

# INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA



2013

Public sitting

held on Wednesday, 6 November 2013, at 10 a.m.,  
at the International Tribunal for the Law of the Sea, Hamburg,

President Shunji Yanai presiding

## THE “ARCTIC SUNRISE” CASE

*(Kingdom of the Netherlands v. Russian Federation)*

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**Verbatim Record**

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<i>Present:</i>	President	Shunji Yanai
	Vice-President	Albert J. Hoffmann
	Judges	Vicente Marotta Rangel
		L. Dolliver M. Nelson
		P. Chandrasekhara Rao
		Joseph Akl
		Rüdiger Wolfrum
		Tafsir Malick Ndiaye
		José Luís Jesus
		Jean-Pierre Cot
		Stanislaw Pawlak
		Helmut Türk
		James L. Kateka
		Zhiguo Gao
		Boualem Bouguetaia
		Vladimir Golitsyn
		Jin-Hyun Paik
		Elsa Kelly
		David Attard
		Markiyan Kulyk
	Judge <i>ad hoc</i>	David Anderson
	Registrar	Philippe Gautier

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*The Kingdom of the Netherlands is represented by:*

Ms Liesbeth Lijnzaad, Legal Adviser, Ministry of Foreign Affairs,

*as Agent;*

Mr René Lefeber, Deputy Legal Adviser, Ministry of Foreign Affairs,

*as Co-Agent;*

*and*

Mr Thomas Henquet, Legal Counsel, Ministry of Foreign Affairs,

Mr Erik Franckx, Professor, Vrije Universiteit Brussel, Department of International and European Law, Centre for International Law, Belgium,

*as Counsel and Advocates;*

Ms Anke Bouma, Legal Counsel, Ministry of Infrastructure and the Environment,

Mr Peter Post, Transport Adviser, Ministry of Foreign Affairs,

Mr Tom Diederer, Legal Officer, Ministry of Foreign Affairs,

*as Advisers.*

*The Russian Federation is not represented.*

1 **THE PRESIDENT:** Pursuant to article 26 of its Statute, the Tribunal holds a hearing  
2 today in the “*Arctic Sunrise*” Case between the Kingdom of the Netherlands and the  
3 Russian Federation.

4  
5 At the outset I would like to note that Judge Lucky is prevented by illness from sitting  
6 on the bench.

7  
8 On 21 October 2013, the Kingdom of the Netherlands submitted to the Tribunal  
9 a request for the prescription of provisional measures pending the constitution of  
10 an arbitral tribunal in a dispute with the Russian Federation concerning the vessel  
11 *Arctic Sunrise*. The request was made pursuant to article 290, paragraph 5, of the  
12 United Nations Convention on the Law of the Sea. The case was named the “*Arctic*  
13 *Sunrise*” Case and entered in the List of cases as Case No. 22.

14  
15 I now call on the Registrar to summarize the procedure and to read out the  
16 submissions of the Kingdom of the Netherlands

17  
18 **THE REGISTRAR** (*Interpretation from French*): On 21 October 2013 a copy of the  
19 request for the prescription of provisional measures was sent to the Government of  
20 the Russian Federation.

21  
22 In a *note verbale* of 22 October 2013, received at the Registry of the Tribunal on  
23 23 October 2013, the Embassy of the Russian Federation in Berlin informed the  
24 Tribunal that:

25  
26 Upon the ratification of the Convention on 26 February 1997 the Russian  
27 Federation made a statement according to which, *inter alia*, “it does not  
28 accept the procedures, provided for in Section 2 of Part XV of the  
29 Convention, entailing binding decisions with respect to disputes [...] concerning law-enforcement activities in regard to the exercise of  
30 sovereign rights or jurisdiction.”  
31

32  
33 In the same note, the Russian Federation informed the Tribunal that it had notified  
34 the Kingdom of the Netherlands

35  
36 that it does not accept the arbitration procedure under Annex VII of the  
37 Convention initiated by the Netherlands in regard to the case concerning  
38 the vessel *Arctic Sunrise* and that it does not intend to participate in the  
39 proceedings at the International Tribunal for the Law of the Sea in  
40 respect of the request of the Kingdom of the Netherlands for the  
41 prescription of provisional measures under article 290, paragraph 5, of  
42 the Convention.

43  
44 On 24 October 2013 the Registry of the Tribunal received a communication in which  
45 the Kingdom of the Netherlands requested the Tribunal to continue the proceedings  
46 and to make its decision on the request for provisional measures.

47  
48 By an order of 25 October 2013 the President fixed 6 November 2013 as the date for  
49 the opening of the hearing.

50  
51 I will now read the submissions of the Kingdom of the Netherlands.

1  
2 (Continued in English)  
3

4 The Tribunal prescribe as provisional measures that the Russian  
5 Federation

- 6  
7 (i) Immediately enable the *Arctic Sunrise* to be resupplied, to  
8 leave its place of detention and the maritime areas under the  
9 jurisdiction of the Russian Federation and to exercise the  
10 freedom of navigation;  
11  
12 (ii) Immediately release the crew members of the *Arctic Sunrise*,  
13 and allow them to leave the territory and maritime areas under  
14 the jurisdiction of the Russian Federation;  
15  
16 (iii) Suspend all judicial and administrative proceedings, and  
17 refrain from initiating any further proceedings, in connection  
18 with the incidents leading to the boarding and detention of the  
19 *Arctic Sunrise*, and refrain from taking or enforcing any judicial  
20 or administrative measures against the *Arctic Sunrise*, its crew  
21 members, its owners and its operators; and  
22  
23 (iv) Ensure that no other action is taken which might aggravate or  
24 extend the dispute.  
25

26 Mr President.

27  
28 **THE PRESIDENT:** Thank you, Mr Registrar.  
29

30 At today's hearing, the Kingdom of the Netherlands will present its oral arguments.  
31 The morning sitting will last until 1 p.m., with a break of 30 minutes at around 11.30  
32 a.m. Possibly, an afternoon sitting will be held at 3 p.m.  
33

34 I note the presence at the hearing of the Agent, the Co-Agent, and of Counsel and  
35 Advocates of the Applicant. I therefore call on the Agent of the Kingdom of the  
36 Netherlands, Ms Liesbeth Lijnzaad, to introduce her delegation.  
37

38 **MS LIJNZAAD:** Mr President, Members of the Tribunal, it is an honour for me to  
39 appear again before this Tribunal representing the Kingdom of the Netherlands.  
40

41 With the indulgence of the Tribunal, I will first introduce the delegation of the  
42 Kingdom of the Netherlands. My name is Ms Liesbeth Lijnzaad, Legal Adviser of the  
43 Ministry of Foreign Affairs, and I am the Agent. With me are Mr René Lefeber,  
44 Deputy Legal Adviser, Ministry of Foreign Affairs, who is the Co-Agent;  
45 Mr Thomas Henquet, Legal Counsel, Ministry of Foreign Affairs; Professor  
46 Erik Franckx, a professor at Vrije Universiteit Brussel in the Department of  
47 International and European Law. They are Counsel and Advocates. Then there is  
48 Ms Anke Bouma, Legal Counsel, Ministry of Infrastructure and the Environment;  
49 Mr Peter Post, Transport Adviser, Ministry of Foreign Affairs; and Mr Tom Diederren,  
50 Legal Officer, Ministry of Foreign Affairs. They are our Advisers.  
51

1 **THE PRESIDENT:** Thank you, Ms Lijnzaad. May I then request you to begin with  
2 your statement.

3  
4 **MS LIJNZAAD** (*Interpretation from French*): With the permission of the Tribunal, I  
5 will now introduce the case.

6  
7 The dispute underlying this case relates to the unlawful boarding and detention of a  
8 vessel flying the Netherlands flag in the Barents Sea, within the exclusive economic  
9 zone of the Russian Federation, and the detention of its crew by the Russian  
10 authorities.

11  
12 By acting in this way, without the prior consent of the Kingdom of the Netherlands,  
13 the Russian Federation has violated the freedom of navigation of the flag State and  
14 its right to exercise its jurisdiction over the vessel under the United Nations  
15 Convention on the Law of the Sea and under customary international law.

16  
17 As a general rule, a coastal State may not exercise its enforcement jurisdiction over  
18 a vessel flying the flag of a third State within its exclusive economic zone.

19  
20 Having boarded the vessel, the Russian authorities arrested and detained the  
21 30 persons on board. The Russian Federation thus violated the human rights of  
22 these individuals, namely the right to freedom and safety and also the right to leave  
23 the territory, including in this case the maritime zones under Russian jurisdiction  
24 according to the International Covenant on Civil and Political Rights and customary  
25 international law.

26  
27 The detention of the vessel and its crew continued upon arrival at port. To date, the  
28 detention has lasted almost seven weeks since the time of the unlawful boarding.  
29 Judicial proceedings have been initiated, on grounds that seem unfounded, against  
30 those on board the vessel. Furthermore, the Russian authorities have seized the  
31 *Arctic Sunrise* and are allowing its general condition to deteriorate. Consequently,  
32 the internationally wrongful acts of the Russian Federation against the Kingdom of  
33 the Netherlands are continuing and the dispute is being aggravated and extended.  
34 The Netherlands has on several occasions in vain requested the Russian Federation  
35 to release the vessel and those on board. Indeed, the Russian Federation has not  
36 responded to the request for provisional measures included in the Statement of claim  
37 and the grounds upon which it is based.

38  
39 This case concerns a dispute between two States over the rights and obligations of a  
40 coastal State within its exclusive economic zone, affecting the rights and obligations  
41 of another State with regard to a vessel flying its flag. The settlement of such a  
42 dispute should not adversely affect the enjoyment of individual rights and freedoms  
43 by the persons on board. This, together with the indecisive legal position of the  
44 Russian Federation as to the justification for its actions against the *Arctic Sunrise*,  
45 underlines the desirability of the Tribunal's ordering the provisional measures  
46 requested.

