

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 2

Wednesday, 11th February 2015

Before:

JUDGE THOMAS A. MENSAH (President)

MR HENRY BURMESTER

PROFESSOR ALFRED SOONS

PROFESSOR JANUSZ SYMONIDES

DR ALBERTO SZÉKELY SÁNCHEZ

BETWEEN:

THE KINGDOM OF THE NETHERLANDS

-and-

THE RUSSIAN FEDERATION

PROF DR LIESBETH LIJNZAAD (Agent) and PROF DR RENÉ LEFEBER
(Co-Agent), with ERIK FRANCKX, 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

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09:30 1 Wednesday, 11th February 2015
2 (9.39 am)
3 THE PRESIDENT: Good morning. It looks like we will finish
4 a little earlier than planned. I will now ask the
5 Co-Agent to present the witness, Ms Saarela. And after
6 that, we will proceed as we had agreed yesterday.
7 MS SINI ANNUKKA SAARELA (called)
8 PROFESSOR LEFEBER: Thank you, Mr President. Good morning,
9 Mr President and members of the Tribunal. The Kingdom
10 of the Netherlands would like to introduce the witness
11 testimony of Ms Sini Annukka Saarela.
12 Ms Saarela was volunteer deckhand and activist on
13 board the Arctic Sunrise. She was one of the persons
14 who made an attempt to climb the Prirazlomnaya. As
15 Ms Saarela is in New Zealand at this moment, her
16 testimony will be taken by video conference. Her
17 testimony will be directed primarily at the specific
18 role she had in the protest action as one of the
19 climbers, and her subsequent detention on board the
20 coastguard vessel, the Ladoga.
21 Thank you, Mr President.
22 THE PRESIDENT: We would ask the witness to read the
23 declaration, which I understand is available to her.
24 THE WITNESS: Thank you, Mr President. I solemnly declare
25 upon my honour and conscience that I shall speak the

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09:41 1 truth, and nothing but the truth, and that my statement
2 will be in accordance with my sincere belief.
3 THE PRESIDENT: Thank you very much. Could you now please
4 go ahead.
5 Direct examination by PROFESSOR LEFEBER
6 Q. Thank you, Mr President. Good evening, Ms Saarela.
7 Could you please identify yourself for the record of the
8 meeting?
9 A. My name is Sini Annukka Saarela, and I am a Finnish
10 citizen.
11 Q. Thank you, Ms Saarela. And thank you for agreeing to
12 testify in these proceedings.
13 With the permission of the Tribunal, I would like to
14 verify that the witness has in front of her a copy of
15 the statement of facts, the addendum and corrigendum
16 thereto, and her witness statement dated
17 26th August 2014.
18 Ms Saarela, can you confirm this?
19 A. I confirm that I have all those documents.
20 Q. Thank you. Ms Saarela, can you confirm that you are the
21 author of the witness statement?
22 A. I confirm that I am the author of the witness statement.
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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09:42 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. I confirm all of this.
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. My role was to be one of the volunteers in the protest,
11 and I was being one of the climbers.
12 Q. Thank you. Could you describe in your own words the
13 facts that you have confirmed to be true and accurate?
14 A. As I stated, I was one of the climbers, and our aim was
15 to make a protest on the oil platform Prirazlomnaya, and
16 our aim was to climb on the side of the platform and
17 hang a banner there, to highlight the risks of Arctic
18 oil drilling and to bring up the -- especially the risks
19 that this special platform has, and also to highlight
20 the risks in climate change.
21 Q. Thank you. Could you describe in a bit more detail what
22 happened during the attempt to climb the platform and
23 afterwards?
24 A. Yes. So I was attempting to climb the platform via
25 getting my climbing rope up on the mooring lines of the

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09:44 1 platform. So I basically had my own climbing rope with
2 me, which I got up on the mooring lines. And first
3 I made an attempt on the other side of the platform to
4 climb it: I got my rope up and started climbing towards
5 the mooring line on the side of the platform. But when
6 I was about two metres above the water, the coastguard
7 boat came there and they cut the rope, so I fell into
8 the water.
9 After that, they retrieved with the coastguard boat,
10 and then the Greenpeace boat came and picked me up.
11 After that, when I was on the boat again, and I felt
12 good and safe, we drove to the other side, because we
13 had just heard on the radio that the other climber,
14 Mr Weber, had managed to get his rope up on the mooring
15 line on the opposite side. So after that, I joined him
16 in climbing that rope, and it was a very difficult climb
17 to get up there, where Mr Weber was, because the workers
18 of the oil platform were hosing us with very cold
19 seawater on a very high pressure. And also they were
20 trying to interfere with our climbing by pulling the
21 mooring line that I was hanging on, so it was very, very
22 difficult circumstances.
23 After a while, me and Mr Weber decided to climb down
24 because we realised that the situation is getting very
25 difficult up there, and also we realised that if we

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09:45 1 can't get down ourselves, nobody can take us down. So
2 we decided to start descending. And while doing that,
3 we had to make our ropes longer, so that we could
4 actually reach the water surface again. And when I did
5 that, the coastguard boat came and grabbed hold of the
6 rope that I was hanging on, and kept it so tight that
7 I couldn't go down. For descent you need some loose in
8 the rope so that you can actually go down, and I was
9 trying to communicate with them and say, "I can't come
10 down if you hold the rope tight", and I was really
11 trying to communicate that I am coming down.
12 Yes. Then eventually I managed to get down to the
13 coastguard boat; I didn't have any other possibilities
14 than going down there. And shortly after me also
15 Mr Weber came down to the boat.
16 Q. Thank you. Could you please go on to describe in the
17 same level of detail what happened until you were
18 brought back to the Arctic Sunrise?
19 A. After Mr Weber came down to the boat, we were told to
20 sit down in the back of the boat, and we were not
21 allowed to move or basically do anything else, and we
22 were taken to the coastguard ship Ladoga. None of the
23 soldiers or the coastguard officers on the boat spoke
24 English, but -- yes, so we didn't know what was
25 happening, but we were taken to the coastguard ship, and

