people started shouting, "Helicopter, helicopter". My

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15:15 1 first surmise was that it was a helicopter that was
2 coming in to remove Marco Weber and Sini Saarela, the
3 two climbers, from the coastguard vessel to bring them
4 to land. And I have to admit that there was a bit of
5 a sense of relief: okay, then this situation becomes
6 resolved here; and then we can, in a way, hand it over
7 to the land team to support the activists who have been
8 detained on land, and we can just go back.
9 That turned out to not be the case. The shouting in
10 the alleyways was becoming more and more agitated, and
11 I went out on deck and I could see an Mi-8 helicopter
12 hovering quite low over the helicopter landing pad at
13 the stern of the Arctic Sunrise, and the side slide door
14 was open. I could see faces of masked camouflaged men,
15 clearly armed, leaning out. And they were shouting down
16 something; you could not hear anything because of the
17 noise of the rotor blades. There were a number of
18 members of the crew of the Arctic Sunrise were standing
19 underneath it, to prevent the helicopter from landing.
20 Then we saw some lines deploying -- or I saw a line
21 deploying from the helicopter, and I saw a trooper slide
22 down that line and land on the deck of the Arctic
23 Sunrise. I ran out -- at this point, I have also run
24 out on to the helicopter deck. I tried to understand
25 who this trooper was. I have worked in the Russian

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15:17 1 Federation for a number of years, I had a number of --
2 quite broad experience of working together with the
3 security and armed forces in Russia, often in a very
4 cooperative manner, but I did not recognise -- well,
5 there were no insignia on the men, neither of rank nor
6 of service branch. He was masked with a balaklava, and
7 had a very big weapon. I am not a weapon expert, but it
8 didn't look familiar to me, from my best experience of
9 observing or working in Russia.
10 He was just gesturing to the rest of us with the
11 weapon, without saying anything, just gesturing us away
12 from the rope. And then more and more troopers started
13 coming down. I believe another line was deployed, so
14 there were at least two lines that the troopers were
15 coming down from. Then they started shouting in
16 Russian, "Get down, get down on deck". My concern was
17 to get to the bridge at that point as quickly as
18 possible, partially to make sure that this new
19 development is communicated to land as soon as possible,
20 to make sure that that has happened, and also just to be
21 at the place where a takeover of a ship could be
22 expected to occur.
23 So I began to run on the port side towards the
24 stairway to the bridge wing, and I could see some
25 uniformed troopers already up there before me. Looking

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15:19 1 over my shoulder, I could see also that there were quite
2 a number of troopers on the helicopter deck, and that
3 most -- if not all -- of our crew were lying on the
4 deck, and some of the troopers were kneeling with one
5 knee on their backs. There was a lot of shouting, and
6 guns were being pointed in different directions.
7 As I started up the stairs, I could see Frank
8 Hewetson right outside the entrance to the bridge. And
9 I could see a trooper behind him, and then I saw Frank
10 get pulled down. I saw his head disappear and his feet
11 go up. Then I felt a hand on my shoulder, and kind of
12 pushed me back -- pulled me back and pushed me forward.
13 So I stumbled and fell on top of Frank, and felt a boot
14 step on my back and go over me.
15 Once we caught our breath, I tried to enter the
16 bridge. The bridge was quite full. There were at that
17 point six or seven troopers, perhaps, and maybe four or
18 five members of the crew, including the captain and
19 at least two of the mates, and a few others. I tried to
20 speak with the trooper that was guarding the entrance,
21 saying, "I need to speak" -- I was speaking English at
22 that point, I should say, although I do speak Russian.
23 I started saying, "I need to speak to the officer",
24 indicating insignia on shoulder blades, "I need to speak
25 to the officer, please let me in". First I was being

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15:21 1 signalled away with a gun, and then eventually I suppose
2 an order was given to allow me to enter, so I was pulled
3 inside.
4 Then I could just observe the process of them
5 securing the bridge. It seemed that the highest -- the
6 primary concern for them, for the troopers, was to take
7 away any sort of video recording equipment, photo
8 recording equipment. So any camera, a smartphone with
9 a lens, a small digital photo camera, all of that was
10 just the first thing to go. Then it was the
11 communication equipment. It just seemed very -- I don't
12 know if "rehearsed" is the right word, but they were
13 quite prepared; they knew what they were doing. It was
14 very methodical.
15 So yes, they would go for VHF and UHF and other
16 bands, and satellite communication. And quite rough:
17 they would seek to turn the piece of equipment off; if
18 they didn't immediately see the on/off switch, they
19 would yank on a cord; if that didn't help them, a knife
20 would be taken out and the cord would be sliced, I saw
21 that on at least one occasion.
22 We could see -- we were told to move away from the
23 windows, signalled to move away from the windows and the
24 portholes. But you could see a little bit of what was
25 happening on the upper deck, and you could see also that

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15:23 1 some of the journalists who were on board were being
2 roughed up, and their equipment was being grabbed from
3 them. And you could also hear that on the deck
4 immediately below the bridge there was quite a loud
5 confrontation: you could hear doors breaking and
6 equipment breaking and things like that.
7 The whole time I was trying to speak with the
8 members of this occupying team, really trying to figure
9 out who they were. I know Russian coastguard: as
10 I said, I have worked with Russian coastguard in the
11 past on joint efforts to apprehend pirate fishermen in
12 the Barents Sea, and on a number of other occasions.
13 These did not look like any coastguard that I have ever
14 seen before. They didn't look like land border guards
15 either. Again, no insignia, masked, heavy guns; and
16 a very -- how shall I put it? -- professional demeanour,
17 more so than I am used to seeing at that point from the
18 Russian military. They had very limited communication
19 with us, basically just, "Move away from this, move away
20 from that". And their communication with each other was
21 also quite limited, mostly in code and on the radio.
22 At some point the situation did sort of stabilise.
23 Okay, we were on the bridge, things were calmed down on
24 the deck below us. And then more people came on board.
25 This time it was different kinds of uniforms. Some of

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15:25 1 them were immediately recognisable as coastguard, some
2 of them were still masked, some of them were not.
3 I tried again to ask, "Are you coastguard? Are you
4 Spetsnaz? What branch of Spetsnaz are you? Are you
5 private security for Gazprom?" That's actually
6 something that I thought was quite plausible at the
7 time.
8 Once the coastguard came on, there was an officer,
9 I believe he was a captain of first rank, which --
10 I think it is fairly common practice -- would be the
11 rank for the commander of a ship. He was not in a very
12 good mood. He was quite aggressive, much more
13 forthcoming than the troopers who occupied us, sort of
14 yelling and shouting and gloating, "Okay, we finally got
15 you". And he said, "Alright, captain, you are now going
16 to be taken to Murmansk". I think he said, "Your ship
17 is under arrest. So are you going to go under your own
18 steam, or will you tow us?"
19 I remember Peter saying -- Peter Willcox, the
20 captain of the Arctic Sunrise, I remember him saying,
21 "I would be happy to go under our own steam", which
22 obviously at this point it seems to me that he did not
23 expect that answer. Peter said, "But of course I'll
24 need to communicate with the operator of the ship that
25 has employed me. I'm not -- it's a big piece of

