

*Arctic Sunrise*  
Student Materials

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- Decided by the Permanent Court of Arbitration in August 2015
- Key topics: upholding international law (international legal enforcement); law of the sea (principles; water and seabed rights); environmental protection (water and living resources)

Learning Objectives

- Understand and apply:
  - the right of a flag state to provide diplomatic protection
  - coastal state rights in an Exclusive Economic Zone
- Analyze and evaluate:
  - how law addresses conflicting claims to jurisdiction over ships
  - rules for enforcing laws in an Exclusive Economic Zone

Background Information

Greenpeace, an environmental group, frequently uses a Dutch ship called the *Arctic Sunrise*—a ship registered in the Netherlands—to protest at sea. In September 2013, Greenpeace activists sailed on the *Arctic Sunrise* to the Barents Sea. Their goal was to protest the *Prirazlomnaya*, a Russian offshore oil platform located in Russia’s Exclusive Economic Zone (EEZ). During the protest, the *Arctic Sunrise* entered a security zone around the *Prirazlomnaya*. Greenpeace activists got into rigid-hulled inflatable boats (RHIBs), which are lightweight boats that transport people between large ships and platforms. They then approached the *Prirazlomnaya*, and two activists climbed onto the *Prirazlomnaya* and tied themselves to the structure.

The *Prirazlomnaya* platform was guarded by a Russian Coast Guard boat called the *Ladoga*. Russian officers from the *Ladoga* arrested the two protestors who tied themselves to the platform. The *Ladoga* then followed the remaining protestors—in their RHIBs and the *Arctic Sunrise*—as they left the security zone, ordering them to stop. A long standoff followed between the *Ladoga* and the *Arctic Sunrise*—the

*Ladoga* monitored the *Arctic Sunrise*, but took no action against it. The next day—about 36 hours after the protest began—Russian officials took control of the *Arctic Sunrise*, towed it to Russian territory, and arrested everyone on board.

This incident created a diplomatic crisis between the Netherlands and Russia. Russia argued that it was enforcing domestic laws, while the Netherlands argued that Russia had violated international rules about flag ship jurisdiction. The Netherlands quickly filed an arbitration case against Russia at the Permanent Court of Arbitration, and Russia released the crew and passengers of the *Arctic Sunrise* a few weeks later. Russia refused to participate in arbitration, meaning that the Tribunal had to consider all possible defenses that Russia might have offered if it had participated in the case.

The edited Tribunal award begins by asking whether Netherlands could offer diplomatic protection to the *Arctic Sunrise*, its crew, and its passengers. The award next briefly discusses the right to protest at sea, and Russia's right to enact a security zone around the *Prirazlomnaya*. Most of the edited award then focuses on how Russia took control of the *Arctic Sunrise* and arrested its crew and passengers. It reviews possible justifications for taking a foreign ship and making arrests, including both: (1) punishing suspected past violations; and (2) preventing likely future violations.

### Relevant Legal Texts

UN Convention on the Law of the Sea (1982)

#### *Possible Russian Violations*

##### Article 56(2)

In exercising its rights and performing its duties ... in the exclusive economic zone, the coastal state shall have due regard to the rights and duties of other states and shall act in a manner compatible with the provisions of this Convention ...

##### Article 58(1)

In the exclusive economic zone, all states ... enjoy, subject to the relevant provisions of this Convention, the freedoms referred to in article 87 of navigation ... and other internationally lawful uses of the sea related to these freedoms, such as those associated with the operation of ships, ...

#### Article 87(1)

The high seas are open to all states ... Freedom of the high seas is exercised under the conditions laid down by this Convention and by other rules of international law. It comprises ...:

- (a) freedom of navigation; ...

#### Article 92(1)

Ships shall sail under the flag of one state only and, save in exceptional cases expressly provided for in international treaties or in this Convention, shall be subject to its exclusive jurisdiction on the high seas ...

#### *Possible Russian Excuses/Justifications*

#### Article 56(1)

In the exclusive economic zone, the coastal State has:

- (a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living ...;
- (b) jurisdiction as provided for in the relevant provisions of this Convention with regard to:
  - (i) the establishment and use of artificial islands, installations and structures ...

#### Article 60

(1) In the exclusive economic zone, the coastal State shall have the exclusive right to construct and to authorize and regulate the construction, operation and use of:

- (a) artificial islands;
- (b) installations and structures for the purposes provided for in article 56 and other economic purposes;

(c) installations and structures which may interfere with the exercise of the rights of the coastal State in the zone.