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09:47 1 they clearly signed to us that we should climb up to the
2 deck of it, on a pilot ladder. And when we came up on
3 the deck, we were taken into the vessel, and we were
4 taken into different rooms. So after that, I didn't see
5 Mr Weber for almost -- yes, one day and a half, for the
6 whole time that we were kept on the ship.
7 So basically, they put us into a room there, and
8 there was all the time somebody guarding me, but we were
9 not free to move on the ship. So if I, for example,
10 needed to go to the restroom, I had to ask that, and
11 then somebody would come with me there, and guard me all
12 the way there. So I was not able to move freely on the
13 ship.
14 We didn't have any connection to the outer world.
15 I couldn't see what was happening; I could only hear
16 that the vessel was using its cannons, and could only
17 imagine what was going on. And there was only one
18 person on the vessel apparently who spoke English, and
19 this person came to tell us very briefly that we would
20 be taken to Murmansk. But that was everything I knew
21 about.
22 Then after one night on board of the vessel -- I of
23 course had no clue about the time, because all the
24 equipment we had on us got confiscated, including most
25 of our clothes, so I was basically in my underwear, in

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09:49 1 underwear for the whole time. But after one night, and
2 a bit of that day, the officers came to us and said that
3 we will be taken back to Arctic Sunrise.
4 We were taken there by one of the boats from the
5 coastguard vessel. And when we came closer to the ship,
6 I of course had no clue what had happened, I didn't know
7 that the ship had been arrested, so I was wondering and
8 a bit confused that we didn't use the pilot door as
9 an entrance to the ship, which we usually use. But we
10 had to take the secondary entrance, the pilot ladder,
11 and climb up all the way to the second outer deck.
12 All we could see was some Russian officers with
13 guns, and I couldn't see any of the crew members on the
14 outer deck. As soon as I was taken into the ship,
15 I could see there were basically officers standing there
16 with guns next to the door, greeting us, and then
17 I could see the door of the radio room kicked in, and
18 then I understood that: okay, the ship has been arrested
19 and taken over.
20 After that, I was brought with Mr Weber to the mess
21 room of the ship, where all the other crew members of
22 Arctic Sunrise were. And first there we could hear from
23 the other crew members what had happened, but at any
24 point I was not told that I had been arrested. The only
25 thing that I was told was that we will be taken to

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09:51 1 Murmansk.
2 PROFESSOR LEFEBER: Thank you, Ms Saarela. This concludes
3 my examination of this witness, Mr President.
4 Questions from THE TRIBUNAL
5 THE PRESIDENT: Ms Saarela, it has been suggested in one of
6 the records of the prosecution that you were not
7 arrested, and you have yourself said that nobody told
8 you that you were arrested. It has been suggested that
9 you were treated as a guest, you were a guest on the
10 ship. What is it that made you feel that you were not
11 a guest? Did you feel that you were a guest? And if
12 not, what is it that made you feel that you were not
13 being treated as a guest?
14 A. Mr President, we did not want to go on board the Russian
15 coastguard vessel at all, so we were taken there by
16 force. And we had all the time soldiers guarding us
17 with guns, so there were soldiers with us on the boat
18 with guns. And then as soon as we got to the coastguard
19 vessel, we were taken apart from each other, me and
20 Mr Weber, and then we were put into separate rooms,
21 where there was all the time a soldier guarding us.
22 I was not free to move freely on board of the ship, and
23 I was trying to -- I was asking, "What is happening?
24 Can you please let me go back to my own ship?"
25 And I was denied to go out on the deck, because

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09:53 1 I stayed there for one day and a half, so at some point
2 I was also asking that I really need fresh air, can
3 I please go out, and I was not let out. I was treated
4 like being under arrest. But when I was asking what is
5 going on, why am I here, there were no people able to
6 speak English well enough to tell me what was going on.
7 Later on, on Arctic Sunrise, when they had started
8 towing us to Murmansk already, the officials and
9 soldiers on board of Arctic Sunrise took me up to the
10 bridge of Arctic Sunrise, and there was kind of
11 a hearing or interrogation that they made to me, asking
12 questions, details about the action, what was our aim,
13 and what was the safety pod being used for. And I was
14 just saying that I don't know what is going on, and can
15 I please talk to my lawyer, or to my consulate, and
16 I was denied that.
17 I was also being body-searched already when taken to
18 the coastguard vessel. All my things were taken away
19 from me, except of my long underwear; so including my
20 watch, my medicines, everything was taken away from me.
21 I was also being body-searched a second time on board
22 Arctic Sunrise. But I think that the official statement
23 of arrest came when we were in Murmansk. That is when
24 I got it on paper.
25 THE PRESIDENT: Thank you very much indeed. Do my

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09:55 1 colleagues have any other questions?
2 PROFESSOR SYMONIDES: Mr President, as a follow-up to your
3 question, I would like to ask Ms Saarela the following
4 question: a package which was received by you from the
5 Arctic Sunrise was sent to you because of special status
6 you enjoyed on board of the battleship [Ladoga], or
7 rather for medical humanitarian reasons or humanitarian
8 grounds?
9 A. Thank you. I received one package; I think it was on
10 the evening of the day when we were arrested, taken to
11 the Ladoga. I have some reasons why I need medication
12 on a daily basis, for my thyroid gland, and I always
13 carry this medicine with me. And I also carry a paper
14 saying that I need this medicine, and I had this paper
15 with me in Russian.
16 I also tried to communicate to the medic of the
17 coastguard ship, which was being one of the guards who
18 was guarding me in the beginning, when I was taken
19 there. I was trying to communicate to him that I need
20 this medicine. I was showing the scar of the operation
21 on my throat, which is visible, and I was saying that --
22 trying to tell him that I need this, and I think he also
23 understood that.
24 Later on, I have heard that from Arctic Sunrise they
25 were contacting the coastguard ship and telling that

