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# GAIA'S NAVY: THE SEA SHEPHERD CONSERVATION SOCIETY'S BATTLE TO STAY AFLOAT AND INTERNATIONAL LAW

GERRY NAGTZAAM\*

*Paul Watson is the greatest Eco-Warrior of all. Operating largely on their own dedication, Paul and his crews enforce international treaties and agreements on the high seas to protect marine mammals and ocean birds from criminal destruction by industrial fishing. . . . Because of this, Watson and his ships have become the international policeman of the sea.*

—Dave Foreman<sup>1</sup>

## ABSTRACT

This Article critically examines the Sea Shepherd Conservation Society and its self-appointed role to protect oceanic life. In Part I, the Article examines the history of this radical environmental group, the role performed by its charismatic leader, Paul Watson, its organizational structure, its strategies and tactics, its governing philosophy, and its attitudes to violence. Part II provides a history of the various direct actions carried out by the group; it examines the organization's ongoing confrontations with the Japanese whaling fleet, documents the current legal travails the group and its leader are experiencing, and asks whether its methods are counterproductive to its stated goals. Part III critically evaluates the group's claims that they are acting at the behest of international law, finding that such claims are fallacious. It goes on to evaluate the international maritime law that the group could potentially be subject to in light of recent legal developments.

## INTRODUCTION

Since 1977, the Sea Shepherd Conservation Society ("SSCS") has gone about its self-appointed task to protect the oceans and their

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<sup>1</sup> David Foreman, *Foreword* to PAUL WATSON, *EARTHFORCE!: AN EARTH WARRIOR'S GUIDE TO STRATEGY*, at v (1993) [hereinafter *EARTHFORCE!*].

inhabitants from human depredation.<sup>2</sup> The Sea Shepherd organization has expanded from one ship and a small crew seeking to protest Canadian sealing to a worldwide organization with multiple ships and the ability to carry out its mission globally.<sup>3</sup> Its leader, Paul Watson, is greeted as an “ecological rock-star” in many western democracies, with his own television series, *Whale Wars*, on the Discovery Channel and celebrity supporters willing to donate to his cause.<sup>4</sup> He is perceived by many of his followers as willing to do what other ecological groups are not prepared to do and to commit militant direct acts that disrupt ongoing whaling and the exploitation of marine life.<sup>5</sup>

However, in states where whaling or overfishing continues, Watson and the group he leads are reviled as pirates or vigilantes and constantly threatened with legal action under both domestic and international law.<sup>6</sup> In response to such allegations, Paul Watson and his members proudly wear such appellations while arguing they have to enforce international wildlife law since no other global agency will act.<sup>7</sup> The SSCS has argued for years that the current slaughter of whales by Japanese whalers under the rubric of “scientific research” is illegal under international laws, such as the International Convention for the Regulation of Whaling (“ICRW”) and the World Charter for Nature.<sup>8</sup> In the absence of a world community willing or able to end the killing, it is incumbent upon them to act, they believe, by shining a media spotlight on their foes’ actions and by carrying out direct actions that make the cost of marine exploitation uneconomic.

The strategies and tactics employed by Sea Shepherd against the annual Japanese whaling fleet are “sensational,” occasionally violent, and intended to inflict property damage with the stated goal of ending global whaling in all forms and the exploitation of the ocean’s resources.<sup>9</sup> Annually, the ever-expanding Sea Shepherd flotilla sets sail from Australian

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<sup>2</sup> *Who We Are*, SEA SHEPHERD, <http://www.seashepherd.org/who-we-are> (last visited Mar. 30, 2014).

<sup>3</sup> Amanda M. Caprari, Note, *Lovable Pirates? The Legal Implications of the Battle Between Environmentalists and Whalers in the Southern Ocean*, 42 CONN. L. REV. 1493, 1506 (2010).

<sup>4</sup> *Id.* at 1506, 1509.

<sup>5</sup> *Id.* at 1505.

<sup>6</sup> *Id.* at 1507–09.

<sup>7</sup> *Id.* at 1495–96.

<sup>8</sup> See Joseph Elliott Roeschke, *Ecoterrorism and Piracy on the High Seas: Japanese Whaling and the Rights of Private Groups to Enforce International Conservation Law in Neutral Waters*, 20 VILL. ENVTL. L.J. 99, 111–12, 116 (2009).

<sup>9</sup> Caprari, *supra* note 3, at 1507.

waters to battle the Japanese whaling fleet.<sup>10</sup> Over the decades, the SSCS has been implicated in ramming whaling ships, sinking whaling vessels, utilizing lasers to blind Japanese whalers, flinging butyric acid (rancid butter) at ships to disrupt on-ship whalemeat processing, fouling the propellers of ships, playing “chicken” with and/or harassing ships, and boarding ships at sea.<sup>11</sup> Further, Watson and his organization have proudly “claimed responsibility for sinking ten illegal whaling ships.”<sup>12</sup>

Yet, at the height of their powers, SSCS and leader Paul Watson find themselves challenged like never before. In the past, despite a myriad of militant direct actions undertaken by the group in the service of their goals, states have been mostly unwilling to challenge them in domestic courts fearing a global media backlash.<sup>13</sup> Further, the SSCS has demonstrated a sophisticated knowledge of the limitations of international oceanic law as applied to their actions, exploiting a lacunae at the center of international maritime law that has allowed the group to operate virtually unhindered to date.<sup>14</sup> However, a number of domestic court actions being brought by the group’s opponents targeting Paul Watson and the SSCS threaten their ability to continue to carry out direct actions with impunity.<sup>15</sup>

Part I of this Article details the background of the group’s totemic leader Paul Watson and his childhood influences that led him to want to work to save oceanic creatures. It describes his oft-times fiery relationship with the Environmental Non-Governmental Organization (“ENGO”) Greenpeace and Watson’s rancorous exit from that organization. The Article then critically examines the formation of Earthforce, the stillborn antecedent group to the SSCS, and the creation in 1977 of the SSCS.<sup>16</sup> It

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<sup>10</sup> See *Sea Shepherd Anti-Whalers Now Labeled ‘Pirates’ by US Fed Court*, RUSSIA TODAY (Feb. 27, 2013, 11:42 AM), <http://rt.com/news/sea-shepherd-court-pirates-534/> (last updated Feb. 27, 2013, 7:17 PM) [hereinafter RUSSIA TODAY].

<sup>11</sup> Teale Phelps Bondaroff, *Sailing with the Sea Shepherds*, 13 J. MIL. & STRATEGIC STUD. 1, 42–43, n.72 (2011) [hereinafter *Sailing with the Sea Shepherds*]; Caprari, *supra* note 3, at 1508; Anthony L.I. Moffa, Comment, *Two Competing Models of Activism, One Goal: A Case Study of Anti-Whaling Campaigns in the Southern Ocean*, 37 YALE J. INT’L L. 201, 209 (2012).

<sup>12</sup> Roeschke, *supra* note 8, at 99 (citing Press Release, Sea Shepherd Conservation Society, Victory for the Whales in Berlin (June 16, 2003), available at [http://www.seashepherd.org/news/media\\_030616\\_1.html](http://www.seashepherd.org/news/media_030616_1.html)).

<sup>13</sup> Caprari, *supra* note 3, at 1519–20.

<sup>14</sup> Raffi Khatchadourian, *Neptune’s Navy: Paul Watson’s Wild Crusade to Save the Oceans*, NEW YORKER (Nov. 5, 2007), [http://www.newyorker.com/reporting/2007/11/05/071105fa\\_fact\\_khatchadourian](http://www.newyorker.com/reporting/2007/11/05/071105fa_fact_khatchadourian).

<sup>15</sup> RUSSIA TODAY, *supra* note 10.

<sup>16</sup> See *Our History*, SEA SHEPHERD, <http://www.seashepherd.org/who-we-are/our-history.html> (last visited Mar. 30, 2014) [hereinafter *Our History*].

goes on to critically analyze the group's ethos, its organizational structure, and strategy and tactics: its use of diplomacy, the global media, and militant direct action to achieve its goals. Lastly, this section examines the SSCS' attitude toward violence carried out in the service of its mission and its distinction between violence against humans and property damage, which the group argues should not be considered a violent act.

Part II provides a history of the various militant acts done by the SSCS since its inception. It focuses in particular on the ongoing annual confrontation between the SSCS and Japanese whalers in Antarctic waters. It further asks how effective the SSCS has been in its stated goals to end Japanese whaling and whether its methods are counterproductive to these stated goals. The section also critically examines the recent domestic state attempts to charge Watson and the SSCS for their actions focusing on an ongoing action brought by the Institute of Cetacean Research ("ICR") and an action brought by Costa Rica that has forced Paul Watson to void bail and become a fugitive limited to living on the high seas for fear of being arrested.<sup>17</sup> The section will conclude by examining the implications of the arrest of the group's totemic leader on future campaigns.

Part III critically analyzes the competing claims of both the SSCS and its opponents through the prism of international law. Paul Watson has continually claimed that his group's actions are permissible within international law.<sup>18</sup> He has cited that his group is entitled to act due to a failure of the International Whaling Commission ("IWC") to act on its own resolutions and the World Charter for Nature.<sup>19</sup> This section critically evaluates those claims to see if they stand up to scrutiny. It also examines the various international maritime laws applicable to the group and considers the likelihood of success of an action founded in international law being brought against the SSCS. Lastly, the SSCS's opponents, in particular the Japanese government, have labeled the SSCS as "pirates" (a label the group wears proudly) and/or vigilantes.<sup>20</sup> This Article will analyze these claims and determine if the SSCS can be considered so within international law, and if so, what might be the consequences for the group.

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<sup>17</sup> See, e.g., Raffi Khatchadourian, *Whale-War Fugitive: Q&A with Paul Watson*, NEW YORKER (June 4, 2013), <http://www.newyorker.com/online/blogs/newsdesk/2013/06/whale-war-fugitive-q-a-with-paul-watson.html> (describing, in Watson's own words, the leader's encounter with law enforcement and the journey to avoid arrest).

<sup>18</sup> Khatchadourian, *supra* note 14.

<sup>19</sup> *Id.*

<sup>20</sup> Caprari, *supra* note 3, at 1507.

## I. BACKGROUND OF PAUL WATSON

Paul Watson claims that his attraction to the ocean began when he was six, when his family relocated to St. Andrews, a colonial resort town situated on Canada's east coast.<sup>21</sup> According to Watson he was "an eco-warrior before puberty" and has related a number of incidents that have profoundly affected him and his relationship to the biosphere.<sup>22</sup> Watson has often told a story that he befriended a beaver (in some accounts it is an otter) near his domicile when he was a child.<sup>23</sup> In 1960, Watson became a member of the Kindness Club, an organization "dedicated to humane and environmental education,"<sup>24</sup> which was founded by Aida Flemming in New Brunswick.<sup>25</sup> After trappers killed and skinned one of his beaver friends, Watson (at the age of nine in some accounts) and his brothers and sisters confiscated and destroyed leg-hold traps.<sup>26</sup> He was also reported to have prevented hunters and children from shooting animals.<sup>27</sup> Watson maintains that his passion for saving animal life developed early.<sup>28</sup> In his book *Seal Wars*, Watson recounts his revulsion at an uncle who took him to a seal hunt and states:

Ever since I was a boy of nine, I have abhorred the killing of seals. That was in 1960, when I first saw evidence of the seal hunt with my own eyes. To this day, forty-two years later, I can still recall the vivid, scarlet-on-white images that so disturbed me as a child. In my nightmares, newborn seal pups were bludgeoned by men whose cold, savage eyes held a ruthlessness I had never before encountered or imagined. In some dreams, I was the seal pup, shivering defenselessly in the shadow of a huge hairy creature who brutally

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<sup>21</sup> PAUL WATSON, *SEAL WARS: TWENTY-FIVE YEARS ON THE FRONT LINES WITH THE HARP SEALS* 43 (2003) [hereinafter *SEAL WARS*].

<sup>22</sup> Khatchadourian, *supra* note 14.

<sup>23</sup> Jonathan Gatehouse, *High Seas Hijinks for Paul Watson*, *MACLEANS* (May 22, 2012), <http://www2.macleans.ca/2012/05/22/high-seas-hijinks/>.

<sup>24</sup> Brochure, Kindness Club Inc., *available at* [http://kindnessclub.nb.ca/documents/kci\\_brochure.pdf](http://kindnessclub.nb.ca/documents/kci_brochure.pdf).

<sup>25</sup> *Captain Paul Watson's Biography*, SEA SHEPHERD, <http://www.seashepherd.org/who-we-are/captain-watson's-biography.html> (last visited Mar. 30, 2014) [hereinafter *Captain Paul Watson's Biography*].

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *SEAL WARS*, *supra* note 21, at 11.

wielded a spiked club dripping with blood. I remember feeling frustrated, angry, and extremely helpless.<sup>29</sup>

Watson spent much of his youth at a marine biology station, including a volunteer position he held when he was eleven, which "helped set the course that led to [his] activist protests against nuclear testing in 1971 and, by extension, most of [his] other expeditions."<sup>30</sup> According to Watson, his personal view of how humans treat the planet was shaken to the core when:

During the winter of 1965, I stumbled across a book that shook me to the very core of my being. . . . Published by the New York Zoological Society in 1913, the study by William T. Hornaday was entitled *Our Vanishing Wild Life—Its Extermination and Preservation*. The book documents human atrocities against the natural world and calls for the formation of an army of defence for non-humans. I still have that copy of Hornaday's book and view it as my personal bible.<sup>31</sup>

By 1970, Watson was a part-time employee for the Canadian Coast Guard while writing for an underground newspaper, the *Georgia Straight*, and studying at Simon Fraser University.<sup>32</sup> Although he studied archeology, linguistics, and communications at Simon Fraser University, Watson never graduated.<sup>33</sup> His studies in media seem to have had a profound effect on him and he has become a master manipulator of the media.<sup>34</sup> According to Watson, "[s]urvival in a media culture meant developing the skills to understand and manipulate media to achieve strategic objectives."<sup>35</sup> As such, Watson concluded that whaling as an activity for most people is "purely academic unless high drama is introduced to make it news-worthy," and his reporting of his own actions indicates he lives by this credo.<sup>36</sup>

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<sup>29</sup> *Id.*

<sup>30</sup> PAUL WATSON, SEA SHEPHERD: MY FIGHT FOR WHALES AND SEALS 47 (Joseph Newman ed., 1982) [hereinafter SEA SHEPHERD].

<sup>31</sup> SEAL WARS, *supra* note 21, at 49.

<sup>32</sup> *See id.* at 50.

<sup>33</sup> EARTHFORCE!, *supra* note 1, at 9; Khatchadourian, *supra* note 14.

<sup>34</sup> PAUL WATSON, OCEAN WARRIOR: MY BATTLE TO END THE ILLEGAL SLAUGHTER ON THE HIGH SEAS 24–25 (1994) [hereinafter OCEAN WARRIOR].

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at 25.



Needing money, Watson joined the Canadian Coast Guard in 1968 at the age of eighteen and then worked as a Merchant Marine,<sup>37</sup> according to his biography he has no educational qualifications past high school.<sup>38</sup> Over the next few years, he would occasionally accept positions as a “merchant marine,”<sup>39</sup> gaining experience as a sailor on Norwegian and Swedish merchant vessels and Mediterranean yachts.<sup>40</sup>

Watson's epiphany that whales need to be protected sprang from an incident as a member of a Greenpeace expedition to disrupt whaling in 1975 where he came face to face with a dying sperm whale and thought he saw “a flicker of understanding in the dying whale's eyes.”<sup>41</sup> This encounter changed him and he vowed to become a defender of marine life.<sup>42</sup> Recalling an event when he came “eye to eye” with a whale, Watson remembers:

His eye fell upon Fred and me, two tiny men in a little rubber raft, and he looked at us. It was a gaze, a gentle, knowing, forgiving gaze. Slowly, slowly, as if he did not want to disturb the water unduly, as if taking care that his great tail did not scrape us from our little perch, he settled into the quietly lapping waves. I had one more glimpse of that gazing eye, and then he was gone from our world.<sup>43</sup>

He goes on to say that the incident changed the course of his life because he believed that the whale understood what Watson was attempting to do.<sup>44</sup> Watson recalls: “I no longer try to understand what happened between that dying Sperm bull and me. I know only that I felt a commitment.”<sup>45</sup>

Rik Scarce's book on eco-activism, however, tells a different story, recounting Watson's claim that his bond with whales derives from a vision he had in an Oglala Sioux sweat lodge during an initiation ceremony subsequent to the Wounded Knee uprising in 1973 where Watson served the Indian cause as a medical aide.<sup>46</sup> He maintains that a bison appeared to

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<sup>37</sup> Khatchadourian, *supra* note 14; *Captain Paul Watson's Biography*, *supra* note 25.

<sup>38</sup> *Captain Paul Watson's Biography*, *supra* note 25.

<sup>39</sup> Khatchadourian, *supra* note 14.

<sup>40</sup> EARTHFORCE!, *supra* note 1, at 8–9.

<sup>41</sup> *Captain Paul Watson's Biography*, *supra* note 25.

<sup>42</sup> *Id.*

<sup>43</sup> SEA SHEPHERD, *supra* note 30, at 41.

<sup>44</sup> Alex McClintock, *Sea Warrior*, SYDNEY MORNING HERALD (Mar. 14, 2010, 12:32 AM), <http://www.smh.com.au/environment/whale-watch/sea-warrior-20100313-q5cp.html>.

<sup>45</sup> SEA SHEPHERD, *supra* note 30, at 41.

<sup>46</sup> See RIK SCARCE, *ECO-WARRIORS: UNDERSTANDING THE RADICAL ENVIRONMENTAL*



him and advised him to focus on preserving sea mammals, and in particular, whales.<sup>47</sup> Manes similarly records that the inspiration behind Watson's ongoing "ecological mission" is rooted in Watson's experience at Wounded Knee.<sup>48</sup>

Watson has also been involved in Canadian politics.<sup>49</sup> He ran for elected office as a Member of Parliament for Vancouver Centre at the Federal elections, was a candidate for the Green Party twice, and ran for the position of Mayor of Vancouver in 1995.<sup>50</sup> Watson has also been involved in many committees and organizations over the course of his career.<sup>51</sup> However, he resigned from the Sierra Club's national board over policy disagreements and has been expelled from attending International Whaling Commission meetings after he successfully sunk two of Iceland's vessels in 1986.<sup>52</sup>

#### A. *Leaving Greenpeace*

A defining moment in Watson's career was his relationship with ENGO Greenpeace. Watson claims that he was an original member of the Greenpeace non-governmental organization, but Greenpeace refers to him now merely as an "influential early member."<sup>53</sup> In 1969, Watson, then a

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MOVEMENT 97 (updated ed. 2006); *see also* ROBERT HUNTER, WARRIORS OF THE RAINBOW: A CHRONICLE OF THE GREENPEACE MOVEMENT FROM 1971 TO 1979, at 165 (2d ed., 2011).

<sup>47</sup> *See* SCARCE, *supra* note 46, at 97.

<sup>48</sup> CHRISTOPHER MANES, GREEN RAGE: RADICAL ENVIRONMENTALISM AND THE UNMAKING OF CIVILIZATION 109 (1990). Watson once described the experience to a journalist:

suddenly saw myself in a grassy, rolling field, gazing into the eyes of a wolf. The wolf looked at me, then into a pond, and walked away. When I told the Sioux what had happened, they gave me my Indian name: Gray Wolf Clear Water. Then I went back into the vision, and saw a buffalo standing on a ridge. It began to speak to me. And as it told me that I must protect the buffalo of the sea, an arrow came and struck it in the back. Attached to the arrow was a cord, symbolic of a harpoon.

*Id.*; *see also* EARTHFORCE!, *supra* note 1, at 8; SEA SHEPHERD, *supra* note 30, at 70.

<sup>49</sup> *See, e.g., Captain Paul Watson's Biography*, *supra* note 25 (describing Watson's involvement with the Green Party).

<sup>50</sup> *Id.*

<sup>51</sup> *See id.*

<sup>52</sup> *See* Khatchadourian, *supra* note 14.

<sup>53</sup> HUNTER, *supra* note 46, at 27, 108 (recounting that Watson was left out of the first crew to protest United States nuclear testing on the island of Anchitka in the Aleutians because other members of the Don't Make Waves Committee considered Watson to be too radical and anti-establishment, but Watson was onboard the subsequent mission to the Aleutians with the ship *Greenpeace Too*); James Marshall Black, *Paul Watson: Shining*

part-time university student, joined fellow Canadian activists to protest United States nuclear testing in Alaska.<sup>54</sup> What is not in dispute is that when those members combined three years later with other activists to form Greenpeace, Watson was “a driving force.”<sup>55</sup>

The group's first confrontation was with a Soviet whaling fleet near the coast of California on June 27, 1975.<sup>56</sup> In that first action, Greenpeace activists discovered Soviet whalers harvesting sperm whales; however, it was Watson who stepped onto the carcass of a whale calf, determined to make his point.<sup>57</sup> The original plan was to use inflatable crafts to position themselves between the whalers and the animals.<sup>58</sup> During the campaign (and while in a Zodiac), an injured sperm whale approached the small dinghy and, without attacking, swam by.<sup>59</sup> Both men in the dinghy (including Watson) were wrought with emotion. Said Watson about the encounter, “[i]n an instant, my life was transformed and a purpose for my life was reverently established.”<sup>60</sup>

In 1976, Paul Watson and Robert Hunter (then President of Greenpeace) prevented a sealer from his hunt by physically standing in its path.<sup>61</sup> As a result, they were nearly run over.<sup>62</sup> In his experience in Labrador and with the seal hunters, Watson explains that he refused to compromise wanting to save as many seal pups as possible and was willing to take any legal consequences that might befall him.<sup>63</sup> Determined to do more, Watson says, “I threw myself between a sealer and his prey, and, when he shrugged and walked off, I followed him and did it again. I blocked

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*Activist Hero or Psychopathic Terrorist?*, COSTA RICA STAR (May 22, 2012), <http://news.co.cr/paul-watson-shining-activist-hero-or-psychopathic-terrorist-2/6967/>; *Paul Watson: The Man Behind Sea Shepherd*, ABC (May 23, 2012, 3:18 PM), <http://www.abc.net.au/news/2012-05-15/paul-watson-sea-shepherd-profile/4011498/?site=newcastle>.

<sup>54</sup> See Gatehouse, *supra* note 23.

<sup>55</sup> *Id.*

<sup>56</sup> Andrew Darby, *Hunters and Protectors*, THE AGE, Nov. 15, 2006, at p.15, [hereinafter *Hunters and Protectors*], available at [http://newsstore.theage.com.au/apps/viewDocument.ac?page=1&sy=age&kw=Hunters+and+Protectors&pb=all\\_ffx&dt=enterRange&dr=1month&sd=01%2F01%2F2006&ed=01%2F01%2F2007&so=relevance&sf=text&sf=headline&rc=10&rm=200&sp=adv&clsPage=1&docID=AGE0611151P58O7KLRLA](http://newsstore.theage.com.au/apps/viewDocument.ac?page=1&sy=age&kw=Hunters+and+Protectors&pb=all_ffx&dt=enterRange&dr=1month&sd=01%2F01%2F2006&ed=01%2F01%2F2007&so=relevance&sf=text&sf=headline&rc=10&rm=200&sp=adv&clsPage=1&docID=AGE0611151P58O7KLRLA).

<sup>57</sup> *Id.*

<sup>58</sup> Khatchadourian, *supra* note 14.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> Paul Watson, Op-Ed., *In Memory of Robert Hunter*, N.Z. HERALD (May 3, 2005, 4:57 AM), [http://www.nzherald.co.nz/opinion/news/article.cfm?c\\_id=466&objectid=10123538](http://www.nzherald.co.nz/opinion/news/article.cfm?c_id=466&objectid=10123538).

<sup>62</sup> *Id.*

<sup>63</sup> See SEA SHEPHERD, *supra* note 30, at 87.

another sealer nearby. I could see other orange-clad figures doing the same, and, to my surprise, I could hear myself swearing in Norwegian.”<sup>64</sup>

With the public's support and the Canadian government discussing the creation and release of a film that defended the hunt, Watson and his crew went back to Newfoundland in 1977 to again disrupt the seal hunt.<sup>65</sup> This time, Watson increased the stakes by being willing to commit assault. Recalling approaching a sealer busy with his kill, he stated:

As the sealer bent to his task, assiduously ignoring me and quickly carving the pelt from the warm little body, I walked slowly behind him. I picked up his club and decorously, almost ceremoniously, I threw it into an open lead. Unfortunately, it floated. But the sealer would have to retrieve it.<sup>66</sup>

Camera footage of Watson's actions increased publicity and subsequently, monetary donations for Greenpeace.<sup>67</sup> After some debate, the group also became involved in protesting the annual seal hunt in Canada.<sup>68</sup>

The actual reasons why Watson left Greenpeace are contested.<sup>69</sup> Scarce maintains that Watson's actions on the Greenpeace seal hunt campaign in 1977 in Newfoundland—where he threatened sealers with their own clubs and threw clubs and seal pelts into the water—saw him expelled from the ENGO.<sup>70</sup> His actions were a crime under Canadian law and threatened Greenpeace with losing its tax-exempt status in the United States.<sup>71</sup> Greenpeace charged that the action carried out by Watson was “too radical”<sup>72</sup> and some within the organization argued that it went against the group's pacifist ethos.<sup>73</sup> In the end, the ENGO determined that Watson's actions had breached Greenpeace policy and had potentially endangered the group's capability of raising funds, and Watson was expelled from the organization.<sup>74</sup>

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<sup>64</sup> *Id.* at 93.

<sup>65</sup> *Id.* at 121.

<sup>66</sup> *Id.* at 143–44.

<sup>67</sup> See Khatchadourian, *supra* note 14.

<sup>68</sup> *Id.*

<sup>69</sup> See SCARCE, *supra* note 46, at 101; Khatchadourian, *supra* note 14.

<sup>70</sup> SCARCE, *supra* note 46, at 101.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.* at 100.

<sup>73</sup> Khatchadourian, *supra* note 14.

<sup>74</sup> Khatchadourian, *supra* note 14.

Watson himself claims on his website that he instead resigned from Greenpeace because he felt that the organization's original vision had been compromised and that there was a need for an organization willing to use direct action methods to enforce maritime law with the aim of preserving marine species.<sup>75</sup> Watson further wrote of the incident, "[i]t was an emotional parting. All of us had given too much of ourselves over too many years for there to be dispassionate goodbyes. Those in control at Greenpeace were going one way, others of us were going another."<sup>76</sup>

Paul Watson still does not agree with Greenpeace's methods or effectiveness in stopping ongoing marine-life exploitation.<sup>77</sup> Watson has argued, "As far as I can see they have no intention of stopping illegal Japanese whaling . . . I don't think they will make any difference this year."<sup>78</sup> For Watson, Greenpeace, the group he helped found, was not radical enough for him and his agenda of saving marine mammals.<sup>79</sup> He refers to his former friends as merely "money-grubbing, publicity-grabbing hypocrites self-victimized by size and inertia," and regards Greenpeace scornfully as "the Avon ladies of the environmental movement."<sup>80</sup>

Greenpeace, on the other hand, has denounced Watson's methods and use of violence as "morally wrong" and "counter-productive."<sup>81</sup> The acrimony between the two groups continues to this day.<sup>82</sup> Watson has accused Greenpeace of telling British authorities that "his organisation was an eco-terrorist group."<sup>83</sup> Greenpeace, however, has firmly denied this accusation, releasing a statement that declared "[n]o Greenpeace employee has intervened at any level with any authorities in relation to the registration of the Sea Shepherd vessels."<sup>84</sup>

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<sup>75</sup> *Captain Paul Watson's Biography*, *supra* note 25.