(2) The coastal State shall have exclusive jurisdiction over such artificial islands, installations and structures, including jurisdiction with regard to customs, fiscal, health, safety and immigration laws and regulations ...

(4) The coastal State may, where necessary, establish reasonable safety zones around such artificial islands, installations and structures in which it may take appropriate measures to ensure the safety both of navigation and of the artificial islands, installations and structures ...

(6) All ships must respect these safety zones and shall comply with generally accepted international standards regarding navigation in the vicinity of artificial islands, installations, structures and safety zones.

#### Article 73(1)

The coastal state may, in the exercise of its sovereign rights to explore, exploit, conserve and manage the living resources in the exclusive economic zone, take such measures, including boarding, inspection, arrest and judicial proceedings, as may be necessary to ensure compliance with the laws and regulations adopted by it in conformity with this Convention ...

#### Article 77(1)

The coastal state exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.

#### Article 101

Piracy consists of any of the following acts:

- (a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship ..., and directed:
  - (i) on the high seas, against another ship ..., or against persons or property on board such ship ...;

(ii) against a ship, ... persons or property in a place outside the jurisdiction of any state ...

#### Article 110(1)

Except where acts of interference derive from powers conferred by treaty, a warship which encounters on the high seas a foreign ship ... is not justified in boarding it unless there is reasonable ground for suspecting that:

(a) the ship is engaged in piracy ...

#### Article 111

(1) The hot pursuit of a foreign ship may be undertaken when the competent authorities of the coastal state have good reason to believe that the ship has violated the laws and regulations of that state. Such pursuit must be commenced when the foreign ship or one of its boats is within the internal waters, ... the territorial sea or the contiguous zone of the pursuing state, and may only be continued outside the territorial sea or the contiguous zone if the pursuit has not been interrupted. It is not necessary that, at the time when the foreign ship within the territorial sea or the contiguous zone receives the order to stop, the ship giving the order should likewise be within the territorial sea or the contiguous zone ...

(2) The right of hot pursuit shall apply ... to violations in the exclusive economic zone ... of the laws and regulations of the coastal state applicable in accordance with this Convention to the exclusive economic zone ...

(4) Hot pursuit is not deemed to have begun unless the pursuing ship has satisfied itself by such practicable means as may be available that the ship pursued or one of its boats or other craft working as a team and using the ship pursued as a mother ship is within the limits of the territorial sea, or, as the case may be, within the contiguous zone or the exclusive economic zone or above the continental shelf. The pursuit may only be commenced after a visual or auditory signal to stop has been given at a distance which enables it to be seen or heard by the foreign ship.

#### Article 220

(3) Where there are clear grounds for believing that a vessel navigating in the exclusive economic zone ... of a state has, in the exclusive economic zone, committed a violation of applicable international rules and standards for the prevention, reduction and control of pollution from vessels or laws and regulations of

that state conforming and giving effect to such rules and standards, that state may require the vessel to give information ... required to establish whether a violation has occurred ...

(5) Where there are clear grounds for believing that a vessel navigating in the exclusive economic zone ... of a state has, in the exclusive economic zone, committed a violation referred to in paragraph 3 resulting in a substantial discharge causing or threatening significant pollution of the marine environment, that state may undertake physical inspection of the vessel for matters relating to the violation if the vessel has refused to give information or if the information supplied by the vessel is manifestly at variance with the evident factual situation and if the circumstances of the case justify such inspection.

(6) Where there is clear objective evidence that a vessel navigating in the exclusive economic zone ... of a state has, in the exclusive economic zone, committed a violation referred to in paragraph 3 resulting in a discharge causing major damage or threat of major damage to the coastline or related interests of the coastal state, or to any resources of its territorial sea or exclusive economic zone, that state may ... provided that the evidence so warrants, institute proceedings, including detention of the vessel, in accordance with its laws ...

#### Article 221

(1) Nothing in this Part shall prejudice the right of states, pursuant to international law ... to take and enforce measures beyond the territorial sea proportionate to the actual or threatened damage to protect their coastline or related interests, including fishing, from pollution or threat of pollution following upon a maritime casualty ...

