The Ministry of Foreign Affairs of the Russian Federation

On

certain legal issues highlighted by the action of the *Arctic Sunrise* against Prirazlomnaya platform

I. INTRODUCTION

1.1. Exploration, exploitation and management of mineral resources in the exclusive economic zone (EEZ) and of the continental shelf, in particular in the Arctic, are of utmost importance to the Russian Federation and serve undisputable public interest. Rights and interests of private parties that actually legitimately carry out these activities are no less important.

1.2. Exploration and exploitation of the mineral resources in the EEZ and on the continental shelf poses safety and environmental risks. The Russian Federation attaches great importance to the technically and environmentally safe and secure operation of the installations on its continental shelf. Every operator of these installations has to follow stringent safety measures provided for under Russian legislation. The safety regime under which these installations operate, necessarily presumes that there is no place for unsanctioned tortious interference.

1.3. The Russian Federation has a right – and a duty – to protect its rights and interests, as well as those of the legal entities operating in its EEZ and on the continental shelf, against any actions that bar or defeat enjoyment of these rights and interests. It must maintain law and order on the installations in its EEZ and on its continental shelf, and in the areas adjacent to them. It is also in public and

1 Art. 4 of the “Basic principles of the State policy of the Russian Federation in the Arctic for the period of up to 2020” of 2008 (“use of the Arctic zone of the Russian Federation as a resource base of the Russian Federation, providing for the execution of tasks of the social and economic development of the country”); Art. 11 of the “Strategy of the development of the Arctic zone of the Russian Federation and safeguarding national security for the period of up to 2020” of 2013.
private interests that measures duly undertaken in this regard by the Russian Federation are neither ignored nor obstructed, especially in the severe conditions of the Arctic.

1.4. Freedom of navigation and freedoms of expression and assembly are all valuable. The Russian Federation acts in its EEZ with due regard to the rights of other actors and in a manner compatible with international law and expects them to have due regard to its rights and duties as a coastal State and to comply with its laws and regulations adopted in accordance with international law.

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2.1. Russia did not participate in the ITLOS proceedings initiated by the Kingdom of the Netherlands concerning the request for the prompt release of the Arctic Sunrise vessel. Nor does it participate in the arbitration to consider the case in the matter of the Arctic Sunrise that arose from the incident with the Prirazlomnaya platform in the EEZ of the Russian Federation.

2.2. Nevertheless, taking into account that the case highlights issues that are essential for the responsible lawful uses of the EEZ and of the continental shelf, for the legal regime of these maritime areas and for the preservation of the proper balance of coastal and flag States’ rights and obligations therein, the Ministry finds it important to address some of those issues.

2.3. The following issues are, in particular, addressed below: intended obstructive pattern of Greenpeace’s conduct; balance between freedom of navigation and flag State’s jurisdiction in the foreign EEZ, on the one hand, and coastal State’s sovereign rights and jurisdiction, on the other hand; action of the Arctic Sunrise in the light of freedom of navigation; limitations to the freedoms of expression and assembly at sea; enforcement measures taken by the Russian Federation in response to the action of Arctic Sunrise against the Prirazlomnaya; obligations of the flag State towards the coastal State in its EEZ. Action of Arctic Sunrise, law-enforcement measures of the coastal State in response thereto and conduct of the flag State, are evaluated under applicable rules of international law.
II. PRIRAZLOMNAYA INCIDENT AND BACKGROUND

3.1. In the early hours of 18 September 2013 the *Arctic Sunrise* – an ice-strengthened vessel in use by Greenpeace Netherlands\(^2\) and flying the Dutch flag – launched a so-called direct action protest\(^3\) against the *Prirazlomnaya* platform in the EEZ of the Russian Federation.

3.2. *Prirazlomnaya* is an offshore ice-resistant fixed platform operated by “Gazprom Neft Shelf”\(^4\) which was the first to start oil extraction operations in the Russian Arctic. It is located on the continental shelf of the Russian Federation within its EEZ, in the Pechora Sea (southeastern part of the Barents Sea). The platform was set on its place in August 2011; drilling operations started in May 2013 with a view to get ready for the beginning of oil extraction before the end of 2013\(^5\). Its coordinates were notified to seafarers in the Notices to Mariners\(^6\), along with the notification of the regime of navigation applicable in the area surrounding the platform.

3.3. All of the *Prirazlomnaya* platform activities are properly authorized and carried out in accordance with the Russian legislation. Respective operation risks were evaluated by, among others, such international companies as «Kvaerner», «Schlumberger» and «Halliburton», which have confirmed that the platform conforms to relevant international standards\(^7\).

3.4. On 24 August 2013 the *Arctic Sunrise* entered the Northern Sea Route without acquiring the necessary authorization from the Russian authorities. Given this fact

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\(^2\) IMO no.7382902, owned by Stichting Phoenix (reg. Netherlands), chartered by Greenpeace International (Stichting Greenpeace Council, Netherlands).

\(^3\) Neither the “direct action protest” nor the “right to peaceful protest” have an established definition in international law. See below, para.8.1ff.

\(^4\) “Gazprom Neft Shelf” LLC is a subsidiary of “Gazprom Neft” and holds a license to explore and produce hydrocarbons in the Prirazlomnoye field (http://www.gazprom.com/about/production/projects/deposits/pnm/).

\(^5\) Oil extraction started in December 2013.

\(^6\) 69° 15′ 56.9″ N  57° 17′ 17.3″ E, Notices to Mariners, edition No 51/2011.

\(^7\) http://shelf-neft.gazprom.ru/about/history/
as well as the ongoing “Save the Arctic” campaign of Greenpeace\(^8\), the Russian Coast Guard ships put the Greenpeace vessel under observation.

3.5. On 16 September 2013 the Russian Coast Guard ship *Ladoga* (hereinafter *Ladoga*) detected the *Arctic Sunrise* in the southern part of the Barents Sea. In the first radio communication with her *Ladoga* reminded the *Arctic Sunrise* about the need to comply, in particular, with Article 60 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS). In response came assurances that the *Arctic Sunrise* was familiar with the provisions of international law and had no intention to violate them.

3.6. In the early morning of 17 September, when the *Arctic Sunrise* set off in the direction of the *Prirazlomnaya* platform, she was once again reminded by *Ladoga* of the rules applicable to navigation in the EEZ of the Russian Federation and in the vicinity of installations therein, and in particular of the regime in force in respect of navigation around the *Prirazlomnaya* where a 3 nautical miles zone was designated as dangerous for navigation and a 500-metres safety zone was established where navigation was prohibited. The *Arctic Sunrise* was also reminded about the diving operations carried out near the *Prirazlomnaya* as was announced in the respective coastal warning.\(^9\) This time again, the master of the *Arctic Sunrise* gave assurances that no violations of applicable rules would be allowed.

3.7. Once the Greenpeace vessel found itself in the vicinity of the platform, in the afternoon of 17 September, she began circling around it, without entering the 3 nautical mile zone, which maneuvers were monitored by *Ladoga* yet were not interfered with by her.

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\(^8\) In the framework of the campaign that was started in 2012, Greenpeace organized “protests” against the companies aiming for extraction of mineral resources in the offshore Arctic: Cairn Energy, Royal Dutch Shell, Rosneft, Statoil etc.

\(^9\) According to Coastal warning 39/13, diving operations were to be carried out from 14 to 24 September around the clock. All vessels were recommended to avoid the defined area. See [http://structure.mil.ru/files/morf/military/files/BULL1339.PDF](http://structure.mil.ru/files/morf/military/files/BULL1339.PDF), p.31.
3.8. At around 4:30 on 18 September several inflatable boats were lowered from the *Arctic Sunrise* and launched in the direction of the platform. At first, two boats were spotted by *Ladoga*, then – three more. One of these latter towed a large object – a white capsule of unidentified nature and designation, alerting the Russian Coast Guard officers as to the potential hazard to the platform from this object.

3.9. Two inflatables were immediately launched from *Ladoga* and started heading towards the platform in order to intercept the lead boats of Greenpeace. In the meantime, when a line on which a white capsule was towed by Greenpeace inflatables had suddenly broken (already within 3 nautical mile zone) *Ladoga* itself set off in its direction with a view to collect it. So did the *Arctic Sunrise*, which crossed into the 3 nautical mile zone and took to the capsule, showing intention to regain possession of this object at any rate – to an extent that *Ladoga* had to change course to avoid a collision with the *Arctic Sunrise* who sped in the direction of its stern and the capsule without indications that it would change course or stop.

3.10. At this point the *Arctic Sunrise* was contacted from *Ladoga* to inform that its heading was dangerous and to request that the Greenpeace vessel change its course and leave the 3 nautical mile zone around the platform. The master of the *Arctic Sunrise* replied with refusal, indicating that they need to collect the capsule before they can leave.

3.11. In the meantime, the Greenpeace inflatables reached the *Prirazlomnaya* and activists began their attempts to scale the installation on different sides, of which activities *Ladoga* was notified by the dispatcher of the *Prirazlomnaya*. Upon permission given by the platform dispatcher *Ladoga* entered the 500-metres safety zone to render assistance to the platform.