<sup>76</sup> Paul Watson, *Tora! Tora! Tora!*, in PETER C. LIST, *RADICAL ENVIRONMENTALISM: PHILOSOPHY AND TACTICS* 170 (1993) [hereinafter *RADICAL ENVIRONMENTALISM*].

<sup>77</sup> *Hunters and Protectors*, *supra* note 56.

<sup>78</sup> *Id.*

<sup>79</sup> Jaime Lopez, *Wanted by Costa Rica, Arrested in Germany: Wildlife Activist Paul Watson*, *COSTA RICA STAR* (May 13, 2012), <http://news.co.cr/wanted-costa-rica-arrested-germany-wildlife-activist-paul-watson/6473/>.

<sup>80</sup> SCARCE, *supra* note 46, at 102.

<sup>81</sup> Dan Murphy, *Whale Wars: The Aggressive Tactics of Sea Shepherd Paul Watson*, *CHRISTIAN SCI. MONITOR* (Jan. 6, 2010), <http://www.csmonitor.com/World/Global-News/2010/0106/Whale-Wars-The-aggressive-tactics-of-Sea-Shepherd-Paul-Watson>.

<sup>82</sup> *Paul Watson and Greenpeace*, *SEASHEPHERD*, <http://www.seashepherd.org/who-we-are/paul-watson-and-greenpeace.html> (last visited Mar. 30, 2014).

<sup>83</sup> Andrew Darby, *Attack Plan for Japan's Whale Ships*, *THE AGE* (Dec. 27, 2006), <http://www.theage.com.au/news/national/attack-plan-for-japans-whale-ships/2006/12/26/1166895297032.html> [hereinafter *Attack Plan*].

<sup>84</sup> *Id.*

### 1. Creating the Sea Shepherd Conservation Society

In June 1977, Watson and several others, including Al "Jet" Johnson, a disillusioned Greenpeace activist, established a short-lived organization called "Earthforce" in Vancouver, Canada, in the hopes of creating a model ecological activist organization.<sup>85</sup> Earthforce held to the tenet that a chorus of voices could gain global attention to its cause and achieve quantifiable results, an approach that Watson and the SSCS continue to this day with their focus on influencing the global media to highlight their cause.<sup>86</sup> Watson envisaged that the group "could investigate crucial environmental problems, advise authorities in responsible positions, encourage some actions and oppose others, and in that way affect decisions about the basic environmental issues."<sup>87</sup> However, before it could stop the global ivory trade, operations ended.<sup>88</sup>

After the failure to successfully launch Earthforce, Watson focused on creating an organization as an alternative to Greenpeace: the Sea Shepherd Conservation Society. Many activists and volunteers within the organization were former members of Greenpeace.<sup>89</sup> They too became disappointed with the more "bureaucratic" path Greenpeace had chosen,

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<sup>85</sup> SEA SHEPHERD, *supra* note 30, at 156–57.

<sup>86</sup> *Id.*

<sup>87</sup> *Id.* at 156. Earthforce's aim was to be a global organization with a world-wide presence. Part of their purpose was to "bring about international commitments to preserve the habitats of wild animals and to foster deeper public understanding of the delicate inter-relationship that binds all life together." *Id.* Watson, along with many members of Earthforce, believed that they were "at a critical point in the survival expectations of a number of species, notably harp seals and many kinds of whales." *Id.* at 157. Further, they believed that ecological stability could be achieved and "[n]ature could overcome the damage already done, if ways to restrain the ravages of man could be found and enforced." *Id.* Through Earthforce, Watson and others reached out to other organizations, suggesting that "in exchange for financing, [Watson] would lead an expedition against the sealers in March and a later one against whalers as a representative to the contributing groups." SEA SHEPHERD, *supra* note 30, at 156. The only response Watson and Earthforce received was from Cleveland Amory (Fund for Animals in New York City). *Id.* Amory's organization had been "leading the fight to get the African elephant listed as endangered and protected from demands of the United States market." *Id.* Watson and several others organized a trip to Nairobi in order to "gather photographic and other evidence of the size and scope of the trade in animal products such as skins and ivory" within animal curio shops. *Id.* While Kenya's President Jomo Kenyatta had commanded these shops be closed, this order was later withdrawn. *Id.* at 156–58, 170–71.

<sup>88</sup> MANES, *supra* note 48, at 108–09.

<sup>89</sup> *Sea Shepherd History*, SEA SHEPHERD LOG (Sea Shepherd Conservation Soc'y, Santa Monica, Cal.) Winter 1983, at 4.

and SSCS was founded with the express purpose of being “devoted to aggressive but non-violent methods” of protection.<sup>90</sup> Watson founded the still ongoing SSCS in 1977 with the aim of protecting global marine life.<sup>91</sup>

Watson needed financial assistance in order to establish the Sea Shepherds.<sup>92</sup> Grants from the Fund for Animals (New York) provided the initial funding for SSCS.<sup>93</sup>

In 1977, Watson reportedly pled with Greenpeace to give him the *Ohana Kai*, with the intent to “sell [it] for scrap.”<sup>94</sup> He and another activist, Ross Thornwood, offered the organization a dollar for the vessel and planned to use it to ram either the whaling ship the *Dalyni Vostok* or the *Sierra*.<sup>95</sup> According to Watson, they “called [the] plan Operation Asshole and the objective was to run the ex-U.S. Navy submarine chaser straight up the stern slipway of a whaler, jamming her in so tightly that she would incapacitate the target vessel.”<sup>96</sup>

After discussion, Greenpeace concluded that the plan was too violent and refused to give Watson the ship.<sup>97</sup> In response, Watson mailed out letters to other environmental organizations, hearing back only from Cleveland Amory (founder of the Fund for Animals in New York City).<sup>98</sup> Watson and Amory met in 1978, with Watson telling him his plan to bring the battle to the whalers on the high seas.<sup>99</sup> They found the *Westella*, a 200-foot British Yorkshire side trawler.<sup>100</sup> On December 5, 1978, with the renaming of the *Westella* (now known as the *Sea Shepherd*), Watson’s vessel became the “first ship in history dedicated exclusively to the enforcement of international marine wildlife conservation law.”<sup>101</sup>

Watson has claimed, “[t]he name was my idea and I insisted on it as the most appropriate one we could think of.”<sup>102</sup> Elsewhere though, Paul Watson has expanded on how the group was named, claiming that

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<sup>90</sup> *Id.*

<sup>91</sup> *Captain Paul Watson’s Biography*, *supra* note 25.

<sup>92</sup> Paul Watson, *Making Burros Fly—Remembering Cleveland Amory*, SEA SHEPHERD (Apr. 13, 2006), <http://www.seashepherd.org/commentary-and-editorials/2008/10/30/making-burros-fly-remembering-cleveland-amory-390>.

<sup>93</sup> *Id.*

<sup>94</sup> OCEAN WARRIOR, *supra* note 34, at 11.

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> OCEAN WARRIOR, *supra* note 34, at 11.

<sup>100</sup> *Id.*

<sup>101</sup> *Id.* at 12.

<sup>102</sup> SEA SHEPHERD, *supra* note 30, at 175.



it stems from an incident in 1977, where he stopped a large sealing vessel by blocking its passage by standing on ice.<sup>103</sup> A newspaper article in the *Georgia Strait* newspaper had the headline, "Shepherds of the Labrador Front," which inspired the naming of the vessel and the organization.<sup>104</sup>

## 2. Philosophy of the SSCS

In Paul Watson's own words:

I intend to change the world. I believe, with Margaret Mead, that any single person can make a difference if he allows his passion to be expressed through action. My passion is the living Earth, especially her oceans. I am a conservationist, a protector of species and ecological systems, and a defender of the rights of nature.<sup>105</sup>

Watson compares the killing of whales to the murder of a human, justifying his statements by claiming that whales are smarter than mankind and that their ongoing killing is a tragedy comparable to the Holocaust.<sup>106</sup>

Watson points out that, for the most part, the modern environmental movement has been too passive and reactionary.<sup>107</sup> According to Watson:

Activities by environmentalists are for the most part a series of small, inexpensive skirmishes against a powerful, better equipped opposition. A direct face to face encounter will almost always result in failure because of the superior financial resources of the opposition. A prolonged face to face campaign on open ground will certainly result in failure. The way of the Earth Warrior is to rely on the covert attack, the surprise attack, and planned defense security.<sup>108</sup>

He argues that it is better for environmental activists to be proactive and carry out campaigns of direct action such as tree-spiking.<sup>109</sup> How Watson sees his group's *raison d'être* is encapsulated in Watson's declaration:

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<sup>103</sup> *Captain Paul Watson's Biography*, *supra* note 25.

<sup>104</sup> *Id.*

<sup>105</sup> OCEAN WARRIOR, *supra* note 34, at xiii.

<sup>106</sup> Khatchadourian, *supra* note 14.

<sup>107</sup> See EARTHFORCE!, *supra* note 1, at 53.

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*



“right now we’re in the early stages of World War III . . . we are the navy to Earth First!’s army.”<sup>110</sup> Watson declares his commitment to the cause by saying, “[a]t the risk of sounding dramatic, my crew and I are prepared to die for these whales if need be.”<sup>111</sup>

### 3. Organizational Structure

The Sea Shepherd Conservation Society is predominantly run by volunteers and through donations.<sup>112</sup> The organization has an annual budget of approximately two million dollars and employs fourteen people.<sup>113</sup> Watson is rather strict on how the group receives the funding and does so mainly by delivering paid lectures, asking for donations on the internet, and soliciting large donors.<sup>114</sup> Watson himself has paid as of 2010, \$120,000 to head up the Sea Shepherds, with the overall organization, according to its tax filings, making \$9.8 million in the 2010 fiscal year.<sup>115</sup> The SSCS has sought charitable status in a number of jurisdictions within which it operates and has been granted United States charitable status, but has been refused in some states such as Australia, despite traditionally being a supporter of its actions.<sup>116</sup>

Paul Watson is the president of a tax-exempt charity headquartered in Washington.<sup>117</sup> The Japanese government tried to get the United

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<sup>110</sup> *Sierra Club: Ever More Radical*, THE CTR. FOR CONSUMER FREEDOM (Sep. 4, 2003), <http://www.consumerfreedom.com/2003/09/2103-sierra-club-ever-more-radical/>; M. Parfit & D.J. Cross, *Earth Firster Wild a Mean Monkey Wrench*, 21 SMITHSONIAN 184, 196, (Apr. 1990).

<sup>111</sup> Andrew Darby, *Anti-Whaling ‘Pirates’ Get More Muscle for Antarctic Skirmish*, THE AGE (Jan. 10, 2007), <http://www.theage.com.au/news/national/antiwhaling-pirates-get-more-muscle-for-antarctic-skirmish/2007/01/09/1168104983880.html> [hereinafter *Anti-Whaling Pirates*].

<sup>112</sup> Andrew Darby Hobart, *How Sea Shepherd Stays Afloat*, THE AGE (Jan. 11, 2012, 3:00 AM), <http://www.theage.com.au/national/how-sea-shepherd-stays-afloat-20120110-1ptu6.html>.

<sup>113</sup> Khatchadourian, *supra* note 14.

<sup>114</sup> *Id.*

<sup>115</sup> Daniel Prousalidis, *Germans Search for Eco-Fugitive Paul Watson*, TORONTO SUN (Aug. 2, 2012, 5:52 PM), <http://www.torontosun.com/2012/08/02/germans-search-for-eco-fugitive-paul-watson> (updated Aug. 3, 2012, 11:50 AM).

<sup>116</sup> Jane Hammond, *‘Absurd Outcome’ for Sea Shepherd Tax*, WEST AUSTRALIAN (Aug. 10, 2012, 2:51 PM), <http://au.news.yahoo.com/thewest/a/-/breaking/14520935/absurd-outcome-for-sea-shepherd-tax/>. The Australian Administrative appeals tribunal denied the Sea Shepherds’ application for charitable status on the grounds that cetaceans and other marine wildlife could not be considered “animals without owners.” *Id.*

<sup>117</sup> Hobart, *supra* note 112.

States government to revoke that status in 2009 without success.<sup>118</sup> Annual charity documents supplied to the Washington state government indicate the organization made most of its money (\$11.4 million United States currency) through received "solicitations" and had assets of \$6.2 million (United States currency) in 2010.<sup>119</sup> It also holds fundraisers to help it fund its campaign in Australia, receives \$635,000 (Australian currency) from the Dutch national lottery, and \$750,000 (United States currency) from the television shows.<sup>120</sup> Eighty-four percent of its income is received from individual donors, and the organization has thirty people on its global payroll.<sup>121</sup> Paul Watson draws an annual salary of \$96,000 in American currency.<sup>122</sup> The organization's ongoing charity status has helped it become the beneficiary of large donations from people such as Bob Barker (\$5 million in United States currency) and Ady Gil (\$1 million in United States currency).<sup>123</sup>

While the Sea Shepherd organization does not spend money on fundraising, it often receives "donations through media attention and word of mouth."<sup>124</sup> Despite its radical tactics, SSCS has attracted a large following of supporters, including some celebrities. For example, "[w]hen Watson was arrested in 1983 for interfering with Canada's seal hunt, his ten-thousand-dollar bail was posted by actor Mike Farrell . . . who not coincidentally is a spokesman for the animal rights group People for the Ethical Treatment of Animals."<sup>125</sup> Maxwell Gail (from the Barney Miller series) "did a commercial for the Sea Shepherds that aired on local stations in California."<sup>126</sup> Steve Wynn (Las Vegas casino owner) "once helped Watson buy a submarine."<sup>127</sup> Several celebrities have also provided donations, including Pierce Brosnan, Martin Sheen, Christian Bale, John Paul DeJoria (CEO of Paul Mitchell hair products company), and Yvon Chouinard (founder of Patagonia).<sup>128</sup>

Large donations have enabled the Sea Shepherds to purchase the vessels they use to disrupt their opponents. Ady Gil, a co-owner of Hi

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<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> Hobart, *supra* note 112.

<sup>124</sup> PETER HELLER, THE WHALE WARRIORS: THE BATTLE AT THE BOTTOM OF THE WORLD TO SAVE THE PLANET'S LARGEST MAMMALS 7 (2007).

<sup>125</sup> MANES, *supra* note 48, at 116.

<sup>126</sup> *Id.*

<sup>127</sup> Khatchadourian, *supra* note 14.

<sup>128</sup> HELLER, *supra* note 124, at 7.

Definition, Inc., donated one million dollars to the group.<sup>129</sup> The money was used to buy a “sleek, speedy and stealthy carbon-fiber trimaran,” which was subsequently named after Gil.<sup>130</sup> After the disputed collision with a Japanese whaling ship that sank, a second activist ship, the *Bob Barker*, rescued crewmembers of the *Ady Gil*.<sup>131</sup> This vessel was purchased following a five million dollar donation from television game show host Bob Barker.<sup>132</sup>

While many similar organizations use “democratic consensus” as a method in the decision making process, Watson does not believe this is a good approach. He states:

This is not wise, but if this is the way accepted by the group, then it should always be consensus less one. There is a psychology of some individuals who will block a decision simply for the sense of power that it gives them. In fact, some of these individuals often seek out such groups for this purpose. Their priorities lie in dealing with their own psychological problems and not with the issues at hand.<sup>133</sup>

His autocratic behavior and chosen actions have led many people to disassociate themselves from him. According to a former member, Watson’s method of control is “anarchy run by God” and “[h]e doesn’t like people who disagree with him.”<sup>134</sup> It is essential in Watson’s view that leaders never give up their control to a bureaucracy. Furthermore, in Watson’s opinion, “[c]onfrontations must be in the control of a defined leadership. When confrontation begins, the time for democratic discussion of strategy and tactics has ended. All decisions must then be entrusted to a recognized command.”<sup>135</sup> Watson is a believer in the captain leadership approach of James T. Kirk, whom, when speaking to a crew member aboard the Starship *Enterprise*, maintained that “[w]hen this ship becomes a democracy, you’ll be the first to know.”<sup>136</sup> Watson also runs the organization and his ship as a dictatorship with him firmly ensconced at the apex.<sup>137</sup>

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<sup>129</sup> Louis Sahagun, *Whaling Clash Highlights Two Hollywood Donors*, L.A. TIMES (Jan. 7, 2010), <http://articles.latimes.com/2010/jan/07/local/la-me-whale-boat7-2010jan07>.

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

<sup>133</sup> EARTHFORCE!, *supra* note 1, at 55.

<sup>134</sup> Khatchadourian, *supra* note 14.

<sup>135</sup> EARTHFORCE!, *supra* note 1, at 54.

<sup>136</sup> *Id.* at 55.

<sup>137</sup> *Id.* at 54–55.

#### 4. Strategy and Tactics

Watson is a firm believer that his opponents' financial resources and technology can be defeated with "superior" strategy and tactics.<sup>138</sup> To achieve their goals, the Sea Shepherds have a multi-prong strategy that ranges from diplomatic, economic and direct actions, to a brilliant media strategy designed to quickly highlight the "nefarious" operations of their opponents. The Sea Shepherds have been known to use diplomatic means to achieve their goals, but have tended to prefer an economic-damage approach to their opponents, coupled with a global media campaign.<sup>139</sup> According to Paul Watson, the objective of the Sea Shepherds is to simply damage whaling vessels enough that they will be forced back to dock for repair, though SSCS has often committed far more damage than that, including sinking whaling ships.<sup>140</sup> As recently as December 2006, Watson argued that the group's activities would be confined to inflicting damage to any whaling vessel of sufficient magnitude to force it to comply with safety regulations and return to dock to be repaired, rather than committing violence.<sup>141</sup> Watson maintained in early 2007 that with his ships the *Farley Mowat* and the new *Robert Hunter*, his organization could both keep up with Japanese whaling ships and possess the means and where-withal to damage them.<sup>142</sup> The *Farley Mowat* was fitted with "a solid steel hydraulic ram with a bulldozer-strength blade."<sup>143</sup>

It has been noted that the organization thrives on publicity, both positive and negative. Such claims were evidenced by the significant increase in the Sea Shepherd's profile since the filming of the documentary series "Whale Wars" began.<sup>144</sup> Watson has learned to use the media to achieve his stated goals. He declares cynically that "[t]he nature of the mass media today is such that truth is irrelevant" and goes on to explain that, to the general public, the truth is simply what is written by the mass

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<sup>138</sup> *Id.* at 24.

<sup>139</sup> *Campaigns from 1984-1986*, SEA SHEPHERD LOG (Sea Shepherd Conservation Soc'y, Santa Monica, Cal.) Summer 1984, at 3. For example, in the two years before the moratorium on commercial whaling (put in force by the International Whaling Commission and set to begin in 1986), the Sea Shepherds planned to use "diplomatic and educational" methods to convince Japan, the Soviet Union, and Norway (and all other nations) to discontinue the practice. *Id.*

<sup>140</sup> *Attack Plan*, *supra* note 83.

<sup>141</sup> *Id.*

<sup>142</sup> *Anti-Whaling 'Pirates'*, *supra* note 111.

<sup>143</sup> *Id.*

<sup>144</sup> Murphy, *supra* note 81.

media.<sup>145</sup> When discussing the use of the media as a tactic, Watson explains, “[i]n the realm of eco-warfare, the camera is much more powerful than the sword.”<sup>146</sup>

*B. Acting Outside the Law*

According to Watson, there are times when it is essential to break the law in order to challenge its validity, and SSCS has certainly put that precept into practice on numerous occasions. One method Watson prefers is what he refers to as the “Brer Rabbit” ploy whereby “[i]f you have a political or moral advantage, then let the authorities know and believe that you want to be put on trial.”<sup>147</sup> He has successfully used this strategy several times, asking to be arrested and charged on many occasions.<sup>148</sup> Watson claims that many states are reluctant to charge him for his and the group’s activities for fear it would bring to light their own unlawful activities and draw unnecessary global media attention.<sup>149</sup> Watson recalls that:

In January 1988, I flew to Iceland to demand that the Icelandic authorities charge me for the sinking of half of Iceland’s whaling fleet which we had sunk in 1986. I told the authorities that they should charge me and that I was

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<sup>145</sup> *Id.*

<sup>146</sup> EARTHFORCE!, *supra* note 1, at 61. Watson quickly learned that using the media was a helpful strategy, one that aided him in preventing the deaths of baby harp seals in Newfoundland in 1984. HELLER, *supra* note 124, at 22. “Watson had staged several confrontations with sealers that drew media attention. And then he’d brought Brigitte Bardot onto the ice for her famous picture with the baby seal.” *Id.* According to Heller, “[t]he starlet on the cold snow holding the defenseless fuzzy white pup, and the pup’s huge, trusting, liquid black eyes had iced it. An outcry ensued and sealing was shut down for ten years.” *Id.*

<sup>147</sup> Khatchadourian, *supra* note 14.

<sup>148</sup> Paul Watson, *Captain’s Log*, SEA SHEPHERD LOG (Sea Shepherd Conservation Soc’y, Santa Monica, Cal.), 3d Quarter 1993, at 2. For example, Paul Watson has been previously charged with: three counts of criminal mischief by Canadian officials, two of those charges carried the potential of a life term in prison. He pleaded not guilty and opted for a trial by jury. He has said that by choosing to be tried by jury, he was hoping more publicity would be brought to his trial and, ultimately, his cause. *Id.* Similarly, in 1983 Watson took a ship into Canadian territorial waters seeking to test the Canadian *Seal Protection Act* (1966) believing it was an unjust law designed to protect the sealing industry. *See* EARTHFORCE!, *supra* note 1, at 85–86. They were arrested, put on trial and initially convicted. They appealed and won but the Canadian government appealed and the Supreme Court of Canada ruled that the Act was unconstitutional. *Id.*

<sup>149</sup> Khatchadourian, *supra* note 14.

at their mercy to decide what should be done with me. This action resulted in a debate in the Icelandic parliament where an Icelandic Member of Parliament stated that they would not play into my hands by doing what I wanted to do. As a result, I was deported without charge and Iceland was publicly and internationally embarrassed.<sup>150</sup>

# 1. Sea Shepherd and Attitudes Toward Violence

Initially Watson believed in the Greenpeace ethos of nonviolence and non-militant direct action.<sup>151</sup> Watson argues that very few changes have occurred historically through nonviolent tactics. He further argues, "[t]o remain nonviolent totally is to allow the perpetuation of violence against people, animals, and the environment."<sup>152</sup> Watson argues that little change has occurred by embracing a nonviolent ethos.<sup>153</sup> Thus, over time and since leaving Greenpeace, his views have evolved regarding violence, particularly against property.

According to Watson, he continues to search for an agreeable compromise between violent and nonviolent tactics. He claims, "I have progressed in my thinking since 1975 to this: sometimes, to dramatize a point so that effective steps may follow, it is necessary to perform a violent act. But such violence must never be directed against a living thing. Against property, yes. But never against a life."<sup>154</sup> Watson emphasizes that all of SSCS's actions have been undertaken without harm to any individual.<sup>155</sup>

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<sup>150</sup> EARTHFORCE!, *supra* note 1, at 91.

<sup>151</sup> SEA SHEPHERD, *supra* note 30, at 18. For example, Watson wrote on his way to confront Soviet whalers:

What mattered to us, and mattered desperately, was that our voyage for peace and the ecology by our Greenpeace Foundation, was bound to win. As we had promised our members and other supporters . . . we were on our way to put our bodies between the Soviet harpoonists and the sperm whales they were systematically and illegally slaughtering. And we would have proof, not only through our eyewitness accounts of what we saw and heard, but especially through the incontrovertible evidence for all the world of our still photographs and movie films. That was our mission, and we were fulfilling it.

*Id.*

<sup>152</sup> *Id.* at 26.

<sup>153</sup> See DOUGLAS LONG, ECOTERRORISM: LIBRARY IN A BOOK 7 (2004); RADICAL ENVIRONMENTALISM, *supra* note 76, at 167; SEA SHEPHERD, *supra* note 30, at 26.

<sup>154</sup> SEA SHEPHERD, *supra* note 30, at 26–27.

<sup>155</sup> See EARTHFORCE!, *supra* note 1, at 9.

Further, the use of militant direct action methods by the Sea Shepherds against commercial whaling in the 1970s and 1980s proved to bring “international attention to this new form of confrontational environmental protest” and its potential as an agent of change.<sup>156</sup>

In practice however, the Sea Shepherds appear to have an almost schizophrenic attitude to violence committed by the organization. On the one hand, the self-imposed, supposedly inflexible rules under which they operate maintain:

1. Crewmembers cannot carry weapons.
2. We cannot use explosives.
3. Actions cannot be undertaken which will risk injury or death of our opposition.
4. We accept complete responsibility for our actions.
5. We accept legal and moral consequences for our actions.
6. We never compromise on the lives of those we defend.<sup>157</sup>

From the beginning Watson set down clear rules of engagement for the SSCS: a prohibition on the use of explosives and weapons or any activity that would injure a living entity.<sup>158</sup> Watson argues that what he does is rather a form of “aggressive nonviolence,” whereby “[i]f property is used to break the law” it can be destroyed by his group.<sup>159</sup>

Lethal force against humans is not permitted by SSCS and its members. Its policy is that action against opposition will be undertaken without firearms or explosives and without violence being directed “against life.”<sup>160</sup> However, this policy dictates that self-defense is permitted.<sup>161</sup> The

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<sup>156</sup> Anthony Vincent Silvaggio, *The Forest Defense Movement, 1980–2005: Resistance at the Point of Extraction, Consumption, and Production* 57 (Aug. 5, 2005) (unpublished Ph.D. dissertation, University of Oregon) (on file with the Department of Sociology and the Graduate School of the University of Oregon).

<sup>157</sup> Don Liddick, *Ecoterrorism: Radical Environmental and Animal Liberation Movement*, PRAEGER PUBLISHING 17 (2006).

<sup>158</sup> EARTHFORCE!, *supra* note 1, at 88 (emphasis omitted).

<sup>159</sup> Don Melvin, *Eco-Group's Founder Uses 'Aggressive Nonviolence,'* SEATTLE TIMES (June 13, 2011, 6:53 AM), <http://news.yahoo.com/econ-groups-founder-uses-aggressive-nonviolence-135258553.html>.

<sup>160</sup> Paul Watson, *Sea Shepherd Defense Policy*, 6 EARTH ISLAND J. 41, 43 (1991) [hereinafter *Sea Shepherd Defense Policy*].

