

CHAPTER I INTRODUCTION

A. Background

Freedom of the seas doctrine is a principle put forth in the seventeenth century essentially limiting national rights and jurisdiction over the oceans to a narrow belt of sea surrounding a nation's coastline.

The remainder of the seas was proclaimed to be free to all and belonging to none.¹ However, problems started to arise when fishing became overwhelming, pollution and wastes from oil tanker or transport ships began threatening the marine life. A tangle of claims, spreading pollution, competing demands for lucrative fish stocks in coastal waters and adjacent seas, growing tension between coastal nations' rights which turned the sea into another battlefield of conflict and instability.

The role of the world's oceans has rapidly evolved and nowadays far exceeds the traditional uses of marine spaces, which for centuries focused essentially on fisheries, transportation and communications. This trend has not only intensified traditional marine uses, but also has resulted in the exploitation of marine resources, mainly minerals and energy, that were inaccessible, if not unknown, in previous generations. The oceans were exploited like never before.

On 1 November 1967, Malta's Ambassador to the United Nations, Arvid Pardo, asked the nations of the world to look around them and open their eyes to a looming conflict that could devastate the oceans, the lifeline

¹ High Seas, <http://www.britannica.com/topic/high-seas#ref215901> , accessed on 22 October 2015

of man's very survival. Pardo ended with a call for "an effective international regime over the seabed and the ocean floor beyond a clearly defined national jurisdiction". "It is the only alternative by which we can hope to avoid the escalating tension that will be inevitable if the present situation is allowed to continue", he said.²

UNCLOS is the international agreement that resulted from the third United Nations Conference on the Law of the Sea (UNCLOS III), which took place between 1973 and 1982. The Law of the Sea Convention defines the rights and responsibilities of nations with respect to their use of the world's oceans, establishing guidelines for businesses, the environment, and the management of marine natural resources. It replaces the older and weaker freedom of the sea doctrine. Up to today, 181 states have signed ratified UNCLOS, including Indonesia, Singapore, Russia and Netherlands.³

Most of the cases resulted from the violation of UNCLOS are brought to International Tribunal Law of the Sea (referred as ITLOS). One of the cases is the Arctic Sunrise, between Russia and Netherlands, occurred in the Economic Exclusive Zone of the Russia in September 2013.

² "Historical Perspective", http://www.un.org/Depts/los/convention_agreements/convention_historical_perspective.htm, accessed on 24 October 2015

³ United Nations, "Convention Declarations", http://www.un.org/Depts/los/convention_agreements/convention_declarations.htm, accessed on 25 October 2015

“Save The Arctic”, a campaign by Greenpeace aimed to protect the Arctic by preventing the oil drilling and industrialized fishing in the area completely. Why the Arctic?

The Arctic is one of the most unique places on Earth. It spans eight countries, is home to more than 13 million people and provides a habitat for some of the most incredible wildlife on Earth that you can find nowhere else. Most of us have not been to the Arctic, but the Arctic affects us in our daily lives in ways that we do not even realize. And now, it's the battleground for what could be the most important fight in environmental history.

The Arctic plays its role as the world's air conditioner. It used to keep our planet cool by reflecting sunlight. Unfortunately, as the world gets warmer and warmer day by day, the Arctic is melting and so the Arctic sea is absorbing sunlight instead of reflecting it. This has caused the world gets warmer and eventually being the cause for the ice to melt even faster than before. The Arctic waters may contain approximately 20% of the world's remaining oil and gas resources. As most easily extractable fossil fuel reserves has been exploited, and the once untouchable resource because of the Arctic ice pack now shrinks made it accessible to the oil companies who play a big role in worsening our climate change. By drilling into the Arctic, they are worsening our climate change than before.

One of the mentioned companies that were protested for their oil drilling is Gazprom. Gazprom is a Russia state-owned global energy

company having its headquarter at Moscow, Russia. Its major business lines are geological exploration, production, transportation, storage, processing and sales of gas, gas condensate and oil, sales of gas as a vehicle fuel as well as generation and marketing of heat and electric power. At present, Gazprom actively implements large-scale projects aimed at exploiting gas resources of the Yamal Peninsula, Arctic Shelf, Eastern Siberia and the Far East.⁴

Protesting the oil drilling in the Arctic is Greenpeace.

Greenpeace is a non-governmental environmental organization with bases in over forty countries and with an international coordinating body in Amsterdam, the Netherlands. Greenpeace states its goal is to “ensure the ability of the Earth to nurture life in all its diversity” and focuses its campaigning on worldwide issues such as climate change, deforestation, overfishing, commercial whaling, genetic engineering, and anti-nuclear issues. It uses direct action, lobbying, and research to achieve its goals.⁵

Greenpeace receives its funding from its 3 million individual supporters and foundations. It screens all major donations in order to ensure it does not receive unwanted donations. The organization does not accept funds from governments, intergovernmental organizations, political parties or corporations in order to avoid their influence. Greenpeace has a general consultative status with the United Nations Economic and Social

⁴ Gazprom, “About Gazprom”, <http://www.gazprom.com/about/>, accessed on 16 September 2015

⁵ Greenpeace, “About Greenpeace”, <http://www.greenpeace.org/international/en/about/>, accessed on 17 September 2015

Council and is a founding member of the INGO Accountability Charter; an international non-governmental organization that intends to foster accountability and transparency of non-governmental organizations.

