

The Evolution, Nature and Application of ‘Private Ends’ in Piracy Definition*

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Abstract

This paper examines the evolution, nature, and judicial interpretations of ‘private ends’, a mainstay of piracy definition from the League of Nations, the Harvard and the International Law Commission Drafts to Article 15(1) of the Geneva Convention on the High Seas¹ and Article 101(a) of the United Nations Convention on the Law of the Sea.² Ju-

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1. Also known sometimes as UNCLOS I.

2. Also known sometimes as UNCLOS II.

dicial applications considered include *Castle John v NV Mabeco* (Castle John and Nederlandse Stichting Sirius v NV Marjlo and NV Parfin) (*The Greenbeard*);³ the Institute of Cetacean Research and Others v Sea Shepherd Conservation Society (*The Sea Shepherd*);⁴ *The Arctic Sunrise*⁵ and *The Enrica Lexie*.⁶ The paper finally argues that had above decision predated the *Santa Maria*,⁷ the Republic of Bolivia v Indemnity Mutual Marine Assurance Company Limited (*The Bolivian Republic*)⁸ and *The Achille Lauro*⁹ outcomes in the latter might have been different.

Keywords: Piracy, Private Ends, Public Motives, Greenbeard, Sea Shepherd, UNCLOS

3. *Castle John v NV Mabeco (The Green Bearded Pirate)* Castle John and Nederlandse Stichting Sirius v NV Marjlo and NV Parfin, 77 *INT'L L.R.* 537. Court of Cassation; December 19, 1986.; For a full commentary on the case see Samuel Pyeatt Meneff, 'The Case of the Castle John, Or *Greenbeard The Pirate*: Environmentalism, Piracy and the Development of International Law' (1993) *Californian Western International Law Journal*, Vol. 24 Fall 1993 No.1, 1-16.

4. *Institute of Cetacean Research v Sea Shepherd Conservation Society*, 725 F.3d 940 (9th Cir. 2013).

5. *The Arctic Sunrise Arbitration (Netherlands v Russia)*, Award on the Merits [2014] PCA 2014-02 (Arbitral Tribunal (UNCLOS, Annex VII)) [233–333, 401(C)].

6. *The 'Enrica Lexie' Incident (Italy v India)*, Award [2020] Arbitral Tribunal (UNCLOS, Annex VII) PCA Case No. 2015-28.

7. The S.S. "Santa Maria" (seizure), HC Deb 24 January 1961 vol 633 cc32-5: <<https://christiebooks.co.uk/2017/09/operation-dulcinea-the-hijacking-of-the-ss-santa-maria-21-january-2-february-1961/>> accessed 31 September 2021.

8. *Republic of Bolivia v Indemnity Mutual Marine Assurance Company Limited* [in the Kings Bench and Court of Appeal [1909] 1 K.B. 785.

9. *Achille Lauro* <<https://www.britannica.com/event/Achille-Lauro-hijacking>> accessed 31 September 2021; see also generally, Andrew L. Liput 'An Analysis of the Achille Lauro Affair: Towards an Effective and Legal Method of Bringing International Terrorists to Justice' (1985) *Fordham International Law Journal* 9(2), Issue 2, Article 5, 328-372.

1. Introduction

This analysis traces the development, examines its nature, and discusses the judicial application of ‘private ends’¹⁰ in the Belgian and US Courts, the International Tribunal for the Law of the Sea (ITLOS), and the Permanent Court of Arbitration (PCA). The problem of what constitutes ‘private ends’ arose in the Belgian decision on *the Greenbeard* (1986), where recourse to the drafting archives of its evolution revealed surprises of its nature and contents. From the *Republic of Bolivia* (1909), the *Santa Maria* (1961), and the *Achille Lauro* (1985) decisions it was considered a settled issue that ‘private ends’ related only to piracy offences and excluded State actors and those acting for ‘political motives’. Thus, *the Greenbeard* decision revived the debate as to its meaning and constitution thereof by showing that ‘private ends’ could also be attributed to the actions of non-pirates such as environmental campaigners and political activists and by extension to terrorists and armed robbers against ships. The *Greenbeard* decision was cited in the US case of *the Sea Shepherd* (2013). On the other hand, the *Arctic Sunrise* crew were released without charge by the Russian Federation, a situation only recently resolved, together with the *Enrica Lexie*, by ITLOS and the PCA.

Against that backdrop this analysis questions whether the *Sea Shepherd* and the *Greenbeard* decisions in revisiting the League of Nations (LON),¹¹ Harvard Draft and International Law Commission (ILC)’s

10. Although only ‘private ends’ is used in Article 101(a) of UNCLOS, it is equated to private motives and the contrasts, ‘public motives’ and ‘political motives’, are also used throughout this paper to highlight the differences.

11. The first attempts in 1922 was abandoned until 1925 as member states were unwilling to accept the proposed solutions. Even then stage, it was postulated that the notion of piracy should include any acts of violence at sea irrespective of the violators’ ends and motives. In the end, this proposal was also rejected and the issue of piracy was clearly separated from politically motivated acts.

linkage of ‘hatred’ and the ‘desire for vengeance’ to ‘private ends’ was apt. The analysis also postulates that, were they to predate the *Greenbeard* and the *Sea Shepherd*; the *Achille Lauro*, the *Santa Maria*, and the *Bolivian Republic* outcomes might have been different and under current conditions. Justice Kennedy in the *Bolivian Republic* case decided that:

The acts of those who seized the goods came within the legal definition of piracy for some purposes, the word “pirates,” as used in the policy, must be construed in its popular sense, and in that sense it meant persons who plunder indiscriminately for their *private gain*, not persons who simply operate against the property of a particular State, however unlawful that might be, for a *public political end*, and, therefore, there had [not] been a loss through “pirates” within the meaning of the policy.¹²

The case also demonstrates differences between commercial and legal approaches to piracy definition, hence Justice Kennedy’s use of ‘private gain’ in contrast to ‘public political end’.

That withstanding, it is arguable that the Belgian and US decisions in the *Greenbeard* and the *Sea Shepherd* respectively, were probably representative of some contemporary ethos that cannot distinguish the actions and motives of political and environmental protestors from those of clear incidences of piracy. It is also debateable whether convictions in the two cases would have been successful had the Belgian and US courts not delved into the history of the LON, Harvard, and ILC Drafts and Commentaries. On that supposition, this analysis contends that had those courts accepted that ‘private ends’ was the only means of separating actual piracy offences from political and related protestors acting on genuine public motives, they would have avoided adding further uncertainties to the definitional problems that have ensued. For the same rea-

12. *Republic of Bolivia v Indemnity Mutual Marine Assurance Company Limited* (n 8) 786. Emphasis added.

sons and assumptions, the analysis maintains that those court decisions in effect inadvertently further clouded the ‘private ends’ requirements in piracy offences and thereby may have rendered Articles 15(1) of the Geneva Convention on the High Seas (GCHS) and Article 101(a) of the UN Convention on the Law of the Sea (UNCLOS) almost redundant.