47  
48 These provisional measures are that the Russian Federation:  
49

- 1 (i) immediately enable the *Arctic Sunrise* to be resupplied, to leave its place of  
2 detention and the maritime areas under the jurisdiction of the Russian Federation,  
3 and to exercise its freedom of navigation;  
4  
5 (ii) immediately release the crew members of the *Arctic Sunrise* and allow them  
6 to leave the territory and maritime areas under the jurisdiction of the Russian  
7 Federation;  
8  
9 (iii) suspend all judicial and administrative proceedings, and refrain from initiating  
10 any further proceedings, in connection with the incidents leading to the boarding and  
11 detention of the *Arctic Sunrise*, and refrain from taking or enforcing any judicial or  
12 administrative measures against the *Arctic Sunrise*, its crew members, its owners  
13 and its operators; and  
14  
15 (iv) ensure that no other action is taken which might aggravate or extend the  
16 dispute.

17  
18 In this oral statement today, the Kingdom of the Netherlands maintains that the  
19 conditions for the prescription of provisional measures under article 290,  
20 paragraph 5, of the Convention are met.  
21

22 Moreover, the Kingdom of the Netherlands wishes to reiterate its desire to settle the  
23 dispute amicably. It welcomes the declared willingness of the Russian Federation to  
24 continue to seek a mutually acceptable solution. However, as is demonstrated by our  
25 presence here today, it has not so far been possible to reach such a solution.  
26

27 The Kingdom of the Netherlands regrets that the Russian Federation is absent from  
28 the present hearing. None the less, the actions prejudicial to its rights are continuing.  
29 The dispute is being aggravated and extended. The Kingdom of the Netherlands  
30 thus finds itself bound to request the Tribunal to continue these proceedings, given  
31 the failure of the Russian Federation to appear.  
32

33 The remainder of this oral statement is structured as follows:  
34

- 35 a) Non-participation by the Russian Federation in these proceedings;  
36  
37 b) Jurisdiction, comprising two aspects:  
38 i. first, the Tribunal has jurisdiction over the request for provisional  
39 measures;  
40 ii. second, the arbitral tribunal to be formed pursuant to Annex VII of  
41 the Convention has *prima facie* jurisdiction;  
42  
43 c) The claim is supported by fact;  
44  
45 d) The claim is supported by law, that is to say:  
46 i. firstly, the claim on the merits can be substantiated;  
47 ii. secondly, the requirements for the prescription of provisional  
48 measures under article 290 of the Convention are met;  
49  
50 e) In conclusion, the final submissions.

1  
2 Mr President, I shall now continue in English.

3  
4 *(Continued in English)* As I have mentioned in my introduction, the Kingdom of the  
5 Netherlands regrets the refusal of the Russian Federation to participate in the  
6 proceedings before the Tribunal. This has an impact on the sound administration of  
7 justice. In proceedings between States before international courts and tribunals it is  
8 rare for a State not to participate. It is the first time that this Tribunal is confronted  
9 with a default of appearance.

10  
11 However, this is not the first time that an international court has been faced with  
12 a situation of default. We have found three instances before the Permanent Court of  
13 International Justice, all in proceedings on provisional measures, and nine instances  
14 before the International Court of Justice in one or more stages of the proceeding,  
15 where a default situation arose. However, instances of non-appearance have been  
16 virtually non-existent in the last 25 years or so, indicating the decline of non-  
17 appearance as a phenomenon. That is, until today.

18  
19 According to our records, it is the first time that the Russian Federation has failed to  
20 participate in proceedings between States before an international court or tribunal.  
21 Before this Tribunal, the Russian Federation participated in the proceedings brought  
22 against it in 2007 by Japan in the “*Hoshinmaru*” case and the “*Tomimaru*” case.  
23 Furthermore, the Russian Federation has availed itself of the compulsory procedures  
24 under the Convention to settle disputes. In 2002, the Russian Federation initiated  
25 proceedings before the Tribunal against Australia in the “*Volga*” case.

26  
27 If a State considers that an international court or tribunal does not have jurisdiction,  
28 as the Russian Federation seems to indicate in its communication to the Tribunal on  
29 22 October, the regular practice of States is to appear and challenge that jurisdiction.  
30 The Russian Federation itself followed this practice in the case brought against it by  
31 Georgia before the International Court of Justice in 2008. It participated in those  
32 proceedings, including the proceedings related to Georgia’s request to indicate  
33 provisional measures. The Russian Federation challenged the jurisdiction of the  
34 Court, but this did not prevent the Court from indicating provisional measures after  
35 the Court had satisfied itself that it had *prima facie* jurisdiction. However, the Russian  
36 Federation’s challenge to the jurisdiction of the Court prevailed and the Court  
37 declined to exercise jurisdiction on the merits. If the Russian Federation believes that  
38 the arbitral tribunal that is being constituted does not have jurisdiction, it would have  
39 been in keeping with its own practice to argue so in these proceedings as well.  
40 Instead, it has refused to participate. Thus, the Tribunal will have to address the  
41 consequences of this non-appearance.

42  
43 The non-appearance of a party is governed by article 28 of the Tribunal’s Statute. It  
44 reads as follows:

45  
46 When one of the parties does not appear before the Tribunal or fails to  
47 defend its case, the other party may request the Tribunal to continue the  
48 proceedings and make its decision. Absence of a party or failure of a  
49 party to defend its case shall not constitute a bar to the proceedings.  
50 Before making its decision, the Tribunal must satisfy itself not only that it  
51 has jurisdiction over the dispute, but also that the claim is well founded in



1 fact and law.

2  
3 Accordingly, the refusal of the Russian Federation to participate in the proceedings  
4 does not bar the Tribunal from exercising its jurisdiction to entertain a request for the  
5 prescription of provisional measures. Further to a communication of the Russian  
6 Federation of 22 October, the Tribunal informed the Kingdom of the Netherlands on  
7 23 October of the Russian Federation's intention not to participate in these  
8 proceedings. The letter also drew the attention of the Kingdom of the Netherlands to  
9 article 28 of the Tribunal's Statute. It conveyed that the President of the Tribunal  
10 would like to receive any comments the Kingdom may wish to make. In our letter of  
11 24 October 2013, we requested the Tribunal to continue the proceedings and make  
12 a decision on the request for the prescription of provisional measures. The Tribunal  
13 accordingly continued the proceedings and convened the present hearing.

14  
15 The failure of the Russian Federation to participate in these proceedings has legal  
16 implications for the making of a decision by the Tribunal. Since this Tribunal has not  
17 yet had a case before it to consider the interpretation and application of article 28 of  
18 its Statute, it is important that this be addressed in these proceedings. In this  
19 respect, the Kingdom of the Netherlands considers the case law of the International  
20 Court of Justice to be of relevance. The provision of the Statute of the International  
21 Court of Justice related to default proceedings bears resemblance to article 28 of the  
22 Tribunal's Statute. Pursuant to article 53, paragraph 2, of the Statute of the  
23 International Court of Justice, the Court must satisfy itself, not only that it has  
24 jurisdiction, but also that the claim is well founded in fact and law.

25  
26 The test to be applied by the Tribunal is three-pronged. The Tribunal must satisfy  
27 itself that: it has jurisdiction; the claim is well founded in fact; and the claim is well  
28 founded in law. Before the Kingdom of the Netherlands will submit that this test is  
29 indeed met, it would like to share with you the relevant considerations of the  
30 International Court of Justice in applying the corresponding test under its Statute. We  
31 note that the Tribunal itself has, on a number of occasions, sought inspiration from  
32 the jurisprudence of the Court on matters pertaining to procedure. The late Professor  
33 Shabtai Rosenne saw no obstacle in this regard. In his study on provisional  
34 measures juxtaposing the Court and the Tribunal, he wrote: "Since Annex VI,  
35 Article 28 of the Law of the Sea Convention follows Article 53 of the Statute of the  
36 ICJ, it may be assumed that ITLOS will follow the same practice."

37  
38 I pray for your indulgence as the following chronological review of the Court's case  
39 law is extensive. I would also like to mention that this review does not distinguish  
40 between incidental proceedings and proceedings on the merits.

41  
42 First, in the case concerning *Corfu Channel*, the International Court of Justice found  
43 that, while it is obliged

44  
45 to consider the submissions of the Party which appears, it does not  
46 compel the Court to examine their accuracy in all their details; for this  
47 might in certain unopposed cases prove impossible in practice. It is  
48 sufficient for the Court to convince itself by such methods as it considers  
49 suitable that the submissions are well founded.

1 Second, in the case concerning *Fisheries Jurisdiction*, the Court addressed the  
2 failure of a State to appear which was understood to entertain objections to the  
3 Court's jurisdiction. In its Orders on provisional measures, the Court considered that,

4  
5 according to the jurisprudence of the Court and of the Permanent Court of  
6 International Justice the non-appearance of one of the parties cannot by  
7 itself constitute an obstacle to the indication of provisional measures,  
8 provided the parties have been given an opportunity of presenting their  
9 observations on the subject.

10  
11 In its Judgments on jurisdiction in the same case, the Court concluded that it, "in  
12 accordance with its Statute and its settled jurisprudence, must examine *proprio motu*  
13 the question of its own jurisdiction."

14  
15 For the purpose of deciding whether the claim is well founded in law, the Court  
16 observed in its Judgments on the merits, also in the *Fisheries Jurisdiction* case, that  
17 it

18  
19 is deemed to take judicial notice of international law, and is therefore  
20 required in a case falling under Article 53 of the Statute, as in any other  
21 case, to consider on its own initiative all rules of international law which  
22 may be relevant to the settlement of the dispute. It being the duty of the  
23 Court itself to ascertain and apply the relevant law in the given  
24 circumstances of the case, the burden of establishing or proving rules of  
25 international law cannot be imposed on any of the parties, for the law lies  
26 within the judicial knowledge of the Court.

27  
28 Third, in the case concerning *United States Diplomatic and Consular Staff in Tehran*,  
29 the Court found that "the non-appearance of one of the States concerned cannot by  
30 itself constitute an obstacle to the indication of provisional measures". The Court  
31 added that, "by not appearing in the present proceedings, the Government of Iran, by  
32 its own choice, deprives itself of the opportunity of developing its own arguments  
33 before the Court."

