

M/V Guanabara: Japan's First Trial on Piracy under the Anti-Piracy Act

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Abstract

This article analyses the Tokyo High Court's decision of 18 December 2013 in the *M/V Guanabara* case, which was Japan's first case on piracy under the Anti-Piracy Act of 2009. It was an appeal submitted by two Somali pirates, who were seized by US forces and transferred to Japan where they were convicted by the Tokyo District Court for their involvement in a pirate attack against the *M/V Guanabara*, a Bahamian oil tanker operated by a Japanese company. The article discusses the main holdings of this judgment, which are as follows: first, the Court held that it has adjudicative jurisdiction under customary international law. It argued that the second sentence of Article 105 UNCLOS stipulates a conflict of law rule and does not prohibit a non-seizing state from exercising its adjudicative jurisdiction. Second, the Court found that the transfer of the piracy suspects from the US, a state that does not impose the death penalty for acts of piracy, to Japan, a state that foresees the death penalty as a possible sentence for piracy, did not violate Article 6(1) ICCPR on the right to life. Lastly, with regards to the sentences, the Court sustained the appealed judgment, which took the intermediate value of the upper and lower limits of the range of possible punishments provided for under the Anti-Piracy Act.

Keywords

prosecution of piracy, Japan's Anti-Piracy Act of 2009, universal jurisdiction on piracy, Article 105 UNCLOS, Article 6(1) ICCPR

1. Introduction

This case commentary analyses the Tokyo High Court's decision of 18 December 2013,² which was Japan's first case on piracy under the Act on Punishment of and Measures against Piracy (Anti-Piracy Act)³.

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2 Tokyo High Court, 66(4) High Court Reporter (*Kosai Hanrei Shu*) 6, reprinted in 1407 Hanrei Taimuzu 234 (*M/V Guanabara* case) <www.courts.go.jp/app/files/hanrei_jp/188/084188_hanrei.pdf> accessed 8 July 2015.

3 Act of 24 June 2009, No 55; for an English translation, see 'Act on Punishment of and Measures against Acts of Piracy' (2010) 53 JYBIL 838.



Japan's penal code recognises criminal jurisdiction based on the territoriality,⁴ flag state,⁵ active personality,⁶ passive personality⁷ and protective principles⁸. In addition, the code applies to anyone who commits, outside the territory of Japan, those crimes that are governed by treaties, such as anti-terrorism conventions.⁹ However, Japanese law had rarely recognised universal jurisdiction until the Anti-Piracy Act was enacted in 2009. This Act provides criminal jurisdiction over an act of piracy where both the offender and victim vessel are non-Japanese.¹⁰ The law was necessary because, while Japan, an island country with little natural resources, relies heavily on maritime commerce, more than 95 per cent of the vessels used for such transaction are registered in foreign states.¹¹

The first case to which the Anti-Piracy Act was applied was the *M/V Guanabara* case. On 5 March 2011, four Somali men boarded the *M/V Guanabara*, a Bahamian oil tanker operated by a Japanese maritime commerce company, on the high seas. They attempted to hijack the vessel for the purpose of extorting a ransom. When they first found the vessel, they kept firing their automatic guns while they approached to it; after they boarded, they smashed into the operation room and turned the steering wheel, broke down locked doors to search for the crew, and shot at the door of the captain's room. However, they did not succeed in taking over control of the vessel.

The next day, the United States navy seized the attackers and transferred them to the Japan Coast Guard (JCG) officer on the Japan Maritime Self-Defense Force (JMSDF) naval vessel on the high seas. The alleged offenders were thereupon taken to Japan. All of them were prosecuted before the Tokyo District Court.

