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# A Red Hunt In October - For Pirates, Hooligans and Spies...



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by Nikhil Desai

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## I. Introduction

In this essay, Nikhil Desai criticizes the violent Russian attack on the Greenpeace ship and the subsequent pre-trial detention of 30 activists. He argues that if concerns of energy security are allowed to degenerate into hallucinations of dominating the Arctic and brutal treatment of non-violent civic action, Russia or other such countries cannot be held to be responsible members of the international community of law-abiding states. The most powerful man in the world may now also be

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the most dreadful.

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## II. Policy Forum by Nikhil Desai

### A Red Hunt In October - For Pirates, Hooligans and Spies...

#### Russia Seeing Red: The Pirates Are Coming, The Pirates Are Coming!!

*Disobedience is the true foundation of liberty.* [Henry David Thoreau](#)

Tom Clancy, the best-selling writer of thrillers who began with the novel *The Hunt for Red October* in 1984 (made into a film in 1990) passed away past 1 October. In the story, “Red October” is a nuclear submarine taking off from the shipyard at Polyamy, located in the Murmansk province (Oblast in Russian), part of the larger Lapland region in northwest Russia.

The administrative center of Murmansk is the city of the same name, the largest city north of the Arctic Circle. This is where Russian Coast Guards brought the Greenpeace ship *Arctic Sunrise* on 24<sup>th</sup> September 2013, five days after they had stormed the ship and taken 30 activists hostage. The Russians did not treat the *Arctic Sunrise* the way [KAL 007](#) was 30 years ago, shooting down a large civil airliner, killing 269 people, on suspicions of espionage.

While news reports claim the activists were “arrested”, “taken hostage” is an appropriate term since the ship at that time was in international waters in the Barents Sea. The previous day, Greenpeace activists had attempted to climb the Gazprom oil platform *Prirazlomnaya* to protest oil drilling in the Arctic and two activists were arguably “arrested” by the Coast Guard, after gun shots to the ship. The 19<sup>th</sup> September helicopter attack was by the Russian Federal Security Service, the umbrella agency that includes the Coast Guards.

The 30-member Greenpeace crew had an American captain, and citizens of 17 other countries, most of whom have shown official silence or muted response. It is not clear if the respective consulates were advised and the detainees permitted timely access in accordance with the Vienna Convention.

Even as the legality of their detention is in doubt, the Arctic 30 were charged with “piracy”. A few days later, President Putin declared that they were obviously not pirates, and the Russian Human Rights Commission, also under Putin, voiced displeasure at such charges.

*“Piracy, as defined in Article 101 of the UN Convention on the Law of the Sea, applies when illegal acts of violence, detention or depredation are committed against a ship or aircraft for private ends. It does not apply to non-violent protests against offshore installations undertaken with the aim of informing public opinion.*

The Netherlands rather promptly (21 September 2013) approached the Hamburg-based International Tribunal for the Law of the Sea to order Russia to release the Arctic 30. It instituted arbitral proceedings via a Notification and the Statement of Claim to Russia. At the time of signing the UN Convention on the Law of the Sea in 1997, Russia had asserted that it will not be bound by the enforcement decisions of any tribunal under the said Law.

Subsequently, it was announced that the charges will be “reduced” to those of “hooliganism” – a matter of Russian domestic law, puzzlingly applied to hostage-taking in international waters. The charge carries the maximum penalty, if convicted, of seven years in a penal colony, compared to 15 years’ maximum penalty under a piracy conviction. The European Parliament has condemned the charges as a threat to freedom of expression and demonstration.

The Arctic 30 are being held in long-term pre-trial detention – a morally abhorrent practice frequently deployed by authoritarian regimes – until 23 November. It is unclear when the individual trials will begin and whether there will be jury trials by peers of international civil activists.

As of this writing (3 November 2013), Greenpeace report that the detainees are being moved from a detention centre in Murmansk to a jail St. Petersburg, and the piracy charges have not been revoked. The International Tribunal for the Law of the Sea has set hearings for 6 November 2013, though Russia does not intend to participate and respond.