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15:27 1 equipment. I don't just make a decision where it goes.
2 I need to inform them of the fact that that, under
3 orders from armed forces, I am proceeding to Murmansk".
4 He said, "No, no, no, you're not calling anybody". And
5 there was a bit of a back and forth, where Peter said,
6 "I will be happy to go, I will go under my own steam,
7 but I do need to speak with the land base and tell them
8 that we're doing this." And the officers basically said
9 "Okay, well then you're refusing. Fine, we'll take you
10 under tow."
11 After that an order was issued, and everyone was
12 taken from the bridge except Pete Willcox, who remained
13 on the bridge. And we were taken -- the remainder of us
14 was taken into the mess, where the rest of the crew also
15 at that point had been gathered. We were kept there
16 under armed guard. And fairly soon after that, the two
17 crew members who were on board the coastguard vessel
18 were brought back to us. We were very happy to see
19 them, they were safe and sound.
20 We could see a lot of people walking around the
21 alleyways outside. It mostly was the camouflage
22 troopers with no insignia, but there was also some
23 coastguard walking around. And we could also see that
24 they were going into different cabins, and hear quite
25 a lot of noise of pieces of furniture breaking and

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15:28 1 things like that. So it seemed clear that some sort of
2 a search of the ship was taking place.
3 We were kept for a number of hours in the mess, and
4 then we were taken out one by one from the mess and
5 taken to a laundry room, which is quite a small room,
6 and quite an intimidating process of personal search
7 ensued there. Basically, you were brought in, you were
8 ordered to keep your hands behind your back, and
9 a trooper was walking ahead of you, and a trooper with
10 a gun was walking behind you, issuing orders in English,
11 very curt orders, just, "Right, left, downstairs, stop."
12 And then you were brought into the laundry room.
13 And when you first came in, what you saw is
14 a trooper with the balaklava mask on, and army boots and
15 army pants, and no clothes on the top except for a thin
16 stripey T-shirt, and big tattooed hairy arms; quite
17 an intimidating scene, while you have two guys with guns
18 behind you at the doorway. Then a very thorough
19 personal search took place, at least of myself, and
20 I understand also from reports of others that they
21 underwent the same process.
22 Then after the search we were put into the lounge,
23 which was the area immediately next door to the laundry
24 room. And after a while, after this processing has
25 taken place, all of the crew except for Peter Willcox,

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15:30 1 the captain of the vessel, were gathered in the lounge.
2 We were kept there for again a few hours, and then we
3 were taken up as a group. I believe we were taken back
4 up into the mess first, and then an announcement was
5 made to us that, okay, we are allowed to leave the mess,
6 and were allowed to be in alleyways on two of the decks;
7 we were not allowed on the upper deck or the bridge; we
8 were not allowed on the outside decks at all; and we
9 were allowed in the cabins that were on the two decks,
10 where we had the freedom of movement.
11 We enquired, "What about the people who have cabins
12 that are outside of that area?" And they said, "We
13 don't care, they are not allowed to go there."
14 At that point already the ship was under tow and
15 moving. I believe that we were informed that we were
16 heading towards Murmansk. We tried to speak with the
17 troops, but they were really not very forthcoming. The
18 crew members who could access the cabins, I among them,
19 went back to our cabins, to -- well basically it was
20 quite a mess. The cabins were very thoroughly searched,
21 with personal possessions strewn all over the deck,
22 drawers pulled out.
23 I could see immediately that a number of my personal
24 belongings were no longer there. Primarily was
25 documents: passport, some written material. Some

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15:32 1 electronic material, such as my computer, my camera,
2 were all gone. We started gathering -- the crew started
3 gathering again in the mess, in the lounge, and speaking
4 with each other, comparing experiences. And you heard
5 about the fact that everyone who had any privately owned
6 alcohol found that the alcohol was missing, and that
7 a lot of people were missing cash. I did not have any
8 cash missing, and I did have some cash in my wallet, but
9 this is what I heard reported by others.
10 So we remained in that state for a number of days as
11 we were being towed towards Murmansk. I apologise,
12 I realise I went beyond the time limit that you actually
13 asked for, so please tell me if you need me to continue.
14 Q. I don't think we are pressed for time. If there is
15 anything important you would like to add, I think you
16 can do so. But so far, thank you for that comprehensive
17 account. If you would like to proceed -- but I think
18 you should try to bring this initial statement to
19 a close.
20 A. Yes, sir. What I have described summarises the sequence
21 of events during the period that you indicated, so I am
22 fine now, thank you.
23 Q. Thank you, then, for that comprehensive account of what
24 happened at that time.
25 Mr Litvinov, I have two further questions for you.

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15:34 1 First, you were the campaign leader. Were you involved
2 in directing the action at the platform?
3 A. Yes, thank you. Yes, indeed, I was the campaign leader.
4 The responsibility of the lead campaigner on board the
5 ship is primarily directed towards communication of the
6 campaign to the outside world, but also ensuring that
7 the campaign is carried out in a way that is most likely
8 to ensure successful communication. So I was certainly
9 involved in the thinking about, the discussions and the
10 design of the action and the activities, but -- so
11 things like, for example, thinking about what should be
12 on the banner, the text on the banner, what is the best
13 way to display the banner in such a way that you get the
14 best image. But the detailed logistical carrying out of
15 the action, that was not within my primary sphere of
16 responsibility, no.
17 Q. Whose responsibility was that?
18 A. The primary responsibility for anything that happens on
19 a ship of course is the captain's. The decisions and
20 the details of an action at sea or on land for that
21 effect is usually delegated to the action coordinator.
22 I should add that we always strive to achieve
23 a triumvirate, if you will. So the lead campaigner, the
24 action coordinator and the captain speak very openly
25 with each other, and attempt to reach a consensus on any

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15:37 1 decision. But of course, if the situation is such that
2 there is no time for this consultation, then it is clear
3 that the decision-making is with the action coordinator
4 on the details of the action.
5 Q. Who was the action coordinator?
6 A. Frank Hewetson was the action coordinator on that trip.
7 Q. Thank you. On that understanding, can I ask you whether
8 you were aware of any orders being given by the Russian
9 coastguard to the RHIBs of the Arctic Sunrise? Was
10 there any visual or auditory signal to the RHIBs to
11 stop?
12 A. I could not see what was happening on the water. We did
13 try to ascertain whether or not the RHIBs were being
14 arrested, especially when the guns came out. And it was
15 reported to us that: no, they were not being arrested;
16 they were being shoed away, more like that. But
17 because I was not in the water, I cannot say I saw it
18 myself.
19 PROFESSOR LEFEBER: Thank you, Mr Litvinov.
20 This concludes my examination of the witness,
21 Mr President.
22 THE PRESIDENT: Thank you very much. Do my colleagues have
23 any questions?
24 Questions from THE TRIBUNAL
25 PROFESSOR SOONS: Thank you, Mr Litvinov. I have two