The present case comment is on the Tokyo High Court's judgment against two of the four alleged offenders. The Tokyo District Court found them guilty¹² of having attempted to commit an act of piracy¹³ as co-perpetrators¹⁴. They both appealed against the judgments, which the Tokyo High Court

4 Penal Code, Act No 45 of 1907, art 1(1).

5 Penal Code, art 1(2).

6 Penal Code, art 3.

7 Penal Code, art 3bis.

8 Penal Code, art 2.

9 Penal Code, art 4bis.

10 Anti-Piracy Act, art 2.

11 For the background and characteristics of this Act, see Mariko Kawano, 'The First Experience of Prosecution under the Japanese Anti-Piracy Act of 2009' in Gemma Andreone (ed), *Jurisdiction and Control at Sea: Some Environmental and Security Issues* (Giannini Editore 2014) 115; Atsuko Kanehara, 'Japanese Legal Regime Combatting Piracy: The Act on Punishment and Measures Against Act of Piracy' (2010) 53 JYBIL 469.

12 Judgment of 1 February 2013. See Kawano (n 11); Jun Tsuruta, 'First Prosecution of Somali Pirates under the Japanese Piracy Act: The Guanabara Case (2014) 7 J of East Asia & Int'l L 243.

13 Anti-Piracy Act, arts 3(2) and (1), citing art 2(1).

14 Penal Code, art 60, which provides the following on co-principals: 'Two or more persons who commit a crime in joint action are all principals.'



dismissed. One of the defendants appealed the judgment, which the Supreme Court dismissed.¹⁵

In their appeal before the High Court, the defendants claimed that the District Court should have dismissed the case because the prosecution was illegal¹⁶ and the sentencing was unjust. With regard to the first claim of illegal prosecution, they substantiated their appeal with three arguments, which are presented in the following.

First, the defendants claimed that Articles 6 and 8 of the Anti-Piracy Act are unconstitutional and, as a consequence, the prosecution should have been dismissed. These provisions stipulate that the JCG and the JMSDF respectively are entitled to use arms when it is necessary to enforce the law. The argument by the defendants was that these provisions run counter to the Constitution, which, *inter alia*, provides that the maintenance of forces at sea is prohibited.¹⁷

Second, the defendants insisted that the District Court lacked jurisdiction under both international law and Japanese domestic law to adjudicate the case. The argument was that Article 105 of the United Nations Convention on the Law of the Sea (UNCLOS)¹⁸ does not constitute an exception to the exclusive jurisdiction of the flag state as recognised under customary and treaty law in terms of *adjudicative* jurisdiction, while it does in terms of *enforcement* jurisdiction. Concretely, the first sentence of Article 105 UNCLOS provides that on the high seas every state may exercise its enforcement jurisdiction to 'seize a pirate ship or aircraft, or a ship or aircraft taken by piracy and under the control of pirates,' and to 'arrest the persons and seize the property on board.' Hence, it provides for universal enforcement jurisdiction. The second sentence of the same article merely provides that the 'courts of the State which carried out the seizure' (the seizing state) may exercise its adjudicative jurisdiction to 'decide upon the penalties to be imposed' and to 'determine the action to be taken with regard to the ships, aircraft or property, subject to the rights of third parties acting in good faith.' As per the defendants, this second sentence of Article 105 UNCLOS does not provide for adjudicative jurisdiction to a state other than the seizing state (i.e. the non-seizing state).

Furthermore, they sustained that domestic law does not confer universal adjudicative jurisdiction either. The Anti-Piracy Act provides for universal jurisdiction only over those criminal suspects who are arrested by Japanese officials¹⁹ and not over those arrested by officials of another state. As a consequence, Japan, as the non-seizing state, had no criminal jurisdiction over the suspects who were seized by US forces.

15 Judgment of 16 June 2014 (unpublished).

16 Code of Criminal Procedure, Act No. 131 of July 10, 1948, arts 338 and 339(1), which provide that the court shall dismiss the case when the prosecution was unlawful and the sentencing was not correct.

17 Constitution of Japan, art 9(2) (promulgated on 3 November 1946, came into effect 3 May 1947) stipulates: 'In order to accomplish the aim of the preceding paragraph, land, sea, and air forces, as well as other war potential, will never be maintained. The right of belligerency of the state will not be recognized.'

