

The Sea Shepherd Case of 2007–2008: Interferences with Japanese Vessels Whaling for “Researching” the Maritime Ecosystem

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1 . Outlin of the Sea Shepherd case of 2007-2008

The *Robert Hunter* is a ship owned by Sea Shepherd Conservation Society, a non-governmental environmental organization established in the United States that is against whaling. On the high seas near the south of New Zealand the ship approached the *Nissin Maru*, a ship conducting whaling to “research” the maritime ecosystem of the Antarctic Sea. The *Nissin Maru* is a Japan-registered ship owned not by the government of Japan but by a private Japanese company. Crew members of the *Robert Hunter* threw smoke candles and a glass bottle filled with butyric acid to clear all hands off the decks. Two Japanese crew members of the *Nissin Maru* suffered injuries from this incident⁽¹⁾.

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2 . Consideration of the case from a legal point of view

2- 1 Consideration of the case from the viewpoint of domestic laws

Specifically, acts of interference by the Sea Shepherd Conservation Society, a non-governmental environmental organization, with Japanese scientific whaling vessels from 2007 to 2009 included (1) throwing smoke candles, bottles containing butyric acid, and other objects at whaling vessels; (2) coming into contact with whaling vessels to interfere; (3) intentionally crashing into whaling vessels; (4) throwing ropes to entangle them with the propellers of whaling vessels; and (5) boarding whaling vessels without their permission. The question is whether, because of these acts, Sea Shepherd activists should be accused not only of injury (for injuries inflicted upon crew members as described in (1)) under Article 204 of the Penal Code of Japan (Act No. 45 of 1907) but also of forcible obstruction of performance (as described in (1) and (3)) under Article 234 of the Code, of endangering traffic (as described in (3) and (4)) under Article 125 Paragraph 2 of the Code, of destruction of vessels (as described in (3) and (4)) under Article 260 of the Code, of entering vessels illegally (as described in (5)) under Article 130 of the Code, and of other offenses. In the following sections, however, this note considers this case by paying attention only to injuries inflicted upon crew members⁽²⁾.

Since some of the facts that corresponded to the structural elements of injuries inflicted by crew members of the *Robert Hunter* occurred on a Japanese vessel, Japan has legislative jurisdiction over these acts on the basis of Article 1 Paragraph 2 of the Code which adopts the flag state principle. Therefore the

Robert Hunter crew members can be accused of injury under Article 204 of the Code, but since they were on a foreign vessel, Japan does not have enforcement jurisdiction over their acts.

As prescribed in its Article 1 Paragraph 1, the Penal Code adopts the territorial principle, stipulating that “This Code shall apply to anyone who commits a crime within the territory of Japan”. And Article 1 Paragraph 2 of the Code stipulates that “The same shall apply to anyone who commits a crime on board a Japanese vessel or aircraft outside the territory of Japan”. Traditionally, the theory of ubiquity has been a common view of what the territorial principle means⁽³⁾. In other words, the territorial principle has been interpreted as including as the location of a crime any place where an act that corresponds to the structural elements of the crime is performed, any place where a result that corresponds to those elements is caused and any place casually effected by the intermediate impact which continues during this interval. The territorial principle regards the crime as a domestic one even if only a part of the facts that correspond to the structural elements of the crime occur in Japan, thus claiming that the Code can be applied to the committer⁽⁴⁾. One judicial precedent indicates that the Code shall apply if a criminal act is performed in Japan even if its result is caused abroad (judgement of June 16, 1911, *Supreme Court Records of Criminal Trials*, No. 15, p. 623⁽⁵⁾). Another precedent shows, on the other hand, that the Code shall also apply to cases in which not a criminal act but its result has a domestic impact; like an act of aiding and abetting abroad a principal offense committed in Japan (decision of December 9, 1994, *Keishu*, Vol. 48 No. 8, page 576).

