In the latest stage of the stoush over Japanese whaling activities in the Southern Ocean, the (Japanese) Institute of Cetacean Research together with Kyodo Senpaku Kaisha have successfully sued for a preliminary injunction against the Sea Shepherd Conservation Society in United States Court. In a judgment released on the 25 February 2013 the US Court of Appeals for the Ninth Circuit overturned an earlier decision of the Western District of Washington, which denied the Institute of Cetacean Research the injunction requested under the Alien Tort 6WDWXWH WKDW SURYLGHV IRU D FDXVH RI DFWLRQ IRU nations of a treaty of WKH 8QLWHG 6WDWHV DQG 6HD 6KHSKHUG·V DFWLYLWLHVµ VHG LWV FODLPV WKD amount to piracy.

In a robust judgment, very different in style and tone to that typically used in New Zealand or Australia, &KLHI -XGJH .R]LQVNL EHJDQ E\ VWDWLQJ You don't need a peg leg or an eye patch. <RX GR 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 EHOLHYH \RXU SXUSRVH WR EH. The definition of piracy, as provided for in Article 101 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS) (to which the US is not yet a party) requires illegal acts of violence or detention, committed for private ends by the crew or the passengers of a private ship on the high seas. 7UDGLWLRQDOO\ WKH WHUP ´SU interpreted as referring to acts relating to personal enrichment rather than with a political or other motive. This was the approach taken by the District Court in this case but overturned DQG GHVFULEHG DV ´HUURQHRXVµ E\ WKH 1LQWK &LUFX EURDGHU GHILQLWLRQ, as set out in Webster's ´SULYDWH, the Court of Appeal decided WKDW WKH WHUP PRUH JHQHUDOO\ UHIHUV WR ´PDWWHU FRQQHFWHG WR WKH LQGLYLGXDO µ. The ZKLFK ´SULYDWH HQGVµ L nature has benefited from recent academic discussion, and the Court of Appeal cited works by Douglas Guilfoyle and Michael Bahare as well as a decision by a Belgium court to support LWV FRQFOXVLRQ WKDW ´SULYDWH HQGVµ ´LQFOXGH WK JURXQGV VXFK DV 6HD 6KHSKHUG·V SURIHVVHG HQYLURQ

Characterising the activities of Sea Shepherd as piracy has potentially far-reaching implications. Piracy is a crime of universal jurisdiction under the UNCLOS (Article 105) and customary international law. Pirates can therefore be prosecuted by any state even where there is no connection between the prosecuting state and the pirates, pirate vessel or the victims. Moreover, any state can board and seize a pirate vessel on the high seas (UNCLOS, Article 105 and 110(1)(a)). These rights do not generally apply to other offences committed at sea. Furthermore, the 1988 International Convention on the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA), which was cited by the Court of Appeal, explicitly does not provide for universal jurisdiction in respect of offences involving acts of violence at sea (Article 6). The fact that this Convention specifically created a number of offences involving violence at sea, broad enough to include those committed with a political or non-profit motive, supports the argument that piracy, a crime under customary international law, does not cover violence committed for political or non-profit motive.

jurisdiction. This arguably goes too far and cannot be supported under international law as it stands today.

The Court of Appeal went on to discuss the relevance of the fact that the whaling activities are taking place in Australian Antarctic Territory (AAT). Unsurprisingly the Court dismissed this as a consideration and confirmed the long-held position that the US does not recognise Australian sovereignty in, and consequently, jurisdiction over, the Antarctic. The Court also dismissed the argument WKDW WKH DSSHOODQWV¶ KDQGV ZHUH IRXO FOHDQ XQGHV remedy) because they had ignored an injunction previously issued by an Australian court in respect of their whaling activities (*Humane Society International v. Kyodo Senpaku Kaisha Ltd* [2004] F.C.A. 1510; [2005] F.C.A. 664; [2006] F.C.A.F.C. 116; [2008] F.C.A. 3) on the basis that neither the US nor Japan recognises Australian jurisdiction over any portion of the Southern Ocean. Rather surprisingly, the Court made no reference to the legal proceedings initiated by