34  
35 In its Judgment, the International Court of Justice found that,

36  
37 in accordance with its settled jurisprudence, the Court, in applying  
38 Article 53 of its Statute, must first take up, *proprio motu*, any preliminary  
39 question, whether of admissibility or of jurisdiction, that appears from the  
40 information before it to arise in the case.

41  
42 Of equal importance, in the case concerning *Military and Paramilitary Activities in*  
43 *and against Nicaragua*, the Court stated that

44  
45 [a] State which decides not to appear must accept the consequences of  
46 its decision, the first of which is that the case will continue without its  
47 participation; the State which has chosen not to appear remain a party to  
48 the case, and is bound by the eventual judgment in accordance with  
49 Article 59 of the Statute.

50  
51 In the same case, with respect to whether the claim is well founded in law, the Court  
52 observed:

1  
2 The use of the term “satisfy itself” [...] implies that the Court must attain  
3 the same degree of certainty as in any other case that the claim of the  
4 party appearing is sound in law and, so far as the nature of the case  
5 permits, that the facts on which it is based are supported by convincing  
6 evidence. For the purpose of deciding whether the claim is well founded  
7 in law, the principle *jura novit curia* signifies that the Court is not solely  
8 dependent on the argument of the parties before it with respect to the  
9 applicable law [...], so that the absence of one party has less impact.

10  
11 With respect to whether the claim is well founded in fact, the Court observed that

12  
13 in principle the Court is not bound to confine its consideration to the  
14 material formally submitted to it by the parties [...]. Nevertheless, the  
15 Court cannot by its own enquiries make up for the absence of one of the  
16 Parties; that absence, in a case of this kind involving extensive questions  
17 of fact, must necessarily limit the extent to which the Court is informed of  
18 the facts.

19  
20 In addition, the Court stated that

21  
22 the equality of the parties must remain the basic principle for the Court.  
23 The intention of Article 53 was that in a case of non-appearance neither  
24 party should be placed at a disadvantage; therefore the party which  
25 declines to appear cannot be permitted to profit from its absence, since  
26 this would amount to placing the party appearing at a disadvantage.

27  
28 In 1991, the *Institut de Droit international* reflected essential elements of the Court's  
29 case law in a resolution on “Non-Appearance Before the International Court of  
30 Justice”. Article 4 of that Resolution provides that, notwithstanding the non-  
31 appearance of a State before the Court in proceedings to which it is a party, that  
32 State is, by virtue of the Statute, bound by any decision of the Court in that case,  
33 whether on jurisdiction, admissibility, or the merits. Article 5 of the Resolution  
34 provides that a State's non-appearance before the Court is in itself no obstacle to the  
35 exercise by the Court of its functions under Article 41 of the Statute, that is the  
36 provision related to the indication of provisional measures.

37  
38 It must now be considered how article 28 of the Tribunal’s Statute is to be applied to  
39 a request for the prescription of provisional measures under article 290 of the  
40 Convention. Taking into account the case law of the International Court of Justice,  
41 the Kingdom of the Netherlands wishes to make the following observations.

42  
43 First, the non-appearance of the Russian Federation cannot by itself constitute an  
44 obstacle to the prescription of provisional measures by the Tribunal.

45  
46 Second, the Tribunal must, on its own accord, examine the question of jurisdiction.  
47 The Tribunal needs to establish its jurisdiction to prescribe provisional measures. It  
48 must also establish the *prima facie* jurisdiction of the arbitral tribunal that is being  
49 constituted to address the merits.

50  
51 Third, the Tribunal needs to ensure that the factual and legal requirements for  
52 prescribing the provisional measures are met. Article 28 of the Tribunal's Statute

1 applies to requests for provisional measures. To conclude otherwise would mean  
2 that proceedings on the merits could take place despite default, but incidental  
3 proceedings could not. The legal ramifications of its application should be  
4 understood in the context of incidental proceedings. Article 28 should be read in  
5 conjunction with Article 290, paragraph 5, of the Convention. It follows from the  
6 simultaneous application of both provisions that the assessment of a request for  
7 provisional measures follows a *prima facie* method of reasoning.

8  
9 Fourth, the Russian Federation, which has chosen not to appear, remains a party to  
10 the case and is bound by the decision of the Tribunal in accordance with Article 33,  
11 paragraph 1, of the Tribunal's Statute.

12  
13 The Kingdom of the Netherlands remains hopeful that the Russian Federation will  
14 reconsider its position and participate in the arbitral procedure.

15  
16 Now, Mr President, with your permission, I would like to suggest calling to the stand  
17 Mr Henquet, who will continue our oral statement and will discuss jurisdiction.

18  
19 **THE PRESIDENT:** Thank you, Ms Lijnzaad.

20  
21 Before we proceed to the next statement, some Judges would like to ask questions  
22 of the Applicant. I give the floor to Judge Wolfrum.

23  
24 **JUDGE WOLFRUM:** Thank you, Mr President.

25  
26 Ms Lijnzaad, may I ask you a question concerning the planning and the organization  
27 of the most recent cruise of the *Arctic Sunrise*? Could the Applicant please clarify  
28 whether, in its view, the operator of the *Arctic Sunrise*, Greenpeace, decided on the  
29 activities of the persons on board the vessel? Referring to activities, I mean the entry  
30 into the safety zone and some of them climbing onto the installation established by  
31 the Russian Federation; or, in the alternative, was the decision to take these actions  
32 made by the captain or by the crew on the spot? It is totally up to you at what time  
33 you respond to that question.

34  
35 Thank you, Mr President.

36  
37 **THE PRESIDENT:** Thank you, Judge Wolfrum.

38  
39 I now give the floor to Judge Cot.

40  
41 **JUDGE COT** (*Interpretation from French*): Thank you, Mr President.

42  
43 My question is as follows: The request for provisional measures made by the  
44 Kingdom of the Netherlands refers, in paragraphs 30 and 31, to a request for the  
45 release of the *Arctic Sunrise* against the posting of a bond or other financial security.  
46 I would like to know whether the Kingdom of the Netherlands could give an  
47 approximate estimate of the value of the vessel in question. I would make the same  
48 point as my colleague Judge Wolfrum: could you reply in due course?

49  
50 **THE PRESIDENT:** Thank you, Judge Cot.

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Judge Golitsyn.

**JUDGE GOLITSYN:** My question is: is the urgency for the release of the *Arctic Sunrise* at the stage of provisional measures justified, given the fact that, in accordance with the official report on the seizure of the property dated 15 October 2013 (Appendix 7 to Annex 2 of the Request), the competent Russian authorities “will be responsible for compliance with the security measures and have been notified of their liability for any loss, disposal or legal transfer of property that has been seized or confiscated”?

**THE PRESIDENT:** Thank you, Judge Golitsyn.

I now give the floor to Judge Akl.

**JUDGE AKL** (*Interpretation from French*): Thank you, Mr President.

I would like to ask the Agent of the Kingdom of the Netherlands a simple question: could you, if possible, tell us what penalties may be imposed for the violation of the laws and regulations of the Russian Federation relating to the safety zone around artificial islands and installations in the exclusive economic zone? Again, we expect to receive these replies at your convenience.

Thank you, Mr President.

**THE PRESIDENT** (*Interpretation from French*): Thank you, Judge Akl.

Judge Bouguetaia.

**JUDGE BOUGUETAIA** (*Interpretation from French*): I would like to ask the Agent of the Kingdom of the Netherlands whether it is possible to tell us the precise conditions under which the 30 sailors on the *Arctic Sunrise* were arrested. It is clear that the events took place within the exclusive economic zone, but I would like to know precisely in what part the sailors were arrested. Was the arrest made in the exclusive economic zone but outside the “safety zone”, or within the safety zone, or possibly on the platform, or, as we understand, on the small boats transporting the sailors from the *Arctic Sunrise* to the platform? Thank you.

**THE PRESIDENT** (*Interpretation from French*): Thank you, Judge Bouguetaia.

(*Continued in English*) I wish to inform the Agent of the Applicant that those questions can be answered either during the hearing or in writing. It would be appreciated to receive a written answer by Thursday 7 November 2013 by 6 p.m.

I now give the floor to Mr Thomas Henquet to make the next statement of the Netherlands.

**MR HENQUET:** Mr President, Members of the Tribunal, it is an honour for me to appear before the Tribunal for the first time.

1 I will first address the jurisdiction of this Tribunal under article 290, paragraph 5. I will  
2 thereafter address the *prima facie* jurisdiction of the arbitral tribunal that is being  
3 constituted under Annex VII to the Convention.  
4

5 This Tribunal has jurisdiction to prescribe provisional measures if two requirements  
6 are met: first, the dispute “is being submitted” to arbitration and, second, the  
7 constitution of the arbitral tribunal is pending. Both requirements are met.  
8

9 First, on 4 October, the Kingdom of the Netherlands submitted the dispute to  
10 arbitration under Annex VII. That dispute settlement procedure applies under  
11 article 287, paragraph 5, of the Convention. This is because the parties have not  
12 agreed on the same mode of binding dispute settlement: the Netherlands opted for  
13 the International Court of Justice and the Russian Federation opted for arbitration  
14 under Annex VII. The parties also did not agree on any other binding dispute  
15 settlement procedure in this case.  
16

17 Second, the constitution of the arbitral tribunal is currently pending. The Netherlands  
18 appointed its arbitrator in accordance with article 3, paragraph (b), of Annex VII to  
19 the Convention. The other members of the arbitral tribunal remain to be appointed.  
20 The term within which the Russian Federation had to appoint its arbitrator expired  
21 last Monday.  
22

23 In conclusion, the dispute has been submitted to arbitration and the constitution of  
24 the arbitral tribunal is pending. In the meantime, this Tribunal has jurisdiction to  
25 prescribe provisional measures.  
26