(2) For the purposes of this article, "maritime casualty" means a collision of vessels, stranding or other incident of navigation, or other occurrence on board a vessel or external to it resulting in material damage or imminent threat of material damage to a vessel or cargo.

## Arbitral Tribunal Award

The Tribunal began by examining whether the Netherlands could offer diplomatic protection to the *Arctic Sunrise*, its crew, and its passengers. While the Netherlands was the flag state of the *Arctic Sunrise*, some of the individuals on board the ship were not nationals of the Netherlands.

The Convention sets out the rights and duties of coastal states and other states, including flag states, within the coastal state's EEZ ... Russia owed certain obligations to the Netherlands under the Convention. It had to ensure that any law enforcement measures taken by it against a vessel within the EEZ under the exclusive jurisdiction of the Netherlands complied with the requirements of the Convention ...

The Tribunal is satisfied that under the Convention the Netherlands has standing to invoke the international responsibility of Russia for breaches of obligations owed by Russia to the Netherlands under the Convention.

The Tribunal turns now to the question of whether the *Arctic Sunrise* and all persons on board the ship at the relevant times should be considered as part of the unit of the ship. In [prior disputes, the International Tribunal on the Law of the Sea] held that "every person involved or interested" in a vessel's operations should be considered as part of the unit of the ship and thus treated as an entity linked to the flag state ...

Not all of the persons on board the *Arctic Sunrise* were, strictly speaking, crewmembers. Notwithstanding this, the Tribunal is satisfied that all thirty individuals on board the *Arctic Sunrise* at the relevant times were "involved" or "interested" in the ship's operations. Even if some did not engage directly in the functioning of the vessel as would a crewmember, they were all closely involved or interested in the ship's campaigning operations for Greenpeace through protest at sea. As such, they are properly considered part of the unit of the ship, and thus fall under the jurisdiction of the Netherlands as the flag state.

Accordingly, the Tribunal considers the *Arctic Sunrise* to be a unit such that its crew, all persons and objects on board, as well as its owner and every person involved or interested in its operations, are part of an entity linked to the Netherlands as the flag state. The Tribunal finds that the Netherlands is entitled to bring claims in respect of alleged violations of its rights under

the Convention which resulted in injury or damage to the ship, the crew, all persons and objects on board, as well as its owner and every person involved or interested in its operations. This conclusion applies regardless of the nationality of the person in question ...

The Tribunal next briefly argued that Greenpeace activists had the right to protest at sea, and Russia had the right to create a security zone around the *Prirazlomnaya* platform.

According to Articles 58 and 87 of the Convention, within the EEZ all states enjoy the freedom of navigation and other internationally lawful uses of the sea related to that freedom.

Protest at sea is an internationally lawful use of the sea related to the freedom of navigation. The right to protest at sea is necessarily exercised in conjunction with the freedom of navigation. The right to protest derives from the freedom of expression and the freedom of assembly, both of which are recognised in several international human rights instruments to which the Netherlands and Russia are parties, including the ICCPR. The right to protest at sea has been recognised by resolutions of international organisations.

The right to protest is not without its limitations, and when the protest occurs at sea its limitations are defined ... by the law of the sea ... Pursuant to Article 56 of the Convention, coastal states have “sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources whether living or non-living”. According to Articles 56 and 60 of the Convention, coastal states have ... exclusive jurisdiction with regard to the establishment and use of artificial islands, installations, and structures in the EEZ. The coastal state is empowered to take certain law enforcement measures with regard to artificial islands, installations, and structures in its EEZ. Article 60(2) provides that: “The coastal state shall have exclusive jurisdiction over such artificial islands, installations and structures, including jurisdiction with regard to customs, fiscal, health, safety and immigration laws and regulations.” Article 60(4) stipulates that: “The coastal state may, where necessary, establish reasonable safety zones around such artificial islands, installations and structures in which it may take appropriate measures to ensure the safety both of navigation and of the artificial islands, installations and structures.”

The Tribunal then turned to the key issue in the ruling—how Russia enforced its laws. Because the Netherlands did not consent to the taking and boarding of the *Arctic Sunrise*, Russia must justify why it violated flag state jurisdiction.



In exercising their rights and duties under the Convention in the EEZ, coastal states must have “due regard to the rights and duties of other states and shall act in a manner compatible with the provisions of this Convention.”