This global organization is known for its direct actions and has been described as the most visible environmental organization in the world. Greenpeace has raised environmental issues to public knowledge by promoting their motto “When the last tree is cut, the last river poisoned, and the last fish dead, we will discover that we can't eat money...”

There were 16 crews, 12 Greenpeace activists and 2 journalists from different nationalities, such as United States, Argentina, Australia, Brazil, Canada, Denmark, France, Italy, Russia, etc, boarded the Greenpeace ship named Arctic Sunrise on 11 August 2013. The ship departed from the Norwegian port of Kirkenes to begin a month-long expedition to protest against oil exploration in the Arctic waters.

The Arctic Sunrise is an ice-strengthened or commonly known as icebreaker ship operated by Greenpeace. It sailed into the Barents Sea and was then refused permission three times by the Russian authorities to enter the Kara sea, which forms a part of the Northern Sea Route, a new sea highway from Europe to Asia that has now become navigable because of the retreating Arctic ice.

This research will analyze and discuss the legal issues pertaining to the exercise of jurisdiction by a coastal State over environmental activists who stage protests against the offshore activities of that State. Such

protests are usually performed with the assistance of a ship which brings the activists to the protest's location, in the proximity of the installation or vessel chosen as a target for their action. They climb onto oil platforms, dive in front of vessels servicing the platforms and otherwise hinder the drilling operations by creating a "human blockade". These so-called "direct actions" performed by Greenpeace have become relatively frequent, the recent example of the actions staged by the Greenpeace's ship is the Arctic Sunrise in the Russian Arctic in September 2013.

Coastal States cannot prevent activists from arriving within the proximity of offshore installations to stage direct actions, because ships are able to rely on the freedom of navigation on the high seas to reach the location of the protest. Freedom of navigation through coastal waters can, therefore, be used to perform deliberate acts targeting offshore installations.

Most offshore oil extraction activities take place beyond territorial waters, i.e. in the EEZ and on the continental shelf. By contrast to internal waters and territorial sea (the latter subject to the right of innocent passage by foreign ships), coastal States do not have full sovereignty over the EEZ and waters superjacent to the continental shelf. These waters are open to free navigation by all ships and the coastal State's rights are generally confined to exploration and use of natural resources, as provided by UNCLOS. The arising tension between the coastal State's jurisdiction over its coastal waters and the freedom of navigation on high seas enjoyed by

all States under the law of the sea and codified in the UN Convention on the Law of the Sea (UNCLOS).

UNCLOS is the central treaty providing a legal framework for these issues, since it sets out the rights and duties of States in the EEZ and continental shelf, including rights with respect to offshore activities. This treaty is also very important because it establishes dispute settlement procedures, including compulsory procedures resulting in binding decisions for the States involved.

Although it is a non-governmental organization, in this matter of case is Greenpeace, staging such protests, and an oil company that will be prevented from operating the installation as a result of the protest, it is the States of the organization and company that generally have rights and obligations under UNCLOS. This is why the plaintiff and defendant of the case, respectively, are Netherlands and Russia.

There is also a significant difference between direct actions performed onshore and actions against offshore installations. The State has full territorial jurisdiction over the onshore direct actions, but a more limited jurisdiction at sea, where the flag State enjoys the freedom of navigation.

The question is whether, and to which extent, coastal States are able to protect their offshore installations against activities undertaken by foreign vessels, including environmental protests. In principle, UNCLOS provides coastal States with certain rights to this end, including the right to

take enforcement measures directly against foreign vessels in the exclusive economic zone (EEZ) and on the continental shelf. Measures undertaken by some coastal States may go beyond what is permitted under UNCLOS or international law generally, especially if they involve some form of coercion directly against a foreign ship and its crew.

It is therefore deemed necessary by researcher to discuss and clarify the underlying law of the sea issues raised by such direct actions. Thus researcher choose the title **“THE ANALYSIS OF UNITED NATIONS CONVENTION ON THE LAW OF THE SEA IN THE ARCTIC SUNRISE CASE (NETHERLANDS VS RUSSIA)”**

B. Research Questions

Based on the background of the research above, the research questions are as follows:

- a. Whether ITLOS has jurisdiction to try the case?
- b. Whether Russia is allowed to ban The Arctic Sunrise to enter the Northern Sea Route (international waters of the Barents Sea)?
- c. Whether the boarding, imprisonment of the activists and seizure of the ship are illegal according to United Nations Convention on the Law of the Sea?

C. Research Purpose and Benefits

1. Research Purposes

The purposes of this research are:

- a. To describe and analyze whether ITLOS has the jurisdiction to try the case
- b. To describe and analyze whether the Russia is allowed to ban the entry of Arctic Sunrise to Kara Sea in accordance to the freedom of navigation
- c. To describe and analyze whether the boarding of the Arctic Sunrise by the Russia authorities, the detainment of the crews and seizure of the ship is allowed in accordance to the UNCLOS

2. Research Benefits

This research is expected to give benefits such as:

- a. To gain a better understanding regarding the types of sea according to United Nations Convention on Law of The Sea.
- b. To gain better information about the rights and obligations of the ships while sailing on different types of sea.
- c. To gain a better information about the rights and obligations of the coastal State.