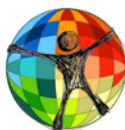


Murky Waters – Evaluating the Role of Campaign Ships on the High Seas



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Abstract

This paper examines the high seas as a space for non-state actors to defend human rights through extralegal strategies. Specifically, it addresses the use of campaign ships by civil society organizations to further their activism and advocacy. First, this paper introduces readers to the international frameworks regulating the high seas. Next, this paper defines the concepts of human rights, non-state actors and extra-legal strategies. Third, an overview of the literature on human rights in international waters is presented. Using the case studies of Greenpeace, Sea Shepherd, Women on Waves, the paper evaluates whether the use of campaign ships by non-state actors represents a fundamental shift in the international order, as well a feasible method defending human rights. Ultimately, this paper argues that campaign ships are best characterized as small-scale strategy for working within the international order to effect change.

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I. Introduction

In 1971, a small group of environmental and peace activists set sail to Amchitka Island to attempt to interrupt a nuclear weapons test.¹ Since that time, the use of campaign ships in political activism has grown more prominent, capturing the public attention and prompting visceral reactions of support and criticism from individuals and governments alike. My interest in campaign ships, however, is much more recent. I am motivated by my experiences as an intern at the One Earth Future foundation, a non-profit organization whose mission is to promote peace through governance. One Earth Future's commitment to a multi-stakeholder approach to governance sparked my curiosity about the role of non-state actors in the international order. While working on issues of maritime piracy law during my internship, I became interested in the the high seas as as a space where boundaries are constantly being navigated and thus appear very much in flux – the physical boundaries between states as much as the conceptual boundaries between legal and illegal activities. As a strategy for change used by civil society organizations that functions primarily in international waters, campaign ships offer a unique opportunity to bring these interests together.

This paper explores the high seas as a space for non-state actors to defend human rights. In writing this paper, I am guided by two overarching questions. First, I consider what the use of campaign ships can tell us about changes to our traditional conception of the international order. Next, using three civil society organizations as case studies, I will evaluate whether campaign ships, as a form of direct action, can be used as an extralegal strategy for meaningfully advancing human rights. Ultimately, this paper posits that campaign ships do not represent a fundamental shift in the international order, but rather a small-scale strategy for working within the international order to effect change. Despite the limited scope of campaign ships, this form of direct action provides many valuable insights on the the ways in which the boundaries of state sovereignty may be negotiated to bring visibility to instances of social and environmental

¹ See Greenpeace, "Amchitka: the founding voyage", (online: <http://www.greenpeace.org/international/en/about/history/>)

injustice, create greater accountability for human rights violators, as well as foster the solidarity and dialogue necessary for the advancement and protection of the dignity of all peoples.

My thesis is advanced in seven sections. Section II will outline the legal, theoretical and practical context in which campaign ships operate. Section III will provide an overview of the existing literature on human rights in international waters, and on campaign ships as a form of direct action, highlighting the debate between scholars who understand campaign ships as an exercise of the right to free speech, and those who characterize this tactic as a form of vigilantism. Section IV will introduce the three civil society organizations used as case studies: Greenpeace, Sea Shepherd and Women on Waves, and evaluate the mission, action, impact and legitimacy of these organizations. Using the case studies, Section V will answer the research questions guiding this paper, reflecting on the changing international order and evaluating the feasibility of campaign ships as a strategy for defending human rights. Section VI will conclude, and Section VII will suggest a way to apply the findings of this paper to case of migrants at sea, an area of growing concern for human rights defenders.

II. Setting the Stage: Situating Campaign Ships in Theory and in Practice

A. The Where: International Waters

As campaign ships operate primarily in international waters, an understanding of this concept is therefore essential to appreciating the tactics used by campaign ships. As a theoretical concept, international waters is inextricably tied to the Westphalian model of international relations, in which states are the primary unit in the international order, and states sovereignty is given primacy.² These features are reflected in the framework of international waters, the modern incarnation of which is laid out in the United Nations Convention on the Law of the Seas (UNCLOS). As one moves further and further away from the shoreline, the sovereignty of the state decreases. Coastal state exert full sovereignty over their territorial waters, which

² See Antonio Cassese, *International Law* 2nd ed (Oxford: Oxford University Presse) at 88.

extend up to to 12 nautical miles off their shoreline.³ In addition, coastal states may claim an exclusive economic zone (EEZ), which extends up to 200 nautical miles, in which the state has specific sovereign rights for the purpose of managing living and non-living natural resources.⁴ With the exception of the particular powers a coastal state has in relation to the EEZ, all waters past 12 nautical miles is considered international waters, or the high seas. International waters are *res communis omnium*—the common heritage of all humankind, not subject to the appropriation by or sovereignty of any state.⁵

While the high seas are a common space, there are nonetheless rules regulating their use. UNCLOS is the central feature of this framework, and is supplemented by treaties and agreements on particular subjects of common concern.⁶ Together with international customary law, these documents make up the Law of the Sea. Within the Law of the Sea, states remain the primary unit. This creates a number of jurisdictional difficulties in ensuring this framework is respected. Each vessel operating on the high seas must be registered to a particular state and fly under their flag. Vessels fall under the jurisdiction of their flag state, and are subject to that state's law.⁷ The notable exception to this is piracy, which is considered to fall under 'universal jurisdiction.'⁸ This signifies that any state has the jurisdiction to pursue, arrest and prosecute pirates, regardless of the vessel's flag state.⁹ However, outside of piracy, flag states have exclusive jurisdiction to vessels flying their flag, and no other state may pursue, arrest or seize a

³ See *United Nations Convention of the Law of the Sea*, 10 December 1982, (entered into force 16 November 1994) at arts 2-16 [UNCLOS]. All ships, however, enjoy the right of innocent passage through territorial waters, meaning that vessels may pass through territorial waters so long as they do not threaten the "peace, good order or security" of the coastal state (See UNCLOS arts 17, 19(1)).

⁴ The EEZ is particularly significant as it gives coastal states legislative powers in regards to fishing rights and marine wildlife conservation, and the right to enforce this legislation upon vessels in their EEZ. (See UNCLOS, *supra* note 3 at arts 57-58; Cassese, *supra* note 2 at 88).

⁵ See UNCLOS, *supra* note 3 at arts 87, 89.

⁶ See especially *The Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation*, 10 March 1988, 1678 UNTS 29004, (entered into force 26 June 1992).

⁷ See UNCLOS, *supra* note 3 at art 27.

⁸ See UNCLOS, *supra* note 3 at arts 100–02.

⁹ Tullio Treves, "Piracy, Law of the Sea and Use of Force: Developments off the Coast of Somalia" *The European Journal of International Law* 20:2 399 at 402-03 [Treves, "Piracy"].

ship flying a foreign flag in international waters.¹⁰ Consequently, international waters are very much perceived as an ungoverned or unregulated space, with a lack of monitoring and oversight by governments as to the actions of vessels under their flag.¹¹ As will be discussed below, this lack of regulation is an important element addressed by campaign ships.

B. The What: Human Rights

Campaign ships, and the issues for which they advocate, are inextricably linked to a human rights. In order to fully appreciate this connection, it is necessary to articulate what is meant by the term ‘human rights.’ This paper relies on several interrelated concepts to advance a definition of human rights as the universal enjoyment of rights, based on solidarity.