Articles 92(1) and 58(2) of the Convention provide for the exclusive jurisdiction of a state over ships flying its flag in the EEZ, which include ships used for the exercise of the right to protest. As a result of the exclusive jurisdiction of the flag state over ships in the EEZ, a coastal state may only exercise jurisdiction, including law enforcement measures, over a ship, with the prior consent of the flag state. This principle is subject to exceptions, some of which are discussed below.

The Tribunal accepts that the Netherlands did not consent to the measures taken by Russia against the *Arctic Sunrise* ... The Tribunal considers ... other possible legal bases for the boarding, seizure, and detention of a vessel under the Convention without the prior consent of the flag state, to assess whether any of these legal bases could have been relied upon by Russia in the present case.

The Tribunal first asked whether Russia was punishing suspected past violations, including: (i) suspected piracy; (ii) hot pursuit of a security zone violation; (iii) violation of non-living resources rules; and (iv) violation of pollution rules.

#### (i) Suspected Piracy

Article 110 of the Convention provides that any duly authorised ship or aircraft clearly marked and identifiable as being on government service may board a foreign ship where there is reasonable ground for suspecting that the foreign ship is engaged in piracy. Piracy is defined at Article 101 of the Convention ...

An essential requirement of Article 101 is that the act of piracy be directed “against another ship.” The *Prirazlomnaya* is not a ship. It is an offshore ice-resistant fixed platform. This appears also to be the view of the Russian authorities ...

Having concluded that the *Prirazlomnaya* is not a ship, the Tribunal need not consider the other elements required to show piracy within the meaning of Article 101.

The Tribunal concludes that the boarding, seizure, and detention of the *Arctic Sunrise* cannot be justified as an exercise of the right of visit to the *Arctic Sunrise* on the suspicion of piracy as provided under Article 110 of the Convention.

(ii) Hot Pursuit of a Security Zone Violation

Article 60 of the Convention provides that coastal states shall, in the EEZ, have exclusive jurisdiction over artificial islands, installations, and structures and may in their safety zones take appropriate measures to ensure the safety both of navigation and of the artificial islands, installations, and structures. However, the alleged commission of the offences of hooliganism and unauthorised entry into a safety zone ... does not provide a basis under international law for boarding a foreign vessel in the EEZ without the consent of the flag state. The boarding, seizure, and detention of a vessel in the EEZ on suspicion of such offences finds a basis under international law only if the requirements of hot pursuit are satisfied.

In broad terms, the right of hot pursuit is the right of a coastal state to pursue outside of territorial waters, and take enforcement action against, a foreign ship that has violated the laws and regulations of that state. It serves to prevent foreign ships that have violated the laws and regulations of a coastal state from evading responsibility by fleeing to the high seas. The parameters of the right of hot pursuit are set out in Article 111 of the Convention ...

(a) Violation of the laws of the coastal state

The first prerequisite for the legitimate exercise of the right of hot pursuit ... is that the competent authorities of the coastal state must have good reason to believe that the vessel being pursued has violated the laws or regulations of that state ... In the present case, the applicable laws and regulations are those applicable in safety zones established around artificial islands, installations, and structures in the EEZ ...

Pursuant to Article 60(4) of the Convention, a coastal state “may, where necessary, establish reasonable safety zones.” This provision does not automatically create a 500-metre safety zone around every artificial island, installation, and structure in the EEZ of every state. Rather, for a

safety zone to exist, a coastal state must take steps, in accordance with the applicable procedures under its domestic law, to establish the safety zone and give due notice of its establishment ...

Russia unequivocally stated the view that a 500-metre zone prohibited to navigation existed around the *Prirazlomnaya*. In addition, in one of the audio files presented by the Netherlands, the support ship of the *Prirazlomnaya* can be heard requesting permission from the platform operator to enter the 500-metre zone around the platform ... Accordingly, the Tribunal proceeds on the assumption that a safety zone had been validly established around the platform and that navigation was prohibited in that zone.

In such case, on the available evidence, the Russian authorities would have had good reason to believe, as they plainly did, that the RHIBs of the *Arctic Sunrise* violated the aforementioned prohibition ... This violation would have constituted sufficient reason to commence pursuit under Article 111 of the Convention ...

(b) Commencement of pursuit: location of the pursued ship and signal to stop

Under Article 111(4), pursuit may only be commenced “after a visual or auditory signal to stop has been given at a distance which enables it to be seen or heard by the foreign ship.” Further, ... to be lawful, the pursuit of the *Arctic Sunrise* had to commence while at least one of its RHIBs was within the 500-metre safety zone around the *Prirazlomnaya* ...