Instead, the judgments in the *Greenbeard* and the *Sea Shepherd* not only emphasised and relied heavily on ‘hatred’ and ‘desire for vengeance’ but also introduced ‘taking the law into their own hands’ to try and distinguish ‘private ends’ from public motives in the piracy definition. Accordingly, this analysis adopts a novel approach¹³ by employing a more critical stance to the decisions.

2. Evolution of ‘Private Ends’ under UNCLOS I–UNCLOS II

2.1. Pre-UNCLOS Development: LON and Harvard University Drafts on ‘Private Ends’ and ‘Political Ends’

The modern era of universal law on piracy and of the law of the sea started with the LON conference in 1922 and LON draft in 1925. Before

13. See UNCTAD, *Maritime Piracy: An Overview of the International Legal Framework and of Multilateral Cooperation to Combat Piracy Part II Studies in Transport Law and Policy*, No.2, UN NY/Geneva 2014, paras 19–22 <https://unctad.org/system/files/official-document/dtltlb2013d1_en.pdf> accessed 15 December 2021; Arron N. Honniball, ‘The “Private Ends” Of International Law Piracy: The Necessity of the Legal Clarity in Relation to Violent Political Activists’ (2015) International Crimes Database (ICD), ICD Briefing 13, October 2015, 5–15 <<https://www.internationalcrimesdatabase.org/upload/documents/20151102T100953-Honniball%20ICD%20Brief.pdf>> accessed 26 November 2021; Konrad Marciniak, ‘International Law on Piracy and Some Current Challenges Related to its Definition’ (2012) Symposium on Maritime Piracy in International Law, 2012, Vol. 1, Polish Review of International and European Law, Issue 3–4, 2012 Vol. I, 97–140, 114–123. The origin of the term ‘private ends’ as a condition of piracy is found within M. Matsuda and M. Wang Chung-Hui, ‘Report by the Sub-Committee of Experts for the Progressive Codification of International Law’, questionnaire No. 6’ (1926) 20 AJIL Supplement, 223–224.

this, piracy was governed by customary international law and municipal legislations implementing the Law of [Civilised] Nations. There were, however, regional intergovernmental drafting efforts prior to the LON Draft, the details of which are beyond the scope of this analysis. However, despite being the first universal exercise, the LON Draft 1922–1925 did not come to much fruition, whereupon the challenge was taken up by the Harvard Draft.¹⁴ This attempt too came to the same fate. Following the formation of the United Nations, the ILC was established and successfully revived the LON project. Thus, after a long history of drafting developments from the Law of [Civilised] Nations and customary international law, through the LON,¹⁵ Harvard, and ILC Drafts,¹⁶ the first codified and universally agreed definition of piracy resulted in Article 15 of the GCHS and later Article 101 of UNCLOS. ‘Private ends’ features prominently in Article 15(1) and Article 101(a) respectively of both Conventions.

However, ‘political motives’, ‘political ends’, or ‘public motives’ do not appear in the two Conventions but are nonetheless implied in their provisions, in contrast to ‘private ends’. Nevertheless, it took another fifty-two years, four different institutional drafts,¹⁷ and twenty-seven conference sessions — including eleven during UNCLOS III negotiations — from the LON Draft in 1922–1925 and the ILC Draft in 1956 to the GCHS (1958) and UNCLOS (1982), for the general consensus on the definition to emerge. Thus, after a long passage through the LON¹⁸

14. For the Harvard Draft and Reports see (1932) 26 AJIL Supplement, 743–872.

15. United Nations Documents on the Development and Codification of International Law, AJIL Supplement, 1947, Vol. 41, No.4, 66–68.

16. 10 *Yearbook of the International Law Commission* 1956, Vol. II, 253–301.

17. LON1925, Harvard Draft Report 1932, ILC 1956 and the Third United Nations Conference on the Law of the Sea (UNCLOS III 1965–1982).

18. See, League of Nations, Acts of the Conference for the Codification of International Law, (LN. doc. C.351.M.145, 1930, V.); Report of the Second Commission, League of Nations Publication V. Legal, 1930.V. 9 (C.230, M. I 17, 1930. V).

and ILC¹⁹ phases, international customary law was finally developed and codified in the first Geneva Conference on the Law of the Sea (UNCLOS I)²⁰ with piracy in Article 15(1) of its fourth Convention — the GCHS.²¹

Yet, it appears ‘private ends’ was initially missing in the LON 1922–1925 and Harvard 1932 Drafts. The focus had been on exempting ‘political ends’ (or political motives) from the definition and, therefore, the offence of piracy. Delegates at and drafters of the LON Conferences could not agree on what constituted ‘political ends’ for reasons of its ambiguity.

It was thought inclusion of ‘political ends’ would blur the distinction between sponsored State actors and the opposing non-State actors, especially in relation to State owned and operated vessels. However, since State warships and State-owned vessels cannot commit piracy, the only exemptions would be actions committed for ‘political ends’ by non-State actors. That would leave only ‘private ends’ in the running. A commentator alludes to the probable continued dilemma when opining that ‘private ends’ had in fact [also] been omitted from the 1958 ILC text in order to include within it the definition of acts of violence or depredation committed for ‘political ends’.²²

It was still assumed then that ‘private ends’, not ‘political ends’, constitute piracy. It was only for those reasons that ‘private ends’ was reinstated in the ILC draft.

19. International Law Commission, see Art 13(1) of the UN Charter; see also, 42 AJIL Supplement 2 (1948).

20. The Geneva Convention 1958 is sometimes referred to as UNCLOS 1; Article 15 of the GCHS corresponds to Article 39 of the ILC draft Articles.

21. In 1956, the United Nations held its first Conference on the Law of the Sea (UNCLOS I) at Geneva, Switzerland. UNCLOS I resulted in four treaties concluded in 1958: this paper’s main interest is the GHSC whose Article 15 defines piracy.

22. Samuel Pyeatt Menefee (n 3) 11, 37.

2.2. Under UNCLOS III Conference 1956–1982: ILC Draft on State Actors and Non-State Actors

The second United Nations Conference on the Law of the Sea 1960 (UNCLOS II) was convened to consider further the breadth of the territorial sea. However, it did not lead to any agreement on the issues at stake, the list of which, in any case, did not include piracy. The main focus of the piracy offence definition, in the resumed UNCLOS III conference, was not merely the use of violence, deprivation of freedom, or other related factors, but whether the motives were for ‘private ends’ as contained in Article 15(1) of the GCHS and Article 101(a) of UNCLOS.