First, universalist understandings of human rights holds that all individuals have rights as part of their intrinsic nature as human beings.¹² While a universal perspective affirms the equality of all individuals, it comes from a particular, primarily Western-oriented framework. Nonetheless, the moral and political power of an appeal to universal human rights cannot be understated. As Engle Merry notes, “human rights are Eurocentric in origin and inspiration yet at the same time are some of the only tools available to struggle for the rights of the disenfranchised.”¹³ Thus, while acknowledging the philosophical limits of this perspective, this paper is grounded in a universal perspective of human rights.

Next, the language human rights enjoyment asserts that these human rights are only realized when they are capable of being enjoyed by individuals. Formal institutionalization of human rights may be insufficient when there are social, political or economic barriers in place.¹⁴ Thus, in order to meaningfully advance human rights, advocates must strive not only for legal recognition, but also towards the full and equal enjoyment of rights for all individuals.

¹⁰ See UNCLOS, *supra* note 3 at art 27.

¹¹ See Okan Duru, “Irrationality in Politics and Governance of Maritime Affairs: The Collapse of Sovereign Maritime Governance” (2014) *International Journal of e-Navigations and Maritime Economy* 1 48 at 49; Cassese, *supra* note 2 at 90.

¹² Brooke Ackerly, “Human Rights Enjoyment in Theory and Activism” *Human Rights Rev* (2010) 12 221 at 222

¹³ Sally Engle Merry, “Transnational Human Rights and Local Activism: Mapping the Middle” in R Provost & C Sheppard, eds, *Dialogues on Human Rights and Legal Pluralism*, (New York: Springer, 2013) at 227.

¹⁴ See Brooke Ackerly, *supra* note 12 at 225.

Furthermore, an understanding of human rights based on solidarity argues that human rights are fundamentally indivisible and interrelated. As Ackerly articulates, “no right is secure if all rights are not secure” and “if the rights of some are not secure, the rights of others are not secure.”¹⁵ Individuals and our rights are fundamentally connected to one another. This understanding leads to an expanded view of human rights to include first, second and third generation rights.¹⁶ Given the interrelated and indivisible nature of human rights, no generation of rights can be achieved without the other.

From this perspective, the *Universal Declaration of Human Rights* is limited in that it conceives human rights primarily as political and civil rights possessed by individuals which must be protected from state interference.¹⁷ Nonetheless, this document is a central feature in framing our understanding of human rights. It remains very much the “lodestar”¹⁸ of international discourses on human rights, and thus cannot be excluded from an consideration of human rights from an global perspective. Furthermore, the rights articulated within the Declaration remain significant, both in and of themselves, and in achieving other substantive rights.¹⁹ Together with the Law of the Sea, the *Universal Declaration of Human Rights* is an important international framework regulating the use of campaign ships.

C. The Who: Non-State Actors and Civil Society Organizations

Campaign ships are a strategy used by a subset of non-state actors—civil society organizations—to further their activism and advocacy. While states have been historically

¹⁵ *Ibid* at 225-26; See also Amartya Sen *Development as Freedom* (New York: Anchor Books, 1999) at 31.

¹⁶ First generation rights are civil and political rights; second-generation rights are social and economic rights; third-generation rights are a group and collective rights, including right to the environment, biodiversity rights. These are reflected in the United Nations’ recently adopted Sustainable Development Goals (See Sarah Freedman, “*Human Rights Transformed*” (Oxford: Oxford University Press, 2008).

¹⁷ See Lindsey Heger et al, *A Common Framework for Understanding Non-state Organizations* (Broomfield: One Earth Future, 2013) at 2

¹⁸ Cassese, *supra* note 2 at 382.

¹⁹ *Universal Declaration of Human Rights*, GA Res 217A (III), UNGAOR, 3rd Sess, Supp No 12, UN Doc A/810 (1948) [UDHR]. The relevant articles of the UDHR for this paper are article 3, which recognizes the right to life, liberty and security of the person, article 13 which articulates the right to freedom of movement, article 19, the right to freedom of expression, and article 20, the right to freedom of peacefully assembly and association.

conceived as the primary players within the international order, policymakers and academics alike have begun paying increasing attention to the role of non-state actors at the international level. Non-state actors are defined broadly as groups, unaffiliated with states, who operate on an international level.²⁰ Over the last several decades, non-state actors have become increasingly important in the international sphere, as they have demonstrated an unprecedented ability to influence domestic and international governments, exert considerable power over local and global economies, and have played an increasingly important role in armed conflict.²¹ It is for this reason that non-state actors are thought to represent a fundamental shift to the current international order.

This paper focuses one subset of non-state actors in particular, civil society organizations.

Civil society, in contrast to the state, is a sphere where citizens can privately come together as individuals or in groups to realize common goals.²² Particularly, global civil society is formed of groups which pursue activism and advocacy across the boundaries of state borders in order to further their visions of justice.²³ All three organizations in the case studies may be broadly categorized as global civil society organizations. Among their other roles, global civil society organizations plays an important role in ensuring greater accountability in global governance.²⁴

²⁰See Jean d'Aspremont et al, "Sharing Responsibility Between Non-State Actors and States in International Law: Introduction", *Netherlands International Law Review* 62:1 49 at 50. Non-state actors include entities such as multi-national corporations, armed groups, non-governmental organizations or private security companies. Typically, the definition of non-state actors excludes both informally organized networks, such as social movements, as well as intergovernmental organizations, such as the United Nations (See generally Herger, *supra* note 17; d'Aspremont, *supra* note 20).

²¹ d'Aspremont, *supra* note 20.

²² See Paul Wapner, *Environmental Activism and World Civic Politics* (Albany: State University of New York Press, 1996) at 5.

²³ See Richard M Price, "Transnational Civil Society and Advocacy in World Politics" *World Politics* (2003) 55:4 at 580; See generally John Gerard Ruggie, "Reconstituting the Global Public Domain – Issues, Actors and Practice" (2004) *European Journal of International Relations* 10:4; Margaret E Keck & Kathryn Sikkink, *Activists beyond borders: advocacy networks in international politics* (Ithaca: Cornell University Press, 1998); Miles Kahler, ed, *Networked politics: Agency, Power and Governance* (Ithaca: Cornell University Press, 2009).

²⁴ See Jab Art Scholte, "Civil Society and Democratically Accountable Global Governance" (2004) *Government and Opposition* 39:2 211 at 218.

This role will be seen in action as we examine the work of campaign ships in Sections IV and V.

Accompanying the increased significance of non-state actors are concerns regarding the most effective ways to ensure their accountability and responsibility for their actions at the global level, especially in relation to human rights. Much has been written about the most effective way to hold armed non-state actors under international law.²⁵ However, the accountability of non-armed civil society organizations is an underexplored area of scholarship. Nonetheless, there is a need to consider how civil society groups should be held accountable for their actions. As Scholte notes, “just like the global governance agencies they may critique, civil society groups have an obligation to answer to stakeholders for their actions and omissions.”²⁶ The question of accountability for civil society organizations is an ongoing theme throughout the paper.

D. The How: Extralegal Strategies

This paper posits that use of campaign ships is best characterized as an extralegal strategy for advancing human rights. Extralegal strategies are methods for promoting human rights outside of the legal system, including community organizing, grassroots activism, human right education. Proponents of extralegal strategies believe that activism in the realm of civil society is the most effective tool to achieve social and political transformation.²⁷ However, Lobel cautions that an overemphasis on extralegal strategies minimizes the role of the state in safeguarding the rights of its citizens and in enhancing their wellbeing through social and economic reform.²⁸ Thus, while extralegal strategies are an important component of advancing human rights, their aims are arguably best achieved by operating in tandem with legal strategies.