If Tom Clancy's novel was about defection of a Soviet submarine captain, this episode is more like a tragedy, "Pirates are coming! Pirates are coming!" A frightening reminder of ["Russians are coming! Russians are coming!"](#)

### **Seeing Red Russia: Pirates, Coast Guards, and Hooligans**

Granted, the USSR of the “Red Days” novel is no longer around. However, even though Russia is no longer Red (as in Communist), it seems to be running in very much the same old manner as in the old days – low-level commissars fumbling with the law if not taking it into their hands, not entirely without the foreknowledge if not approval by the higher ups in the chains of command.

There was a time – before Glasnost and Perestroika in the mid-1980s – when “freedom of expression and demonstration” meant practically nothing to Russia (as a part of the Soviet Union). Self-publishing of dissent – Samizdat – against official censorship landed individuals in prison.

Looking behind the Iron Curtain made the Soviet Russians of the day see red. In 1960, a US spying plane U-2, launched from Pakistan, was shot down, along with a Soviet MiG-19; the U-2 pilot, Gary Powers, survived but the MiG pilot did not. Powers was sentenced to three years of imprisonment and seven years of hard labor; he served a little over a year before being exchanged for a Soviet spy.

Does Russia still live in the Cold War paranoia, threatening civil protesters – not just against Gazprom or Russia but all petroleum and mining companies – with more severe penalties than those for espionage, and with no hope of prisoner exchange (save the British, American, Canadian or Norwegian security forces repeating the crime)?

Russia could still charge them with espionage, but it is at the risk of compromising its credibility – whatever it has earned. The Investigative Committee in the case has charged the Greenpeace crew with “acting in a group and with ‘using objects as weapons’, and says that it was examining “possible scenarios including ‘seizing the platform for financial motives and terrorist motives and

carrying out illegal scientific activity and espionage”.

*"Russia is feeling its revived-superpower oats. MEMO to the U.S. Senate: It is good that Moscow ratified the UNCLOS treaty. Now its violation of customary international law is combined with a violation of treaty law! Two for the price of one."*

[\*'What Russia's Piracy Charges Against Greenpeace Mean for International Law'\*](#), Eugene Kontorovich (2 October 2013)

The Investigative Committee could well be pursuing the bureaucratic “Save Your Ass” tactic – the Coast Guard and the security forces having blundered into a show of force, the investigators and prosecutors are trying to justify the action with any charges they can imagine. The Russian case law against abuse of process cannot be very old or impressive, after all.

The best that can be said of the Russian actions – since those of the state and of the judiciary cannot be distinguished easily, or the distinction makes no difference – is that it is less damaging than KAL 007 or the French bombing of the [Rainbow Warrior](#) two years later. But human grief and fear cannot be weighed in time or in intensity.

This may not have been a blunder. It is unlikely that Putin developed his opinion on “piracy” charge only after the charges were levied. A violent attack, followed by piracy charges, then ‘hooliganism’ charges, and whatever develops from now on, may well be a well-planned strategy. The question is, what did Putin know and when did he know it (even as he was allegedly getting married to his long-time mistress, half his age and mother of his son)?

*"Russia's ruling elite, led by Putin, does not act in Russia's interests. Russian elites act in their own interests. At the moment, they are convinced that economic nationalism and the language of neo-imperialism will win them popular support, and possibly private profits. I wonder how long the rest of the Russians will put up with it."*

[Anne Applebaum, Washington Post, 20 September 2013](#)

Is the bear just throwing its weight around because it can? Anne Applebaum, commenting on the Russian treatment of Ukraine, seems to think so. Under Russian Code of Criminal Procedure, pre-trial detention is allowed only in crimes punishable by imprisonment of more than two years, but it also provides for extending detention itself for up to two years. The chain of command may well make this an example to terrorize any civil action from anywhere against Gazprom or any such companies controlled by the Russian state or, for that matter, private companies that offer lucrative revenues to the regime.

In the book *The Pirates of Somalia: Inside their hidden world*, Jay Bahadur notes that the pirates see themselves as coast guards – in their language, *baddadinta badah* (“saviours of the sea”), and not *burcad badeed* (“ocean robber”).

“To him (Bahadur’s Somali interviewee), his actions had been in protection of *his* sea, the native waters he had known all his life; his hijackings, a legitimate form of taxation levied in absentia on behalf of a defunct government that he represented in spirit, if not law”. (p. 16)

Could it be that Greenpeace International, in spirit, feels it is a moral representative of humanity threatened by the real and envisioned destruction of the Arctic, and when Russia calls the Arctic 30 “pirates”, they are the guards of the ocean (frozen most of the time during the known course of human civilization) whereas Gazprom and other investors are the pirates in disguise?

