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Piracy or Hooliganism: detention of the Arctic Sunrise

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Abstract

Dual accusations have been presented to the detained crewmembers of the Greenpeace vessel Arctic Sunrise, and it is unclear under which charge the Russian authorities will prosecute. In this paper the major differences between the "hooliganism" charge under Article 213 of the Criminal Code of the Russian Federation and the "piracy" charge under Article 227(3) are highlighted, and key terms within each charge are analyzed and defined. To analyze terms such as "vessel" and "private ends" many sources of international and domestic law are considered, and issues of "force" and the law of hot pursuit are raised. In addition to an analysis of the charges the protestors face in Russian courts the legality of the seizure of the vessel is considered, as well as the proceedings brought by the flag State, the Netherlands, to the International Tribunal for the Law of the Sea. Sources of international and domestic law considered include the 1958 Geneva Convention on the High Seas, the 1982 United Nations Convention on the Law of the Sea, Article 227(1) of the Russian Criminal Code, the Merchant Shipping Code of the Russian Federation, Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation of 1988, and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf.

Keywords

Greenpeace, Arctic Sunrise, piracy, hooliganism, ITLOS, Netherlands.

Introduction

Since 2010, Greenpeace has pursued a campaign to "Save the Arctic", with the objective of securing an international agreement to create a global sanctuary around the North Pole, banning commercial fishing and offshore drilling.¹ To this end, Greenpeace activists have participated in protests aimed at a multitude of oil companies, including Cairn Energy and their exploration off Western Greenland, Royal Dutch Shell and their operations in the Barents and Chukchi Seas, and Rosneft concessions in the Barents and Kara Seas. Greenpeace's latest protest in the "Save the Arctic" campaign targeted Russia's Gazprom and their Prirazlomnaya fixed oil platform operating on the continental shelf of the Barents Sea. The Prirazlomnaya is located within the Russian Exclusive Economic Zone, but not within territorial waters, at 69° 15'56.88"N 57° 17'17.34"E.² The Russian authorities

have declared a safety zone around the platform with a radius of three nautical miles, under Article 60 of the United Nations Convention on the Law of the Sea, which allows for the establishment of reasonable safety zones around artificial islands, installations, and structures.

Greenpeace successfully executed a protest against the Prirazlomnaya platform before their failed protest in September 2013. Protesters had succeeded in scaling the oil platform and suspending themselves from the side for a total of fifteen hours in August 2012. The protest ended peacefully, and the protesters returned to their vessel without intervention from the Russian authorities. Shortly after the protest, Gazprom announced a delay in production, citing safety concerns; Greenpeace media releases attributed the delay to their efforts, claiming that the intent of their protest had been to raise awareness of those safety issues.³

Greenpeace launched the second protest over a year later, on 18 September 2013. Unlike the first protest, the Russian authorities intervened shortly after the second protest began, and all 30 crew of the *Arctic Sunrise*, along with the vessel, were detained.

1 "Statement of facts concerning the boarding and detention of the MY Arctic Sunrise and the judicial proceedings against all 30 persons on board", *Greenpeace International*, available at: <http://www.greenpeace.org/international/Global/international/briefings/climate/2013-10-19%20GP%20Statement%20of%20Facts%20Final.pdf>

2 Ibid.

3 Ibid.

Detention of *Arctic Sunrise*

For analytical purposes, a timeline of events has been constructed. Given the unavailability of a cohesive timeline released by the Investigative Committee of the Russian Federation, this timeline has been assembled by using media and news articles released by Greenpeace. All times provided by Greenpeace are Moscow Standard Time.

On Wednesday, 18 September 2013 at 04:26, protesters aboard the *Arctic Sunrise* launched five inflatable boats towards the Prirazlomnaya Platform.⁴ The launch occurred outside the three nautical mile radius around the platform, although the inflatable boats soon entered the radius. Greenpeace maintains that the platform would have been advised of the oncoming protest prior to the launch of the inflatables, but as the logbook and radio communication recordings on the vessel have been obtained by the Investigative Committee and have not been released to the public, this is unsubstantiated. Two inflatable vessels reached the oil platform and two activists disem-

⁴ Ibid. All information for the Greenpeace timeline of events from September 18-October 19 was collected from Greenpeace International's official communication to the Ministry of Foreign Affairs of the Kingdom of the Netherlands overseeing the events.

barked, beginning to mount the side of the platform with climbing equipment. The activists claim they had no intention of scaling the platform high enough to reach the main deck; their goal was to hang a banner below the deck. Once the activists began to climb, personnel on the oil platform deck began to utilize fire hoses to repel the climbers.