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15:38 1 questions. One deals with the initial refusal to allow
2 an inspection of the vessel, and the second deals with
3 the anticipated effects of the attempted aborted action
4 for the operations of the activities on the platform.
5 First, the refusal. In your statement just now, you
6 said, "After consultation, we decided not to accept
7 an inspection", and by using the word "we", I gather
8 that you were part of the persons on board the Arctic
9 Sunrise who were discussing whether or not, on the
10 morning immediately after the aborted attempt, and after
11 the order to stop was given, to allow inspection of the
12 vessel.
13 The reason I would like you to elaborate a little
14 bit more on the reasons for not allowing the inspection
15 have also to do with paragraph 13, which is part of your
16 written statement that you are aware of, paragraph 13 of
17 the Greenpeace statement of facts.
18 On 26th August you allowed, under protest,
19 an inspection by the Russian coastguard, also after
20 there was a threat to use force first. So I think we
21 would be interested in hearing a little bit more from
22 you about your discussion on the morning of the 18th
23 about whether or not to allow an inspection at that
24 moment. That is question one.
25 Question two: I am sure that, as lead campaigner,

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15:40 1 you must have been one of the designers of the action?
2 A. Indeed.
3 PROFESSOR SOONS: What did you anticipate would be the
4 effects, especially if your action would have been
5 successful, for the ongoing operational activities of
6 the platform?
7 A. Yes, sir, thank you very much for the question.
8 Mr President, to address the first question, I cannot
9 speak for the captain of the Arctic Sunrise who allowed
10 the inspection at a previous occasion, a week or so
11 before; I was not on board at that point.
12 PROFESSOR SOONS: I asked the question to you because in
13 your witness statement you include paragraph 13 of the
14 statement of facts.
15 A. Indeed. I was the coordinator of the land response team
16 for that portion of the expedition, so I was in contact
17 with the ship. So I was informed of that decision, and
18 of the subsequent events as they were unfolding.
19 However, I was not directly privy to that decision as it
20 was being made. So having said that, I do -- it has
21 been explained to me what it was based on, and I'll be
22 happy to share that.
23 The main difference, I think, between the two
24 events, as we saw it, is that the second time our vessel
25 was in the waters of the Northern Sea Route. We were

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15:42 1 still quite far outside the territorial waters when this
2 occurred. However, it was not -- we felt that the
3 Russian Federation had a bit more of an authority to
4 enforce rules that they -- more or less they saw fit in
5 that [territory]. Perhaps that is erroneous.
6 We did ask on a number of occasions for permissions
7 to enter the Northern Sea Route, and were refused on the
8 grounds that we did not feel were real. So we were
9 aware at that point that we were in breach already of
10 Russian regulation that is really -- is not a bad thing.
11 The regulation is put into place actually to protect
12 marine environment, so we did not feel that it was
13 morally acceptable for us to challenge that further.
14 I think that was one of the big reasons.
15 There was clearly a conviction on the part of the
16 captain, that indeed the coastguard would open fire, he
17 communicated that clearly, and it was also felt that we
18 would not further serve the needs of the campaign by
19 insisting that we do not leave, because the
20 communication to the outside world of the problem that
21 we were there to expose at that point has already been
22 done. We have indeed succeeded at that point; or,
23 I should say, the vessel at that point has succeeded in
24 bearing witness to and communicating the seismic
25 exploration that was being carried out in that area.

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15:44 1 This was a bit different from the situation that we
2 found ourselves in later on. Again, quite a significant
3 difference was the fact that we felt, okay, we really
4 are in international waters, where Russia has a much
5 more limited jurisdiction. Yes, we are inside the
6 economic zone; however, we did not feel that our
7 activities at that point were economic in nature. So
8 while, yes, indeed we also understood that perhaps
9 a breach of the safety zone was taking place, that this
10 did not give the right for the coastal state to enforce
11 these regulations by boarding the ship. So we felt we
12 had no reason to accept that on board.
13 And from the campaign perspective, we also felt that
14 it was important for as long as possible for us to
15 remain in place and not to be shooed away, taken away or
16 pushed away, so we could continue to communicate to the
17 outside world the threat of Arctic oil drilling.
18 Added to that was the fact that we had two people on
19 board the coastguard vessel whose fate was really not
20 clear to us. We felt that we did not want to really
21 start going along with what we felt were unreasonable
22 demands while they are holding our people in a way
23 hostage, perhaps.
24 So I hope that sheds some light on the first
25 question.

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15:46 1 The second question, of what it was that we were
2 trying to do -- and we were quite open with this, from
3 the very beginning of the expedition --
4 PROFESSOR SOONS: My question is not about the purpose of
5 the action, because that is clearly stated for the
6 longer term: to convince Gazprom not to continue,
7 et cetera, et cetera. But my question relates to, based
8 on your experience, actually what do you expect would
9 happen when you are climbing a platform? Business as
10 usual on board the platform, or would it not be business
11 as usual on board the platform?
12 A. We did have experience of doing a very similar action at
13 the same installation the year before. So we expected
14 that the reaction would be similar to the sequence of
15 events in 2012. Basically, what that amounted to was
16 the attempt -- eventually successful -- by the operators
17 to wash off, to remove the activists from the platform.
18 This was also the reason why we wanted to actually
19 deploy a safety pod, is to enable us to stay longer, to
20 continue to communicate to the rest of the world.
21 I think it was fairly open-ended. We did not have
22 an exact guess of what other steps the operators would
23 resort to. The one thing we did not expect is the
24 direct involvement of the coastguard, I must say,
25 because the year before it was -- the coastguard was

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15:48 1 also present, and they actually made it clear that they
2 did not have orders nor did they feel that they had the
3 right to interfere with this; that this was between the
4 operator and Greenpeace.
5 PROFESSOR SOONS: Thank you. But from the statement of
6 facts, the supplement, we understand that the platform
7 became fully operational in December 2013, so three
8 months after the action. Again my question is: what
9 kind of anticipated effects would a Greenpeace action
10 [have on] the work on the platform?
11 A. Yes, sir, thank you. I think I do understand the
12 question now. We did not, in all honesty, expect to be
13 able to interfere or to prevent the platform from
14 operation. The purpose of it was not to stop the
15 platform operating, but to register protest, and to
16 communicate that protest and to bear witness.
17 Clearly, our presence there was very annoying and
18 disturbed the daily operations in the sense that the
19 platform would have needed to deal with us. But we did
20 not hope that our action would actually significantly
21 slow down their ability to drill for oil.
22 PROFESSOR SYMONIDES: Mr Litvinov, I understand that you
23 have participated in a number of protests, actions, and
24 so on. So you are an expert on equipment which is used
25 during such protests. Bearing this in mind, I would