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09:57 1 I need this medication. So yes, it was not a treat:
2 it's life-threatening for me if I don't get that
3 medicine.
4 PROFESSOR SYMONIDES: Thank you very much, I am fully
5 satisfied.
6 THE PRESIDENT: We don't have any more questions, so if you
7 want to ask another question?
8 PROFESSOR LEFEBER: Thank you, Mr President, I don't have
9 any further questions for this witness at this stage.
10 Thank you.
11 THE PRESIDENT: Thank you. In that case, Ms Saarela,
12 I think we do not have any further questions for you, so
13 thank you very much for your presence and for your
14 evidence, which we will take duly into account. Thank
15 you so much.
16 THE WITNESS: Thank you, Mr President. Thank you, everyone.
17 THE PRESIDENT: We informed you yesterday that we would like
18 the captain to come back, because we have a few
19 questions to ask him.
20 MR PETER WILLCOX (recalled)
21 THE PRESIDENT: Good morning, and thank you very much for
22 coming, Mr Willcox. May I remind you that you made
23 a declaration yesterday which is still applicable.
24 THE WITNESS: Yes. Thank you, Mr President. I am aware.
25 THE PRESIDENT: Thank you very much. We have a few

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10:00 1 questions to ask of you in connection with the evidence
2 that you gave yesterday. I will ask first
3 Professor Soons.
4 Questions from THE TRIBUNAL
5 PROFESSOR SOONS: Thank you, Mr President.
6 Mr Willcox, my question concerns the decision that
7 you took on the morning of the 18th, as the captain of
8 the Arctic Sunrise, according to paragraph 32 of the
9 original statement of facts that is part of your witness
10 testimony, where it is stated that you refused to allow
11 an inspection. Yesterday in your statement -- and
12 I quote from the record -- you said:
13 "Answer: Later that morning, the Russian coastguard
14 vessel announced that they wished to board us for
15 an inspection. We declined the offer", et cetera.
16 Could you elaborate for us a little bit more on the
17 grounds for you to refuse the boarding for
18 an inspection? Although paragraph 13 of the Greenpeace
19 statement of facts is not part of your own witness
20 testimony, I could imagine that you have followed
21 closely the discussions about what happened on
22 August 26th prior with the Arctic Sunrise, where in
23 another context there was a boarding and inspection by
24 the Russian coastguard.
25 The question is: could you elaborate a bit more on

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10:02 1 the grounds for the refusal of an inspection on the
2 morning of 18th September?
3 A. Yes, sir. It was my feeling at the time that we were in
4 international waters. We had not been fishing, we had
5 not done any research, we had not carried out any
6 commercial activity that would give the Russian
7 coastguard a justification for boarding our vessel. And
8 that's why I declined their invitation to an inspection.
9 I didn't think we had done anything to warrant
10 an inspection. In this case, unlike my colleague the
11 previous month, I didn't want them on board the ship.
12 PROFESSOR SOONS: Could you elaborate a little bit more then
13 on the comparison?
14 A. Well, the month before, the ship had been in the Kara
15 Sea. I believe the intent was to get a feeling for how
16 much commercial development was already going on, and
17 what was happening there. They were ordered to leave
18 the area.
19 I didn't want to give the Russian coastguard
20 a chance to order us to leave the area. I thought we
21 had every right to be there, in a non-commercial
22 activity, and I didn't want a similar instance where
23 they demanded we leave. That was the primary reason why
24 I didn't want them on board the ship.
25 PROFESSOR SOONS: Thank you.

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10:04 1 DR SÁNCHEZ: Captain Willcox, yesterday we learned from the
2 Netherlands the following, regarding the signal to stop,
3 and it appears at page 25 of the transcript:
4 "The initial order, over the wireless, was given
5 when the Ladoga was close to the Prirazlomnaya, whereas
6 the Arctic Sunrise was approximately three nautical
7 miles away. This casts doubt about whether this order
8 constitutes a signal 'given at a distance which enables
9 it to be seen or heard by the foreign ship', implying
10 the proximity of the vessels concerned."
11 I would like to ask: it is evident from the way this
12 is said that there was knowledge that such a signal, no
13 matter what the circumstances and the distances, was
14 given. We would like to know: who perceived this first
15 signal? Who perceived it and who communicated it to
16 whom?
17 A. Sir, we did receive a VHF call from the Ladoga. I have
18 no recollection of one being made before the small boats
19 were back to the Arctic Sunrise, although I want to
20 point out that I stepped out on the bridge wing several
21 times that morning to issue orders regarding the lifting
22 of the boats so, just before they came back, I may have
23 missed that radio call. I certainly was aware of it
24 after the boats were back on board.
25 DR SÁNCHEZ: Are you talking about the subsequent signal