27 I now turn to the jurisdiction of the arbitral tribunal that is being constituted.  
28 Article 290, paragraph 5, provides that the International Tribunal for the Law of the  
29 Sea may only prescribe provisional measures if it considers that, *prima facie*, the  
30 arbitral tribunal would have jurisdiction. Article 288 sets out a two-pronged test for  
31 the jurisdiction of the arbitral tribunal: first, the dispute must be submitted to the  
32 tribunal in accordance with Part XV; and second, the dispute must concern the  
33 interpretation or application of the Convention. Again, we submit that both elements  
34 of the test are met.  
35

36 First, under article 286, a dispute may only be submitted to binding dispute  
37 settlement if no settlement has been reached by recourse to section 1. The relevant  
38 provision under section 1 is article 283, concerning the obligation to exchange views  
39 between the parties. The parties have exchanged several diplomatic notes, and we  
40 will recall those later. Further, the respective Ministers of Foreign Affairs discussed  
41 the dispute thrice: twice before the submission of the dispute to arbitration and once  
42 before the submission of the request for provisional measures. This notwithstanding,  
43 the dispute has rapidly escalated, and it continues to aggravate and extend.  
44

45 The possibilities to settle the dispute by negotiation or otherwise have been  
46 exhausted. Therefore, under the settled case law of this Tribunal, the Kingdom of the  
47 Netherlands was permitted to submit the dispute to arbitration.  
48

49 The second element of the test for the jurisdiction of the arbitral tribunal is also met:  
50 the dispute concerns the interpretation and application of the Convention. More

1 specifically, it concerns the rights and obligations of the Russian Federation as a  
2 coastal State in its exclusive economic zone, and, notably, its right to board,  
3 investigate, inspect, arrest, detain and seize vessels flying the flag of a third State.  
4 This concerns in particular Part V and Part VII, notably article 56, paragraph 2;  
5 article 58; article 87, paragraph 1(a); and article 110, paragraph 1.  
6

7 In conclusion, the two-pronged *prima facie* test under article 290, paragraph 5, of  
8 UNCLOS is met. This *prima facie* jurisdiction is not affected by the declaration of the  
9 Russian Federation upon ratification of the Convention. The Russian Federation  
10 declared that

11  
12 in accordance with article 298 of the [Convention], it does not accept the  
13 procedures, provided for in section 2 of Part XV of the Convention,  
14 entailing binding decisions with respect to [...] disputes concerning law-  
15 enforcement activities in regard to the exercise of sovereign rights or  
16 jurisdiction.  
17

18 The Russian Federation invoked this declaration in its communication to the Tribunal  
19 of 22 October. The Russian Federation stated that it does not accept the arbitration  
20 procedure and that it did not intend to participate in the proceedings before this  
21 Tribunal.  
22

23 We would make the following submissions on the position of the Russian Federation.  
24 Ultimately it is for the arbitral tribunal to decide whether it has jurisdiction,  
25 *compétence de la compétence*. This Tribunal must now decide whether the arbitral  
26 tribunal has *prima facie* jurisdiction. We submit that it does. Article 297,  
27 paragraph 1(a), of the Convention provides that the dispute shall be subject to  
28 binding dispute settlement when it is alleged that a coastal State has acted in  
29 contravention of the provisions of the Convention in regard to the freedoms and  
30 rights of navigation. This is precisely what the Kingdom of the Netherlands alleges.  
31

32 Article 298 allows States to opt for exceptions to binding dispute settlement.  
33 However, they may only do so in the following categories of disputes. The first  
34 category of disputes, in paragraph 1(a), concerns sea boundary delimitations or  
35 historic bays or titles. The *Arctic Sunrise* dispute does not fall in this category. The  
36 second category of disputes, in paragraph 1(b), concerns military activities. The  
37 *Arctic Sunrise* dispute does not fall in this category either. The third category of  
38 disputes, in paragraph 1(c), concerns disputes in respect of which the Security  
39 Council of the United Nations is exercising the functions assigned to it by the Charter  
40 of the United Nations. There is no Security Council involvement and the *Arctic*  
41 *Sunrise* dispute does not fall in this category.  
42

43 The remaining categories of disputes, also in paragraph 1(b), concern law  
44 enforcement activities in regard to the exercise of sovereign rights or jurisdiction  
45 excluded from the jurisdiction of a court or tribunal under article 297, paragraphs 2  
46 and 3. This merits further consideration.  
47

48 Before considering the Russian declaration, may I remind the Tribunal that, as a  
49 general rule, the 1982 Convention on the Law of the Sea does not allow reservations  
50 and exceptions. The Convention truly is a package deal. We note that the Russian

1 declaration makes an exception for “disputes concerning law-enforcement activities  
2 in regard to the exercise of sovereign rights or jurisdiction”. However, article 298,  
3 paragraph 1(b), limits the scope of this exception; it only applies to disputes that are  
4 excluded from dispute settlement under article 297, paragraph 2 or 3.

5  
6 Therefore, the question arises how to interpret the Russian declaration. Let us  
7 explore two possible interpretations. The first is that the declaration would be in  
8 conformity with the Convention. This would mean that the exception is limited to  
9 disputes in article 297, paragraph 2 and 3. These are disputes regarding marine  
10 scientific research and fisheries, respectively. The facts before us do not concern  
11 marine scientific research, nor do they concern fisheries. Therefore, the Russian  
12 declaration cannot affect the jurisdiction of the arbitral tribunal. The second possible  
13 interpretation is that the declaration is of a general nature. This would mean that any  
14 “disputes concerning law-enforcement activities in regard to the exercise of  
15 sovereign rights or jurisdiction” would be beyond the reach of binding dispute  
16 settlement. However, such a broad exception is not permitted by the Convention.  
17 The Convention prohibits it.

18  
19 This prohibition is underscored by a declaration of the Kingdom of the Netherlands  
20 upon ratification. The Netherlands objected to any declaration or statement excluding  
21 or modifying the legal effect of the Convention. However, let us consider not only the  
22 position of the Kingdom of the Netherlands. The Russian Federation also made a  
23 declaration, and it is along the very same lines. I will read it out:

24  
25 The Russian Federation, bearing in mind articles 309 and 310 of the  
26 Convention, declares that it objects to any declarations and statements  
27 made in the past or which may be made in future when signing, ratifying  
28 or acceding to the Convention, or made for any other reason in  
29 connection with the Convention, that are not in keeping with the  
30 provisions of article 310 of the Convention. The Russian Federation  
31 believes that such declarations and statements, however phrased or  
32 named, cannot exclude or modify the legal effect of the provisions of the  
33 Convention in their application to the party to the Convention that made  
34 such declarations or statements, and for this reason they shall not be  
35 taken into account by the Russian Federation in its relations with that  
36 party.

37  
38 So, the refusal by the Russian Federation to accept the jurisdiction of the arbitral  
39 tribunal would not only be inconsistent with article 309 of the Convention, but it would  
40 also be inconsistent with its very own declaration upon ratification. Therefore, the  
41 declaration by the Russian Federation cannot affect the jurisdiction of the arbitral  
42 tribunal; either it does not apply, or it is not allowed.

43  
44 In conclusion, we submit that the *prima facie* test for jurisdiction is met.

45  
46 Mr President, Members of the Tribunal, I will now demonstrate that the claim is  
47 supported by fact.

48  
49 On 18 September the Russian Federation informed the Kingdom of the Netherlands  
50 that “the decision was made to seize the *Arctic Sunrise*”. This followed a protest by



1 Greenpeace International directed against the offshore ice-resistant fixed platform  
2 Prirazlomnaya in the Barents Sea.  
3

4 On 19 September, in the exclusive economic zone of the Russian Federation, armed  
5 agents of the Russian Federal Security Service descended from a Russian  
6 helicopter of this Service and boarded the *Arctic Sunrise*. The agents took control of  
7 the vessel, and detained the vessel and its crew. The Russian coastguard  
8 subsequently towed the vessel to Murmansk.  
9

10 The day after, on 20 September, the Kingdom of the Netherlands requested the  
11 Russian Federation to provide information, including answers to specific questions,  
12 concerning these actions. The Netherlands also underlined the importance of the  
13 immediate release of the vessel and its crew. It requested the Russian Federation to  
14 reply by the 23rd.  
15

16 On 24 September the *Arctic Sunrise* arrived in Murmansk, where it was moored  
17 alongside the Russian coastguard vessel *Ladoga*. The crew was brought to shore.  
18 The crew members have since been kept in detention pending judicial proceedings.  
19

20 The Russian Federation did not respond to the requests by the Kingdom of the  
21 Netherlands of 20 September. It also did not respond to an urgent reminder by the  
22 Netherlands on 26 September. In that note the Netherlands reiterated its request that  
23 the Russian Federation immediately release the vessel and its crew. In this  
24 connection, the Netherlands inquired as to “whether such release would be  
25 facilitated by the posting of a bond or other financial security and, if so, what the  
26 Russian Federation would consider to be a reasonable amount for such bond or  
27 other financial security.”  
28

29 On 27 September the Russian authorities announced that investigations on board  
30 the *Arctic Sunrise* would be conducted. They suggested that a representative of the  
31 Consulate General be present during these investigations. The Netherlands declined  
32 this as the detention of the vessel was unlawful.  
33

34 On 28 September the Russian authorities commenced the investigation of the  
35 vessel. The Netherlands recorded its formal protest thereto. As of today, the  
36 Netherlands has not received a report of the investigation.  
37

38 On 1 October the Russian Federation responded to the requests for information of  
39 the Kingdom of the Netherlands. The Russian Federation argued that the boarding,  
40 investigation and detention of the *Arctic Sunrise* and the detention of its crew were  
41 justified on the basis of general provisions in the Convention related to the exclusive  
42 economic zone and the continental shelf. It also gave notification that it had instituted  
43 a criminal investigation into crew members of the vessel for the crime of piracy under  
44 Russian law.  
45

46 In reply, the Netherlands contested that these provisions of the Convention justified  
47 the actions taken against the *Arctic Sunrise* and its crew.  
48

49 The Netherlands also stated that it appeared that the two States have diverging  
50 views on the rights and obligations of the Russian Federation as a coastal State in its

1 exclusive economic zone. The matter was urgent because of the detention of the  
2 vessel and its crew. Hence, the Kingdom of the Netherlands stated that it considered  
3 initiating arbitration as soon as feasible. The Netherlands did so on 4 October. Since  
4 then the dispute has further aggravated and extended. First, the detention of the  
5 entire crew has been ongoing for nearly seven weeks. Second, by judgment of  
6 8 October the captain of the *Arctic Sunrise* was found guilty and fined for failing to  
7 comply with a coastguard order to stop the vessel and allow for an inspection. Third,  
8 on 15 October Russian authorities formally seized the *Arctic Sunrise* on the basis of  
9 a court order. The Netherlands formally protested against the seizure. It also once  
10 again urged the Russian Federation to immediately release the vessel and its crew.