3.12. Using line haulers, two Greenpeace activists managed to suspend themselves from one side of the platform. In the course of this action Russian Coast Guard boats were given orders to prevent the unlawful activities, including authorization to fire warning shots. The crews of Russian inflatables attempted to remove the
activists from the platform. However, they were confronted with active (and at times violent) obstruction from the outnumbering Greenpeace boats that were ramming the Russian boats, driving them away from the two activists, causing the inflatable tube on one of the boats to deflate. Warning shots effectively made no difference. Disobedience and obstruction continued.

3.13. Eventually, two activists were removed from the platform into one of the Russian boats and delivered to *Ladoga*. Several Greenpeace boats accompanied, and tried to interrupt, Russian boats on their way to *Ladoga*. Soon after that the Greenpeace boats set off back to the *Arctic Sunrise*.

3.14. As *Ladoga* also turned towards the *Arctic Sunrise*, it contacted the latter on the radio and, based on the fact that the inflatables from *Arctic Sunrise* had breached the 500-metres safety zone and people onboard attempted to attack the platform, requested that she stop or heave about, as well as admit an inspection team onboard. The master of *Arctic Sunrise* refused, claiming that the vessel was sailing in the high seas and orders from *Ladoga* were unlawful. An inspection team that was sent on a Russian Coast Guard boat towards the *Arctic Sunrise* was prevented from stepping on board and had to return to *Ladoga*.

3.15. The *Arctic Sunrise* was given visual signal to stop, following which several warning shots were fired from *Ladoga*. The Greenpeace vessel continued to ignore the orders of the Russian law-enforcement authorities.

3.16. From then on, the *Arctic Sunrise* resumed circling around the platform, at the distance of between 3 and 4 nautical miles, refusing to comply with legitimate requests of the Russian Coast Guard in the exercise of its duties. *Ladoga* had to move along the path of the *Arctic Sunrise* and position itself between the former and the *Prirazlomnaya*, as a measure of precaution in order to prevent possible new assaults. Repeated requests to stop were consistently ignored by the Greenpeace vessel.
3.17. Nothing in the maneuvers of the *Arctic Sunrise* suggested that she was trying to flee. On the contrary, she remained in close vicinity of the *Prirazlomnaya*, giving an impression that aggressive activities in respect of the platform may be resumed. At a certain point, after withdrawing from the platform to a distance of 20 nautical miles, the *Arctic Sunrise* returned to it as if to continue assaults on the Russian oil-and-gas production facility.

3.18. Finally, to put an end to the continued aggressive behavior of the *Arctic Sunrise*, the day after, on 19 September, around 18:30, the Russian inspection team boarded and inspected the vessel, without requesting consent of the flag State. Activists on board were detained (none of them was hurt or injured), as was the vessel itself which was escorted to the port of Murmansk.

3.19. Right after the morning assault on the *Prirazlomnaya* took place on 18 September 2013, Russian authorities drew the attention of the Netherlands to the unacceptable behavior of the Dutch-flagged vessel in the Russian EEZ in respect of the Russian platform. On 18 September Ambassador of the Kingdom of the Netherlands was invited to the Russian Foreign Ministry and served with a note verbale by which the Russian Federation informed the Netherlands about the events taking place in the Pechora Sea and requested the authorities of the Kingdom of the Netherlands to immediately take appropriate measures aimed at avoiding a repetition of such actions.

3.20. It was only on 24 September (i.e. 6 days after the incident) that the Netherlands informed Russia that the Ministry of Infrastructure and Environment of the Netherlands “has contacted Greenpeace in the Netherlands. Greenpeace has reaffirmed their awareness of the necessity to abide by all safety and

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10 It took place at 69˚20,5’ N  57˚17,9’ E.
environmental rules and regulations. The Ministry …, keeping in mind the right to demonstrate as laid down in the European Treaty for Human Rights (article 10 and 11), have taken note of this reassurance” (emphasis added – MFA)\(^\text{12}\). **

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4.1. The incident with the *Prirazlomnaya* of 18 September 2013 was not the only instance of a so-called direct action protest staged by Greenpeace in the area – it was preceded by a sequence of actions in respect of this platform in particular, and [mineral] resources exploitation in the offshore Arctic generally.

4.2. Following the platform installation, on 24 August 2012 six Greenpeace activists scaled the *Prirazlomnaya* and suspended themselves from its side. After 15 hours they left the platform on their own.\(^\text{13}\)

4.3. The associated violation by the *Arctic Sunrise* of the safety zone adjacent to the platform prompted a request in December 2012 from the Ministry of Transport of the Russian Federation that the Dutch authorities take appropriate measures in respect of the offender and inform the Ministry accordingly, as well as take actions to prevent similar violations in future. No reaction followed from the Dutch authorities that were at least once reminded of the standing request by the Russian Ministry of Transport.

4.4. On 27 August 2012, activists attached their boats to the anchor chain of the *Anna Akhmatova* – a vessel carrying aboard workers from the *Prirazlomnaya*, thus preventing their drop off at the platform and, respectively, continuation of works

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\(^{12}\) Note Verbale from the Ministry of Foreign Affairs of the Kingdom of the Netherlands to the Embassy of the Russian Federation in the Kingdom of the Netherlands, dated 24 September 2013.

\(^{13}\) As one of the activists reports on the action: “This is why today, at 70 degrees North in the Pechora Sea, activists are occupying this monster platform and preventing it from drilling. … This morning at 4 am local time, a team of Greenpeace International activists including Executive Director of Greenpeace International, Kumi Naidoo, boarded energy giant Gazprom’s Arctic oil platform *Prirazlomnaya* off the northeastern coast of Russia in the Pechora Sea, interrupting its operations.” [http://www.greenpeace.org.uk/blog/climate/live-arctic-oil-drilling-platform-occupied-activists-20120824](http://www.greenpeace.org.uk/blog/climate/live-arctic-oil-drilling-platform-occupied-activists-20120824). “15 hours after boarding the Gazprom Arctic oil platform in the Pechora Sea, and interrupting the platform’s operation, the team of six Greenpeace International activists including Kumi Naidoo voluntarily left the platform.” [http://www.greenpeace.org/canada/en/recent/Greenpeace-activists-board-oil-platform-in-Russian-Arctic/](http://www.greenpeace.org/canada/en/recent/Greenpeace-activists-board-oil-platform-in-Russian-Arctic/).
on it as planned. Again, no law-enforcement measures were taken in respect of the activists or their boats.

4.5. On 13-14 August 2013 attempts were made to prevent (including by mere presence in its vicinity) the Rosneft-contracted vessel Academic Lazarev from undertaking seismic surveying in the course of preparations for drilling.

4.6. On 26 August 2013 on their inflatable boats launched from the Arctic Sunrise Greenpeace activists interfered in the activities in the Kara Sea of the research vessel Geolog Dmitriy Nalivkin. This time, a 4 nautical mile exclusion zone around the Russian research vessel had to be declared by the Russian authorities to prevent Greenpeace from further obstructing its lawful activities. Besides, an inspection of the Arctic Sunrise was carried out, after which she left the Kara Sea.

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5.1. The Russian Federation is by far not the only State that is facing the so-called “direct action protest” campaigns of Greenpeace (and other environmental NGOs).

14 “Greenpeace International Executive Director Kumi Naidoo and six other Greenpeace activists headed toward the platform early this morning in two high-speed boats to intercept the Anna Akhmatova passenger vessel as it prepared to drop off the workforce to the Prirazlomnaya. Two hours later, another two boats with seven more activists arrived on scene. There are now 14 activists in place from 10 different countries.

The activists have attached themselves to the anchor chain of the Anna Akhmatova and chained their boat to it, preventing the ship from lifting anchor and sailing to the platform to complete the work that will allow them to begin drilling in this fragile region.”


“Kumi’s boat is now attached to anchor chain of this vessel - it’s not moving anywhere and so the platform workers can’t get on-board, effectively stopping its preparations to drill for oil in the Arctic.”


15 “Yesterday, Greenpeace campaigners communicated to the Lazarev’s captain by radio, demanding that the vessel cease its preparations as it began firing underwater sound cannons up to 250 decibels in the Fedynskiy license block.”