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10:06 1 received --
2 A. I am talking about the first VHF call, the first
3 announcement over the radio, when the Ladoga asked us to
4 stop or heave to. To my knowledge, that was done when
5 the boats were back at the ship.
6 DR SÁNCHEZ: There is an acknowledgment in this paragraph
7 that I just read that this first signal was known to
8 have happened. Did you have knowledge at some point
9 that such a signal had been given?
10 A. Oh yes, very definitely.
11 DR SÁNCHEZ: When did you gain knowledge of that first
12 signal?
13 A. It was when the small boats were back at the ship, some
14 time right in that very brief period when they were back
15 at the ship and being lifted on board.
16 DR SÁNCHEZ: How did you gain knowledge of this?
17 A. I think I heard the VHF myself. There is some question
18 in my mind whether that was the first call; that I can't
19 recollect, because I was out on the bridge wing several
20 times to give orders regarding the lifting of the boats.
21 But at some point at that time I became aware that such
22 a request had been made.
23 DR SÁNCHEZ: The next paragraph in what we got yesterday
24 from the Netherlands says:
25 "Such a visual signal was given at a later stage, it

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10:08 1 is true. However, by that time, it was certain that
2 none of the RHIBs of the Arctic Sunrise were in the
3 500-metre safety zone."
4 This implies that the first signal did not happen
5 when all the RHIBs had left the 500-metre zone. So for
6 us it is important to know if you had knowledge of that
7 signal when it was emitted, the first one.
8 A. Yes, I can't remember which signal I became aware of.
9 When the small boats were back to the ship, at about
10 that time; not when they were in the 500-metre zone.
11 When they had returned to the ship, that's when I became
12 aware that the Ladoga had requested us to heave to.
13 DR SÁNCHEZ: Had you a way to know that all the RHIBs had
14 left the 500-metre zone? Because apparently you were
15 three nautical miles away from that.
16 A. That's correct, we were three nautical miles away. And
17 I became aware of the request made by the Ladoga when
18 the boats were back at the ship.
19 DR SÁNCHEZ: Not only outside of the zone, but already on
20 the ship?
21 A. They would have been way outside the zone: they would
22 have been at three miles. They didn't all arrive
23 precisely at the same point, but within two minutes of
24 each other they basically came back. And that's when
25 I became aware that the Ladoga had asked us to stop.

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10:09 1 They were 15 minutes outside the 500-metre zone when
2 that request was made.
3 DR SÁNCHEZ: Just to finish, would you have a way to know at
4 what exact moment in time -- at what minute of time --
5 you heard that first signal? Would you have a way to
6 know?
7 A. I will estimate that it was at about 6.25. The boats --
8 we have a logbook entry indicating the boats were back
9 on deck at 6.35. So working back, I would estimate that
10 I became aware of that signal at 6.25, when the boats
11 were back; not when they were all up; when they were
12 back in close proximity to the Arctic Sunrise.
13 DR SÁNCHEZ: Thank you very much.
14 THE PRESIDENT: There are no other questions from the
15 Tribunal. So Mr Willcox, thank you very much indeed for
16 your evidence, and also for being available to answer
17 these other questions.
18 I want to ask the Co-Agent if he has any other
19 questions to ask, in the light of the questions that
20 have been asked by the Tribunal.
21 PROFESSOR LEFEBER: Thank you. No, I don't have any further
22 questions for this witness. Thank you, Mr President.
23 THE PRESIDENT: Thank you very much. In that case,
24 Mr Willcox, that concludes your testimony and we do not
25 intend to ask you any further questions.

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10:11 1 THE WITNESS: Thank you, Mr President.
2 THE PRESIDENT: Now we come back to the Netherlands, to the
3 Agent. We want to find out exactly how you want to
4 proceed subsequent to this.
5 PROFESSOR LIJNZAAD: Thank you, Mr President, and good
6 morning.
7 On the basis of the testimony that we have just
8 heard, could I ask that we suspend the meeting for
9 a while, so that we can reflect on what we have heard
10 from both witnesses this morning, and review our closing
11 statement and the other information that we still owe
12 you. So if we could suspend our meeting for, say,
13 an hour or something like that, and we will return fully
14 prepared for what I think will be the final round, if
15 that is acceptable to the Tribunal?
16 THE PRESIDENT: Yes. I think that is a very reasonable
17 request, and we will adjourn for one hour, and come back
18 at 11.15. Thank you very much.
19 (10.15 am)
20 (A short break)
21 (11.30 am)
22 THE PRESIDENT: May I call on the Agent of the Netherlands,
23 please.
24 Closing statement on behalf of the Netherlands
25 PROFESSOR LIJNZAAD: Thank you, Mr President. As I said, we

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11:29 1 are a little later than anticipated. However, here we
2 are.
3 Before I start, I would like to inform you that
4 I wanted to speak to three things: we have some
5 reflections on the testimonies by the witnesses, then we
6 are making an initial attempt at replying to the
7 questions raised by the Tribunal, and then obviously
8 there will be the formal submissions.
9 First of all, with your permission, I would like to
10 make a few more general comments reflecting on the case
11 discussed yesterday and today. Perhaps I would like to
12 start out with the continuing and regretful situation of
13 the absence of our counterparts; we have been looking at
14 an empty table the past few days. As I mentioned
15 before, and I wish to reiterate, we continue to regret
16 the non-participation of the Russian Federation. Also
17 I think this complicates the task of the Tribunal in
18 establishing whether the claim that the Netherlands is
19 making is well-founded in fact and in law.
20 With respect to questions of fact, I would note that
21 very recently the International Court of Justice, in its
22 judgment last week, on the application of the Convention
23 On the Prevention and Punishment of the Crime of
24 Genocide, confirmed that:
25 "Whilst the burden of proof rests in principle on