It can be cynically argued that the Russians did not think the Arctic-30 to be pirates; what Russians do with Somali pirates is instructive:

"MOSCOW, Russia — Following high level complaints about "imperfections" in international law, Russia announced Tuesday that captured Somali pirates "have all died." A Russian official claimed that 10 pirates seized by Russian special forces aboard an oil tanker last week were quickly freed but then died on their way back to the Somali coast.

The unidentified high-ranking Defense Ministry official did not elaborate on how the pirates died, deepening a mystery that has prompted speculation the pirates were executed by commandos who had freed a Russian oil tanker seized in waters 500 miles (800 kilometers) east of Somalia's coast."

([Pirates 'have all died', Russia says, after decrying 'imperfections' in international law](#), Mansur Mirovalev, AP 11 May 2010)

Russia has a hooliganism law, under which Pussy Riot protesters, among others, were prosecuted and convicted for actions on *Russian soil* and presumably offending the sensibilities of the at least some Russian people.

Hooliganism is a problem in sports events, not just in Russia, with "more than 14,000 offenses committed at Russian sporting events over the last three years.. Firework-throwing and racist chants are commonplace at Russian football matches, while violence occasionally erupts". Putin signed a new law in July, becoming effective in January next year, banning convicted hooligans from sports events for at least six months and up to seven years, the maximum penalty the Arctic-30 are threatened with. Football hooligans went on such a rampage last week that Telegraph headlined its story "[Russia shamed by new hooliganism scandal](#)".

*"The true extent of Russia's racist hooligan problem has been brutally exposed after Spartak Moscow fans went on a rampage that led the country's leading sports newspaper to warn of "the end of football in our country", [The Telegraph](#) [31 October 2013]*

The civic people suffered shame at sports hooliganism, no doubt, especially considering the racist elements behind the violence. However, with the type of hooliganism charges being brought against the Arctic 30, one wonders just who should be charged with hooliganism.

Russia comes across as the George Zimmerman of Florida, the vigilante neighborhood protector claiming to be so mortally afraid of an African American kid passing by and whom he had an altercation with, successfully defending charges of second-degree murder on claims of "self-defense" sing the Florida "Stand your Guard" laws.

Nobody has accused the Russian actions as vigilantism yet, but first impressions suggest that the Investigation Commission may have botched its remit, and followed some orders from higher ups, real or imagined. In effect, it also serves notice of lawlessness by design and of intent to terrorize the world citizenry into submission.

## **Civil and uncivil actions**

Pending further legal submissions and trial arguments, the facts so far must be treated in terms of Greenpeace claims since the prosecution claims can be dismissed *prima facie*. Not only is the burden of proof on the prosecutors, the motives and instruments of, and available opportunities to, the Russian authorities need to be examined. Russia is still very much a Superpower and its actions deserve scrutiny. The preponderance of evidence available so far for moral and political analysis

suggests that this was not an error on the part of overly zealous coast guard but a deliberate strategy yet unfolding to demonstrate the willingness to dominate the Arctic as a Russian zone.

*"The possibility now exists that climate change and development for energy extraction will whipsaw the Arctic, each causing its own damage so that less is left to save from the other. .. The climate changes that are coming have hit soon and hard in the Arctic, and their consequences may be starkest there."*

[\*Ian Frazier, New York Review of Books\*](#)

Spies, pirates and hooligans that Russia has ever experienced surely never gave advance notice, publicized peaceful intent, or appealed to the conscience of humanity. All three came from Greenpeace, reflecting in turn two common causes of public concern over mining the Arctic. One is the further violation of the Arctic ecosystem to the point of irreversible damage. The other – and to some people, more serious one – is that the mining of undersea oil and gas, whose use may not only add to climate change but accelerate it, via likely release of methane from undersea hydrate stocks, leading to breakdowns of ecosystems all around the world.