17 E.g. Sea Shepherd.
5.2. For example, in July 1994 Greenpeace was involved in a “direct action” against commercial whaling in the EEZ of Norway. In order to “stop the whaling” physically Greenpeace vessels targeted the Norwegian whaling ship Senet by manoeuvring in front of the ship in zigzag to force it to change the course and by using water cannons to impede the visibility from Senet, whereas several Greenpeace activists boarded the whaler and took control over the harpoon gun.\(^{18}\)

5.3. In August 1997 Greenpeace activists, in the framework of the so called Atlantic Frontier campaign, occupied a British Petroleum (BP) chartered oil rig, the Stena Dee, west of the Shetland Islands.\(^{19}\) The same month Greenpeace’s Arctic Sunrise, during its “Arctic tour”, physically blocked the movement of a floating ARCO drilling platform near Prudhoe Bay.\(^{20}\)

5.4. In August 1998 Greenpeace carried out a “protest” against the Norwegian drilling rig Deepsea Bergen, located in the EEZ of Norway, during which several activists boarded the rig and hoisted a survival capsule to its side, while Greenpeace spokesperson underlined that protesters were to remain on board as this was “a new part of [Greenpeace] campaign to get oil companies to switch to developing renewable energy”.\(^{21}\)

5.5. In May 2010 Greenpeace tried to physically prevent fishing of Bluefin tuna by the French fishermen in the Mediterranean, where in the course of violent confrontation one of the activists was wounded (harpooned).\(^{22}\)

5.6. In August 2010 in the EEZ of Greenland Greenpeace activists attacked the drilling platform Stena Don run by Cairn Energy. In violation of the orders of

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\(^{18}\) [http://photo.greenpeace.org/C.aspx?VP3=ViewBox&STID=27MZIF6HYCV&CT=Story](http://photo.greenpeace.org/C.aspx?VP3=ViewBox&STID=27MZIF6HYCV&CT=Story), see also facts outlined in *Drieman and others v Norway (decision)*, no. 33678/96, 4 May 2000.


\(^{22}\) [http://photo.greenpeace.org/C.aspx?VP3=ViewBox&VBID=27MZV8P0P7BO2&VBIDL=&SMLS=1&RW=1423&RH=731](http://photo.greenpeace.org/C.aspx?VP3=ViewBox&VBID=27MZV8P0P7BO2&VBIDL=&SMLS=1&RW=1423&RH=731)
compotent authorities to stop they climbed the platform and stayed aboard, suspending the company’s authorized exploration activities and creating a threat to the safety of the platform and its workers. Greenpeace declared that in order to perform the action the activists (in boats) “evaded the Danish Navy and the police surrounding the Stena Don drill rig”. In May and June 2011 Greenpeace occupied the rig Leiv Eiriksson operated by Cairn Energy to prevent it from drilling.

5.7. In May 2014 Greenpeace scaled and occupied the mobile platform Transocean Spitsbergen run by Statoil in the Barents Sea that was scheduled to start exploration drilling in the Norwegian EEZ. In the course of this “protest” Greenpeace blocked the drill site with its ship Esperanza, rejected the Norwegian Coast Guard’s demands to move the ship and prevented the rig from taking the position to start drilling operations.

5.8. In November 2014 the notorious Arctic Sunrise in order to prevent oil drilling by Repsol took an action against Rowan Renaissance drill ship off the Canary Islands in total disregard of warnings of the Spanish Navy to leave the area.

5.9. In April 2015 the Esperanza vessel took part in a “direct action” against Shell in the course of which several Greenpeace climbers, in the middle of the Pacific

24 http://www.telegraph.co.uk/news/worldnews/europe/greenland/7972748/Greenpeace-claims-to-have-shut-down-Greenland-oil-well.html
Ocean, intercepted the *Polar Pioneer* oil rig and set up a camp under its main deck\(^{28}\).

**III. BOARDING OF THE ARCTIC SUNRISE AND DETENTION OF THE VESSEL AND ITS CREW WERE IN CONFORMITY WITH INTERNATIONAL LAW**

6.1. The issue of legality of the boarding of the *Arctic Sunrise* and detaining the vessel and those on board by the coastal State in its EEZ without consent of the flag State is crucial to the situation. It is important to consider it in light of the balance of rights and duties of a coastal State and of a flag State in the EEZ.

6.2. Freedom of navigation is one of the principal rights every State is entitled to on the high seas and in the EEZs of other States. However even on the high seas such freedom is not absolute. In particular, Article 87 of UNCLOS provides that the freedom of the high seas, including the freedom of navigation, shall be exercised with due regard for the interests of other States in their exercise of the freedom of the high seas and for activities in the area.

6.3. This is even more evident for the freedom of navigation within a foreign EEZ. The qualifications on this freedom on the high seas are applicable in the EEZ too, but, in addition, by virtue of Article 58 (3) of UNCLOS, “[i]n exercising their rights and performing their duties under this Convention in the exclusive economic zone, States shall have due regard to the rights and duties of the coastal State and shall comply with the laws and regulations adopted by the coastal State in accordance with the provisions of this Convention and other rules of international law in so far as they are not incompatible with this Part [on EEZ – *MFA*]”. Thus, in the EEZ the freedom of navigation should be balanced against the rights of the coastal State.

6.4. Exclusive jurisdiction that a State exercises over vessels flying its flag on the high seas, similarly, may be subject to limitations “in exceptional cases expressly

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provided for in international treaties or in [UNCLOS]."\(^{29}\) In addition to these limitations, in a foreign EEZ the flag State jurisdiction should be balanced against the coastal State’s rights and jurisdiction it possesses therein.

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7.1. Articles 56(1) and 77(1) of UNCLOS as well as general international law vest the coastal State with the sovereign rights in its EEZ and over its continental shelf for the purpose of exploring, exploiting and managing its natural resources. International Law Commission explaining the notion of “sovereign rights” in the commentary on draft article 68 of Draft articles on the law of the sea (which later became article 2 of the 1958 Convention on the continental shelf) noted that the text of the article “leaves no doubt that the rights conferred upon the coastal State cover all rights necessary for the exploration and exploitation of the natural resources of the continental shelf” and that “[s]uch rights include jurisdiction in connexion with the preventing and punishment of violations of law”.\(^{30}\) Such rights also include “the exclusive right to authorize and regulate drilling on the continental shelf”.\(^{31}\)

7.2. Under UNCLOS Articles 60(2) and 80 the coastal State has the exclusive jurisdiction over installations in its EEZ and on its continental shelf. “Exclusive jurisdiction” differs from “jurisdiction” simple. It means that the coastal State alone is empowered (a) to legislate over installations and activities related to them; and (b) to take the necessary enforcement measures with regard to installations and offences against them. This exclusive jurisdiction of the coastal State extends in particular to the foreign vessels that are involved in an illegal action against such installations. Any derogation from the exclusive jurisdiction of the coastal State over the installations in its EEZ must be derived from the consent of the coastal

\(^{29}\) UNCLOS, Article 92(1).


\(^{31}\) UNCLOS, Article 81.
State. Consequently when a vessel acts illegally against the installation in the foreign EEZ, the flag State has no exclusive jurisdiction over the vessel. The exclusive character of the coastal State’s jurisdiction means no other State can interfere in the exercise of the coastal State’s powers with regard to these installations.

7.3. The same UNCLOS provisions set forth that the coastal State’s exclusive jurisdiction over installations in its EEZ includes “jurisdiction with regard to customs, fiscal, health, safety and immigration laws and regulations”\textsuperscript{32}. Furthermore, under Article 60(4) the coastal State “may establish safety zones around such … installations in which it may take appropriate measures to ensure safety … of the installations”. The text of paragraphs (2) and (4) of Article 60 does not suggest that the coastal State’s exclusive jurisdiction over the installation is limited to the areas specifically listed in Article 60(2), or only to the legislative jurisdiction.

7.4. The enforcement element is an integral part of the coastal State’s exclusive jurisdiction with regard to installations, which is instrumental for ensuring that legitimate operations to explore, exploit and manage natural resources are not interrupted due to illegal interference, trespassing or other perilous acts. These law-enforcement prerogatives of a coastal State are indispensable to the unhindered exercise by the coastal State of its sovereign rights for the purpose of exploring, exploiting and managing mineral resources in its EEZ and continental shelf (and to the protection of public and private interests related thereto), as otherwise proper implementation of these rights would have been impossible.

7.5. The fact that UNCLOS is silent with regard to measures to protect installations and to enforce its applicable legislation does not mean that this jurisdiction is non-existent under the Convention and general international law.\textsuperscript{33}

\textsuperscript{32} UNCLOS, Article 60 (2).
\textsuperscript{33} Article 60(2) is not the only UNCLOS article that gives jurisdictional prerogatives to a coastal State without providing for the details with respect to law enforcement. For example, Article 33 explicitly gives to a coastal State
The coastal State’s jurisdiction over installations in its EEZ necessarily comprises administrative and criminal jurisdiction\(^{34}\) over offences committed on or against them\(^{35}\) and over persons and vessels involved. This jurisdiction includes the right not only to introduce appropriate rules of administrative and criminal law but also to take measures in order to (a) duly protect these installations from a threat to its normal functioning and (b) enforce these rules once such threat is imminent or \textit{prima facie} illegal interference and (or) trespassing has occurred\(^{36}\).

7.6. The enforcement jurisdiction of a coastal State is not limited to the surface and interiors of installations or to the safety zones around them. It extends to offences committed against such installations\(^{37}\) as well as to any person who has

\(^{34}\) As early as in 1956 International Law Commission in its Commentaries to the Articles concerning the Law of the Sea noted in particular that installations on the continental shelf “are under the jurisdiction of the coastal State for the purpose of maintaining order and of the civil and criminal competence of its courts”. Yearbook of the International Law Commission, 1956, vol. II, 1956, pp. 299-300.

