

# **Arctic Sunrise – Spain**

**Incident in November 2014, Canary Islands**

## **Report of Findings**

Drawn up by the Human Environment and Transport Inspectorate

ILT/Shipping

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## Introduction

Following a complaint from the Spanish authorities, passed on by the Ministry of Foreign Affairs (BZ), the Human Environment and Transport Inspectorate (the Inspectorate) has studied and assessed the *Arctic Sunrise* incident of 15 November 2014 and the events leading up to that incident.

## Outline of events

The events in question took place in the vicinity of drilling location Sandia 1-X, coordinates 28°33.55'N 013°11.6'W, between 12 and 15 November 2014. This is situated in Spain's exclusive economic zone (EEZ), around 30 nautical miles east of the islands of Lanzarote and Fuerteventura.

During the events in question, the MV *Arctic Sunrise*, which is chartered by a foundation known as Stichting Greenpeace Council from the foundation Stichting Phoenix, was present in a safety zone announced by the Spanish authorities, which has a radius of one nautical mile and is centred on the Sandia 1-X location mentioned above.

In this period, Greenpeace activists in three rigid-hulled inflatable boats (RHIBs) from the *Arctic Sunrise* carried out a protest action near the drilling ship *Rowan Renaissance*. Following intervention by two Spanish navy RHIBs from the Spanish naval vessel P43, a female Greenpeace activist was injured and two Greenpeace RHIBs were damaged. During these events a number of collisions occurred between the RHIBs of Greenpeace and the Spanish navy.

## Role of the Inspectorate

Under Dutch law, seagoing ships owned by a charitable foundation are registered as recreational craft. The *Arctic Sunrise* is registered as a recreational craft. The RHIBs used to carry out the protest action are deemed to belong to the *Arctic Sunrise*. The rules governing recreational craft and the Inspectorate's related enforcement powers are limited. With the exception of environmental certificates for seagoing ships over 400gt, recreational craft are not subject to any requirements in respect of which the Inspectorate has enforcement powers. However, an expert opinion can be given about operational aspects such as compliance by the vessel concerned with maritime traffic rules, although even where sanctions would otherwise be appropriate the Inspectorate does not have the power to impose them.

Any material damage caused by the protest action and the activities of Greenpeace, the Spanish navy and the Spanish authorities falls outside the Inspectorate's remit. Nor does boarding vessels at sea come within its remit.

## The investigation

The investigation has been carried out on the basis of the following documents, interviews, photographic material and video footage. None of these documents is attached as an annexe. All the documents concerned are available from the Inspectorate.

- The Dutch translation of note verbale no. 40/3 of the Spanish Ministry of Foreign Affairs and Cooperation to the Embassy of the Kingdom of the Netherlands in Spain.
- The Dutch translation of note verbale no. 46/3.5 of the Spanish Ministry of Foreign Affairs and Cooperation of 22 December 2014.
- Oral statements by staff of Greenpeace International during an interview conducted by the undersigned and W.H.J. Grootendorst, expert senior staff officer of the Maritime Police in Den Helder at the office of Greenpeace International in Amsterdam on Friday 23 January 2015.
- Various documents made available by Greenpeace International during the above-mentioned interview, including:
  - statement of facts by the master of the *Arctic Sunrise*;
  - statement of facts by Greenpeace International;
  - copy of the 2014 charter agreement for the *Arctic Sunrise*;
  - copy of the ship's log of the *Arctic Sunrise*;
  - copy of General Arrangement Plan RHIB P22 (Pacific 22 Mk II Fast Rescue Boat);
  - copy of Navtex Important Notice NR2008/2014;
  - copy of LES 121 – MSG 23359 – NAV/MEAREA Safety Call to Area : 2 (Inmarsat C notice).
- Photographic material of the damage to the injured activist's shoe made available by Greenpeace International during the above-mentioned interview.
- Extensive video material of the protest action around the *Rowan Renaissance* from the moment that the RHIBs left the *Arctic Sunrise*, supplied by Greenpeace International during the above-mentioned interview.

The following were among the subjects dealt with in the investigation:

- Whether Greenpeace violated an established safety zone.
- Whether the collision regulations (COLREGs) were violated during the incident and, if so, by whom.
- Whether the safety of navigation of the exploration vessel *Rowan Renaissance* was jeopardised at any time.
- Whether both Greenpeace and the Spanish enforcement units observed good seamanship.
- Whether the *Rowan Renaissance* may be regarded as an installation or structure in Spain's EEZ.