The remaining three inflatable vessels had begun to tow a safety pod – whose function was to protect the climbing activists from fire hoses and the elements for the duration of their protest – but the tow line snapped, and the *Arctic Sunrise* retrieved the pod. In the process of recovering the safety pod the *Arctic Sunrise* briefly entered the safety zone, retreating immediately after retrieval. Greenpeace maintains that this was the only instance of the *Arctic Sunrise* entering the safety zone.

Approximately an hour after the initial launch, at 05:28 hours, the first Russian Coast Guard inflatables were deployed and approached the activists at the platform. The officials in the Coast Guard vessels allegedly slashed at the Greenpeace inflatables and fired shots into the water. It is unclear from the publicly released video footage where the shots came from and who fired them. Greenpeace declared that there were

shooters both on the deck of the oil platform and in the Coast Guard inflatable vessels. The Federal Security Service of the Russian Federation has since confirmed the use of preventative firing. The activists did not resist, and the two activists climbing the platform were immediately apprehended and transported to the Coast Guard vessel, while the remaining activists retreated to the *Arctic Sunrise*. During this time, an initial radio communication between the Coast Guard vessel and the *Arctic Sunrise*, clearly heard in released video footage, communicated the Coast Guard intention to investigate the activists as potential terrorists.⁵

Subsequently, the Coast Guard inflatables attempted to board the *Arctic Sunrise*, which took evasive action, temporarily halting the impending boarding process. An initial threat to the Greenpeace vessel from the Coast Guard to open fire unless boarding was permitted led to negotiations, which eventually ceased with no result. The following day, the Ministry of Foreign Affairs of the Russian Federation released a statement describing the protest as "aggressive and provocative" with "outward signs of extremist activity that may result in death

and other serious consequences", which resulted in the decision to "detain the vessel".⁶ The Ria Novosti news agency shortly thereafter released a report claiming that the Prirazlomnaya had reported the threat of a terrorist attack, asserting that the five Greenpeace vessels had "an unidentified object resembling a bomb," which, although not confirmed by Greenpeace, presumably referred to the safety pod.⁷ That evening, armed Russian officials boarded the *Arctic Sunrise* from a helicopter. Greenpeace claims that at this point the vessel was within the Russian Exclusive Economic Zone, but outside both Russian territorial waters and the oil platform safety zone. The agents then apprehended and presented initial allegations to the crew, which include terrorism, breach of a 500m safety zone, illegal scientific activities, and an attempt to seize control of a platform. The *Arctic*

5 "Prirazlomnaya Gazprom Oil Rig Protest Clipreel", *Greenpeace International*, available at: <http://photo.greenpeace.org/image/GP04VK6>

6 "Statement of facts concerning the boarding and detention of the MY Arctic Sunrise and the judicial proceedings against all 30 persons on board", *Greenpeace International*, available at: <http://www.greenpeace.org/international/Global/international/briefings/climate/2013-10-19%20GP%20Statement%20of%20Facts%20Final.pdf>

7 "Border guards hold the 'Arctic Sunrise' captain responsible for the incident" ["Pogranichniki schitayut otvetstvennym za ChP kapitana 'Arktik Sanraiz'"], *Ria Novosti*, available at: <http://ria.ru/eco/20130919/964386631.htm>

Sunrise was then escorted to Murmansk on Friday, 20 September 2013.