\(^{35}\) 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and 1988 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed platforms located on the Continental Shelf. The fact that this Convention and its protocol were originally focused on combating terrorism, does not preclude its interpretation in a wider context of any attack on offshore platforms. Such an approach is shared by IMO. See e.g. para 7 of the preamble of the Resolution MSC.303 (87) adopted on 17 May 2010.

\(^{36}\) This can be illustrated by examples of domestic legislation. In many countries interference with structures or operations in offshore areas is prohibited by law, and persons, for example interfering with safety zones, can be held liable for such activities with imprisonment (depending on national provisions up to 12 months or 5 or 10 years) and fines (up to 100 000 US dollars). See, for example, Section 101B(1) of the Crown Minerals Act 1991 of New Zealand, the US legislation – Outer Continental Shelf Lands Act, 33 C.F.R. § 140.35, and 18 U.S.C. §2280 (Violence against maritime navigation) and 18 U.S.C. § 2281 (Violence against maritime fixed platforms), Section 23 of the UK Petroleum Act 1987, Sections 9-4, 10-16, 10-18 of the Act of 29 November 1996 No. 72 of Norway, Article 2 of the North Sea Installations Act of the Netherlands 1964, etc. For Japanese law see Souichirou Kozuka and Hideyuki Nakamura, “Observations on the Law Applicable on the Continental Shelf and the Exclusive Economic Zone: The Japanese Perspective”, Ocean Yearbook 25, ed. by Aldo Chircop, Scott Coffen-Smout and Moira L. McConnell, 2011, p. 377. Domestic law also provides for preventive measures to be taken both by law-enforcement authorities and operators of the installations (structures) in order to protect them. See, Articles 16 and 19 of the Law of Portugal No. 34/2006 on delimitating marine areas under national jurisdiction (which allow for seizure of goods and documents constituting evidence, arrest of crew members and the ship), Section 40 (Use of force) of the Act of 16 February 2007 No. 9 relating to Ship Safety and Security of Norway, Article 56 of the Notification by Ministry Of Petroleum And Natural Gas of India (18.06.2008, G.S.R. 469(E)), etc.

allegedly committed (or attempted to commit) an offence on or against the installations and to the ship that was used as a tool of the offence by the person(s) who committed it.38

7.7. The *Arctic Sunrise* delivered Greenpeace activists to *Prirazlomnaya*. After their action that was coordinated from the ship they returned to the *Arctic Sunrise* which remained in the vicinity of the platform refusing to follow the instructions of the Russian Border Guard and obstructing its activities. The vessel and its crew were clearly acting as a unit against the platform and Russian law-enforcement officials. In this situation exclusive criminal jurisdiction and in particular enforcement jurisdiction of the Russian Federation over *Prirazlomnaya* apparently extended to the vessel and those on board and the flag State had no exclusive jurisdiction over the vessel. Thus there was no need for the Russian authorities to seek consent of the flag State for the boarding of *Arctic Sunrise* and detention of the ship and its crew.

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8.1. The “right to peaceful protest” is a concept that as such is not defined in international law. The phrase “peaceful protest” is used to denominate a particular type of action which is often considered to be a manifestation of rights to freedom of expression and of peaceful assembly. The so-called right to peaceful protest at sea which is often referred to as a legal basis for the “direct action”, is neither a part of freedom of high seas nor a part of freedom of navigation. These freedoms, as clearly follows, in particular, from Articles 86 and 87 of UNCLOS, belong to States, while the rights to freedom of expression and of peaceful assembly which

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38 The words “over [...] installation” which are used in Article 60 (2) of UNCLOS do not mean “on the installation”, but are to be understood as “in respect of the installation”. This interpretation is supported by Article 79 (4) of UNCLOS which provides for a coastal State’s jurisdiction “over cables and pipelines” on the continental shelf. One cannot reasonably interpret the word “over” in this phrase as indicating that the jurisdiction may be exercised only “on” the cable or pipeline. It is definitely about jurisdiction “with respect to” the cable and pipelines, i.e. with respect to all acts with regard to them and with regard to the persons involved in such acts. Dutch authorities apparently share this approach – in Art. 2 of the North Sea Installations Act 1964 declares the applicability of the Dutch Criminal Law to anybody committing an offence on or with regard to installations at sea (See [http://wetten.overheid.nl/BWBR0002467/](http://wetten.overheid.nl/BWBR0002467/)).
may be manifested in the form of so-called peaceful protest are individual rights
governed by a cluster of international law separate from the law of the sea. Thus
the freedom of navigation and the freedom of expression belong to different
subjects, and though at times they can be exercised simultaneously, it is perfectly
possible to enjoy the hypothetical “right to protest at sea” without the exercise of
the freedom of navigation (for example, while navigating in the territorial sea or
other areas where there is no freedom of navigation).

8.2. The Russian Federation respects the rights to freedom of expression and
peaceful assembly exercised in accordance with international law, including when
they are exercised at sea. Russian authorities are also open to dialogue with those
having concerns regarding economic activities in the Arctic. The President of the
Russian Federation Vladimir Putin while condemning Greenpeace’s illegal action
against the Prirazlomnaya at the International Forum “The Arctic: Territory of
dialogue” (a regular event to discuss, also with NGOs, issues important for the
region)\(^39\) emphasized that “it would be much better if people from Greenpeace
joined here in this hall and expressed their views on the issues we are discussing,
or set out their complaints, demands or concerns”\(^40\).

8.3. However, when the enjoyment of the aforementioned rights is combined
with aggressive behavior of their beneficiaries (“protesters”), obstruction of the
law-enforcement activities and infringement of the rights of others, it cannot, in
accordance with international law, be qualified either as peaceful or as lawful.
Definitely, there are alternative means to express views on the necessity to
preserve the Arctic environment and to “protest at sea” – such that would not
create prejudice to private and public rights and interests, infringe the law and put
others at risk.

\(^{40}\) See [http://en.kremlin.ru/events/president/transcripts/19281](http://en.kremlin.ru/events/president/transcripts/19281)
8.4. Rights to freedom of expression and of peaceful assembly are not absolute rights themselves. As many other rights and freedoms they must be exercised with necessary respect for interests of security, public order as well as other human rights, and their enjoyment may be limited in certain situations.\(^{41}\)

8.5. No less so when these rights are exercised – in whatever form – at sea. Different international bodies have emphasised the crucial importance of ensuring safety during actions constituting protests at sea and abstaining from dangerous acts. This understanding *inter alia* is contained in International Maritime Organization (IMO) Resolution MSC.303(87), which expressed serious concern regarding risks related to “protests at sea” and called on governments to urge persons and entities under their jurisdiction/flying their flag to refrain from dangerous protest actions at sea.\(^{42}\) The International Whaling Commission in its Resolution on safety at sea condemned protest actions that are a risk to human life and property at sea, urging governments to take actions to prevent and suppress such actions.\(^{43}\)

8.6. In the instances of Greenpeace purported “peaceful protest” actions in abundance (though far from exhaustively) listed above\(^{44}\), these actions, as it is confirmed by the statements of Greenpeace itself, were intended to (or carried out in full awareness that they would) create obstacles to normal (and safe) functioning of the platforms (or vessels). In practice, their implementation was connected with the dangerous manoeuvring of vessels and boats of Greenpeace, deploying climbers and special equipment, resistance to law-enforcement measures, putting at risk safety of people, vessels and platforms.

\(^{41}\) See, among others, Art 19(3) of the International Covenant on Civil and Political Rights, Articles 10(2) and 11(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 55 of the Constitution of the Russian Federation.

\(^{42}\) IMO Resolution MSC.303 (87): ‘Assuring Safety during Demonstrations, Protests or Confrontations on the High Seas’, 17 May 2010. While the provisions of the Resolution are clearly intended to cover protest actions on the high seas, there is hardly any reason to deny that concerns over safety of navigation during the exercise of protests are equally present in other maritime areas where navigation takes place.


\(^{44}\) See paras.5.2-5.9 supra.
9.1. The “targeted” States qualify most of the actions of this kind as dangerous, irresponsible and illegal behaviour. For example, the French Ministry of Agriculture and Fisheries in reaction to the incident of May 2010 (para.5.5 above) underlined that Greenpeace must avoid hindering legal fishery activities. The Prime Minister of Greenland qualified the action in the Greenlandic EEZ of August 2010 (para. 5.6 above) as “very serious and an illegal attack on the country's constitutional rights” and expressed confidence “that the police and the executive authorities will continue to ensure that the legal business activities can continue undisturbed”. Japanese fisheries authorities earlier labeled Greenpeace’s “direct action” anti-whaling campaigns as “terrorist activity”.

9.2. Greenpeace’s “direct actions” threatening the safety at sea were discussed at the IMO where several “targeted” States brought to the attention of the IMO Council their serious concerns regarding Greenpeace’s activities.

