Shifting to a More Progressive Paradigm: From Eco-Piracy to Environmental Solidarity

Zerry Akbar Yudisetyo[1*], *Elisabeth* Septin Puspoayu[1], *Irfa* Ronaboyd[1], *Ade* Putra Hasibuan[1], and *Prachi* Singh[2]

[1]Faculty of Law, State University of Surabaya, Surabaya, Indonesia
[2]Faculty of Law, University of Lucknow, Lucknow, India

Abstract. The presence of environmental activist "eco-pirates" has triggered intense conflict between marine researchers and the environmental community due to their various extreme actions. This paper examines the need to re-evaluate the international community's understanding that "eco-piracy" should not be placed in the same category as crime, as highlighted in the judgments of the Arctic Sunrise case (Kingdom of the Netherlands v. Russian Federation), Provisional Measures, ITLOS, 2013 and The Arctic Sunrise Arbitration (Netherlands v. Russia) PCA, 2015). The methods of this research comprise reinterpreting the piracy norm under UNCLOS and reflecting it in relation to the targets of SDG 14 and SDG 16. The results show that the acts of environmentalists, even in their uttermost extreme form, do not constitute piracy. The reluctance to classify such acts is consistent with particularly Target 14.C emphasizing the document The Future We Want, as these actions aim to uphold the principles of international environmental law. The NGO that facilitated the dispute settlement, being the actor behind such an issue, is already in itself a civil society representation demanding a more inclusive ocean governance, which is consistent with Target 16.7. Finally, the findings seek to shift the classical paradigm of eco-piracy to a more progressive one, inspiring policymakers to adopt a more environmentalist-friendly commitment.

1 Introduction

"Why is the rum always gone?" says Captain Jack Sparrow as his crew continue marching with their swords towards the sea creatures [1]. While the cinematic scene of the movie seems adventurous, the real-life acts of plundering are categorized as crimes under either general international law or municipal law. Ironically, when similar acts are carried out in the name of environmental protection, States' responses are far less forgiving. As demonstrated by non-governmental organizations such as the Sea Shepherd Conservation Society, the violent acts at sea have created a moral and legal dilemma. On the one hand, their actions are celebrated by the academic community and environmental advocates, they are condemned by the general international society on the other. This is due to the lack of understanding of the subjective element of the act itself. Thus, the term "eco-piracy" is coined [2].

*Corresponding author: zerryyudisetyo@unesa.ac.id

The phrase "eco-piracy" refers to direct actions at sea that are environmentally-motivated and implement disruptive or confrontational methods, often targeting vessels that take part in whaling, or illegal, unreported and unregulated (IUU) fishing [3]. Such actions, however, while based on the moral duty to protect marine life, have been legally challenged and treated as piracy. One of the acts that falls within the definition piracy under the United Nations Convention on the Law of the Sea 1982 (UNCLOS) is:

> **Article 101.** *(a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or passengers of a private ship, 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*

The wording "*private ends*" has led to several different interpretations and understandings. Debates have sparked that some said that it shall include any defined acts without considering the motivation behind them as long as it provides personal gain, while other scholars are convinced otherwise. This is where the problem started. The ambiguity of the phrase has driven further judicial opinions and policy positions.

There are several cases that clarify this issue, such as the Arctic Sunrise case (Kingdom of the Netherlands v. Russian Federation), Provisional Measures, ITLOS, 2013, and The Arctic Sunrise Arbitration (Netherlands v. Russia), PCA, 2015. In these cases, environmental activists from Greenpeace conducted peaceful protests against the installation of oil rigs at sea. Other cases, such as the Institute of Cetacean Research v. Sea Shepherd before the United States Court of Appeals, also bear a similar degree of relevance, where eco-protesters were criminalized. At the same time, raising attention from the environmentalist spectrum concerning the limitations of existing legal frameworks in the face of marine conservation is facilitated in the Whaling in the Antarctic (Australia v. Japan) before the International Court of Justice (ICJ). These cases illustrate the tension between state interests and security and the environment that drives the reinterpretation of norms to respond to global developments.

This article emphasizes that the element of "private ends" in Article 101 of UNCLOS is not automatically attached to confrontational actions carried out by marine environmental activists aimed at "public ends." Ironically, actions that are often considered as interference are actually more in line with sustainable development in the environmental sector, which includes real contributions to the protection of the global commons [4]. Through the perspective of the Vienna Convention on the Law of Treaties (VCLT), this article uses a normative juridical method to reconceptualize UNCLOS to be in line with the objectives and basic principles of international environmental law.