2-2 Consideration of the case from the viewpoint of international law

2-2-1 If the Sea Shepherd’s acts of interference are recognized as piracy defined by Article 101 of the United Nations Convention on the Law of the Sea

On the high seas, in order to protest whaling, crew members on the privately owned vessel *Robert Hunter* threw smoke candles, bottles containing butyric acid, and other objects at the Japanese whaling vessel *Nissin Maru* at sea, and caused *Robert Hunter* to crash into the port side of *Nissin Maru*. There is a possibility that these acts could be recognized as piracy defined by Article 101 of the United Nations Convention on the Law of the Sea (UNCLOS). If they are recognized as such, the Japanese government can exercise its enforcement and judicial jurisdiction in accordance with the Article 105 of the UNCLOS such as seizing the pirate vessel, arresting the committers of piracy, referring them to the public prosecutors, and indicting and punishing them.

In recognizing the acts of interference in this case as piracy, the question is how to interpret the requirement of “private ends” among the requirements for piracy stipulated in Article 101 of the UNCLOS. YAMAMOTO Soji defines “private ends” as the offender’s personal or subjective motives such as hatred and revenge, not limited to the pursuit of profit. But the primary purpose of the requirement is to exclude from piracy “acts performed by persons that act on behalf of the state or are authorized to do so or by persons that are authorized to force certain actions on other countries under international law (belligerent and national liberation organizations) and other acts driven by a purely political motive.”⁽⁶⁾ In other words, the requirement was added in an historical context for the purpose of distinguishing violent acts with national authorization committed on

the high seas from piracy under international law. For this reason, it is considered that there is no particular problem with the argument that the obstructions caused by the Sea Shepherd meet the requirement of private ends⁽⁷⁾⁽⁸⁾.

Entities that are allowed to exercise their enforcement and judicial jurisdiction for capture, arrest, and confiscation under Article 105 of the UNCLOS are limited to warships, military aircraft, and government vessels and aircraft under Article 107 of the UNCLOS. Furthermore, since Officers of the Japan Coast Guard (JCG) are Japanese authorities that have policing powers at sea, Japan cannot exercise its policing powers in waters where obstructive acts are performed unless JCG’s patrol vessels or boats are deployed in the waters or JCG Officers are on duty aboard the Maritime Self-Defense Force’s naval escorts and other vessels deployed there. Moreover, even if JCG Officers are on duty aboard a whaling vessel of Japanese nationality to guard it, they are not allowed to exercise their policing powers unless committers of piracy move onto the vessel.

If JCG Officers arrest committers of piracy in the waters where the piracy is committed, it is possible that they might not be able to refer them to public prosecutors within 48 hours of arrest as stipulated in Article 203 Paragraph 1 of the Code of Criminal Procedure of Japan (Act No.131 of 1948) because the waters where the case occurred are located in the Antarctic Ocean, which is far away from Japan. This provision can be interpreted as allowing delay in such referral under Article 206 of the Code of Criminal Procedure because such delay is caused for an unavoidable reason, but it is necessary to make efforts to render the detainment of suspects as short as possible.

As of February 9, 2007, when its crew members performed obstructive acts against *Nissin Maru* for the first time, *Robert Hunter* was of British registry, but on February 11 of the same year, the vessel was deprived of its nationality and

became a vessel of no nationality. If the Sea Shepherd’s acts of interference are recognized as piracy, it is presumed that if JCG Officers arrest committers of piracy in a Sea Shepherd vessel of no nationality, there is no legal problem with their exercise of policing powers under international law. Since there is no common view and precedent of the scope of application for the Code of Criminal Procedure, however, it is unknown whether there is any procedure with the exercise of such powers under domestic laws. For this reason, it is desirable that, if possible, JCG Officers arrest suspects after they transfer them to a JCG patrol vessel or boat.