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11:31 1 the party which alleges a fact, this does not relieve
2 the other party of its duty to co-operate 'in the
3 provision of such evidence as may be in its possession
4 that could assist the court in resolving the dispute
5 submitted to it.'
6 That is paragraph 173 of that decision.
7 This is exactly the difficulty with the current
8 case, in which our opponents have chosen not to appear,
9 in spite of their duty to co-operate such as formulated
10 by the International Court of Justice. Thus, evidence
11 that may be of assistance to this Tribunal is not fully
12 available to you; and the difficulty in establishing
13 facts in a case directly influences determination and
14 application of the relevant law.
15 Mr President, members of the Tribunal, the
16 Netherlands called eight witnesses who have all been
17 involved in some way or another in the events
18 surrounding the actions of Greenpeace near the
19 Prirazlomnaya platform in September 2013, and the
20 consequences these actions have had since. Their
21 testimonies are important, as they inform our
22 understanding of the case.
23 As lawyers, we have focused on the specific legal
24 implications of this case between the Kingdom of the
25 Netherlands and the Russian Federation. Yet these

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11:32 1 testimonies have given us a more profound impression of
2 the lack of necessity and proportionality of the actions
3 of the Russian government: the amount of violence used
4 in trying to hamper access to Prirazlomnaya, in boarding
5 the Arctic Sunrise, and in the subsequent law
6 enforcement actions. These actions were much too
7 violent, they were uncalled for, and that is against the
8 law.
9 Looking at the testimonies in some detail, I would
10 like to draw the attention of the Tribunal to the
11 following aspects. The witnesses have all confirmed
12 that the purpose of the protest action was to attach
13 a banner to Prirazlomnaya. The purpose was not to climb
14 on the deck of the platform, nor to disturb any of the
15 operations at the platform. Facts indicate that it was
16 unlikely to see the protest action otherwise at the time
17 it took place.
18 Testimony confirms that the two activists that
19 climbed the platform were, like the other members of the
20 so-called "Arctic 30" -- the people on board the Arctic
21 Sunrise -- not formally arrested until their arrival in
22 Murmansk.
23 Although Greenpeace is obviously familiar with
24 strong responses to its protest actions, the response by
25 the authorities of the Russian Federation in this case

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11:34 1 were more violent than anticipated.
2 The witnesses also confirm that there was not
3 a situation of hot pursuit. First, the RHIBs received
4 no signal to stop, as is required in Article 111.1 of
5 the Law of the Sea Convention. No message containing
6 a signal to stop was delivered in such a way that it
7 could be understood by those travelling in the RHIBs.
8 Secondly, there was not continuing pursuit
9 culminating in the arrest of the Arctic Sunrise, as is
10 also required under Article 111.1. The pursuit was
11 interrupted.
12 Thirdly, the unmarked helicopter from which the
13 persons boarding the Arctic Sunrise descended was
14 unrecognisable and not "clearly marked and identifiable
15 as being on government service and authorised to that
16 effect", as is required by the Convention. The men who
17 boarded the vessel did not clarify their identity when
18 questioned, and their authority remained unclear to the
19 people on board the Arctic Sunrise.
20 These are some of the aspects that I wanted to
21 highlight following the statement of the witnesses.
22 Mr President, members of the Tribunal, I now turn to
23 the questions that you raised shortly before the hearing
24 started. You raised some pertinent further questions to
25 the Netherlands on 9th February, and we note that some

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11:36 1 of these questions are of a factual nature, and others
2 relate to Russian domestic law. We will not be able to
3 answer all questions authoritatively at this stage, and
4 we cannot but refrain from answering your questions
5 related to Russian domestic law due to our limited
6 understanding of foreign legislation. We will answer
7 the questions in writing within the next two weeks, and
8 these answers today are tentative and provisional. But
9 we thought we would make the effort in order to help
10 your deliberations.
11 With these caveats, I will now address each of the
12 questions.
13 Question A is related to the right of a coastal
14 state to take preventive action. As we demonstrated
15 yesterday in our oral submissions, we are of the view
16 that a coastal state does have the right to prevent or
17 end a protest action in its exclusive economic zone,
18 provided that a three-pronged test has been met. The
19 response action to prevent or end the protest action
20 must have a legal basis in international law; such
21 response action must be carried out in accordance with
22 international law; and any subsequent law enforcement
23 action related thereto must be in accordance with
24 international law.
25 As to question B, it is related to the application

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11:38 1 of Articles 9 and 12.2 of the Covenant on Civil and
2 Political Rights. I think we have demonstrated that the
3 principle of reasonableness applies to any law
4 enforcement actions that are taken under the Convention.
5 The Netherlands is not inviting the Tribunal to
6 determine specifically that there is a breach of
7 Articles 9 and 12.2 of the Covenant when the Tribunal
8 considers that the contents of these provisions, as
9 applied and interpreted by international courts and
10 tribunals, are an integral part of the principle of
11 reasonableness as applicable to law enforcement actions
12 under the Convention.
13 Question C is related to the control of the Russian
14 Federation over Ms Saarela and Mr Weber after their
15 aborted attempt to climb Prirazlomnaya. On the basis of
16 the testimony of the witnesses, the Netherlands would
17 like to note that it has not been established in these
18 proceedings that Ms Saarela and Mr Weber were arrested
19 in accordance with Russian domestic law and
20 international human rights standards before the arrival
21 of the Arctic Sunrise in the Port of Murmansk.
22 However, it does appear from the facts that
23 Ms Saarela and Mr Weber were deprived of their liberty
24 outside formal arrest and detention. We have heard
25 Ms Saarela speak to that this morning.