UNCLOS is supposed to have finally settled the ‘private end’ debate by comprehensively codifying customary international law and developing the contemporary law of the sea in peacetime. For those, *inter alia*, reasons, it has been widely regarded as ‘the greatest codification in international law and the major milestone in the history of the law of the sea’.²³

However, Article 101(a) of UNCLOS did not materially change the text of Article 15(1) of the GCHS which remained unaltered except for paragraph numberings. Significantly, reference to ‘private ends’ also remains unchanged. Article 101 of UNCLOS should be read together with Article 58(2) of UNCLOS, which makes it clear that the Article and other pertinent rules of international law apply to the Exclusive Economic Zone (EEZ) in so far as they are not incompatible with the provision of UNCLOS relating to the EEZ; and especially Articles 102 and 103 of UNCLOS on the status of State owned and/or operated vessels, emphasising the significance of State actors or State system in determining the scope of ‘private ends’ versus ‘political motives’. Thus, the actions of State

23. For further background information, see generally, Alfred P. Rubin, ‘The Law of Piracy’ (1987) 15 *Denv. J. Int’l L. & Pol’y* 173, 1-63 <<https://digitalcommons.du.edu/cgi/viewcontent.cgi?article=2312&context=djilp>> accessed 15 December 2021; Alfred P. Rubin AP, in Bernhardt(ed.) *Encyclopaedia of Public International Law* (1989), 259-62.

actors or with the authority, or touching on the authority, of the State or State system seems to fall in the realm of ‘public motives’, while actions by any non-State actors relate to ‘private ends’.

Understanding these subtle distinctions is essential to appreciating the evolution, nature, and role of ‘private ends’ in the definition of piracy. That was the drafters and negotiators’ intentions regarding ‘private ends’ and ‘political motives’. The matter was considered settled. The upshot then was that only pirates were subject to the ‘private ends’ test with State actors and political activists being exempt but subject to political motives test. Key to current issues is that environmental activists, terrorists, and armed robbers against ships were not in the drafters and delegates’ contemplation at the time as were those actors in the grey area. Hence reasons for continued dilemma of ‘private ends’ versus ‘public ends’.

Further insight on the nature and function of ‘private ends’ can be gathered from its judicial considerations in municipal courts and international tribunals. The earliest opportunity for testing ‘private ends’ came in the Belgian Courts under the GCHS definition before UNCLOS entry into force.

3. Judicial Interpretation of Nature of ‘Private Ends’ in the Belgian and United States Courts

3.1. ‘Desire for Private gain’ and ‘Private Ends’ in the Belgian Courts: *The Greenbeard*

The judicial pronouncements from the Belgian case of the *Greenbeard*²⁴ reopened the debate on its meaning and role. Legal action on the case

²⁴ Green signifies environmental credentials of the captain. It also seems to be reference to Edward Teach or Edward Thatch (c. 1680 – 22 November 1718), better known as *Blackbeard*; and *Redbearded* Pirate Barbarossa Brothers, Ottoman pirates.

arose from the Greenpeace campaign against the vessel *Falco* and the *Wadsy* tanker dumping industrial wastes into the sea, and involved boarding, occupying, and causing damage to the two vessels. According to the Court, Greenpeace vessels went too far in preventing the dumpers from leaving the harbour in accordance with the required permit and in those actions, violated accepted navigational practices, though significantly not the GCHS practices.

To aid their interpretation of Article 15(1) of the GCHS, the Court revisited the drafting archives. One such record was a Commentary on ‘private ends’ in the League of Nations Committee of Experts for the Progressive Codification of International Law in 1925 giving insight that:

Certain authors take the view that *desire for gain* is necessarily one of the characteristics of piracy. But the motive of the acts of violence might be not the prospect of gain but *hatred* or a *desire for vengeance*. In my opinion it is preferable not to adopt the criterion of *desire for gain*, since it is both *too restrictive* and contained in the *larger qualification* “for private ends.” It is better, in laying down a general principle, to be content with the external character of the facts without entering too far into the often-delicate question of motives. Nevertheless, when the acts in question are committed from *purely political motives*, it is hardly possible to regard them as acts of piracy involving all the important consequences which follow upon the commission of that crime. Such a rule does not assure any absolute impunity for the political acts in question, since they remain subject to the ordinary rules of international law.²⁵

Although the piracy definition in the GCHS is underpinned by the two words ‘private’ and ‘ends’, neither the GCHS/UNCLOS nor the 1956

25. See *League of Nations, Acts of the Conference for the Codification of International Law*, (LN. doc. C.351.M.145, 1930, V.); *Report of the Second Commission, League of Nations Publication V. Legal*, 1930 V. 9 (C.230, M. I 17, 1930 V.). Emphasis added.

ILC Commentary on the draft article define what constitutes ‘private ends’.²⁶

‘Private’ refers to personal interests or personal self (ego) gain, individual, own benefits or reasons as opposed to the expressions general, sharing with, or belonging to the public as a whole.²⁷ The nearest alternative that best explains ‘private’ is ‘private profit’, construed as the underlying reason why, for instance, a taxpayer or company participates in business activities of any kind.²⁸ However, profit is a business occupation which arises from the function of revenue minus expenses, an analogy which does not apply well to ‘private ends’ in piracy operations, even if profit motives may be involved in the latter.²⁹

As to motives, Curzon and Richards define ‘motive’ under English Criminal Law as ‘that which incites to action, the source of power for a given action but which should not be confused with *men’s rea*’.³⁰ That approach is the same for municipal as well as international criminal offences. In US law, however, Garner best defines private as ‘that relating or belonging to an individual as opposed to the government or public’³¹ which also reflects the common use of the word. So, from the above,

26. The ILC Commentaries on their equivalent Article 39 had 4 conclusions; the second commentary simply provided that: “The acts must be committed for private ends” without adding much to it.

27. See Cambridge Advanced Learner’s Dictionary & Thesaurus, Cambridge University Press <<https://dictionary.cambridge.org/dictionary/english/private>> accessed 15 December 2021.

28. *id*; however, a business or company concept of private differs slightly from those of the individual.

29. Although the Somali piracy has been associated with business, shareholding and floatation in the Mogadishu Stock Exchange. The potential for enormous reward is undoubtedly the major draw for young pirates.