18 United Nations Convention on Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 397 (UNCLOS).

19 Anti-Piracy Act, arts 2-4.



Third, the defendants claimed that their transfer was illegal for two reasons. One reason put forward to support the claim was that they would have enjoyed more due process rights either in the US, the seizing state, or the Bahamas, the flag state of the victim vessel, as compared to the rights they were granted in Japan. They argued that their procedural rights were denied from the time they were arrested throughout the trial, including the rights to have legal assistance and free assistance of an interpreter. Counsel was not immediately assigned after they were arrested, and they faced communication difficulties through the trial process because they had to rely on two interpreters: one translating from Somali to English and another from English to Japanese.

The other argument as to why their transfer from the US to Japan was illegal was that it violated the right to life stipulated in Article 6(1) of the International Covenant on Civil and Political Rights (ICCPR).²⁰ In *Judge v Canada*,²¹ the Human Rights Committee (HRC) stated that it is a violation of Article 6(1) ICCPR for an abolitionist state to deport a person to another state where a death sentence has been pronounced against him without first ensuring that the death penalty will not be carried out. In the present case, the defendants were transferred from the US, where the death penalty is not imposed for acts of piracy, to Japan, where the Anti-Piracy Act foresees the death penalty as a potential punishment, without any assurance that it ultimately would not be carried out. Hence, the defendants argued that their transfer from the US to Japan was in violation of Article 6(1) ICCPR and the ensuing criminal prosecution was therefore illegal and null.

2. The judgment of 18 December 2013

The Tokyo High Court dismissed all of these claims for the following reasons. First, the Court held that it was not necessary to decide on the constitutionality of the Anti-Piracy Act in the present case.²² The provisions applied by the District Court were Articles 2 and 3, and not Articles 6 and 8, the constitutionality of which the defendants questioned in their appeal. In Japan, a constitutional review is only undertaken if necessary to resolve the case. In the present case, no such necessity was recognised.²³

Second, and most importantly, the Court gave its interpretation of jurisdiction over acts of piracy under international law, stating that since ancient times, the act of piracy has been considered to be *hostis humani generis*, which threatens the general safety of maritime transportation.²⁴ Under the universality principle, it is recognised that every state may exercise its jurisdiction to address acts of

20 International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171.

21 *Roger Judge v Canada*, Communication No 829/1998, UN Doc CCPR/C/78/D/829/1998 (2003).

22 1407 Hanrei Taimuzu 238 (the judgment is only available in Japanese. The following segments were translated and paraphrased by the present author.)

23 *ibid.*

24 *ibid.*



piracy.²⁵ In the case of Somali piracy as well, there are many examples where a state seizes a suspect, transfers him to a third state, and the third state accepts, prosecutes and adjudicates him.²⁶ In addition, with regard to the factual situation and state practice under customary international law,²⁷ the Court took into account that Article 100 UNCLOS sets out a duty to cooperate in the repression of piracy²⁸ and concluded that 'therefore, under international law, every State is entitled to exercise its jurisdiction against the act of piracy.'²⁹

The Court then continued its interpretation of the second sentence of Article 105 UNCLOS. It recognised that Article 105 does not *oblige* but rather *permits* states to exercise their jurisdiction against piracy.³⁰ In particular, it noted that the jurisdiction that every state has with regard to piracy is not newly established under UNCLOS; rather, it has been recognised under customary international law since 'ancient times.'³¹ Therefore, the claim put forth by the defendants was not consistent with this history and the object and purpose of the provision.³² In its substance, Article 105 provides that the seizing state may exercise jurisdiction preferably against the non-seizing states, which includes states that have a stake in the case, on the premise that every state may exercise jurisdiction, and in order to ensure fair and prompt adjudication and to safeguard the human rights of alleged pirates, as the seizing state has detained the suspects and retains the evidence.³³

The Court continued by finding that the District Court seemed to have adopted the same interpretation, and thus the claim on international law was unfounded because the defendants did not understand the judgment correctly.³⁴ The claim on domestic law also had no basis because its understanding of universal jurisdiction and the interpretation of Article 105 were different from that of the High Court.³⁵ As a consequence, the Court dismissed the claim by the defendants that the District Court had no criminal jurisdiction over them.