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11:40 1 After their aborted attempt to climb Prirazlomnaya,
2 they remained within the effective control of the
3 authorities of the Russian Federation, and could have
4 been arrested at any time.
5 I move to question D, which is related to the
6 reasonableness of the response to Greenpeace's announced
7 actions on 18th September in a safety zone of 500 metres
8 around Prirazlomnaya. The reasonableness of these
9 actions must be assessed on the basis of the
10 three-pronged test I referred to in my earlier answer to
11 question A. It does not involve an assessment of the
12 boarding of the Arctic Sunrise on 19th September.
13 The Netherlands considers that there was a legal
14 basis for the Russian Federation to make an end to the
15 protest actions against Prirazlomnaya, but it has
16 concerns about the force used to make an end to the
17 protest action; and has demonstrated that the subsequent
18 law enforcement actions, in particular the serious
19 criminal charges brought against the persons on board,
20 and the length of their pre-trial detention, were not in
21 accordance with international law.
22 In question E, you, the Tribunal, have requested the
23 Netherlands to provide our best estimate of the exact
24 moment when the last of Greenpeace's RHIBs left the
25 500-metre safety zone, and the time the first stop order

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11:41 1 was given by the Ladoga to the Arctic Sunrise. Based on
2 the complete factual account, it appears that the last
3 of the RHIBs of the Arctic Sunrise left the safety zone
4 of 500 metres around Prirazlomnaya no later than 06.07
5 Moscow Standard Time, so 0607 hours, Moscow Standard
6 Time.
7 It further appears that the first stop order of the
8 Ladoga to the Arctic Sunrise was not given before 06.15
9 Moscow Standard Time. It seems therefore safe to
10 conclude that the RHIBs of the Arctic Sunrise had left
11 a safety zone of 500 metres around Prirazlomnaya at the
12 time the first stop order was given.
13 On the basis of witness testimony given at this
14 hearing, our best estimate of the exact moment when the
15 first stop order was given by the Ladoga to the Arctic
16 Sunrise is 06.25 Moscow Standard Time.
17 I now move to question F, which is related to the
18 rights of a coastal state to ensure compliance with laws
19 concerning the exploitation of non-living resources in
20 the exclusive economic zone. The scope of Article 73 of
21 the Convention is limited to the exploitation of living
22 resources in the exclusive economic zone. The article
23 contains several elements that cannot be applied mutatis
24 mutandis to the exploitation of non-living resources in
25 the exclusive economic zone.

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11:43 1 However, as we demonstrated yesterday in our oral
2 submissions, a coastal state may resort to law
3 enforcement actions in its exclusive economic zone to
4 protect its sovereign rights over its non-living
5 resources, provided that such actions meet the
6 three-pronged test.
7 Moving to question G, the Tribunal requested the
8 Netherlands whether it would be appropriate for the
9 coastal state to take action without the consent of the
10 flag state where an adverse impact has actually
11 occurred. We consider that the coastal state may also
12 take such action where there is an imminent threat of
13 such adverse impact.
14 Question H is related to the observation that the
15 Shipping Inspectorate of the Netherlands [said]:
16 "An offence may have been committed when the RHIBs
17 sailed to the platform and dropped the crew off at the
18 platform."
19 We are not able to assess whether or not the RHIBs
20 committed an offence under Russian law by entering
21 a duly established 500-metre zone around Prirazlomnaya.
22 This is a caveat I made earlier.
23 In contrast, we can authoritatively state that the
24 RHIBs did not commit an offence under Dutch law by
25 entering the 500-metre zone around Prirazlomnaya. There

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11:45 1 is a prohibition in Dutch legislation to enter safety
2 zones, but it only applies to maritime areas under the
3 jurisdiction of the Netherlands.
4 This state of affairs does not prevent the Shipping
5 Inspectorate from making enquiries and concluding that
6 an offence may have been committed. Such conclusion
7 could be the basis for the Netherlands, as a flag state,
8 to "take action, where appropriate, in accordance with
9 its national legislation", on the basis of the IMO
10 resolution on safety zones and safety of navigation
11 around offshore installations and structures, in
12 particular in the case of bad seamanship. Whether the
13 entry of the safety zone amounts to bad seamanship
14 depends on the particular circumstances of such entry.
15 Question I is related to the responsibility of the
16 flag state to take steps to prevent the violation of
17 safety zones, and to prosecute those responsible for
18 such violations. The Netherlands considers that it is
19 the responsibility of the flag state to take steps to
20 ensure safety at sea in accordance with generally
21 accepted regulations, procedures and practices under
22 Article 94.5 of the Convention, and to take any steps
23 which may be necessary to secure their observance.
24 These generally accepted regulations, procedures and
25 practices include the International Regulations for

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11:47 1 Preventing Collisions at Sea, the so-called "Colregs".
2 And if the violation of a safety zone endangers safety
3 at sea, the flag state should consider prosecuting those
4 responsible for such violations.
5 However, the prosecution of those responsible for
6 a mere violation of a safety zone is the responsibility
7 of a coastal state. Only the coastal state is competent
8 to establish a safety zone up to 500 metres, and to
9 determine the conditions for entry. In the absence of
10 a generally accepted regulation, procedure or practice
11 on the establishment, breadth and entry conditions, only
12 the coastal state is in a position to prosecute the
13 violation of a safety zone it has established.
14 Bearing in mind generally accepted regulations,
15 procedures and practices to ensure safety at sea under
16 Article 94.5 of the Convention, as well as other
17 relevant international instruments, such as the IMO
18 resolution on safety zones and safety of navigation
19 around offshore installations and structures, my
20 government regularly meets with representatives of
21 non-governmental organisations that operate ships flying
22 the flag of the Netherlands. During such meetings, we
23 clearly outline our expectations with respect to the
24 conduct of ships during protest at sea, including
25 compliance with duly established safety zones.