²⁵ See generally, Cedric Ryngaert, “Non-State Actors and International Humanitarian Law” (2008) Katholieke Universiteit Leuven Faculty of Law Working Paper No 97815099; Andrew Clapham, “Human rights obligations of non-state actors in conflict situations” (2006) *International Rev of the Red Cross* 88:863

²⁶ Scholte, *supra* note 24 at 230.

²⁷ Orly Lobel, “The Paradox of Extra-Legal Activism: Critical Legal Consciousness and Transformative Politics” (2007) *Harvard L Rev* 120:4 at 963.

²⁸ *Ibid* at 941-42.

Parallels between the coupling on legal and extralegal strategies may be drawn with the dual need for human rights to exist both in law and in fact in order to be fully enjoyed by all individuals. Sally Engle Merry suggests that extralegal strategies are essential for bridging the gap between formal recognition of human rights at a global level and the enjoyment of these rights by individuals at a local level.²⁹ In this way, the international framework of human rights are translated into local terms and are made meaningful in local settings.

Our conception of social justice impacts the strategies by which we work to achieve justice. Thus, a theory of human rights which emphasizes the indivisible and interrelated nature of human rights demands tactics which recognizes this interconnectedness. Ackerly terms this “connected activism” She writes:

In connected activism, social change happens through collaboration across different skills and roles. ... Connected action captures the need to work politically, economically and socially, the need to work internationally, nationally and locally, and the need to be aware of one another’s role in bringing about change.”³⁰

A more just, equitable world for all cannot be achieved without a diversity of tactics. As will be highlighted by the case studies in Section IV, organizations use campaign ships as an extralegal strategy functioning in the realm of civil society to achieve social justice, supplemented where necessary by litigation to advance their goals through the courts. As such, in order to fully evaluate campaign ships as a method for advancing human rights, their effectiveness cannot be measured in isolation, but rather as one piece within a broader network of various strategies, both legal and extralegal, to promote human rights and social justice more broadly.

E. The Why: Assessing the Theoretical Relevance of Campaign Ships

The use of campaign ships by civil society organizations in international waters exists at the intersection of the concepts introduced in the preceding sections. As my thesis indicates, while campaign ships do not represent a complete upheaval of traditional theoretical understandings of any of these concepts, they do challenge us to re-examine these categories through an alternative lens. Perhaps most evidently, campaign ships offer an opportunity to theorize about

²⁹ Merry, *supra* note 13 at 214.

³⁰ Ackerly, *supra* note 12 at 227.

the changing conception of the traditional state model of international relations, and the impact of this changing mode on global governance. Furthermore, the cross-cutting issues addressed by campaign ships has implications for a solidarity approach to human rights by broadening our understanding not only of the rights themselves, but of those who advocate for them. Additionally, the use of campaign ships assists us in evaluating the use extralegal strategies as working both with and around the law. Finally, campaign ships provide an opportunity to reflect on the growing importance of non-state actors generally and global civil society in particular, and consider the necessary accountability measures which flows from their increased significance. While the use of campaign ships is a narrow topic, the insights evoked from a closer examination of this phenomenon informs our understanding of these broader concepts, and allow us to better appreciate how these concepts are situated with respect to one another.

III. Literature Review

A. Human Rights in International Waters

As highlighted in Section II, the two international frameworks relevant to this paper are the international human rights framework, as articulated in the *UDHR*, and the concept of international waters as captured in *UNCLOS*. While human rights law and the Law of the Sea are traditionally understood to be separate, specialized branches of international law, there have been occasions of overlap between the two.³¹ Formal consideration of human rights within the Law of the Sea remains in its beginning stages.³² However, concern for human beings, which Treves characterizes as “the core of human rights” are present within *UNCLOS*.³³ This is evident explicitly in its provisions outlining the duty to render assistance to persons in distress, and implicitly in the great emphasis placed on safety of passage throughout the convention.³⁴ Similarly, human rights tribunals have considered the Law of the Sea in interpreting international

³¹ Tullio Treves, “Human Rights and the Law of the Sea” (2010) Berkley Journal of International Law 28:1 1 at 2 [Treves, “Human Rights”].

³² See Treves, “Human Rights”, *supra* note 31 at 6.

³³ *Ibid* at 3

³⁴ See especially *UNCLOS*, *supra* note 3 arts 98.

human rights instruments.³⁵ The international frameworks on human rights and the high seas come into contact with one another, and in these instance require consideration of the other in order to better articulate their own legal boundaries and normative goals.

Human rights in international waters have gained increased attention following international efforts to address Somali piracy. Treves notes that states are reluctant to exercise their powers to capture pirates under universal jurisdiction out of concern for the human rights of pirates.³⁶ Particularly when pirates risk torture or other human rights violations in their country of origin, states are unwilling to prosecute pirates, and instead opt for a method of “catch and release”, in which navies intervene in instances of piracy, but do not charge pirates with any formal sanctions.³⁷ While piracy may appear outside the scope of this paper, concerns for the human rights of pirates is relevant in light of an increasing willingness to characterize campaign ships as a form of piracy, as will be discussed in subsection C of this part. From this brief overview, it is clear that human rights are recognized within international waters, and efforts to respect these rights bring with it its own set of particular concerns. Operating within the framework of international waters set out by *UNCLOS* has implications for the protection of human rights both on land and at sea.

B. Campaign Ships as a Form of Direct Action

Campaign ships are most appropriately characterized as a form of direct action. Direct action refers to instances in which a person or groups uses public protest to achieve their goals by direct interference with the conduct being protested. Campaign ships are a unique form of direct action both because it necessarily requires the use of ships, and because the action itself

³⁵ For an overview of the consideration of *UNCLOS* by the European Court of Human Rights, see Treves at 8.

³⁶ While universal jurisdiction has always existed in relation to piracy, following the rise of Somali piracy in 2008, the United Nations Security Council has extended the right of certain states to patrol and arrest pirates in Somali territorial waters. (See Treves, “Piracy”, *supra* note 9 at 408)

³⁷ This is highlighted by the case of the Danish navy ship which captured ten pirates off the coast of Somalia, but ultimately decided to released them without pressing charges. The Danish authorities were concerned that the pirates risked torture and the death penalty if released to Somali authorities. These risks would manifest even if they served their sentence elsewhere, as they would be deported to Somalia after their release. (See Treves, “Piracy”, *supra* note 9 at 408).

takes place on the ocean, which is not typically understood as a space for public protest.³⁸ Campaign ships intervene in the conduct on the seas they view as politically or morally objectionable, such as nuclear weapons testing or whaling.³⁹ This is accomplished through the use of human shields, where a person or group debarks the campaign ship and places themselves in the path of a target ship. The purpose of this strategy is to compel the target ship to alter or stop their activities out of fear of harming protestors.⁴⁰ In brief, campaign ships are a form of direct action that takes place on the seas.