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45 “Du côté des autorités, le gouvernement français «déplore les heurts» et demande que les pêcheurs puissent faire leur travail, a indiqué ce samedi un porte-parole du ministère de l'Agriculture et de la Pêche, au lendemain d'une violente altercation au large de Malte entre des thoniers et des militants de Greenpeace, faisant un blessé grave dans les rangs de l’organisation écologiste. «Il faut laisser la pêche se dérouler dans le cadre légal», a déclaré à l’AFP un porte-parole du ministère de l’Agriculture et de la Pêche. “ http://m.20minutes.fr/planete/575703-thon-rouge-militant-toujours-hospitalise-greenpeace-va-porter-plainte
49 See Note by the IMO Secretary-General C 89/26 dated 10 September 2002 regarding the communications from Turkey and Greece, which, referring to the Greenpeace direct action of 4 July 2002 against the Greek oil tanker Crude Dio outside the Turkish territorial sea, stated that “such acts against the freedom of navigation will not be tolerated by the Turkish Government and the perpetrators will be prosecuted to the fullest extent of law” and that “Greece strongly protests against the illegal acts of Greenpeace members during the incident, which jeopardized the safety of the vessel and resulted in a serious delay to the vessel's voyage”. See also Note by the IMO Secretary-General C 90/29(b) dated 13 March 2003 and Note by the IMO Secretary-General C 90/29(b/Add.1) dated 9 May 2003. See also IMO Document MSC 75/17/45 of 12 April 2002 submitted by Cyprus and Malta to the IMO Maritime Safety Committee and drawing attention to security risks resulting from demonstration and actions against ships, offshore installations and port facilities. See also IMO Document C 90/SR.9 for concerns related to Greenpeace’s protests at sea expressed by Iceland, Spain and Philippines, and Annual Report of the International Whaling Commission 2006, p.59, for those voiced by St. Kitts and Nevis. (IMO documents have been consulted at www.imo.org, IWC documents – at www.iwc.int).
9.3. Concerns as to dangerous and illegal nature of Greenpeace’s “direct actions” are continuously articulated by representatives of fishing industry\(^\text{50}\) as well as oil and gas industry\(^\text{51}\). Those who experienced the “protests” first-hand described them as violent, illegal, (physically) interfering with the lawful activities and infringing legal rights of those being attacked\(^\text{52}\). In order to protect themselves from activists the attacked companies resort to courts with requests for temporary restraining orders, which are being widely granted as national courts, too, view Greenpeace’s “direct actions” not as any “peaceful protests”, but rather as illegal acts\(^\text{53}\). Nevertheless, the activists continue to employ the same dangerous forms of “protest” against those who have not yet obtained restraining orders.

9.4. States being faced with illegal “direct actions” of Greenpeace react thereto – depending on the circumstances of a particular “protest” – with protective and law-enforcement measures accompanied by national courts’ decisions reflecting positions of these States with respect to Greenpeace so-called “protests” and measures taken in response.

\(^{50}\) “Selon Bertrand Wendling, directeur général de la Sathoan, organisation qui représente les intérêts de plusieurs thoniers sétois, "les marins-pêcheurs ont fait tout ce qui était possible pour empêcher que les poissons soient libérés, puisque c'est ce qui leur permet de vivre". "La pêche au thon rouge est une activité fortement encadrée, elle est totalement légale et autorisée. Il est hors de question que qu'on empêche les gens qui sont en mer et qui n'ont que 15 jours pour vivre, parce que la campagne de pêche dure du 15 mai au 15 juin et jusqu'à présent, les bateaux étaient complètement coincés" pour cause de mauvais temps, a-t-il dit. Le comité national des pêches, qui indique avoir "protesté officiellement" auprès des autorités françaises, a estimé de son côté que Greenpeace avait "décidé de mener un combat qui s'apparente à de la piraterie".” (http://www.lemonde.fr/planete/article/2010/06/05/un-militant-de-greenpeace-grievement-blesse-par-des-pecheurs-de-thon_1368104_3244.html#PZqfroVbufKjlmMz.99);

\(^{51}\) E.g. “Greenpeace has been explained the risk associated with actions against a rig in open waters. When they still use this form of protest we believe they act irresponsibly and illegally” (http://www.aboutseafood.com/press/press-releases/greenpeace-s-pacific-protest-dangerous-misguided);

\(^{52}\) E.g., Australian government reported to the IMO that companies find it “irresponsible of Greenpeace to approach tankers in small craft” and that “ship operators may interpret such actions as potential terrorist attacks and react accordingly” See Note by the IMO Secretary-General C 90/29(b/Add.1) dated 9 May 2003. Available at www.imo.org.

\(^{53}\) See paras. 9.9-9.10 below.
9.5. For example, in 1994 the Norwegian Coast Guard curbed the direct action of Greenpeace against Norwegian whalers in the EEZ of Norway. Respective measures included arrest of the Greenpeace’s *Sirius* vessel, confiscation of the dinghies (rubber boats) used for the protest as well as arrest and criminal prosecution of the protesters. In 1998 Norwegian authorities arrested protesters attacking the *Deepsea Bergen* platform located in the EEZ of Norway. They seized six inflatable dinghies and a “capsule” that were lowered from the ship M/V Greenpeace, flying the flag of the Netherlands, as property used in connection with the perpetration of a criminal offence. Several activists were prosecuted and fined.

9.6. In 2011 the Greenland police, reacting to the action against the *Stena Don* in the Greenlandic EEZ, arrested Greenpeace activists on charges of violating the security perimeter and trespassing, also seizing a helicopter used by Greenpeace to photograph the rig (as evidence in the investigation). Norwegian law-enforcement authorities in May 2014 boarded Greenpeace’s *Esperanza* “protesting” in the EEZ of Norway and forcefully towed her away, whereas activists were removed from the *Transocean Spitsbergen* platform. In November 2014 Spain, in its EEZ, detained the *Arctic Sunrise*.

9.7. The legality of coastal States’ responses of this nature has been confirmed by a number of court decisions. National courts frequently find Greenpeace’s “direct...
action protests” conducted at sea to be non-peaceful and manifestly and unreasonably infringing other public and private interests and rights involved. They assess Greenpeace’s actions at sea as illegal and posing serious risks to human life.

9.8. The Norway’s reaction to the “direct action” of 1994 was approved by the Supreme Court of Norway which recognized as lawful (and justified) the measures, which included arrest of the vessel and protesters and confiscation of rubber boats, taken by the Norwegian Coast Guard in order to suppress Greenpeace’s dangerous action\(^{60}\). Later the legality of this response was upheld by the European Court of Human Rights\(^{61}\). In 2002 the Supreme Court of Norway recognized as lawful Norwegian law-enforcement measures to prevent the 1998 attack of Greenpeace against the *Deepsea Bergen* in the EEZ of Norway, including confiscation of rubber boats and a “capsule” and imposition of fines on the protesters\(^{62}\). The Court justified the confiscation of Greenpeace’s rubber dinghies and a capsule as equipment used in the perpetration of a criminal offence, to which Greenpeace’s dangerous attack at the *Deepsea Bergen* rig amounted, giving no weight to the activists’ arguments that the dinghies were deployed for a “peaceful protest” and, therefore, their use could not be restricted\(^{63}\). According to the Court, measures that were taken were lawful and necessary in order to prevent disorder and crime.

9.9. The US District Court for the District of Alaska performing a so-called “balance of equities” test on several occasions underlined that Greenpeace’s interest in conducting illegal and tortious protest activities cannot outweigh interests of legally operating companies as well as strong public interest in proper

\(^{60}\) Høyesteretts dom av 4 mars 1996 – Rt-1996-376.

\(^{61}\) *Drieman and others v Norway* (decision), no. 33678/96, 4 May 2000. See para.9.11 infra.

See [http://www.codices.coe.int/NXT/gateway.dll/CODICES/precis/eng/eur/nor/nor-2002-3-005](http://www.codices.coe.int/NXT/gateway.dll/CODICES/precis/eng/eur/nor/nor-2002-3-005)

\(^{63}\) [http://www.codices.coe.int/NXT/gateway.dll/CODICES/precis/eng/eur/nor/nor-2002-3-005](http://www.codices.coe.int/NXT/gateway.dll/CODICES/precis/eng/eur/nor/nor-2002-3-005)
law-enforcement, safe navigation, and development of continental shelf. The US Court of Appeals for the Ninth Circuit in 2013, finding it “too plain for debate” that Greenpeace’s tactics that include forcible boarding of vessels at sea and the use of human beings as impediments to drilling operations “at minimum pose a serious risk of harm to human life, particularly if attempted in the extreme conditions of the Arctic Ocean”, highlighted that “[t]he safety zones do not prevent Greenpeace USA from communicating with its target audience because, as the district court observed, Greenpeace USA has no audience at sea”.