The Code of Criminal Procedure has no provision of the scope of application. Article 2 of the Code of Criminal Procedure is strictly a provision of the territorial jurisdiction of courts. The only judicial decision in which a judge has squarely grappled with this issue is the one given at the court of first instance for the Rastoborov case (decision of May 13, 1961, *Tokyo Chihan Gekeishu*, Vol. 3, Nos. 5 and 6, p. 469). The point at issue in this trial was whether a record of oral statement compiled by a Japanese public prosecutor after he questioned a foreign suspect in a foreign country was admissible as evidence. In addition, the court decision only states that “criminal investigations, whether they are compulsory or conducted on a voluntary basis, cannot be carried out in areas where the Code of Criminal Procedure is not applicable because they are done so under the Code” (p. 472); that “essentially, the Code of Criminal Procedure is based on the territorial principle under which it applies in principle to the whole territory of Japan and therefore criminal investigations cannot arbitrarily be conducted in foreign territories” (p. 472); but that “it is accepted under international law that officers in a country are allowed to exercise in other countries certain powers that they are authorized to do so in their own country without violating the

sovereignty of the other countries if they obtain the consent of the other countries” (p. 473). In this decision, it is unclear whether (1) other countries’ approval makes it possible to apply the Code of Criminal Procedure outside the territory of Japan or (2) the Code of Criminal Procedure is applicable outside the territory of Japan in the first place, making criminal investigations under the Code of Criminal Procedure possible if other countries’ approval is obtained. In other words, the legal effects of “other countries’ approval” as they are related to the applicability of the Code of Criminal Procedure outside the territory of Japan are unclear.

2-2-2 If the Sea Shepherd’s acts of interference are not recognized as piracy defined by Article 101 of the United Nations Convention on the Law of the Sea

As of February 9, 2007, when its crew members performed obstructive acts against *Nissin Maru* for the first time, *Robert Hunter* was of British registry, but on February 11 of the same year, the vessel was deprived of its nationality and became a vessel of no nationality. For this reason, even if the acts of interference are not recognized as piracy, the Japanese government can exercise the right of visit on *Robert Hunter*, a vessel of no nationality, as stipulated in Article 110 of the UNCLOS. The right of visit allows officers to dispatch boats and other means of transport to suspected vessels as stipulated in Article 110 Paragraphs 1(a) to 1(e) (Article 110 Paragraph 1 (e) includes a provision of vessels of no nationality) in order to confirm their nationality in accordance with Article 110 Paragraph 2, communicate with the vessels by wireless or other means of communication, and, if suspicions are not dispelled, enter the vessels for inspection.

The right of visit does not include rights related to the exercise of enforcement

jurisdiction for capture, arrest, and confiscation. Article 105 of the UNCLOS permits the exercise of enforcement jurisdiction over vessels engaged in piracy as stipulated in Article 110 Paragraph 1 (a), and Article 109 Paragraph 3 of the UNCLOS permits the exercise of enforcement jurisdiction over vessels engaged in unauthorized broadcasting as stipulated in Article 110 Paragraph 1 (c). This enforcement jurisdiction, however, cannot be exercised over vessels of no nationality simply due to the fact that the vessels have no nationality, and the only measure that can be taken is, for example, to notify the country of their captain or other officers. Moreover, Article 110 Paragraphs 2, 4, and 5 of the UNCLOS limit entities that are allowed to exercise the right of visit to warships, military aircraft, government vessels and government aircraft.

Therefore, even if JCG Officers exercise the right of visit on *Robert Hunter* and enter the vessel because it is a ship of no nationality, they cannot make arrests on the vessel on suspicion of injury of those who throw smoke candles, bottles containing butyric acid, and other objects. All they can do is either to transfer suspects to their patrol vessel or boat strictly on a voluntary basis and then arrest them or to request the country of suspects to extradite them to the Japanese authorities and arrest them after their extradition.

Reference on whether the Sea Shepherd’s acts of interference are recognized as piracy under international law and other issues

1 . Answer at a meeting of the House of Representatives Committee on Foreign Affairs on May 25, 2007

- IWAYA Takeshi, State Minister for Foreign Affairs: “However, since I don’t have a whole picture of the case yet, I would like to refrain at this moment from answering the question of how the excessive acts of interference (committed by the Sea Shepherd [inserted by the author of this note]) you mentioned are viewed under international law. Then, if we speak in generalities, the NGOs’ acts of interference with scientific research whaling that Japan is engaged in on the high seas could be, depending on their nature, considered as piracy as stipulated in customary international law and the UNCLOS. They could also be considered crimes as defined in the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, which stipulates unlawful acts against the safety of vessels navigating in the ocean. It is a bit complex, but that is how I view their acts of interference.” (*Minutes, No. 15 of the 166th Diet Session House of Representatives Committee on Foreign Affairs*, p. 13)