The legal support for the breach of a 500m safety zone charge is thin. The three nautical mile safety radius was established by the Russian Federation via declaration in the Notice to Mariners No. 51 (2011).⁸ The authority to establish the zone comes from Article 60(4) of UNCLOS, which allows a coastal State to "establish reasonable safety zones".⁹ Article 60(5) requires that "due notice shall be given of the extent of safety zones", which is fulfilled by the Notice to Mariners. The point of contestation is the breadth of the safety zone.¹⁰ UNCLOS explicitly states that safety zones "shall not exceed a distance of 500 metres around them (...) except as authorized by generally accepted international standards or as recommended by the competent international organization".¹¹ No

8 "Statement of facts concerning the boarding and detention of the MY Arctic Sunrise and the judicial proceedings against all 30 persons on board", *Greenpeace International*, available at: <http://www.greenpeace.org/international/Global/international/briefings/climate/2013-10-19%20GP%20Statement%20of%20Facts%20Final.pdf>

9 "Convention on the Law of the Sea", available at: www.un.org/depts/los/convention_agreements/texts/unclos/closindx

10 Ibid.

11 Ibid.

international organization has released a recommendation regarding the size of the safety zone around Prirazlomnaya, which suggests that any argument validating the breadth of the zone must rely on a "generally accepted international standard", an argument unlikely to succeed.

The 1958 Geneva Convention on the Continental Shelf also addresses the establishment of safety zones surrounding continental shelf installations. However, the standards established in the Convention align with the requirements of Article 60 of UNCLOS; Article 5(3) states "safety zones (...) may extend to a distance of 500 metres around the installations and other devices which have been erected, measured from each point of their outer edge".¹²

On Tuesday, 24 September 2013, shortly before the arrival of the *Arctic Sunrise* in Murmansk, the Investigative Committee published an official statement opening a criminal case against the activists under Article 227(3) of the Criminal Code: piracy by an organized group. The initial statement from the Committee stated: "(w)hen a foreign vessel filled with electronic equipment

12 "Convention on the Continental Shelf", available at: <http://sedac.ciesin.columbia.edu/entri/texts/continental.shelf.1958.html>

of unknown purpose, and a group of individuals that have declared themselves members of an environmental advocacy organization are trying to do nothing less than seize a drilling platform by storming it, there are legitimate doubts as to their intentions".¹³

The activists were detained after the arrival of the *Arctic Sunrise* in Murmansk. The 1993 Russian Constitution allows detention for up to 48 hours, and a court order is required for any investigative detention lasting longer. Thus, on Thursday, 26 September, the Investigative Committee began submitting petitions to the Leninskii District Court of Murmansk to extend the detentions. The hearings continued over several days until all 30 activists were remanded into custody; the length of investigative detention was extended to 24 November. A District Court Judge also issued a warrant for the investigation of crew quarters aboard the *Arctic Sunrise*, pursuant to Article 177 of the Russian Code of Criminal Procedure.

13 "Statement of facts concerning the boarding and detention of the MY Arctic Sunrise and the judicial proceedings against all 30 persons on board", *Greenpeace International*, available at: <http://www.greenpeace.org/international/Global/international/briefings/climate/2013-10-19%20GP%20Statement%20of%20Facts%20Final.pdf>

In early October, accusations were presented to the activists under Article 227(3). Shortly thereafter the Netherlands, the flag State of the *Arctic Sunrise*, began to seek the release of the vessel and her crew members through international proceedings, utilizing the United Nations Convention on the Law of the Sea. The arrest of the vessel was brought before a court on 7 October, and the judge found that the vessel had been lawfully seized under Article 19 of the 1958 Geneva Convention on the High Seas. On 9 October 2013 the Investigative Committee declared that it had found narcotics aboard the *Arctic Sunrise*, which Greenpeace declared to be "presumably poppy straw and morphine", which must be kept on board a vessel as part of medical supplies under Dutch law.¹⁴ No accusations regarding any alleged narcotics found aboard the *Arctic Sunrise* have been presented to the crewmembers.

On 21 October the Dutch Government submitted its application to the International Tribunal for the Law of the Sea. On 23 October the Russian Ministry of Foreign Affairs declared that it would neither attend the Tribunal hearings nor abide by the outcome. On 24 October the first of the activists were presented

14 Ibid.

with accusations of hooliganism under Article 213(2) of the Criminal Code of the Russian Federation, although by early November it was evident that the Investigative Committee had no intention of rescinding the earlier accusations of piracy, raising questions as to whether both crimes would be prosecuted.