<sup>161</sup> *Id.* at 43.



policy on property damage is also clear—any property being used unlawfully to take “sentient life” will be destroyed.<sup>162</sup>

The Sea Shepherds have a rigid policy on the use of weapons. When the opposition is a government agency, weapons are not permitted on board at all.<sup>163</sup> Rather, SSCS believes that when fighting with a government, a camera can be a better weapon.<sup>164</sup> However, if the opposition is a non-governmental organization, the Sea Shepherds will carry weapons.<sup>165</sup> Captain Paul Watson admits to having a “Confederate Navy black powder revolver.”<sup>166</sup> Further within the ship’s armory, weapons can be found, including “body armour, kevlar helmets, flak jackets and gas masks.”<sup>167</sup> A shotgun and rifle are also carried on board.<sup>168</sup> These weapons are all kept locked up and the only set of keys belongs to the captain.<sup>169</sup> Some argue that having the weapons on board results in a temptation to use them, to which Paul Watson argues that there has been no temptation and no incidents in which they have been used in over a decade.<sup>170</sup>

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<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

<sup>164</sup> *Id.*

<sup>165</sup> *Id.*

<sup>166</sup> *Sea Shepherd Defense Policy*, *supra* note 160, at 43. The issue of having guns aboard at one point threatened to fracture the organization asunder. Once they became involved with drift-netters, Watson’s fear for the crew’s safety increased. *See EARTHFORCE!*, *supra* note 1, at 210. According to Watson, at a board meeting in the Spring of 1991, he “moved that the *Sea Shepherd II* take on two semi-automatic rifles and a shotgun so that [they] wouldn’t be entirely defenceless in the event that [they] came under attack by firearms.” *Id.* Taiwanese fisherman had already reportedly threatened to shoot the crew. Watson wrote that not all members agreed on the motion regarding placing firearms on the vessel. He recalls that “Scott [Trimingham] and Ben White were infuriated by this idea. They voted against the motion. Peter Wallerstein was not at the meeting in Virginia, which meant that Peter Brown’s vote in favour tied the vote.” *Id.* Brown further pointed out that the two votes in favor of the motion were made by the “two directors who sailed on every voyage.” *Id.* According to Brown, “[i]t was easy . . . for Ben and Scott to be opposed to carrying firearms. They were never in a position to be shot at. Scott insisted that our rules forbade firearms.” *Id.* at 210–11. Following the meeting, Peter Brown asked Watson what he planned to do, to which Watson responded, “[i]t’s a tie vote. They don’t want guns. WE do. I suggest we maintain the status quo—and that means we carry guns.” *Id.* at 211. Watson, in response to Scott Trimingham’s opinion that arming SSCS sailors was against the Sea Shepherd rules, stated, “rules can be changed. If our opposition is government, then I agree. These drift-netters are pirates and they carry guns, and if they start shooting at us hundreds of miles out at sea then it won’t do us much good to call the police.” *EARTHFORCE!*, *supra* note 1, at 211.

<sup>167</sup> *Sea Shepherd Defense Policy*, *supra* note 160, at 43.

<sup>168</sup> *Id.*

<sup>169</sup> *Id.*

<sup>170</sup> *Id.*

Watson takes great satisfaction in the claim that no one has ever been injured or killed during a campaign (on either side).<sup>171</sup> Watson and SSCS claim that this is proof that the SSCS is “operated safely and efficiently.”<sup>172</sup> However, SSCS does not consider itself a pacifist or anti-violent group and does not condemn the use of violence as a method of action.<sup>173</sup>

However, there have been incidents of violence against humans reported from Sea Shepherd members. In 1986, Sea Shepherd activists, using a line rifle, allegedly shot at Faroese police.<sup>174</sup> A report by the police following the incident stated that the attack “endangered the lives of the police crewmembers.”<sup>175</sup> It should also be noted that “Sea Shepherd used ‘toads’ (rotating iron spikes, pointed and sharp at both ends) against the rubber dinghies . . . petrol was poured over the side of the ship and signal flares were thrown.”<sup>176</sup> While the Sea Shepherds claim they only retaliated once the police had fired upon them, but the police claimed they only “tried to subdue the environmentalists with tear gas.”<sup>177</sup>

Further, in 2010 it was alleged that a Maltese diver reportedly “had his arm ripped by a fishing hook during a clash with conservationists who were trying to free caged tuna being towed by two fishing vessels.”<sup>178</sup> The conflict occurred approximately thirty-five nautical miles north of Tripoli when SSCS activists “accosted the two vessels—a tug boat and a supply vessel—towing the cage with hundreds of tuna belonging to Maltese company Fish and Fish.”<sup>179</sup> A second diver, who was also airlifted, was bruised as a result of the attack.<sup>180</sup>

However, there have been several conflicting versions of this event. The captain of the Sea Shepherds’ *Steve Irwin* “denied the accusations, insisting it was the ship’s crew that repelled a ‘violent assault’ by

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<sup>171</sup> *Hunters and Protectors*, *supra* note 56.

<sup>172</sup> *Sea Shepherd History*, *supra* note 89, at 5.

<sup>173</sup> *Sea Shepherd Defense Policy*, *supra* note 160, at 43.

<sup>174</sup> INST. CETACEAN RESEARCH, SEA SHEPHERD’S VIOLENT HISTORY, *available at* <http://www.icrwhale.org/eng/history.pdf>.

<sup>175</sup> *Id.*

<sup>176</sup> *Id.*

<sup>177</sup> *Environmentalists Battle Faeroe Islands Police*, ASSOCIATED PRESS (July 12, 1986, 6:01 PM), <http://www.apnewsarchive.com/1986/Environmentalists-Battle-Faeroe-Islands-Police/id-76dd156ba2fdc7ee4108f13a9589e894>.

<sup>178</sup> Kurt Sansone, *Two Maltese Divers Airlifted to Hospital, Conflicting Versions of Events at Sea*, TIMES MALTA (June 18, 2010, 9:15 AM), <http://www.timesofmalta.com/articles/view/20100618/local/two-maltese-divers-airlifted-to-hospital.313178>.

<sup>179</sup> *Id.*

<sup>180</sup> *Id.*

fishermen.”<sup>181</sup> Paul Watson reportedly told *Times of Malta* that “they had no evidence of anybody being injured,” and that the Sea Shepherd organization had “every reason to suspect that the tuna was caught illegally in the last couple of days when the fishing season is closed. We asked to inspect the cage but the fishermen were defensive and did not cooperate when we asked for information.”<sup>182</sup> The Sea Shepherds though, have been more sanguine about causing property damage to achieve their goals and have not been shy about promoting their actions to a global audience.<sup>183</sup>

The SSCS has been growing in the last three decades from a small organization to a multimillion-dollar organization with a flotilla of ships, dozens of staff, hundreds of volunteers, and thousands of supporters worldwide—all inspired by an autocratic leader and his vision of taking on who he perceives to be the enemies of Gaia.<sup>184</sup> Watson’s willingness to directly confront Japanese whalers and illegal fishermen has seen him win global accolades from environmental activists, even from members of his former ENGO Greenpeace.<sup>185</sup> Watson has also proven himself to be a master media manipulator, ever willing to subvert the truth to achieve his goals. The SSCS’s attitude towards violence remains problematic, however. The willingness to use violence, even if limited to attacking property or self-defense, runs the risk that every operation could see a loss of life on both sides—a price Paul Watson says he would personally and gladly pay to defend his beloved oceans.<sup>186</sup>

## II.

Part II puts into a historical context the various major militant direct actions that SSCS has carried out since its inception, with a particular

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<sup>181</sup> *Id.*

<sup>182</sup> *Id.*

<sup>183</sup> *Sea Shepherd Defense Policy*, *supra* note 160, at 41. Actions of the Sea Shepherd include: ramming and sinking ships, obstructing harbors, the use of intimidation and threats, the destruction of a whale processing plant, and offering rewards for the conviction of offenders who kill marine animals. *Id.* They have attempted to disable Japanese whaling ships propellers through a variety of means. *Hunters and Protectors*, *supra* note 56. The Sea Shepherds also successfully cut the drift nets off two Japanese whaling vessels. The damage of these nets was documented in 1987; in 1990 and 1991 Sea Shepherd vessels successfully disabled several drift net trawlers. Alston Chase, Op-Ed., *In Praise of Sea Shepherds, Drift-Net Foes*, SEATTLE TIMES (Aug. 28, 1990), <http://community.seattletimes.nwsources.com/archive/?date=19900828&slug=1090106>. A more full account of the SSCS direct action campaigns will be undertaken in Part II.

<sup>184</sup> See Hobart, *supra* note 112; *Our History*, *supra* note 16.

<sup>185</sup> Khatchadourian, *supra* note 14.

<sup>186</sup> *Anti-Whaling ‘Pirates,’ supra* note 111.

focus on the Antarctic campaigns against the Japanese whalers. It examines the evolving strategy and tactics developed by the group as it set about on its quest to end oceanic creature exploitation and questions the campaigns' increased violence. Major actions undertaken by the SSCS fall into several broad categories: spoiling the whaling or sealing byproduct via various means; ramming ships at sea; sinking ships in harbor; harassing ships at sea via a variety of tactics; and boarding vessels while at sea. The section questions whether the direct action approach of the group is counterproductive to its stated objectives of ending global whaling and overfishing. It also analyzes the ongoing legal consequences of these actions for SSCS, in particular the attempts to jail Watson for his and the group's actions. It analyzes the likely effects Watson's current legal travails will have on the long-term viability of the organization.

A. *Commencing Operations: The Canadian Seal Hunt*

In March 1979, the *Sea Shepherd* made its first appearance targeting the ongoing Canadian seal hunt, with a crew of thirty-two members.<sup>187</sup> From the start, Watson understood the value of having media attention on his activities (and those of his opponents) and his crew had a complement of media personnel from the American, British, Australian, and Canadian Press.<sup>188</sup> The activists' participation in the first seal hunt included throwing red dye on seal pups.<sup>189</sup> This dye is not harmful to the animals, but devastates their "commercial value."<sup>190</sup> Eight crewmen, including Watson, were subsequently arrested by the Canadian Coast Guard and questioned by the Royal Canadian Mounted Police ("RCMP").<sup>191</sup> Watson reportedly was beaten and threatened by RCMP officers. He was eventually "released after two hours of exposure on the main deck after being doused with water in 10 degree temperature and told . . . they (RCMP) would kill him if he returned to the seal hunt." He was "soaked from being pushed into the sea . . . taken to the deck outside and forced to lie on his stomach for two hours and kicked each time he attempted to rise."<sup>192</sup>

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<sup>187</sup> *Environmentalists Jailed After Painting Baby Seals Red*, OCALA STAR-BANNER, Mar. 11, 1979, A2, available at <http://news.google.com/newspapers?id=1iwTAAAAIbAJ&sjid=ugUEAAAAIbAJ&pg=5044,2964856&dq=sea-shepherd>.

<sup>188</sup> *Seal-Hunt Protesters Fear More Trouble*, SPOKESMAN-REVIEW, Mar. 12, 1979, at 2, available at <http://news.google.com/newspapers?id=78kRAAAIbAJ&sjid=800DAAAIAbAJ&pg=7152,6911778&dq=sea-shepherd>.

<sup>189</sup> *History of Sea Shepherd Campaigns for Seals*, SEASHEPHERD, <http://www.seashepherd.org/seals/history-saving-seals.html> (last visited Mar. 30, 2014).

<sup>190</sup> *Id.*

<sup>191</sup> *Id.*

<sup>192</sup> *Id.*

All eight crewmen were found guilty under the Canadian *Seal Protection Act* (1966), and were fined \$1000 and sentenced to five days in jail (except for Watson, who was sentenced to a fine of \$8000 and ten days in jail).<sup>193</sup> They were given an additional three years of probation and prohibited from protesting the seal hunt until 1983.<sup>194</sup> During their time in prison, it was alleged by SSCS that the activists were unable to eat, as seal meat was mixed with their food.<sup>195</sup>

*B. Ramming the Pirate Whaling Ship the Sierra*

For the Sea Shepherds, and in particular Watson, the defining moment and the event that truly announced them to the world was their decision to tackle pirate whaling ships directly and violently by targeting the most notorious ship of its kind: the *Sierra*.<sup>196</sup>

Watson convinced Cleveland Amory, the President of the Fund for Animals in 1978, to provide \$120,000 to buy the ship that eventually was named the *Sea Shepherd*.<sup>197</sup> In July 1979, Watson set out to sea in the 206-foot *Sea Shepherd*—a converted trawler with a reinforced concrete bow—determined to deal with the *Sierra* and morally avenge, as he saw it, the deaths brought about by the ship and its crew.<sup>198</sup> But there was also a calculating aspect to the targeting of that particular ship. As Watson stated afterwards, “I knew, we would get maximum world attention when I rammed the *Sierra* with the *Sea Shepherd*.”<sup>199</sup>

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<sup>193</sup> *Hunt Disrupter Gets 10 Days in Quebec Jail*, MONTREAL GAZETTE, Mar. 11, 1980, at 14, available at <http://news.google.com/newspapers?id=1GUxAAAAIBAJ&sjid=oqQFAAAAIBAJ&pg=1227,81403&dq=paul+watson+convicted&hl=en>.

<sup>194</sup> *Id.*

<sup>195</sup> *Id.*

<sup>196</sup> REX WEYLER, GREENPEACE: AN INSIDERS ACCOUNT 542–43 (2004). Private whaling ships continued to operate despite the edicts of the IWC to the contrary, and refused to curtail whaling operations. *Id.* Such ships flew flags of convenience from Spain, Peru and Taiwan, and were financed by whaling nations such Norway and Japan. The *Sierra* had a Norwegian national as a captain and was crewed primarily by Japanese sailors. *Id.* It was seventy-five percent owned by the Taiyo Fishery Company of Japan and twenty-five percent by the Foreningsbanken of Norway. *Id.* at 543. Reportedly, the whaler was “the worst offender in a dirty business. Barred from ports around the world for violating international conventions on whaling and endangered species, and for not paying bills for fuel and provisions, it roved over the globe taking every whale it came across.” HELLER, *supra* note 124, at 32. The *Sierra* hunted and took 1676 whales during a three-year period and then sold the meat in Japan. SCARCE, *supra* note 46, at 97. Despite many attempts to stop its whaling, the ship was considered untouchable by the IWC or any other agency. HELLER, *supra* note 124, at 32.

<sup>197</sup> SCARCE, *supra* note 46, at 98.

<sup>198</sup> See *id.* at 98; WEYLER, *supra* note 196, at 543.

<sup>199</sup> SEA SHEPHERD, *supra* note 30, at 211.

In July 1979, Watson tracked down the *Sierra* off the coast of Portugal.<sup>200</sup> The *Sea Shepherd*, under the guidance of Peter Woof, first positioned the ship across the *Sierra*'s bow, striking a glancing blow to warn its sailors it was about to be rammed.<sup>201</sup> Scarce argues that Watson's "strict code of non-violence prevented him from smashing into his antagonist then and there, . . . risking the lives of the *Sierra*'s crew and his own,"<sup>202</sup> since in calm waters a competent skipper can control any ramming.<sup>203</sup> However, Watson is quoted by Darby as warning the *Sierra* prior to ramming the ship: "Sierra, Sierra . . . your career is going to end today."<sup>204</sup>

According to Watson, once they had pursued and rediscovered the *Sierra*:

We made straight for the *Sierra*. My intention was to try to crash our bow into her bow in such a way that the harpoon gun would be cut away. I did not want to hit too hard . . . I did not want to hurt anyone—not so much because I had tender feelings toward the forty-two men aboard the *Sierra*, but because I oppose causing injury to any living thing and because their injuries might provide an excuse for a backlash that could undermine whatever good will our dramatic and dangerous aggression might produce.<sup>205</sup>

However, Watson has told another version of the same event that paints a darker picture of how far he was willing to go.<sup>206</sup> He has stated that after ramming the vessel twice, the *Sea Shepherd* came around to hit the *Sierra* again.<sup>207</sup> According to Watson, "We had jabbed, we had hooked, and now would come the knockout blow. If possible, I would cut her in half this time."<sup>208</sup> They did not succeed in that goal but did tear a six-foot hole in the ship, and stove in forty-five feet of the hull, crippling the ship.<sup>209</sup> Despite being heavily damaged, however, the *Sierra* successfully escaped.<sup>210</sup>

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<sup>200</sup> *Id.* at 226–29.

<sup>201</sup> SCARCE, *supra* note 46, at 98.

<sup>202</sup> *Id.*

<sup>203</sup> *See id.* at 99.

<sup>204</sup> *Hunters and Protectors*, *supra* note 56.

<sup>205</sup> SEA SHEPHERD, *supra* note 30, at 230–31.

<sup>206</sup> *See id.* at 233.

<sup>207</sup> *Id.*

<sup>208</sup> *Id.*

<sup>209</sup> *See* SCARCE, *supra* note 46, at 99; WEYLER, *supra* note 196, at 543.

<sup>210</sup> SEA SHEPHERD, *supra* note 30, at 233.



The *Sea Shepherd* attempted to make for Spanish territorial waters to avoid Portuguese retribution, but was overhauled and apprehended by a Portuguese destroyer.<sup>211</sup>

As a result of the collisions, the *Sierra* was badly damaged and would require approximately one million dollars for repairs.<sup>212</sup> All three SSCS crewmen were arrested and Portuguese authorities, pending the outcome of the case, confiscated the *Sea Shepherd*.<sup>213</sup> After being captured, the *Sea Shepherd* was docked at Leixões since the authorities were uncertain how to proceed.<sup>214</sup> A Liberian company, Ultra-Marine Shipping, filed suit against Paul Watson, and the Portuguese police impounded the ship and seized its crew's passports.<sup>215</sup>

Following the ramming of the *Sierra*, according to Watson:

The authorities really didn't know what to do about us. It was obvious that a crime had been committed, but technically the *Sierra* did not exist, because trading whale meat to the Japanese was illegal and therefore the whalemeat that had regularly been offloaded at Portuguese docks and reloaded onto Japanese refer ships did not officially exist either. This meant, of course, that the *Sea Shepherd* could not have actually rammed a vessel that did not exist.<sup>216</sup>

The three activists eventually escaped Portugal, with Jerry Doran "sw[imming] across the river to Spain," Peter Woof "simply hopp[ing] on a bicycle . . . and cycl[ing] north over the mountains", and Paul Watson flying out using his "Canadian seaman's book" in place of a passport.<sup>217</sup> A court hearing in Portugal never occurred. According to Watson, "[f]urther inquiries with some of the reporters I had met a few months before suggested that the judge had taken \$60,000 (United States currency) from Richard Shepherd, business manager for Andrew Behr, the listed owner of the ship."<sup>218</sup> Watson and the SSCS were eventually served with a demand to pay \$750,000 in fines and damages for the return of their ship.<sup>219</sup>

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<sup>211</sup> See SCARCE, *supra* note 46, at 99; WEYLER, *supra* note 196, at 543.

<sup>212</sup> OCEAN WARRIOR, *supra* note 34, at 23.

<sup>213</sup> *Id.*

<sup>214</sup> *Id.*

<sup>215</sup> See SCARCE, *supra* note 46, at 99; WEYLER, *supra* note 196, at 543–44.

<sup>216</sup> OCEAN WARRIOR, *supra* note 34, at 6.

<sup>217</sup> *Id.* at 23.

<sup>218</sup> *Id.* at 25.

<sup>219</sup> SCARCE, *supra* note 46, at 99.



Fearful that the ship would be converted into a whaling vessel, Watson suggested burning it.<sup>220</sup> A crew member responded, “[n]o, much too messy. We should scuttle her.”<sup>221</sup> Thus on December 31, three members of SSCS, including Watson, made their way on board to the engine room, disconnected the bolts on the sea valve and sank their own ship.<sup>222</sup>

After the *Sierra* incident, Lloyd’s of London declined to pay out insurance for the *Sierra*, as it was registered illegally and “cancelled policies with other whalers.”<sup>223</sup> The *Sierra* was subsequently destroyed in suspicious circumstances.<sup>224</sup> As Watson tells the story, he received an anonymous phone call and met up with an individual (whose identity he promised to keep confidential) who offered to “finish off” what Watson and his team had started when they rammed the *Sierra*.<sup>225</sup> According to this individual, he “represented a small group of concerned professionals who had the means and the skills to help the whales.”<sup>226</sup> He further claimed that he and his team “have the funding and the technical skills to finish off what [he] started.”<sup>227</sup>

On February 6, 1980 a bomb destroyed the newly refitted *Sierra* in Lisbon’s port with an anonymous caller to the press offices of United Press International stating “[t]he *Sierra* will kill no more whales! We did it for the *Sea Shepherd*.”<sup>228</sup> Within the next few weeks two of Spain’s five whaling ships were also destroyed (allegedly by the same three bombers who sunk the *Sierra*).<sup>229</sup> There were no injuries sustained by the personnel in the attacks and the bombers were never apprehended.<sup>230</sup> Watson had the perfect alibi regarding the bombings since he was sitting in a courtroom in Quebec when he received the news that the *Sierra* had been destroyed in Lisbon Harbor.<sup>231</sup>

According to Heller, following his encounter with the *Sierra*, Watson “got a taste for the immediate, undeniable results of direct ‘enforcement.’”<sup>232</sup>

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<sup>220</sup> OCEAN WARRIOR, *supra* note 34, at 25.

<sup>221</sup> *Id.*

<sup>222</sup> *See id.* at 26.

<sup>223</sup> *Sea Shepherd History*, *supra* note 89, at 4.

<sup>224</sup> *See* OCEAN WARRIOR, *supra* note 34, at 31.

<sup>225</sup> *Id.* at 30.

<sup>226</sup> *Id.*

<sup>227</sup> *Id.*

<sup>228</sup> SCARCE, *supra* note 46, at 100.

<sup>229</sup> *Id.*

<sup>230</sup> *Id.*

<sup>231</sup> SEA SHEPHERD, *supra* note 30, at 247.

<sup>232</sup> HELLER, *supra* note 124, at 32.

Following the ramming of the *Sierra*, Watson was asked to do various media interviews in the United States.<sup>233</sup> Regarding such interviews, Watson declared, "[T]here isn't much point in ramming a whaler if you can't tell the world that you did so. In a media culture, a thing just doesn't happen unless the media covers it. We need to send a message loud and clear that whaling isn't going to be tolerated any longer."<sup>234</sup> Up until this point, "it was assumed that the issue of pirate whaling was an issue of state jurisdiction" only.<sup>235</sup> The actions of SSCS in sinking the *Sierra* represented "a fundamental assault" on state prerogatives to deal with on-going piracy.<sup>236</sup> Further, it demonstrated that SSCS, operating in a "legal gray area," could take militant direct action.<sup>237</sup>

### C. *Actions Following the Sinking of the Sierra*

Following the *Sierra* incident, the Sea Shepherds were involved in a range of further actions. In 1981, Watson secretly entered Siberia and successfully obtained documented evidence that a "food-processing facility . . . was converting illegally harvested whale meat into feed for animals at a fur farm."<sup>238</sup> In 1982 the organization dropped "paint-filled light bulbs" onto a Soviet vessel from a low flying plane.<sup>239</sup> Following the light bulb incident in 1982, Watson was arrested and charged with violating several sections of the Canadian Aeronautics Act.<sup>240</sup> As the opposing crew could not be subpoenaed for court, Watson was the only witness to the incident and was released.<sup>241</sup>

However, the group's focus remained the prevention of whaling ships carrying out their operations. In 1981, Sea Shepherd agents allegedly sank the *Isba I* and *Isba II*, both ships used for whaling, in the Spanish harbor of Viga.<sup>242</sup> Watson later called a press conference to announce that the group had been involved in the sinkings, virtually daring the Spanish authorities to act on the information.<sup>243</sup> At the same conference,

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<sup>233</sup> SEA SHEPHERD, *supra* note 30, at 238.

<sup>234</sup> OCEAN WARRIOR, *supra* note 34, at 21.

<sup>235</sup> Gerry Nagtzaam & Peter Lentini, *Vigilantes on the High Seas?: The Sea Shepherds and Political Violence*, 20 *TERRORISM & POLITICAL VIOLENCE* 120, 123 (2007).

<sup>236</sup> *Id.*

<sup>237</sup> *Id.*

<sup>238</sup> Khatchadourian, *supra* note 14.

<sup>239</sup> *Id.*

<sup>240</sup> *Id.*

<sup>241</sup> *Id.*

<sup>242</sup> RADICAL ENVIRONMENTALISM, *supra* note 76, at 178.

<sup>243</sup> OCEAN WARRIOR, *supra* note 34, at 34.

Watson offered a \$25,000 reward for the sinking of any Taiwanese whaling vessel.<sup>244</sup> Following the announcement of the monetary reward and “shortly after the IWC meeting, the Taiwanese announced that they were shutting down the operations of the five illegal whalers in their nation.”<sup>245</sup> According to Watson in his essay *Tora! Tora! Tora!*, “[t]he last of the Atlantic pirate whalers, the *Astrid* was shut down after I sent an agent to the Spanish Canary Islands with a reward offer of \$25,000 US to any person who would sink her. The owners saw the writing on the wall and voluntarily retired the whaler.”<sup>246</sup>

#### D. Iceland Action

One of the most famous actions mounted by the Sea Shepherds was a daring raid at the heart of one of the remaining whaling powers: Iceland.<sup>247</sup> In 1986, the Sea Shepherds claimed responsibility for the sinking of two whaling ships and the destruction of a whaling station in Reykjavik, Iceland.<sup>248</sup> Watson justified these actions in an essay written about the raid on Reykjavik by arguing that the killing of whales is both a crime and a violation of international law.<sup>249</sup>

The militant direct action on the November 9, 1986, was undertaken by two SSCS members (Rod Coronado and David Howitt), with the help of unidentified locals against the Icelandic whalers.<sup>250</sup> The whaling station (Reykjavik) was disabled and two vessels, out of a fleet of four, were sunk (*Hvalur 6*, *Hvalur 7*).<sup>251</sup> The other two could not safely be

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<sup>244</sup> *Id.*

<sup>245</sup> *Id.*

<sup>246</sup> RADICAL ENVIRONMENTALISM, *supra* note 76, at 178.

<sup>247</sup> Iceland has a somewhat “checkered history with whaling” that continues to this day. Teale Phelps Bondaroff, *Throwing a Wrench into Things: The Strategy of Radical Environmentalism*, 10 J. MIL. & STRATEGIC STUD. 1, 16 (2008) [hereinafter *Throwing a Wrench into Things*]. The country joined the IWC moratorium in 1989, then left the IWC in 1992, and rejoined in 2002. *Id.*; see also Alex Kirby, *Iceland Bids to Resume Whaling*, BBC NEWS (Apr. 3, 2003), <http://news.bbc.co.uk/2/hi/science/nature/2910655.stm>.

<sup>248</sup> See RADICAL ENVIRONMENTALISM, *supra* note 76, at 178.

<sup>249</sup> Paul Watson, *Raid on Reykjavik*, in RADICAL ENVIRONMENTALISM, *supra* note 76, at 172 [hereinafter *Raid on Reykjavik*]. In the same essay (regarding the raid on Reykjavik), Watson describes that it was Rod Coronado’s idea to commit a commando style action in Iceland. *Id.* at 174. Initially Coronado and David Howitt got jobs in Iceland in the local fish processing plant, and then for three weeks scouted the sites and worked out the security watches. *Id.*

<sup>250</sup> *Throwing a Wrench into Things*, *supra* note 247, at 15.