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15:50 1 like to ask you perhaps a naive question. During this
2 action on the 18th, line throwers were used. The use of
3 line throwers, can you create a danger for the guards,
4 or not at all? I understand that Arctic Sunrise was
5 equipped with four such line throwers. Were all of them
6 were used on the 18th, or only two or three? I don't
7 know. I would be very grateful if you could answer this
8 question.
9 A. Yes, sir, thank you very much, Mr President. The line
10 throwers that were used in that action -- well, to say
11 that under no circumstances they could cause damage
12 would not be correct. Anything can cause damage, any
13 tool or shovel, anything like this. But I think that
14 the way that they were being used and planned to be
15 used, it would have to be quite a serious sequence of
16 accidental events that would lead to serious damage to
17 anyone.
18 The projectile is quite soft and small, the power is
19 not very high. It is just designed to put the line and
20 a weight a distance in the air. So it certainly would
21 never occur to me that they were in any way dangerous.
22 I'm afraid I am not able to answer the second
23 question, which ones of the line throwers were deployed.
24 I was not involved in the actual equipping of the
25 inflatables when they went out to do the action.

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15:52 1 PROFESSOR SYMONIDES: Thank you.
2 THE PRESIDENT: Thank you very much. Let me ask one
3 question. The captain was asked if he heard that
4 inspectors would be sent on board the Arctic Sunrise,
5 and he says that he did not hear this. But he said that
6 it was possible that you heard it, because you were also
7 on the bridge with him. Did you hear this? Did you
8 know in any case that there was the possibility of
9 inspectors being sent on board the Arctic Sunrise?
10 A. Yes, thank you, Mr President. Yes, indeed, at one
11 point -- and I apologise for omitting this from my
12 description earlier, but indeed, at one point during the
13 first half of the day, after the action itself, we were
14 also informed that we need to stand by for an inspection
15 team that is coming on board. So it was not an order
16 for us to receive one, but we were being informed that
17 there is an inspection team coming on board, and
18 an inflatable boat with some -- I think mostly if not
19 all of them were masked troopers, did leave from the
20 coastguard vessel and approached our ship, and attempted
21 to board.
22 So I did hear that, and I was also standing on the
23 deck as they were coming, and basically signalling, "No,
24 you're not welcome to come."
25 THE PRESIDENT: Thank you.

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15:54 1 MR BURMESTER: Can I follow up on that? In paragraph 46 of
2 the statement, there is reference to receiving
3 an inspection team, a message to that effect, just
4 before the helicopter approaches. Were you aware of
5 that message being sent just before the helicopter
6 arrived?
7 A. Right, I understand the question. Thank you, sir. No,
8 I definitely do not recall hearing at that point, at
9 that specific point, information that an inspection team
10 was about to come, not at all. At the point when the
11 helicopter arrived, I was sitting in the mess. But
12 I think -- I would have thought that, if such a message
13 were to have been received on the bridge, then either
14 myself or the captain or both would have been called to
15 the bridge immediately; if we were told, "An inspection
16 is coming", in the same way that it was done earlier on.
17 So the answer is: no, I did not hear, as far as
18 I recall, such a warning.
19 THE PRESIDENT: Thank you very much. I don't think that we
20 have any more questions.
21 But I will ask whether you have any further
22 questions to ask by way of re-direct?
23 PROFESSOR LEFEBER: Thank you, Mr President, there is one
24 point I would like to clarify with Mr Litvinov.
25 Re-direct examination by PROFESSOR LEFEBER

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15:56 1 Q. Mr Litvinov, plan A was to suspend a survival capsule
2 from the side of the platform. Plan A failed. What was
3 plan B? Plan B consisted of an aborted attempt to climb
4 the platform. But was the plan to reach the deck of the
5 platform, or to suspend the climbers from the side of
6 the platform?
7 A. Yes, thank you. Both plans involved scaling the side of
8 the platform in order to -- and attempt to stay for as
9 long as possible while displaying a message. The first,
10 plan A, was to attempt to do it under the structure
11 underneath the helicopter platform. And then plan B
12 would be to attempt to do it from other possible pieces
13 of the structure coming out from the hull, such as the
14 mooring line attachments, things like that, on another
15 part of the hull. From what we could see, that was
16 something that was quite possible, to do it on the side
17 that is directly opposite from the helicopter structure.
18 It was not an attempt to actually enter the platform,
19 get on to the deck, and go on to the platform. That was
20 not one of the plans.
21 Q. Thank you. For how long was the expectation that they
22 would be there?
23 A. If we were to have gotten up the survival pod, we would
24 have been able to stay there, given the ability to
25 resupply it, for quite some time: certainly days,

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15:58 1 probably weeks. Based on our experience from the
2 previous year, we were quite unsure how long we would be
3 able to maintain presence if we did not get the pod up
4 because, as we did see in fact in our attempt, there
5 would be quite strong reaction from the operators of the
6 rig. I think the best we could have hoped for: a number
7 of hours, perhaps a day, maybe two.
8 Q. The supplies available in the survival capsule would
9 have enabled the people in there to stay for how long on
10 the side of the platform before they would need to be
11 resupplied?
12 A. I can't answer that question, I am afraid. I don't know
13 the answer to that. I think that perhaps Mr Frank
14 Hewetson will be able to answer that more than I. It
15 would have been a number of days, but I don't think that
16 there was enough to really stay there for weeks and
17 weeks without resupplying.
18 PROFESSOR LEFEBER: I have no further questions,
19 Mr President.
20 THE PRESIDENT: Thank you so much. In that case, I think
21 that we can dispose of you now. But again, like I told
22 previous witnesses, if you are going to be around in
23 Vienna up to tomorrow, we would like you to be at our
24 disposal, because we may need to ask you some more
25 questions. There is no guarantee that we will do so,

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15:59 1 but just in case we decide to ask you any more
2 questions. So make yourself available. Thank you very
3 much.
4 THE WITNESS: Thank you, Mr President. I will of course
5 make myself available all day tomorrow, and today.
6 THE PRESIDENT: Thank you. (Pause).
7 I understand that you have two more witnesses to
8 come this afternoon. I think this is very helpful to
9 us, but I would suggest that we have a short break of
10 about 15 minutes, to enable us to get together, and also
11 to enable you to get them together. Thank you very
12 much. So we will break for 15 minutes.
13 (4.01 pm)
14 (A short break)
15 (4.23 pm)
16 MR FRANK HEWETSON (called)
17 THE PRESIDENT: Thank you very much for coming, and thank
18 you all for coming back so quickly. I will ask you to
19 identify yourself, and then to make the declaration
20 which is on your desk.
21 THE WITNESS: My name is Frank Hewetson, and I solemnly
22 declare upon my honour and conscience that I shall speak
23 the truth, the whole truth and nothing but the truth,
24 and that my statement will be in accordance with my
25 sincere belief.