As such, campaign ships are regulated by the same international framework regulating the use of maritime space as all other vessels. Plant notes there is no *a priori* reason that campaign ships would be prohibited from navigating through international and territorial waters.⁴¹ Thus, campaign ships enjoy navigational rights so long as they are under the jurisdiction of the flag state, comply with jurisdictional laws within territorial waters and respect the provisions *UNCLOS* on the high seas.⁴² However, the legality of the tactics used by campaign ships is hotly contested, with the two starkly opposed positions outlined in the following section.

C. Divergent Legal Perspectives on Campaign Ships

From one perspective, campaign ships are a manifestation of the rights to freedom of expression, as enshrined in articles 19 of the *UDHR*. In the landmark case *Steel and Morris v*

³⁸ See G Plant “International law and direct action protests at sea: twenty years on,” *Netherlands Yearbook of International Law* 33 75 at 76.

³⁹ See generally Plant, *supra* note 38; Jasper Teulings, “Peaceful Protests against Whaling on the High Seas – A Human Rights-Based Approach” in Clive Ralph Symmons, ed, *Selected contemporary issues in the law of the sea* (Boston: Martinus Nijhoff Publishers, 2011).

⁴⁰ See Plant, *supra* note 38 at 98. The term ‘direct action’ captures a wide diversity of tactics: it may take nonviolent forms, such as sit-ins, strikes or blockades, and in some instances includes violent forms such as property destruction or assault. Similarly, direct action may be a form of lawful protest, or in either its nonviolent or violent forms, it may be civil disobedience. This is particularly relevant given the difference in approaches used by Sea Shepherd and Greenpeace.

⁴¹ See Plant *supra* note 38 at 86.

⁴² It must be noted that the Laws of the Sea are aimed at regulating vessels, and not individuals. As such, from a purely technical standpoint, the use of the human shield tactic does not contravene the Law of the Sea, as vessels themselves are not inhibiting the right of passage of other ships, or risking unnecessary collision. (See Plant, *supra* note 38 at 101.

United Kingdom, the European Court of Human Rights affirmed that freedom of expression is not limited to communication, but also to acts which convey an opinion, including direct action.⁴³ Teulings asserts that the use of campaign ships is both legal under the Law of the Sea, and protected in recognition of the expressive rights of individuals who engage in it.⁴⁴ This right exists much in the same way it does on land in democratic societies—as a fundamental, but not absolute right, whose limits must be balanced in recognition of the rights of others.⁴⁵ Indeed, the right to use the seas for peaceful protest, in a manner that is consistent with regulations regarding safe navigations has been affirmed by the International Maritime Organization and the International Whaling Commission.⁴⁶ In short, proponents of this strategy view campaign ships as a legitimate exercise of the fundamental right to freedom of expression.

From another perspective, campaign ships are understood an exercise of vigilante justice. Opponents of the use of campaign ships argue that even nonviolent direct actions needlessly endanger the safety of seafarers and interfere with lawful and legitimate uses of maritime space.⁴⁷ At its most extreme, this perspective asserts that organizations who use this strategy are engaging in piracy.⁴⁸ A recent appellate-level decision in the United States which found Sea Shepherd guilty of piracy has given firmer grounding to the understanding of

⁴³ Teulings, *supra* note 39 at 237.

⁴⁴ *Ibid* at 236.

⁴⁵ *Ibid* at 240. See also *Steele and Morris v The United Kingdom* [2005] ECHR 103, 41 EHRR 403.

⁴⁶ *Assuring Safety During Demonstrations, Protests or Confrontations on the High Seas*, Resolution MSC.303(87), International Maritime Organization (2010) [IMO Resolution]; *Resolution on the Safety of Vessels Engaged in Whaling and Whale-Research-Related Activities*, Resolution 2006-2, International Whaling Commission (2006) [IWC Resolution].

⁴⁷ Japan has long been an opponent of campaign ships, taking this position particularly in the context of research whaling. This will be explored more in section IVA. (See Teulings, *supra* note 39 at 245).

⁴⁸ Until recently, this perspective was understood to be a minority opinion. Piracy is defined as “illegal acts of violence or detention...committed for private ends,” (UNCLOS, *supra* note 3 at art 101). As such, the general consensus amongst academics and legal practitioners that even violent forms of direct action could not be construed as piracy. Though these actions may fall outside the boundaries of law, they were motivated by political aims, rather than self-interest, and therefore do not meet the definition of piracy (See especially Teulings, *supra* note 39 at 246; JL Jesus, “Protection of Foreign Ships against Piracy and Terrorism at Sea: Legal Aspects” (2003) *International Journal of Marine and Coastal Law* 18 363 at 379.)

campaign ships as illegitimate.⁴⁹ Plant argues that concerns about terrorism over the last decade has narrowed states' tolerance of protests at sea.⁵⁰ This is consistent with the heightened attention given to accountability mechanisms for non-state actors. Thus, the perspective that the use of campaign ships falls outside the bounds of legality is gaining growing academic, political and juridical support.

This paper is written from the perspective that —as with many forms of protest— campaign ships are a legitimate form of direct action which on occasion operates outside the boundaries of the law. While in most instances campaign ships operate within the sphere of peaceful protests that has been recognized as within the right to freedom of expression, in certain circumstances, the actions take by campaign ships may veer towards illegality. This does not mean that all direct action is categorically illegal or illegitimate, but rather that the actions taken by campaign ships should be evaluated on a case-by-case basis.

IV. Case Studies

A. Promoting Accountability: Greenpeace's Anti-Whaling Protests

Greenpeace is an international non-governmental organization focused on peace and environmental advocacy and activism. Its mission is to use “creative confrontation to expose global environmental problems and to force the solutions which are essential to a green and peaceful future.”⁵¹ In fulfilling its mission, Greenpeace is committed to the core principles of

⁴⁹ See *Institute of Cetacean Research v Sea Shepherd Conservation Society* 725F (3d) (9th Cir 2014) [Cetacean]; Lucas VM Bento, “The ‘Piratisation’ of Environmental Activism”, Case Comment on *Institute of Cetacean Research v Sea Shepherd* (2014) Lloyd’s Maritime and Commercial Law Quarterly 2 152; Danielle T Gauer, “Unconventional Pirates: A New Label for Anti-Whaling Activists”, online: (2014) Miami International and Comparative Law Review <<http://international-and-comparative-law-review.law.miami.edu/unconventional-pirates-label-anti-whaling-activists/>>; Kevin John Heller, “Sea Shepherd, Piracy and ‘The High Seas’” (March 1, 2013), *Opinio Juris* (blog), online: <<http://opiniojuris.org/2013/03/01/sea-shepherd-piracy-and-the-high-seas/>>. See contra Eugene Kontorovich, “Yes Sea Shepherd Engages in Piracy Under International Law” (February 27, 13), *The Volokh Conspiracy*, online: <<http://volokh.com/2013/02/27/yes-sea-sheperd-engages-in-piracy-under-international-law/>>.

⁵⁰ Plant, *supra* note 38 at 111.

⁵¹ Greenpeace, “Core Values”, online: <<http://www.greenpeace.org/international/en/about/our-core-values/>>.

personal responsibility and nonviolence. Both values of have their roots in the Quaker concept of 'bearing witness.' Upon witnessing injustice, an individual cannot turn away, but instead has a responsibility to either prevent the injustice or observe and attest to its occurrence.⁵² These values inform Greenpeace's organizing model of engaging in nonviolent direct action and publicizing their actions in international media. Thus, Greenpeace engages in "visually spectacular" actions to focus media attention on acts of militarization and environmental destruction.⁵³ In so doing, the organization invites the general public to join them in bearing witness, and in demanding a more peaceful, sustainable world.