<sup>251</sup> *Our History*, *supra* note 16.

wrecked without the potential to cause personal injury, as one had a crewman aboard it and the other was in drydock, so they were not targeted.<sup>252</sup> Actions were thoroughly planned out to ensure the safety of everyone involved, including non-activists, and the same method of disabling the ships was employed with the *Sea Shepherd*: removing bolts from the sea-cocks.<sup>253</sup> A more forceful method was employed with the whaling station where the activists used sledgehammers.<sup>254</sup> The damage to the ships was later estimated to be \$2.8 million, in addition to the \$1.8 million of damage caused to the station.<sup>255</sup>

Although the vessels were eventually successfully recovered, they were effectively scrap metal.<sup>256</sup> Very few previous campaigns had been so successful in drawing the international attention of the global media to ongoing whaling.<sup>257</sup> Following this incident, some Icelandic government officials referred to the Sea Shepherds as terrorists for their actions.<sup>258</sup> In 1988, Watson attempted to put even more pressure on the Icelandic government over the issue when he tried to surrender to Icelandic officials claiming responsibility for the sabotage.<sup>259</sup> However, once he realized he was facing several years in prison over the criminal matter, he retracted his statement.<sup>260</sup> Since there was no further incriminating evidence against Watson, he was ordered to leave Iceland and declared *persona non grata* within the jurisdiction.<sup>261</sup> Manes, however, argues that although Iceland threatened to extradite Watson over the sabotage, once he was in the country focusing global attention on continued Icelandic whaling, the government wanted nothing to do with the matter.<sup>262</sup> The support of the locals in carrying out this action caused many Icelanders to reflect on the nation's continued whaling activities, and many concluded that whaling was morally wrong and Iceland should discontinue such activities.<sup>263</sup>

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<sup>252</sup> *Raid on Reykjavik*, *supra* note 249, at 174.

<sup>253</sup> *See id.* at 174–75.

<sup>254</sup> *Id.* at 174.

<sup>255</sup> *Id.* at 175.

<sup>256</sup> *See* DEAN KUIPERS, OPERATION BITE BACK: ROD CORONADO'S WAR TO SAVE THE AMERICAN WILDERNESS 33 (1st ed., 2009).

<sup>257</sup> *See* Sveinn Birkir Björnsson, *Whaler Down*, REYKJAVÍK GRAPEVINE (Mar. 11, 2006), <http://www.grapevine.is/Home/ReadArticle/Whaler-Down>.

<sup>258</sup> *Id.*

<sup>259</sup> *See* MANES, *supra* note 48, at 117.

<sup>260</sup> *See* Black, *supra* note 53.

<sup>261</sup> *See id.*

<sup>262</sup> *See* MANES, *supra* note 48, at 117.

<sup>263</sup> *Throwing a Wrench into Things*, *supra* note 247, at 16.

In 1992 SSCS was implicated in an attempt to sink the *Nybraena* in the Lofoten Islands, Norway, but the activists were ultimately unsuccessful, leaving the ship functional but water damaged.<sup>264</sup> Watson was arrested and convicted for attempting to sink a Norwegian ship and spent eighty days in jail.<sup>265</sup> In 1993, a similar attempt was made to sink the *Senet* in Gressvik harbor, but SSCS again was unsuccessful with that ship only suffering water damage.<sup>266</sup>

*E. 2002 Costa Rica Campaign Against Shark-Finining*

In 2002 a SSCS vessel came across an illegal shark finning operation, run by the Costa Rican ship the *Varadero*.<sup>267</sup> As a Costa Rican vessel, it had no permit to fish outside Costa Rica or within Guatemala.<sup>268</sup> The Sea Shepherd reportedly contacted Guatemalan authorities, which asked them to escort the vessel to port for arrest.<sup>269</sup> "Sharkwater," filmed by a documentary crew aboard the SSCS vessel, shows Sea Shepherd personnel asking the crew of the *Varadero* to release the lines, but being ignored.<sup>270</sup> The *Sea Shepherd* then positioned itself to sink their line and stop the *Varadero* from continuing to haul in sharks, resulting in a T-collision.<sup>271</sup> The *Varadero* refused to stop and attempted to escape.<sup>272</sup> The Sea Shepherds chased the *Varadero* with water cannons with the aim of flooding or stalling the ship's engines.<sup>273</sup> The *Varadero* was then rammed by the *Sea Shepherd* and finally agreed to follow them back to port.<sup>274</sup>

In a telephone interview about the incident, "Captain Hammarstedt [of the SSCS] said the group took control of the boat, the *Varadero I*, at the urging of the Guatemalan authorities but that 'the tables turned,' with

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<sup>264</sup> Doug Mellgren, *American Environmentalist Group Sabotages Whaling Ship*, ASSOCIATED PRESS (Dec. 28, 1992, 1:30 PM), <http://www.apnewsarchive.com/1992/American-Environmentalist-Group-Sabotages-Whaling-Ship/id-7c1bb14ad4d73e0ae3c0ded6b4e3d6bb>.

<sup>265</sup> See Khatchadourian, *supra* note 14.

<sup>266</sup> See Doug Mellgren, *Sailing with Norwegian Whalers in the Arctic*, ASSOCIATED PRESS (June 25, 1995, 2:31 PM), <http://www.apnewsarchive.com/1995/Sailing-With-Norwegian-Whalers-in-the-Arctic/id-f9f72f7d07003746f3de2076b3b03be7>.

<sup>267</sup> *Captain Paul Watson Arrested in Frankfurt, Germany on Warrant Issued by Costa Rica*, SEA SHEPHERD (May 13, 2012), <http://www.seashepherd.org/news-and-media/2012/05/13/captain-paul-watson-arrested-in-frankfurt-germany-on-warrant-issued-by-costa-rica-1374> [hereinafter *Captain Paul Watson Arrested in Frankfurt*].

<sup>268</sup> SHARKWATER (Canada Alliance Films 2006).

<sup>269</sup> *Id.*

<sup>270</sup> *Id.*

<sup>271</sup> *Id.*

<sup>272</sup> *Id.*

<sup>273</sup> *Id.*

<sup>274</sup> SHARKWATER, *supra* note 268.

the Guatemalans dispatching a gunboat to arrest Captain Watson.”<sup>275</sup> Why the Guatemalan authorities took this action is still unclear.<sup>276</sup> In response, “[t]he Sea Shepherd vessel took flight, sailing to the Costa Rican port of Punto Arenas.”<sup>277</sup> The Sea Shepherds stated that “[t]he Costa Rican authorities charged Captain Watson with violating navigational regulations.”<sup>278</sup> The SSCS “says the charges were eventually dropped but later reinstated” by another prosecutor, with an arrest warrant issued in October 2011.<sup>279</sup>

However, other reports, including the *Sharkwater* documentary, maintain that subsequent to these events, the *Varadero* crew accused Watson of ramming their vessel and Watson was charged with attempted murder for his actions.<sup>280</sup> The charges were initially dismissed when a video of the incident, which was captured by the documentary crew, was shown to the prosecutor.<sup>281</sup> However, in Costa Rica a defendant can be jailed for up to a year pending an official investigation.<sup>282</sup> Freeman recounts that even when the Sea Shepherds were granted permission to leave they were pursued, leading to the bizarre event of them tossing a copy of the documents authorizing their ship’s release in a bottle to a Costa Rican patrol boat.<sup>283</sup>

In “Sharkwater,” another version of events is told.<sup>284</sup> Back on their vessel, Watson and Stewart were contacted by their lawyer who informed them that the Coast Guard was on the way to indefinitely detain them.<sup>285</sup> As a result, the *Sea Shepherd* pulled anchor and ran for international waters.<sup>286</sup> Soon after, the Coast Guard is shown chasing them with machine guns, threatening to shoot if they refuse to stop.<sup>287</sup> The Sea Shepherds

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<sup>275</sup> Kelly Slivka, *Germany Detains Activist ‘Whale Wars’ Captain*, N.Y. TIMES GREEN BLOG (May 16, 2012, 4:11 PM), <http://green.blogs.nytimes.com/2012/05/16/germany-detains-activist-captain-connected-with-whale-wars/>.

<sup>276</sup> *See id.*

<sup>277</sup> *Id.*

<sup>278</sup> *Id.*

<sup>279</sup> *Id.*

<sup>280</sup> SHARKWATER, *supra* note 268. In the DVD it is recounted that the Costa Rican authorities initially charged the Sea Shepherd crew with seven counts of attempted murder. *Id.*

<sup>281</sup> Shiv Malik, *Paul Watson, Anti-Whaling Campaigner, Held in Germany over 2002 Incident*, GUARDIAN (May 14 2012, 7:29 PM), <http://www.theguardian.com/environment/2012/may/14/paul-watson-arrested-germany-sea-shepherd>.

<sup>282</sup> Don Freeman, *Can Paul Watson Get a Fair Trial in Costa Rica?*, COSTA RICA STAR (May 26, 2012), <http://news.co.cr/can-paul-watson-get-a-fair-trial-in-costa-rica/7193/>.

<sup>283</sup> *Id.*

<sup>284</sup> SHARKWATER, *supra* note 268.

<sup>285</sup> *Id.*

<sup>286</sup> *Id.*

<sup>287</sup> *Id.*



decided to string barbed wire around the edges of the ship to prevent being boarded.<sup>288</sup> In the end, the Sea Shepherds outran the Coast Guard to the safety of international waters.<sup>289</sup> While perceived as a relatively minor incident in a long-running campaign, this action had far reaching consequences for Watson and SSCS in 2012 when the Costa Rican Authorities re-opened the matter.<sup>290</sup>

*F. The Sea Shepherds vs. Japanese Scientific Whaling*

For the last two decades, the main aim of SSCS has been ending Japanese whaling that continues under the rubric of “scientific research” in Antarctic waters.<sup>291</sup> The SSCS appears to believe that ending Japanese whaling would sound the death knell for the global whaling industry given the Japanese industries’ long involvement in whaling.<sup>292</sup> The group continues to claim that the Japanese government is using “scientific research” as a front to allow illegal whale hunting.<sup>293</sup> Watson and the Sea Shepherds have become the lone activist group campaigning against Antarctic whaling since Greenpeace discontinued their participation in protesting the Antarctic hunts.<sup>294</sup>

The conflict between Japanese whalers and SSCS has been getting more aggressive in recent years.<sup>295</sup> The Japanese government claims that the Sea Shepherd group has continually threatened the lives of whalers with their methods of protest.<sup>296</sup> Watson claims that the Japanese government is desperate to stop the Sea Shepherds because of the strain the activist campaign has had on its domestic whaling industry.<sup>297</sup> This section

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<sup>288</sup> *Id.*

<sup>289</sup> *Id.*

<sup>290</sup> See *infra* notes 387–418 (giving further details of the Costa Rican authorities attempts to extradite Paul Watson over this issue).

<sup>291</sup> See *The Whales’ Navy*, SEASHEPHERD, <http://www.seashepherd.org/whales> (last visited Mar. 30, 2014).

<sup>292</sup> See generally *Operation Divine Wind*, SEA SHEPHERD, <http://www.seashepherd.org/campaigns/operation-divine-wind/operation-divine-wind/> (last visited Mar. 30, 2014).

<sup>293</sup> *Japanese Media Report Arrest Warrant Issued for Sea Shepherd Leader Paul Watson*, L.A. TIMES BLOG (Apr. 30, 2010, 6:25 PM), <http://latimesblogs.latimes.com/unleashed/2010/04/japanese-media-reports-arrest-warrant-issued-for-sea-shepherd-leader-paul-watson.html> [hereinafter *Japanese Media Report*].

<sup>294</sup> See *Greenpeace Changes Tactic on Whaling in Japan*, NBC NEWS (Dec. 9, 2008, 1:12 PM), [http://www.nbcnews.com/id/28141932/ns/world\\_news-world\\_environment/t/greenpeace-changes-tactic-whaling-japan/#.UwQmPYX-rZw](http://www.nbcnews.com/id/28141932/ns/world_news-world_environment/t/greenpeace-changes-tactic-whaling-japan/#.UwQmPYX-rZw).

<sup>295</sup> *Japanese Media Report*, *supra* note 293.

<sup>296</sup> See *id.*

<sup>297</sup> *Id.* For example, on February, 9 2007, the Sea Shepherd’s *Farley Mowat* and *Robert Hunter* engaged with the Japanese factory ship *Nisshin Maru*. *Whalers Activities Disrupted*



details some of the more serious incidents that have occurred between the two combatants, including boarding of vessels by SSCS activists, ramming of vessels by SSCS, Japanese vessels putting lives at risk, and in one case, a SSCS ship sinking.

### 1. The Tactic of Boarding Japanese Whaling Vessels

In the 2008–09 whaling season, two men, Australian Benjamin Potts and British citizen Giles Lane, boarded the *Yushin Maru No. 2* whaling vessel and ended up tied to the radar mast.<sup>298</sup> The men were urged on by Watson while knowing they could potentially be shot for boarding the ship, or arrested and jailed.<sup>299</sup> Watson worked hard as shown in “Whale Wars” to convince crewmembers to do so to the disgust of several others.<sup>300</sup> The aim appeared to be to create a media controversy over Japan’s treatment of the boarders. The men were eventually released into the custody of the Australian Customs vessel *Oceanic Viking*.<sup>301</sup>

### 2. The *Ady Gil* Sinking

In the 2009–2010 whaling season the Japanese whaling vessel *Shonan Maru #2* cut the high-tech *Ady Gil* in two, paralyzing her.<sup>302</sup> The

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by *Sea Shepherd*, SEA SHEPHERD (Feb. 9, 2007, 8:30 AM), <http://www.seashepherd.org/news-and-media/2007/02/08/whalers-activities-disrupted-by-sea-shepherd-728>. According to the organization’s news releases, Sea Shepherd crew conducted attacks in which they “delivered six liters of butyric acid onto the flensing deck of the *Nisshin Maru*. This ‘butter acid’ is a nontoxic obnoxious smelling substance. The foul smell . . . cleared the flensing deck and stopped all work of cutting up whales.” *Id.* The Japanese contend that Sea Shepherd also threw smoke bombs on the *Nisshin Maru*’s deck (this was later confirmed on video tape), and Institute for Cetacean Research’s Hiroshi Hatanaka said bottles of butyric acid hit two crewmen. See Andrew Darby, *Film Shows Attempts to Stop Whalers*, THE AGE (Feb. 12, 2007), <http://www.theage.com.au/news/national/film-shows-attempts-to-stop-whalers/2007/02/11/1171128813835.html>. In a statement Hatanaka claimed, “[o]ne of [the] crewmen is having difficulty opening his eye because of the acid, but the full extent of his injuries has yet to be determined.” *Id.*

<sup>298</sup> See *Sea Shepherd Crew Remain Hostages on the Japanese Whaling Ship*, SEA SHEPHERD (Jan. 16, 2008), <http://www.seashepherd.org/news-and-media/2008/10/26/sea-shepherd-crew-remain-hostages-on-the-japanese-whaling-ship-587>.

<sup>299</sup> See *Whale Wars: Nothing’s Ideal* (Animal Planet television broadcast Nov. 14, 2008).

<sup>300</sup> *Id.*

<sup>301</sup> See *Japanese Poachers Release Sea Shepherd Hostages*, SEA SHEPHERD (Jan. 18, 2008), <http://www.seashepherd.org/news-and-media/2008/10/26/japanese-poachers-release-sea-shepherd-hostages-585>.

<sup>302</sup> See Andrew Darby, *Japanese Ship Destroys Whale Protest Boat Ady Gil*, SYDNEY MORNING HERALD (Jan. 6, 2010), <http://www.smh.com.au/environment/whale-watch/japanese-ship-destroys-whale-protest-boat-ady-gil-20100106-ltp4.html> [hereinafter *Japanese Ship*].

*Shonan Maru* was at the time providing security for the whaling vessels.<sup>303</sup> According to Watson, the *Ady Gil* was near Commonwealth Bay (south of Hobart) when it was, without warning, rammed by the security vessel.<sup>304</sup> The captain of the *Ady Gil*, Pete Bethune, claimed that the Japanese whaler (weighing approximately 1000 tons) approached the *Ady Gil* (weighing approximately 18 tons) from about 75 meters away and while most of its crew were on deck.<sup>305</sup> Bethune was adamant that his vessel was idling, communicating with activists aboard the *Bob Barker* when the impact occurred.<sup>306</sup> Bethune thought the Japanese vessel was simply going to use a water cannon as a deterrent, but instead the *Ady Gil* was rammed.<sup>307</sup> A crewman aboard the *Ady Gil* received minor injuries (two broken ribs) as a result of the collision.<sup>308</sup>

Pete Bethune accused the *Shonan Maru 2* crew of “attempted murder,” claiming that the Japanese vessel intentionally collided with the activist vessel.<sup>309</sup> Watson alleged that the act was deliberate and “sheared the bow right off.”<sup>310</sup> As a result of the collision between the Sea Shepherd’s vessel *Ady Gil* and the Japanese whaling ship *Shonan Maru*, the *Ady Gil* sunk as it was being towed.<sup>311</sup> The force of the initial collision destroyed the bow of the activist vessel.<sup>312</sup> Watson claims that despite being responsible

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*Destroys*]; Thomas Hunter, *Whaling Fleet More Violent Than Ever: Sea Shepherd*, THE AGE (Jan. 7, 2010), <http://www.theage.com.au/environment/whale-watch/whaling-fleet-more-violent-than-ever-sea-shepherd-20100106-lubs.html> [hereinafter *Whaling Fleet More Violent Than Ever*].

<sup>303</sup> *Japanese Ship Destroys*, *supra* note 302.

<sup>304</sup> *Id.*

<sup>305</sup> See Andrew Darby & Jonathon Pearlman, *Whaling War Set to Worsen After Crash*, SYDNEY MORNING HERALD (Jan. 8 2010, 12:48 AM), <http://www.smh.com.au/environment/whale-watch/whaling-war-set-to-worsen-after-crash-20100106-luej.html>; *Whaling Fleet More Violent Than Ever*, *supra* note 302.

<sup>306</sup> See *Whaling Fleet More Violent Than Ever*, *supra* note 302.

<sup>307</sup> *Id.*

<sup>308</sup> *Ady Gil Sinks After Collision*, THE AGE (Jan. 8, 2010), <http://www.theage.com.au/national/ady-gil-sinks-after-collision-20100108-lxlh.html>.

<sup>309</sup> Cortlan Bennett, *Ady Gil Captain Tells of Ramming at Sea*, SYDNEY MORNING HERALD (Jan. 28, 2010, 6:39 AM), <http://news.smh.com.au/breaking-news-national/ady-gil-captain-tells-of-ramming-at-sea-20100128-n08v.html>.

<sup>310</sup> *Sea Shepherd Boat Crippled When Struck by Whaler*, JAPAN TIMES (Jan. 7, 2010), <http://www.japantimes.co.jp/news/2010/01/07/national/sea-shepherd-boat-crippled-when-struck-by-whaler/#.UwRKT4X-rZw>.

<sup>311</sup> See *Japanese Ignored Distress Calls from Ady Gil, Watson Says*, SYDNEY MORNING HERALD (Jan. 8, 2010), <http://www.smh.com.au/environment/japanese-ignored-distress-calls-from-ady-gil-watson-says-20100108-lxg2.html> [hereinafter *Japanese Ignored Distress Calls*].

<sup>312</sup> *Sea Shepherd Vessel Ady Gil Has Bow Sheared Off After Being Struck by Japanese Whaling Ship*, L.A. TIMES BLOG (Jan. 6, 2010, 7:00 AM), <http://latimesblogs.latimes>

for the collision and subsequent sinking, the Japanese whaling vessels ignored distress calls and did not act to aid the *Ady Gil* or its crew as it was sinking.<sup>313</sup> Watson was outspoken when asked if he thought the whaling vessels should have offered assistance and stated that his society's commitment to the whales would not decrease, declaring, "[w]e now have a real whale war on our hands."<sup>314</sup>

Not surprisingly, the Japanese Fisheries Agency told a different story, blaming the collision on the Sea Shepherd, arguing the ship's crew had tried to ward off the *Ady Gil* with a water cannon initially, but the ship employed reducing speed maneuvers going from idling to full-steam-ahead tactics, which brought about the collision.<sup>315</sup> Japanese video of the collision between the *Ad Gil* and the *Shonan Maru 2* shows a "frothy wake" coming from the activist vessel, though evidence from the video is inconclusive regarding whether or not it was moving at the time of the crash.<sup>316</sup> The video evidence shows the *Ady Gil* "stalking" the vessel and dragging ropes from the rear of the ship.<sup>317</sup> The Institute of Cetacean Research went on to accuse the *Ady Gil* of coming within "collision distance" of the Japanese vessel and using the ropes to "entangle . . . the rudder and propeller."<sup>318</sup> Further, the video reportedly shows the *Ady Gil* increasing speed and deliberately entering the path of the *Shonan Maru 2*.<sup>319</sup>

### 3. Boarding of the *Shonan Maru 2* and Captain Bethune's Citizen's Arrest

Then, the situation escalated further when Pete Bethune, the New Zealand captain of the sunken *Ady Gil* boarded a Japanese security ship on February 15, 2010, in order to effect a citizen's arrest on the captain for attempted murder of himself and his crew.<sup>320</sup> It has been reported that

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.com/outposts/2010/01/sea-shepherd-vessel-ady-gil-has-bow-sheared-off-after-being-struck-by-japanese-whaling-vessel.html.

<sup>313</sup> *Japanese Ignored Distress Calls*, *supra* note 311.

<sup>314</sup> Darby & Pearlman, *supra* note 305.

<sup>315</sup> Mark McDonald, *Anti-Whaling Vessel Damaged in a Collision at Sea*, N.Y. TIMES, Jan. 6, 2010, at A10, available at <http://www.nytimes.com/2010/01/07/world/asia/07whales.html?fta=y>.

<sup>316</sup> *Id.*

<sup>317</sup> *Japanese Ship Destroys*, *supra* note 302.

<sup>318</sup> *Id.*

<sup>319</sup> Darby & Pearlman, *supra* note 305.

<sup>320</sup> *Anti-Whaling Activist Boards Japanese Ship to Arrest Captain for Destruction of Protest Vessel*, MAILONLINE (updated Feb. 15, 2010, 5:35 AM), <http://www.dailymail.co>

Bethune was able to climb aboard without the crew becoming aware of his presence.<sup>321</sup> At 6:30 AM, Pete Bethune approached the crew of the Japanese vessel, *Shonan Maru 2*.<sup>322</sup> The Sea Shepherd's filmed the exchange via helicopter.<sup>323</sup> Paul Watson called this boarding a "mission impossible" and gave Bethune only a "50/50 chance" of being successful.<sup>324</sup> Watson points out that Bethune had to "dodge nets and spikes on the outside of the vessel."<sup>325</sup> Bethune reportedly planned to stay aboard the *Shonan Maru 2* until the captain agreed to his list of demands.<sup>326</sup> Once aboard, Bethune reportedly knocked on the door of the wheelhouse and "handed over a letter in Japanese saying 'I am here to arrest you.'"<sup>327</sup> Not surprisingly, he was detained and then arrested by the Japanese Coast Guard for trespass when it docked in Japan.<sup>328</sup>

The Institute for Cetacean Research confirmed that Pete Bethune boarded the *Shonan Maru 2* and has, in the past, threatened to arrest and charge protesters who board Japanese vessels.<sup>329</sup> The Japanese Fisheries Minister Hirotaka Akamatsu declared, "[a]s it is outrageously illegal behaviour, we want to deal with it strictly."<sup>330</sup> The ICR has said that Bethune used a knife to cut away defensive nets in order to successfully board the Japanese vessel and that the crew treated him for a slight injury once he

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.uk/news/article-1251092/Anti-whaling-activist-boards-Japanese-ship-arrest-captain-destruction-protest-vessel-Ady-Gil.html.

<sup>321</sup> See Cathy Alexander, *Protester Boards Japanese Whaling Vessel*, SYDNEY MORNING HERALD (Feb. 15, 2010, 6:44 PM), <http://news.smh.com.au/breaking-news-national/protester-boards-japanese-whaling-vessel-20100215-o11t.html>.

<sup>322</sup> James Murry & Chris Whitworth, *Citizen's Arrest Attempted on Japanese Whaling Captain*, 3 NEWS (Feb. 15, 2010, 2:29 AM), <http://www.3news.co.nz/Citizens-arrest-attempted-on-Japanese-whaling-captain/tabid/417/articleID/141811/Default.aspx>.

<sup>323</sup> *Id.*

<sup>324</sup> *Id.*

<sup>325</sup> *Id.*

<sup>326</sup> See *id.* Bethune gave the captain papers, which detailed the arrest of the captain of the *Shonan Maru 2* for "attempted murder" charges, following the collision and sinking of the *Ady Gil*, and a bill for three million dollars, the amount to replace the sunken vessel. *Id.*

<sup>327</sup> Alexander, *supra* note 321.

<sup>328</sup> *Japan Charges New Zealand Whaling Activist Pete Bethune*, BBC NEWS (Apr. 2, 2010), <http://news.bbc.co.uk/2/hi/8600458.stm>.

<sup>329</sup> Andrew Darby, *Activist Boards Japanese Whaler and Demands \$3.4m for Sunken Boat*, THE AGE (Feb. 16, 2010), <http://www.theage.com.au/environment/whale-watch/activist-boards-japanese-whaler-and-demands-34m-for-sunken-boat-20100215-o2wt.html>.

<sup>330</sup> Andrew Darby, *Protester May Face Charges in Japan*, JAPAN TIMES (Feb. 17, 2010), <http://www.japantimes.co.jp/news/2010/03/15/news/antiwhalingactivist-faces-charge/#.Uyu5PZWPLIU>.

was aboard.<sup>331</sup> Pete Bethune was taken into custody and taken back to Japan to face charges.<sup>332</sup>

He was then handed to Tokyo's prosecutors to face charges of trespassing in connection with boarding the *Shonan Maru 2*.<sup>333</sup> The Sea Shepherds, in order to highlight the case, compared Bethune's imprisonment to that of a prisoner of war, stating that he is "the first New Zealander taken as a 'prisoner of war' to Japan since World War II."<sup>334</sup>

Bethune initially faced up to three years of imprisonment or a fine of 100,000 yen if convicted in a Japanese court of law.<sup>335</sup> Bethune was convicted of the following charges: "trespassing, vandalism and possession of a knife."<sup>336</sup> For all charges but the assault Bethune pleaded guilty.<sup>337</sup> Although he was sentenced to two years imprisonment, the sentence was suspended for five years.<sup>338</sup> During his closing statement on June 10, Bethune tearfully apologized and expressed that he never meant to harm anyone.<sup>339</sup> He was also ordered to leave the country and return to New Zealand.<sup>340</sup>

In another ratcheting-up of the pressure, Japanese officials announced that the founder and leader of the Sea Shepherd, Paul Watson, had been placed on an wanted list in late June 2010 for "allegedly ordering Bethune's actions as part of the group's disruption of Japanese whaling in the Atlantic."<sup>341</sup>

#### 4. Third Boarding

As Paul Watson tells the story, while in Fremantle, Australia, he was approached by three people from Forest Rescue Australia—Geoffrey

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<sup>331</sup> See Tanalee Smith, *Whaling Protester in Custody on Japanese Boat*, SEATTLE TIMES (Feb. 15, 2010, 3:12 PM), [http://seattletimes.com/html/nationworld/2011085386\\_apasantarcticwhaling.html](http://seattletimes.com/html/nationworld/2011085386_apasantarcticwhaling.html).