Furthermore, the research is framed its analysis within the framework of the Sustainable Development Goals (SDG) 14 (Life Below Water), to, particularly, promote the conservation and usage of the ocean in a sustainable manner by implementing and enforcing international law of the sea (Target 14.C) as well as the SDG 16, which aims to ensure representative, responsive, inclusive and participatory decision-making at all levels (Target 16.7) [5]. The goal of the research is to highlight how progressive reinterpretation of maritime law can foster collaboration among states, civil society, and non-state actors. Such a paradigm shift from "eco-piracy" to "environmental solidarity" is of paramount importance for achieving equitable and sustainable ocean governance in the future.

2 Methods

This research employs a juridical-normative method, focusing on an analysis that combines the doctrinal legal interpretation of international legal instruments with elements of policy analysis. The method is structured into several layers. To begin with, a statutory approach is conducted through a doctrinal examination of Article 101 UNCLOS. This analysis concentrates on the interpretative meaning behind the term "private ends" within the definition of piracy. Several types of interpretations are depicted. Then, a case-law approach is undertaken to several judgments *inter alia* the *Arctic Sunrise case (Kingdom of the Netherlands v. Russian Federation), Provisional Measures, ITLOS, 2013* and *The Arctic Sunrise Arbitration* (Netherlands v. Russia) *PCA, 2015, Whaling in the Antarctic (Australia v. Japan)* before the International Court of Justice (ICJ) and *Institute of Cetacean Research v. Sea Shepherd* before the United States Court of Appeals (USCA) for the Ninth Circuit. These cases are analyzed to illustrate the divergence between environmental and maritime jurisprudence, particularly regarding how environmental activism at sea is framed within the international judicial plane compared to domestic legal systems. Secondly, the research evaluates whether the reasoning and outcomes of the judgments of the ICJ and the USCA are consistent with the framework of the Sustainable Development Goals (SDG) 14, particularly Target 14.C which calls upon the international community to effectively implement UNCLOS, as reaffirmed in the document *The Future We Want*. The study relies on primary legal sources including treaties, court decisions, and international reports. It is supported by secondary literature such as books and journal articles. Ultimately, this methodological framework aims to provide a comprehensive legal and policy-oriented assessment of how a more sided-with-environmental objectives reinterpretation of eco-piracy can strengthen the implementation of international law at sea in a manner consistent with Target 14.C.

3 Results and Discussion

3.1 Critical analysis of several jurisprudence in relation to eco-piracy

To grasp a firm understanding regarding of the tension between the duty of environmental protection and sovereign rights to exploit natural resources, a deeper analysis is needed of the *Arctic Sunrise case (Kingdom of the Netherlands v. Russian Federation), Provisional Measures, ITLOS, 2013* and *The Arctic Sunrise Arbitration* (Netherlands v. Russia) *PCA, 2015* [6]. On 18 September 2013, Greenpeace activists abroad the vessel called Arctic Sunrise tried to access the *Prirazlomnaya* oil rig, which was operating within the area of the exclusive economic zone of the Russian Federation. The activists staged a peaceful protest in opposition to the practice of oil mining. The next day, the Russian authorities boarded and arrested the vessel, towed it to Murmansk and detained its crew. The crew then charged with piracy under Article 227 Russian Criminal Code.

The immediate reaction towards the Arctic Sunrise detention was raised by its flag State, The Netherlands, which submitted the case to the International Tribunal on the Law of the Sea (ITLOS). They argued that the vessel when boarded was exercising the freedom of navigation guaranteed by Article 58 and 87 of the United Nations Convention on the Law of the Sea (UNCLOS) to which both States are parties. It further stated that only the Netherlands itself as the flag state was entitled to take any measures or enforcements against action committed by the Arctic Sunrise, meaning that exclusive jurisdiction belonged solely to The Netherlands as stipulated in Article 92. About two years apart, the Netherlands submitted another complaint *via* the Permanent Court of Arbitration (PCA)

using the same legal basis under UNCLOS. In addition, it added that there was a duty to cooperate in the conservation and peaceful uses of the ocean, as enshrined in Article 301. Key findings of both tribunals contemporaneously showed that there was a violation by the Russian government of its obligation under international law of the sea. Firstly, the action of the Arctic Sunrise activists did not constitute piracy under UNCLOS. They were attempting to scale the oil rig, navigating near the installation and then displaying banner. They, therefore, did not fulfil the violence criteria. From a more contextual reading of the piracy, their actions were not for private ends as it was environmentally motivated and did not involve depredation, let alone personal gain. The judgments underscore that even though it was unlawful or, to some extent, endangering the surroundings it lacks the element of "private ends."