Campaign ships as an extralegal strategy are thus well-suited to fulfilling Greenpeace's mission while staying true to their guiding principles. As highlighted in the introduction, Greenpeace pioneered the use of campaign ships, and is credited in inspiring both Sea Shepherd and Women on Waves to engage in this form of direct action.⁵⁴ Since their maiden voyage over four decades ago, Greenpeace's fleet of campaign ships have confronted nuclear testing sites in the Pacific, destructive fishing operations in the Indian Ocean, marine pollution from oil installations in the North Sea, to name but a few of their campaigns.⁵⁵ When Greenpeace deploys their campaign ships, it is with a focus on both short-term impact and systemic change: they interrupt specific instances of injustice, but always with a view towards their overarching goals of global disarmament and ecological conservation.⁵⁶ Greenpeace's anti-whaling campaign provides an excellent example to further investigate the impact of this strategy.

⁵² See Wapner, *supra* note 22 at 50–51.

⁵³ *Ibid.*

⁵⁴ Greenpeace first developed campaign ships as a strategy used by non-governmental organizations in protesting nuclear arms testing in 1971. Paul Watson was an early member of Greenpeace but disagreed with the organization's principle of nonviolence and parted ways with Greenpeace to found Sea Shepherd. Dr. Rebecca Gomperts was inspired to found Women on Waves after serving as the resident doctor aboard Greenpeace's Rainbow Warrior II (See Caty Enders, "Can Sea Shepherd Survive its Own Success?", *The Guardian* (5 June 2015), online: <<https://www.theguardian.com>>; Julie Ferry, "The Abortion Ship's Doctor", *The Guardian* (14 November 2007), online: <<https://www.theguardian.com>>).

⁵⁵ For more information on the actions undertaken by Greenpeace's campaign ships, see generally: Wapner, *supra* note 22.

⁵⁶ *Ibid* at 70.

Greenpeace's use of campaign ships to prevent Japanese whaling in the Southern Ocean demonstrates how this strategy can be used to bring visibility to injustices. Ideologically, Greenpeace opposes all whaling as endangering biological diversity and the delicate balance of marine ecosystems. Politically, Greenpeace alleged that Japan's continued issuance of whaling licenses contravened the International Whaling Commission's Moratorium on Commercial Whaling, which has been in effect since 1986.⁵⁷ In the face of inaction on the part of the international community, Greenpeace sent a ship to the Southern Ocean to disrupt any whaling it witnessed. Activists would debark the vessel in rubber boats and physically place themselves between the whales and the harpoons. Whalers were therefore unable to make a catch without endangering the protestors.⁵⁸ Greenpeace justified their approach by claiming they were taking action against violations of international law. Greenpeace also adopted a number of strategies to use the Law of the Seas to their advantage: their ship was a Dutch-flagged vessel, and was careful to remain in international waters, a safe distance from the whaling ships.⁵⁹ These tactics prevented Japan from claiming any jurisdiction over the vessel, or alleging that the Rainbow Warrior contravened *UNCLOS* by infringing on the navigational rights of the target ships. In response, Japan adopted increasingly confrontational approach, attempting to label Greenpeace as 'eco-pirates', and introducing motions in international forums to curtail the use of the high seas as a protest space.⁶⁰ However, likely due to Greenpeace's commitment to nonviolence, Japan's strategy was unsuccessful.

Instead, Greenpeace gained the support of the international community and the public at large. Greenpeace's highly visible tactics brought the issue of whaling into the public eye for the first time. It was this increased public pressure that prompted Australia to bring a case against

⁵⁷ Japan is a signatory to the *International Convention for the Regulation of Whaling*, the legal framework regulating the International Whaling Commission. While the Moratorium halted all commercial whaling, it included an exception for scientific or research-oriented whaling. Greenpeace alleged that Japan was issuing licences to commercial whalers under the auspices of this exception (Teulings, *supra* note 39).

⁵⁸ Teulings, *supra* note 39 at 222.

⁵⁹ Plant, *supra* note 38 at 95.

⁶⁰ See Atsuko Kanehara, "So-Called 'Eco-Piracy' and Intervention by NGOs to Protest against Scientific Research Whaling on the High Seas: An Evaluation of the Japanese Position" in Clive Ralph Symmons, ed, *Selected contemporary issues in the law of the sea* (Boston: Martinus Nijhoff Publishers, 2011).

Japan before the International Court of Justice.⁶¹ In 2014, the Court found that Japan's whaling program in the Southern Ocean to contravene the Moratorium, and ordered Japan to revoke the licenses it had issued.⁶² Thus, as a result of Greenpeace's actions, Japan was legally sanctioned for its violations of international treaties. Perhaps more significantly, however, Greenpeace put pressure on the international community to deliver such sanctions. Greenpeace's actions and the public dialogue they sparked provided the impetus for Australia to bring this matter before an international tribunal. This is an example of the important role that civil society organizations play in ensuring states fulfill their international commitments. Without independent organizations fulfilling this function, the gap between legal recognition of social, political and environmental rights and the actual enjoyment of such rights will never be bridged.

B. Achieving Justice: Sea Shepherd's Actions against IUU Fishing

Sea Shepherd is an international marine wildlife conservation organization which seeks to directly enforce international environmental law. Its mission is to end the exploitation and destruction of marine ecosystems and species.⁶³ While Sea Shepherd's work is motivated by the goal of safeguarding marine biodiversity for future generations, it views focusing on the relationship of humans to the oceans as unnecessarily anthropomorphic.⁶⁴ Instead, Sea Shepherd represents the interests of marine wildlife itself through the use of campaign ships to police the high seas.⁶⁵ The organization derives its mandate from the United Nations *World Charter for Nature*, which provides that "States, and to the extent they are able, other public

⁶¹ Teulings, *supra* note 39 at 235.

⁶² *Whaling in the Antarctic (Australia v Japan: New Zealand intervening)*, Judgment, ICJ Reports 2014 226.

⁶³ Sea Shepherd, "Mission", online: <<http://www.seashepherd.org/who-we-are/laws-charters.html>>.

⁶⁴ Indeed, their equality statement reads "Sea Shepherd operates outside the petty cultural chauvinism of the human species. Our clients are whales, dolphins, seals, turtles, sea-birds, and fish. We represent their interests." (See Sea Shepherd, "Equality Statement", online: <<http://www.seashepherd.org/who-we-are/equality-statement.html>>).

⁶⁵ Enders, *supra* note 54; Sea Shepherd, "Laws and Charters" online: <<http://www.seashepherd.org/who-we-are/laws-charters.html>>; Alan Yuhas, "Sea Shepherd conservation group declared pirates in US court ruling", *The Guardian* (27 February 2013), online: <<https://www.theguardian.com>>.

authorities, international organizations, individuals, groups and corporations shall...safeguard and conserve nature in areas beyond national jurisdiction.”⁶⁶ Thus, as international waters are outside of national jurisdiction and are consequently a space where it is difficult to ensure respect for law, Sea Shepherd has taken on the role of law enforcement – monitoring and confronting illegal activities on the high seas.