### **Undisputed facts**

The following facts have not been disputed by either party:

- The Spanish Ministry of Industry, Energy and Tourism (DG de Política Energética y Minas) permitted Repsol Investigaciones Petrolíferas S.A. to carry out the Sandia 1-X drilling by authorisation of 11 August 2014.



- The *Arctic Sunrise* is a ship that was sailing under the Dutch flag in November 2014.
- The *Arctic Sunrise* arrived at the Sandia 1-X drilling location on 12 November 2014. It remained there until immediately after the protest action involving the *Rowan Renaissance* on 15 November 2015, during which an activist was injured.
- Under the COLREGs, the *Arctic Sunrise* wrongfully exhibited its not-under-command (NUC) lights during the events in question. Although the means of propulsion were temporarily stopped, this did not detract from the ship's ability to maintain its position and could not therefore have restricted its ability to manoeuvre.
- A safety zone with a radius of 1 nautical mile around drilling location Sandia 1-X was established by the Spanish authorities by resolution of 12 November 2014 for a period of 60 days from the date of the resolution.
- It was not until 13 November 2014, i.e. after the *Arctic Sunrise* had arrived at the Sandia 1-X location, that the authority in question – Sociedad de Salvamento y Seguridad Marítima – notified all ships that the safety zone established in the resolution of 12 November 2014 had to be respected. It did this by issuing the prescribed 'Notice to seafarers'.
- At no time during the events in question was the drilling vessel *Rowan Renaissance* in the safety zone. The events which occurred in the immediate vicinity of the *Rowan Renaissance* had nothing to do with the safety zone established around Sandia 1-X.
- The events in the immediate vicinity of the *Rowan Renaissance* on 15 November 2014 involved three Greenpeace RHIBs and two Spanish navy RHIBs.
- At least one of Greenpeace's RHIBs was carrying activists equipped with boarding gear.
- During these events an Italian activist fell overboard and sustained various injuries, including an injury to her foot.
- After the activist fell overboard the protest action at this location was broken off by Greenpeace. The *Arctic Sunrise* then sailed voluntarily to Arrecife on the Spanish island of Lanzarote.

#### **Facts that cannot be disputed by Greenpeace and the Spanish authorities:**

- The *Arctic Sunrise* is a recreational craft registered under the Dutch flag.

#### **Disputed facts**

The parties interpret the following facts differently:

1. The Spanish claim that during the events in question the *Rowan Renaissance* could be regarded as an 'installation or structure in Spain's EEZ'.
2. The legitimacy of the safety zone established around Sandia 1-X during the events.
3. The Spanish claim that the safety zone around Sandia 1-X was violated by Greenpeace with the *Arctic Sunrise*.
4. The Spanish claim that the safety of navigation around the *Rowan Renaissance* was endangered by Greenpeace.

5. Greenpeace's claim that the Spanish navy RHIBs unnecessarily endangered the safety of navigation.
6. The Spanish navy's claim that the dangerous actions of their RHIBs were legitimate because they were absolutely essential to prevent Greenpeace activists from boarding the *Rowan Renaissance*.
7. The Spanish claim that the female Italian activist who ended up overboard was hit by the propeller of a Greenpeace RHIB.

### Findings concerning the disputed facts

(a1) Article 60 (2) UNCLOS:

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

As the *Rowan Renaissance* was a vessel able to navigate independently and operated under the flag and jurisdiction of the Marshall Islands, it could not be deemed an installation or structure within the meaning of article 60 UNCLOS at the time of the events in question.

(a2) In view of the findings referred to at (a1) above, no safety zone could have been established for the *Rowan Renaissance* under article 60 (4) UNCLOS.

Moreover, the *Rowan Renaissance* was a vessel able to navigate independently to which the COLREGs were applicable. If its ability to manoeuvre was restricted and there were obstacles caused by works, these regulations would have required other vessels to take evasive action and thus ensure the safety of the *Rowan Renaissance*. The establishment of a safety zone was therefore unnecessary.

(a3) The establishment of a safety zone was not legitimate. It follows that there could have been no violation of such a zone.

(a4) Greenpeace's operations around the *Rowan Renaissance*, outside the safety zone, were conducted solely with three RHIBs. The activists were unarmed. The *Rowan Renaissance* and the two offshore supply ships in its immediate vicinity were virtually at a standstill and were not endangered in a nautical sense. Their safe navigation was not restricted or endangered.

(a5) Greenpeace clearly informed the master of the *Rowan Renaissance* before the start of the events around that vessel that the protest action would be peaceful and would not affect the safety of the vessel and those aboard it. The master of the *Rowan Renaissance* acknowledged receipt of this message. Although two of the three RHIBs operated by Greenpeace were equipped with boarding gear, there was no reason whatsoever to suppose that these activists were armed.