Nevertheless, another jurisprudence concluded otherwise. In 2005, Japan launched a program to conduct various of researches on the Antarctic marine ecosystem, namely JARPA II, ranging from monitoring the whale stocks to managing whale resources through biological data collection [7]. The program was conducted based on the Article VIII of the International Convention for the Regulation of Whaling (ICRW). The ICRW, through a highly monitored system, allows State parties to the convention "special permits" for killing whales for the purpose of scientific research. Seemingly, the genuine objectives of JARPA II were contested by many States as the program allegedly disguised commercializing the whaling program under the pretense of scientific research. Unfortunately for its stakeholders, there was a moratorium on commercial whaling by the International Whaling Commission (ICW). Both situations served as the basis to challenge the legality of JARPA II under Article VIII ICRW.

Australia initiated the contest by submitting the case to the ICJ in 2010 (with New Zealand intervening) arguing that Japan's program violated its obligation under international law *Whaling in the Antarctic (Australia v. Japan)*. Ultimately, the Court ruled against Japan. It concluded that JARPA II's aim for several scientific programs was not conducted in the purposes laid by the Convention [8]. The Court assessed that "scientific research" under Article VIII ICRW cannot be justified subjectively by self-declared intentions. It must be, otherwise, objectively measured by finding the clarity through subsequent practice and overall object and purpose. The Court underscored that State parties to the convention have a conservation obligation that cannot be circumvented by reason of scientific exemptions [9]. Japan, then, was ordered to revoke the permit and refrain from issuing new ones. At about the same time, there was a proceeding to an issue relevant to the Japan's matter above. A U.S.-based NGO called the Sea Shepherd Conservation Society (SSCS) consistently obstructed the Japan's program, specifically targeting the JARPA II operating vessels. They launched targeted campaign to disrupt the whaling fleet including chasing and blocking harpoon ships, throwing substances -harmless but foul-smelling, ramming the vessels, also boarding the ship to hand-deliver the protest letters. Their purpose was solely to protect whales.

The JARPA II representative, namely the Institute of Cetacean Research (ICR), then filed a lawsuit against SSCS in the U.S. Court. In its Ninth Circuit (*Institute of Cetacean Research v. Sea Shepherd,* Court of Appeals), the U.S. Court took a sturdily different viewpoint. Firstly, the U.S Court did not deny that SSCS's actions constituted violence at sea. This alone would not satisfy the requirement of piracy under international law. The next step was an assessment whether or not the action meets the "committed for private ends" element. The U.S Court went a great length and provided an unusual interpretation. It basically said that in the event of violence act at the sea did not represent the will of a flag state nor does it act on behalf of a sending State, they automatically fell under the category of "private ends" thus amounting to piracy under international law [10]. In this manner, piracy was understood as actions not authorized by any state, even it was politically or

environmentally motivated. In turn, its decision was focused on the status rather than to the action *per se* [11]. Therefore, since the SSCS acts were outside lawful State authority, according to the U.S. Court it was a piracy.

From the jurisprudence above, there are several distinguish legal takeaway. The *Institute of Cetacean Research v. Sea Shepherd* decision marked the usage of the norm of international law regarding international maritime-environmental law. In its view, the concept of piracy is interpreted in an expanded manner: private ends include those morally or environmentally motivated acts. Alas, it did not consider the importance of the *Whaling in the Antarctic* judgment whose subject matter has comparable relevance and could have provided valuable insight to the relationship between lawful uses of the sea and environmental activism. Finally, the *Arctic Sunrise* judgment concluded a narrow interpretation regarding piracy: protest of an environmental character directed towards other subjects at sea does not constitute piracy *per se*. The "private ends" element needs to be interpreted in light of the object and purpose of the whole international environmental law norms and not only the legality of the status of the action. This decision strike a balance that marked an effort to a sustainable way of State's response to global green movements or activisms, since their aims align with the international environmental law norms.

3.2 Evaluation of the jurisprudence *vis-à-vis* SDG 14 and 16

The collective outcomes of the *Arctic Sunrise,* the *Whaling in the Antarctic,* and the *Sea Shepherd* cases offer a valuable opportunity to analyze how different judicial interpretations of international law could either promote or hinder the effort to achieve the United Nations Sustainable Development Goals (SDG) 14 and 16 [12]. Conservation and sustainable use of the marine resources are the main goals emphasized by this criterion. Legal order at sea is, thus, connected to the broader aspirations of environmental global governance. It connects environmental conservation with the responsibility of States to uphold international law, including the principles of peaceful use, cooperation, and protection of the marine environment. This makes Target 14.C a unique entry point for analyzing cases such as Arctic Sunrise and Sea Shepherd, in which the interpretation of "private ends" and the criminalization of environmental activism intersect with the broader question of how law can be used to preserve marine ecosystems. Thus, selecting Target 14.C enables the study to show that achieving ocean sustainability is an ecological, normative, and legal challenge, rooted in States' commitment to fully implement UNCLOS as the "constitution for the oceans."