2 . Questions and answers at the April 4, 2008 meeting of the House of Representatives Committee on Foreign Affairs

- NODA Yoshihiko, member of the Committee: “This year’s first case involved
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two Sea Shepherd activists entering *the Daini Yushin Maru* and being temporarily detained on January 15. One intruder was reported to be an Australian and one British. However, if they entered a Japanese vessel, Japanese laws should have been applied. After they were detained, they should also have been arrested as private citizens. Why did you hand over them to the Australian authorities at such an early stage? I would like you to explain the circumstances under which that happened.”

- YAMASHITA Jun, Director-General, Resources Management Department, the Fisheries Agency: “On January 15, two Sea Shepherd activists entered the *Daini Yushin Maru*, a visual-whaling vessel. In order to ensure the safety of the vessel, the captain temporarily detained the two in the cabin of the vessel. These two activists did not use violence and their sole objective was to hand a letter of protest to the captain. Because it was necessary to consider how to respond to various kinds of interference that could continue, the captain decided to release the two. This action was taken after consultation with related government agencies with the aim of minimizing the effects of obstructions on scientific research whaling.”
- Noda: “You said that when they entered the vessel, they handed a letter of protest or something like that to ship officers, but before they did so, crew members on the Sea Shepherd’s ship had performed such acts as throwing bottles containing chemicals onto the Japanese vessel and entangling a rope with the propeller of the vessel, hadn’t they? Three hours after the two activists were handed over to the Australian authorities, Sea Shepherd crew members threw ten bottles containing butyric acid again, this time targeting another whaling ship. After all, if what happened before and after the extradition is taken into account, I think that the captain made the wrong decision. Why did

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the captain release them from detainment and hand over them? I think that the captain made the wrong decision. I would like to ask your opinion about this again.”

- Yamashita: “I will repeat my answer to the question you asked me now. At that time, these two activists did not use violence, it was clear that their sole objective was to hand a letter of protest to ship officers, and the effects of the interference on scientific research whaling had to be minimized. Therefore, we acted according to consultations with related government agencies.”
- Noda: “I believe that this clearly constitutes a crime of entering a ship illegally. Therefore, this was plainly a violation of the sovereignty of Japan, and appropriate measure should have been taken from the viewpoint of domestic laws. Did you say that the captain handed over the two to the Australian authorities? Then, did the Australian authorities question them properly? What happened to them?”
- ISHIBSHI Mikio, Vice Commandant for Operations, the Japan Coast Guard: “As you pointed out, with respect to the recent series of interferences, criminal investigations are being conducted to accuse them of entering a ship illegally. In this case, since the suspects live outside Japan, investigations are under way with the cooperation of the countries concerned.”

(Minutes, No. 5 of the 169th Diet Session House of Representatives Committee on Foreign Affairs, pp. 9–10)

3. Answers to the questions about Japanese government agencies’ response to the Sea Shepherd’s acts of interference at the March 17, 2009 meeting of the House of Councilors Committee on the Cabinet

- IKEDA Katsuhiko, Director-General, Security Bureau, National Police Agency:
“I will report on the progress in criminal investigations. The police are investigating the incident that occurred on February 12, 2007. Crew members on a ship owned by the Sea Shepherd performed acts of interference with a Japanese vessel whaling for scientific research purposes, and these acts included throwing smoke candles at the vessel and dropping ropes into the sea. In this case, the investigators identified three male suspects in August and one female suspect in November on a charge of obstructing performance by force and, after obtaining arrest warrants, asked ICPO to circulate a notice. The police authorities are currently working to take these suspects into their custody by seeking cooperation with related countries.”
- SHIRONO Isao, Director-General, the Guard and Rescue Department, the Japan Coast Guard: “At the Japan Coast Guard, criminal investigations related to scientific research whaling in fiscal 2007 are under way. On January 15, 2008, Sea Shepherd activists entered a Japanese scientific whaling vessel, and on March 3 of the same year, they threw bottles containing chemicals at a Japanese scientific whaling vessel. In relation to these acts of interference, JCG is currently proceeding with criminal investigations to accuse these activists on suspicion of committing such crimes as illegal entry into a vessel and forcible obstruction of performance. In this case, since the suspects live