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11:49 1 International maritime legislation should be complied
2 with to ensure safety at sea and the protection of the
3 marine environment.
4 Mr President, members of the Tribunal, I would now
5 like to turn to the conclusion of our pleadings and
6 present our final submissions. On the grounds set out
7 in the written pleadings and elaborated on in the course
8 of the oral statement, the Kingdom of the Netherlands
9 respectfully submits the following submissions.
10 Pursuant to the Tribunal's intention not to deal
11 with the issue of compensation at the present hearing,
12 the Netherlands reserves the right to present its
13 submissions concerning compensation at a later stage.
14 The Kingdom of the Netherlands requests the Arbitral
15 Tribunal to adjudge and declare:
16 That the Russian Federation, in boarding,
17 investigating, inspecting, arresting, detaining and
18 seizing the Arctic Sunrise, without the prior consent of
19 the Kingdom of the Netherlands, breached its obligation
20 to the Kingdom of the Netherlands in its own right, in
21 the exercise of its right to protect a ship flying its
22 flag, and as a non-injured state with a legal interest,
23 in regard to the freedom of navigation as provided in
24 Articles 58.1 and 87.1(a) of the Law of the Sea
25 Convention, and under customary international law.

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11:51 1 That the Russian Federation, in boarding,
2 investigating, inspecting, arresting, detaining and
3 seizing the Arctic Sunrise, without the prior consent of
4 the Kingdom of the Netherlands, breached its obligations
5 to the Kingdom of the Netherlands in regard to the
6 exercise of jurisdiction by a flag state as provided by
7 Articles 56.2 and 58 of the UNCLOS, and Part VII of
8 UNCLOS, and under customary international law.
9 That the Russian Federation, in boarding the Arctic
10 Sunrise without the prior consent of the Kingdom of the
11 Netherlands, to arrest and detain the persons on board
12 the ship, and initiating judicial proceedings against
13 them, breached its obligation to the Kingdom of the
14 Netherlands in its own right, in the exercise of its
15 right to diplomatic protection of its nationals, in the
16 exercise of its right to seek redress on behalf of the
17 persons on board a ship flying the flag of the Kingdom
18 of the Netherlands, irrespective of their nationality,
19 and as a non-injured state with a legal interest in
20 regard to the right to liberty and security of the
21 persons on board a ship and their right to leave the
22 territory and maritime areas under the jurisdiction of
23 a coastal state as provided for by Articles 9 and 12.2
24 of the Covenant on Civil and Political Rights, and under
25 customary international law.

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11:52 1 That the Russian Federation, in applying national
2 legislation related to artificial islands, installations
3 and structures in the exclusive economic zone vis-à-vis
4 the Netherlands, including ships flying its flag, [and]
5 extending the breadth of safety zones around artificial
6 islands, installations and structures in its exclusive
7 economic zone beyond the extent allowed under UNCLOS,
8 breached its obligations to the Kingdom of the
9 Netherlands, first in its own right, in the exercise of
10 its right to protect a ship flying its flag, in regard
11 to the freedom of navigation, the exercise of
12 jurisdiction by a flag state, and the freedom to protest
13 at sea as provided by Articles 56.2, 58.1 and 60.4 of
14 the Law of the Sea Convention, as well as Part VII of
15 the Law of the Sea Convention, and under customary
16 international law; and second, as a non-injured state
17 with a legal interest in regard to the freedom of
18 navigation.
19 That the Russian Federation, in bringing serious
20 criminal charges against the persons on board the Arctic
21 Sunrise, that is piracy and hooliganism, and keeping
22 them in pre-trial detention for an extended period of
23 time, breached its obligations to the Kingdom of the
24 Netherlands in its own right, in the exercise of its
25 right to protect a ship flying its flag, in the exercise

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11:54 1 of its right to diplomatic protection of its nationals,
2 in the exercise of its right to seek redress on behalf
3 of persons on board a ship flying the flag of the
4 Kingdom of the Netherlands, irrespective of their
5 nationality, and as a non-injured state with a legal
6 interest in regard to the freedom of protest at sea
7 provided by Articles 56.2 and 58.1 of the Law of the Sea
8 Convention, and Part VII of UNCLOS, and under customary
9 international law.
10 That the Russian Federation, in not timely and fully
11 complementing the order of the Law of the Sea Tribunal,
12 breached its obligations to the Kingdom of the
13 Netherlands in its own right, in regard to the
14 compliance with provisional measures as provided for by
15 Articles 290.6 and 296.1 of the Law of the Sea
16 Convention, and Part XV and Article 300 of the
17 Convention.
18 That the Russian Federation, in not making the
19 required payments to contribute to the Tribunal's
20 expenses, breached its obligations to the Kingdom of the
21 Netherlands in its own right, in regard to the equal
22 sharing of the Tribunal's expenses as provided for by
23 Article 7 of Annex VII of the Convention, Articles 31
24 and 33 of the Tribunal's Rules of Procedure, paragraph 7
25 of the Tribunal's Procedural Order No. 1, and Part XV

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11:56 1 and Article 300 of the Convention.
2 Mr President, members of the Tribunal, these
3 violations constitute internationally wrongful acts
4 entailing the international responsibility of the
5 Russian Federation.
6 These internationally wrongful acts involve legal
7 consequences requiring the Russian Federation (a) to
8 cease, forthwith, the internationally wrongful acts
9 continuing in time, as specified in section V.2.7 of the
10 Memorial; (b) to provide the Kingdom of the Netherlands
11 with appropriate assurances and guarantees of
12 non-repetition of all the internationally wrongful acts
13 just referred to, as specified in section V.2.7 of the
14 Memorial; (c) to provide the Kingdom of the Netherlands
15 full reparation for the injuries caused by all the
16 internationally wrongful acts I have referred to.
17 With respect to reparation, the Kingdom of the
18 Netherlands respectfully submits the Tribunal to award,
19 first, in the form of satisfaction, a declaratory
20 judgment on the wrongfulness of the conduct of the
21 Russian Federation in respect of all five
22 internationally wrongful acts indicated in the Memorial,
23 and a formal apology from the Russian Federation for its
24 wrongful conduct in respect of all five internationally
25 wrongful acts indicated in the Memorial.