Although it is unclear precisely what the Greenpeace activists intended, it was only reasonable from the Spanish point of view to make allowance for an attempt to board the *Rowan Renaissance*.



The available video material shows four collisions:

- The first collision took place at some distance from the *Rowan Renaissance*. A Spanish navy RHIB navigated at high speed into the stern of a Greenpeace RHIB on the port side, causing the starboard side of the naval RHIB to collide heavily with the port side of Greenpeace's RHIB. Greenpeace has stated that this was its media and safety vessel. No activists and boarding gear were on board this vessel, which was only carrying a professional film crew and photographer. This is confirmed by the photographic evidence.
- The second collision took place on the starboard side of the *Rowan Renaissance*. While one of Greenpeace's RHIBs was sailing in the direction of the *Rowan Renaissance* it was rammed from the port side and partially run over by a Spanish navy RHIB. Those on board Greenpeace's RHIB were almost hit by the Spanish navy RHIB and faced a real risk of serious injury or even death.
- Almost immediately afterwards the same Spanish navy RHIB drove from the starboard side into Greenpeace's third RHIB, which was at that moment lying with its bow against the hull of the *Rowan Renaissance*, hemming it in.
- The fourth collision took place simultaneously when Greenpeace's hemmed-in RHIB was run over from the port side by the Spanish navy's second RHIB. This caused damage. The bow of the Spanish RHIB almost hit the head of one of those on board the Greenpeace RHIB. Those on board the RHIB faced a real risk of serious injury or even death. An Italian activist fell overboard and was injured in the process.

All these collisions were deliberately caused by the Spanish navy with its RHIBs. Assessment of these collisions falls outside the scope of the COLREGs. The Spanish navy took no heed of the requirement of 'good seamanship'. Clearly, it deliberately took the risk that citizens from a vessel flying the Dutch flag might be seriously injured or even killed. It is not for the Inspectorate to assess the actions of the Spanish navy in terms of legitimacy, proportionality and subsidiarity.

- (a6) It should also be noted that it cannot be alleged that there were grounds for believing that Greenpeace's action would endanger the *Rowan Renaissance* or its crew. The activists were unarmed. But even if there had been grounds to believe this, the Spanish navy had the opportunity to take control of Greenpeace's RHIBs by peaceful means and/or to arrest those on board. If the activists had really intended to climb aboard, they could have been arrested one by one when they reached the ship's rail. That would have greatly benefited nautical safety.
- (a7) The video footage clearly shows that during the events the propulsion units of three RHIBs were in the vicinity of the Italian activist who had fallen overboard. Two of the RHIBs belonged to the Spanish navy and the other to Greenpeace.

The Greenpeace RHIB in question has been identified from the video footage and construction drawings as a PACIFIC 22 Mk II fast rescue boat. This boat is jet driven and does not have a propeller. The Spanish claim that the foot of the Italian activist who fell overboard was hit by a propeller of a Greenpeace RHIB is therefore incorrect. Whether there could have been other causes of the injuries has not been examined.

## Conclusions

- The *Arctic Sunrise* wrongfully exhibited its not-under-command (NUC) lights during the events in question. Nonetheless, the ILT inspectors are not authorised to take action against this violation of the rules.
- As the *Rowan Renaissance* was a vessel able to navigate independently and operated under the flag and jurisdiction of the Marshall Islands, it could not be deemed an installation or structure within the meaning of article 60 UNCLOS at the time of the events in question. Consequently, no safety zone could have been established for the *Rowan Renaissance* under article 60 (4) UNCLOS.
- Since there was no legitimate safety zone, such a zone could not have been violated by the *Arctic Sunrise*.
- From the available information, there is nothing to suggest that the *Arctic Sunrise* and its RHIBs caused danger to ships, shipping, seafarers or the environment. There was no bad seamanship by Greenpeace.
- All collisions were deliberately caused by the Spanish navy with its RHIBs. Assessment of these collisions falls outside the scope of the COLREGs. The Spanish navy took no heed of the requirement of 'good seamanship'.
- The foot of the female Italian activist who fell overboard was not hit by a propeller of a Greenpeace RHIB. Whether there could have been other causes of the injuries has not been examined.
- It does not come within the remit of the Inspectorate to assess the legitimacy of the actions of the Spanish navy against those aboard a Dutch vessel. It is up to the competent Dutch authorities to determine what further steps should be taken.