Third, as to the legality and validity of the transfer of the defendants, the Court found that the right of defence had not been substantially violated. If states exist where the rights of the defendants could be more properly ensured, that fact does not itself invalidate the prosecution of the current case nor does it deny the Court jurisdiction over the case.³⁶

25 *ibid.*

26 *ibid.*

27 *ibid.*

28 *ibid.*

29 *ibid.*

30 *ibid.*

31 *ibid.*

32 *ibid.*

33 *ibid.*

34 *ibid.*

35 *ibid.*

36 *ibid.*



On the claim that Article 6 ICCPR was violated, the Court noted that while the ICCPR has been incorporated into Japanese domestic law, the interpretation of the defendants cannot be supported by the words of Article 6(1). Moreover, the views of the HRC are not legally binding, even on State Parties; Japan had not ratified the First Optional Protocol, which established the individual complaints mechanism, so that the normative impact of the HRC's views is further limited.³⁷ In addition, the Court took into account that the HRC treated abolitionist and retentionist states differently, and noted that only abolitionist states are under an obligation not to extradite a person to a retentionist state if it is reasonably expected that the death penalty would be imposed upon the person. Since both Japan and the US are retentionist states, no such obligation exists, and thus the transfer of the defendants did not violate the ICCPR, and the prosecution was not illegal and void.³⁸

As to the sentencing, the District Court's judgment weighed the fact that the attempt was not completed against the danger and viciousness of the act, finding that the defendants' case fit in neither the upper limit nor the lower limit of the range of possible sentences but in the midpoint of the two limits.³⁹ It then considered several factors to adjust the term of imprisonment. As per the High Court, the appealed judgment relied upon no unreasonable facts, and the defendants' claim therefore lacked reason.

3. Analysis

3.1 The second sentence of Article 105 UNCLOS

The first and most important issue of the present decision was the basis of Japan's adjudicative jurisdiction. In the *M/V Guanabara* case, it was the US navy that seized the piracy suspects, and the defendants argued that Japan as a non-seizing state did not have adjudicative jurisdiction. The High Court understood the second sentence of Article 105 UNCLOS as a conflict of law provision and that it did not exclude the adjudicative jurisdiction of the non-seizing state.

There are three points of view as to whether the exercise of adjudicative jurisdiction of a non-seizing state is permissible under the second sentence of Article 105 UNCLOS.⁴⁰

First, there is the view that the exercise of criminal jurisdiction by non-seizing states is not permissible under customary international law or the UNCLOS. According to these authors, the provision grants the competence to criminally prosecute exclusively to the seizing state (*forum deprehension-*

37 *ibid* 239.

38 *ibid*.

39 *ibid*.

40 For a concise summary of the arguments and relevant materials, see Robin Geiss and Anna Petrig, *Piracy and Armed Robbery at Sea: The Legal Framework for Counter-Piracy Operations in Somalia and the Gulf of Aden* (OUP 2011) 148. See also Daniel Patrick O'Connell, *International Law of the Sea* 2 (1987) 977; Paul Fauchille, *Traité de droit international public* 1 (8^e ed, 1925) 88.



is).⁴¹ However, such a characterization of adjudicative jurisdiction over piracy has been considered as not appropriate in light of the history of piracy regulation and state practice. In addition, if every state is permitted to exercise their jurisdiction over pirates, the interpretation that the article prohibits a non-seizing state from exercising its adjudicative jurisdiction is unreasonably narrow.⁴²

The two other positions on Article 105 UNCLOS are based on the view that customary international law permits the exercise of adjudicative jurisdiction by every state. This view that customary international law provides for adjudicative jurisdiction for non-seizing states is widely supported by state practice and notably evidenced by the fact that a number of states and the EU have concluded transfer agreements with regional states, such as Kenya, the Seychelles and Mauritius.⁴³

While there is agreement that customary international law provides for adjudicative jurisdiction, the two positions differ with regard to the interpretation of the second sentence of Article 105 UNCLOS.