On 15 November the Investigative Committee applied for a 3-month extension of investigative detention, which did not succeed, and eventually the detained activists began to be conditionally released on surety. On 21 November the Murmansk court rejected an appeal over the legality of the arrest of the *Arctic Sunrise*. The next day, on 22 November, the International Tribunal for the Law of the Sea released its opinion and order in the *Kingdom of the Netherlands v. Russian Federation*, named the "*Arctic Sunrise*" case, which demanded the release of the remaining detained activists on surety. The ITLOS decision in the "*Arctic Sunrise*" case expressly ordered the following provisional measures, as allowed under Article 290(5) of the Convention: that the vessel and the activists be released on the posting of 3.6 million euros by the Netherlands, and that the vessel and the detained activists be allowed to leave the territory and maritime areas of the Russian Federation. A week

later, on 29 November, the Dutch Government complied with the ruling of ITLOS, securing a bank guarantee for the surety payment. By 4 December all the activists had been conditionally released on surety, although whether the driving force behind the releases was the end of the granted investigative detention period or the ruling of ITLOS is unclear. However, Russia has refused to comply with the ITLOS ruling and allow the activists to leave the country.

The State Duma adopted a Law on Amnesty based on a draft submitted by the President of the Russian Federation which granted certain amnesties to persons convicted under Article 213.¹⁵

Legal Implications

Under the 1958 Geneva Convention on the High Seas and the 1982 United Nations Convention on the Law of the Sea, piracy is defined as an act of violence committed on the high seas by a private vessel against another vessel for private ends. The UNCLOS definition

15 On the original draft of the amnesty law, see "Greenpeace: Current draft of Russian amnesty does not include Arctic 30", *Greenpeace International*, available at: <http://www.greenpeace.org/international/en/press/releases/Greenpeace-Current-draft-of-Russian-amnesty-does-not-include-Arctic-30/>

of piracy is found in Article 101, which stipulates piracy as:

(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 or a private aircraft, and directed:(i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;(ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State.¹⁶

The exact language of Article 227(1) of the Russian Criminal Code defines piracy as "An attack against a sea-going or river vessel for the purpose of taking possession of another's property committed with the application of force or with the threat of the application thereof".¹⁷ The accusation under Article 227(3) utilizes the same definition with the added stipulation that the act must be "committed by an organized group or entailed through negligence the death of a person or other grave consequences".¹⁸ Considering that neither the Russian authorities nor Greenpeace have claimed

that a death occurred during the failed protest, the activists would be charged under Article 227(3) because the Greenpeace organization qualifies as an "organized group".

The definition in UNCLOS is more explicit, specifying "committed for private ends" and adding "detention" and "depredation." However, other than the vital "private ends" question, the key aspects of the two definitions as they relate to this case are the same; the attack must have occurred using a vessel and with force or the threat of force.

The three main problematic aspects in the two definitions are: could Greenpeace's actions be termed "force", is an oil platform a "vessel", and could political protest be termed "private ends". The force claim is not analyzed, due to lack of substantial and reliable evidence; while many pictures and videos have been released depicting the events, the quality of video is questionable at best and the majority of the submissions have been by Greenpeace, which must be assumed to have some measure of bias.

The "private ends" question has arisen in the United States, in the Federal Court decision in *Institute of Cetacean Research v. Sea Shepherd*.¹⁹ There the

16 "Convention on the Law of the Sea", available at: www.un.org/depts/los/convention_agreements/texts/unclos/closindx

17 Butler, W.E. (2011), *Russian Criminal Law and Procedure*, Wildy, Simmonds & Hill Publishing, London, p. 157.

18 Ibid.

19 Guilfoyle, D. (2013), "Political Motivation and Piracy: What History Doesn't Teach

holding determined that political protest could be termed "private ends", and if it crosses the line into force, it is piracy. However, experts are split over the issue of whether the court properly handled the question. Some argue that politically motivated acts, by the pure reasoning of them being politically motivated, cannot be for private ends. Others argue that any act not sanctioned by the State is private. There is not much precedent on which to base either argument, although a convincing response to the latter argument is that the word "private" in and of itself is usually contrasted with the word "public" and not the word "political", suggesting that the intention of the drafters in using the word "private" may have been to separate those actions from those that could be termed "public," which would not include politically motivated actions that are not sanctioned by a State.