11  
12 Mr President, at this point, the Kingdom of the Netherlands would like to introduce  
13 the witness testimony of Mr Daniel Simons. Mr Simons is legal counsel with  
14 Greenpeace International. His testimony will be directed to the factual account  
15 provided by Greenpeace International as Annex 2 to the Request for provisional  
16 measures. Mr Simons is a co-author of this factual account. The account spans the  
17 period between 18 September and 17 October.

18  
19 **THE PRESIDENT:** Thank you, Mr Henquet.

20  
21 The Tribunal will then proceed to hear the witness, Mr Daniel Simons. He may now  
22 be brought into the courtroom.

23  
24 I call upon the Registrar to administer the solemn declaration to be made by the  
25 witness.

26  
27 **THE REGISTRAR:** Thank you, Mr President.

28  
29 Good morning, Mr Simons. A witness is required to make the solemn declaration  
30 under article 79 of the Rules of the Tribunal before making any statement before the  
31 Tribunal. You have been provided with the text of the declaration. May I invite you to  
32 make the solemn declaration?

33  
34 *(The witness made the solemn declaration.)*

35  
36 **THE REGISTRAR:** Thank you, Mr Simons.

37  
38 **THE PRESIDENT:** Good morning, Mr Simons. Your examination will be conducted  
39 by Mr Henquet of the Kingdom of the Netherlands.

40  
41 Mr Henquet, you may proceed.

42  
43 **MR HENQUET:** Good morning, Mr Simons. Thank you for agreeing to testify in  
44 these proceedings. With the permission of the Tribunal I would like to give the  
45 witness a copy of the factual account which is Annex 2 to the Request for provisional  
46 measures. *(Document handed to the witness)* Mr Simons, could you please take a  
47 look at the document I have just put in front of you? Can you confirm that you are  
48 indeed the co-author of this factual account?

49  
50 **MR SIMONS:** Yes, I am.

1  
2 **MR HENQUET:** Second, can you confirm that the contents of this factual account  
3 are correct to the best of your knowledge?  
4

5 **MR SIMONS:** Yes, I can.  
6

7 **MR HENQUET:** Mr Simons, could you explain the sources of the information  
8 underlying the factual account?  
9

10 **MR SIMONS:** Normally, in drawing up a statement of facts like this, we would be  
11 able to rely on direct sources of information. I am thinking of, for example, the  
12 testimony of crew members, the log book of the ship, audio recordings of  
13 communications on the bridge, as all radio communications are automatically  
14 recorded on Greenpeace ships. As you know, Greenpeace International has always  
15 been willing to make such direct information available to the Foreign Ministry of the  
16 Netherlands.  
17

18 In this case, those sources of information are unfortunately not available to us. The  
19 30 persons who could testify as to the events of the day are all unfortunately in  
20 detention in Murmansk. The ship's log book and the recordings of audio are within  
21 the control of the Russian authorities and may have been partly lost, as explained in  
22 the statement of facts.  
23

24 We do have access to some real-time information or almost real-time information  
25 from 18 and 19 September. The ship was in regular contact by telephone with a  
26 Greenpeace International employee in London. After the telephone conversations  
27 that person immediately summarized the content of the telephone conversation in an  
28 internet chat group. We have the records of those chat groups which provide a fairly  
29 detailed account of the events of the day. Also, some emails were sent from the ship  
30 to various staff members. We have been able to draw on those. Of course, as far as  
31 events after 19 September are concerned, the statement of facts also draws on  
32 various sources of information, documents from the domestic legal proceedings,  
33 news reports, official statements, the video that is available of those events et cetera.  
34

35 **MR HENQUET:** Could I ask you to explain your personal involvement in obtaining  
36 this information that you have just described?  
37

38 **MR SIMONS:** I was a member of the chat group that I just mentioned, where the  
39 information coming from the ship was shared with the staff members. Also, I have  
40 been responsible over the past few weeks for coordinating the legal response to the  
41 prosecutions in Murmansk. As part of that, I have been in Murmansk for two weeks  
42 and so I have gained some personal knowledge through that involvement.  
43

44 **MR HENQUET:** Thank you very much.  
45

46 Mr President, this concludes our questioning of the witness.  
47

48 **THE PRESIDENT:** Mr Simons, at this stage Judge Golitsyn has a question that he  
49 would like to ask.  
50

1 **JUDGE GOLITSYN:** Mr Simons, you are a legal counsel of Greenpeace  
2 International. In your capacity as legal counsel, did you, or any other members of the  
3 legal team of Greenpeace International, advise the crew members before they  
4 undertook this trip on floated boats that their activities in the safety zone and on the  
5 platform may constitute a violation of the safety regulations for the safety zone and  
6 also regulations on continental shelf installations enacted by the Russian Federation  
7 in furtherance of its jurisdiction under article 60 of the United National Convention on  
8 the Law of the Sea? I will have a follow-up question.

9  
10 **MR SIMONS:** We always conduct an assessment of the legal risks that may be  
11 involved in advance of any protests at sea. This assessment is made available to  
12 management. It is also made available to prospective participants in such a protest,  
13 and they have the ability to opt out of the action if they are not comfortable with the  
14 risks that are entailed. Of course, the content of that legal advice is privileged. I  
15 therefore believe it would be problematic, in view of the ongoing prosecutions in  
16 Murmansk, if I were to disclose the exact content of the legal advice that was given  
17 at that time.

18  
19 **JUDGE GOLITSYN:** In the light of what you have just told us, it would be understood  
20 that the crew members who took part in these activities were aware of the fact that  
21 they may be detained and prosecuted under Russian law for violation of safety  
22 regulations in the safety zone and on the continental shelf installation.

23  
24 **MR SIMONS:** As far as the safety zone is concerned, I can say that we have not  
25 been able to find any criminal or administrative rule in Russian law which imposes a  
26 sanction for entering a safety zone. I would say that the decision to enter the safety  
27 zone was certainly not taken lightly. A protest of this kind is, of course, very difficult  
28 to conduct at a distance of three nautical miles from a platform and the protest was  
29 entirely safe. The *Prirazlomnaya* is an ice-resistant platform. It is capable, according  
30 to the director of the company, of withstanding a torpedo strike. We certainly took  
31 safety considerations into account and we felt it would be possible to conduct the  
32 protest entirely safely.

33  
34 **THE PRESIDENT:** Thank you, Judge Golitsyn.

35  
36 Mr Simons, thank you for your testimony. Your examination is now finished.

37  
38 *(The witness withdrew)*

39  
40 **MR HENQUET:** Mr President, we would like to add that, since the period covered by  
41 the factual account of Greenpeace, events have unfolded further. On 22 October the  
42 captain of the ship reported to the operator that Russian authorities had investigated  
43 the ship. The captain witnessed the investigation together with his lawyer and finally,  
44 by 23 October, the crew of the *Arctic Sunrise* had reportedly been charged with  
45 hooliganism. It remains unclear to us whether these charges replace the piracy  
46 charges or whether they are supplemental to those charges.

47  
48 Mr President, Members of the Tribunal, this concludes my part of the oral statement  
49 and with your indulgence, I would now like to hand over to my colleague, Mr René  
50 Lefeber.

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**THE PRESIDENT:** Mr Lefeber, you have the floor.

**MR LEFEBER:** Mr President, Members of the Tribunal, it is an honour for me to appear for the first time before this Tribunal. Shakespeare said “[t]here is a tide in the affairs of men, which taken at the flood, leads on to fortune. Omitted, all the voyage of their life is bound in shallows and miseries. On such a full sea are we now afloat.” (*Julius Caesar*, Act IV, Scene 3).

From the time its native son, Hugo Grotius, first declared that the freedom of the seas was the right of all, the Netherlands has defended the freedom of navigation and other freedoms of the seas, as well as uses related to these freedoms. It does so today.

Pursuant to article 28 of the Tribunal’s Statute, the claim must be well founded in law. However, in these proceedings related to the prescription of provisional measures, the Tribunal does not, according to its settled jurisprudence, need to establish definitely the existence of the rights claimed by the Kingdom of the Netherlands. This notwithstanding, the Kingdom will address whether its claim on the merits can be substantiated.

The applicable law in the proceedings before the arbitral tribunal that is being constituted and this Tribunal is the Convention and other rules of international law not incompatible with the Convention. So provides article 293 of the Convention. Such other rules include the 1966 International Covenant on Civil and Political Rights as well as customary international law.

The Kingdom of the Netherlands claims that the freedom of navigation by a vessel flying its flag and its right to exercise jurisdiction over that vessel have been infringed by the Russian Federation. In addition, it claims that the right to liberty and security of a vessel's crew members and their right to leave the territory and maritime areas of a coastal State have been infringed by the Russian Federation. As for the freedom of navigation, the provisions of the Convention on the High Seas apply in the exclusive economic zone. The high seas are open to all States for navigation and, hence, the exclusive economic zones of coastal States are open to all States for navigation: article 58, paragraph 1, and article 87 of the Convention. This was recently considered by this Tribunal in its Judgment of 28 May in the case concerning the *Louisa*: “article 87 of the Convention deals with the freedom of the high seas, in particular the freedom of navigation, which applies to the high seas and, under article 58 of the Convention, to the exclusive economic zone.” (*M/V “Louisa”*, para. 109).