Some authors take the stance that the provision should be read as simply reaffirming the rule established under customary international piracy law, i.e. that the prosecution of piracy suspects takes place based on the domestic law of the seizing state when it is prosecuted in that state. The jurisdictional basis for the prosecution of piracy suspects is supported by customary international law. Robin Geiss and Anna Petrig support this view, as it is generally consistent with the wording of the provision as well as the explanation of the Virginia Commentary.⁴⁴ However, one could argue that this view contradicts the wording of the second sentence of Article 105 UNCLOS, which explicitly limits the scope of the provision to the seizing state.

Other authors argue that Article 105 UNCLOS has the effect of a conflict of law rule, thereby solving competing jurisdictional claims by according priority to the seizing state to prosecute the case, without actually conferring a basis for the exercise of adjudicative jurisdiction. There is no contention that, under the second sentence of Article 105 UNCLOS, the seizing state has priority in exercising jurisdiction over other states interested in prosecuting the case, including the flag state and the national state of the piracy suspect or the victims. While the non-seizing state cannot claim priority in exercising adjudicative jurisdiction to the seizing state, and it does not have the same opposability

41 See Fauchille (n 40).

42 For this point, see Kazuhiro Nakatani, 'Kaizoku kōi no Shobatsu oyobi Kaizoku Kōi heno Taisho ni Kansuru Hōritsu' (2011) 1385 *Juristo* 68 (in Japanese).

43 See, eg, Exchange of letters for the conditions and modalities for the transfer of persons having committed acts of piracy and detained by the European Union-led Naval Force (EUNAVFOR), and seized property in the possession of EUNAVFOR, from EUNAVFOR to Kenya [2009] OJ L79/49. For the further state practice, see Tullio Treves, 'Piracy, Law of the Sea, and Use of Force: Developments off the Coast of Somalia' (2009) 20 *Eur J Int'l Law* 399; James Thuo Gathii, 'Jurisdiction to Prosecute Non-National Pirates Captured by Third States under Kenyan and International Law' (2009) 31 *Loy LA Int'l & Comp L Rev* 363.

44 Geiss and Petrig (n 40) 149; Satya Nandan and Rosenne Shabtai, *United Nations Convention on the Law of the Sea 1982: A Commentary* 2 (1993) 216, state that '[t]he second sentence of Article 105 implies that the courts of the State which carried out the seizure will apply national law, including, where appropriate, the national rules governing the conflict of laws.'



against the other non-seizing state as the seizing state, the provision does not prohibit non-seizing states from exercising adjudicative jurisdiction.⁴⁵ The Djibouti Code of Conduct provides that the seizing state has a 'primary right' to adjudicate piracy suspects and stipulates that this right may be waived.⁴⁶ This provision of the Djibouti Code is consistent with this interpretation.

The High Court's decision supported the last view.⁴⁷ It recognised the adjudicative jurisdiction under customary international law and held that the second sentence of Article 105 UNCLOS as 'providing that the seizing State can exercise primary jurisdiction against the other States, including States who have a stake in the case.' The Court correctly understood the relationship between customary international law and Article 105 UNCLOS.

It should be noted that the Court referred to Article 100 UNCLOS as part of the basis for the jurisdiction. However, it is undisputed that this provision does not provide any exception to the exclusive jurisdiction of the flag state. Therefore, the reason why the Court added this part is not clear. Arguably, the Court referred to this provision as the basis for international cooperation in the form of transfers of piracy suspects; and in that case, it is not incorrect, although unnecessary.