9.10. In the case regarding Greenpeace’s direct action in the EEZ of Greenland in 2011 the Dutch court concluded that the action (protest), in accordance with the applicable Greenlandic law, was illegal and that the “interest Greenpeace had in moving over to action did not make a difference”. In the court’s opinion, the legal rights of others in this case (i.e. of operators and owners of the oil platforms) outweighed the good intentions of Greenpeace. In Nederlandse Aardolie Maatschappij (NAM) v. Greenpeace the court opposed the invocation by Greenpeace of their rights to “freedom of expression and demonstration” and concluded that prohibition to “protest” near NAM’s drilling locations did not conflict with the human rights of the protesters as the rest of the North Sea was “entirely available” to conduct their protests. In the Vulcanus II case the court rejected Greenpeace’s argument that activists “must be given great freedom of action in society, because they represent a public interest to which ever higher

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64 See Shell Offshore Inc. v. Greenpeace. No. 3:12-cv-00042-SLG, D.Alaska, 28 March 2012; Shell Offshore Inc. v. Greenpeace. No. 3:15-cv-00054-SLG, D.Alaska, 8 May 2015; Shell Offshore Inc. v. Greenpeace. D.Alaska, No. 3:15-cv-00054-SLG, 11 April 2014 (“IV. Public Interest. Finally, injunctive relief to prevent illegal and tortious conduct is in the public interest. Congress has recognized a public interest in the expeditious and orderly development of the Outer Continental Shelf that is consistent with the entry of this temporary restraining order. And on the high seas in particular, there is a strong public interest in safe navigation”).
priority is being assigned nationally and internationally, and that they may therefore carry out actions such as [boarding and occupying a ship at sea] even if they result in damage to others”68. The court highlighted that the protest action ran counter not only to “the commercial interest” of the harmed private parties, but also against “the public interest in ensuring that in a democratically governed country any person may exercise rights which he has acquired lawfully”.

9.11. The European Court of Human Rights had to address obstructive protesting at sea in Drieman and others v. Norway, when it was called by Greenpeace to assess the measures taken by the Norwegian authorities (including arrest of Greenpeace vessel, seizure of dinghies, arrest and prosecution of the activists) while curbing the so-called “direct action” against lawful whaling in the Norwegian EEZ. The facts of Drieman case are essentially comparable to those of assault on the Prirazlomnaya – dangerous maneuvering of dinghies, impeding of lawful activities, obstruction to law-enforcement, infringement of others’ rights69. The Court, refraining from addressing in substance the question of whether these actions of Greenpeacers could at all be viewed as falling within the notions of “expression” and/or “assembly” under the Convention, proceeded on the assumption that they do and ruled that Norway’s interference with the “protest” was justified as it was aimed at effective law-enforcement in the Norwegian EEZ and was undertaken for the prevention of crime and for the protection of the rights and freedoms of others. The Court gave weight to the fact that the activists had other non-obstructive options available to express their concerns on whaling and ruled that the conduct of Greenpeace’s activists during the said action “could not enjoy the same privileged protection under the Convention as political speech or debate on questions of public interests or the peaceful demonstration of opinions on such matters” and that “the Contracting States must be allowed a wide margin

69 See para.9.5 above and facts outlined in Drieman and others v Norway (decision), no. 33678/96, 4 May 2000.
of appreciation in their assessment of the necessity in taking measures to restrict such conduct” 70.

9.12. Hence, the ill-intended “direct action protest” of Greenpeace conducted against the Prirazlomnaya in September 2013, which consisted of aggressive attempts to scale the platform exercised with a declared aim “to stop the drilling”71 and accompanied by open resistance to the law-enforcement measures, did not qualify as “peaceful protest” as a form of the exercise of the rights to freedom of expression and peaceful assembly, and warranted immediate action of the coastal State to eventually stop it and launch an investigation into it.

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10.1. Today we know that the purpose of the vessel’s entry into the EEZ of the Russian Federation was to deploy Greenpeace people as well as a survival capsule on the Prirazlomnaya with a view to interfere with the legitimate activities of the platform and to interrupt its safe functioning, thus encroaching upon the legitimate rights and interests of the Russian Federation and of “Gazprom Neft Shelf”72. The aggressive action of the ship and its crew to achieve this purpose was accompanied by the obstruction of the law enforcement activities of the coastal State. After the initial action the ship demonstrated no intention to leave the area and the Russian EEZ, but remained in the vicinity of the platform. All this was done with the full knowledge of the flag State.

10.2. The legal regime of the installations in the EEZ is a part of the legal regime of the EEZ as such. With its carefully staged action against the Prirazlomnaya the

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70 See Drieman and others v Norway (decision), no. 33678/96, 4 May 2000.
71 Early on 18 September 2013 the post on the Arctic Sunrise twitter account announces: “BREAKING: we've got 4 boats in the water heading towards Gazprom's Arctic rig. We're going to try and stop the drilling.” At: https://twitter.com/gp_sunrise/status/380127561423925248.
72 In her interview following release from detention in Russia Faiza Oulahsen, Greenpeace activist, says: “Our plan was to stop the platform for a certain time. If you place climbers on it—unauthorized personnel—you are able to shut down such a platform for a week or three in a safe and effective manner. Then you put Gazprom under pressure. They lose income. And you scare off other investors.” (Faiza Oulahsen, cited as translated by Oude Elferink, in “The Arctic Sunrise Incident: A Multi-faceted Law of the Sea Case with a Human Rights Dimension”, The International Journal of Marine and Coastal Law 29 (2014) 244, p.249 [Y. Aboutaleb and J. van der Kris, “In de cel voel je je echt geen held; Interview Faiza Oulahsen” NRC Weekend, 4 and 5 January 2014, pp. 6–7 at p. 6]
Arctic Sunrise not only flagrantly disregarded the coastal State’s rights in the EEZ, but deliberately infringed them as well as those of “Gazprom Neft Shelf”. It also intentionally did not comply with applicable Russian legislation, disregarding the measures implemented in the exercise of law-enforcement authority of the Russian Coast Guard73.

10.3. Thus, the actions of the Arctic Sunrise were intentionally undertaken in the EEZ against rights, duties and interests of the coastal State and its legal entities and were deliberately aimed at hindrance of lawful activities of a coastal State and obstruction to its law-enforcement. For these reasons, they are incompatible with the freedom of navigation and cannot be regarded as representing the exercise thereof.

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11.1. When the Russian officials boarded the Arctic Sunrise and detained the vessel and those on board they were not acting in the exercise of the right of hot pursuit.

11.2. Reflected in Article 111 of UNCLOS, belonging to its Part VII (High Seas), the right of hot pursuit represents a legal possibility for a coastal State to pursue onto the high seas and seize there a foreign vessel that violated the coastal State’s legislation within its respective maritime jurisdictional zones, thereby denying to the offending vessel the opportunity to escape punishment by attempting to hide behind the right of free navigation designed to protect innocent vessels. It is widely recognized that the right of hot pursuit represents an extension of the coastal State’s jurisdictional reach which is requisite for the effective exercise of sovereign rights and jurisdiction that it possesses in the relevant maritime areas. Accordingly, it is an exception to the general rule of exclusive flag State jurisdiction over a ship on the high seas.

11.3. When a coastal State faces an unauthorized interference from the foreign-flagged vessel with the installation in its EEZ (on its continental shelf), as well as any other violation of the laws adopted by this State with a view to give effect to its sovereign rights and exclusive jurisdiction in respect of resource exploitation and installations, this State is empowered by the international law to pursue such an offending vessel with a view to enforce its respective laws and regulations. In such instances, enforcement measures such as boarding or inspection of a vessel are not subject to the flag State consent, as it is exactly the substance of the exception to the exclusive flag State jurisdiction.

11.4. The circumstances of the incident in question, however, did not give rise to hot pursuit. As is clear from the account provided above, there was no need for the Russian authorities to pursue the *Arctic Sunrise* as she made no attempt to actually escape from the vicinity of the platform or from the EEZ of the Russian Federation into the high seas, remaining in the area under the jurisdiction of the coastal State.

11.5. The Russian Coast Guard, while having good reason to believe that the *Arctic Sunrise* violated laws and regulations applicable to installations in the Russian EEZ, and therefore being effectively authorized to launch hot pursuit if the Greenpeace vessel attempted to flee, instead had to remain next to the platform to protect it and preclude the *Arctic Sunrise* from further attempts to interfere into the platform’s operations. Both the activities of the *Arctic Sunrise*, which were in breach of the legal regime of the installations in the EEZ, and the action of Russian Coast Guard took place in close vicinity of the platform within the Russian EEZ where the ship remained.

11.6. Under the circumstances the issue of hot pursuit did not arise. The Russian Federation took action within its EEZ to protect its sovereign right to safely exploit mineral resources of its continental shelf and its EEZ without unauthorized illegal interference and to exercise to this end the exclusive jurisdiction over installations in its EEZ vis-à-vis the vessel that was deliberately violating law and order rather than exercising the freedom of navigation.
12.1. The Russian Federation response to the actions of the Arctic Sunrise and Greenpeace against the Prirazlomnaya, in particular boarding of the Arctic Sunrise and detention of the ship and the crew, did not require consent of a flag State. The illegal actions of the Arctic Sunrise were targeted at interrupting the operation of the platform and posed threat to both private and public rights and interests. Such actions are incompatible with the freedom of navigation, may not be regarded as an exercise thereof and fall under the exclusive jurisdiction of Russia as the coastal State over installations in its EEZ, which includes criminal jurisdiction with regard to offences committed on or against installations.

12.2. Official statements and action of the coastal States targeted by Greenpeace “direct protests” testify to the emerging pattern of coastal States’ practice with respect to (a) unacceptability and illegality of those Greenpeace malicious activities and (b) legality and necessity of protective and law enforcement measures undertaken by a coastal State against foreign vessels and their crews involved into these activities, without the need to seek prior consent of a flag State.