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16:24 1 THE PRESIDENT: Thank you very much. Please go ahead.
2 PROFESSOR LEFEBER: Thank you, Mr President. The Kingdom of
3 the Netherlands would like to introduce the witness
4 testimony of Mr Francis Patrick Michael Hewetson.
5 Mr Hewetson was the action coordinator on board the
6 Arctic Sunrise during the protest in September 2013
7 against the Prirazlomnaya. His testimony will be
8 primarily directed to his supervision of the actions
9 carried out from the RHIBs.
10 Direct examination by PROFESSOR LEFEBER
11 Q. Good afternoon, Mr Hewetson.
12 A. Good afternoon.
13 Q. Thank you for agreeing to testify in these proceedings.
14 With the permission of the Tribunal, I would like to
15 give the witness a copy of the statement of facts, the
16 addendum and corrigendum thereto, and his witness
17 statement dated 26th August 2014. (Handed).
18 Mr Hewetson, could you please take a look at the
19 three documents that were just put in front of you, and
20 can you confirm that you are the author of the witness
21 statement?
22 A. Yes, that's correct.
23 Q. Thank you. In your witness statement, you confirm that
24 specific paragraphs of the statement of facts are true
25 and accurate. The addendum and corrigendum thereto

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16:25 1 contain additional information and adjustments. Can you
2 confirm that the contents of the statement of facts, as
3 adjusted and supplemented by the addendum and
4 corrigendum thereto, are correct to the best of your
5 knowledge?
6 A. To the best of my knowledge, yes, that's correct.
7 Q. Thank you. Could you explain your personal involvement
8 in the protest action on 18th September 2013 against the
9 Prirazlomnaya?
10 A. Yes. I was the action coordinator that day. I have
11 worked for Greenpeace for 25 years, and that's my job
12 title, that's my role.
13 Q. Thank you. Could you describe in your own words the
14 facts that you have confirmed to be true and accurate?
15 A. Yes, indeed. The morning of that day, the 18th, I was
16 waiting on the bridge and in the hold of the Arctic
17 Sunrise. I was waiting for the daylight to come over
18 the horizon, to give us enough light to see where we
19 were going, and also for the cameras that we were going
20 to be using to be able to document the entire day.
21 We set off, I believe, about 04.30, something like
22 that, in two boats, myself in one. And we made our way
23 as quickly as we could to the Prirazlomnaya oil rig. We
24 got there, I suggest, in about 15 minutes. It didn't
25 take too long; we were going at top speed. And our

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16:27 1 intention there was to get access to the side of the oil
2 rig, and to hang a banner. We had gone through these
3 plans. I was specifically in charge of those plans.
4 I was in charge of executing those plans on that day,
5 with a team of people that had volunteered to come with
6 me.
7 It did not take very long for two RHIBs to be
8 launched from the Ladoga coastguard vessel. They
9 arrived on site quite soon after our arrival, and
10 immediately engaged with us. From what I remember,
11 there was not much talking, there was an instant
12 engagement.
13 It was quite aggressive; I would say that we were
14 slightly taken by surprise on the aggression.
15 Nevertheless, we were there to protest against drilling
16 in the Arctic, a campaign that I particularly feel
17 extremely attached to, and we wanted to make sure that
18 we got a banner on to that oil rig to show our protest.
19 During the course of those few minutes, our boats
20 were stabbed by knives, guns were raised; and shortly
21 afterwards, three other RHIBs turned up, also launched
22 from the Arctic Sunrise. After that, we went around and
23 around and around the oil rig, trying to get a line up
24 the side to hang a banner. Every time we did, we were
25 interrupted. Eventually, we were successful, and two

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16:29 1 climbers gained access.
2 Shortly after they gained access to the side of the
3 oil rig -- I actually correct myself: man-made island;
4 it's not a rig, it's a man-made island -- the situation
5 became one that I thought: we have two people, it might
6 be possible to hang a banner. And there was quite a lot
7 of intent shown by the coastguard to grab our two
8 cameramen and their camera equipment. I made a decision
9 at that stage to take the cameras and the cameramen back
10 to the Arctic Sunrise. I did that as quickly as
11 I could. I deposited both those two people and their
12 equipment. I was on the bridge for a period of time
13 with Captain Pete Willcox and Dima Litvinov. I then
14 made my way back to Prirazlomnaya.
15 I was expecting to get there and still see our two
16 people hopefully hanging a banner. I was actually
17 confronted with RHIBs returning from the rig, from the
18 platform. And from then, I understood what had
19 transpired. Then all together we came back to the
20 Sunrise, and one by one those RHIBs were put back on
21 board.
22 Q. Thank you, Mr Hewetson. I have one further question for
23 you at this stage. You said there was not much talking
24 between the people on board the RHIBs of the Russian
25 coastguard and your RHIBs. Are you aware that at any

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16:31 1 point in time the Russian coastguard gave any orders to
2 the RHIBs of the Arctic Sunrise, any visual or auditory
3 signal to stop?
4 A. Certainly not initially. There was an immediate ramming
5 of my boat. Also I don't speak Russian. So there was
6 a bit of screaming, but there was never an attempt to
7 jump on to my boat, to seize my boat, to disable the
8 engine, to take control of my boat, which I would have
9 thought a normal process of arrest would have been some
10 such. There was just a lot of screaming, a lot of very
11 high volume shouting.
12 Q. They tried to chase you away from the platform?
13 A. They chased us around. And when we were staying still,
14 quite often they came alongside, and were looking at
15 what we were doing. But quite often, they were just
16 sitting next to us actually. But there was eventually
17 five of us and two of them, so they had problems in
18 deciding who to chase.
19 PROFESSOR LEFEBER: Thank you, Mr Hewetson.
20 This concludes my examination of the witness,
21 Mr President.
22 THE PRESIDENT: Do my colleagues have any questions?
23 Questions from THE TRIBUNAL
24 PROFESSOR SOONS: Mr Hewetson, I understand from the
25 statement of facts and your witness statement that you

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16:32 1 went back to the Arctic Sunrise and then tried to
2 return, but confronted the leaving last two RHIBs,
3 I think, from the Arctic Sunrise?
4 A. Yes.
5 PROFESSOR SOONS: The decision to leave by those two RHIBs
6 was taken by the people on board the RHIBs, just to move
7 away as soon as possible?
8 A. Yes.
9 PROFESSOR SOONS: Is it possible to reconstruct how much
10 time it took for them to leave from the platform, close
11 to the platform, where they were, to outside the
12 500-metre safety zone?
13 A. Well, I was not there at that time.
14 PROFESSOR SOONS: No, but from -- yes.
15 A. I know that one of the vessels was damaged by the
16 ramming -- all of our vessels were stabbed, all of the
17 vessels had damage; but one of the engines had been
18 damaged, and I think they would probably be capable of
19 15 knots, maybe. So I couldn't really guesstimate too
20 well but I would say at 15 knots, 15 minutes to get to
21 a mile away.
22 PROFESSOR SOONS: Thank you.
23 DR SÁNCHEZ: From what you have just told us, the coastguard
24 boats that approached you did not give you any specific
25 instructions, they did not demand anything from you;