3.2 Article 6(1) ICCPR

The second issue was the legality of the transfer of the piracy suspects from the perspective of international human rights law. The Anti-Piracy Act provides for the death penalty⁴⁸ while the US anti-piracy law does not, hence the defendants argued that the transfer was contrary to the right to life enshrined in Article 6(1) ICCPR. The High Court correctly denied this allegation.

The restriction under international human rights law extends to the procedure of extradition or transfer of criminal suspects. However, it is rare that a state is prevented from transferring an individual because of such a restriction.

In the present case, it was disputed whether the transfer from the US to Japan was contrary to Article 6(1) ICCPR. There is no serious dispute that Article 6 ICCPR does not prohibit the death penalty itself, and that it treats abolitionist states and retentionist states differently.

The view that the defendants brought forward to support their claim was *Judge v Canada*.⁴⁹ In this case, the question submitted to the Human Rights Committee was whether Canada violated the author's right to life under Article 6 ICCPR by deporting him to the US, where a sentence of death had already been imposed upon him, without first ensuring that that sentence would not be carried out.

45 Akio Morita (2013) Hanrei Watch No.23 (Case Comment); Akio Morita, 'Kokusaihō jō no Kaizoku ni taisuru Kokka Kankatsuken no Kakuchō' (2013) 110 *Hogaku Shirin* 110.

46 Djibouti Code of Conduct, IMO Doc C102/14, 3 April 2009, Annex, art 4(7).

47 The Court seems to have relied upon the interpretation supported in the case comment of Morita (n 45).

48 Anti-Piracy Act, art 4.

49 *Judge v Canada* (n 21).



The author had already been sentenced to death before he fled from the US to Canada. In answering the question, the HRC stated that Canada, as a State Party that has abolished the death penalty, violated the author's right to life under Article 6(1) ICCPR by deporting him to the US where a death sentence against him was pronounced without first ensuring that the death penalty would not be carried out.

The HRC acknowledged that by interpreting Article 6(1) and (2) ICCPR in this way, abolitionist and retentionist States Parties are under different obligations. It considered this to be an inevitable consequence of the wording of the provision itself, which, as becomes clear from the *travaux préparatoires*, sought to appease divergent views on the issue of the death penalty in an effort to find a compromise among the drafters of the provision. As per the HRC, the *travaux préparatoires* express that, on the one hand, one of the main principles of the Covenant should be abolition of the death penalty, but that, on the other hand, capital punishment still existed in certain countries for which abolition would create difficulties.⁵⁰ The death penalty was seen by many delegates and bodies participating in the drafting process as an 'anomaly' or a 'necessary evil'.⁵¹ It would therefore appear logical to interpret the first paragraph of Article 6(1) ICCPR providing for the right to life in a broad sense, while the second paragraph, which addresses the death penalty, should be interpreted narrowly.⁵²

For these reasons, the HRC considered in *Judge v Canada* that Canada, as a State Party that has abolished the death penalty, violated the author's right to life under Article 6(1) ICCPR by deporting him to the US, where he was under a sentence of death, without first ensuring that the death penalty would not be carried out – irrespective of the fact that it had not yet ratified the Second Optional Protocol to the Covenant Aiming at the Abolition of the Death Penalty.⁵³ The HRC recognised that Canada did not itself impose the death penalty on the author.⁵⁴ However, by deporting him to a country where he was under sentence of death, Canada established the crucial link in the causal chain that would set in motion the execution of the author.⁵⁵ As such, the ambit of the view was limited to the obligations of the *abolitionist* state.

It should be noted that there is an argument that even retentionist states are obliged to ensure that the receiving state complies with the obligations provided under Article 6(2) and (5) ICCPR.⁵⁶ However, in the case at hand, the defendants did not raise this point and the Court did not examine it.

The Court held that the views of the HRC did not extend to the present case because both Japan and the US are *retentionist* states. This judgment was appropriate as it correctly understands the distinc-

50 *ibid*, para 10.5.

51 *ibid*.

52 *ibid*.

53 *ibid*, para 10.6.

54 *ibid*.

55 *ibid*.