Sea Shepherd’s actions against vessels which engage in illegal and environmentally destructive fishing practices highlights the way in which campaign ships can fill unmet needs in the face of state inaction. Of particular concern is industrial-scale fishing taking place in international waters that catches fish by dragging a net across the ocean floor. This both dangerously depletes fish populations and destroys the fragile ecosystems on the ocean shelf.⁶⁷ Furthermore, IUU fishing has significant implications for human rights: there is well-documented evidence of human rights violations aboard commercial fishing vessels, and the destructive practices of industrial fishing endangers the rights of those who depend on fisheries for their livelihood.⁶⁸ Sea Shepherd’s campaign ships trailed the Thunder for 110 days across 10,000 nautical miles in order to expose its illegal and unsustainable fishing practices.⁶⁹ After witnessing the Thunder—a notorious illegal fishing vessel on Interpol’s Watch List—fishing in the Antarctic sea, Sea Shepherd radioed in their location to the authorities and maintained pursuit of the vessel, confiscating their fishing nets as evidence of their crimes.⁷⁰ The evidence collected by Sea Shepherd assisted in trial and conviction of the ship’s captain and two senior officer.⁷¹ Sea Shepherd was thus instrumental in ensuring international law was respected. It is

⁶⁶ *World Charter for Nature*, GA Res 37/7, UNGAOR, 37th Sess, Supp No 141 UN Doc A/35 (1982) at art 21(e).

⁶⁷ For the basic framework for the conservation and management of fish on the high seas, see *UNCLOS*, arts 116-20.

⁶⁸ United Nations Office of Drug and Crime, *Transnational Organized Crime at Sea*, (Vienna: United Nations, 2013).

⁶⁹ Ian Urbina, “A Renegade Trawler, Hunted for 10,000 Miles by Vigilantes”, *The New York Times* (July 28, 2015), online: <<https://www.nytimes.com>>.

⁷⁰ While the hope was to maneuver the Thunder into waters where it could be stopped and seized by authorities, the fishing vessel ultimately sank in the Southern Atlantic. Sea Shepherd and international authorities suspect that this was an attempt to destroy evidence of the ship’s crimes (See Urbina, *supra* note 69).

⁷¹ Ian Urbina, “African Court Convicts Captain of Renegade Ship in Illegal Fishing Case”, *The New York Times* (13 October 2015), online: <<https://www.nytimes.com>>.

uncertain that without the organization's efforts, the Thunder would have ever halted its destructive fishing practices or that been prosecuted for its crimes.

This case demonstrates the ability of campaign ships to navigate legal boundaries in order to achieve justice. State-operated vessels have greater difficulty in maintaining pursuit of vessels engaged in illegal activities without exceeding the boundaries of their jurisdiction on the high sea. Furthermore, states inadvertently enter into the territorial waters of another state risk causing diplomatic incidents.⁷² Sea Shepherd, as an independent organization, is less preoccupied with jurisdictional limits, and is more easily able to manoeuvre the boundaries between territorial and international waters. Undoubtedly, it would be more effective to have navies – who are authorized by *UNCLOS* to board and search ships suspected of illegal activities, to monitor international waters for illegal fishing. However, states have demonstrated an unwillingness to take on the effort, expense and level of international cooperation required to address this issue.⁷³ In the absence of state action, Sea Shepherd is fulfilling a much needed role in the international order.

There is, undoubtedly, an unanswered question of legitimacy in situations where a non-state actor is taking on the role of policing, traditionally understood as belonging to the state. In this sense, without adding any pejorative connotation to the term, Nagtzaam and Lentini argue that Sea Shepherds are best characterized as vigilantes. When organizations use campaign ships to enforce international laws or treaty obligations they meet the definition of vigilantism – seeking to enforce a legal status quo because of the unwillingness or inability of national or international authorities to do so.⁷⁴ Indeed, Sea Shepherd defiantly embraces this label, jokingly invoking the age-old adage that it ‘takes a pirate to catch a pirate’⁷⁵ Yet, as national governments and international agencies display continued inertia in the face of the growing problem of IUU fishing, Sea Shepherd gains increasing moral legitimacy to take steps to ensure international

⁷² For further understanding of the role of non-governmental participation in maritime regulation, see Duru, *supra* note 11 at 56.

⁷³ United Nations Office of Drug and Crime, *supra* note 68 at 41–42.

⁷⁴ Gerry Nagtzaam & Pete Lentini, “Vigilantes on the High Seas? The Sea Shepherds and Political Violence” (2007) *Terrorism and Political Violence* 20:1 110 at 129.

⁷⁵ Ian Urbina, *supra* note 69.

fishing treaties and regulations are respected.⁷⁶ This moral legitimacy is amplified by the reality that the international community recognizes the need to regulate fishing practices to preserve marine biodiversity, but is unwilling to engage with the admittedly complex question of enforcement. In this sense, Sea Shepherd activities are not unlike the practices of human rights defenders in using the language of universal human rights to access moral legitimacy in the face of state persecution.

C. Inciting Dialogue: Women on Waves' Provision of Off-Shore Abortions

Unlike the organizations in the preceding cases studies, Women on Waves is focused on promoting and providing access to safe abortions worldwide. Their mission statement is “to prevent unsafe abortions and empower women to exercise their human rights to physical and mental autonomy.”⁷⁷ Thus, Women on Waves understands their work as fundamentally tied to human rights, notably women’s right to life, liberty and security of the person.⁷⁸ To fulfill their mission, Women of Waves sails a Dutch-flagged campaign ship to countries where abortions are either illegal or difficult to obtain. In certain campaigns, the ship serves as a symbolic meeting place between Women on Waves and national women’s groups in the countries it visits. In other campaigns, on-ship abortions are performed in compliance with Dutch law, outside the territorial waters of the state who restricts access to abortion.⁷⁹ Through this dual approach, the organization works to further global access to abortion for all women.

The organizing model used by Women on Waves in deploying campaign ships is unique, and it is worth dwelling on for a moment before examining its impact. Unlike the previous case studies, Women on Waves engages in direct action at sea with the specific purpose of inciting

⁷⁶ Sea Shepherd’s moral legitimacy in relation to their policing of illegal fishing must be separated from instances where they use violent tactics during the course of their direct actions, particularly when interrupting whaling. It is significant that while states have been willing to sanction Sea Shepherd for their anti-whaling protests, the organizations has faced no threat of sanctions for its work regarding illegal fishing.

⁷⁷ Women on Waves, “Who are We?”, online: <<http://www.womenonwaves.org/en/page/650/who-are-we>>.

⁷⁸ UDHR, *supra* note 19 at art 3; Althea Skinner, “Women on Waves: Navigating National and International Laws and Values”, online: (2007) Humanity in Action <<http://www.humanityinaction.org/knowledgebase/152-women-on-waves-navigating-national-and-international-laws-and-values>>.

⁷⁹ Shannon Renton Wolf, “Making Waves: Circumventing Domestic Law on the High Seas” (2003) *Hastings Women’s LJ* 14:1109 at 113.

change on land. Whether or not their campaign ships provide abortions, they are always deployed with the view of sparking a larger conversation about access to abortion in the coastal state they are visiting.⁸⁰ Furthermore, in contrast Greenpeace and Sea Shepherd who identify themselves as international organizations, Women on Waves recognizes that the boundaries of states which they are constantly navigating in their work. The organization identifies itself as Dutch-based, and works to build coalitions with pro-choice organizations in the countries it visits.⁸¹ Thus, the recognition of the diverse cultural contexts in which Women on Waves operates necessitates a particular tailoring of the use of campaign ships to meet the needs of the people whom the organization wishes to serve.