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16:34 1 they only accompanied your boats and tried to interfere
2 with what you were doing. But you were not told
3 anything as to what you were expected to do?
4 A. Certainly not in English, absolutely not. And I think
5 they were there -- clearly, their presence was to
6 prevent us, I don't think there is any denying that.
7 But they were not clear. It is not in English. And
8 I am afraid to say the immediate communication, I think,
9 was one of shouting at an extremely high level, one that
10 I could not -- nor could Denis Sinyakov, who is
11 a Russian speaker who was in my RHIB, he could not
12 understand it either.
13 DR SÁNCHEZ: Did you say that you speak Russian?
14 A. No, I am saying -- sorry, none at all.
15 DR SÁNCHEZ: Thank you very much.
16 THE PRESIDENT: Nobody has any more questions, so I will ask
17 you whether you want to ask another question? Yes,
18 please, go ahead.
19 Re-direct examination by PROFESSOR LEFEBER
20 Q. Thank you, Mr President. I do have two further
21 questions for Mr Hewetson. The first question relates
22 to the time it takes to get away from the platform.
23 You were not there, but your estimate is 15 minutes
24 to get a mile away, taking into account the slowest of
25 the five RHIBs. So you are talking here about a safety

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16:36 1 zone of 500 metres, so that means less than five minutes
2 to get 500 metres away. And actually, when the RHIBs
3 departed, they were not next to the platform; they were
4 closer to the Ladoga, which was 200 or 300 metres away
5 from the platform?
6 A. From what I understand, yes.
7 Q. So then we are down to two minutes to get outside of the
8 safety zone?
9 A. That sounds about right to me, yes.
10 Q. Thank you very much. It is my understanding that you
11 also were involved in the transport of medication from
12 the Arctic Sunrise to the Ladoga, the medication that
13 was destined for Sini Saarela. Could you describe the
14 events related to that supply of medication?
15 A. Yes, we were concerned that she only had one day's
16 medication with her. That is because she didn't carry
17 so much on her body. I was worried that we were unaware
18 of how long they were going to be kept on board the
19 Ladoga. So we engaged with VHF communication with the
20 bridge, with the captain, and we arranged for
21 a drop-off, a bag of food and medication.
22 Myself and Annie Jensen, the third mate, got into
23 the one RHIB that was still working, still functioning
24 properly, and we made our way over to the Ladoga. This
25 was, I think, maybe four miles outside Prirazlomnaya.

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16:38 1 And we approached their port side, the pilot door was
2 opened, and I came alongside. There were masked, armed
3 men with guns in their hands and one with a camera. And
4 we said, "Good morning", and we put the bag on to the
5 vessel, and then departed.
6 PROFESSOR LEFEBER: Thank you, Mr Hewetson.
7 At this stage I have no further questions for the
8 witness, Mr President.
9 THE PRESIDENT: Thank you very much. In that case, we will
10 again ask you to step down. But if you are going to be
11 around, we would like you to make yourself available
12 just in case we want to ask you any more questions.
13 THE WITNESS: Of course.
14 MR PHILIP BALL (called)
15 THE PRESIDENT: Thank you very much. Could you identify
16 yourself, and then read the declaration which is on your
17 desk?
18 THE WITNESS: Thank you, Mr President. I solemnly declare
19 upon my honour and conscience that I shall speak the
20 truth, the whole truth and nothing but the truth, and
21 that my statement will be in accordance with my sincere
22 belief.
23 THE PRESIDENT: You can go ahead, please.
24 PROFESSOR LEFEBER: Thank you, Mr President. The Kingdom of
25 the Netherlands would like to introduce the witness

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16:42 1 testimony of Mr Philip Edward Ball. Mr Ball is a
2 cameraman, and was a volunteer deckhand on the Arctic
3 Sunrise. Mr Ball filmed the events that occurred on
4 18th September 2013 in relation to the protest at the
5 Prirazlomnaya.
6 His testimony will be primarily directed to his
7 involvement in filming the actions carried out from the
8 RHIBs. He was also in the RHIBs all the time during the
9 action. So we heard that Mr Hewetson had to go back to
10 the Arctic Sunrise at some point during that action, but
11 Mr Philip Ball was there all the time.
12 Direct examination by PROFESSOR LEFEBER
13 Q. Good afternoon, Mr Ball.
14 A. Good afternoon.
15 Q. Could I ask you to identify yourself for the record,
16 please?
17 A. Yes, Mr President, my name is Philip Edward Ball.
18 Q. Thank you. And thank you for agreeing to testify in
19 these proceedings.
20 With the permission of the Tribunal, I would like to
21 give the witness a copy of the statement of facts, the
22 addendum and corrigendum thereto, and his witness
23 statement dated 26th August 2014. (Handed).
24 Mr Ball, could you please take a look at the three
25 documents that were just put in front of you, and

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16:43 1 confirm that you are the author of the witness
2 statement?
3 A. Yes, I can confirm that I am the author of this witness
4 statement. Yes, Mr President.
5 Q. Thank you. In your witness statement, you confirm that
6 specific paragraphs of the statement of facts are true
7 and accurate. The addendum and corrigendum thereto
8 contains additional information and adjustments. Can
9 you confirm that the contents of the statement of facts,
10 as adjusted and supplemented by the addendum and
11 corrigendum thereto, are correct to the best of your
12 knowledge?
13 A. I can, that is correct.
14 Q. Thank you. Could you explain your personal involvement
15 in the protest action on 18th September 2013 against the
16 Prirazlomnaya?
17 A. I was present on the Arctic Sunrise as an activist and
18 a deckhand. And on the 18th, myself and the other
19 people involved in the action went to the base of the
20 Prirazlomnaya oil rig and took part in a peaceful direct
21 action.
22 On the way there, the survival pod that one of the
23 boats had been towing, the tow line broke. And at that
24 point the plan changed to continue the action without
25 the survival pod. And we attempted to get climbers on

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16:45 1 to the side of the oil rig, onto the structure of the
2 oil rig itself.
3 We were met with resistance from the coastguard, who
4 were using their boats in a quite dangerous manner, and
5 threatening us with knives and safety flares, distress
6 flares being fired within the safety zone. And they
7 pulled guns out and pointed them at various members on
8 the boats.
9 The boat that I was in was rammed by one of the
10 coastguard vessels, and it damaged the engine in a way
11 that made it impossible for us to actually take it out
12 of gear. So the boat was only able to keep going
13 forwards, and that -- because of safety implications of
14 not being able to avoid other boats, it meant that we
15 then had to remove ourselves from the melee, as it were,
16 so that we wouldn't run the risk of endangering anybody
17 or crashing into one of the coastguard vessels. So for
18 safety reasons we took a more distant approach to the
19 action from that point.
20 At the point when the two climbers who had managed
21 to get on to the side of the rig were threatened with
22 guns, and then the guns were fired, that was when the
23 action itself was deemed to be over. And when they were
24 arrested, taken to the coastguard vessel, the Ladoga, we
25 then made our way back to the Arctic Sunrise. We had no