30. Leslie B. Curzon and Paul Richards, *The Longman Dictionary of Law* (7th Edn., Longman, 2007) 388; see also *R v Rowley* [1991] 1WLR1020 and *Birch v DPP* (2000), *The Independent* 13 January 2000 both criminal law cases in which motive is linked to purpose.

31. Brian A. Garner, *Black’s Law Dictionary* (2nd Edn., West Publishers, 2001) 553.

those who attack ships for private, individual, and self-benefits qualify as pirates while those who do so for political or public cause should not. Precedents in the latter include the *Santa Maria* and the *Achille Lauro* in both of which passengers highjacked cruise ships in support of their political causes, and the *Bolivian Republic* where insurgents hijacked and confiscated a merchant vessel and her cargo for similar political reasons.

On the other hand, ‘ends’, equated to ‘motives’, also means a reason for doing something, as in, the ‘police were unable to establish a motive for his murder’.³² In this context the word motive is synonyms with reason, motivation, and has an implication of incentive and consideration, as in, ‘the motive for the attack is still unknown’.³³

3.2. Probable Influence of the Level of Violence on ‘Private Ends’: SUA–COLREGs Conventions Offences

It is arguable that the Court in the *Greenbeard* case had difficulties convicting the crew for actions purely for ‘private ends’. Instead, the Court in effect suggested that these were offences under the Convention on the International Regulations for Preventing Collisions at Sea 1972 (COLREGs), as interference with and endangering navigation rather than piracy. Nevertheless, for the interference with navigation and execution of permitted functions, the trial Court declared the action a piracy, and accordingly issued injunction prohibiting the defendants from engaging in any conduct ‘hindering the free passage’ of the dumping vessels from their point of departure or in their freedom of navigation within Belgian territorial waters, ‘when such conduct would risk

32. *id.*

33. *ibid* (n 31) 1014: Motive on the other hand means a reason for doing something, e.g., “police were unable to establish a motive for his murder”. It is synonyms with reason, motivation, motivating force, rationale, ground s, cause, basis, occasion, thinking, the whys and wherefores, object, purpose, intention, design.

safety or lives'.³⁴ A sentiment repeated by Chief Judge Konzisk in the *Sea Shepherd* case.

Despite, in their inference, this being partly a COLREGs and freedom of navigation issue rather than piracy, the Court nevertheless concluded that the threatened actions on the high seas involved conduct which fulfilled the definition of piracy under Article 15(1) of the GCHS. Pursuant to the Court:

It appears from the facts available that, at the time of their action against *the Wadys Tanker* and the *Falco*, the applicants resorted to “violence” [...] The actions in question were committed *for personal ends*, in furtherance of ... [their] objects”. Furthermore, more personal motivation such as *hatred*, the *desire for vengeance* and the *wish to take justice into their own hands* are not excluded in this case. There is no provision of municipal or international law which imposes restrictions on the competence of the Belgian courts, in relation to their own nationals to take measures to protect their *free right of passage* and their lawful activities and even, if necessary, to pronounce a civil sanction to *ensure respect for the freedoms granted to all persons*.³⁵

From the above quotation, the freedom of navigation under Article 87(1) (a) of UNCLOS only applies to State actors. Secondly, in revisiting the LON and the ILC Commentaries on the meaning of ‘private ends’ which included ‘hatred’, the Court seems to equate the actions of Greenpeace activists to those of lawless mobs or rioters, meaning violent people ‘who

34. See (n 3).

35. See also *Castle John v NV Mabeco* (n 3) 538-39. The Court of Appeal noted that violence was included among the actions undertaken by the defendant against the *Wady Tanker* and the *Falco*. This consisted not only of material deeds such as boarding, painting the vessels, making threats with a knife, detaching the cable used for dumping and sawing through it, but also included moral pressure on the crews, such as threats to throw themselves across the bow, the presence of divers in the water, and threats to loosen the anchors, all of which could be labelled as forms of violence. (Emphasis added indicating the supposed real reasons for the court’s decision).

wish to take justice into their own hands'. It is plausible the Court was influenced by the perceived level of violence employed by the activists — a sentiment the *Sea Shepherd* found persuasive. That interpretation would seem to fit with international customary law's characterisation of pirates: outlaws who have by their actions forsaken the protection of national jurisdictions, 'taken the law into their own hands', and become enemies of civilisation — *hostis humani*.³⁶

However, this paper takes a dissimilar view as to whether lawless mobs and rioters should be a correct description of non-pirates such environmental, conservation, and political activists.³⁷ From its pronouncements the Court seemed more concerned with the Greenpeace crew's apparent violation of 'accepted navigational practices', 'free right of passage', and ensuring 'respect for the freedoms granted to all persons' than whether the defendants' actions were for 'private ends' and, therefore, constituted piracy under Article 15(3) of the GCHS. Accordingly, it appears any actions that deviated from the Court's perceptions were consigned to 'private ends'. Instead, a holistic rather than a selected reading of the Commentaries in the drafting archives would have put 'private ends' and 'political ends' into perspective.

The Court also returned to 'hatred' in the LON and ILC Commentaries. In that respect it raises doubts as to whether the Court was right in both its reasoning and conclusion.

3.3. Hatred in 'Private Ends'

In its decision the Belgian Court of Appeal revisited 'hatred' as a constituent of 'private ends'. However, it was the Commentary rather than Article 15 of the GCHS definition that included 'hatred'. The Court was

36. See also generally, Konrad Marciniak (n 13) 97-140.

37. Cf, generally, Kevin J. Heller, 'Why Political Ends are Public Ends, Not Private Ends' (Opinio Juris, 1 March 2013) <<http://opiniojuris.org/2013/03/01/a-final-word-about-politically-motivated-piracy/>> accessed 31 July 2021.

supposed to ascertain Article 15(1) rather than its history. The common law mischief rule has been discredited. Despite that, the Court did not define ‘hatred’. However, the word means intense dislike, *inter alia*. It is synonymous with hostility, loathing, hate, and detestation.³⁸ Despite the LON and ILC alluding to the term in their 1925 and 1956 Commentaries³⁹ respectively, it is doubtful whether they or the Court were aware of introducing such emotive language and concepts into the interpretation of an international Convention and, therefore, international law. That notwithstanding, the Court concluded that the defendants’ actions were committed for ‘private ends’, the inference here being the achievement of their group’s corporate goals. But corporate goals can hardly be for ‘private ends’. Individuals can, but a group cannot have a group ‘private end’. It is different from the analogy, in company law, of associating the actions of company directors to that of the company

