

“Ships owned or operated by a State” (Art. 15), and “Effect of an arbitration agreement” (Art. 16).

(3) State immunity from measures of constraint in connection with proceedings before a court

The act includes “State immunity from pre-judgment measures of constraint” and “State immunity from post-judgment measures of constraint”. There are provisions of “the Effect of consent to jurisdiction to measures of constraint” (Art. 17), and “Specific categories of property” (Art. 18).

(4) Miscellaneous provisions

Miscellaneous provisions include “Service of process” (Art. 20), “Default judgment” (Art. 21), “Privileges and immunities during court proceedings” (Art. 22).

Editorial Note:

“Limited Jurisdictional Immunity” is the trend of the world, but since the Taishin-in December 28, 1928 (7 (12) MINSHU 1128) adopted “Absolute Jurisdictional Immunity”, the supreme court has applied it.

The Supreme Court 2nd P. B., July 18, 2006 (60 (6) MINSHU 2542), however, overruled the decision of the Taishin-in, and adopted “Limited Jurisdictional Immunity”.

“The Act of Civil Jurisdiction against the State” clarifies the concept-for instance, its scope, range and procedure etc.- of “Limited Jurisdictional Immunity”. It prohibits interference in the state-functions that should be protected, but in fact the act is very abstract. That is the reason why we should pay attention to its future interpretation.

5. Criminal Law and Procedure

Law for the punishment and treatment of acts of piracy

Law No. 55, June 24, 2009 (effective on July 24, 2009)

Background:

Japan is a very big island nation, which is surrounded by sea, and for-

eign trading is essential for it. Thus, the security of shipping is indispensable for Japan's economic society and national life. Moreover, in the United Nations Convention on the Law of the Sea, which Japan ratified in 1996, countries are required to cooperate for the prevention of piracy in the public ocean as widely as they can. Concretely speaking, this treaty says that, in order to keep the public safety and order in the oceans, the punishment of acts of piracy and necessary measures for coping with them properly and effectively are necessary. Also, at the time of ratification, although there were acts of piracy, fewer incidents happened than now. Moreover, there were few problems since incidents happened in territorial waters where its national laws had been made and the activity of sea police was performed effectively. There are three serious problems in today's frequent acts of piracy off Somalia and in the Gulf of Aden and the Red Sea. Firstly, the problem is the performance of the acts in the public ocean. There is no problem from the angle of the territorial principle for the exercise of national jurisdiction when acts of piracy occur in territorial waters. But when acts of piracy occur in the public ocean, there lies international law's and law philosophy's fundamental problem whether the use of national power to punish outside its national territory is legitimate. Secondly, the problem is the vicious character of the acts of piracy. Traditional acts of piracy were just like bank robberies on national territory, in that traditional pirates robbed cargo by using small heavy firearms. But today's pirates off Somalia hold as hostages the cargo and crew and rob money from insurance companies by means of strong heavy firearms like rocketlaunchers. In brief nowadays acts of piracy are more serious and dangerous than before. Thirdly, the problem is direct damage to Japan's national power. Japan exports many industrial products, while it imports many natural resources since load resources are short. But the majority of export-import items depend upon sea shipping and are transported through the sea off Somalia and the Red Gulf. Thus, once pirate actions occur, Japan will be damaged directly. If ordinary ships choose to detour in order to avoid pirate actions, they will be burdened with a surcharge, which will in the long run have a bad impact on Japan's economy. And this will amount to the nation's recognition of a compromise with evil.

Therefore, new legislation has come to be necessary.

Main Provisions:**Article 2 (Definition)**

Acts of piracy in this law are the following ones performed in public oceans (including exclusive economic zones, which the United Nations Convention on the Law of the Sea provides) or Japan's territorial waters or Internal waters for private purpose by persons who get into or have got into ships (except warships and ones which each government possesses or operates).

① (Forcible seizure of ships or domination of navigation)

Seizing forcibly another ship during the voyage or dominating arbitrarily its navigation through assault or intimidation, or plunging into loss of consciousness or inability to resist by other means

② (Robbery of property in ships)

Robbing another of property inside another ship during the voyage or obtaining or causing another to obtain a profit through assault or intimidation, or plunging into loss of consciousness or inability to resist by other means

③ (Kidnapping of persons in a ship)

Kidnapping persons in a ship in order to hold them hostage for the purpose of causing the other to perform an act which the other person has no obligation to perform, or hinders the other from exercising his or her rights

④ (Compulsion against hostage)

Causing the other to perform an act which the other person has no obligation to perform, or hinders the other from exercising his or her rights by holding as hostage a person who exists inside another ship during the voyage which has been seized forcibly or whose navigation has dominated arbitrarily

⑤ (Breaking into or destroying a ship for certain purpose)

Breaking into or destroying another ship during the voyage in order

to perform an act of piracy as prescribed in the preceding paragraph

⑥ (Remarkably approaching or stalking another ship for a certain purpose)

Causing the other ship to operate, remarkably approaching or stalking another ship during the voyage or hindering the advance in order to perform an act of piracy prescribed in the preceding paragraph (from 1para. to 4para.)

⑦ (Causing the other ship to operate with weapons)

Causing the other ship to operate, by preparing weapons in order to perform an act of piracy prescribed in the preceding paragraph (from 1para. to 4para.)

Editorial Notes:

This law has enabled Japan to punish persons performing an act of piracy in a public ocean.

There are several problems about procedural and substantive law.

Other nations are usually very reluctant to try pirates in their own courts although they make an act of piracy into crimes.

One procedural problem is it is very difficult to try the accused of piracy according to due process.

In Japan, the suspected has to be delivered to the prosecutor within 48 hours of the arrest. For example, it is almost impossible to send the *flagrante delicto* suspected off Somalia to Japan within 48 hours.

One substantive problem is whether another crime in the penal code can be accomplished when an act of piracy as crimes are performed.

Therefore Japan made legislation for piracy but its operation is not promising.

6. Commercial Law

The Commodity Futures Trading Act

Law No.74, July 10, 2009 (Gradually effective between October 8,