The question on whether the oil platform should be considered a "vessel" is also controversial. One view is that the act of fixing the platform to the continental shelf should remove it from classification as a "vessel". On the other hand, the ability of the oil platform to move—as it

must have been moved to be transported to its location on the continental shelf to begin with—is an indicator of its ability to be classified as "vessel", although the determination of a platform as vessel due to the instances of its transport by tug boat is not convincing. In Article 1 of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation of 1988, it is declared that a "'ship' means a vessel of any type whatsoever not permanently attached to the sea-bed, including dynamically supported craft, submersibles, or any other floating craft". Although the oil platform is able to be disconnected from the continental shelf and therefore not distinctly "permanent", the necessity for the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf seems to imply that the original intention of the Convention was not to cover fixed platforms, which for the purpose of the protocol is defined as "an artificial island, installation or structure permanently attached to the sea-bed for the purpose of exploration and exploitation of resources or for other economic purpose," a definition that appears to fit an oil platform better than that of a "vessel."

The Merchant Shipping Code of the Russian Federation also provides

Us About Law", *Blog of the European Journal of International Law*, available at: <http://www.ejiltalk.org/political-motivation-and-piracy-what-history-doesnt-teach-us-about-law/>

a definition of "vessel." In Article 7(1) of the Code, it is written that "a vessel in this Code shall be understood [as] any self-propelled or non-self-propelled floating construction used for the purpose of merchant shipping."²⁰ Disregarding the "used for the purpose of merchant shipping" qualification, it is evident that a fixed oil platform would qualify as a vessel under the Merchant Shipping Code; when in transport, the oil platform proved to be capable of "floating," and is obviously a man-made structure, which would qualify it under "construction." The platform would have been moved by tugboat, which disqualifies it from being "self-propelled," but the code also applies to constructions that are "non-self-propelled." Therefore, the strongest legal argument would be to define a fixed oil platform as a "vessel" under Russian law; the argument under international law, while existent, is significantly weaker.

However, other international rules may apply. The Russian authorities maintain that the Greenpeace activists had the intention of unlawfully seizing or exercising control over the oil platform, which if done by force, threat, or means of intimidation is unlawful under

the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf of 1988 [ratified by Russia in 2001]. Furthermore, the capture of the *Arctic Sunrise* should be considered legal under international law. While the *Arctic Sunrise* did not enter the safety zone surrounding the oil platform, disregarding the short period of time to retrieve the safety pod, the inflatables launched from the vessel did, and therefore the right of pursuit and enforcement applies. Article 60 of the Law of the Sea Convention allows the establishment of the safety zone, although as discussed earlier, the breadth of the declared zone may render the safety zone invalid, and Article 111, regarding the law of hot pursuit, applies "mutatis mutandis" to safety zones. The law of hot pursuit only applies in some circumstances, and must be preceded by a visual or auditory signal, and both requirements were met; even disregarding the argument that, under Article 111(2) any infringement of the safety zone allows hot pursuit. Article 111(1) reads: "[t]he 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," and either piracy and terrorism, as the

20 "Merchant Shipping Code of the Russian Federation", available at: <http://folk.uio.no/erikro/WWW/HNS/rmc.pdf>

Russian Coast Guard initially believed, would fall under "laws and regulations of the Russian State," and are therefore acceptable justifications for hot pursuit as well as the boarding of a vessel by foreign law enforcement officials. Although the piracy allegations had yet to be communicated to the crew of the *Arctic Sunrise* by the time of boarding, it is clear from the footage posted by Greenpeace that the Russian authorities continuously communicated their intent to investigate the crew as terrorists. Furthermore, the video footage also shows radio communication clearly expressing their intent to seek entrance to the vessel by either peaceful or forceful means. Article 111(4) stipulates "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." Given that the Coast Guard witnessed the return of the five Greenpeace inflatables to the *Arctic Sunrise*, assuming that they did not witness the initial launch, it would be evident that the *Arctic Sunrise* was operating in the capacity of "mother ship" to "craft working as a team," legitimizing the end seizure of the *Arctic Sunrise*.