Nonetheless, Women on Waves remains true to the use of campaign ships as a strategy for addressing injustice, promoting public dialogue, and engaging short-term action for long-term change. Women on Waves' maiden voyage to Ireland demonstrates the way in which the organization navigates international law to highlight the injustice of unequal access to abortion. Ireland, renowned for having the most restrictive abortion laws in the European Union, prevents women from terminating pregnancy except in a very narrow set of circumstances. However, Irish law permits women to travel elsewhere to obtain abortions.⁸² By anchoring their ship a mere 12 nautical miles off the shore of Ireland, Women on Waves made a powerful statement about the injustice of permitting women with the means and mobility to access abortion, while preventing others from accessing the same rights.

Additionally, Women on Waves' campaign ships are intended to foster dialogue around access to abortion not only in the coastal state they are visiting, but around the world. Women on Waves, similar to Greenpeace and Sea Shepherd, is able to garner in international media attention through its campaign ships, prompting public discussion about safe abortions, family planning and women's health more generally. In the countries its visiting, Women on Waves couples this general media attention with strategic workshops and forums aimed at bringing together pro-choice activists, doctors, lawyers and academics in order to exchange information

⁸⁰ See Skinner, *supra* note 78 at 4.

⁸¹ *Ibid* at 3.

⁸² See Wolf, *supra* note 79 at 129.

and expertise.⁸³ Together, these tactics promoted increased public knowledge and open communication about the importance of access to abortion.

Finally, Women on Waves uses short-term action to inspire systemic transformation. The visits made by the campaign ships last at most several weeks, and are not intended to be a permanent solution to the issue of lack of access to abortion ashore. Instead, they are intended to encourage the legislators, policymakers and the public to fundamentally reconsider their treatment of abortion. Of all the goals of Women on Waves, this is undoubtedly the most difficult to achieve, and one where they have had varying degrees of success. Following their visit to Portugal, early abortion was decriminalized in 2006, a major victory for the organization.⁸⁴ However, while Women on Waves' visit to Ireland culminated in the establishment of a pro-choice organization of Irish medical professionals, abortion law in the state has not been substantially altered.⁸⁵ As such, it is evident that the use of campaign ships does not replace, but rather must be part of the sustained activism and advocacy necessary to bring about meaningful change.

V. Analysis

A. *Reflections on the (Un)Changing International Order*

In reflecting on the case studies presented above and returning to the overarching research questions guiding this paper, the answer to the first is clear: Campaign ships do not represent a fundamental shift in the international order. Rather, they demonstrate the ways in which civil society organizations work within the existing order to advance their goals. This is demonstrated by the explicit and implicit acceptance of the international order by all three organizations, as well as the willingness of the organizations to acknowledge and be held accountable by the rule of law.

⁸³ See Skinner, *supra* note 78 at 4.

⁸⁴ Ferry, *supra* note 54.

⁸⁵ See Skinner, *supra* note 78 at 4; Women on Waves, "Ireland 2001", online: <<https://www.womenonwaves.org/Ireland>>.

First, the continued importance of states remains secure, despite the rise of global civil society. All three organizations in the case studies explicitly upheld the existing international order by relying on the support of states in achieving their aims. Both Greenpeace and Sea Shepherd ultimately required the governments of sympathetic states to prosecute the violations of international law that their campaign ships were working against.⁸⁶ Equally, Women on Waves would not have been able to provide abortions had it not flown under the flag of a state where abortion is legal.⁸⁷ As such, it is clear that states remain the primary unit in the international order—the unit through which civil society organizations work to further their activism and advocacy. Campaign ships, as much as they actively disrupt to the status quo, do not seek to overturn the system as a whole. Instead they seek to encourage transformative change *within* the current system, either by demanding the enforcement existing legal obligations that the organizations view as just, or by encouraging states to change laws the organizations view as unjust.

Furthermore, the organizations maintained the international order by using its rules to their advantage and thereby implicitly accepting the legitimacy of these rules. Both Greenpeace and Women on Waves use the rules regarding the exclusive jurisdiction of flag states over their vessels to prevent unfriendly governments from interfering with their actions.⁸⁸ Additionally, both organizations worked to ensure their right to peaceful protest was upheld by international organizations and tribunals.⁸⁹ While the jurisdictional elements of Sea Shepherd's pursuit of the Thunder are undoubtedly more complicated, the entire saga was premised on the acknowledgement that under the Laws of the Sea, only states are authorized to seize ships and make arrests.⁹⁰ Furthermore, the underlying motivation for such a pursuit was the belief that the Thunder could and ought to be brought to justice under international law, suggesting a

⁸⁶ See respectively, Teulings, *supra* note 39; Urbina, *supra* note 69.

⁸⁷ See Skinner, *supra* note 78 at 3.

⁸⁸ Wapner, *supra* note 22; H Haider, *International Legal Frameworks for Humanitarian Action*: Topic Guide (Birmingham: GSDRC, 2013).

⁸⁹ IWC Resolution, *supra* note 46; IMO Resolution, *supra* note 46; *Women on Waves and others v Portugal*, No 31276/05 (February 3, 2009) [*Women on Waves v Portugal*].

⁹⁰ Cetacean, *supra* note 49.

recognition of the law itself. Again, it is clear that campaign ships operate firmly within the international framework to realize change and advance their goals.

These reflections have implications for the concerns regarding the accountability of campaign ships under the existing international order articulated in Section IC. While concerns regarding the accountability of non-state actors for their actions will likely be ever-present, in light of the organizations' demonstrable willingness to work with the rule of law, these concerns are likely overstated in the case of campaign ships. This is established by the way all three organizations have used the courtroom as a battleground to advance in law what they defend in practice on the high seas.⁹¹ Perhaps even more significantly, when Sea Shepherd – undisputedly the organization which generates the most concerns about accountability – faced sanction and were labelled as pirates, they did not disregard this ruling but continued in their attempts to have their legal position validated by the courts.⁹² This does not imply that their actions are always in conformity with the law, but that when they are not, these organizations take responsibility and face the censure of the international community. Thus, the continued recognition of and engagement in national and international legal systems by campaign ships highlights their willingness to be held accountable for their actions. Taken together, these elements demonstrate rather than threatening the current international order, campaign ships are an innovative way of working within that order while upholding its legitimacy.

B. Feasibility of Campaign Ships as an Extralegal Strategy for Advancing Human Rights

In contrast to the previous section, the answer to the second question is substantially less evident. In my view, campaign ships present an opportunity for the small-scale advancement of human rights. As demonstrated by the case studies, campaign ships advance cross-cutting issues which impact many different elements of human rights – the right to life, gender equality, biodiversity rights, freedom of expression, among others. While none of these can be wholly advanced by the use of campaign ships alone, the continued existence of campaign ships as an extralegal strategy can serve to meaningfully advance human rights in three interrelated ways.

⁹¹ See *Australia v Japan*; *Women of Waves v Portugal*, *supra* note 89; *Cetacean*, *supra* note 49.

⁹² See *Cetacean*, *supra* note 49.

First, campaign ships offer an opportunity to increase the visibility of injustices. Second, campaign ships can promote greater accountability for violations of international norms, including human rights law. Third, campaign ships serve to encourage dialogue and build coalitions in order to foster justice. Taken together, these elements offer a small but nonetheless meaningful contribution towards building a world where human rights are enjoyed by all individuals.