The contemporary law of the sea has undergone significant changes since the days of Hugo Grotius. In the 20<sup>th</sup> century, coastal States have successfully claimed and acquired sovereign rights over adjacent maritime areas. This development of international law corresponds with legitimate concerns of coastal States to protect their national interests, notably in the field of the use and conservation of natural resources and the protection of the coastal marine environment. Unlike the territorial sea, the sovereignty of a State does not extend to that area. The sovereign rights of a coastal State in maritime areas beyond its territorial sea are resource-oriented and

1 limited in scope. The exercise of jurisdiction to protect these sovereign rights is  
2 functional. The law of the sea restricts the right of a coastal State to exercise  
3 jurisdiction in these areas. A coastal State cannot unilaterally extend such a right.  
4 Indeed, concern over the broad assertion of jurisdiction in the exclusive economic  
5 zone, notably enforcement jurisdiction, by coastal States prompted my Government  
6 to address this matter in a declaration upon ratification of the Convention. The  
7 declaration states that jurisdiction over the establishment and use of installations and  
8 structures is limited to the rules contained in article 56, paragraph 1, and is subject to  
9 the obligations contained in article 56, paragraph 2, article 58 and article 60 of the  
10 Convention. In addition, the declaration states that the coastal State does not enjoy  
11 residual rights in the exclusive economic zone: “The rights of the coastal State in its  
12 exclusive economic zone are listed in article 56 of the Convention, and cannot be  
13 extended unilaterally.”

14  
15 The Kingdom of the Netherlands itself is a coastal State with maritime areas in the  
16 North Sea and the Caribbean Sea. It has proclaimed an exclusive economic zone  
17 and has made use of the rights of a coastal State under the contemporary law of the  
18 sea. At the same time, the Kingdom of the Netherlands is conscious of its obligations  
19 as a coastal State towards flag States. It respects the navigational rights of foreign  
20 vessels and exercises limited enforcement jurisdiction in order to respect the rights  
21 of flag States.

22  
23 In the present case, the Russian Federation has not exercised similar restraint. By  
24 boarding the *Arctic Sunrise*, the Russian Federation has overstepped its rights as a  
25 coastal State and violated its obligations owed to the flag State of the *Arctic Sunrise*,  
26 the Kingdom of the Netherlands.

27  
28 Mr President, the Convention prohibits the boarding of foreign vessels on the high  
29 seas: article 110. This prohibition applies to the boarding of foreign vessels in the  
30 exclusive economic zone: article 58, paragraph 2. The right of visit and search is an  
31 exception to the freedom of navigation and flag State jurisdiction, and thus needs a  
32 specific justification in every instance. Indeed, in the case concerning the *S.S. Lotus*,  
33 the Permanent Court of International Justice held that, “It is certainly true that – apart  
34 from certain special cases which are defined by international law – vessels on the  
35 high seas are subject to no authority except that of the State whose flag they fly.”  
36 Any exceptions to the general prohibitive rule to exercise enforcement jurisdiction  
37 over foreign vessels are explicit and cannot be implied. The interpretation and  
38 application of any such exceptions must be narrowly construed.

39  
40 The Russian Federation has made various inconsistent attempts to justify the  
41 boarding of the *Arctic Sunrise*.

42  
43 First, in its diplomatic note of 18 September, the day before the boarding of the *Arctic*  
44 *Sunrise*, the Russian Federation informed the Kingdom of the Netherlands that the  
45 decision had been made to seize the vessel. Having stated that the actions by  
46 Greenpeace “bore the characteristics of terrorist activities”, the Russian Federation  
47 observed that the actions of the *Arctic Sunrise* can be interpreted only as “a  
48 provocation, which exposed the Arctic region to the threat of an ecological disaster  
49 with unimaginable consequences”. On 1 November, Interfax News Agency reported  
50 that the Prime Minister of the Russian Federation, Dmitry Medvedev, said at a news

1 conference that his country “cannot support activities which may cause damage to  
2 the environment and which may be dangerous for people on the whole”.

3  
4 Second, in its diplomatic note of 1 October the Russian Federation stated that the  
5 boarding of the *Arctic Sunrise* had been carried out on the basis of articles 56, 60  
6 and 80 of the Convention and in accordance with domestic law. In its diplomatic note  
7 to the Tribunal of 22 October, the Russian Federation invokes the Convention  
8 without specifying the relevant provisions. It pointed out that the actions of the  
9 Russian authorities in respect of the vessel *Arctic Sunrise* and its crew to enforce  
10 laws and regulations of the Russian Federation as a coastal State are in accordance  
11 with the relevant provisions of the Convention.

12  
13 Third, a court order of 7 October to seize the vessel referred to article 19 of the 1958  
14 Convention on the High Seas with respect to piracy. According to the court, it was on  
15 the basis of that Convention that the coastguard had seized the *Arctic Sunrise* as  
16 “there was a reasonable suspicion that this ship was engaged in piracy”.

17  
18 Fourth, a judgment of 8 October, by which the captain of the *Arctic Sunrise* was  
19 found guilty of an administrative offence, stated that “the ship increased its speed  
20 and continually changed course, thereby manoeuvring dangerously and posing a  
21 real threat to the safety of the naval ship and its crew.”

22  
23 Fifth, in recent days, it is reported in the news that charges have been brought under  
24 Russian law against the members of the crew for hooliganism.

25  
26 Mr President, the foregoing illustrates the wavering legal stance of the Russian  
27 Federation as to the legal basis for its actions related to the *Arctic Sunrise*. For the  
28 sake of argument, in the light of the absence of the Russian Federation at the  
29 present hearing, the Kingdom of the Netherlands will consider the application of the  
30 justifications invoked by the Russian Federation as well as other justifications  
31 provided for in the Convention. Article 110 of the Convention lists five exceptions to  
32 the general prohibitive rule.

33  
34 First, subparagraph (a): were there any reasonable grounds for suspecting that the  
35 *Arctic Sunrise* was engaged in piracy? No, there were no such grounds. In its  
36 diplomatic note of 1 October the Russian Federation informed the Kingdom of the  
37 Netherlands that a criminal investigation had been instituted into piracy committed by  
38 an organized group under Russian law. It also would appear that the content of this  
39 domestic law provision differs from the definition of piracy in the Convention. To  
40 justify the boarding of the *Arctic Sunrise* on the suspicion that the vessel was  
41 engaged in piracy, the actions concerned need to qualify as piracy under  
42 international law, notably article 101 of the Convention. Although a Russian court  
43 referred to article 19 of the 1958 Convention on the High Seas with respect to piracy,  
44 the President of the Russian Federation, Vladimir Putin, stated on 25 September that  
45 the Greenpeace activists are “obviously not pirates”. The Kingdom of the  
46 Netherlands can only concur with the President of the Russian Federation on this  
47 point. The facts in the present case do not provide reasonable grounds for  
48 suspecting that the crew of the *Arctic Sunrise* engaged in piracy.

1 The actions of the Greenpeace activists do not meet the requirements of article 101  
2 of the Convention. In particular, they do not qualify as any illegal acts of violence or  
3 detention, or any act of depredation; the actions were also not committed for private  
4 ends.

5  
6 Second, subparagraph (b): were there any reasonable grounds for suspecting that  
7 the *Arctic Sunrise* was engaged in slave trade? No, there were no such grounds and  
8 this has also not been alleged by the Russian Federation. Furthermore, we would  
9 like to note that enforcement rights beyond that of visit are limited to the flag State:  
10 article 99 of the Convention.

11  
12 Third, subparagraph (c): were there any reasonable grounds for suspecting that the  
13 *Arctic Sunrise* was engaged in unauthorized broadcasting? No, there were no such  
14 grounds and this also has not been alleged by the Russian Federation.

15  
16 Fourth, subparagraph (d): were there any reasonable grounds for suspecting that the  
17 *Arctic Sunrise* was without nationality? No, there were no such grounds and this has  
18 also not been alleged by the Russian Federation. The *Arctic Sunrise* is flying the flag  
19 of the Kingdom of the Netherlands and the Russian Federation was conscious of the  
20 fact that the *Arctic Sunrise* is of Dutch nationality. Its diplomatic note of  
21 18 September may serve as evidence.

22  
23 Fifth, subparagraph (e): were there any reasonable grounds for suspecting that the  
24 *Arctic Sunrise* was, though flying the flag of the Kingdom of the Netherlands, of  
25 Russian nationality? No, there were no such grounds and this has also not been  
26 alleged by the Russian Federation. The Russian Federation has acted on the  
27 understanding that the vessel is of Dutch nationality. Its diplomatic note of  
28 18 September attests to that as well.

29  
30 Therefore, none of the exceptions in article 110 of the Convention apply. Are there  
31 any other exceptions the Russian Federation could invoke to justify the boarding of  
32 the *Arctic Sunrise*? The *chapeau* of article 110 indicates that there may be such  
33 other exceptions. The boarding of foreign vessels may be justified where acts of  
34 interference derive from powers conferred by treaty.

35  
36 The Convention itself provides for additional exceptions with respect to activities of  
37 foreign vessels in the exclusive economic zone.

38  
39 First, article 73, paragraph 1, provides that the coastal State may take enforcement  
40 measures, including boarding, inspection, arrest and judicial proceedings, with  
41 respect to the use of living resources in its exclusive economic zone. The facts do  
42 not support the view that the *Arctic Sunrise* engaged in such use and this has also  
43 not been alleged by the Russian Federation. This exception does not apply.

44  
45 Second, article 220, paragraphs 3 to 8, in conjunction with article 226, paragraph 1,  
46 permit a coastal State to take specified enforcement measures with respect to  
47 foreign vessels under narrowly defined circumstances. These circumstances all  
48 relate to the violation of applicable international rules and standards for the  
49 prevention, reduction and control of pollution from vessels. The facts do not support



1 the view that the *Arctic Sunrise* polluted the marine environment and this has also  
2 not been alleged by the Russian Federation. This exception does not apply either.

3  
4 **THE PRESIDENT:** I am sorry to interrupt you, Mr Lefeber. We have reached 11.34.  
5 Unless you can finish in a few minutes, we will now take a break of 30 minutes and  
6 continue at noon.

