

## Greenpeace: Reconceptualizing our Notions of “Illegal” Activities

This Nonprofits in the News takes a closer look at Greenpeace. It considers the organization’s background, tax-exempt status, a past Internal Revenue Service (“IRS”) audit, and two legal battles involving Greenpeace activists. The impetus for choosing Greenpeace was due to two things, first, the media coverage of the Greenpeace activists who are being held in jail in Russia for allegedly illegal acts of piracy, and second, a recent opportunity I had to attend an event on one of Greenpeace’s boats, the Rainbow Warrior, in Vancouver, Washington. I am particularly interested in the issue of whether “illegal” activities conducted by Greenpeace activists will affect the organization’s tax-exempt status.

Greenpeace was founded in 1971 and is an international environmental organization with offices in over 40 countries. Generally speaking, the organization works to protect and preserve the environment. More specifically, the organization works on various environmental issues, including climate change, deforestation, commercial whaling, marine reserves, and anti-nuclear, among others.<sup>1</sup> Largely due to their direct actions, the organization is one of the most visible environmental organizations in the world.

Greenpeace is divided into two separate entities for tax purposes. Greenpeace Fund, Inc. is a 501(c)(3) organization, while Greenpeace Inc. is a 501(c)(4) organization. According to its Articles of Incorporation, the purpose of Greenpeace Fund, Inc. is to research and monitor issues affecting marine mammals and the environment, increase public awareness of environmental issues through educational programs, and implement programs to protect marine mammals and the environment.<sup>2</sup> Greenpeace Inc., on the other hand, is a 501(c)(4) organization. It furthers its mission of protecting the environment through research, advocacy, litigation, and lobbying. Greenpeace Inc. has significantly more financial resources than Greenpeace Fund, Inc. – in 2012, Greenpeace Inc. received almost \$33 million in grants and contributions compared to \$12 million in grants and contributions for Greenpeace Fund Inc.<sup>3</sup> Both Greenpeace Fund, Inc. and Greenpeace Inc. work on the same overarching mission – protection of the environment – but they do so with different strategies. The primary difference is that Greenpeace Inc., has the ability to spend more time and money lobbying.

In 2005, the IRS subjected both arms of Greenpeace to a three month long audit.<sup>4</sup> An interesting thing to note about the audit is that the IRS admitted that it only initiated the audit due to pressure from Public Interest Watch (“PIW”), a self-proclaimed watchdog of nonprofits.<sup>5</sup> PIW claimed that Greenpeace Fund was “laundering” tax-deductible contributions for advocacy purposes and not just charity and educational purposes.<sup>6</sup> PIW, it was later discovered, received almost all of its funding (approximately 97%) from Exxon Mobil.<sup>7</sup> This is noteworthy because

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<sup>1</sup> GREENPEACE, <http://www.greenpeace.org/usa/en/campaigns/> (last visited Nov. 11, 2013)

<sup>2</sup> See Articles of Incorporation for Greenpeace Fund, Inc., (filed Nov. 20, 1978), *available at* <http://www.greenpeace.org/usa/en/about/governance/>.

<sup>3</sup> See Greenpeace Fund, Inc. and Greenpeace Inc. 990 forms, *available at* <http://www.greenpeace.org/usa/en/about/reports/>.

<sup>4</sup> Steve Stecklow, *Did a Group Financed by Exxon Prompt IRS to Audit Greenpeace?*, THE WALL STREET JOURNAL (Mar. 21, 2006), <http://online.wsj.com/news/articles/SB114291044305003774> [hereinafter Stecklow, *Did a Group Financed by Exxon Prompt IRS to Audit Greenpeace?*]

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> Alex Seitz-Wald, *When the IRS Targeted Liberals*, SALON (May 14, 2013), [http://www.salon.com/2013/05/14/when\\_the\\_irs\\_targeted\\_liberals/](http://www.salon.com/2013/05/14/when_the_irs_targeted_liberals/).

Greenpeace had labeled Exxon Mobil as the “No. 1 climate criminal” and engaged in frequent protests against the corporation.<sup>8</sup> Greenpeace argued that it qualified for tax-exempt status and that the 2005 audits were politically motivated investigations by the IRS and Congress.<sup>9</sup>

In the end, the IRS concluded that Greenpeace Fund, Inc. and Greenpeace Inc. both continued to qualify as tax-exempt organizations. The IRS said that even though Greenpeace engaged in some unlawful activities, they were not the organization’s primary purpose and therefore, would not affect its tax status.<sup>10</sup> The fact that the IRS has recently audited both arms of Greenpeace and found that the organizations continue to qualify as tax-exempt is significant because Greenpeace is widely seen as engaging in activities that are illegal, or if not illegal, disruptive and arguably not within the realm of what some people would consider “charitable.” Nevertheless, both arms of Greenpeace continue to maintain their tax-exempt status.

A final point worth making is that Greenpeace’s “illegal” activities are frequently accompanied with effective lawyering, which means that while Greenpeace activists are arrested, they may ultimately be acquitted for their so-called “illegal” activities. There are several examples of this, but one example from Britain effectively illustrates this point. In 2007, six Greenpeace activists were arrested for breaking into the Kingsnorth power station. The activists climbed a 200-meter smokestack to paint “Gordon” on it (the name of Britain’s Prime Minister at the time) and caused almost \$50,000 in damages. While admitting to trying to shut down the power station, the activists argued that they were legally justified because they were attempting to prevent climate change from causing even greater damage to property around the world. At their trial, evidence was heard from Dr. James Hansen, an Inuit leader from Greenland, and others about how climate change was affecting life and property around the world. In the end, the six activists were acquitted – it was the first time that preventing damage caused by climate change was used as a lawful defense in court. The *New York Times* put the acquittal on its annual list of most influential ideas of the year.<sup>11</sup> This is a remarkable example of how Greenpeace may be challenging our notions of what activities are considered to be illegal with their activism and novel defense theories.

Currently, 30 Greenpeace activists, the Arctic 30, are being held in a Russian prison on claims of piracy and other charges. However, as one author explained, the piracy allegations are legally flawed. For one, piracy requires an attack against a “ship,” while the Greenpeace activists were scaling an oilrig.<sup>12</sup> Second, piracy requires “acts of violence or detention” but all the Greenpeace activists were doing was trying to hang a banner.<sup>13</sup> At this point, the future of the Arctic 30 is far from certain, but it is worth following the outcome of this situation.

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<sup>8</sup> Stecklow, *Did a Group Financed by Exxon Prompt IRS to Audit Greenpeace?*

<sup>9</sup> *Greenpeace Calls Out Mitch McConnell’s IRS Hypocrisy with Full Page Ad in Lexington Herald-Leader*, (May 17, 2013), <http://www.greenpeace.org/usa/en/media-center/news-releases/Free-Speech-Isnt-Just-for-Your-Friends/>.

<sup>10</sup> Stecklow, *Did a Group Financed by Exxon Prompt IRS to Audit Greenpeace?*

<sup>11</sup> Daniel Simmons, *Is Breaking the Law Always Illegal?*, GREENPEACE BLOGPOST (Jan. 11, 2011), <http://www.greenpeace.org/international/en/news/Blogs/makingwaves/is-breaking-the-law-always-illegal/blog/32276/>.

<sup>12</sup> <http://www.volokh.com/2013/09/25/russias-piracy-charges-greenpeace-groundless-illegal/>

<sup>13</sup> *Id.*