The visibility attained by campaign ships as they undertake their work is undoubtedly one of the greatest strengths of this strategy. Campaign ships act as a lightning rod for media attention and public recognition. The importance of making visible injustice in order to effect change cannot be overstated; in the words of Sea Shepherd founder Paul Watson, “most powerful weapon on the planet is the camera.”⁹³ Indeed, visibility is one of the elements to ensuring extralegal strategies are successful. By setting sail on the high seas, each organization has immeasurably advanced the public consciousness of the issue for which they are advocating, an essential element to generating the social and political will necessary to achieve change. As a strategy for increasing the visibility of human rights, campaign ships hold great potential.

Together with greater visibility goes greater accountability. Campaign ships fulfill the essential role of monitoring international waters to ensure all vessels, regardless of jurisdiction, comply with international law. Through the work of campaign ships, states may be held to account for their failure to fulfill their treaty obligations, as was the case of Japan. Additionally, as Sea Shepherd demonstrates, campaign ships may fill the gaps in the international order to ensure illegal activity on the high sea that endangers human rights and environmental conservation does not go unsanctioned. Thus, campaign ships may be an effective way of ensuring actions in maritime space do not adversely impact human rights at sea or ashore. This may appear esoteric, but the growing body of scholarship regarding human rights in international waters, discussed in Section IIIA should serve as a reminder that considerations of human rights at sea has rippling effects. Further, as discussed in Section VII of this paper,

⁹³ Enders, *supra* note 54.

there are concrete instances of human rights violations at sea that may be effectively addressed through the use of campaign ships.

Finally, by navigating the waters which connect this planet, campaign ships are able to traverse boundaries to make connections between seemingly disparate groups and cultivate conversation among them. Campaign ships are a physical manifestation of the mobility necessary for global coalition building. In this way, they do the work of bringing together the transnational and the local, work which is essential to the advancement of human rights through extralegal strategies.⁹⁴ Understood in this way, campaign ships hold great potential as a strategy for bringing together human rights work and workers from around the world.

Despite the power and potential of campaign ships to advance human rights, we must be cautious not to overstate the abilities of this strategy to effect change. It is true that campaign ships accomplish the goals which are necessary for defending human rights through extralegal means. However, campaign ships are most effective—indeed are arguably only effective, when their work on the high seas is a direct intervention in injustice. This is a foundational requirement of direct action—protest is not symbolic but intended to have immediate, concrete results which then translate into systemic change. Thus, as we evaluate the potential of campaign ships as a way to advance human rights, the tangible impact of this strategy must be at the forefront of our considerations. As such, advancing human rights through a broad-scale use of campaign ships would be ultimately ineffective. Instead, human rights defenders and their allies should stay attuned to instances where the use of campaign ships could achieve one or several of the results outlined above, and should not hesitate to deploy campaign ships in these circumstances.

⁹⁴ Merry, *supra* note 13.

VI. Conclusion

In conclusion, campaign ships do not represent a fundamental shift to the international order, but rather a small-scale strategy through which civil society organizations may meaningfully advance human rights in specific circumstances. Campaign ships are regulated both by the international framework of human rights law, which protects their ability to use the sea as a protest space, and the Law of the Sea that regulates all vessels on the high seas. Campaign ships navigate – both literally and figuratively—the physical and theoretical gaps in the existing international order. It is when working within these gaps presents an opportunity for meaningful change that campaign ships are most effective. As an extralegal strategy used by civil society organizations, campaign ships form part of a connected network of activism.

While the use of campaign ships may not always be a feasible strategy for defending human rights, all individuals and groups who are looking to achieve broad-based social justice through transformative change can draw inspiration from this strategy.⁹⁵ The innovative use of international law, the creative use of maritime space and the commitment to their cause in the face of adversity demonstrated by the organizations who use campaign ships should inspire us all to think outside the box as we envision and work towards a more just, peaceful and sustainable world for all.

VII. Way Forward

A. The Case of Migrants at Sea

The examination of campaign ships has taken on new relevance in light of the growing concern of loss of life and human rights violations faced by migrants travelling on international waters. With ongoing conflict and instability in the Middle East and Northern Africa,

⁹⁵In an understanding of human rights and human rights works as based on solidarity, it cannot go unacknowledged that activists on campaign ships protect the rights of others through the use of their own right to freedom of expression. While this notion is outside the scope of this paper, it is the conception of campaign ships as solidarity in action which continues to capture my attention as an area for further reflection. For more on the use of human rights as a proxy, see Natalie L. Bridgeman, “Human Rights Litigation Under the ATCA as a Proxy for Environmental Claims,” *Yale Human Rights & Development Law Journal* 6 1.

particularly in Syria, an unprecedented number of migrants are arriving in Europe by sea. However, unsafe and exploitative conditions make this trip fraught with risk; an estimated 3,117 migrants lost their lives in the Mediterranean in 2015 alone.⁹⁶ Given these circumstances, it is worthwhile to explore the possibilities of defending or monitoring human rights of migrants through the use of campaign ships.

The human rights elements of the migrant crisis are multi-faceted. Migrants are often fleeing from civil and political human rights violations or conditions which impact their economic and social rights.⁹⁷ At sea, the precarious routes used by migrants and the predatory practices of human smugglers results in ‘large-scale violations of the right to life’⁹⁸ Finally, “push-back” operations by the navies of certain coastal states, which seek to return migrants to their country of departure before reaching shore, pose serious risks to migrant safety and violate obligations of states under refugee law to ensure potential asylum seekers are not returned to a place where their life or freedom would be threatened.⁹⁹ From this brief overview, it is clear that protecting migrants at sea is a concrete human rights issue which a strong focus on international waters. As such, it may be an appropriate circumstance in which to deploy a campaign ship.

Indeed, the use of campaign ships by an civil society organization would be effective in advancing the human rights of migrants in the three ways outlined above. A well-publicized ship campaign which explicitly sets out to monitor the treatment of migrants in the Mediterranean would increase the visibility of this issue. Most significantly in these circumstances, a campaign ship would be able to monitor both naval forces and human smugglers, with a view to holding them accountable for their human rights violations. A recent report commissioned by the European Union to examine human rights protections for migrants notes that despite recognition of human rights safeguards in maritime border surveillance,

⁹⁶ European Parliament Directorate-General for External Policies, *Migrants in the Mediterranean: Protecting human rights* (Brussels: European Parliament, 2015) at 12 [“Migrants”].

⁹⁷ *Ibid* at 27.

⁹⁸ *Ibid* at 30.

⁹⁹ This is known as the principle of *non-refoulement* enshrined in Article 33 of the Geneva Convention (*Ibid* at 59).

“implementation, monitoring and control remain problematic.”¹⁰⁰ A campaign ship would be able to quickly and effectively fill that gap until government agencies develop ability and willingness to do so themselves. Finally, a campaign ship may be able to incite public dialogue on transforming migration policies to ensure they do not unnecessarily risk the lives and the rights of individuals. While further research is necessary to determine whether the use of a campaign ship in this situation would meaningfully advance the human rights of migrants, it is clear that evaluating this form of direct action as an extralegal strategy for human rights defenders has previously unexplored practical implications for responding to a pressing global crisis.

¹⁰⁰ See “Migrants”, *supra* note 96 at 1.

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