Yet, the Court felt that more personal motivations, presumably of individual crews, could not be excluded from the publicly motivated actions of activists such as Greenpeace. The supposition here being that hatred can turn a seemingly public motive into ‘private ends’. That might be understandable in political actions where emotions can sometimes run so high that it is hard to distinguish a political cause from a private one, but not necessarily in environmental protests. In that context, the Court seemed to venture into metaphysical logic by suggesting that public motives are a collective form of private motives. However, delving into metaphysics is beyond the scope of this paper. That notwithstanding, the nature of the actions was held by the Belgian trial Court to fulfil the ‘private ends’ test, and the Belgian Court of Appeal upheld the decision that

38. It is synonymous with hostility: Brian A Garner (n 31) 728.

39. Hatred was contained in the Commission’s first conclusion on the equivalent Article 39, namely that “(i) The intention to rob (*animus furandi*) is not required. Acts of piracy may be prompted by feelings of hatred or revenge, and not merely by the desire for gain”.

the piracy provisions applied. Greenpeace appealed to the Belgian Court of Cassation, on the grounds that its actions did not involve piracy, as they were not committed for ‘private ends’ and reasoned that:

An action which impedes, threatens, prevents, or makes more difficult the discharge at sea of waste products which are harmful for the environment, taken with a view to alerting public opinion, cannot be considered as having been committed “for private ends” merely because that aim corresponds with the objects set out in the articles of association (*object social*) of the applicant. The consideration that those personal motives such as *hatred*, the *desire for vengeance* or the *wish to take justice into their own hands* “are not excluded” in this case, is insufficient in law to deduce the existence of “personal ends”.⁴⁰

Nevertheless, in arriving at that view, the Court did not demonstrate existence of corporate goals in Greenpeace’s Articles and Memorandum of Association. Notwithstanding, in rejecting this contention, the Court of Cassation noted that:

The applicants do not argue that the acts at issue were committed in the interest or to the detriment of a State or a State system rather than purely in support of *a personal point of view concerning a particular problem, even if they reflected a political perspective*. On the basis of these considerations the Court of Appeal was entitled to decide that the acts at issue were committed for personal ends within the meaning of the Convention on the High Seas. The ground of appeal is therefore unfounded in law.⁴¹

So, ‘hatred’ is a constituent of ‘private ends’ in the GCHS, unless it was ‘committed in the interest or the detriment of a State or a State system’⁴² rather than in that of an individual or organisation, however noble the

40. *Castle John v NV Mabeco* (n 3) 539.

41. *ibid* 540. Emphasis added.

42. *id.* Emphasis added.

objectives of that individual or organisation are or was. In referring to the ‘State or State System’, the Court appeared to return to the origin and intention of the LON draft definition to exclude public or political motives from piracy. Accordingly, the Court suggested that environmentalists were not political rebels and, therefore, not among the beneficiaries of political motives; instead, they represented a private view, even if those views reflected political or public perspectives.⁴³ This reasoning is questionable. Even if the defendants actually hated the respondents in this case, it is arguable that that was not the point here, considering their non-discriminatory position against all polluters rather than just these particular appellants. Following the Court’s rationale, it is doubtful whether even the actions of indisputable political activists such as those of the *Bolivian Republic*, the *Santa Maria*, and the *Achille Lauro*, would have qualified as political motives before this Court.

That notwithstanding, the Court went on to consider ‘desire for vengeance’ as a further constituent of ‘private ends’ pursuant to the LON and ILC Commentaries.

3.4. Desire for Vengeance in ‘Private Ends’

3.4.1. ‘Desire’ and Intentions to Rob

The court’s third revisit to the Commentaries was regarding ‘desire for vengeance’. This too originated from the LON and ILC Commentaries (where the text used was instead ‘feelings of vengeance’), details of which are omitted in both the GCHS and UNCLOS definitions.⁴⁴ Furthermore, it is not clear from the judgment whether ‘feelings’ and ‘desire’

43. Douglas Guilfoyle, ‘Political Motivation and Piracy: What History Doesn’t Teach Us About Law’ (EJIL: Talk!, 17 June 2013) <<https://www.ejiltalk.org/political-motivation-and-piracy-what-history-doesnt-teach-us-about-law/>> accessed 15 December 2021.

44. The Commission’s first conclusion on their commentary to Article 39 did not use the term “desire for vengeance” but rather “a feeling of hatred or vengeance”.

convey the same meaning. Neither did the Court define what constitutes ‘desire for vengeance’. This analysis will be divided into ‘desire’ and ‘vengeance’. Like ‘hatred’, the noun ‘desire’ means desperation for, having a strong feeling of wanting to have something or wishing for something to happen, as in, ‘he resisted public desires for choice in education’.⁴⁵ While the adverb of desire also refers to strongly wishing for or wanting (something),⁴⁶ as in, ‘he never achieved the status he so desired’.⁴⁷

It is, however, doubtful that in their use of the term neither the LON and the ILC Commentaries nor the Court in the *Greenbeard* case appreciated its true and wider meaning. Yet, it is improbable that the appellant actors in this case would have had such a strong, in-depth, and emotional desire for revenge (vengeance), as characterised in the judgment, against the respondents. In that context ‘private ends’ does not necessarily have any connections with private gains. This is because the intention to rob is not an essential part of ‘private ends’ in piracy. As the IMO Committee Legal Committee has reaffirmed:

Article 101(a) of UNCLOS, requires that, in order to constitute piracy “any illegal acts of violence or detention, or any act of depredation,” be committed “for private ends”. It is noteworthy that the International Law Commission (ILC), in its 1956 draft Articles concerning the Law of the Sea with commentaries (Commentary), stated that “[t]he intention to rob (*animus furandi*) is not required. Acts of piracy may be prompted by *feelings of hatred or revenge* and not merely by the desire for gain”.⁴⁸

45. More fanciful meanings of the term include inclination, yearning, longing, craving, and hankering for an object. Used informally it would include one’s desire to see the world.

46. In this context the term is synonymous with wish for, want, long for, yearn for, crave, set one’s heart on, hanker after/for, day.

47. *id.*

48. IMO Circular Letter concerning information and guidance on elements of international law relating to piracy, Circular Letter No.3180, 17 May 2011 <http://www.un.org/depts/los/piracy/circular_letter_3180.pdf> accessed 11 September 2021. Emphasis added.