<sup>332</sup> *Id.*

<sup>333</sup> *Antiwhaling Activist Faces Charge*, JAPAN TIMES (Mar. 15, 2010), <http://www.japantimes.co.jp/news/2010/03/15/national/antiwhaling-activist-faces-charge/>.

<sup>334</sup> Hiroshi Hiyama, *Japan Arrests Anti-Whaling Activist*, THE AGE (Mar. 12, 2010), <http://news.theage.com.au/breaking-news-world/japan-arrests-antiwhaling-activist-20100312-q204.html>.

<sup>335</sup> Smith, *supra* note 331.

<sup>336</sup> Mari Yamaguchi, *Japan Court Convicts NZ Anti-Whaling Activist*, CHINA POST (July 7, 2010), <http://www.chinapost.com.tw/asia/japan/2010/07/07/263699/Japan-court.htm>.

<sup>337</sup> *Id.*

<sup>338</sup> *See id.*

<sup>339</sup> *Id.*

<sup>340</sup> *See Activist Lashes Out at Sea Shepherd*, STUFF.CO.NZ (Oct. 7, 2010), <http://www.stuff.co.nz/the-press/news/4206365/Activist-lashes-out-at-Sea-Shepherd>.

<sup>341</sup> Yamaguchi, *supra* note 336.

Tuxworth, Simon Peterffy and Glen Pendlebury—who offered to board the *Shonan Maru 2*, the same ship Pete Bethune had boarded previously, which had tailed the *Steve Irwin* to Fremantle Port.<sup>342</sup> Watson states he advised them that the Australian government might not support them and they ran the risk of being taken prisoner but the men wanted to do something since the Australian government was failing to act.<sup>343</sup>

The three men were brought out by boat to the Sea Shepherd ship approximately sixteen miles off the coast near Bunbury, Western Australia.<sup>344</sup> Watson points out that he knew this was inside Australia's contiguous zone, where Australia exercises nautical dominion, including control of who enters and leaves Australia's territorial waters.<sup>345</sup> Watson reasoned that within the zone, Japan had no authority to remove Australian citizens without the express permission of the Australian government.<sup>346</sup>

The activists disembarked from the *Steve Irwin* via rubber dinghies and circled twelve miles back and around the *Shonan Maru 2*, guided in by the *Steve Irwin* crew with satellite navigation phones.<sup>347</sup> To confound the Japanese ship, and aware the Japanese monitored the Sea Shepherd website, the crew of the *Steve Irwin* posted that the ship had engine trouble, necessitating repairs.<sup>348</sup> When the *Steve Irwin* stopped, so did the *Shonan Maru 2*.<sup>349</sup> The three men attempting to board would have to defeat large spikes, razor wire and armed Japanese Coast Guard officers.<sup>350</sup> However, they had studied photos of the defenses and believed they could do so.<sup>351</sup> Initially there was a problem when one boarding vessel engine failed, but Watson ordered the mission to be completed using the Delta boat.<sup>352</sup> The three men successfully boarded the Japanese ship after the Delta used its bow to create a space between two spikes and the three men climbed through the hole in the razor wire.<sup>353</sup>

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<sup>342</sup> Paul Watson, *Forest Rescue Men Go Out on a Limb for Sea Shepherd*, SEA SHEPHERD (Jan. 7, 2012), <http://www.seashepherd.org/commentary-and-editorials/2012/01/07/forest-rescue-men-go-out-on-a-limb-for-sea-shepherd-502> [hereinafter *Forest Rescue Men*].

<sup>343</sup> *Id.*

<sup>344</sup> *Id.*

<sup>345</sup> *Id.*

<sup>346</sup> *Id.*

<sup>347</sup> *Id.*

<sup>348</sup> *Forest Rescue Men*, *supra* note 342.

<sup>349</sup> *Id.*

<sup>350</sup> *Id.*

<sup>351</sup> *Id.*

<sup>352</sup> *Id.*

<sup>353</sup> *Id.*



However, the Sea Shepherd strategy initially backfired when the Australian Attorney-General Nicola Roxon publicly noted that the three men had been detained by the Japanese whalers whilst in international waters.<sup>354</sup> The Japanese whalers alleged that when the boarding took place, their vessel was forty-four kilometers offshore, outside the twenty-four-mile contiguous zone.<sup>355</sup> The Sea Shepherds rejected that claim, arguing that their GPS device showed the incident took place 16.2 miles off the beach at 32° 57' 48" South and 115° 20' 24" East.<sup>356</sup> The Australian government then stated that it would forward the cost of bringing back the three boarders to the Sea Shepherd organization, an assertion that Paul Watson refused to countenance.<sup>357</sup>

The Sea Shepherds argued that the three men were being abducted from Australian territorial waters as the *Shonan Maru 2* headed toward Antarctica.<sup>358</sup> On January 10th a deal was struck—the three boarders would be released, with the Australian government sending a ship to rendezvous with the Japanese whaling vessel to take custody of the men.<sup>359</sup> Paul Watson maintained that the operation had been a great success since it focused global media attention on Japanese whaling and got the global community and leaders talking about the issue of whaling.<sup>360</sup> On January 13th the three men were transferred to the Australian vessel *ACV Ocean Protector* and brought back to Australia three days later.<sup>361</sup>

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<sup>354</sup> See Paul Watson, *The Bullshit Politics of Betrayal*, SEA SHEPHERD (Jan. 8, 2012), <http://www.seashepherd.org/commentary-and-editorials/2012/01/08/the-bullshit-politics-of-betrayal-503>.

<sup>355</sup> See 32° 57' 48" South and 115° 20' 24" East, SEA SHEPHERD (Jan. 9, 2012), <http://www.seashepherd.org/news-and-media/2012/01/09/32-57-48-south-and-115-20-24-east-1310> (this is the position of the *Shonan Maru #2* when it was boarded by the three brave activists from Forest Rescue at 0430 hours on January 8th).

<sup>356</sup> *Id.*

<sup>357</sup> See Paul Watson, *Our Sincere Apologies, Prime Minister*, SEA SHEPHERD (Jan. 9, 2012), <http://www.seashepherd.org/commentary-and-editorials/2012/01/09/our-sincere-apologies-prime-minister-504>.

<sup>358</sup> *Australian Whale Defenders on Their Way to Antarctica Against Their Will*, SEA SHEPHERD (Jan. 9, 2012), <http://www.seashepherd.org/news-and-media/2012/01/09/australian-whale-defenders-on-their-way-to-antarctica-against-their-will-1311>.

<sup>359</sup> See Paul Watson, *Heroes of Forest and Sea to Be Freed*, SEA SHEPHERD (Jan. 10, 2012), <http://www.seashepherd.org/commentary-and-editorials/2012/01/10/heroes-of-forest-and-sea-to-be-freed-505>.

<sup>360</sup> See *id.*; Paul Watson, *Focusing Attention on Things That Matter Is Always Positive*, SEA SHEPHERD (Jan. 15, 2012), <http://www.seashepherd.org/commentary-and-editorials/2012/01/15/focusing-attention-on-things-that-matter-is-always-positive-508>.

<sup>361</sup> *Australian Protesters Safely Transferred to ACV Ocean Protector*, SEA SHEPHERD (Jan. 13, 2012), <http://www.seashepherd.org/news-and-media/2012/01/13/australian-protesters-safely>



G. *Pete Bethune v. Paul Watson*

An ugly internal spat threatened to tear the SSCS wide open and it revolved around the issue of weapons on board SSCS vessels. While on trial in Japan, Pete Bethune was formally expelled from the SSCS for violating its policy on weapons.<sup>362</sup> As Bethune had admitted to having the weapons onboard in a filmed documentary, the Sea Shepherds felt they had no choice but to eject him from the organization.<sup>363</sup> Bethune admitted he was carrying a bow and arrow but claimed to have permission to have it on board.<sup>364</sup> The Sea Shepherd organization has stated that it expelled Bethune because “he violated its policies against carrying weapons.”<sup>365</sup> The organization conceded that he was in possession of a bow and arrows while aboard the *Ady Gil*, although they were never used.<sup>366</sup>

Pete Bethune then resigned from his position in the Sea Shepherds, accusing the organisation of being “morally bankrupt” and purposefully sinking the *Ady Gil* following a high profile collision with a Japanese whaling vessel.<sup>367</sup> Bethune claims Watson ordered the sinking, which was motivated by a need to “garner sympathy with the public and to create better TV.”<sup>368</sup> Bethune claims even after the initial collision the *Ady Gil* could have been repaired.<sup>369</sup> Pete Bethune then took his public feud with the Sea Shepherds to his Facebook page, claiming that Paul Watson had ordered him to deliberately sink the *Ady Gil*, one of the Sea Shepherds’ activist vessels.<sup>370</sup> Bethune argues he had no choice but to follow the direct orders, out of “loyalty” to Watson and the SSCS.<sup>371</sup>

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-transferred-to-acv-ocean-protector-1317; *Home from the Sea; Home to the Trees*, SEA SHEPHERD (Jan. 16, 2012), <http://www.seashepherd.org/news-and-media/2012/01/16/home-from-the-sea-home-to-the-trees-1318> (discussing the arrival of the three men in Australia three days after their transfer).

<sup>362</sup> See Andrew Darby, *Sea Shepherd Bans Activist Bethune from Protests*, THE AGE (June 9, 2010), <http://www.theage.com.au/national/sea-shepherd-bans-activist-bethune-from-protests-20100608-xtol.html>.

<sup>363</sup> *Id.*

<sup>364</sup> *Activist Lashes Out at Sea Shepherd*, *supra* note 340.

<sup>365</sup> Yamaguchi, *supra* note 336.

<sup>366</sup> *Id.*

<sup>367</sup> *Green Group Accused of Sinking Ship for a Stunt*, SYDNEY MORNING HERALD (Oct. 8, 2010), <http://www.smh.com.au/environment/whale-watch/green-group-accused-of-sinking-ship-for-a-stunt-20101007-169u7.html>.

<sup>368</sup> *Id.*

<sup>369</sup> *Id.*

<sup>370</sup> *Activist Lashes Out as Sea Shepherd*, *supra* note 340.

<sup>371</sup> *Id.*

It is Bethune's opinion that any organization that uses public funding has a responsibility to be honest, and that this is not occurring with the Sea Shepherds.<sup>372</sup> He has since cut all ties from the society.<sup>373</sup> Ady Gil, the United States businessman who donated one million United States dollars to the SSCS for the vessel, backs Bethune's claims.<sup>374</sup> He maintains that Watson has used "publicity stunts" in order to raise money for the society.<sup>375</sup>

Paul Watson, however, has denied all accusations that have been leveled by Bethune, claiming he is simply upset and seeking revenge for being fired.<sup>376</sup> He goes on to say that any and all action that occurred on the *Ady Gil* was under the orders of Bethune, the captain of the vessel.<sup>377</sup> Watson, however, claims that Bethune did not simply leave the group, but that he was expelled for cooperating with Japanese authorities in exchange for a lighter sentence.<sup>378</sup> Watson says that the Japanese authorities were given incorrect information when they were told that Watson ordered Bethune onto the *Shonan Maru 2*.<sup>379</sup> Watson states that this betrayal is the reason that Bethune is no longer welcome in the organization.<sup>380</sup>

Further, the SSCS leader claims that "[h]is main sticking point" is that he believes Bethune gave false and accusatory information to the Japanese authorities in exchange for a lighter sentence.<sup>381</sup> This information resulted in Watson being placed on Interpol's "Blue Watch" list.<sup>382</sup>

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<sup>372</sup> *Green Group Accused of Sinking Ship for a Stunt*, *supra* note 367.

<sup>373</sup> *Id.*

<sup>374</sup> *Id.*

<sup>375</sup> *Id.* In a setback for the SSCS, Ady Gil, the businessman and long-time supporter of the group, has stated he is suing the organization for five million (United States dollars) over the sinking of the boat named after him. Kim Choe, *Ady Gil Sues Sea Shepherd over Antarctic Sinking*, 3 NEWS (Jan. 10, 2013), <http://www.3news.co.nz/Ady-Gil-sues-Sea-Shepherd-over-Antarctic-sinking/tabid/417/articleID/282601/Default.aspx> (explaining that Ady based his claim on the information provided by former SSCS captain Pete Bethune that he was ordered to sink the vessel. Gil contends that the sinking was "an opportunity to spin the incident into a major publicity and money maker." Bethune is also currently suing the SSCS for half a million U.S. dollars for its share in purchasing the vessel from him. Watson has described the lawsuit as "frivolous," denying he ever ordered Bethune to scuttle the vessel.).

<sup>376</sup> *Green Group Accused of Sinking Ship for a Stunt*, *supra* note 367.

<sup>377</sup> *Id.*

<sup>378</sup> *Activist Lashes Out as Sea Shepherd*, *supra* note 340.

<sup>379</sup> *Id.*

<sup>380</sup> *Id.*

<sup>381</sup> See Michael Destries, *Sea Shepherd Emails that Started Online 'War of Words' Released*, ECORAZZI (Oct. 6, 2010), <http://www.ecorazzi.com/2010/10/06/sea-shepherd-emails-that-started-online-war-of-words-released/>.

<sup>382</sup> *Id.*

Interpol “issued a so-called blue notice, asking national police forces to pass on information about Mr. Watson’s whereabouts and activities.”<sup>383</sup> However, it is important to note that, at that time, Interpol had yet to issue a “notice requesting his arrest.”<sup>384</sup> Watson reportedly said, “[i]t’s a blue notice which means it’s not an arrest warrant, it’s just so they can keep tabs on me. But they needn’t have wasted their time, they could have just followed our website.”<sup>385</sup>

On March 2, 2012, Interpol declared it would not publish a Red Notice sought by Costa Rica to arrest Paul Watson over the 2002 incident, since it was not satisfied that the request to do so was in compliance with its constitution and rules.<sup>386</sup>

#### H. *Paul Watson Arrested*

In an incident that might well have vast ramifications for the SSCS, Paul Watson was arrested in Frankfurt, Germany, on May 13, 2012, on an outstanding warrant from Costa Rica while on a speaking tour.<sup>387</sup> The arrest warrant was over the confrontation in 2002 in Costa Rica where Sea Shepherd activists confronted Costa Rican fisherman over the practice of sharkfinning.<sup>388</sup> Costa Rican authorities alleged that Paul Watson

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<sup>383</sup> Mark Willacy, *Sea Shepherd’s Watson on Interpol’s Wanted List*, ABC (June 28, 2010), <http://www.abc.net.au/news/2010-06-26/sea-shepherds-watson-on-interpols-wanted-list/882422>.

<sup>384</sup> *Id.*

<sup>385</sup> *Id.*

<sup>386</sup> *Can Paul Watson Get a Fair Trial in Costa Rica?*, COSTA RICA STAR (May 26, 2012), <http://news.co.cr/can-paul-watson-get-a-fair-trial-in-costa-rica/7193/>; *INTERPOL Statement to Clarify the Record Concerning Paul Watson of the Sea Shepherd Conservation Society*, INTERPOL (May 14, 2012), <http://www.interpol.int/News-and-media/News-media-releases/2012/N20120514> [hereinafter *INTERPOL Statement*]. With a Red Notice, police forces are asked “[t]o seek the location and arrest of wanted persons with a view to extradition or similar lawful action,” while a blue notice requires national police forces “[t]o collect additional information about a person’s identity, location or activities in relation to a crime.” *Notices*, INTERPOL, <http://www.interpol.int/INTERPOL-expertise/Notices> (last visited Mar. 30, 2014). Further, “[i]n the case of Red Notices, the persons concerned are wanted by national jurisdictions for prosecution or to serve a sentence based on an arrest warrant or court decision.” *Id.* Interpol states that its “role is to assist the national police forces in identifying and locating these persons with a view to their arrest and extradition or similar lawful action.” *Id.*

<sup>387</sup> *Captain Paul Watson Arrested in Frankfurt*, *supra* note 267.

<sup>388</sup> Andrew Darby, *‘Attempted Murder’ Probe: Anti-Whaling Skipper Faces Deportation*, THE AGE (May 14, 2012), <http://www.theage.com.au/environment/whale-watch/attempted-murder-probe-antiwhaling-skipper-faces-deportation-20120514-1ylpf.html> [hereinafter

of the Sea Shepherd vessel *Farley Mowat* committed attempted murder by ramming a fishing boat, the *Varadero 1*.<sup>389</sup> The SSCS maintain the incident merely involved an "alleged violation of ship's traffic law."<sup>390</sup>

The statute of limitations on the case against Paul Watson was due to expire in June of 2013.<sup>391</sup> Costa Rican prosecutors first filed charges in 2002 against Paul Watson "for allegedly endangering the lives of eight fishermen and for attempting to cause a shipwreck."<sup>392</sup> Watson did not attend a trial there on June 26, 2006, and he was declared a fugitive by the Costa Rican courts.<sup>393</sup> Sea Shepherd spokesman Mr. Hammarstedt said that an arrest warrant against Paul Watson had lapsed before it was reactivated in October 2011.<sup>394</sup>

However, the global media reported that the Costa Rican government wished to charge Paul Watson with attempted murder over the alleged incident.<sup>395</sup> A higher Regional Court in Frankfurt directed that the alleged incident would have been a crime under German law and that the statute of limitations for this alleged crime had not yet passed, and therefore ordered Watson into custody until the extradition process was

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*'Attempted Murder' Probe*]. This is not the first time Paul Watson had been arrested on an extradition warrant. In 1997 Paul Watson was picked up in the Netherlands pursuant to a Norwegian arrest warrant and placed in jail. Gatehouse, *supra* note 23. An Oslo court had convicted him in absentia to 120 days of jail over the Sea Shepherds' sinking of a ship in 1994. *Id.* After several months of court proceedings and a global outcry spearheaded by celebrities such as Pierce Brosnan and Jane Seymour, he was eventually released. *Id.*

<sup>389</sup> Malcolm Holland, *Sea Shepherd Leader Paul Watson Crook Charge*, DAILY TELEGRAPH (May 15, 2012), <http://www.dailytelegraph.com.au/news/nsw/sea-shepherd-leader-paul-watson-crook-charge/story-e6freuzi-1226355321873>.

<sup>390</sup> *'Attempted Murder' Probe*, *supra* note 388. The offense Paul Watson is alleged to have committed falls under Article 251 of the Costa Rican Penal Code, whereby anyone "who knowingly carries out any act which endangers the safety of a ship, floating structure or aircraft" shall be punished with imprisonment of two to six years. *National Laws and Regulations on the Prevention and Suppression of International Terrorism*, 23 U.N. LEGISLATIVE SERIES XXII (2005), available at [http://legal.un.org/legislative-series/documents/Book23/Book23\\_XXII.pdf](http://legal.un.org/legislative-series/documents/Book23/Book23_XXII.pdf) (continuing that if any act "causes a shipwreck, a running aground or an aviation accident," the penalty is six to twelve years' imprisonment. If the accident injures someone, the penalty is six to fifteen years' imprisonment, and if the accident causes death, imprisonment is between eight and sixteen years.).

<sup>391</sup> *Watson Prepares Defense in Costa Rica*, TICO TIMES (May 15, 2012), <http://www.tico-times.net/2012/05/16/paul-watson-prepares-defense-in-costa-rica>.

<sup>392</sup> *Id.*

<sup>393</sup> *Id.*

<sup>394</sup> Andrew Darby, *Costa Rica Confirms Watson Extradition Demand*, SYDNEY MORNING HERALD (May 16, 2012), <http://www.smh.com.au/environment/whale-watch/costa-rica-confirms-watson-extradition-demand-20120516-1yqmo.html>.

<sup>395</sup> See *'Attempted Murder' Probe*, *supra* note 388.

determined.<sup>396</sup> The prosecutor in the matter alleged that the charge in the matter before the court was one of “putting a ship’s crew in danger,” not attempted murder.<sup>397</sup> On May the 18, 2012, Paul Watson was granted bail of €250,000 while the Costa Rican extradition request was considered by the courts.<sup>398</sup> Further, the Court decided he was not to leave Germany and had to adhere to further conditions on his freedom.<sup>399</sup>

In a phone interview with the AFP, Watson told them that he was under house arrest and had to report to the police twice a day.<sup>400</sup> Watson argued in the interview that this was an attempt by his enemies to get him out of the way and “shut down [their] operations.”<sup>401</sup> Watson maintained he was more than willing to “serve as a symbol of resistance to the destruction of our oceans from inside a prison cell.”<sup>402</sup> Watson alleged that this was a conspiracy by the Costa Rican shark fin mafia.<sup>403</sup> He stated:

Although I have no reason to believe that the Costa Rican legal system would not give me a fair trial, my concern is not for the judicial system, but for the reality that the shark fin mafia of Costa Rica has a price on my head and a Costa Rican prison would provide an excellent opportunity for someone to exercise this lethal contract against me. . . . We have cost the shark finners a great deal of money over the last two decades and they want their revenge. I would need absolute assurance that the Costa Rican authorities would not place me in a position to jeopardise my safety when I return to Costa Rica to prove my innocence in court.<sup>404</sup>

Watson claimed in an interview with Fairfax media that he felt fear for his life if he were to be extradited.<sup>405</sup> Further, he used this perceived

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<sup>396</sup> *Anti-Whaling Leader Freed on Bail While Extradition Decided*, AGENCE FRANCE-PRESSE (May 18, 2012), <http://www.google.com/hostednews/afp/article/ALeqM5iJNfm-bWp3RxRvfkm4BYty0VCIEA?docId=CNG.0d8e1a34f8eed2b6a7343577531cf5e3.5f1>.

<sup>397</sup> *Id.*

<sup>398</sup> *Id.*

<sup>399</sup> *Id.*

<sup>400</sup> Simon Morgan, *Anti-Whaling Leader Says Extraditing Him Won't Halt Campaign*, AGENCE FRANCE-PRESSE (May 23, 2012), [http://www.google.com/hostednews/afp/article/AleqM5i8GfAI6WZ\\_c-CU74Gm64\\_PiBdVig?docId=CNG.f72b6b8ee30b11dfdfcfcf33e14f6c2.c1](http://www.google.com/hostednews/afp/article/AleqM5i8GfAI6WZ_c-CU74Gm64_PiBdVig?docId=CNG.f72b6b8ee30b11dfdfcfcf33e14f6c2.c1).

<sup>401</sup> *Id.*

<sup>402</sup> *Id.*

<sup>403</sup> *Id.*

<sup>404</sup> *Id.*

<sup>405</sup> Andrew Darby, *Sea Shepherd Leader Fears for His Life*, THE AGE (May 17, 2012),

threat to argue to the German authorities that he should not be extradited to Costa Rica.<sup>406</sup> However, the Costa Rican President, Laura Chincilla, maintained that Costa Rica had a completely independent judiciary and that Paul Watson would receive a fair trial.<sup>407</sup>

Watson also found the timing of the extradition order suspicious.<sup>408</sup> He claimed that the extradition order was enacted in October 2011, at the same time the Japanese were suing him in a Seattle court.<sup>409</sup> Watson expressed concern in the same interview that the Japanese government was “putting pressure” on the German government to carry out the extradition.<sup>410</sup> He argued, “It may be more than coincidental that the extradition order was put out in October 2011 at around the same time that the Japanese brought civil charges against us—and lost—in a Seattle court.”<sup>411</sup> Watson claims that it is abnormal that an extradition order would be sought for “a relatively minor offence, where no one was injured and no property damaged.”<sup>412</sup> He also has noted that “Germany does not have an extradition treaty with Costa Rica but insists they can extradite to Costa Rica if they decide to so.”<sup>413</sup> The SSCS has publicly doubted that Paul Watson would get a fair trial and urged their supporters to write to German officials protesting their actions.<sup>414</sup>

The Sea Shepherd spokesman, Peter Hammarstedt, stated that a General Public Prosecutor of the German Higher Regional Court had requested a preliminary extradition arrest warrant for Paul Watson based

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<http://www.theage.com.au/environment/whale-watch/sea-shepherd-leader-fears-for-his-life-20120517-1ys4h.html> [hereinafter *Sea Shepherd Leader Fears for His Life*].

<sup>406</sup> Siobhán Dowling, *Veteran Anti-Whaling Activist Paul Watson to Be Released on Bail*, GUARDIAN (May 18, 2012), <http://www.theguardian.com/environment/2012/may/18/anti-whaling-activist-paul-watson>.

<sup>407</sup> *Costa Rica Assures Fair Trial for Anti-Whaling Crusader*, AGENCE FRANCE-PRESSE (May 23, 2012), <http://www.google.com/hostednews/afp/article/ALeqM5jPG7qYHfkO95J578U7JrO6NJbBAw?docId=CNG.1e151374da51b67fa780f31d582cb3c9.5a1>.

<sup>408</sup> *Sea Shepherd Boss Blames Japan for Arrest*, THE AGE (May 22, 2012), <http://www.theage.com.au/environment/whale-watch/sea-shepherd-boss-blames-japan-for-arrest-20120522-1z2ta.html>.

<sup>409</sup> *Id.* See *infra* Part III.E.3 for further details of the court case.

<sup>410</sup> Morgan, *supra* note 400.

<sup>411</sup> *Costa Rica Assures Fair Trial for Anti-Whaling Crusader*, *supra* note 407.

<sup>412</sup> *Id.*

<sup>413</sup> Paul Watson, *The Law Takes Precedence over Justice in Germany*, SEA SHEPHERD (May 29, 2012), <http://www.seashepherd.org/commentary-and-editorials/2012/05/29/the-law-takes-precedence-over-justice-in-germany-540>.

<sup>414</sup> *Bail Set for ‘Whale Wars’ Star in Extradition Fight*, CNN (May 18, 2012, 2:54 PM), <http://news.blogs.cnn.com/2012/05/18/bail-set-for-whale-wars-star-in-extradition-fight/>.



on the Costa Rican warrant and request for extradition.<sup>415</sup> However, and unusually, the spokesman claimed the Public Prosecutor stated that the German Ministries of Justice and Foreign Affairs had the power to stop proceedings on political grounds, if they wish.<sup>416</sup> The Sea Shepherds were waiting on a decision from the closed court hearing, but if extradition were allowed, Costa Rica would have ninety days to file papers to complete the process.<sup>417</sup> Failure to do so would see Watson freed.<sup>418</sup>

### *I. Paul Watson Skips Bail*

On the July 26, 2012, it was reported that Watson's lawyer told the Frankfurt court that Watson had fled Germany for an "unknown destination."<sup>419</sup> The catalyst for his flight appears to have been Japan requesting Germany to arrest Watson. According to the SSCS German lawyer Oliver Wallasch, the Japanese Embassy had requested on July 19 that Germany extradite Watson to Japan.<sup>420</sup> Lamya Essemlali, the president of the SSCS in France, stated that Japan had been trying to extradite Watson and furthermore, Japan had entered into an agreement with Costa Rica to work together against "terrorism."<sup>421</sup>

Paul Watson went on to claim in a letter to supporters that Germany and Japan were conspiring against him:

The German government said I betrayed their trust by leaving Germany, yet they had already betrayed my trust. The German politicians had made up their minds politically before the German court had made a decision, and during the time I was held in Germany, the Japanese negotiated with Germany to file for an extradition order to Japan on

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<sup>415</sup> *Sea Shepherd Leader Fears for His Life*, *supra* note 405.