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11:58 1 We also request this Tribunal to reward, in the form
2 of restitution, an order to the Russian Federation to
3 issue a Notice to Mariners revoking existing Notices to
4 Mariners relating to the Prirazlomnaya, including in
5 particular Notices to Mariners no. 51/2011, and Notices
6 to Mariners no. 21/2014, and replacing them by Notices
7 to Mariners that are in accordance with the Law of the
8 Sea Convention.
9 We would also like to see the return of the objects
10 belonging to the Arctic Sunrise which have not yet been
11 returned, and the return of personal belongings of the
12 persons on board the Arctic Sunrise which have not yet
13 been returned, and also the formal dismissal of the
14 charges of piracy and hooliganism brought against the
15 persons who were on board the Arctic Sunrise.
16 Finally, we request this Tribunal to award in the
17 form of compensation for material damages suffered by
18 the Kingdom of the Netherlands due to the issuance of
19 the bank guarantee, and due to the non-participation of
20 the Russian Federation in the present proceedings, and
21 for material and non-material damage suffered as
22 a result of the law enforcement acts against the Arctic
23 Sunrise and the persons on board the ship.
24 With respect to compensation, the Netherlands
25 reserves the right to present its submissions at a later

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11:59 1 stage, pursuant to the Tribunal's instructions that it
2 would not intend to deal with the issue of compensation
3 at this stage, at the present hearing.
4 With that, Mr President, members of the Tribunal,
5 I now end our pleadings. It has been an honour for me
6 and the other members of my delegation to present our
7 arguments to this Tribunal. Mr President, members of
8 the Tribunal, thank you for your kind attention.
9 THE PRESIDENT: Thank you very, very much indeed for those
10 remarks, and thank you very much for the expressions of
11 gratitude to the Tribunal.
12 We have taken due note of all that you have said,
13 and we will come back to this in our deliberations.
14 Yesterday, during the opening statement, the
15 Co-Agent for the Netherlands discussed several examples
16 of the Netherlands' recent practice in response to
17 Greenpeace actions at sea, both as a flag state and as
18 a coastal state. This discussion can be found at pages
19 33 to 48 of the hearing transcript, which I am sure you
20 have.
21 To the extent that the Netherlands wishes the
22 Tribunal to rely on the information provided by the
23 Co-Agent in this respect, the Tribunal invites the
24 Netherlands to submit official documentation concerning
25 the various proceedings, which we will then examine.

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<p>12:01 1 This invitation is made pursuant to paragraph 22.4 of 2 the Rules of Procedure of this Tribunal, which concerns 3 the production of documents. It also relates to 4 paragraph 15.3 of the Rules of Procedure, according to 5 which any document submitted to the Tribunal in 6 a language other than English shall be accompanied by 7 a translation into English. 8 These documents which the Tribunal has requested 9 should be submitted to the Tribunal by Wednesday, 10 25th February, that is two weeks from now. 11 As to the responses of the Netherlands to the 12 Tribunal's questions of 9th February, the Tribunal is 13 very grateful indeed to the Netherlands for the 14 preliminary responses that it has provided orally today. 15 We understand that the Netherlands proposes to elaborate 16 further on these answers, and the Tribunal will expect 17 the Netherlands in due course to provide its full and 18 final responses in writing, as soon as possible, and in 19 any event not later than 25th February 2015. 20 At paragraph 28 of the addendum and corrigendum to 21 the Greenpeace Statement of Facts, Greenpeace indicates 22 that some items belonging to the Arctic Sunrise and the 23 persons on board, including electronic devices, are in 24 transit to the Netherlands and will be subsequently 25 analysed and read. At paragraph 26, Greenpeace also</p> <p style="text-align: center;">Page 37</p>	<p>12:06 1 that they will extend this also to their authorities 2 back home. 3 We will now, as a tribunal, retire to deliberate on 4 these issues. We will in due course inform the 5 Netherlands and the Russian Federation of the time when 6 the Tribunal will be ready to issue its judgment or its 7 award. 8 That having been said, if we have any requests that 9 we think that we should ask of the Netherlands, we will 10 let the Netherlands know. But in the absence of any of 11 those requests, I now declare this hearing closed, and 12 I wish every one of you a safe return journey home. 13 Thank you very much indeed, and maybe I will say not 14 goodbye, but au revoir. Thank you very much. 15 PROFESSOR LIJNZAAD: Thank you. 16 (12.07 pm) 17 (The hearing concluded)</p> <p style="text-align: center;">Page 39</p>
<p>12:04 1 refers to a video that has not yet been fully analysed. 2 The Tribunal invites the Netherlands, in responding 3 to question E -- that is the former question 8 of the 4 further questions posed by the Tribunal on 5 9th February -- to indicate whether the analysis of the 6 video in question and of any additional electronic 7 devices would shed any further light on this matter. 8 The Tribunal will be grateful indeed for whatever 9 information the Netherlands will be able to provide. 10 I will shortly be declaring this hearing closed. 11 But before I do so, please allow me to thank the staff 12 of the Palais Niederösterreich for their assistance; 13 Mrs Claire Hill for her court reporter services, which 14 have been absolutely helpful to us; the interpreters, 15 Ms Van Erkel and Mr Mikheyev, who were here yesterday, 16 but are not present today. We thank them very, very 17 much for their very, very helpful contribution to our 18 work. 19 Of course, I would like to express our thanks to the 20 Registrar, Ms Sarah Grimmer, and Ms Evgēniya 21 Goriatcheva, of the Permanent Court of Arbitration, for 22 the very considerable assistance that they have given to 23 us in these proceedings. I also thank the Netherlands 24 for their help, both in the oral and written 25 submissions, for which we congratulate them, and we hope</p> <p style="text-align: center;">Page 38</p>	

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