outside Japan, JCG is striving to advance its criminal investigations in order to identify the suspects and the crimes committed while obtaining the cooperation of related countries.”

- MOTOMURA Yuzo, Director-General, Resources Management Department, Fisheries Agency: “Particularly, I would like to stress that as stated in the resolutions of related committees at the House of Representatives and the House of Councillors, the Japanese government will request the governments of related countries, including Australia, the Netherlands, and the United States, to take strict action against persons who performed acts of interference. The government is taking every opportunity to request related countries, including Australia, the Netherlands, and the United States, at various levels to take appropriate action in accordance with their domestic laws and relevant international law. In particular, in order to defend Japan’s scientific research whaling, the Director-General of the Fisheries Agency made the following requests to ministers at the embassies of the respective countries in Tokyo on February 9 and 10 : specifically, he requested the Netherlands, the flag state of the vessel owned by the anti-whaling group the Sea Shepherd, to immediately clamp down on the group’s acts of interference; Australia, a country at which the vessel called, to take appropriate measure, including criminal investigations; and the U.S., a country where the group is headquartered, to take measures for preventing and deterring the recurrence of similar acts of interference. Partly due to the effects of these requests, the Australian federal police searched the vessel owned by the Sea Shepherd and confiscated evidence on February 20, and it is currently conducting criminal investigations. In addition, at the International Whaling Commission (IWC)’s intersessional meeting held for three days from March 9 , the Dutch

government stated that it was considering taking legal action. As typified by this statement, I believe that JCG’s efforts are producing certain results. That is all I have to say.”

- TAKAOKA Masato, Counsellor, Minister’s Secretariat, Ministry of Foreign Affairs: “Based on the resolutions of related committees at the House of Representatives and the House of Councillors, the Ministry of Foreign Affairs has taken several occasions, including approaches at the ministerial level, to tell the Netherlands, the flag state of the Sea Shepherd’s vessels, Australia, at which these vessels called, and other countries that these acts of interference were highly deplorable and strongly implore them to take appropriate measure for the acts of interference that had been performed up to that time in accordance with related international law and domestic laws. On February 6, with respect to the acts of interference committed in the same month, MINORIKAWA Nobuhide, Parliamentary Vice-Minister for Foreign Affairs, told the Dutch ambassador in Tokyo that the Sea Shepherd’s acts of interference were highly deplorable and requested the ambassador that the Netherlands make the Sea Shepherd stop its obstructions and take appropriate measure as a responsible flag state so that similar acts of interference would not be committed again. He also implored Australia to take appropriate measure, including criminal investigations. The IWC held its intersessional meeting from March 9 to 11, and on this occasion, the Japanese delegation used videos to fully explain all the facts about the acts of interference the Sea Shepherd had performed and strongly criticized these acts. As a result, many participating countries strongly attacked the group’s acts of interference and expressed their opinion that these related countries should take prompt measure. As explained by the Fisheries Agency earlier, we have been advised

that in response to Japan’s requests, the Australian federal police searched the Sea Shepherd’s vessel on February 20 . Furthermore, at this year’s IWC intersessional meeting, the Dutch delegation stated that it was considering legal and other measures. The Ministry of Foreign Affairs will follow up on the measures taken by these related countries appropriately.

(Minutes, No. 2 of the 171st Diet Session House of Councillors Committee on Cabinet, pp. 13-14)

4 . Questions and answers at the April 23, 2009 meeting of the House of Representatives Special Committee on the Measures taken against Piracy, the Prevention of International Terrorism, and Japan’s Cooperation and Support, Etc.