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16:47 1 reason to stay there, and we also had reason to suspect
2 that we would be -- there would be an attempt made to
3 detain us as well. So we made the decision to go back
4 to the Arctic Sunrise at that point.
5 Q. Thank you. I have one further question for you at this
6 stage. So the entire action at the platform took how
7 long approximately?
8 A. We launched shortly after 4.00, and we were back by,
9 I believe, about -- well, certainly before 7.00.
10 I can't remember the exact timings.
11 Q. So your estimate is that you were in the water
12 approximately three hours. And in the course of those
13 three hours, you had close encounters with the RHIBs of
14 the Ladoga. Were there any communications between you
15 and the people on board the RHIBs of the Ladoga?
16 A. There was nothing intelligible that I could understand.
17 It was -- anything that was shouted was in Russian, any
18 sign language wasn't understandable, there were no clear
19 signs or anything that I could hear that I could
20 understand. And the guys on those RHIBs had balaklavas
21 on, so there was no -- it was very difficult to
22 communicate. So I wasn't able to get any kind of
23 communication from them in any way.
24 Q. So you have not seen that any orders were being given,
25 no auditory or visual stop orders, to your knowledge?

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16:48 1 A. Nothing to my knowledge. And certainly I would imagine
2 that, if an official order would be given, it would be
3 done in a clear way, and there was nothing that was
4 clear in any sense of the word.
5 PROFESSOR LEFEBER: Thank you, Mr Ball. This concludes my
6 examination of the witness, Mr President.
7 THE PRESIDENT: Thank you.
8 Questions from THE TRIBUNAL
9 MR BURMESTER: Mr Ball, can I just clarify, so there was no
10 order so far as you were aware to stop, or anything like
11 that? There was disruption to your boat, and what it
12 was trying to do, but there was no attempt to board it
13 or seize it; is that what you said? Or is that your
14 understanding? They didn't actually try and stop you
15 and arrest you, even though you were at least concerned
16 that that may happen. But in what they did while you
17 were actually present in the zone, you didn't see that
18 attempt actually occur?
19 A. No, that's right. Mr President, I would say that the
20 attempts that were made by the coastguard were merely of
21 a practical nature: to prevent us doing what they
22 perceived to be what we were trying to do, i.e. to get
23 ropes on to the structure of the oil rig, and to get
24 climbers on to the oil rig itself. And anybody who is
25 used to working with boats like that will know that they

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16:50 1 are quite easy to stop: there is a kill cord that you
2 can turn off. And there was no attempt made to stop our
3 boats. We did feel that they would quite possibly try
4 and detain one of us by pulling us out of our boats, but
5 that never occurred. Everything we saw was focused
6 specifically on moving our boats away from where we were
7 trying to be, and preventing ropes from going on to the
8 structure.
9 PROFESSOR SYMONIDES: I would like only to have
10 a confirmation from you, because if I understand
11 properly, answering the questions posed by the Co-Agent,
12 you have stated clearly that the two climbers were
13 arrested.
14 A. Yes.
15 PROFESSOR SYMONIDES: You confirm this?
16 A. Mr President, I believe I am being asked to confirm that
17 there were two climbers arrested on the side of the oil
18 rig?
19 THE PRESIDENT: Yes.
20 A. I am not sure I understand the question specifically.
21 PROFESSOR SYMONIDES: In your answer, you used this phrase
22 that two climbers were arrested and sent to the Ladoga.
23 As you probably know, there is an interesting discussion
24 as to whether two climbers were guests on the Ladoga or
25 whether they were arrested. If you are stating that

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16:51 1 they were arrested, you are confirming one of the
2 possible positions which on this question may be taken.
3 A. Mr President, I would say that, although it was
4 impossible to understand what was being said, the
5 intentions were fairly clear: that they captured two
6 people from the side of the rig, they forced them to
7 come down at gunpoint, and gave them no option other
8 than to go into the coastguard RHIB. And whilst the
9 word obviously was not used "arrest", nothing was
10 intelligible, it was quite clear to me that they had
11 been arrested. They were not invited to come into the
12 RHIB; they were forced at gunpoint.
13 PROFESSOR SYMONIDES: So I would say that a very important
14 part of your statement is that they were not invited to
15 step down into the boat, but they were somehow forced to
16 step down into the boat of the coastguard, yes?
17 A. Yes, and the coastguard were forcibly hauling on the
18 rope that the climbers were hanging on. They didn't
19 realise that that prevented them from descending,
20 because of the way the climbing gear worked, but they
21 were trying to force them into the boat. I would have
22 expected, if they had been guests, an invitation would
23 have been a little more polite.
24 PROFESSOR SYMONIDES: Thank you.
25 DR SÁNCHEZ: You said that they were taken at gunpoint and

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16:55 1 DR SÁNCHEZ: Thank you.
2 THE PRESIDENT: Do you have any further questions for the
3 witness?
4 PROFESSOR LEFEBER: Yes, Mr President.
5 Re-direct examination by PROFESSOR LEFEBER
6 Q. Mr Ball, are you a lawyer? Do you have any legal
7 background, any legal training?
8 A. Mr President, I have no legal training other than being
9 involved in some events with Greenpeace in the past.
10 Q. Mr Ball, while you were there and when you witnessed, as
11 you said in your own words, that the two climbers were
12 captured at gunpoint, you said the word "arrest" was not
13 being used. Did you observe that their rights were read
14 to them?
15 A. Mr President, I was not aware that anything that could
16 be understood was being presented to any of us, least of
17 all the climbers. To my knowledge, neither of the
18 climbers spoke any Russian, so anything that was said to
19 them was unintelligible. From a language point of view,
20 I would be surprised if anybody who could speak Russian
21 would be able to understand what was being said either.
22 There was a lot of shouting, it was very unclear, and
23 no, again from my experience, I would imagine or I would
24 understand that having your rights read to you would be
25 quite a formal procedure, and they would ensure that you

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16:53 1 then it didn't seem that they were free to leave and go
2 back to their own boats. Then we have read in the
3 various testimonies and in the memorial that after that,
4 there was an exchange with the coastguard, between the
5 Arctic Sunrise and the coastguard, as to the possibility
6 that these two people would be released. So it was
7 entirely dependent on the will of the coastguard whether
8 these two persons would be able to go back to the Arctic
9 Sunrise or not. Is that your perception of things?
10 A. Yes, Mr President. While the two climbers were being
11 detained on the Ladoga -- whilst in my official capacity
12 as an activist and a deckhand, I was not involved in
13 what went on with the radio conversations, I did spend
14 some time on the bridge, and I was informed and I was up
15 to date with the situation, and it was clear and obvious
16 that there was no option of those two making their way
17 back to the Arctic Sunrise.
18 Some conversations were happening over the radio
19 about getting our activists back and as a personal
20 friend of them, I was concerned over Ms Saarela's
21 health, because she needed medication on a daily basis
22 and she only had one day's supply, so the rest of the
23 crew were also concerned, and there was considerable
24 worry about her being taken away from her medication.
25 We were very keen to get them both back.