From the variety of targets set out in SDG 16, Target 16.7 is the most noticeable as the one with the strongest link to democracy. Democracy provides mechanisms that allow participation of the citizens and, further, influence decision-making, in contrast to authoritarian regime that are characterized by decisions made by a small group of people who are impervious to criticism, popular control, and actions [13]. As a result, Target 16.7 is important not only for achieving SDG 16, in itself, but also for achieving other SDGs such as SDG 14. Social acceptance would be increased by participatory practices of resource users, which are essential for the long-term sustainability of management strategies. It also boosts the advancement of an effective conservation agenda. A lack of participation, however, erodes trust and could lead to protests and resistance from local communities and impacted stakeholders [14]. The connection between SDG 14 and SDG 16, especially Target 16.7, stems from the governance aspect of sustainability. The evolving understanding of "eco-piracy," in this context, is not merely viewed through using lenses of traditional crime apparatus, hence a criminal classification. On the contrary, it is a litmus test for how effective the international law alignments with the sustainability agenda [15]. This particular issue, not only it inevitably transcends the doctrinal confines of the *jus*

gentium of piracy, but also delving beyond the normative inquiry of how law responds to environmental activism in defense of marine ecosystems as illustrated below:

Table 1. Evaluation of the jurisprudence to Target 14.C and Target 16.7

SDGs **Judgments**	**SDG 14** **Target 14.C** *Enhance Conservation and sustainable use of ocean by implementing law as reflected in UNCLOS*	**SDG 16** **Target 16.7** *Ensure responsive, inclusive, participatory and representative decision-making at all levels.*
The *Institute of Cetacean Research v. Sea Shepherd* (USCA)	**Unfulfilled.** Detaches the interpretation away from the spirit of sustainability in *The Future We Want*.	**Weak.** Portraying environmental activism as criminality rather than lawful engagement in ocean governance.
Whaling in the Antarctic (Australia v. Japan) ICJ	**Fulfilled.** Preventing abuse of "scientific research" exceptions.	**Moderate.** To some extent recognize non-state actor participation, while remained a State-to-State process.
Arctic Sunrise case (ITLOS & PCA)	**Strongly Fulfilled.** Protecting freedom of navigation and lawful environmental protest under Article 58, 87 and 92 UNCLOS.	**Strongly Fulfilled.** Facilitated environmental NGO as legitimate actors in maritime governance.

The ruling of the domestic court reinforces order at sea but weakens inclusive environmental participation, where enforcement is prioritized over collaboration, which is contrary to Target 16.7. The second judgment, that of the ICJ, strengthened international law with regard to conservation, which is consistent with Target 14.C. The ICJ did not, nevertheless, fully integrate the participatory governance principle outlined in Target 16.7. Among the examined cases, the *Arctic Sunrise* judgments of both ITLOS and the PCA are the most faithfully to advance these targets. The Tribunals reaffirmed that UNCLOS remains the central constitutional instrument of the ocean as were highlighted in both judgments. Lawful uses of sea *inter alia* peaceful protest and navigation are protected under this legal regime. Such freedoms cannot be criminalized under the pretext of piracy. By emphasizing that flag State of a vessel exercises exclusive jurisdiction, as stated in Article 92, both Tribunals demonstrated a real contribution of UNCLOS towards safeguarding legitimate environmental activism, which is an indispensable part of the effort in maintaining sustainable ocean governance globally.

4 Conclusion

To sum up, the jurisprudences discussed above unveil two strikingly different approaches in international law: one hinders environmental activism participation, while several others promote environmental solidarity within the UNCLOS framework. The *Arctic Sunrise* amid the others, is the most closely aligned with Target 14.C and Target 16.7 because of its recognition of civil society's participatory role in sustainable ocean governance. In contrast, the "private ends" element was expansively defined in the *Sea Shepherd* decision. As a result, moral-environmental activism was criminalized. Conservation norms were advanced the *Whaling in the Antarctic* judgment, alas, its reach was still confined to inter-State enforcement. Collectively, these rulings underline that the achievement of the 2030 Agenda

requires interpreting maritime law in harmony with sustainability principles and fostering environmental solidarity. Finally, a paradigm shift is necessary where States, institutions and civil society jointly steward the oceans through lawful, inclusive and cooperative governance.

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