7  
8 (Break)  
9

10 **THE PRESIDENT:** We will continue the hearing.

11  
12 Mr Lefeber, you have the floor.

13  
14 **MR LEFEBER:** Thank you, Mr President. Before the coffee break I was reviewing  
15 possible justifications for the boarding of the *Arctic Sunrise*. I had explained that  
16 exceptions must be explicit and narrowly construed. I had reviewed article 110  
17 exceptions and then proceeded to other exceptions that may be found in the  
18 Convention, and I was drawing the Tribunal's attention to exceptions that may be  
19 found in relation to the exclusive economic zone. I had mentioned articles 73, 220  
20 and 226, and I have one further observation to make in relation to articles 73, 220  
21 and 226.

22  
23 The additional exceptions contained in articles 73, 220 and 226 corroborate the fact  
24 that any exception to the general prohibitive rule must be narrowly construed. The  
25 boarding, investigating, inspecting, arresting, detaining and seizing of a vessel by a  
26 coastal State under these provisions is subject to the prompt release procedure  
27 under article 292 of the Convention.

28  
29 The Convention also provides for general exceptions that may apply in connection  
30 with activities of foreign vessels in the exclusive economic zone.

31  
32 First, article 111 allows a coastal State to board and arrest a foreign vessel after a  
33 hot pursuit. However, the facts of the case do not justify hot pursuit in accordance  
34 with the provisions of the Convention. The boarding was not preceded by an  
35 uninterrupted pursuit. Approximately 36 hours elapsed between the decision to seize  
36 the vessel and its boarding by agents of the Russian Federal Security Service. This  
37 exception does not apply.

38  
39 Second, article 221 contains a safeguard clause with respect to measures to avoid  
40 pollution arising from maritime casualties. This provision permits the coastal State to  
41 take and enforce measures beyond the territorial sea proportionate to the actual or  
42 threatened damage to protect their coastline or related interests from pollution or  
43 threat of pollution. Such measures must be taken following a maritime casualty, or  
44 acts relating thereto, which may reasonably be expected to result in major harmful  
45 consequences. The Russian Federation has alluded to the threat of an ecological  
46 disaster with unimaginable consequences in the Arctic region to justify its action with  
47 respect to the *Arctic Sunrise*, but the facts do not support it. Therefore, this exception  
48 does not apply either.

1 There is no other treaty that applies between the Kingdom of the Netherlands and  
2 the Russian Federation that could have justified the boarding of the *Arctic Sunrise*.  
3 What is more, the conclusion of bilateral and multilateral treaties addressing  
4 contemporary concerns related to trafficking in drugs, migrants and weapons of  
5 mass destruction have only confirmed the exclusive right of the flag State to exercise  
6 enforcement jurisdiction. Procedures were introduced in these treaties to facilitate  
7 authorization by flag States to board a vessel, but they stop short of permitting the  
8 boarding of a vessel without the prior consent of the flag State.

9  
10 Other justifications advanced by the Russian Federation also do not provide for  
11 exceptions to the general prohibitive rule. These justifications are not supported by  
12 law.

13  
14 First, articles 56, 60 and 80 of the Convention. In accordance with article 60, a  
15 coastal State may establish reasonable safety zones around artificial islands,  
16 installations and structures. The breadth of the safety zone shall not exceed 500m,  
17 except as authorized by generally accepted international standards or as  
18 recommended by the competent international organization; and we would argue that  
19 in this case that is the international maritime organization. There are, however, no  
20 such authorizations or recommendations.

21  
22 Mr President, we challenge the lawfulness of the extensive breadth and the  
23 applicable rules in the safety zone established around the Prirazlomnaya platform.  
24 Russian domestic law provides for a safety zone of three nautical miles around the  
25 platform and a ban where it is considered that there could be a danger to shipping, in  
26 which case permission is required from the operator of the platform to enter that  
27 safety zone of three nautical miles.

28  
29 In addition to that, there is a ban on shipping in a safety zone of 500 metres around  
30 the platform. We challenge the lawfulness of the safety zone that extends to three  
31 nautical miles. This is not compatible with the Convention. In any event, the coastal  
32 State may only take “appropriate measures” under article 60, paragraph 4, of the  
33 Convention. The boarding of a foreign vessel, let alone the taking of other  
34 enforcement measures, is not, as it is not explicitly provided for.

35  
36 Second, the alleged dangerous manoeuvring. The international standards and rules  
37 referred to by the Russian Federation in its diplomatic note of 1 October, that is the  
38 1965 International Code of Signals and the 1972 International Regulations for  
39 Preventing Collisions at Sea, do not permit States to board a foreign vessel, let alone  
40 to take other enforcement measures. This is corroborated by article 97, paragraph 3,  
41 of the Convention. In matters of collision or any other incident of navigation, no arrest  
42 or detention of the ship, even as a measure of investigation, shall be ordered by any  
43 authorities other than those of the flag States.

44  
45 Third, the new allegations of hooliganism. Although such conduct may be prohibited  
46 under Russian law, this does not have a corollary in international law. The actions of  
47 Greenpeace would rather fall within the ambit of the freedoms of expression,  
48 demonstration and protest. These freedoms are supported by international law.

1 Therefore, the boarding of the *Arctic Sunrise* by the Russian authorities without the  
2 prior consent of the Kingdom of the Netherlands was a breach of the Convention as  
3 well as customary international law. The actions of the *Arctic Sunrise* on  
4 18 September were reason for the Russian Federation to contact the Kingdom of the  
5 Netherlands on the same day in a diplomatic note, but it did not request – I repeat: it  
6 did not request – the Kingdom’s consent to board the vessel. Such consent would  
7 have justified the boarding of the *Arctic Sunrise*. Consent is one of the circumstances  
8 precluding wrongfulness, as contained in the Articles on the Responsibility of States  
9 for Internationally Wrongful Acts. The facts of this case also do not support the  
10 application of any of the other circumstances precluding wrongfulness that can be  
11 found in these Articles: self-defence, countermeasures in respect of an  
12 internationally wrongful act, *force majeure*, distress, or necessity. The part of these  
13 Articles related to circumstances precluding wrongfulness reflects customary  
14 international law.

15

16 In sum, the boarding of the *Arctic Sunrise* by the Russian authorities is a breach of  
17 the Convention and customary international law. It is prohibited under the  
18 Convention, in particular Part V and Part VII, notably article 56, paragraph 2;  
19 article 58, paragraph 2; and article 110, paragraph 1; as well as customary  
20 international law. The boarding carried out by agents of the Federal Security Service  
21 from a helicopter of that Service is attributable to the Russian Federation, as this  
22 aircraft was on government service, as were the agents. Therefore, the boarding of  
23 the vessel constitutes an internationally wrongful act, entailing the international  
24 responsibility of the Russian Federation.

25

26 Mr President, since the boarding of the *Arctic Sunrise* is internationally wrongful, all  
27 subsequent acts are internationally wrongful as well. Accordingly, the usurpation of  
28 control over the *Arctic Sunrise* is internationally wrongful; the transfer of the *Arctic*  
29 *Sunrise* to the internal waters of the Russian Federation is internationally wrongful;  
30 the inspections and investigations of the *Arctic Sunrise* are internationally wrongful;  
31 the arrest, continuing detention and seizure of the *Arctic Sunrise* are internationally  
32 wrongful; and the arrest and continuing detention of the crew of the *Arctic Sunrise*  
33 are internationally wrongful. Since these acts are all attributable to the Russian  
34 authorities, they also entail the international responsibility of the Russian Federation.

35

36 The detention of the vessel and its crew, irrespective of its conformity with the  
37 domestic law of the Russian Federation, is an internationally wrongful act continuing  
38 in time. The arrest and detention of the persons on board the *Arctic Sunrise* is not  
39 only a breach of the law of the sea, but also of international human rights law.

40

41 The Russian authorities were only able to arrest and detain the crew after the  
42 boarding of the *Arctic Sunrise* without the prior consent of the Kingdom of the  
43 Netherlands. Even if the unlawful capture of a person by the authorities of one State  
44 in an area or place under the jurisdiction of another State may result in lawful  
45 detention under the domestic law of some nations under the doctrine of *male captus*,  
46 *bene detentus*, it does not preclude its wrongfulness under international law.

47

48 The arrest and detention of the crew of the *Arctic Sunrise* are contrary to  
49 international law and they are therefore arbitrary in nature. This is a breach of  
50 article 9, paragraph 1, of the 1966 International Covenant on Civil and Political

1 Rights, pursuant to which no one shall be deprived of his liberty except on such  
2 grounds and in accordance with such procedure as established by law, and that  
3 includes international law. It also results in a breach of article 12, paragraph 2, of the  
4 Covenant, as the crew is not free to leave the territory and maritime areas under the  
5 jurisdiction of the Russian Federation.

6  
7 Accordingly, the Kingdom of the Netherlands submits that its claim on the merits can  
8 be substantiated.

9  
10 Mr President, to further corroborate that the claim is supported by law, I will now turn  
11 to the requirements for the prescription of provisional measures under article 290 of  
12 the Convention. Such measures may be prescribed if: (1) the arbitral tribunal that is  
13 being constituted has *prima facie* jurisdiction, (2) the requested provisional measures  
14 are appropriate under the circumstances to preserve the rights of the Kingdom of the  
15 Netherlands, and (3) the prescription of provisional measures is urgently required.

16  
17 As already submitted, the arbitral tribunal that is being constituted has *prima facie*  
18 jurisdiction. This requirement is therefore met. As for the second requirement, that  
19 the requested provisional measures are appropriate under the circumstances to  
20 preserve the rights of the Kingdom of the Netherlands, we would like to observe that  
21 the Russian Federation's internationally wrongful acts continue as long as the vessel  
22 and its crew remain detained. The continuing detention of the *Arctic Sunrise* requires  
23 the prescription of provisional measures, as it precludes the exercise of the freedom  
24 of navigation by a vessel that flies the flag of the Kingdom of the Netherlands. It also  
25 precludes the Kingdom's exercise of jurisdiction over the vessel.

