

PEG LEGS AND EYE PATCHES...

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New Zealand has for many years taken a stand when it comes to our position on environmental issues. As a country we are proud to stand apart from some of the bigger global “heavyweights” and remain firm in refusing to back down from our stance – preventing nuclear warships from entering our waters is a good example. But where should the line be drawn between what is a valid expression of views and what has gone too far?

What happens when those with strong (perhaps even extreme) views about the need to preserve global natural resources express their views in a manner that not only puts themselves and others in danger, but also violates several international treaties?

The question that we should be asking is what legal rights do these parties have to behave as they do? Are they breaking the law in doing so? Are these groups entitled to do what they do, for what they claim is a “higher purpose”?

The recent decision of the United States Court of Appeal relating to the actions of environmental group, Sea Shepherd Conservation Society and its founder Paul Watson, against the Institute of Cetacean Research and Kyodo Senpaku Kaisha Ltd, both of Japan, raised some interesting points on the legality of the tactics.

Sea Shepherd’s activities in the southern ocean targeting the Japanese scientific research whaling fleet have been widely reported in the last few years and show an escalation in the violence of tactics employed by both Sea Shepherd and the vessels that are targeted by them. According to the Sea Shepherd’s website, their actions resulted in the Japanese fleet only catching a mere 10 percent of its research quota last season.

Rather memorably, the opening paragraph of the Court of Appeal Judgement is a strong indication that matters have gone too far in the eyes of the United States judiciary:

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

The Japanese sued for injunctive and declaratory relief – essentially seeking the Court’s intervention to stop Sea Shepherd disrupting their operations.

The Court found that the actions of Sea Shepherd did constitute acts of “piracy” in terms of the United Nations Convention on the Law of the Sea. “Piracy,” is defined in UNCLOS as:

“Illegal acts of violence... committed for private ends by the crew or passengers of a private ship... and directed... on the high seas, against another ship... or against persons or

property onboard such a ship.”

The Court held that in this context, “private” must have the opposite meaning of “public,” noting that the term often refers to matters of a personal nature that are not necessarily connected to finance. That definition, in the context of extensive history on piracy law, resulted in the conclusion of the Court that “private” ends include those pursued on personal, moral or philosophical grounds, such as environmental goals.

The Court noted *“...that the perpetrators believed themselves to be serving the public good does not render their ends public.”* Further, *“the activities ... Sea Shepherd has engaged in are clear instances of violent acts for private ends, the very embodiment of piracy.”*


The Court subsequently found that Sea Shepherd’s actions, including the deliberate navigation of vessels dangerously close to Cetacean’s vessels, were in contravention of the Convention on the International Regulations for Preventing Collisions at Sea.

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vessels, using metal reinforced ropes to foul propellers and other aggressive measures in this instance, despite the fact that those attempts had so far been unsuccessful, was contrary to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation.

These findings, unsurprisingly, have led to a number of responses through print and video media, as well as further legal proceedings in various jurisdictions. Whilst some have expressed concern that this is a significant widening of the idea of piracy, other legal commentators have heralded this as the deterrent that is required.

Whatever your thoughts on the actions of some of the more extreme environmental groups, this is unlikely to be the last that we hear from the Courts, relating to Sea Shepherd and the tactics they employ. 

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