[Based on its review of the facts,] the Tribunal finds that the *Ladoga* gave the *Arctic Sunrise* a valid “auditory signal,” which allowed the commencement of the pursuit, when it transmitted its first radio message to stop.

The remaining question is whether, at the time of the first radio message to stop, at least one of the *Arctic Sunrise* RHIBs was still within the 500-metre zone around the *Prirazlomnaya*. This factual determination is not easy to make, as both the time when the first radio message was transmitted and the time when the last RHIB of the *Arctic Sunrise* left the 500-metre zone can only be estimated ...

In any case, the question of whether pursuit was lawfully commenced is not the only consideration to be taken into account to determine the lawfulness of the hot pursuit of the *Arctic Sunrise*.

(c) Continuity of pursuit

The fourth condition for a lawful exercise of the right of hot pursuit, set forth in Article 111(1) of the Convention, is that a pursuit continued outside the maritime area where it was lawfully commenced—here, the 500-metre zone around the *Prirazlomnaya*—must not have been interrupted. Therefore, the question for determination is whether the pursuit of the *Arctic Sunrise* remained uninterrupted from the time of the first stop order until the boarding of the *Arctic Sunrise* ... some 36 hours later.

In the view of the Tribunal, this question must be answered in the negative. During the three hours following the first stop order, the *Ladoga*'s conduct was consistent with the notion of pursuit. The order to stop, heave to, and admit an inspection on board was repeated time after time. Threats were issued that warning shots would be fired should the *Arctic Sunrise* fail to comply. Eventually, as the *Arctic Sunrise* refused to comply, several rounds of warning shots were fired. A RHIB was sent by the *Ladoga* to attempt (unsuccessfully) the boarding of the *Arctic Sunrise*.

However, after the initial flurry of orders, threats, and warning shots, ... the *Ladoga*'s behaviour changed. After threatening to open direct fire at the stern of the *Arctic Sunrise* and preparing its guns, the *Ladoga* unloaded its gun mounts and ceased issuing orders to the *Arctic Sunrise*. For the following 33 hours, the *Ladoga* shadowed the *Arctic Sunrise*, positioning itself between the *Arctic Sunrise* and the *Prirazlomnaya* when the *Arctic Sunrise* circled the platform at a distance of approximately four nautical miles, and following the *Arctic Sunrise* when it retreated 20 nautical miles north of the platform ... It is apparent that [the *Ladoga*'s] later conduct is not consistent with continuous pursuit, the final objective of which would have been to board, as soon as possible, the pursued ship. The conduct of the *Arctic Sunrise* was also not consistent with that of a pursued ship, as it remained in the area and did not try to flee ...

Having concluded that the pursuit was interrupted, and that therefore one of the necessary conditions set out in Article 111 for a lawful exercise of the right of hot pursuit was not met, the Tribunal concludes that the right of hot pursuit cannot serve as the legal basis for the boarding, seizure, and detention of the *Arctic Sunrise*.

(iii) Violation of Non-Living Resources Rules

The Tribunal has also considered whether a coastal state has the right to enforce its laws regarding non-living resources in the EEZ.

Article 73 of the Convention deals expressly with the enforcement of laws relating to living resources in the EEZ ... Article 73(1) confers authority on a coastal state to board, inspect, arrest, and commence judicial proceedings against a ship where that may be necessary to ensure compliance with its laws and regulations over its living resources. There is no equivalent provision relating to non-living resources in the EEZ ...

The activity of the *Arctic Sunrise* and the law enforcement actions taken by the Russian Federation did not concern living resources within Russia's EEZ. The actions taken by the Russian Federation were triggered by Greenpeace's protest actions in relation to the *Prirazlomnaya*, which was constructed for the exploitation of non-living resources. Accordingly, Article 73(1) could not serve as a legal basis for the measures of the Russian Federation.

The absence of any express enforcement provision in the Convention dealing with the right to enforce the coastal state's laws regarding non-living resources in the EEZ makes it necessary to recall that its Article 77, which deals with non-living resources in the continental shelf, largely reproduces the 1958 Convention on the Continental Shelf. That convention was itself based on draft articles prepared by the ILC. The commentary of the ILC in relation to the draft provision now reflected in Article 77 of the Convention says that the words setting out the rights of the coastal state in relation to the continental shelf:

leave no doubt that the rights conferred upon the coastal state cover all rights necessary for and connected with the exploration and exploitation of the resources of the continental shelf. Such rights include jurisdiction in connexion with the prevention and punishment of violations of the law.