Once private gains and intention to rob are removed from the equation, it renders political motives without robbery irrelevant and instead equates political motives or public motives to 'private ends'. The Virginia Commentary on Article 101(a) of UNCLOS agreed that '[i]n limiting the definition to acts committed for "private ends", Article 101(a) excludes acts having political motives'.⁴⁹ This also represents the views of past and recent scholars such as Birnie⁵⁰ that those who act purely for self and private enrichment are not exempt. Another author,⁵¹ however, points out that the term 'private ends' is not defined, making it difficult to interpret what exactly is meant.⁵² In support of another,⁵³ the same authors opines that the clause itself was supposed to distinguish between acts of true piracy and acts of privateering, the historical practice of State-sponsored piracy outlawed in the mid nineteenth-century.⁵⁴ Accordingly, '[a] pirate either belongs to no state or organised political society or by the nature of his act he has shown his intention to reject the authority of that to which is his properly subject'.⁵⁵ It is only from this type of approach that one can understand the nature and perspective of 'private ends', and therefore piracy.

That notwithstanding, in the LON and the ILC Commentaries and the *Greenbeard* judgment, 'desire' is further linked to 'for vengeance'.

49. Myron H. Nordquist, Satya Nandam SN, and Shabtai Rosenne, *United Nations Convention on the Law of the Sea of 1982: A Commentary, Volume VII* (Brill/Nijhoff 2011) 200.

50. Patricia M Birnie, 'Piracy: past, present and future' (1987) 11 Marine Policy, Issue 4, 163-183, 171.

51. Malvina Halberstam, 'Terrorism on the high seas: the Achille Lauro, piracy and the IMO convention on maritime Safety', *AJIL* 82 (2), 269-310.

52. Elizabeth Nyman, 'Modern Piracy and International Law: Definitional Issues with the Law of the Sea' (2011) Center for International Studies, Georgia Southern University, Geography Compass 5/11:863-874, 865-866.

53. Lawrence Azubuike, 'International law regime against piracy' (2009), *Annual Survey of International & Comparative Law*, Vol.15, Iss.1, Art.4, 43-59.

54. Elizabeth Nyman (n 52).

55. Harvard Research in International Law. (1932). "Draft convention on piracy with comments. *AJIL* 26, 739-885.

3.4.2. 'For Vengeance'

The Court's fourth reference to the Commentaries was 'for vengeance'.⁵⁶ This, too, was neither included in the GCHS or UNCLOS definitions nor defined by the Court. Like 'desire', 'vengeance' imparts somewhat strong language and emotive interpretation into the provision. It means punishment inflicted or retribution exacted for an injury or wrong. The word is synonymous with revenge, as in, 'he demanded vengeance for the murder of his father'.⁵⁷ That notwithstanding, the *Greenbeard* decision reaffirms the proposition that as non-State actors, violent actions by environmentalists qualify as 'private ends' and, therefore, constitute piracy under international law. The Court also appeared to view the actions as a malicious vendetta as described in Hammurabi's 'an eye for an eye and a tooth for a tooth'. It is, however, unlikely that the defendants in the *Greenbeard* harboured such extreme feelings of vengeance individually or jointly. Besides, what would they be revenging against? It is assumed that the LON, Harvard, and ILC drafters were all competent linguists, some of whom were probably native English speakers, who must have understood the real meanings and seriousness of using these terminologies. That being the case, it is rather unfortunate that they could have chosen such strong and emotive expressions as 'hatred' and 'desire for vengeance' to designate 'private ends'.

Pursuant to the judgment, to take it out of the private and into the public motive arena, the act had to be in the interest or to the detriment of a State or a State system rather than purely in support of a point of view concerning a particular problem, even if they reflected a political

56. Contained in the Commission's first conclusion of their commentary on their equivalent Article 39.

57. See Cambridge Advanced Learner's Dictionary & Thesaurus, Cambridge University Press <<https://dictionary.cambridge.org/dictionary/english/vengeance>> accessed 15 December 2021.

perspective. In other words, merely wrapping a personal point of view in a public interest context, even for such a noble cause as saving the environment and, therefore, the planet, is immaterial so long as what the defendants embodied is neither for nor against a State or a State system. To further exacerbate the problem, the Court did not define what constitutes a system but the statement should be read in the context of *ejusdem generis* to a State as the apex of a public institution. Whether this view is subsequently accepted or ultimately becomes general consensus is immaterial. However, on the basis of ‘hatred’ and ‘desire for vengeance’, the *Greenbeard* decision is in the paper’s opinion questionable.

As noted, the clue seems to be in the level of violence employed by the accused and the Courts’ apparent abhorrence of protesters ‘taking the law into their own hands’. This line of argument is also supported by Menefee who suggests that ‘the answer to and key to understanding the decision is its link with external factors: the Court’s disapproval of violent attack on vessels’.⁵⁸ If those assumptions are correct, then *the Greenbeard* and later *the Sea Shepherd* (post) decisions seem to have ‘jumped the gun’ (to use a jargon): the decision seems to be based on SUA Convention offences of violent attacks on ships than on piracy, and, one would add, COLREGs offences of interference with the freedom of navigation. However, the SUA Convention 1988 (including the SUA Protocol 1988 and the SUA Protocol 2005) offences were at least two years too late at the earliest for *the Greenbeard* decision.

3.5. Extension of ‘Private Ends’ to Armed Robbery Against Ships

For the above reasons, it is probably safe to assume the decision was also based on what turned out to be SUA-type offence rather than on ‘private

58. Samuel Pyeatt Menefee (n 3) 1-16; see also Samuel Pyeatt Menefee, ‘Anti-piracy law in the year of the ocean: Problems and opportunity’ (1999) ILSA Journal of International & Comparative Law, 5(2), 309-318. Emphasis added.

ends' in Article 15(1) of the GCHS. It has also been opined correctly that:

two *external* factors also lessen the likelihood that the *Greenbeard* decision represents a turning point in the international definition of piracy. The first is the reluctance of some countries to face up to the problem of piracy at all. A second factor which makes the redefinition of piracy unlikely is the existence of a new alternate ground of prosecution.⁵⁹

This was unavailable at the time the *Greenbeard* was decided. The answer, therefore, might lie in Article 3 of the SUA Convention,⁶⁰ drafted in response to the *Achilles Lauro*⁶¹ hijack. Among the unlawful acts covered by the SUA provision are the seizure of ships by force, acts of violence against persons on board ships, and the placing of devices on board a ship which are likely to destroy or damage it. The *very absence* of terms, such as 'piracy' and 'maritime terrorism', makes it more likely that this SUA-type offence was prematurely applied in the *Greenbeard* and *Sea Shepherd* decisions.

It is expected it will also now be applied by SUA Member States in appropriate environmental contexts and thus *less* likely that an expanded definition of international piracy will come into use. Having 'private ends' is not essential for commission of a SUA offence but it is for armed robbery against ships. Consequently, this is now included in the IMO's *Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery Against Ships*,⁶² which provides that armed robbery against ships consists of any of:

59. id.