12.3. Boarding of the Arctic Sunrise and detention of the ship and its crew by the Russian authorities following the defiant illegal action of the Arctic Sunrise against the Prirazlomnaya platform and Russian law-enforcement officials fit well with the pattern of other coastal States’ response to illegal activities of Greenpeace.

12.4. IMO in similar instances recommends that the coastal State, which is aware of an infringement of the regulations relating to the safety zones around offshore installations under its jurisdiction take action in accordance with international law and, where it considers necessary, notify the flag State of the infringement allegedly committed by a vessel flying its flag.\(^{74}\)

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\(^{74}\) Res. IMO A/671 (16), Annex, para 3.1. Further to this, in its document SN.1/Circ.295 Guidelines for safety zones and safety of navigation around offshore installations and structures IMO states that navigation around artificial installations "creates concern about the safety of personnel and the risk of serious damage to offshore
12.5. This recommendation is silent about the need for the coastal State to seek the flag State’s consent before taking action. Moreover, it follows from the text of the document that even notifying the flag State is not indispensable.

12.6. It is clear that in the case of the Prirazlomnaya the situation went further than a mere infringement of the safety zone around the platform. There was a prima facie illegal malicious action against the platform itself carried out by the crew of the Arctic Sunrise using the boats from the vessel that served as a mother ship that in fact coordinated this action.

12.7. It must be noted further, that the well-established pattern of Greenpeace “protests”, into which the incident in question fits, does not represent any guarantee that every purportedly “peaceful” and “harmless” protest action will in fact be carried out in such way. Law-enforcement authorities can not ignore the possibility of the presence among protesters of ill-intentioned individuals that might wish to use the veil of activism to pursue, for example, terrorist goals. Law enforcement authorities cannot simply rely on assumptions or assurances that the “protest” activities will not violate law and order, quite the opposite – they have to ensure this. As can be seen, in the incident with the Prirazlomnaya Greenpeace activists and the vessel did everything to prevent the Russian Coast Guard from doing so, thus aggravating the potential risks.

12.8. Under the circumstances of the case and in view of the exclusive nature of the Russian jurisdiction over the platform, the consent of the flag State was not required for boarding and detention of the Arctic Sunrise by the Russian authorities.

12.9. The coastal State cannot be reasonably expected to be always able to stop, detain or arrest those who perform an attack on the installation, within 500 meters safety zone. As it happened in the situation under consideration, modern

installations or structures, vessels and the environment...” and recommends a flag State “to take all necessary steps to ensure that ... ships flying their flag observe any coastal State’s conditions for entry into and/or navigation within duly established safety zones”. Available at www.imo.org.
equipment, including high speed boats and effective means of communication, careful preparation of the attack and presence of the mother vessel beyond the safety zone but still in the immediate vicinity, facilitate prompt escape of the attackers from the installation and narrow safety zone around it, making their interception by law-enforcement authorities within the range of 500 meters hardly possible. Besides, for the purposes of investigation and prosecution it is important for the coastal State to detain not only the members of the group who are trying to scale or occupy the installation, but also the mother vessel as a crucial *prima facie* offence instrument, as well as those on board, because the vessel and the crew on board were apparently acting as a unit together with those who had been dispatched to the platform.

12.10. The measures taken to curb the illegal action of Greenpeace against the *Prirazlomnaya* were, under the existing circumstances, necessary and adequate to ensure law-enforcement in the Russian EEZ. In light of Greenpeace’s record of unlawful and harmful attacks and witnessing the activists’ intent on continuing the protest of the *Prirazlomnaya* using the *Arctic Sunrise*, the dinghies, line haulers and whatever it takes, the Russian authorities were impelled to stop the illegal, dangerous and obstructive “direct action”, also with a view to investigate the incident and to prosecute those involved.

IV. OBLIGATIONS AND RESPONSIBILITY OF THE FLAG STATE

13.1. The situation of the *Arctic Sunrise* and the *Prirazlomnaya* highlights the flag State’s obligations to respect coastal State’s rights to exploit mineral resources of the continental shelf and, to this end, to exercise properly its jurisdiction over vessels under its flag navigating in the foreign EEZ.\(^75\)

13.2. The obligation of all States exercising their rights under UNCLOS to pay due regard to the coastal State’s sovereign rights with respect to the natural

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\(^75\) Paras. 111-146 of the ITLOS Advisory Opinion on the Request submitted to the Tribunal by the Sub-Regional Fisheries Commission (SRFC) of 2 April 2015 *mutatis mutandis* are quite illustrative in this respect (See [https://www.itlos.org/fileadmin/itlos/documents/cases/case_no.21/advisory_opinion/C21_AdvOp_02.04.pdf](https://www.itlos.org/fileadmin/itlos/documents/cases/case_no.21/advisory_opinion/C21_AdvOp_02.04.pdf)).
resources of its EEZ\textsuperscript{76} includes the obligation of the flag State to prevent violation by a vessel under its flag of the coastal State’s sovereign rights and thus to ensure that the vessels under its flag and under its jurisdiction behave accordingly. To ensure such conduct of the vessels flying its flag the flag State is obligated to take appropriate measures.

13.3. The flag State jurisdiction over vessels under its flag shall be exercised effectively\textsuperscript{77}. The obligations of the flag State stemming from its jurisdiction over the ship flying its flag are partially reflected in Article 94 of UNCLOS, but as the text of paragraph 2 of the Article\textsuperscript{78} confirms are not limited by it.

13.4. For example, under Article 60(6) of UNCLOS all vessels shall comply with generally accepted international standards regarding navigation in the vicinity of installations. Apparently it is even more so when it comes to the safety of an installation \textit{per se}. The flag State is obliged to take necessary measures to ensure this compliance not only after a tortious conduct takes place, but also ahead of it in order to prevent eventual wrongdoing. That is why after the incident with the \textit{Prirazlomnaya} in 2012 and before the events of 18 September 2013 the Russian Federation requested the flag State to take appropriate measures with regard to the \textit{Arctic Sunrise} and those who operate it.

13.5. The pattern of behavior of Greenpeace vessels in the Russian EEZ and in the similar situations elsewhere before the fall of 2013 (in the majority of which vessels flying the flag of the Netherlands were involved) had been well-known to the flag State. The number of incidents instigated by Greenpeace vessels in foreign

\textsuperscript{76} UNCLOS, Art. 58 (3).
\textsuperscript{77} UNCLOS, Art. 94.
\textsuperscript{78} Paragraph 2 of the Article, listing the duties of the flag State, starts with the words “[i]n particular”. In the introductory phrase of paragraph 3 that enumerates issues with regard to which the flag State shall take measures for ships flying its flag to ensure safety at sea, word “inter alia” are used. As ITLOS puts it: “The Tribunal holds the view that, since article 94, paragraph 2, of the Convention starts with the words “[i]n particular”, the list of measures that are to be taken by the flag State to ensure effective exercise of its jurisdiction and control over ships flying its flag in administrative, technical and social matters is only indicative, not exhaustive.” (Advisory opinion delivered by ITLOS upon the request submitted by The Sub-Regional Fisheries Commission (SRFC), para.117.)
EEZs was growing\(^79\), but the flag State confined itself to some policy statements that in the absence of more effective measures could be considered more as encouraging Greenpeace to pursue its campaign of so-called “direct protests” than as a real attempt to bring its activities in accordance with international law\(^80\).

13.6. Despite being perfectly aware of the previous pattern of Greenpeace activities, the flag State failed to exercise properly its jurisdiction over the vessel in question in order to avoid the infringement of legitimate coastal State’s rights neither in this particular incident nor during the similar preceding instances.

13.7. In case with the *Prirazlomnaya* the flag State made a sluggish attempt to investigate the incident, but the assessment conducted by the flag State’s Human Environment and Transport Inspectorate (Ministry of Infrastructure and the Environment) could hardly be considered as an adequate effort by the flag State. It follows from the Inspectorate’s report of 18 October 2013\(^81\) that such offences as entry of the boats from the mother ship into the platform’s safety zone or dropping the crew off at the platform, fall outside the scope of the Inspectorate’s responsibilities, although according to the Inspectorate’s opinion no danger was posed by the *Arctic Sunrise* or its inflatable boats to “ships, maritime traffic, those on board, the environment or the platform”.\(^82\) Nevertheless, it was advised that the

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\(^79\) We should also keep in mind that Greenpeace is not the only organization operating on the vessels under Dutch flag and practicing so-called direct action protests, which in many instances contradict not only the Law of the sea, but also national legislation of the countries they are directed against. One of the vivid examples is the activity of Sea Shepherd.

\(^80\) Even the advisory report prepared for Dutch Government and Parliament by Advisory Council for International Affairs states that the Netherlands “should expand its dialogue with Greenpeace and other NGO’s on developments in the Arctic, as host country to these organizations, it has a major stake in managing tension in the region (“The Future of the Arctic Region: Cooperation or Confrontation?”, Advisory Council on International Affairs, No 90, September 2014, p. 58 (www.aiv-advice.nl)).