26  
27 Moreover, the vessel is at risk of perishing since the Russian authorities assumed  
28 control over the vessel. An operational vessel cannot be deactivated without creating  
29 a risk of damage, unless adequate measures are taken to preserve its operability.  
30 The operability of the vessel may be adversely affected when the vessel is  
31 reactivated. This reality is compounded by the prevailing weather, ice, and  
32 environmental conditions in the fragile and hostile Arctic region. The operator of the  
33 *Arctic Sunrise* has expressed concern that keeping a vessel unmanned for extended  
34 periods in cold weather may cause damage to machinery, and may cause fire,  
35 flooding, pollution, security and health risks. The vessel is an aging icebreaker and  
36 requires intensive servicing to maintain its operability. This has not been possible. As  
37 a result, the vessel's general condition may deteriorate, possibly compromising the  
38 vessel's safety and seaworthiness. This may create a risk for the environment,  
39 including the release of bunker oil.

40  
41 The captain of the *Arctic Sunrise* witnessed an inspection of the vessel. On  
42 22 October, he reported to the operator that navigational aids had been taken away  
43 from the vessel. These include the Electronic Chart Display and Information System,  
44 its monitor and the side scan sonar. Furthermore, the antenna of the long-range  
45 identification and tracking system had been removed from the crew's nest and the  
46 radio room is in disarray. The exact wording of the captain was "the radio room looks  
47 like a bomb hit it". The captain also reported that every single hard drive from the  
48 computer equipment had been removed. As all the satellite communication systems  
49 seem to have been disabled, the vessel's ability to operate independently appears to  
50 be greatly reduced and therefore its safety level has been adversely affected.

1  
2 Moreover, the continuing detention of the crew requires the prescription of  
3 provisional measures. This case concerns a dispute between two States with respect  
4 to the rights and obligations of a coastal State in its exclusive economic zone. The  
5 settlement of such disputes between two States ought not to infringe upon the  
6 enjoyment of individual rights and freedoms of the crew of the vessels concerned.  
7

8 Mr President, the continuing detention of the vessel and its crew has irreversible  
9 consequences. As a result of the continuing detention, the *Arctic Sunrise* is at risk of  
10 perishing; if the vessel perishes, the loss is irreversible. As for the continuing  
11 detention of the crew, every day spent in detention is irreversible. To prolong the  
12 detention pending the constitution of the arbitral tribunal and the resolution of the  
13 dispute would further prejudice the rights of the Kingdom of the Netherlands.  
14

15 It also follows from the case law of the Tribunal that the rights of the Kingdom of the  
16 Netherlands as the flag State would not be fully preserved if the provisional  
17 measures were not prescribed. In the case concerning the *M/V Saiga* the Tribunal  
18 held:

19  
20 The rights of the Applicant would not be fully preserved if, pending the  
21 final decision, the vessel, its Master and the other members of the crew,  
22 its owners or operators were to be subjected to any judicial or  
23 administrative measures in connection with the incidents leading to the  
24 arrest and detention of the vessel and to the subsequent prosecution and  
25 conviction of the Master.  
26

27 This consideration of the Tribunal fully applies in this case. The *Arctic Sunrise*, its  
28 master and the other members of the crew, its owner and operator are, directly or  
29 indirectly, subject to judicial and administrative measures in connection with the  
30 incidents leading to the arrest and detention of the vessel. The entire crew is being  
31 prosecuted. The similarities between the two cases cannot but lead the Tribunal to  
32 prescribe the requested provisional measures, as it did in the case concerning the  
33 *M/V Saiga*.  
34

35 The third, and final, requirement under article 290, paragraph 5, urgency, is also met.  
36 According to the Tribunal in the case concerning *MOX Plant*, there is urgency,  
37 amongst others, if action prejudicial to the rights of either party is likely to be taken  
38 before the constitution of the Annex VII arbitral tribunal. In the present case, action  
39 prejudicial to the rights of the Kingdom of the Netherlands is not merely likely to be  
40 taken by the Russian Federation; such action has already been taken and has been  
41 continuing since the boarding and detention of the *Arctic Sunrise*. Moreover, the  
42 dispute has further aggravated and extended since the initiation of the arbitral  
43 procedure.  
44

45 The Tribunal has further clarified that urgency must be measured against the time  
46 needed to operationalize the arbitral tribunal. In this case, the Russian Federation  
47 has indicated that it does not accept the arbitration procedure under Annex VII of the  
48 Convention. As of today, the Russian Federation has not appointed its arbitrator. The  
49 refusal of the Russian Federation to accept arbitration is resulting in delays in the  
50 constitution of the arbitral tribunal. It will therefore take considerable time before the  
51 arbitral tribunal can exercise its judicial function.

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In conclusion, the prescription of provisional measures is not only appropriate, but cannot endure any further delay.

Mr President, before I hand over to the Agent for the Kingdom of the Netherlands to make our final submissions, with your indulgence, I would like to make one further observation.

The events giving rise to this dispute took place in the Barents Sea. The Barents Sea was named after Willem Barentsz. In 1596, he sailed from Amsterdam to explore the North East Passage. His ship became stranded in ice and Captain Barentsz and his crew were forced to hibernate on *Novaya Zemlya*. It was a long and severe winter for the sailors. They built themselves, from the wreckage of the ship, a house. It was called "Het Behouden Huys", the Safe House. After the winter, the survivors, with the assistance of Russian coastal communities, returned to Amsterdam, where they arrived at the beginning of November of the following year. Their account is part of our national cultural heritage.

Mr President, winter is coming. My Government prays that the *Arctic Sunrise* and its crew may safely return to Amsterdam before the Arctic sun sets and winter comes. Mr President, Members of the Tribunal, thank you for your attention.

**THE PRESIDENT:** Thank you, Mr Lefeber.

At this stage Judge Anderson would like to ask questions.

**JUDGE ANDERSON:** Thank you very much, Mr President.

My question arises from counsel's statement when allusion was made to the order made by a court in Russia in application of article 19 of the Convention on the High Seas of 1958. Have you been informed of any new legal basis for the seizure of the ship or does the ship remain under detention today on the basis of this order under the Convention on the High Seas?

**THE PRESIDENT:** Thank you, Judge Anderson, and thank you again, Mr Lefeber, for your statement.

Now I would like to give the floor to Ms Lijnzaad.

**MS LIJNZAAD:** Thank you, Mr President. Mr President, Members of the Tribunal, before I conclude with making our final submissions, I would like to inform the Tribunal that my delegation would like to avail itself of the possibility to provide answers in writing by 6 o'clock tomorrow. We will be happy to look at the questions raised by the Judges and respectfully submit that some of the questions really require us to look into the detail of events developing in the Russian Federation, so we will provide answers in writing tomorrow by the end of the day. It is our understanding that our written replies to these questions will also be made public by the Tribunal on the internet site for the wider public to see our replies.

1 Mr President, Members of the Tribunal, it is now for me to conclude our oral  
2 statement with the final submissions by the Kingdom of the Netherlands in this case.

3  
4 The Kingdom of the Netherlands requests the International Tribunal for the Law of  
5 the Sea with respect to the dispute concerning the *Arctic Sunrise*,

6  
7 to declare that:

- 8  
9 a) the Tribunal has jurisdiction over the request for provisional measures;  
10  
11 b) the arbitral tribunal to which the dispute is being submitted has *prima facie*  
12 jurisdiction;  
13  
14 c) the claim is supported by fact and law;

15  
16 to order, by means of provisional measures, the Russian Federation:

- 17  
18 d) to immediately enable the *Arctic Sunrise* to be resupplied, to leave its place of  
19 detention and the maritime areas under the jurisdiction of the Russian  
20 Federation and to exercise the freedom of navigation;  
21  
22 e) to immediately release the crew members of the *Arctic Sunrise*, and allow  
23 them to leave the territory and maritime areas under the jurisdiction of the  
24 Russian Federation;  
25  
26 f) to suspend all judicial and administrative proceedings, and refrain from  
27 initiating any further proceedings, in connection with the incidents leading to  
28 the dispute concerning the *Arctic Sunrise*, and refrain from taking or enforcing  
29 any judicial or administrative measures against the *Arctic Sunrise*, its crew  
30 members, its owners and its operators; and

31  
32 to ensure that no other action is taken which might aggravate or extend the dispute.

33  
34 **THE PRESIDENT:** Thank you, Ms Lijnzaad, for the final submissions made under  
35 article 75, paragraph 2, of the Rules of the Tribunal. The written text of these  
36 submissions, signed by the Agent, shall be communicated to the Tribunal and a copy  
37 of it shall be transmitted to the other Party.

38  
39 I would like to ask the Registrar to make some administrative announcements.

40  
41 **THE REGISTRAR** (*Interpretation from French*): Thank you, Mr President.

42  
43 Pursuant to article 86, paragraph 4, of the Rules of the Tribunal, the Parties may,  
44 under the supervision of the Tribunal, correct the transcripts of speeches and  
45 statements made on their behalf, but in no case may such corrections affect the  
46 meaning and scope thereof. These corrections relate to the verified versions of the  
47 transcripts in the official language used by the Party in question. The corrections  
48 should be submitted to the Registry as soon as possible and by Tuesday,  
49 12 November 2013 at 5 p.m. Hamburg time at the latest.

1 **THE PRESIDENT:** On behalf of the Tribunal, I would like to take this opportunity to  
2 express our appreciation for the high quality of the presentations at the hearing.

3  
4 The Tribunal will now withdraw to deliberate. The date for the delivery of the Order in  
5 this case is tentatively set as Friday, 22 November 2013. The Parties will be  
6 informed reasonably in advance of any change to this date. In accordance with the  
7 usual practice, I request the Agent to kindly remain at the disposal of the Tribunal in  
8 order to provide any further assistance and information that it may need in its  
9 deliberations prior to the delivery of the order. The hearing is now closed.

10  
11 *(The sitting closed at 12.40 p.m.)*