60. And Articles 3bis and 8bis, namely: Maritime Terrorism and Arms and Weapons of Mass Destruction (WMD).

61. See Malvina Halberstam (n 51).

62. Code of Practice for the Investigation of Crimes of Piracy and Armed Robbery against Ships, adopted by the IMO General Assembly Resolution A.1025. (26) during the 26th IMO Assembly on 2 December 2009.

any illegal act of violence or detention or any act of depredation, or threat thereof, other than an act of piracy, committed for *private ends* and directed against a ship or against persons or property on board such a ship, within a State's internal waters, archipelagic waters and territorial sea.⁶³

Although armed robbery is not piracy, this definition is almost identical to Article 101(a) of UNCLOS except for the geographical requirement. So, 'private ends' is no longer the preserve of piracy definition and has been extended to armed robbery against ships. Viewing the decision in that context of extension of 'private ends' remit would probably make sense, instead of the Belgian Court struggling with/overreaching itself in revisiting the LON and ILC Commentaries on 'hatred' and 'desire for vengeance' without any apparent explanations or justifications.

In adding their own, 'wishing to take justice into their own hands', which was not in the LON and ILC Commentaries, into the constituents and interpretation the Court seemed to cause yet more confusion. Regrettably, a similar approach was adopted by the American Courts in the *Sea Shepherd*.

3.6. Wishing to Take Justice into Own Hands and Private Ends

The fifth consideration was the 'wish to take justice into their own hands', also excluded in the LON and ILC Commentaries as well as the GCHS. It was instead added, but not defined, by the Court. However, in so doing, the Courts in the *Greenbeard* and later in the *Sea Shepherd* were perhaps not only expressing their personal disapproval of the activists' actions but also assimilating those actions to mob rule or vigilante

63. id; See also Niclas Dahlvang, 'Thieves, Robbers & Terrorists: Piracy in the 21st Century' (2006) 4 Regent Journal of International Law 17, 17–45. Emphasis added.

justice.⁶⁴ It is plausible that in the two cases the Belgian and US courts were likewise equating the actions to the origin of mutinies and piracy when naval officers rebelled against the established rules and thereby placing themselves outside the normal judicial system — hence *hostis humani generis*. Mob rule is not generally popular and so the Courts are conceivably suggesting that grievances against marine environmental pollution (*Greenbeard*) and illegal whaling (*Sea Shepherd*) should follow the normal judicial channels rather than a group of people, for whatever reasons, taking it upon themselves to punish whalers and those they regard as polluters.

In that context it was interesting to note Chief Judge Konziscki's remarks in the *Sea Shepherd*:

You don't need a peg leg or an eye patch. When you ram ships; hurl glass containers of acid; drag metal-reinforced ropes in the water to damage propellers and rudders; launch smoke bombs and flares with hooks; and point high-powered lasers at other ships, you are, without a doubt, a pirate, no matter how high-minded you believe your purpose to be.⁶⁵

It gave the unfortunate impression the Courts were expressing disapproval of the vigilantism, hooliganism, and anarchism of those they equated to political activists and environmental agitators. Taking the law into one's own hands and attempting to effect private justice according to one's own understanding of right and wrong have several connotations and are tantamount to actions taken by, for instance, anarchists. It is contended that this is what the Courts objected to in these decisions rather than whether the actions in question constituted 'private ends'

64. See, generally, Barry Hart Dubner, Claudia Pastorius, 'On the ninth circuit's new definition of piracy: Japanese Whalers v The Seashepherd who are the real pirates (i.e. plunderers)?' (2014) 45 J.Mar. L. & Com. 415 (2014) Journal of Maritime Law and Commerce, 415-444.

65. Institute of Cetacean Research V Sea Shepherd Conservation Society, United States Court of Appeals 9th Circuit 725 F.3d 940, 947.

rather than ‘public motive’ and, therefore, piracy. The level of violence applied by the accused maybe swayed the judges.

As noted, put into the appropriate historical context of piracy history and development, in the view of the Belgian Court of Appeal by ‘taking justice in their own hands’, like the original pirates, the defendants removed themselves from, and forsook, the protection of the ‘public motive’ sphere and the judicial system into the realm of ‘private ends’. Not to mention that in so doing, the defendants were ‘usurping’ the role of courts and judges, a course of action not condoned by the judiciary. The *Greenbeard* and *Sea Shepherd* decisions also paint a black and white picture of motives, leaving no room for actions falling between ‘private ends’ and ‘public motives’. The Courts were instead rigidly unwilling to countenance the possibility of the co-existence of a grey area: a mixture of ‘private end’ and political motives in piracy. That notwithstanding, it is thought that in the *Sea Shepherd* decision, the Court missed the point, namely that:

The outer bounds of the private ends requirement are relatively clear. On one end, proving *animus furandi* – or the intention to steal for personal pecuniary gain – is not required to satisfy the private ends requirement. On the other end, it is undisputed that acts of violence committed on the high seas under state authority fail to satisfy the private ends requirement. But there is significant room between these two extremes. Just exactly where the line should be drawn between these two extremes, and on which side of that line the Sea Shepherds fall, is a more difficult issue.⁶⁶

So, desire is probably a stronger and a more appropriate expression. The same probably also applies to vengeance.

Belish, in the above view, exemplifies the problem caused by the nature of ‘private ends’ in the piracy definition.

66. Jon Bellish, ‘More Great Piracy Facts in U.S. Courts: Private Ends Edition’ (EJIL: Talk!, 28 February 2013) <<https://www.ejiltalk.org/more-great-piracy-facts-in-u-s-courts-private-ends-edition/>> accessed 15 December 2021.

4. ITLOS and PCA: The Arctic Sunrise and the *Enrica Lexie*

The arrest of the *Arctic Sunrise* and her crew in 2013 and the threatened prosecution of her thirty crew members for piracy in the Russian Federation intensified the debate over the nature and role of ‘private ends’ in the definition of piracy. The *Arctic Sunrise*’s flag State, the Netherlands, instituted arbitral proceedings against the Russian Federation under Annex VII of UNCLOS⁶⁷ at ITLOS. The Netherlands argued that the arrest and detention of the *Arctic Sunrise* and its crew was in violation of the provisions of UNCLOS.⁶⁸ The issue was whether the crew committed piracy generally and in particular whether ‘private ends’ could be attributed to entities other than individuals under Article 101(a) of UNCLOS. The incident also brought back vivid memories of the bombing and sinking of Greenpeace’s *Rainbow Warrior*.⁶⁹ The PCA unanimously decided that the Russian Federation were in breach of their international obligation in detaining the vessel and its crew for suspected piracy and ordered the Russian Federation to pay the Netherlands compensation for: damage to the *Arctic Sunrise*; non-material damage to the Arctic 30 for their wrongful arrest, prosecution, and detention in the Russian Federation; and damage resulting from the measures taken by the Russian Federation against the Arctic 30.⁷⁰ The importance of the case is that a charge of piracy based on ‘private ends’ would have been unsustainable in the Russian Federation.