<sup>416</sup> *Id.*

<sup>417</sup> *Id.*

<sup>418</sup> *Id.*

<sup>419</sup> *Sea Shepherd Founder Paul Watson 'Flees Germany'*, BBC NEWS (July 26, 2012), <http://www.bbc.co.uk/news/world-europe-18996972>.

<sup>420</sup> Paul Everest, *Fugitive Whale Wars Star's Brother Battling Stage 4 Cancer: Hopes Paul Watson Makes It to London Soon*, LONDON COMMUNITY NEWS (July 27, 2012), <http://www.londoncommunitynews.com/news-story/1358685-fugitive-whale-wars-star-s-brother-battling-stage-4-cancer-hopes-paul/>.

<sup>421</sup> Laura Stone, *Canadian Anti-Whaling Activist Paul Watson Flees Germany After Japan Issues Extradition Request*, THESTAR.COM (July 26, 2012), [http://www.thestar.com/news/world/2012/07/26/canadian\\_antiwhaling\\_activist\\_paul\\_watson\\_flees\\_germany\\_after\\_japan\\_issues\\_extradition\\_request.html](http://www.thestar.com/news/world/2012/07/26/canadian_antiwhaling_activist_paul_watson_flees_germany_after_japan_issues_extradition_request.html).



fabricated evidence provided by former Sea Shepherd Crew-member, Peter Bethune.<sup>422</sup>

Japan subsequently admitted that it had sought the arrest and extradition of Paul Watson, essentially confirming the details supplied by Watson's German lawyer.<sup>423</sup> The Japanese Coast Guard requested that Watson be detained by the German authorities "with the aim of extraditing him to Japan."<sup>424</sup> Watson accused Japan of seeking revenge for past acts by him and his organization.<sup>425</sup> He said in a message to his followers, "I am very disappointed with the German government. For me it is obvious that the German government conspired with Japan and Costa Rica to detain me so that I could be handed over to the Japanese."<sup>426</sup>

Watson said of his whereabouts, "I am presently in a place on this planet where I feel comfortable, a safe place far away from the scheming nations who have turned a blind eye to the exploitation of our oceans."<sup>427</sup> Following Paul Watson's escape from Germany, the higher regional court in Frankfurt resumed extradition proceedings against him to send him to Costa Rica to face pending charges.<sup>428</sup> The court stated, "Since by fleeing, Watson has shown that he can not justify the trust placed in him, the extradition process has been restarted."<sup>429</sup>

An Interpol Red Notice was activated which requested all 190 member states to consider enforcing the warrant issued by Costa Rica for Watson's arrest, to detain or arrest him so he can be extradited to Costa

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<sup>422</sup> Miguel Llanos, *Fugitive Anti-Whaling Activist Accuses Former Crew Member of Betraying Him to Japan*, NBC NEWS (July 31, 2012), [http://worldnews.nbcnews.com/\\_news/2012/07/31/13052889-fugitive-anti-whaling-activist-accuses-former-crew-member-of-betraying-him-to-japan](http://worldnews.nbcnews.com/_news/2012/07/31/13052889-fugitive-anti-whaling-activist-accuses-former-crew-member-of-betraying-him-to-japan); *Captain Paul Watson Sends First Message to Supporters Since Departing Germany*, SEA SHEPHERD (July 30, 2012), <http://www.seashepherd.org/news-and-media/2012/07/30/captain-paul-watson-sends-sea-shepherd-first-message-for-supporters-since-departing-germany-1413>.

<sup>423</sup> *Japan Admits Asking Germany to Arrest, Extradite Sea Shepherd Chief*, JAPAN TIMES (July 29, 2012), <http://www.newsonjapan.com/html/newsdesk/article/97631.php>.

<sup>424</sup> *Id.*

<sup>425</sup> *Japan Is After Revenge: Watson*, WEST AUSTRALIAN (July 31, 2012), <http://au.news.yahoo.com/thewest/a/-/breaking/14417081/japan-is-after-revenge-watson/>.

<sup>426</sup> *Id.*

<sup>427</sup> John R. Kennedy, *Canadian Activist Paul Watson Named on Interpol's Notice*, GLOBAL NEWS (Aug. 8, 2012), <http://globalnews.ca/news/274294/canadian-activist-paul-watson-named-on-interpols-notice/>.

<sup>428</sup> *German Court Wants Fugitive Activist Paul Watson Extradited*, AGENCE FRANCE-PRESSE (July 25, 2012), <http://www.google.com/hostednews/afp/article/ALeqM5j9nlyJRsdZu3Qz-y9PzDmgNWleQ?docId=CNG.b4cc08dc997a311f5dff666028b265a6.261>.

<sup>429</sup> *Id.*

Rica.<sup>430</sup> However, a Red Notice is framed as a request since Interpol does not have the authority to issue an arrest warrant, nor can Interpol demand that a state arrest anyone.<sup>431</sup> As Watson's lawyer, Oliver Wallasch, pointed out, such a Red Notice merely means that police in a state that Watson is visiting should be aware that he is wanted in Costa Rica.<sup>432</sup> However, it is their call if they wish to act on this local arrest warrant and detain Watson for extradition.<sup>433</sup>

The Sea Shepherd's German lawyer is on the record arguing that under German law, as opposed to American law for example, skipping bail is not considered a crime.<sup>434</sup> Paul Watson leaving Germany is considered to be a local matter, with a local arrest warrant issued by the German Higher Regional Court, and the forfeiture of his bail.<sup>435</sup> At this time he claims that, due to this being an extradition matter, Germany is not actively searching for Watson.<sup>436</sup>

A Facebook posting by Watson alleges that "[t]he German court has withdrawn their arrest warrant for me citing failure from Costa Rica to cooperate in answering their questions concerning my case. I guess the Costa Ricans failed to get their instructions from Japan in time. I am no longer wanted in Germany."<sup>437</sup> Watson argues this is because the Costa Rican government failed to meet a "February 27 deadline set by the German court to explain why there was a warrant for his arrest."<sup>438</sup> Watson has argued, however, that he is still "on an Interpol red list usually reserved for 'serial killers and war criminals.'"<sup>439</sup> Watson will continue to remain on the high seas unless he receives assurances from the Australian government that if he enters Australia's jurisdiction he will not be sent to Japan.<sup>440</sup>

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<sup>430</sup> Kennedy, *supra* note 427.

<sup>431</sup> *INTERPOL Statement*, *supra* note 386.

<sup>432</sup> *Setting the Record Straight on Paul Watson's Legal Status*, SEA SHEPHERD (Aug. 11, 2012), <http://www.seashepherd.org/news-and-media/2012/08/11/setting-the-record-straight-on-paul-watsons-legal-status-1425>.

<sup>433</sup> *Id.*

<sup>434</sup> *Id.*

<sup>435</sup> *Id.*

<sup>436</sup> *Id.*

<sup>437</sup> *Germany Drops Arrest Warrant for Sea Shepherd Founder*, ENV'T NEWS SERV. (Mar. 8, 2013), <http://ens-newswire.com/2013/03/08/germany-drops-arrest-warrant-for-sea-shepherd-founder/>.

<sup>438</sup> *Id.*

<sup>439</sup> David Beniuk, *Germany Drops Sea Shepherd Warrant*, AUSTRALIAN (Mar. 8, 2013), <http://www.theaustralian.com.au/news/breaking-news/germany-drops-sea-shepherd-warrant/story-fn3dxiwe-12265933451795363854>.

<sup>440</sup> *Id.*

*J. Injunction Levied on Paul Watson and the SSCS*

Initially, in February 2012, the ICR lost a preliminary injunction it brought against Sea Shepherd to prevent them interfering with the Japanese whale hunt.<sup>441</sup> However, in a blow to the SSCS, the decision of the U.S. Court of Appeals for the Ninth Circuit in Washington state overturned the prior ruling in the group's favor by District Court Judge Richard Jones and issued a preliminary injunction against the group.<sup>442</sup> The injunction enjoined the SSCS from physically confronting any vessel or any person on any vessel in the Southern Ocean engaged by the plaintiffs, the ICR, and from navigating in a manner that is likely to endanger the safe operation of any such vessel.<sup>443</sup> It also mandated that the defendants shall not approach the plaintiffs any closer than 500 yards when defendants are navigating on the open sea.<sup>444</sup> The preliminary injunction stated that:

Defendants Sea Shepherd Conservation Society and Paul Watson, and any party acting in concert with them (collectively "defendants"), are enjoined from physically attacking any vessel engaged by Plaintiffs the Institute of Cetacean Research, Kyodo Senpaku Kaisha, Ltd., Tomoyuki Ogawa or Toshiyuki Miura in the Southern Ocean or any person on any such vessel (collectively "plaintiffs"), or from navigating in a manner that is likely to endanger the safe navigation of any such vessel. In no event shall defendants approach plaintiffs any closer than 500 yards when defendants are navigating on the open sea.<sup>445</sup>

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<sup>441</sup> *Sea Shepherd Australia to Lead Antarctic Whale Defense Campaign*, SEA SHEPHERD (Jan. 7, 2013), <http://www.seashepherd.org.au/news-and-media/2013/01/07/sea-shepherd-australia-to-lead-antarctic-whale-defense-campaign-1477>.

<sup>442</sup> Laura Petersen, *OCEANS: Sea Shepherd Takes Fight Against Japanese Whalers to Supreme Court*, SEA SHEPHERD (Feb. 12, 2013), <http://www.seashepherd.org.au/news-and-media/2013/02/12/oceans-sea-shepherd-takes-fight-against-japanese-whalers-to-supreme-court-1493>. See *U.S. Court Order to Prevent Clashes Between Japanese Whalers and Sea Shepherd Vessels*, AUSTRALIAN (Dec. 19, 2012), <http://www.theaustralian.com.au/news/world/us-court-order-to-prevent-clashes-between-japanese-whalers-and-sea-shepherd-vessels/story-e6frq6so-1226540130562>. See also *Paul Watson Quits Sea Shepherd over U.S. Court Order*, CBCNEWS (Jan. 8, 2013), <http://www.cbc.ca/news/world/story/2013/01/08/canada-paul-watson-sea-shepherd-conservation-society-president.html> (recounting Paul Watson's statement that he would comply with the Ninth Circuit temporary injunction).

<sup>443</sup> *Inst. of Cetacean Research v. Sea Shepherd Conservation Soc'y*, 702 F.3d 573, 573 (9th Cir. 2012) (order granting preliminary injunction).

<sup>444</sup> *Id.*

<sup>445</sup> *Id.*

The injunction was to remain in place until the court issued an opinion on the merits of the appeal filed by the ICR.<sup>446</sup> The SSCS publicly vowed that the injunction would not deter it from its mission since the injunction is only operational against Sea Shepherd Conservation Society U.S. and its founder, Paul Watson, not against other states which host Sea Shepherd groups, which are separate legal entities.<sup>447</sup> However, it does clear the way for Japan to bring more legal actions against the group.<sup>448</sup> Watson publicly stated since he was personally named in the injunction he believed he must step down as leader of the SSCS in order to avoid criminal charges for any of his actions.<sup>449</sup>

Though Canadian born, Paul Watson holds dual Canadian–United States citizenship and has stated he would respect the court's decision and not violate the temporary injunction.<sup>450</sup> However, later he did state that he was aboard the *Steve Irwin* as an observer and was present during Operation Zero Tolerance, the 2012–13 campaign to thwart Japanese whaling, which potentially put him in breach of the injunction.<sup>451</sup> The SSCS's lawyers have asked the United States Supreme Court to lift the injunction.<sup>452</sup> The attorneys for SSCS U.S. filed a motion with the court against the ICR seeking relief, arguing that the Ninth Circuit Court incorrectly issued the injunction without any party filing a motion requesting such an outcome, and ignored the earlier decision of the District Court in February.<sup>453</sup>

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<sup>446</sup> *US Court Tells Sea Shepherd to Stay Away from Japan's Whaling Fleet in Southern Ocean*, MERCOPRESS (Dec. 19, 2012), <http://en.mercopress.com/2012/12/19/us-court-tells-sea-shepherd-to-stay-away-from-japan-s-whaling-fleet-in-southern-ocean>.

<sup>447</sup> See Petersen, *supra* note 442; *Sea Shepherd Australia to Lead Antarctic Whale Defense Campaign*, *supra* note 441 (describing the changes Sea Shepherd is undertaking to eliminate Paul Watson from the group's hierarchy).

<sup>448</sup> David Kirby, *Sea Shepherd's Paul Watson Mocks Court's 'Pirate' Ruling*, TAKEPART (Feb. 27, 2013), <http://www.takepart.com/article/2013/02/28/us-court-calls-sea-shepherd-pirates> [hereinafter *Sea Shepherd's Paul Watson Mocks Court's 'Pirate' Ruling*].

<sup>449</sup> *Paul Watson Resigns as Leader of Anti-Whaling Organisation Sea Shepherd*, GLOBE & MAIL (Jan. 8, 2013), <http://www.theglobeandmail.com/news/british-columbia/paul-watson-resigns-as-leader-of-anti-whaling-organisation-sea-shepherd/article7039373/>.

<sup>450</sup> *Paul Watson Quits Sea Shepherd over U.S. Court Order*, *supra* note 442.

<sup>451</sup> *Sea Shepherd Has Intercepted the Whale Poachers Before a Single Whale Is Killed*, SEA SHEPHERD (Jan. 28, 2013), <http://www.seashepherd.org.au/news-and-media/2013/01/28/sea-shepherd-has-intercepted-the-whale-poachers-1482>.

<sup>452</sup> See Petersen, *supra* note 442. The SSCS attorney, Charles Moore, argued that the “injunction surprised the group because it was issued without warning or a chance to argue in front of the judges and without being requested by Japan's Institute for Cetacean Research. The court issued the preliminary injunction *sua sponte* or ‘of its own accord.’” *Id.*

<sup>453</sup> *Sea Shepherd Takes Battle Against ICR to U.S. Supreme Court*, SEA SHEPHERD (Feb. 13, 2013), <http://www.seashepherd.org.au/news-and-media/2013/02/13/sea-shepherd-takes-battle-against-icr-to-us-supreme-court-1497>.

K. *Operation Zero Tolerance*

The Appeal Court's decision specifically named Watson so that it would severely curtail his ability to lead the fight against Japanese whaling.<sup>454</sup> Consequently, Watson decided to resign as president of the SSCS in both the United States and Australia, and as executive director in the United States.<sup>455</sup> Watson stated on the SSCS website, "I will hold no paid position with Sea Shepherd anywhere Sea Shepherd is registered and operates as a non-profit organization in any nation."<sup>456</sup>

To fill the leadership hole left by the absence of Watson, Bob Brown, former Australian Green Party leader, agreed to join the SSCS Australia Board of Directors.<sup>457</sup> Thus, the Australian chapter of SSCS led the campaign against Japanese whalers for the 2012–13 season.<sup>458</sup> While Watson remained aboard one of the SS vessels, he would not be captaining.<sup>459</sup> Rather, Bob Brown led the campaign.<sup>460</sup> Watson was aboard the flotilla as an observer and as an advisor but rejected the claim that the leadership restructure was merely a cosmetic change.<sup>461</sup> Further, and potentially infringing on the injunction issued by the Washington court, Peter Hammarstedt (captain of the *Bob Barker*) stated, "It is expected Captain Paul Watson would appear in command of one of the vessels when the action begins."<sup>462</sup>

On the 5th of November the SSCS flotilla left Australia to commence *Operation Zero Tolerance*, its ninth Antarctic Whale Defense

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<sup>454</sup> Inst. of Cetacean Research v. Sea Shepherd Conservation Soc'y, 702 F.3d 573 (9th Cir. 2012) (order granting preliminary injunction).

<sup>455</sup> Adam Westlake, *Paul Watson Steps Down as Sea Shepherd Leader, Australian Greens' Bob Brown Takes Over*, JAPAN DAILY PRESS (Jan. 8, 2013), <http://japandailynews.com/paul-watson-steps-down-as-sea-shepherd-leader-australian-greens-bob-brown-takes-over-0821046/> [hereinafter *Paul Watson Steps Down*].

<sup>456</sup> *Eco-Fugitive Paul Watson Resigns from Sea Shepherd*, TORONTO SUN (Jan. 8, 2013), <http://www.torontosun.com/2013/01/08/eco-fugitive-paul-watson-resigns-from-sea-shepherd>.

<sup>457</sup> *Sea Shepherd Australia Welcomes Former Greens Leader Bob Brown to Its Board of Directors*, SEA SHEPHERD (Dec. 30, 2012), <http://www.seashepherd.org.au/news-and-media/2012/12/30/sea-shepherd-australia-welcomes-former-greens-leader-bob-brown-to-its-board-of-directors-1476>.

<sup>458</sup> *Sea Shepherd Australia to Lead Antarctic Whale Defense Campaign*, *supra* note 441.

<sup>459</sup> *Paul Watson Steps Down*, *supra* note 455.

<sup>460</sup> *Sea Shepherd Australia to Lead Antarctic Whale Defense Campaign*, *supra* note 441.

<sup>461</sup> *Paul Watson Steps Down*, *supra* note 455. See *Eco-Fugitive Paul Watson Resigns from Sea Shepherd*, *supra* note 456.

<sup>462</sup> *Sea Shepherd's Wanted Watson to Join Anti-Whaling Fight*, AGENCE FRANCE-PRESSE (Nov. 2, 2012), [http://www.google.com/hostednews/afp/article/ALeqM5ihUXk4B\\_swixfswA3yY7ZGrgbKwA?docId=CNG.8b9ff8e613fe19f3f1f5c2ac5c34d3c6.11](http://www.google.com/hostednews/afp/article/ALeqM5ihUXk4B_swixfswA3yY7ZGrgbKwA?docId=CNG.8b9ff8e613fe19f3f1f5c2ac5c34d3c6.11).



Campaign.<sup>463</sup> For the 2012–13 whaling season Japan's ICR “set itself a quota of nearly one thousand minke and fifty fin whales to be culled.”<sup>464</sup> However, the SSCS intended to pursue a new strategy for this campaign.<sup>465</sup> As Captain Hammerstedt explained, the SSCS wanted to take the fight up to Japan itself by targeting the whaling vessels in the North Pacific rather than waiting for the whaling fleet to enter Antarctic waters.<sup>466</sup> As Watson stated, “It's time to bring intervention north and show Japan we intend to ensure there are no whales killed. We have never been stronger, and the Japanese have never been weaker, so we need to take advantage of that.”<sup>467</sup>

The SSCS flotilla secured an early tactical advantage by locating the Japanese whaling fleet before a single whale was killed.<sup>468</sup> By the end of January, the SSCS ships had succeeded in locating the Japanese whaling fleet and hindering their operations so that no whales had been taken.<sup>469</sup> The first major incident of the campaign was in early February when the SSCS ship the *Sam Simon* discovered another ship off the coast of Albany Australia, the refueling tanker for the Japanese whaling fleet, the “Panamanian registered and Korean-owned vessel *Sun Laurel*.”<sup>470</sup> The SSCS

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<sup>463</sup> *Sea Shepherd Launches Operation Zero Tolerance*, SEA SHEPHERD (Nov. 5, 2012), <http://www.seashepherd.org.au/news-and-media/2012/11/05/sea-shepherd-launches-operation-zero-tolerance-1462>. Australian SSCS Director Jeff Hansen maintains that this was the largest flotilla to date, comprising four vessels and over 100 crewmembers drawn from twenty-three nations. *Id.*

<sup>464</sup> Locky Maclean, *The SSS Sam Simon Is Unveiled in Hobart, Tasmania*, SEA SHEPHERD (Dec. 10, 2012), <http://www.seashepherd.org.au/news-and-media/2012/12/10/the-sss-sam-simon-is-unveiled-in-hobart-tasmania-1471>. See Adam Westlake, *Japan's Whaling Industry Looks Forward to Arrest of Sea Shepherd's Watson*, JAPAN DAILY PRESS (Nov. 5, 2012), <http://japandailypress.com/japans-whaling-industry-looks-forward-to-arrest-of-sea-shepherds-watson-0517837/> [hereinafter *Japan's Whaling Industry Looks Forward to Arrest*].

<sup>465</sup> *Sea Shepherd Launches Operation Zero Tolerance*, *supra* note 463.

<sup>466</sup> *Id.*

<sup>467</sup> Neil Reid, *The Sea Shepherd Extends Battlefield*, STUFF.CO.NZ (Oct. 28, 2012), <http://www.stuff.co.nz/national/7873346/The-Sea-Shepherd-extends-battlefield>.

<sup>468</sup> Adam Westlake, *Sea Shepherd Claims Early Victory Against Japan's Whaling Fleet*, JAPAN DAILY PRESS (Jan. 31, 2013), <http://japandailypress.com/sea-shepherd-claims-early-victory-against-japans-whaling-fleet-3122399/> [hereinafter *Sea Shepherd Claims Early Victory*].

<sup>469</sup> *Sea Shepherd Has Intercepted the Whale Poachers Before a Single Whale Is Killed*, *supra* note 451. See *Sea Shepherd Ships Intercept the Nisshin Maru—Whale Poachers on the Run*, SEA SHEPHERD (Jan. 30, 2013), <http://www.seashepherd.org.au/news-and-media/2013/01/30/sea-shepherd-ships-intercept-the-nisshin-maru-1483>.

<sup>470</sup> *Sea Shepherd Severs Fuel Supply to the Whaling Fleet*, SEA SHEPHERD (Feb. 7, 2013), <http://seashepherd.org.au/news-and-media/2013/02/07/sea-shepherd-severs-fuel-supply-to-the-whaling-fleet-1489>.

ship *Steve Irwin* met up with the *Sam Simon* with a plan to use the ships to block whaling ships from re-fuelling.<sup>471</sup> The SSCS claimed the tactic was a success, putting the Japanese whaling ships in complete disarray and leaving the whaling ship the *Yushin Maru* potentially unable to get to safety in the event of a sudden emergency due to a lack of fuel.<sup>472</sup>

On February 15, 2013, the *Bob Barker* caught up with the *Nisshin Maru* and the *Yushin Maru No. 2*.<sup>473</sup> A female minke whale was killed and eventually brought aboard the *Nisshin Maru* for processing despite a tense five-hour blockade initiated by the *Bob Barker*.<sup>474</sup> The captain of that vessel claimed that the *Yushin Maru No. 2* attempted to block the SSCS ship “by dangerously criss-crossing the bow of the *Bob Barker*, coming as close as 600 yards and threatening to deploy prop fouling devices,” forcing him to heave-to to avoid ramming the Japanese vessel.<sup>475</sup>

The SSCS also stated that its ships, the *Bob Barker* and the *Steve Irwin*, were rammed by the Japanese whaling fleet’s massive factory vessel, the *Nisshin Maru*.<sup>476</sup> The vessel was attempting to obtain fuel from the *Sun Laurel* when it hit the *Bob Barker* in the stern, effectively disabling it and pushing it into the side of the tanker as well as hitting the *Steve Irwin* a number of times.<sup>477</sup> Watson alleged that “the Japanese boat deliberately rammed the Sea Shepherd boats to try to move them aside

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<sup>471</sup> *Id.*

<sup>472</sup> *Japanese Whaling Fleet Abandons Harpoon Vessel Nearly Empty on Fuel, Pressure Korean Refueling Vessel to Enter Australian Antarctic Territory*, SEA SHEPHERD (Feb. 10, 2013), <http://www.seashepherd.org.au/news-and-media/2013/02/10/japanese-whaling-fleet-abandons-harpoon-vessel-nearly-empty-on-fuel-1491>.

<sup>473</sup> *Sea Shepherd Ship Bob Barker Is on the Slipway of the Nisshin Maru*, SEA SHEPHERD (Feb. 15, 2013), <http://www.seashepherd.org.au/news-and-media/2013/02/15/sea-shepherd-ship-bob-barker-is-on-the-slipway-of-the-nisshin-maru-1495>.

<sup>474</sup> Andrew Darby, *Whale Taken onto Factory Ship After Five-Hour Standoff*, THE SYDNEY MORNING HERALD (Feb. 17, 2013), <http://www.smh.com.au/environment/whale-watch/whale-taken-onto-factory-ship-after-fivehour-standoff-20130216-2ejh.html>.

<sup>475</sup> *Sea Shepherd Ship Bob Barker Is on the Slipway of the Nisshin Maru*, *supra* note 473.

<sup>476</sup> *Japanese Whale Poaching Vessel*, *Nisshin Maru, Rams S. Korean Fuel Tanker, Sea Shepherd Ships Sam Simon, Steve Irwin, and Bob Barker*, SEA SHEPHERD (Feb. 20, 2013), <http://www.seashepherd.org.au/news-and-media/2013/02/20/japanese-whale-poaching-vessel-nisshin-maru-rams-s-korean-fuel-tanker-sea-shepherd-ships-sam-simon-s-1501> [hereinafter *Japanese Whale Poaching Vessel*].

<sup>477</sup> See Andrew Darby, *Ships Collide in Antarctic Whaling Protest*, SYDNEY MORNING HERALD (Feb. 20, 2013), <http://www.smh.com.au/environment/whale-watch/ships-collide-in-antarctic-whaling-protest-20130220-2eqyg.html>; *Japanese Whaling Ship Rams Sea Shepherd Protesters*, AUSTRALIAN (Feb. 20, 2013), <http://www.theaustralian.com.au/news/nation/japanese-whaling-ship-rams-sea-shepherd-protesters/story-e6frg6nf-1226582013026>.



and get to the refueling tanker.”<sup>478</sup> However, the crew of the *Bob Barker* eventually got the situation under control and was able to continue with its mission.<sup>479</sup>

According to the SSCS, the group blocked refueling to the whaling fleet for a third time.<sup>480</sup> However, doing so again led to dangerous clashes, with both the SSCS and the whalers accusing each other of ramming their ships.<sup>481</sup> According to Paul Watson, the *Nisshin Maru* deliberately rammed the *Bob Barker*.<sup>482</sup> However, Japan's ICR “accused several Sea Shepherd boats of slamming into the *Nisshin Maru* as the vessel attempted to refuel with her supply tanker the *Sun Laurel*.”<sup>483</sup> The Japanese whaling ship eventually was forced to quit trying to refuel, after allegedly being hit five times by SSCS vessels determined to stop it refueling.<sup>484</sup>

Both sides released video of the incident purporting to show their version of events.<sup>485</sup> The Japanese released a media statement that “[t]he

<sup>478</sup> *Whaling Activists: Boats Collide near Antarctica*, ASIAN CORRESPONDENT (Feb. 20, 2013), <http://asiancorrespondent.com/98655/japan-whaling-collision-sea-shepherd/>. The SSCS accused the *Nisshin Maru* of damaging the portside life-raft, preventing its release in an emergency, and of “destroying the davit to launch the other life-raft.” *Japanese Whale Poaching Vessel*, *supra* note 476. They stated that due to the ramming, the *Bob Barker* lost all power and issued a distress call. *Japanese Whale Poaching Vessel*, *supra* note 476.

<sup>479</sup> *Whaling Activists: Boats Collide Near Antarctica*, *supra* note 478.

<sup>480</sup> *Tensions Rise in Clash with the Japanese Whalers*, SEA SHEPHERD (Feb. 25, 2013), <http://www.seashepherd.org.au/news-and-media/2013/02/25/tensions-rise-in-clash-with-the-japanese-whalers-1504>.