The legality of the Russian officials boarding via helicopter has also been questioned. Article 111(6)(b) prescribes that when hot pursuit is effectuated by aircraft, "the aircraft giving the order to stop must itself actively pursue the ship until a ship or another aircraft of the coastal State, summoned by the aircraft, arrives to take over the pursuit, unless the aircraft is itself able to arrest the ship." In this instance, it is clear that the aircraft was able to arrest the ship. In regards to the other provisions of Article 111(6), the boarding occurred still within the exclusive economic zone, and the pursuit was conducted without interruption; the boarding by helicopter was legal.

Regarding the validity of the jurisdiction of the International Tribunal for the Law of the Sea, Russia did enter reservations to the United Nations Convention on the Law of Sea during signature and ratification, which it understands as invalidating jurisdiction of the Tribunal over this case. In particular, during ratification Russia set forward a declaration that stated:

in accordance with Article 298 of the United Nations Convention on the Law of the Sea, [the Russian Federation] does not accept the procedures, provided for in section 2 of Part XV of the Con-

vention, entailing binding decisions with respect to disputes concerning the interpretation or application of articles 15, 74 and 83 of the Convention, relating to sea boundary delimitations, or those involving historic bays or titles; disputes concerning military activities, including military activities by government vessels and aircraft, and disputes concerning law-enforcement activities in regard to the exercise of sovereign rights or jurisdiction.²¹

Assuming that the case falls under Russia's exercise of sovereign rights or jurisdiction, the clause regarding law-enforcement activities infers that the Russian Federation is within her rights to refuse to honor the jurisdiction of the Tribunal.

However, it is arguable that since law enforcement disputes fall under Article 297(2) and (3) of the United Nations Convention on the Law of the Sea, and since the prompt release proceedings undertaken by the Tribunal fall under Article 292, Russia's reservations on the applicability of the Tribunal's jurisdiction may not be valid. Since the activists were

granted conditional release on security with the end of the investigative detention period, the point of contention following the declaration of the Tribunal's order is allowing the activists to leave the country; the Russian authorities have declared that they will not comply. However, barring the issue being reiterated in another international forum, it is unlikely the authorities' failure to comply will directly affect the activists' trials, given the lack of an international enforcement apparatus capable of imposing the declaration of the tribunal upon the Russian Federation.

It is notable, however, that the Russian Federation has been involved in three previous Tribunal decisions: the "Hoshinmaru" and "Tomimaru" cases against Japan, and the "Volga" case against Australia. In the "Hoshinmaru" and "Tomimaru" cases Russia was also ordered to promptly release captured vessels and crews, and followed the order of the Tribunal, but both cases involved Japanese vessels fishing within the Russian exclusive economic zone, a separate issue from the current proceedings.

In regards to the exercise of jurisdiction, as a Russian oil platform both within the Russian exclusive economic zone and attached to a portion of the Russian continental shelf, the acts would

21 "Declarations and Statements", *United Nations Oceans & Law of the Sea*, available at: http://www.un.org/depts/los/convention_agreements/convention_declarations.htm#Russian%20Federation%20Upon%20signature

be within the jurisdiction of Russian law, and charges would be applicable under the Russian Criminal Code.

Salient questions regarding the *Arctic Sunrise* case under the Russian Criminal Code extend to both the piracy charges and the hooliganism charges, as it is unclear which of the charges will be applied, or if the Russian authorities intend to prosecute the activists under both charges. Article 213 defines hooliganism as a "flagrant violation of public order expressed by a clear disrespect for society, committed with the use of a weapon or articles used as a weapon ...".²² Article 227 describes piracy as an "attack against a sea-going or river vessel for the purpose of taking possession of another's property committed with the application of force or with the threat of the application thereof".

Notably, Article 213 expressly requires hooliganism to be motivated by "clear disrespect for society". Assuming that in this case "society" would extend to the operations of the oil platform, Greenpeace has blatantly and repeatedly admitted their intentions in staging the protest, freely admitting that their organization does not approve of the op-

erations of the *Prirazlomnaya*. Whether the declared intent to protest qualifies as "clear disrespect" is unclear.

One issue with the charge under Article 227 not mirrored in Article 213 is the classification of an oil platform as "a sea-going or river vessel." Using the Russian Merchant Code as examined above, it is evident that under Russian law an oil platform would qualify under "sea-going vessel".