- NAGASHIMA Akihisa, member of the Committee: “As I have touched on a little bit right now, they just committed violence against a Japanese scientific whaling vessel, which was operating legally under international law. I would like to ask you how an act of interference at sea is viewed under international law. Isn’t this exactly what we call ‘piracy’? What is your opinion, Minister for Foreign Affairs?”
- NAKASONE Hirofumi, Minister for Foreign Affairs: “Depending on its specific type, violence at sea, for example, of the nature you pointed out right now, is in a sense considered as an act of interference, although the Sea Shepherd claims that it is an act of protest. But it is my opinion that the possibility that their act is considered to fall into the category of piracy as defined in the UNCLOS cannot be immediately ruled out.”

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- Nagashima: “I also believe that these activities are considered as piracy. This bill, however, gives a narrow definition to piracy if I may say so. In its definition, piracy is limited to what is described in each item of Article 2 (of the Act on Punishment of and Measures against Piracy (Act No. 55, 2009) [inserted by the author of this note]). What is the reason for intentionally giving a restrictive definition to piracy? Please explain, Minister for Ocean Policy.”
- KNEKO Kazuyoshi, Minister of Land, Infrastructure, Transport, and Tourism: “We wonder whether there is after all a international understanding that the Sea Shepherd’s activities really fall into the category of piracy as we define it. In light of this, we have determined that they did not and are excluded from a broader definition of piracy.”
- Nagashima: “Is that really so? Aren’t these internationally regarded as piracy? That seems hard to believe. The Commandant of the Japan Coast Guard is present at this meeting, isn’t he? I hear that two years ago, three JCG Officers on duty aboard a whaling ship were injured. Will you explain the situation clearly?”
- IWASAKI Teiji, Commandant of the Japan Coast Guard: “As you pointed out, splashes of butyric acid thrown by Sea Shepherd activists struck on two JCG Officers and one crew member of Nissin Maru, and they had to have their eyes cleansed. With respect to this incident, we are proceeding with criminal investigations to accuse them on suspicion of injury and other offenses.”

(Minutes No. 7 of the 171st Diet Session House of Representatives Special Committee on the Measures against Piracy, the Prevention of International Terrorism, and Japan’s Cooperation and Support, Etc., pp. 21–22)

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- (1) On the details of the violent activities by the Sea Shepherd Conservation Society, cf. KANEHARA Atsuko, 2011, So-called “Eco-Piracy” and Interventions by NGOs to Protest against Scientific Whaling on the High Seas: An Evaluation of the Japanese Position, in Clive R. Symmons (ed.), *Selected Contemporary Issues in the Law of the Sea*, Leiden: Martinus Nijhoff, pp. 195-197., Debra Dobby, 2013, Whale Wars: How to end the Violence on the High Seas, *Journal of Maritime Law & Commerce*, Vol. 44, No 2, pp. 138-140., Barry Hart Dubner and Claudia Pastorius, 2014, On the Ninth Circuit’s New Definition of Piracy: Japanese Whalers v. the Sea Shepherd - Who are the Real Pirates?, *Journal of Maritime Law & Commerce*, Vol. 45, No 4, p. 417.
- (2) This note doesn’t consider the legality of the whaling by Japanese scientific whaling vessels, now that the International Court of Justice, in the Judgment of 31 March 2014 at the case “Whaling in the Antarctic (Australia v. Japan: New Zealand intervening)”, has decided that Japan violated the International Convention for the Regulation of Whaling for the following reasons. The Court considered that Japanese whaling research program named as “JARPA II” involves activities that can broadly be characterized as scientific research, but that the evidence does not establish that the program’s design and implementation are reasonable in relation to achieving its stated objectives, and therefore concluded that the special permits granted by the government of Japan for the killing, taking and treating of whales in connection with JARPA II are not “for purposes of scientific research” pursuant to Article VIII, paragraph 1, of the Convention.
- (3) Incidentally, in addition to the theory of ubiquity, there are two theories of determination of the location of a crime: the theory of acts and the theory of results. The theory of acts regards the place where a physical act is performed as the location of a crime and does not call into question the place where its result occurs. The theory of results regards the place where a result that corresponds to the structural elements of a crime occurs as the location of a crime and does not call into question the place where a criminal act is performed.
- (4) The question here is whether preliminary acts are included in a “part of the facts that correspond to the structural elements of the crime.” The commonly accepted theory is that for certain crimes, the Penal Code does not stipulate that preliminary acts are punishable, and that for these crimes, preliminary acts are not regarded as a part of the facts that constitute the crimes, having nothing to do with the determination of the place of crime-committing.
- (5) This judicial decision concerned the case in which, due to an error committed