<sup>481</sup> *Ram Claims as Japanese Whalers, Sea Shepherd Protesters Clash*, AUSTRALIAN (Feb. 26, 2013), <http://www.theaustralian.com.au/news/nation/ram-claims-as-japanese-whalers-sea-shepherd-protesters-clash/story-e6frg6nf-1226586174246>.

<sup>482</sup> *Id.*

<sup>483</sup> *Id.*

<sup>484</sup> Cherrie Lou Billones, *New Video Shows Sea Shepherd Ramming Japanese Whaling Ships*, JAPAN DAILY PRESS (Feb. 26, 2013), <http://japandailypress.com/new-video-shows-sea-shepherd-ramming-japanese-whaling-ships-2624082>.

<sup>485</sup> *See id.* The SSCS also alleged that the *Nisshin Maru* used high-powered water cannons against the *Steve Irwin*, *Bob Barker*, and *Sam Simon*, in an attempt to flood their engine rooms, but was unsuccessful. *Tensions Rise in Clash with the Japanese Whalers*, *supra* note 480. Watson further accused the Japanese coastguard personnel onboard of utilizing flash-bang concussion grenades against the *Bob Barker* during the incident when the vessel was rammed by the *Nisshin Maru* into the *Sun Laurel*. *See* Andrew Darby, *Sea Shepherd Claims Whalers Using Stun Grenades*, THE AGE (Feb. 25, 2013), <http://www.theage.com.au/environment/sea-shepherd-claims-whalers-using-stun-grenades-20130225-2f1is.html>. The Japanese Fishery Agency denied the use of that weapon but admitted that the *Nisshin Maru* had rammed two Sea Shepherd ships. *Whaling No Risk to Relationship with Australia: Japan*, ABC (Feb. 22, 2013), <http://www.abc.net.au/news/2013-02-22/whaling-no-risk-to-relationship-with-australia-japan-says/4535064>.

sabotage is not only malicious but inconceivably obstructive actions. Thus it threatens safety of our research ships and lives of crews on them and is therefore completely unacceptable.”<sup>486</sup> The Japanese government stated that it was mulling over filing a third claim in a U.S. court for the SSCS actions, alleging they constitute an insult to the court’s authority.<sup>487</sup>

According to SSCS Australia, for the 2012–13 whaling season Japan managed to kill no more than 103 whales, possibly the lowest catch in the history of Japanese Antarctic whaling expeditions.<sup>488</sup> The SSCS’s successes can be attributed to a number of factors: it pre-empted the Japanese whaling fleet arriving in Antarctic waters; it used smaller, more nimble boats to prevent whalers getting to their targets; it tried to prevent the harpoon ship from meeting up with the factory ship; and it targeted the refuelling ship to, in effect, starve the fleet of vital fuel.<sup>489</sup>

#### 1. Paul Watson: International Fugitive?

However, the successful campaign has come at a price. At the end of the campaign Watson was cautious about coming ashore in Australia as he traditionally had, since he feared the possibility of being arrested

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<sup>486</sup> Jonathon Gul & Emily Bryan, *Japanese Whaling Vessel ‘Rammed’ by Sea Shepherd Fleet*, ABC (Feb. 26, 2013), <http://www.abc.net.au/news/2013-02-26/japanese-whaling-vessel-being-rammed-by-sea-shepherd-fleet/4539718>.

<sup>487</sup> Jethro Mullen & Mark Morgenstein, *Anti-Whaling Activists Say They Were Attacked by Japanese Ships*, CNN (Feb. 26, 2013), <http://edition.cnn.com/2013/02/20/world/asia/australia-japan-whaling/index.html>.

<sup>488</sup> *Japanese Whalers Have ‘Worst Ever’ Catch*, THE AGE (Apr. 6, 2013), <http://www.theage.com.au/environment/whale-watch/japan-whalers-have-worst-ever-catch-20130406-2hed5.html>. See *Japanese Whalers ‘Quit Hunting Ground,’* SYDNEY MORNING HERALD (Mar. 2, 2013), <http://www.smh.com.au/environment/whale-watch/japanese-whalers-quit-hunting-ground-20130302-2fcy7.html> (recounting that Mr. Watson believes no more than seventy-five whales were killed). The actions of the Sea Shepherd organization also forced an early end to the hunt in the 2011–12 whaling season, meaning that the Japanese only caught 266 whales out of a planned 900. Rick Wallace, *Japanese Whalers Return to Port*, AUSTRALIAN (Mar. 10, 2012), <http://www.theaustralian.com.au/news/world/japanese-whalers-return-to-port/story-e6frg6so-1226295546900>. For the second year in a row, Sea Shepherd harassment forced an early end to Japanese whaling and a reduced catch (in 2010–11 approximately 172 whales were caught), which again put financial pressure on Japanese whaling. Harumi Ozawa, *Saboteurs Blamed as Japan Whale Catch Falls Short*, AGENCE FRANCE-PRESSE (Mar. 9, 2012), [http://www.google.com/hostednews/afp/article/ALeqM5hT\\_PB4VTJcenschQhgThu0kKgC19A?docId=CNG.f0067d6b6c5fc41cfa26baa08eca6055.591](http://www.google.com/hostednews/afp/article/ALeqM5hT_PB4VTJcenschQhgThu0kKgC19A?docId=CNG.f0067d6b6c5fc41cfa26baa08eca6055.591).

<sup>489</sup> Nick Bryant, *Politics at Play in Sea Shepherd—Japan Whaling Wars*, BBC NEWS (Feb. 28, 2013), <http://www.bbc.co.uk/news/world-asia-21612740>.

by the Australian Federal Police on the outstanding Interpol warrant.<sup>490</sup> Australian National University law academic Donald Rothwell argued that Japan could request the Federal Police act, and since Watson was subject to an Interpol red notice, he faced being arrested if Japan requested his extradition.<sup>491</sup> Watson claimed he had been given a business entry visa to Australia by the Australian Embassy in Washington.<sup>492</sup> However, the Australian Environment Minister Tony Burke stated that the Australian government had no plans to arrest Watson if he came ashore.<sup>493</sup> The current leader of the expedition, Bob Brown, stated that “a key job in his new role as a Sea Shepherd Australia director was to ensure that Mr. Watson could come ashore safely, and warned an arrest would bring uproar.”<sup>494</sup>

The situation was heightened when it appeared that New Zealand officials were searching for Watson, who evaded them by switching ships at sea, and who was not on board when the ship docked in New Zealand.<sup>495</sup> Watson professed that he was “pretty shocked” that the New Zealand authorities were willing to acquiesce to the Japanese on this issue.<sup>496</sup> According to Makoto Ito, the spokesman for the company that owns Japan’s whaling fleet, he hoped Paul Watson would be “arrested and brought to justice this year,” since Watson poses a serious threat to whaling crews.<sup>497</sup>

*L. Are the SSCS Methods Counterproductive?*

Over the last few years the SSCS has met one of its key objectives—putting economic pressure on the Japanese whaling industry through its harassing tactics.<sup>498</sup> The 2012–13 whaling season saw possibly the lowest catch on record, continuing a trend of the last few years.<sup>499</sup> Watson has

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<sup>490</sup> See Michelle Paine, *Sea Shepherd Ships Set to Be Raided by Australian Federal Police*, PERTH NOW (Mar. 3, 2013), <http://www.perthnow.com.au/news/national/sea-shepherd-fleet-set-to-be-raided-by-australian-federal-police/story-fndor8bb-1226589262705>.

<sup>491</sup> *Id.*

<sup>492</sup> Andrew Darby, *Anti-Whaling Skipper Poses Problem over Arrest Notice*, SYDNEY MORNING HERALD (Jan. 1, 2013), <http://www.smh.com.au/environment/whale-watch/anti-whaling-skipper-poses-problem-over-arrest-notice-20121231-2c2q1.html>.

<sup>493</sup> *Id.*

<sup>494</sup> *Id.*

<sup>495</sup> Georgina Stylianou, *High-Seas Protester Slips Past Kiwi Search*, STUFF.CO.NZ (Jan. 7, 2013), <http://www.stuff.co.nz/the-press/news/8148473/High-seas-protester-slips-past-Kiwi-search>.

<sup>496</sup> *Id.*

<sup>497</sup> *Japan's Whaling Industry Looks Forward to Arrest*, *supra* note 464.

<sup>498</sup> *Japanese Whalers Have 'Worst Ever' Catch*, *supra* note 488.

<sup>499</sup> *Id.*

frequently stated that the primary objective of the Sea Shepherd has always “been to sink the Japanese whaling fleet economically—to bankrupt them, and it is a strategy that appears to be working.”<sup>500</sup> He believes that demand for whale meat in Japan is down and that there is a surplus of whalemeat being kept frozen at great expense in warehouses in Japan.<sup>501</sup> It is true that the Japanese appetite for whale meat has diminished radically.<sup>502</sup> Further, a Greenpeace analysis has revealed that the Japanese whaling industry currently sells such small amounts of whalemeat that the industry is totally reliant on government subsidies to function.<sup>503</sup> Also, the ICR has revealed that SSCS actions are taking a financial toll on the whaling fleet.<sup>504</sup> In the 2010–11 season the whalers lost \$25.2 million since they were only able to catch seventeen percent of their goal that season, and twenty-six percent of their goal in 2011–12.<sup>505</sup>

While the SSCS has forsaken sinking vessels through the use of explosives, it continues ramming vessels and allowing personnel to board vessels with the attendant risks such tactics engender.<sup>506</sup> The Sea Shepherd

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<sup>500</sup> Paul Watson, *Will This Be the Sea Shepherd's Last Antarctic Campaign?*, SEA SHEPHERD (Jan. 28, 2011), <http://www.seashepherd.org/commentary-and-editorials/2011/01/28/will-this-be-sea-shepherds-last-antarctic-campaign-22>.

<sup>501</sup> *Id.*

<sup>502</sup> See *Japan Plans Wider Sales of Whale Meat*, UNITED PRESS INT'L (Nov. 7, 2012), [http://www.upi.com/Top\\_News/World-News/2012/11/07/Japan-plans-wider-sales-of-whale-meat/UPI-70471352314575](http://www.upi.com/Top_News/World-News/2012/11/07/Japan-plans-wider-sales-of-whale-meat/UPI-70471352314575) (stating that “[c]onsumption has been dropping although some restaurants offer whale as a luxury item”). A survey of 1200 Japanese people by the International Fund for Animal Welfare, and completed by Nippon Research Centre, showed that “nearly 90 percent said they had not bought whale meat in the last year.” Kieran Mulvaney, *Japanese Public on Whale Meat: 'Meh,'* DISCOVERY NEWS (Nov. 27, 2012), <http://news.discovery.com/earth/japanese-public-on-whaling-whale-meat-meh-121127.htm> (Continuing that of those that had bought whalemeat, most had only done so once. Only twenty-seven percent of those surveyed supported ongoing whaling, and eighty-seven percent opposed government funding of the scientific whaling program.). To try to overcome the lack of interest in whalemeat, Japan's Fisheries Agency has announced plans to publicly sell whalemeat to the general public to recoup costs of around \$60 million a year. *Japan Plans Wider Sales of Whale Meat*, *supra*. Starting in 2013, individuals will be able to get whalemeat via mail order, the school lunch system will receive more whalemeat, and whalemeat will also be sold to restaurants, as opposed to the current scheme whereby whalemeat is only sold to wholesale distributors. *Japan Plans Wider Sales of Whale Meat*, *supra*.

<sup>503</sup> See Andrew Darby, *Japan Props up Floundering Whale Business: Greenpeace*, THE AGE (Dec. 21, 2012), <http://www.theage.com.au/environment/whale-watch/japan-props-up-floundering-whale-business-greenpeace-20121220-2bpg5.html>.

<sup>504</sup> See Reid, *supra* note 467.

<sup>505</sup> *Id.*

<sup>506</sup> See Andrew Hoek, *Sea Shepherd Conservation Society v. Japanese Whalers, the Show-down: Who Is the Real Villain?*, 3 STAN. J. ANIMAL L. & POL'Y 159, 182 (2010).

organization's violent tactics have appalled some fellow anti-whaling activists, and are seen by many as counterproductive.<sup>507</sup> Dr. Sidney Holt, one of the architects of the original IWC 1986 moratorium, believes that Watson and his group's actions have been an "absolute disaster" in terms of convincing Japan to stop whaling.<sup>508</sup> Dr. Holt claims that "[a]lmost everything [Watson] has been doing has had blowback for those who want to see an end to whaling. In too many cases, playing piracy on the ocean, and creating danger for other ships, is simply not liked."<sup>509</sup>

Although the Sea Shepherd group claims to be enforcing IWC rules, IWC members have publicly condemned their direct action campaign.<sup>510</sup> Due to his actions in sinking two ships in Iceland in 1986, Paul Watson is no longer allowed to attend IWC meetings because many conservationists believe that his actions have actually turned sympathy away from anti-whaling nations; however, the exclusion denies him a voice to make his case in a less direct manner.<sup>511</sup>

While the consumption of whale meat in Japan has significantly decreased, the Western disapproval of the hunts is resented and viewed "as a form of Western cultural imperialism."<sup>512</sup> It has been stated by Tadamas Kodaira, leader of the Democratic Party of Japan, that his party "was firmly committed to research whaling."<sup>513</sup> In an interview, he admitted that "Japan's whaling industry had shrunk to just a few hundred jobs, mostly paid for by the government."<sup>514</sup> He further stated that the actions of activist groups, such as the Sea Shepherds, had incensed the public, "making it impossible for Tokyo to compromise now."<sup>515</sup>

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<sup>507</sup> *Id.*

<sup>508</sup> *Id.*

<sup>509</sup> *Id.*

<sup>510</sup> See Stuart Biggs, *IWC Condemns Sea Shepherd's Tactics Against Whalers*, BLOOMBERG (Mar. 9, 2008), [http://www.bloomberg.com/apps/news?pid=newsarchive&sid=an0uArBv\\_eyU](http://www.bloomberg.com/apps/news?pid=newsarchive&sid=an0uArBv_eyU).

<sup>511</sup> Caprari, *supra* note 3, at 1507; *Sea Shepherd Celebrates 25th Anniversary of Being Banned from the International Whaling Commission Meetings*, SEA SHEPHERD (Aug. 24, 2011), <http://www.seashepherd.org/news-and-media/2011/08/24/sea-shepherd-celebrates-25th-anniversary-of-being-banned-from-the-international-whaling-commission-m-1274> [hereinafter *Sea Shepherd Celebrates 25th Anniversary of Being Banned from IWC*].

<sup>512</sup> Martin Fackler, *Uncertainty Buffets Japan's Whaling Fleet*, N.Y. TIMES, May 15, 2010, <http://www.nytimes.com/2010/05/16/world/asia/16whaling.html>.

<sup>513</sup> *Id.*

<sup>514</sup> *Id.*

<sup>515</sup> *Id.* The yearly budget for the whaling industry is only \$86 million, a small part of the Japanese Government's budget. *Id.* The fear for the Japanese government is that "trying to cut the program would risk a huge political outcry from nationalists for only marginal

Despite the losses and the waning appetite for whalemeat, Yoshi-masa Hayashi, the current Agriculture, Forestry and Fisheries Minister for Japan, argues that his state will not stop whaling, despite the ongoing SSCS effort and the opposition of some Western nations.<sup>516</sup> It appears clear that the Japanese government will not be bullied into ending the ongoing whaling by the actions of the SSCS, no matter how outrageous they become.<sup>517</sup>

Rather, the response from Japan seems to be an increased effort to use legal means to bring Watson to "justice."<sup>518</sup> This can be evinced by Costa Rica seeking Watson to stand trial for attempted murder—almost certainly at the behest of Japan—and the use of injunctions to legally constrain the SSCS's activities, perhaps with the aim of having the United States arrest and jail Watson and seize SSCS property for violating the injunction.<sup>519</sup> This campaign has left Watson unable to come ashore in previously friendly nations for fear of being arrested and perhaps extradited to Japan to stand trial.<sup>520</sup> While Watson has stated in the past that he is willing to be a martyr for his cause, his actions when faced with prison belie that boast.<sup>521</sup>

### III.

The SSCS's occasional dismissal of the validity of international law has not stopped the SSCS from trying to give itself the imprimatur of international law.<sup>522</sup> The veracity of their claims that the UN World Charter for Nature—and the failure of the IWC to act—give them the legal authority to act as they do, as well as their argument they are

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budget savings." *Id.* According to Atsushi Ishii, a professor at Tohoku University, "Research whaling claims to be protecting science and culture, but it is really just protecting bureaucratic self-interest." Fackler, *supra* note 512. It is well known that "much of the meat piles up uneaten in freezers and the last private company dropped out of the Antarctic hunt four years ago." *Id.*

<sup>516</sup> See *Japan Will Never Stop Whaling: Minister*, HERALD SUN (Feb. 26, 2013), <http://www.heraldsun.com.au/news/breaking-news/japan-will-never-stop-whaling-minister/story-e6frf7k6-1226586407192>.

<sup>517</sup> See *id.*

<sup>518</sup> *Japan's Whaling Industry Looks Forward to Arrest*, *supra* note 464.

<sup>519</sup> Javier Cordoba, *Paul Watson: Costa Rica Charged Me with a Made-Up Crime*, HUFFINGTON POST (June 27, 2013), [http://www.huffingtonpost.com/2013/06/27/paul-watson-costa-rica-sea-shepherd\\_n\\_3507401.html](http://www.huffingtonpost.com/2013/06/27/paul-watson-costa-rica-sea-shepherd_n_3507401.html).

<sup>520</sup> *Anti-Whaling Skipper Poses Problem over Arrest Notice*, *supra* note 492.

<sup>521</sup> See Stylianou, *supra* note 495.

<sup>522</sup> See *Sea Shepherd Defense Policy*, *supra* note 160, at 41–42.



helping to protect Australia's Exclusive Economic Zone ("EEZ") from the predations of Japanese whalers, will be critically interrogated.<sup>523</sup> Part III also critically examines how the international laws pertaining to the 1982 *United Nations Convention on the Law of the Sea* ("UNCLOS"), the 1972 *Convention on the International Regulations for Preventing Collisions at Sea* ("COLREGS"), the 1988 *Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation* ("SUA"), and piracy affect the SSCS, and offers an explanation as to why these laws have not been successfully utilized by certain states to curtail the militant activities of the SSCS.

The Sea Shepherd organization considers itself to be "a navy, a policing force" whose purpose is to protect sentient animals and confront criminals and criminal activities.<sup>524</sup> Watson has long criticized many international laws, such as UNCLOS, which declare that the powers of enforcement are wielded by states alone.<sup>525</sup> Moreover, despite the clear intent of the UNCLOS signatories, the SSCS still appears to see its role as being an enforcement agency since it argues that no other state or international institution will take on that role.<sup>526</sup> Watson ignores regulations when he believes they are unjust and enforces his own.<sup>527</sup> The SSCS has attempted to justify its ongoing activities by claiming that the Japanese whalers are breaking international law and regulations.<sup>528</sup> Specifically, it cites as authority for its actions that the Japanese whalers are violating the IWC whaling moratorium that bans commercial whaling, and that the SSCS is empowered to act under the UN World Charter for Nature.<sup>529</sup>

#### A. *The SSCS and Scientific Whaling*

The SSCS argues that the claimed Japanese scientific research is merely a pretext for ongoing commercial whaling, and that if the IWC member states will not act, they will, as they are empowered to do so under

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<sup>523</sup> Caprari, *supra* note 3, at 1495–96.

<sup>524</sup> *Sea Shepherd Defense Policy*, *supra* note 160, at 44.

<sup>525</sup> United Nations Convention on the Law of the Sea art. 224, Dec. 10, 1982, 1833 U.N.T.S. 396 [hereinafter UNCLOS] (stating that "[t]he powers of enforcement against foreign vessels under this Part may only be exercised by officials or by warships, military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect").

<sup>526</sup> Khatchadourian, *supra* note 14.

<sup>527</sup> *Id.*

<sup>528</sup> *Japanese Whaling Fleet Forced to Run from Sea Shepherd*, SEA SHEPHERD (Feb. 8, 2007), [http://www.seashepherd.org/news/media\\_070208\\_1p.html](http://www.seashepherd.org/news/media_070208_1p.html).

<sup>529</sup> *Id.*

international law.<sup>530</sup> Watson argues, "Our intention is to stop the criminal whaling. We are not a protest organization. We are here to enforce international conservation law. We don't wave banners. We intervene."<sup>531</sup>

Problematically, current maritime international law as regards whaling is complex, engendered by decades-old political compromises and a lack of foreseeability on the part of the IWC negotiators.<sup>532</sup> Thus, both whaling states and the SSCS have sought to pick and choose to follow only those laws that suit them.<sup>533</sup> Further, both groups claim to have the legal right to their actions.<sup>534</sup> The Japanese whalers cite that under the IWC exemption for research activities their whale hunt is legitimate, while the SSCS demurs, arguing that the UN World Charter for Nature gives them the authority to enforce that document by any means.<sup>535</sup>

Article VIII of the International Convention for the Regulation of Whaling 1946 states in part:

[A]ny Contracting Government may grant to any of its nationals a special permit authorizing that national to kill, take, and treat whales for purposes of scientific research . . . and the killing, taking, and treating of whales in accordance with the provisions of this Article shall be exempt from the operation of this Convention.<sup>536</sup>

Since the global moratorium came into effect in 1986, only Japan, Iceland, and Norway have issued scientific permits.<sup>537</sup> The Japanese government created the Japan Whale Research Program under Special Permit in the Antarctic (JARPA I) in 1987, and then the JARPA II program, which continues taking whales to this day.<sup>538</sup>

While Japan must submit scientific permit proposals for scrutiny by the other IWC members, the IWCR permits any state to award itself

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<sup>530</sup> Hoek, *supra* note 506, at 178–79.

<sup>531</sup> HELLER, *supra* note 124, at 4.

<sup>532</sup> Roeschke, *supra* note 8, at 101.

<sup>533</sup> *See id.*

<sup>534</sup> Caprari, *supra* note 3, at 1495–96.

<sup>535</sup> *Id.*

<sup>536</sup> International Convention for the Regulation of Whaling art. VIII, Dec. 2, 1946, 62 Stat. 1716, 161 U.N.T.S. 72 [hereinafter ICRW].

<sup>537</sup> Hoek, *supra* note 506, at 168.

<sup>538</sup> GOVERNMENT OF JAPAN, SC/57/01, PLAN FOR THE SECOND PHASE OF THE JAPANESE WHALE RESEARCH PROGRAM UNDER SPECIAL PERMIT IN THE ANTARCTIC (JARPA II) 1 (2005), available at <http://www.icrwhale.org/pdf/SC57O1.pdf>.

a scientific permit despite objections by other members as to its methodology.<sup>539</sup> Japan can thus set its own quotas for how many and the type of whales to be hunted in the name of scientific research, since the whaling moratorium only outlawed commercial whaling.<sup>540</sup> While many IWC members believe that Japan is acting beyond the scope of Article VIII, the IWCR does not allow them to take any action greater than enacting symbolic resolutions asking Japan to comply with the spirit of the Convention or engage in non-lethal research methods.<sup>541</sup>

According to Paul Watson and the SSCS, the Japanese scientific research program is “bogus research” which must be stopped.<sup>542</sup> Since the IWC member states will not, or cannot, act to stop scientific whaling which the SSCS regards as a travesty, the SSCS believes it has little choice but to act militantly to prevent ongoing whaling.<sup>543</sup> However, in a blow to the SSCS argument that scientific whaling is illegitimate, the United States Court of Appeals for the Ninth Circuit decreed that the United States allows scientific whaling pursuant to the Whaling Convention Act and the Marine Mammal Protection Act, and determined that the Japanese whaler’s activities were consistent with United States congressional policy as regards the marine ecosystem.<sup>544</sup>

The SSCS can make a moral argument that it can act as the IWC’s enforcer, but it cannot make a legal case. The IWC certainly will not cede its authority to regulate scientific and commercial whaling to the group, even assuming that the Convention it operates under would allow such an outcome, which it does not. Further, given the disdain shown by many

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<sup>539</sup> Moffa, *supra* note 11, at 205–06.

<sup>540</sup> Caprari, *supra* note 3, at 1500.

<sup>541</sup> See Moffa, *supra* note 11, at 206. However, Hoek maintains that a case can be made that the current Japanese whaling activities are primarily about processing and selling the byproduct rather than engaging in scientific research. Hoek, *supra* note 506, at 173 (explaining that if so, it is certainly arguable that Japan is violating the “abuse of rights” doctrine by doing so while a member of the IWC). Under the Vienna Convention on the Law of Treaties, the “good faith” provision, Article 26, provides that “[e]very treaty in force is binding upon the parties to it and must be performed by them in good faith.” Vienna Convention on the Law of Treaties art. 26, May 23, 1969, 1155 U.N.T.S. 331. If it can be shown that Japan’s whaling is actually a commercial activity cloaked under the guise of scientific research it would be in violation of the convention. Hoek, *supra* note 506, at 173. However, Hoek is correct when he points out that it would be extremely difficult to establish the “bad faith” requirement that Japan is killing whales under the guise of research, unless a Japanese official were to come forward with irrefutable proof.

<sup>542</sup> HELLER, *supra* note 124, at 4.

<sup>543</sup> See Khatchadourian, *supra* note 14; Moffa, *supra* note 11, at 210.

<sup>544</sup> *Inst. of Cetacean Research v. Sea Shepherd Conservation Soc’y*, 725 F.3d 940, 946 (9th Cir. 2013).

of the member-states for Watson and the SSCS's methods as evinced by their banning Watson from attending IWC meetings, it seems highly unlikely that such a move would be supported in the future.<sup>545</sup>

*B. The UN World Charter for Nature*

Watson and the SSCS allege their actions to prevent ongoing Japanese whaling from occurring are justified under the United Nations World Charter for Nature, a claim they have made repeatedly and in different fora.<sup>546</sup> Paul Watson argued in a radio interview in 2007:

[W]e intervene against illegal activities, and we are simply upholding international conservation law, and the United Nations World Charter for Nature allows for us to do that. It says that any nongovernmental organization, or individual, is empowered to uphold international conservation law. That's why I've sunk ten whaling ships and destroyed tens of millions of dollars' worth of illegal fishing gear, and I'm not in jail.<sup>547</sup>

The Charter's mandate was to provide "appropriate measures at the national and international levels to protect nature and promote international co-operation in that field."<sup>548</sup> Problematically for the SSCS case, the Charter is merely a non-binding resolution and is not considered a formal source of international law.<sup>549</sup> Section 21 of the Charter states in part that "individuals, [and] groups . . . shall . . . [s]afeguard and conserve nature in areas beyond national jurisdiction," which would potentially include endangered whale species in Antarctica.<sup>550</sup> Section 24 states that "acting individually, . . . each person shall strive to ensure that the objectives and requirements of the [Charter for Nature] are met."<sup>551</sup> The SSCS cites these provisions to argue that it is legally entitled to "act on behalf

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<sup>545</sup> See Khatchadourian, *supra* note 14.

<sup>546</sup> Khatchadourian, *supra* note 14; *International Laws & Charters*, SEA SHEPHERD, <http://www.seashepherd.org/who-we-are/laws-and-charters.html> (last visited Mar. 30, 2014). Paul Watson, *Captain's Log*, SEA SHEPHERD LOG (Sea Shepherd Conservation Soc'y, Santa Monica, Cal.) 2d Quarter 1993, at 2.