A key issue is the "purpose of taking possession of another people's property" (Article 227). Although the Russian authorities have made clear in many press releases that they believed the intent of the activists was to seize or otherwise control the platform, Greenpeace admitted their intention to hang a banner on the side of the platform, for which they would need to "take possession" of the oil platform. However, the footage currently released is ambiguous, although there is the possibility that evidence exists that has not been released to the public.

Both the hooliganism and piracy charges have another vital weakness: "committed with the application of force or with the threat of the application thereof." None of the photographs or footage suggests that there were any indications on the part of the activists to incite any

22 Butler, W.E. (2011), *Russian Criminal Law and Procedure*, Wildy, Simmonds & Hill Publishing, London, p. 145.

fear or suspicion that force may be used, and the Russian authorities have not publicly declared that they believe the activists were in possession of any weapons. The only indicia of fear of weapons may come from the safety pod momentarily brought out of the *Arctic Sunrise*, which the oil platform allegedly communicated to the Russian Coast Guard as a possible bomb. However, with both the quick removal of the safety pod from the scene and the eventual search that must have cleared the pod of any remaining suspicions of it being a weapon weakens the argument.

Some Western legal experts argue, however, that the offending party is not the group of activists, but the Russian Federation, and that the key legal facts in this case point to Russia blatantly performing illegal actions against the *Arctic Sunrise* and her crew. As previously mentioned, Russia's three nautical mile radius safety zone surrounding the Prirazlomnaya is in direct violation of Article 60(5) of the Law of the Sea Convention and Article 5(3) of the 1958 Geneva Convention on the Continental Shelf. It is arguable that the use of force committed by the Coast Guard against the activists was disproportionate, especially the use of preventative fire against unarmed and unresisting activists. It is

alleged that while en route to Murmansk the Russian authorities turned off the Automatic Identification System on the vessel, a violation of Regulation 19 of Chapter V of the International Convention for the Safety of Lives at Sea. Further, the alleged slashing of the inflatable vessels may be in further violation of right to life protections in either the Law of the Sea Convention or the European Convention on Human Rights.

Conclusion

Forum will be vital in determining the outcomes of any future litigation. Evidence of the Russian Federation violations against the activists are unlikely to be presented during a domestic prosecution under either Article 213 or 227 of the Criminal Code, but could influence an international court or tribunal, as could Russia's failure to comply with the order of the Law of the Sea tribunal. Defining an oil platform as a vessel is better supported by domestic Russian law than international law.

The outcome of domestic trials will largely depend on the accusation. While both Article 213 and 227 share the same weakness in proving the intent to use force or the threat of force, and the existence of weaponry or articles used as

weaponry, there are key differences between the charges. Under the hooliganism charge, it is unnecessary to prove that an oil platform would qualify as a vessel or that the activists intended to take possession of any property onboard the platform or take possession of the platform

itself. If the authorities prosecute under Article 213, the vital question will be if Greenpeace's actions were motivated by "clear disrespect for society".

These questions can only be definitively answered by testing them in a court of law.

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Пиратство или хулиганство: задержание ледокола «Арктический Рассвет»

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Аннотация

В сентябре 2013 года возникло несколько возражений правового порядка в результате задержания ледокола Арктический Рассвет со стороны России. На национальном уровне российские власти представили двойное обвинение задержанным членам экипажа Рассвет; хулиганство по Статье 213(2) Уголовного кодекса Российской Федерации и пиратства в соответствии со Статьей 227(3). На международном уровне Нидерланды довели дело до Международного трибунала по морскому праву. Данная статья рассматривает варианты определений «пиратства» на международном и национальном уровне. Предложено сравнение данных определений к определению «хулиганство» в соответствии со Статьей 213. Для точного анализа определения ключевых терминов, таких как «судно» и «личные цели», рассмотрены некоторые источники международного и национального права, в том числе Женевская конвенция об открытом море 1958 года, Конвенция ООН по морскому праву 1982 года, Статья 227(1) Уголовного кодекса Российской Федерации и Кодекса торгового мореплавания Российской Федерации.

Ключевые слова

Гринпис, Арктический рассвет, пиратство, хулиганство, МТМП, Нидерланды.

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