\(^82\) As the Inspectorate indicated, “It is clear in any case that the RIBs entered [safety] zone to reach the platform. If there is an established zone an offence may have been committed when the Ribs sailed to the platform and dropped the crew off at the platform. It is unclear whether mother ship AS committed the offence in this case because the safety zone exceeds the maximum permitted under international regulations. Any such offence and expertise to determine whether it gives rights to criminal liability falls outside the scope of the responsibilities of the Inspectorate”. Ibid.
Dutch authorities might launch a criminal investigation into the acts of Greenpeace activists and the vessel (to see if an offence has been committed e.g. “when the RIBs sailed to the platform and dropped the crew off at the platform”\textsuperscript{83}). Information is unavailable whether the flag State did anything to pursue this advice and to submit the matter to the Public prosecution. On the whole, the Russian Federation is not aware if any of the previous incidents in the Russian EEZ involving Greenpeace vessels had been investigated at all.

13.8. The flag State was in a position to anticipate the upcoming developments with the \textit{Arctic Sunrise} and the \textit{Prirazlomnaya}, but failed to act vigilantly. It was aware of the ship’s and Greenpeace’s intentions, of the ship’s and Greenpeace’s pattern of action in the Russian EEZ as well as of Greenpeace’s and its vessel’s past activities in similar situations. Nevertheless it failed to do anything meaningful to preempt the impending events, thus failing to exercise due diligence.

13.9. It also failed to exercise its duties to prevent the escalation when it already had good reasons to believe that the action of the \textit{Arctic Sunrise} might have nothing to do with the exercise of freedom of navigation. While the situation was unfolding and the tension was extremely high, the flag State did nothing to bring to reason Greenpeace and the ship’s crew, to persuade it to adjust its conduct.

13.10. In this regard the flag State was not at all active, though it claims that it enjoys exclusive jurisdiction over the ship. In point of fact, in case of the \textit{Prirazlomnaya}, jurisdiction of the flag State over the \textit{Arctic Sunrise} has not been effective.

13.11. Under the circumstances, the measures taken (if at all) by the flag State to ensure that the ship flying its flag and operated by Greenpeace complies with the legal order in the EEZ of the Russian Federation, were far from being sufficient and, accordingly, the flag State failed to meet its obligations under international law \textit{vis-à-vis} Russia as a coastal State.

\textsuperscript{83} RIB – rigid-hulled inflatable boat.
13.12. This failure of the flag State to take appropriate measures to ensure compliance by the ship flying its flag and navigating in the Russian EEZ in the vicinity of the platform with the applicable legal order resulted in the infringement of the sovereign rights of the Russian Federation to exploit and manage safely and without undue interference natural resources of the continental shelf in its EEZ. Thus, in case of the *Prirazlomnaya* the flag State was acting without due regard to the sovereign rights and exclusive jurisdiction of the Russian Federation as a coastal State in its EEZ and on its continental shelf.

V. CONCLUSIONS

14.1. The so-called “direct action protest” carried out by the Greenpeace activists, can hardly be qualified as anything other than trespassing on the exercise by the coastal State of its sovereign rights in the EEZ, normal safe operations of the *Prirazlomnaya* platform by the duly authorized entities in accordance with the laws of the Russian Federation. Moreover, it involved direct disobedience and obstruction of the legitimate activities of the law-enforcement agencies (Coast Guard) of the coastal State. This action created emergency at sea, endangering Russian Coast Guard personnel, personnel of the platform and members of the *Arctic Sunrise* crew itself, taking into account *inter alia* the harsh weather conditions in the Arctic.

14.2. It was evident from the circumstances of the incident that the *Arctic Sunrise* and its crew were acting as a unit against *Prirazlomnaya* and Russian law enforcement agents. The *Arctic Sunrise* served as a mother ship to the boats that manifestly acted with a common aim of trespassing on the platform and obstructing its operations. That they were not acting independently was equally evident from the coordinated manner in which they obstructed the law-enforcement action of the Russian Coast Guard. The entire so-called protest action
by the vessel was clearly staged, directed and coordinated on the spot by Greenpeace\textsuperscript{84}.

14.3. Judging by the statements of Greenpeace, as well as its previous similar “direct protest” conduct, the action in question was intended to disrupt the activities of the \textit{Prirazlomnaya}, and not merely to draw public attention to the Arctic resources exploitation.

14.4. As their behavior shows, activists should have been aware that on such a complex and potentially hazardous structure as an offshore drilling installation, stringent safety rules must be applied, and that even the presence of unauthorized persons on an installation may put on hold its operations. Otherwise, the activists would not seriously expect to hinder the platform operations by merely scaling it and declaring an intention to carry out a peaceful and safe protest\textsuperscript{85}.

14.5. Suspension of the practical operation of an offshore installation extracting mineral resources necessarily results in economic damage to the legitimate operator of such installation, leading to either suspension of resources extraction, or delays in the start thereof.

14.6. While it is unlikely that compromising the physical safety of the platform was the goal of the activists, the actions carried out look highly irresponsible from this angle as well. The activists should have been aware of risks posed by the use of line haulers to the personnel of the platform and its equipment. The activists were presumably also more than aware of the hazardous consequences that could result from an incident with the platform caused by safety violations.

\textsuperscript{84} ITLOS in The M/V Saiga Case stipulated that a vessel, everything on it, and every person involved or interested in its operations form a unit according to UNCLOS and should be treated as an entity linked to a flag State. See THE M/V “SAIGA” (No. 2) Case, Judgment of 1 July 1999, para.106, at https://www.itlos.org/fileadmin/itlos/documents/cases/case_no_2/merits/Judgment.01.07.99.E.pdf.

\textsuperscript{85} See, for example, A.Oude Elferink citing the Dutch Branch of the Organization of Oil and Gas Producers (NOEPA), according to which “upon an intentional and unauthorized entry of a vessel or its boats into the safety zone of an installation, the operator of the installation will, if deemed necessary, shut it down to ensure the safety of the installation and the personnel stationed on it. The further response to such an entry will be assessed on a case-by-case basis”, in Alex G. Oude Elferink “The Arctic Sunrise Incident: a Multi-faceted Law of the Sea Case with a Human Rights Dimension”, The International Journal of Marine and Coastal Law 29 (2014), 253, footnote 44.
14.7. Apart from the declared intention to obstruct the operation of the platform the *Arctic Sunrise* actively disobeyed and obstructed the law-enforcement measures taken by the Russian Coast Guard, deliberately acting in such a way as to aggravate the confrontation, provoking the Russian authorities. Activists’ actions could have been ceased after the first preventive measures were taken by the Russian authorities. Nevertheless, this did not happen. The *Arctic Sunrise* kept refusing to comply with the orders of the law-enforcement authorities continuing to circle around the platform.

14.8. The history of “direct action protests” of Greenpeace, the pattern of its deliberately aggressive behavior manifestly demonstrate that the goals of activists go far beyond the scope of merely “peaceful” protest and are specifically directed at interference in and prevention of unhindered exercise by States of their sovereign rights, and by legal persons – of their lawful activities in areas that happen to fall into focus of Greenpeace numerous campaigns – and in the EEZ (on the continental shelf) in particular.

14.9. In all these instances activists did not conceal their intentions which were to hamper, for as long as possible, normal functioning of the respective vessel or the platform. Nonetheless, in all these instances the Russian law-enforcement authorities in fact did not respond forcefully to those actions, rather focusing on maintaining public order and issuing respective warnings, and requesting the flag State authorities to ensure compliance of the vessels flying its flag with the rules applicable in the Russian EEZ.

14.10. In the absence of any noticeable change in the Greenpeace’s defiant and aggressive pattern of behavior, and given the fact that their next target – the *Prirazlomnaya* platform was in the final stage of preparations for the beginning of oil extraction, the Russian authorities were no longer in a position to turn a blind eye to the attacks on the Russian sovereign rights, public and private interests, safety and security in the inclement Arctic conditions.
14.11. Having a wide margin of appreciation in choosing the measures to suppress the Greenpeace’s illegal action, the Russian authorities from the very beginning of the “protest” were in touch with the activists over the radio and tried to persuasively prevent them from committing illegal action in the EEZ of Russia. This was to no avail and the Russian authorities, being well aware of Greenpeace’s record of unlawful and harmful attacks had to undertake measures to stop the illegal action of *Arctic Sunrise*.

14.12. In the exercise of its exclusive enforcement jurisdiction and taking into account the factual circumstances of the incident the Russian Federation had the right (a) to take measures to prevent or curb the *Arctic Sunrise* Greenpeace illegal action against the *Prirazlomnaya* in the close vicinity of the platform when the action became imminent or actually began and malicious intentions of the “protesters” were obvious; (b) to prevent further illegal action of *Arctic Sunrise* against the *Prirazlomnaya*; and (c) to investigate the case and to prosecute those involved in the illegal activities.

14.13. To this end boarding the *Arctic Sunrise* and detaining the vessel and its crew without consent of the flag State were, under the existing circumstances, in conformity with international law.