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when oilpaper was loaded onto a German vessel at Yokohama Port, a fire broke out on the vessel after it went out of Japanese waters. The court affirmed the application of “fire caused through negligence” as stipulated in the Penal Code to this case, ruling that “as long as an error that corresponded to one of the structural elements of fire caused through negligence was committed within the territory of the Empire of Japan, this crime was considered to have been committed within the Empire even if its result, another element that constituted the crime, was caused outside the territory of the Empire, and that the committer of the crime should be punished in accordance with the laws of the Empire of Japan.”

- (6) YAMAMOTO Soji, 1991, *International Criminal Law*, Tokyo: Sanseido, p. 250. Cf. Dobby 2013, pp. 147–150., Dubner and Pastrius 2014, pp. 435–436.
- (7) KANEHARA points out that, even if interferences by the Sea Shepherd against Japanese whaling vessels satisfies each requirement piracy under international law, they may still not be regarded as piracy for several reasons, one of which is “obstructive acts against research whaling ships are so varied in terms of means and magnitude that not all of them could, in any event, fall under the same legal category of piracy with special status”. Cf. KANEHARA 2011, pp. 207–212.
- (8) In order for the Sea Shepherd’s acts of interference to be considered to be piracy as defined in Article 2 of the Act on Punishment of and Measures against Piracy (Act No. 55, 2009) (Japanese Piracy Act), however, it is necessary that they fall into the category of one of the acts specified in Items (i) to (vii) of the Article. The Article 2 of the Japanese Piracy Act stipulates as “Definition of Piracy” that “The term “piracy” as used in this Act shall mean the acts falling under any of the following items committed for private ends on the high seas (including exclusive economic zone prescribed in the United Nations Convention on the Law of the Sea) or Japanese territorial sea as well as internal waters by crew or passengers of ships (excluding warships and ships owned or operated by a foreign government). On the details of the Japanese Piracy Act, cf. TSURUTA Jun, 2011, “The Japanese Act on the Punishment of and Measures against Piracy”, *The Aegean Review of the Law of the Sea and Maritime Law*, Vol. 1 (2), pp. 237–245., FURUYA Kentaro and TSURUTA Jun, 2013, “The Guanabara Case - The First Prosecution of Somali Pirates under the Japanese Piracy Act”, *The International Journal of Marine and Coastal Law*, Vol. 28(4), pp. 719–728.
- (i) seizing another ship in navigation or taking control of its operation, by rendering persons irresistible by assault, intimidation or any other means;

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- (ii) robbing property on board another ship in navigation or obtaining or causing others to obtain an unlawful profit, by rendering persons irresistible by assault, intimidation or any other means;
- (iii) kidnapping a person on board another ship in navigation, for the purpose of taking the person hostage to demand a third person to deliver any property or take any other unobligated action or to waive that person’s right;
- (iv) demanding a third person to deliver any property or to take any other unobligated action or to waive that person’s right, by taking hostage a person on board a robbed or navigation-controlled ship or a person abducted from another ship in navigation;
- (v) breaking into or damaging another ship in navigation, for the purpose of committing piracy as referred to in each proceeding items;
- (vi) operating a ship and approaching extremely or following about another ship in navigation, or obstructing the passage of another ship in navigation, for the purpose of committing piracy as referred to in items (i) to (iv) above; and
- (vii) preparing forces and operating a ship, for the purpose of committing piracy as referred to in items (i) to (iv) above.”