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16:57 1 were understanding what was being said to you. There
2 was no attempt made to make any form of understanding
3 whatsoever, other than a few shouts of something. But
4 at that point, no, there was nothing of that nature.
5 Q. Thank you. Can you then confirm that Mr Weber and
6 Ms Saarela were arrested in accordance with Russian
7 domestic law and in accordance with international human
8 rights standards?
9 A. I don't believe that they were. They were detained, and
10 to me, it felt more like a capture, just being grabbed,
11 rather than anything formal.
12 PROFESSOR LEFEBER: Thank you very much. No further
13 questions, Mr President.
14 THE PRESIDENT: No, I think that is enough, we have got
15 enough. So we will ask you also to stand down, but if
16 you are going to be around today and tomorrow, we would
17 like you to be available, because we may want to ask you
18 some further questions. There is no guarantee that we
19 will want to do that, but just in case.
20 A. Thank you, Mr President. I am available tomorrow, so
21 I am at your disposal, if you need me to come back.
22 THE PRESIDENT: Thank you very much indeed.
23 May I ask the Agents, in the light of the fact that
24 we have gone through all the witnesses for today, what
25 are your plans? What do you want us to do?

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16:59 1 PROFESSOR LIJNZAAD: Sir, I was about to say, you took the
2 words out of my mouth, because I just wrote down -- we
3 had the same question before us. I just wrote down that
4 I would like to raise the question as to how do we
5 proceed next, and you are in effect raising more or less
6 the same question.
7 For us, it looks as though we have exhausted today's
8 work, there is one witness remaining, and that is the
9 person who is going to testify tomorrow morning by video
10 link, so I think we can only more or less draw
11 conclusions from the whole of the testimony when we have
12 listened to her tomorrow morning.
13 At the same time, we have listened that you have
14 carefully left the possibility open for witnesses to
15 return, and indeed it may be that based on the later
16 testimony, we would like to go back to the earlier
17 testimony and raise perhaps some further questions.
18 I would say on a personal basis, a number of the
19 witnesses have presented their own views and their own
20 experiences, I think that adds more depth to what is
21 initially presented as a legal problem, but with the
22 testimony you see the whole picture of the events, and
23 it is quite impressive to talk to people who have been
24 there when all these events took place.
25 Of course, somewhere during tomorrow, I will present

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17:01 1 our final submission, but what steps do we take before
2 we get there? Does perhaps the Tribunal already have
3 an idea as to whether you wish to recall witnesses?
4 Because I think that very much informs how we organise
5 our work tomorrow. Just some general thoughts, I am
6 afraid. I have no clear idea really.
7 THE PRESIDENT: I think you are absolutely right, I don't
8 think that we would want to ask any further questions
9 from any of the witnesses at this stage, I don't think
10 so, but tomorrow, we will have one witness, who will be
11 examined by video conference, and after that, what
12 I wanted to find out was what you propose to do. Do you
13 have a long statement that you want to make, or do you
14 propose to make only a short statement of conclusion?
15 What should we plan for tomorrow, in the light of the
16 fact that, as I said, we do not intend to ask any
17 questions from any of the witnesses?
18 PROFESSOR LIJNZAAD: I am not sure my statement is
19 necessarily very long, but I do think that on the basis
20 of the testimony we have heard today, we may wish to
21 reflect a little bit on the testimony.
22 It is helpful for us to know that the Tribunal does
23 not intend to recall any witnesses, that is something
24 that we will keep in mind when we ourselves look into
25 the question as to whether we wish to recall any

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17:03 1 witnesses. Of course, at the same time, if we wish to
2 do so, it would be perhaps more elegant to inform them
3 tonight that we wish to recall them tomorrow, or rather,
4 if we are all certain that we don't wish to do that, we
5 might as well tell them tonight as well. However,
6 I have not had the opportunity to discuss exactly that
7 issue with my delegation so far.
8 I would say my submission would be perhaps half
9 an hour at the very most, or something like that, it
10 will need some tweaking tonight, on the basis of what we
11 have heard, but perhaps not much more than that. But
12 I am saying this really tentatively, I haven't had the
13 opportunity to talk to all my learned colleagues around
14 me.
15 That suggests to me we listen to the witness
16 tomorrow, maybe suspend a bit, and then maybe move to
17 the final statement, including the submission, unless
18 there is any further development. Is there anything
19 else that you would like us to reflect on, because that
20 is, of course -- we have presented our thinking, we have
21 sent you our written comments, but it might be that on
22 the basis of the testimony, there are further questions.
23 THE PRESIDENT: When I said that at this point, we do not
24 intend to call any witnesses, what I meant was that we
25 have not decided to call any particular witness, but

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17:04 1 I think we will, as you quite rightly suggested, let you
2 know by the end of today whether we want to ask any
3 further questions from any witness. So we will consult
4 and then let you know well in advance, certainly by the
5 end of this evening.
6 You have also indicated that your statement will not
7 be more than half an hour, so we can now perhaps say
8 that barring any questions which we may want to ask of
9 witnesses, we are not likely to extend into the
10 afternoon. So we will have a session tomorrow morning,
11 we will have one witness examined by video conference,
12 we will then let you know whether we have any further
13 questions for any of the witnesses, and then after that,
14 you will then be able to make your statement, and that
15 will be it. So we can plan for tomorrow morning, up to
16 the time when it is necessary, but no more than tomorrow
17 morning. Will that be acceptable to you?
18 PROFESSOR LIJNZAAD: Yes, I think that sounds like a good
19 agenda for tomorrow. Thank you, sir.
20 THE PRESIDENT: Thank you very much. I think we will let
21 you know by the end of the day if we want to ask
22 questions from any other witness, and then tomorrow
23 morning, we will operate on that basis.
24 Unless something extraordinary happens, we will
25 finish by tomorrow lunchtime, but it depends on when

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17:06 1 lunchtime will be.
2 PROFESSOR LIJNZAAD: Thank you. That would suit us fine.
3 Thank you very much.
4 THE PRESIDENT: Thank you very much. On that basis then, we
5 will close for today, and we will then see what happens
6 tomorrow, in the light of the decisions that we will
7 take. Thank you very much. The meeting is adjourned
8 until 9.30 tomorrow morning.
9 (5.10 pm)
10 (The hearing adjourned until 9.30 am the following day)
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