56 For the analysis of this issue, see Anna Petrig, *Human Rights and Law Enforcement at Sea: Arrest, Detention and Transfer of Piracy Suspects* (Brill 2014) 350.



tion between retentionist and abolitionist states underlying Article 6 ICCPR.

3.3 Sentence

The District Court imposed on each defendant a sentence of ten years of imprisonment. When it decided the sentence, it took the midpoint between the upper and lower limits of the sentencing range provided for under the Anti-Piracy Act.⁵⁷ It then considered several factors, such as the seriousness of the crime (i.e. its commission was thoroughly planned and the tanker was with 24 crew members and crude petroleum worth 37 million dollars) and the role played by the defendants (i.e. they played the lead role in organising the attack and pursuing the plan) to adjust the sentence.⁵⁸

Under Japan's Penal Code, the punishment may be reduced for a person who commences a crime without completing it, but such a reduction is not mandatory unless the offender voluntarily abandoned the commission of the crime.⁵⁹ In the present case, the Court did not reduce the punishment although the crime was ultimately an attempted crime, stating that they almost hijacked the vessel and the act of threat was dangerous.

In addition, the Court can reduce a sentence for mercy. The defendants argued that this was their first time attempting to commit piracy and that they were working diligently for their families who lived in poverty so they deserved a reduction in their sentences. However, the Court took the view that the defendants committed the offence due to their interest in making a profit (i.e. they were expecting rewards of 40,000 to 50,000 dollars) and did not reduce the sentence.

The High Court held that the lower court's decision regarding the sentencing was appropriate and dismissed the claims of the defendants.⁶⁰

The reasoning pertaining to the sentence seems to reflect the change in Japan's judicial system, which introduced a quasi-jury system in 2004.⁶¹ In Japan, the judge relies on a sentencing standard ('Ryokei Sōba'), which is a standard inferred from precedents. Up until the late 1990s, a judge used to have wide discretion in deciding the final sentence, although he relied on the sentencing standard, and the sentencing method was heavily criticised as being opaque. Because the quasi-jury system was introduced, the court started to change its way of sentencing. It categorises the offenses based on social factors and decides the sentence based on similar precedents and statistics so that one could see the reason for the sentence from the judgment.

57 The lower limit of the imprisonment for an act of piracy is five years and the upper limit is twenty years (Anti-Piracy Act, art 3(1); Penal Code, art 12(1)).

58 For the decision of the Tokyo District Court, see Tsuruta (n 12) 247.

59 Penal Code, art 43.

60 1407 Hanrei Taimuzu 239.

61 See Act on Criminal Trials with Participation of Saiban-in (Quasi-Jury), Act No. 63 of 2004, amended, Act No. 44 of 2011. Trials under the new system started in 2009.



The present case was the first to arise under the Anti-Piracy Act, and consequently, there was no standard based on precedents. The Court relied on the sentence for provided in the Act and then took into account factors of the case. Domestically, it could be supported, as it is a method to secure the clarity and transparency in deciding the sentence.

4. Concluding remarks

As the analysis of this comment shows, the *M/V Guanabara* case is a noteworthy precedent in terms of both international and domestic legal points of view, as it clarified the Japanese Court's interpretation of Article 105 UNCLOS and Article 6(1) ICCPR. Since international cooperation between states is necessary in order to address the criminal phenomenon of piracy and armed robbery at sea, an analysis of state practice is crucial. This clarification by the Court regarding how it understands and interprets international law will serve as a step towards the development of the argument on piracy.

It should be noted that piracy, in particular Somali piracy, is a global issue and the sentencing procedure in each domestic court requires further research. In this regard, Eugene Kontorovich did an empirical study on penalties imposed for the offence of piracy,⁶² and the present case would serve as valuable data for such a study.

⁶² Eugene Kontorovich, 'The Penalties for Piracy: A Discussion Paper' (One Earth Future Foundation, 2012) <<http://onearthfuture.org/>> accessed 8 July 2015.