Although the Tribunal does not find it necessary to reach a view on the extent of the coastal state's right to enforce its laws in relation to non-living resources in the EEZ, it is clear that such a right exists. However, there is no basis to conclude on the evidence that the *Arctic Sunrise* had violated any Russian laws in relation to exploration and exploitation activities on non-living resources in the EEZ.

The Tribunal concludes that the measures taken by Russia against the *Arctic Sunrise* ... did not constitute a lawful exercise of Russia's law enforcement powers concerning the exploration and exploitation of its non-living resources in the EEZ.

#### (iv) Violation of Pollution Rules

Under certain circumstances, the Convention allows coastal states to take enforcement action against foreign vessels in the EEZ that have committed serious violations of applicable laws of the coastal state related to the protection of the marine environment.

Article 220 of the Convention allows a coastal state to take enforcement measures against vessels in the EEZ in order to reduce and control vessel-source pollution ...

The Tribunal considers that there were no grounds for Russia to believe that the *Arctic Sunrise* had committed a violation of applicable international rules and standards for the prevention, reduction, and control of vessel-source pollution in Russia's EEZ. There is also no evidence of a discharge from the *Arctic Sunrise* or its RHIBs causing pollution or major damage (or a threat thereof) ...

The Tribunal concludes that the measures taken by Russia against the *Arctic Sunrise* ... did not constitute a lawful exercise of Russia's enforcement rights as a coastal state under [Article] 220 ...

The Tribunal then asked whether Russia was legally preventing future violations, including: (i) preventing environmental harm; (ii) preventing terrorism; and (iii) preventing interference in the EEZ.

#### (i) Preventing Environmental Harm

Article 221 of the Convention allows coastal states to take preventive action against foreign vessels and their crews with respect to marine pollution. The enforcement measures are to be "proportionate to the actual or threatened damage" to protect the coastal state's interests from pollution or threat of pollution following upon a maritime casualty or acts relating to such a casualty, which may "reasonably be expected to result in major harmful consequences." ...

Russia referred to the actions of Greenpeace as exposing “the Arctic region to a threat of an ecological disaster of unimaginable consequences.” Further, ... the Prime Minister of the Russian Federation was reported as stating that Russia “cannot support activities which may cause damage to the environment and which may be dangerous for people on the whole.”

The Tribunal considers that even if it were to accept that the actions of the *Arctic Sunrise* constituted an “occurrence on board a vessel or external to it resulting in material damage or imminent threat of material damage to a vessel or cargo,” the threatened damage to Russia’s interests could not reasonably have been expected to result in major harmful consequences ...

Russian authorities were familiar with the nature and scale of Greenpeace protest actions in the Arctic, having witnessed the Greenpeace action at the *Prirazlomnaya* of August 2012. The earlier protest action would have informed the Russian authorities of what was reasonable to expect in September 2013. There is no evidence before this Tribunal that the earlier protest action had an adverse ecological or environmental impact, let alone one of unimaginable consequences, or that it resulted in major harmful consequences. In September 2013, the *Arctic Sunrise* provided the *Prirazlomnaya* with an indication of what the protest action would entail. The scale was limited. As it was, the protest action involved approximately 10 to 15 individuals transported by RHIBs, two of whom managed to climb some way up the side of the fixed platform with ropes. The Tribunal does not consider that it is reasonable to expect that such actions could have resulted in major harmful consequences.

In any event, Russia boarded, seized, and detained the *Arctic Sunrise* approximately 36 hours after the protest action at the *Prirazlomnaya*. During this period, the Russian authorities knew that the protest actions ... had not resulted in any ecological or environmental adverse consequences. At the time of Russia’s actual boarding, seizure, and detention of the *Arctic Sunrise*, the vessel was at a distance of at least three nautical miles from the *Prirazlomnaya* and not engaged in any protest action. Accordingly, there was no “maritime casualty” of the kind envisaged by Article 221 ... that could have justified Russia taking measures to protect its interests in the EEZ at that time.

The Tribunal concludes that Article 221 of the Convention did not provide Russia with a legal basis for the boarding, seizure, and detention of the *Arctic Sunrise*.