Civil disobedience – in particular, off-shore civil disobedience – probably has not been tested under the Russian legal system, at any rate not the new set of laws in the post-Soviet era. It seems that under some theories of civil disobedience such as by John Rawls, it can be justly practiced only in a near-just society that otherwise governs by the consent of the governed. *International* – indeed simultaneous multinational – civil disobedience may not have been tested, and whether the Russian law even permits free expression of speech as a defense remains to be seen.

This was not the first time Greenpeace protested in the Arctic waters – a nearly identical effort was made last year, scaling the same Gazprom platform, and climbing a Cairn Energy platform in 2010 – and its activists have courted on-land arrests by the Russian police. Greenpeace Russia is said to have accepted last year that scaling the platform ["could be classified as hooliganism, punishable with up to seven years in prison in Russia"](#); however, no charges were made then, and applying hooliganism law to civil disobedience is morally more abhorrent than charges of sedition or treason applied to Mohandas K. Gandhi and his followers under the British Empire. The loss of Royal Dutch Shell civil suit against Greenpeace later last October, with the Dutch court ruling in favour of the right to protest near or on Shell sites, may have led Russia and Gazprom to choose violent action and criminal charges at any risk and cost.

Apparently, Russia would protect the free speech right of Syria's Assad and of Iran's Ahmedinejad, even possible manufacture or use of weapons of mass destruction. It perhaps just cannot accept civil opposition to the risk of mass destruction worldwide. We also know Russia's readiness to countenance violent crackdowns by the Government of India over Koodankulam fuel loading and startup despite evidence of fraudulent contract practices.

Gazprom does not in any sense "need" Arctic oil, which if at all cannot compete with its other oil and gas exports. This is not a matter of "energy security" for the largest petroleum exporter country, nor one of additional revenue for the government.

Russia itself is bound – so far – to the Kyoto Protocol restraints on domestic emissions of specified greenhouse gases, though enjoying the "hot air" provisions under the Protocol.

A Greenpeace International spokesman says, "We were trying to put our banner up, just to show people what was happening here."



If at all, Gazprom's revenues – and those of the Russian state and possibly Mr. Putin – are at far more severe threat by Mr. Al Gore and Lord Stern who have been talking up a storm after another on the so-called "carbon bubble". If the Gore-Stern vision comes to pass, Russia is ready to earn from Rosatom exports, further accelerating its assistance in nuclear proliferation (China, North Korea, India, Iran, now others). In the latter business, its customers like India have copied the paranoia and authoritarianism of old Russia.

## Crimes and Punishments

Mahatma Gandhi wrote decades ago:

"An unjust law is itself a species of violence. Arrest for its breach is more so. Now the law of nonviolence says that violence should be resisted not by counter-violence but by nonviolence. This I do by breaking the law and by peacefully submitting to arrest and imprisonment." - [\*Non-violence in Peace and War 1942-49\*](#)

However, that was against an unjust regime. As a signatory to the UN Convention on the Law of the Sea, Russia is a member of an international community that is as near-just as it can get, with voluntary agreements of signatory states. In such a situation, perhaps Ronald Dworkin's advice in 1968 applies:

"How should the government deal with those who disobey the draft laws out of conscience? Many people think the answer is obvious: the government must prosecute the dissenters, and if they are convicted it must punish them. Some people reach this conclusion easily, because they hold the mindless view that conscientious disobedience is the same as lawlessness. They think that the dissenters are anarchists who must be punished before their corruption spreads. Many lawyers and intellectuals come to the same conclusion, however, on what looks like a more sophisticated argument. They recognize that disobedience to law may be *morally* justified, but they insist that it cannot be *legally* justified, and they think that it follows from this truism that the law must be enforced.... But the argument that, because the government believes a man has committed a crime, it must prosecute him is much weaker than it seems. *Society "cannot endure" if it tolerates all disobedience; it does not follow, however, nor is there evidence, that it will collapse if it tolerates some.*" (emphasis in italics added).

The Arctic 30 may but do not have to be prosecuted; the charges of hooliganism appear hollow and may well be dismissed or sharply reduced. The two-month pre-trial detention is certainly abhorrent; Olympics teams of the world should re-consider their attendance in the Winter Olympics in Russia (where it has shown utter disregard for its own environmental promises.)

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Arranged chronologically. **Bolded items are recommended by the author.**

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## IV. NAUTILUS INVITES YOUR RESPONSES

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