67. See also Theodore Kill, ‘Arctic sunrise arbitration (Netherlands v Russia) (Perm. Ct. Arb.) (2016) ILM, 55(1), 1-73; and Eva Rieter, ‘The Arctic Sunrise Case (Netherlands/Russia) (ITLOS)’ (2014) ILM, 53(4), 603-619.

68. *The Arctic Sunrise Arbitration* (n 5) 238-241.

69. France-New Zealand (*Rainbow Warrior*), Arbitration Tribunal, 82 I.L.R. 500 (1990) 82 ILR 500.

70. *The Arctic Sunrise Arbitration* (n 5).

In the latest development, ITLOS-PCA in the *Enrica Lexie* case, in which Italian marines acting as marials on board an Italian tanker shot and killed two Indian fishers and injured a third on board the fishing vessel the *St Anthony* they suspected of piracy. The Tribunal decided unanimously in respect of India's submissions that the fishers were not pirates and that, therefore, Italy had breached Articles 87(1)(a) and 90 of UNCLOS for the injury to India's non-material interests. As a result of this breach by Italy, India was entitled to payment of compensation in connection with loss of life, physical harm, material damage to property (including to the *St Antony*), and moral harm suffered by the captain and other crew members of the *St Antony*, which by its nature cannot be made good through restitution.⁷¹ As with the *Arctic Sunrise*, Italy's proof of piracy based on 'private ends' against the *St Anthony* crew would have failed.⁷²

5. Conclusion

This analysis has demonstrated that: piracy definitional provisions in the GCHS and UNCLOS have had a tortuous evolution; the nature and constitution of 'private ends' have had unintended consequences outside their original targets; doubts persist as to whether actions in the *Greenbeard* and the *Sea Shepherd* cases were for 'private ends' in that the defendants were not indiscriminate plunderers for private gain under both customary and Treaty Law; besides the actual pirates and political activists, newer actors such environmental activists, terrorists,⁷³ and

71. *The 'Enrica Lexie' Incident* (n 6).

72. Danielle Ireland-Piper, 'The Enrica Lexie and St. Anthony: A voyage into jurisdictional conflict' (2014) Vol 14 No 2: QUT Law Review, 74-89.

73. Martin Murphy, 'Piracy and UNCLOS' in Frantz Peter Lehr, (ed.) *Violence at sea: piracy in the age of global terrorism. United States of America* (Routledge, 2007) 155-18; Terence Fokas, 'The Barbary Coast revisited: the resurgence of international maritime piracy', *USF Maritime Law Journal* 9, 427-460.

armed robbers against ships had not been anticipated at the drafting and Conferences resulting in Article 15(3) of the GCHS and Article 101(a) of UNCLOS:⁷⁴ the *Greenboard's* and *Sea Shepherd's* introducing the SUA Convention (supposed to supplement UNCLOS in accommodating the new violent regimes at sea) and COLREGs offences into the equation only contributed to further blurring the 'private end' issues; and 'hatred', 'desire for vengeance', and 'taking the law into one's own hands' are now entrenched in the definition, nature, and contents of 'private ends' in piracy irrespective of whether the offending actions are embodied in public-spirited and a noble cause.

As observed in the *Greenbeard* case, supporting the 'private end' predicament in this paper:

Examining the Castle John action in context has shown how the changing definition of piracy relates to the development of international law particularly in the interface between piracy and maritime environmental actions. While the decision of the Court of Cassation does not appear to herald a new trend in redefining the crime of piracy, it does suggest some of the problems raised by increasing maritime environmental violence. If this review of a contemporary problem and one possible solution makes us think further about these issues, then *Greenbeard*, like his less fictional forebears, will have served his purpose.⁷⁵

The inclusion of 'hatred' and 'desire for vengeance' had been known since the LON Commentary way back in 1925 and was reiterated by the ILC Commentary in 1956. The LON, Harvard, and the ILC Commentaries have come to haunt current scholars of piracy. The US and Belgian Court rulings were a reminder of what academics (including this author) had forgotten, and taken for granted, that there are different shades to

74. id; see also Elizabeth Nyman (n 52).

75. Samuel Pyeatt Menefee (n 3) 11.37.

‘private ends’ and ‘public motives’. It is not just that scholars had forgotten about it but had assumed that Article 101 was now irrefutable. They predated the negotiations leading to both the GCHS and UNCLOS. That the *Greenbeard* revisited it in 1986 and the *Sea Shepherd* in 2013 was therefore no major reflection.⁷⁶ That notwithstanding, the issues in this paper are, however, whether the judicial decisions discussed above have enriched and furthered the jurisprudence on piracy. On the contrary, it is probably a regressive move as it takes us back ninety-five years to when ‘hatred’ and ‘desire for vengeance’ first surfaced in the LON and Harvard Draft and later the ILC Commentaries.

The upshot is that only clear-cut cases of piracy where motives are purely pecuniary and for individuals’ gains are now settled areas. In view of the above judicial stance, actions of political protesters run the risk of being dragged into ‘hatred’ and ‘desire for vengeance’ and, therefore, the ‘private end’ cobweb. When intention to rob and pecuniary interests are removed from the equation then any action is regarded as usurpation of judicial process and falls foul of ‘hatred’, ‘desire for vengeance’, and ‘taking the law into own hands’. In political and environmental activities where emotions can sometimes run high, it is easy to depict them as events leading to ‘hatred’ and ‘desire for revenge’. For same reasons in political actions where convictions tend to be so polarised and deeply entrenched, it would be easy for them to fall into the trap of ‘taking the law into own hands’. This is unfortunate as the original intention of ‘private ends’ was to exempt State actors and politically motivated actions from piracy. Environmental campaigners and others in the grey area find themselves in the deeper end of the trap; they were not envisaged in the draft or mentioned in the Commentaries. So nearly 100 years since

76. See, generally, Stefano Dominelli, ‘Evolutionary Trends in Maritime Piracy: Possible Assessment of Eco-Activists’ Conduct’ (2014) *Australian International Law Journal*, Vol. 21, 41-54.

the first LON draft in 1922 and its evolution through the many drafts, international conferences and two conventions, not much has improved on ‘private ends’. What evolved from a purely anti-piracy measure has evolved into a mechanism against a wider unintended group.

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