## (ii) Preventing Terrorism

One of the rights of a coastal state in its EEZ that may justify some form of preventive action against a vessel would derive from circumstances that give rise to a reasonable belief that the vessel may be involved in a terrorist attack on an installation or structure of the coastal state. Such an attack, if allowed to occur, would involve a direct interference with the exercise by the coastal state of its sovereign rights to exploit the non-living resources of its seabed. It is not, however, necessary for this Tribunal to determine the extent of any power to take such preventive action. This is because on the facts here there was no reasonable basis for Russia to suspect that the *Arctic Sunrise* was engaged in or likely to engage in terrorist acts ...

The Tribunal considers that the Russian authorities were aware of the likelihood of a protest action by the *Arctic Sunrise* at the *Prirazlomnaya* (indeed, the presence of the *Ladoga* in the vicinity of the platform is evidence of the fact that the Russian authorities anticipated protest action) and of the kind of protest action that it would be, i.e., non-violent and in keeping with the kind of protest action Greenpeace had staged before as part of its campaign to “Save the Arctic”. Given this background, the Tribunal does not accept that there were reasonable grounds for the Russian authorities to consider that, on this particular occasion, the *Arctic Sunrise* intended to resort to terrorism to achieve its ends.

The Tribunal concludes that there were no reasonable grounds for the Russian authorities to suspect the *Arctic Sunrise* of terrorism and therefore any purported suspicion of potential terrorism could not provide a legal basis for the measures taken by Russia against the vessel ...

### (iii) Preventing Interference in the EEZ

A coastal state has the right to take measures to prevent interference with its sovereign rights for the exploration and exploitation of the non-living resources of its EEZ. The Tribunal will therefore address the question of whether the actions of the *Arctic Sunrise* could have been regarded by Russia as constituting an interference with its sovereign rights, thus triggering its right to take appropriate measures ... In the view of the Tribunal, the protection of a coastal state’s sovereign rights is a legitimate aim that allows it to take appropriate measures ...

The Tribunal has given careful and detailed consideration to the types of protest actions that could reasonably be considered as constituting an interference with the exercise of those sovereign



rights, particularly in the context of the case at hand. In that regard, the Tribunal considers that it would be reasonable for a coastal state to act to prevent: (i) violations of its laws adopted in conformity with the Convention; (ii) dangerous situations that can result in injuries to persons and damage to equipment and installations; (iii) negative environmental consequences ...; and (iv) delay or interruption in essential operations. All of these are legitimate interests of coastal states.

At the same time, the coastal state should tolerate some level of nuisance through civilian protest as long as it does not amount to an “interference with the exercise of its sovereign rights.” Due regard must be given to rights of other states, including the right to allow vessels flying their flag to protest.

At the time it was boarded and seized, the *Arctic Sunrise* was no longer engaged in actions that could potentially interfere with the exercise by Russia of its sovereign rights as a coastal state. The measures taken by Russia might have been designed to prevent a resumption of the *Arctic Sunrise*'s protest actions, but the Russian authorities did not give this as the reason for the boarding, seizure, and detention of the vessel. The criminal and administrative proceedings that were instituted were based on other grounds.

There is no basis to conclude that the conduct of the *Arctic Sunrise* at the time of its boarding amounted to interference with Russia's exercise of its sovereign rights for the exploration and exploitation of non-living resources of its continental shelf. At that time, the *Arctic Sunrise* was exercising the freedom of navigation. Its involvement in the protest action against the *Prirazlomnaya* had come to an end, and there is no evidence that its presence in the EEZ was interfering with the operation of the platform ...

The Tribunal, therefore, concludes that Russia's right as a coastal state to take measures to prevent interference with its sovereign rights for the exploration and exploitation of the non-living resources of its EEZ ... did not provide a legal basis for the measures it took *vis-à-vis* the *Arctic Sunrise* ...

Based on this analysis, the Tribunal concluded that Russia had violated the flag state jurisdiction of the Netherlands

In light of the foregoing analysis, the Tribunal concludes that the boarding, seizure, and detention of the *Arctic Sunrise* by the Russian Federation ... did not comply with the Convention. Accordingly, the Tribunal finds that Russia, as a coastal state, has breached obligations owed by it ... to the Netherlands as a flag state enjoying exclusive jurisdiction over the *Arctic Sunrise* in Russia's EEZ.