<sup>547</sup> Roeschke, *supra* note 8, at 108.

<sup>548</sup> United Nations World Charter for Nature, G.A. Res. 37/7, U.N. Doc. A/RES/37/7 (Oct. 28, 1982).

<sup>549</sup> Caprari, *supra* note 3, at 1509–10.

<sup>550</sup> G.A. Res. 37/7, *supra* note 548, at sec. 21.

<sup>551</sup> *Id.* at sec. 24.

of and enforce international conservation laws,” up to and including ramming whaling vessels since the Japanese are in fact commercially whaling.<sup>552</sup> In an interview, Watson argued that if his actions were illegal under the World Charter why has he not been arrested and charged for his actions?<sup>553</sup>

The SSCS's claims of protection under the World Charter for Nature are extremely dubious. Even if it were to be accepted that Japan is whaling illegally, this would not provide legal cover for ramming vessels.<sup>554</sup> Further, the Charter was deliberately created to be non-binding and was crafted to foster state protection of the environment by setting forward moral principles concerning how states should act.<sup>555</sup> David Caron, a co-director of the Law of the Sea Institute, emphatically argues that the SSCS's arguments are incorrect as a matter of law, and that there is no ambiguity as regards the Charter as to what is or isn't legitimate action.<sup>556</sup> Watson's claim that private individuals may take direct action to safeguard the World Charter for Nature is nonsensical since the Charter makes no mention of enforcement or allowances for direct action or penalties, let alone empowering a non-state actor such as the SSCS to carry out its mandate.<sup>557</sup> Furthermore, a UN resolution is considered to have less legal effect than multilateral conventions such as UNCLOS and SUA, which are critical of the group's direct approach.<sup>558</sup>

Nothing in the text of the Charter confers authority on non-state actors to enforce international law as the SSCS and Watson claim. At best, all that can be asserted is that the Charter recognizes that “each person shall strive to ensure that the objectives and requirements of the present Charter are met.”<sup>559</sup> However, any actions must be lawful. As Scholar Donald K. Anton puts it, “One cannot bootstrap private enforcement to this striving if it cannot be located elsewhere in the law.”<sup>560</sup> States do not

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<sup>552</sup> Roeschke, *supra* note 8, at 116. See Caprari, *supra* note 3, at 1510.

<sup>553</sup> Khatchadourian, *supra* note 14.

<sup>554</sup> Caprari, *supra* note 3, at 1510.

<sup>555</sup> *Id.*

<sup>556</sup> Khatchadourian, *supra* note 14.

<sup>557</sup> Moffa, *supra* note 11, at 211.

<sup>558</sup> *Id.* The World Charter's language is that of generality. Donald K. Anton, *Protecting Whales by Hue and Cry: Is There a Role for Non-State Actors in the Enforcement of International Law?*, 14 J. INT'L WILDLIFE L. & POL'Y 137, 142 (2011) (explaining the *travaux* makes it clear that the Charter's drafters clearly did not want the resolution to have any binding force or sanctions.).

<sup>559</sup> G.A. Res. 37/7, *supra* note 548, at sec. 24.

<sup>560</sup> Anton, *supra* note 558, at 142.

consider the activities of the SSCS such as ramming or scuttling whaling ships to be legal behavior.<sup>561</sup>

#### 1. EEZ Enforcement

The SSCS has also argued that in acting to prevent Japanese whaling operations, it is enforcing Australia's right under UNCLOS to establish a whale sanctuary in its maritime exclusive economic zone in Antarctic waters.<sup>562</sup> Many states claim an EEZ area to regulate the resources within the region and to prevent exploitation by other states.<sup>563</sup> Currently, the Japanese whaling fleet kills within the claimed Australian zone.<sup>564</sup> However, Part V of UNCLOS, dealing with enforcement claims, is silent on the issue of empowering non-state actors such as the SSCS to take enforcement action within the EEZ.<sup>565</sup> Australia is well placed to deal with this issue itself if it wants to, and it does not need the help of the SSCS to enforce its sovereign claims.

#### C. *United Nations Convention on the Law of the Sea*

Part VII of UNCLOS is also relevant to the discussion of SSCS behavior on the High Seas. Article 92 states that ships are subject to the exclusive jurisdiction of the flag state under which they are registered whilst operating on the high seas.<sup>566</sup> Article 94 puts various obligations on flag states, including revoking or suspending the registration of a ship if the crew are operating the vessel in an unsafe manner in violation of international maritime law.<sup>567</sup>

The International Maritime Organization ("IMO") has put in place rules (COLREGS) under which all flagged ships must operate.<sup>568</sup> Regarding

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<sup>561</sup> Khatchadourian, *supra* note 14.

<sup>562</sup> Caprari, *supra* note 3, at 1495–56. Currently there are two sanctuaries in the region. *Sailing with the Sea Shepherds*, *supra* note 11, at 25 n. 45. In 1994 the IWC created the Southern Ocean Whale Sanctuary ("SOWS"), and in 1999 Australia domestically created the Australian Whale Sanctuary, including the EEZ of continental Australia, the EEZ surrounding Australia's external dependencies, and Australia's Antarctic region. *Sailing with the Sea Shepherds*, *supra* note 11, at 25 n. 45. Problematically, this domestic claim is acknowledged by few states and neither sanctuary is currently recognized by Japan. *Sailing with the Sea Shepherds*, *supra* note 11, at 25 n. 45.

<sup>563</sup> Caprari, *supra* note 3, at 1503.

<sup>564</sup> *Id.* at 1503.

<sup>565</sup> Anton, *supra* note 558, at 143.

<sup>566</sup> UNCLOS, *supra* note 525, at art. 92.

<sup>567</sup> *Id.* at art. 94.

<sup>568</sup> United Nations Convention on the International Regulations for Preventing Collisions at Sea, rule 1, Oct. 20, 1972, 28 U.S.T. 3459, 1050 U.N.T.S. 16 [hereinafter COLREGS].



the SSCS, Rule 2 maintains that a ship's master must operate his ship both prudently and with reference to "good seamanship."<sup>569</sup> The rule incorporates a "reasonable mariner" test whereby sailors have a legal duty "to operate their vessels with the same care and vigilance that would be exercised by a reasonably prudent and professional seaman in the same conditions and circumstances."<sup>570</sup> The SSCS has violated this rule on a number of occasions by ramming and interfering with other seafaring vessels, which could lead to its registration being terminated; it could also lead to its ships being declared flagless vessels, which would accord them pariah status with no right to operate freely and leave them open to being boarded by any state.<sup>571</sup>

The Court of Appeals for the Ninth Circuit also addressed this issue in its judgment, agreeing with the lower court that the whalers would likely succeed in an action brought under the COLREGS which subsumes within it the norm of navigating to avoid collision.<sup>572</sup> The court found the SSCS was deliberately steering its ships close to whaling ships, a finding that could leave them vulnerable to court actions in the future.<sup>573</sup>

*D. Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation*

The Japanese government has argued that the SSCS's actions almost certainly transgress the United Nations Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation ("SUA").<sup>574</sup> Legal scholars such as Anthony Moffa and Amanda Caprari

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<sup>569</sup> See COLREGS, *supra* note 568, at rule 2; CRAIG H. ALLEN, FARWELL'S RULES OF THE NAUTICAL ROAD 87 (8th ed. 2005).

<sup>570</sup> ALLEN, *supra* note 569, at 87.

<sup>571</sup> Caprari, *supra* note 3, at 1522.

<sup>572</sup> *Inst. of Cetacean Research v. Sea Shepherd Conservation Soc'y*, 725 F.3d 940, 945 (9th Cir. 2013).

<sup>573</sup> *Id.*

<sup>574</sup> Moffa, *supra* note 11, at 210–11. SUA was introduced to address the issue of terrorism at sea that was not auspiced under the UNCLOS piracy laws. Caprari, *supra* note 3, at 1516. The convention drafters did not define terrorism, deeming it too difficult. *Id.* at 1517. SUA's focus is on creating extraditable offenses in situations where there are intentional and unlawful threats, attempts, or actual endangerment of the safe navigation of a vessel. *Id.* at 1517. The Convention states:

Any person commits an offence if that person unlawfully and intentionally . . .

(b) performs an act of violence against a person on board a ship if that act is likely to endanger the safe navigation of that ship; or

(c) destroys a ship or causes damage to a ship or to its cargo which is likely to endanger the safe navigation of that ship . . .

have supported the Japanese position arguing that violating SUA can constitute marine terrorism.<sup>575</sup> Caprari argues that the SSCS have violated SUA Articles 3(1)(c) and (3)(2)(a), in that the group may have attempted to “cause[] damage to a ship . . . which is likely to endanger the safe navigation of that ship.”<sup>576</sup> Watson and the SSCS have been involved over the years in a number of incidents that fit under that rubric: the ramming of the *Sierra*, the *Yushin Maru No. 2*, and many other vessels, which would potentially render them liable. However, Caprari argues that “[i]t would also be inappropriate to prosecute Sea Shepherd as pirates when SUA was enacted in part to prosecute environmental terrorists who are politically motivated and who traditionally fall outside of the definition of piracy under UNCLOS.”<sup>577</sup>

The Ninth Circuit Court of Appeals examined the issue of SUA in its judgment. It found that the Japanese whalers offered uncontradicted evidence that the SSCS’s tactics could impede their ability to navigate.<sup>578</sup> It further dismissed the District Court approach that since SSCS had not yet disabled any whaler’s ships, it would be unlikely to do so in the future.<sup>579</sup> The Appeals Court examined SUA’s language which prohibited “‘endanger[ing]’ safe navigation.”<sup>580</sup> The test to be applied under SUA requires that the SSCS “create dangerous conditions” and, given its record of ramming and sinking vessels, the test is clearly met.<sup>581</sup> The Appeals Court went on to find that the SSCS had indeed attempted to endanger the navigation of the whaling ships.<sup>582</sup>

At the very least, the Appeals Court determined that attempting to endanger the navigation of the Japanese whaling ships is sufficient to activate the SUA Convention, even if held ultimately to be unsuccessful

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United Nations Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, art. 3, Mar. 10, 1988, 1678 U.N.T.S. 221 [hereinafter SUA]. It focuses on the tenets of “apprehension, conviction, and punishment” rather than prevention, and it does not apply to governments or state-sponsored terrorist organizations, but can only be utilized against individuals. Caprari, *supra* note 3, at 1517. The convention covers only ships operating beyond the outer limits of any state’s territorial sea, since attacks within territorial waters are covered by domestic law. *Id.* at 1517.

<sup>575</sup> See Caprari, *supra* note 3, at 1519; Moffa, *supra* note 11, at 210.

<sup>576</sup> SUA, *supra* note 574, at art. 3; Caprari, *supra* note 3, at 1519.

<sup>577</sup> Caprari, *supra* note 3, at 1524.

<sup>578</sup> *Inst. of Cetacean Research v. Sea Shepherd Conservation Soc’y*, 725 F.3d 940 (9th Cir. 2013).

<sup>579</sup> *Id.*

<sup>580</sup> *Id.*

<sup>581</sup> *Id.*

<sup>582</sup> *Id.*

under the Convention.<sup>583</sup> The Appeals Court rejected the SSCS's argument that its actions were merely "symbolic" and designed for "maximum safety," finding that SSCS vessels were often dangerously close to the whaling ships.<sup>584</sup> The Appeals Court further argued that the initial district court's decision that the whalers would not be likely to succeed under SUA would be erroneous if an action was brought in the future.<sup>585</sup>

However, there are a number of issues with bringing an action under SUA. Problematically, SUA does not mandate that states must extradite any alleged offender if there is not already an extradition treaty.<sup>586</sup> Therefore, "the possibility of non-extradition for political offenses as well as the right to grant asylum are maintained."<sup>587</sup> A state may as an option consider the SUA as a legal basis for extradition, but does not have to if there is not already a pre-existing extradition treaty.<sup>588</sup> As Caprari points out, the convention is only as strong as a state's willingness to utilize these sections to arrest and extradite Watson.<sup>589</sup> For example, Australia, despite repeated requests from the Japanese government, has consistently refused to bring terrorism charges against the SSCS under these headings.<sup>590</sup>

#### *E. Are the SSCS Pirates?*

Japan has in the past also claimed that Watson and the SSCS are pirates, particularly when the militant direct actions undertaken include boarding Japanese ships while at sea.<sup>591</sup> Watson himself has done nothing to deny this charge, often appearing to revel in the appellation on a number of occasions. Watson has stated publicly that "[i]f they want us to be pirates, th[e]n we will be damn pirates."<sup>592</sup> In a media interview in Canada he stated, "[S]ometimes it takes a pirate to stop a pirate. Call me a pirate if you like, but remember, it was a pirate that stopped piracy in the Caribbean in the seventeenth century. The Royal Navy couldn't do it."<sup>593</sup>

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<sup>583</sup> *Id.*

<sup>584</sup> *Inst. of Cetacean Research*, 725 F.3d at 940.

<sup>585</sup> *Id.*

<sup>586</sup> Caprari, *supra* note 3, at 1518.

<sup>587</sup> *Id.*

<sup>588</sup> *Id.*

<sup>589</sup> *Id.*

<sup>590</sup> *Id.* at 1520.

<sup>591</sup> Roeschke, *supra* note 8, at 128.

<sup>592</sup> Hoek, *supra* note 506, at 185.

<sup>593</sup> OCEAN WARRIOR, *supra* note 34, at 22.

# 1. Defining Piracy

The Japanese government argues that because incidents such as the boarding of ships by SSCS personnel take place on the high seas, that the UNCLOS provisions relating to piracy apply.<sup>594</sup> First, it should be pointed out that at international law, all states are obliged to act to prevent acts of piracy on the high seas.<sup>595</sup> UNCLOS Article 101 defines acts of piracy as:

(a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed;  
(i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;  
(ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;

(b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;

(c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).<sup>596</sup>

UNCLOS Article 103 defines a pirate ship as one utilized by the person “in dominant control” of the vessel to commit one of the above acts in Article 101.<sup>597</sup> Scholars Adam Young and Mark Valencia define piracy acts as ranging from activities such as in-port pilfering and hit-and-run attacks, to temporary and permanent seizure of ships.<sup>598</sup> However, their definition of hit-and-run attacks (the most applicable to the SSCS) appears limited to actors clandestinely boarding ships to steal what they can, and is not applicable to the SSCS, which is carrying out politically motivated acts.<sup>599</sup>

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<sup>594</sup> Roeschke, *supra* note 8, at 128.

<sup>595</sup> Caprari, *supra* note 3, at 1511.

<sup>596</sup> UNCLOS, *supra* note 525, at art. 101.

<sup>597</sup> UNCLOS, *supra* note 525, at art. 103.

<sup>598</sup> Adam J. Young & Mark J. Valencia, *Conflation of Piracy and Terrorism in Southeast Asia: Rectitude and Utility*, 25 CONTEMP. SE. ASIA 269, 272 (2003).

<sup>599</sup> *Id.*

## 2. Likelihood of Being Charged and Convicted for Piracy

Paul Watson has stated previously he hoped his adversaries would charge him with piracy and take him to court.<sup>600</sup> At present, Japanese authorities have declined to do so.<sup>601</sup> While Japan could potentially bring claims of piracy against Watson, the SSCS, and its volunteers, they would likely fail.<sup>602</sup> There are several problems with successfully convicting the SSCS on a charge of piracy. Firstly, the vagueness of the UNCLOS law regarding piracy has to date allowed the SSCS, by mostly operating outside of the territorial waters of states, to avoid legal consequences.<sup>603</sup> For example, the Convention does not properly define the term “illegal acts,” leaving the term ambiguous.<sup>604</sup> The term can have different meanings under different national laws than that which is expressed in UNCLOS.<sup>605</sup>

Secondly, states such as Australia appear extremely reluctant to bring piracy charges against the SSCS since it is opposed to Japan's continued utilizing of the scientific research program loophole.<sup>606</sup> Thirdly, enforcing piracy under the UNCLOS categorization has proven extremely difficult in the past.<sup>607</sup> Nations are hesitant to prosecute pirates under international laws in their municipal courts because piracy has traditionally been viewed as a domestic problem.<sup>608</sup> Fourthly, UNCLOS is not applicable to actions within a state's territorial waters, such as the damaging and subsequent sinking of the *Sierra* and other whaling ships in harbor.<sup>609</sup> These are matters for the individual state if it wishes to pursue them, and as we have seen, most have been reluctant to do so for fear of handing Watson and the SSCS a media *cause celebre*.

## 3. Private Ends

Perhaps the biggest problem with the UNCLOS definition of piracy is what can be understood by the term “private ends.”<sup>610</sup> Problematically,

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<sup>600</sup> Khatchadourian, *supra* note 14.

<sup>601</sup> Roeschke, *supra* note 8, at 128.

<sup>602</sup> *Id.*

<sup>603</sup> Caprari, *supra* note 3, at 1513.

<sup>604</sup> *Id.* at 1512.

<sup>605</sup> *Id.*

<sup>606</sup> *Id.* at 1513.

<sup>607</sup> *Id.* at 1512.

<sup>608</sup> *Id.*

<sup>609</sup> Caprari, *supra* note 3, at 1513.

<sup>610</sup> *Id.* at 1512.

it is not defined in the Convention, but Caprari argues it excludes political activities that would preclude maritime terrorism from being covered by the statute.<sup>611</sup> Arguably, as per scholar H.E. Jose Luis Jesus, it could be extended to incorporate violent acts with the intent to plunder, or “acts of personally motivated hatred or sheer vengeance.”<sup>612</sup> However, this attempted extension of “private ends” does not appear applicable in the case of the SSCS. Caprari argues persuasively that a pirate is generally defined as “a private individual whose heinous acts are aimed towards achieving some personal economic benefit.”<sup>613</sup> Thus, it can be inferred that “private ends” encompasses acts done for economic gain, which is not the SSCS’s motivation.<sup>614</sup>

Only once has an environmental group been prosecuted under the UNCLOS piracy laws: the Belgian case of *Castle John and Nederlandse Stichting Sirius v. NV Mabeco and NV Parfin*.<sup>615</sup> In that case, the Belgian Court of Cassation held that Greenpeace had committed piracy when its members disrupted two ships legally dumping waste in the ocean.<sup>616</sup> That court determined that the acts were for “private ends” because the aim was to achieve stated Greenpeace goals and thus was a private act, subject to UNCLOS piracy laws.<sup>617</sup> However, this case has traditionally not been ascribed much weight and there have been no further similar prosecutions of green groups under this provision.<sup>618</sup>

However, and worryingly for the future of the SSCS, the Ninth Circuit Court of Appeals judges in *Institute of Cetacean Research v. Sea Shepherd Conservation Society* were willing to ascribe the “pirate” tag to SSCS.<sup>619</sup> Judge Alex Kozinski asserted that the group’s “aggressive and high-profile attacks” are “the very embodiment of piracy.”<sup>620</sup> He stated:

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<sup>611</sup> *Id.*

<sup>612</sup> H.E. Jose Luis Jesus, *Protection of Foreign Ships Against Piracy and Terrorism at Sea: Legal Aspects*, 18 INT’L J. MARINE & COASTAL L. 363, 377–78 (2003).

<sup>613</sup> Caprari, *supra* note 3, at 1512.

<sup>614</sup> *Id.* at 1512, 1519.

<sup>615</sup> *Id.* at 1514; Moffa, *supra* note 11, at 210.

<sup>616</sup> Caprari, *supra* note 3, at 1514.

<sup>617</sup> *Id.*

<sup>618</sup> *Id.*

<sup>619</sup> *Ninth Circuit Court of Appeals Hands Down Ruling in Favor of Japanese Whale Poachers*, SEA SHEPHERD (Feb. 27, 2013), <http://www.seashepherd.org.au/news-and-media/2013/02/27/ninth-circuit-court-of-appeals-hands-down-ruling-in-favor-of-japanese-whale-poachers-1507>.

<sup>620</sup> Nick Bryant, *Politics at Play in Sea Shepherd—Japan Whaling Wars*, BBC NEWS (Feb. 28, 2013), <http://www.bbc.co.uk/news/world-asia-21612740>.



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.<sup>621</sup>

Circuit Judge M. Smith added, "Even if one believes it is barbaric to harvest whales for any purpose at the beginning of the 21st century, as practiced by Cetacean, it is clearly permitted under international law . . . . The Sea Shepherds are pirates. Period."<sup>622</sup>

The Court Of Appeals maintained that acts such as ramming ships, fouling propellers and hurling fiery and acid-filled projectiles are violent activities, even if directed only at inanimate objects, since they could injure crew or cause damage to ships that could sink.<sup>623</sup> Such acts are thus violent acts for private ends, which is the essence of piracy.<sup>624</sup>

The Appeals Court noted that the Belgian court, the only court to date to examine this issue, had ruled that environmental activism should be considered a "private end."<sup>625</sup> It dismissed arguments made by the SSCS that because they saw themselves as serving the public, their ends were thus public instead of private.<sup>626</sup> The court further criticized the district court for holding "that Sea Shepherd's conduct is not violent because it targets ships and equipment rather than people."<sup>627</sup> The Appeals Court argued that enjoining piracy has nothing to do with whaling, but rather sends the message that piracy is not to be tolerated.<sup>628</sup> Refusing to issue an injunction would tell the world that the United States tolerates "violent vigilantism."<sup>629</sup>

The SSCS's claim that its actions utilize international law cannot be justified via even a cursory examination of the relevant international law. The group's claims regarding scientific research whaling, and its

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<sup>621</sup> Mike Schuler, *Paul Watson and Sea Shepherd Are Pirates, US Court Says*, GCAPTAIN.COM (Feb. 27, 2013), <http://gcaptain.com/paul-watson-and-shepherd-pirates-us-court-rules/>.

<sup>622</sup> *Id.*

<sup>623</sup> *Id.*

<sup>624</sup> *Id.*

<sup>625</sup> *Inst. of Cetacean Research v. Sea Shepherd Conservation Soc'y*, 725 F.3d 940, 944 (9th Cir. 2013).

<sup>626</sup> *Id.*

<sup>627</sup> *Id.*

<sup>628</sup> *Id.* at 946.

<sup>629</sup> *Id.*

role in enforcing what the IWC will not, have no legal validity given the strictures imposed on the IWC by the current version of the International Convention on the Regulation of Whaling.<sup>630</sup> Further, the U.S. Court of Appeals found that the use of the exception was valid under U.S. law.<sup>631</sup> It is up to the IWC members to resolve this issue and outside pressure of the sort used by the SSCS appears counterproductive to the cause of ending global whaling: the group's stated objective. Similarly, the issue of EEZ enforcement is one for individual states to determine how best to defend their sovereignty.<sup>632</sup> The UN World Charter for Nature, quoted often by Watson as the legal justification for his group's actions, also provides no succor. The Charter is non-binding, does not allow for private actors to take action as is so often claimed in the group's communications, does not mention enforcement, and requires all actions undertaken to be lawful.<sup>633</sup>

Rather, given the recent U.S. Court of Appeals judgment, there is validity to the proposition that international law may be utilized in the future to attack the SSCS. The group's direct actions bring them into conflict with the COLREGS on prudential maritime usage by the master of vessels as well as engendering danger via its actions thus contravening SUA.<sup>634</sup> The willingness of the U.S. Appeals Court to follow Belgian precedent regarding "private ends," and being willing to brand the SSCS as pirates, is also problematic for the group, opening them up to a plethora of similar legal cases from their opponents who now have a greater likelihood of success.<sup>635</sup> Bringing such actions is of course contingent upon states being willing to do so, but given Japan's recent aggressive legal actions, it appears clear that it has a strategy to go after Paul Watson and the SSCS through the courts, and will no doubt continue to bring further legal actions.

## CONCLUSION

In many ways, the SSCS is at the zenith of its powers. It has grown exponentially since its inception with a large operating budget, enormous charitable donations, dozens of paid staff, thousands of supporters globally,

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<sup>630</sup> Caprari, *supra* note 3, at 1500; *Sea Shepherd Celebrates 25th Anniversary of Being Banned from IWC*, *supra* note 511.

<sup>631</sup> *Inst. of Cetacean Research*, 725 F.3d at 946.

<sup>632</sup> See Caprari, *supra* note 3, at 1503.

<sup>633</sup> *Id.* at 1510.

<sup>634</sup> *Inst. of Cetacean Research v. Sea Shepherd Conservation Soc'y*, 725 F.3d 940, 944–46 (9th Cir. 2013).

<sup>635</sup> *Id.* at 944.

and a flotilla of ships to achieve its goals.<sup>636</sup> The group has evolved into a global entity, with national chapters staffed by eager volunteers desiring to force an end to global whaling through the mechanism of direct action.<sup>637</sup> In the past three years the SSCS has been incredibly successfully in preventing Japanese whaling in Antarctic waters. In that period the SSCS has limited the Japanese whale take to approximately ten percent of what the Japanese wished to harvest.<sup>638</sup>

The SSCS has, from the beginning, been fueled by Watson's vision and his authoritarian manner to continue until all exploitation of marine life is ended.<sup>639</sup> To achieve that goal, the SSCS have engaged a multipurpose strategy that utilizes diplomacy, economic threats and damage coupled with media-savvy direct actions. It is the group's use of the global media apparatus to achieve its goals that truly sets the SSCS apart. Watson's media training has enabled him to create a drama where his group is the heroic underdog fighting on behalf of the planet against evil Japanese whalers, who, he argues, are acting contrary to international law and Western mores.<sup>640</sup> The group's bold, direct actions are designed for a global media audience.

Watson understands that more media coverage means more donations and a bigger organization able to carry out its mission.<sup>641</sup> He has constantly dared the whaling states to put him on trial knowing that such an act will draw the spotlight of the world's media to his cause.<sup>642</sup> Until recently, states had not been willing to fall for this "Brer Rabbit" ploy,<sup>643</sup> but it appears that Japan now has gambled that calling his bluff may be necessary to rid itself of Watson.

The SSCS finds itself beset on all sides by legal actions designed to limit its effectiveness. The Japanese state now appears to be targeting Watson and his group through the courts to remove a perennial thorn in its side. Japan now seems willing to use the U.S. court system to prevent ongoing direct SSCS actions against its annual Antarctic whaling operations. Japan further appears to have instigated a program to have Watson

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<sup>636</sup> See Hobart, *supra* note 112; *Sea Shepherd Launches Operation Zero Tolerance*, *supra* note 463.

<sup>637</sup> *Sea Shepherd Launches Operation Zero Tolerance*, *supra* note 463.

<sup>638</sup> *Japanese Whalers Have 'Worst Ever' Catch*, *supra* note 488; Ozawa, *supra* note 488; Wallace, *supra* note 488.

<sup>639</sup> See EARTHFORCE!, *supra* note 1, at 54–55.

<sup>640</sup> See Khatchadourian, *supra* note 14.

<sup>641</sup> See Hobart, *supra* note 112, Khatchadourian, *supra* note 14.

<sup>642</sup> Khatchadourian, *supra* note 14.

<sup>643</sup> *Id.*

extradited to face charges in Japan and has sought an injunction from U.S. courts to curtail the group's activities.<sup>644</sup>

The U.S. Ninth Circuit Court of Appeals decision to grant a preliminary injunction against Watson and the SSCS weakens the group's ability to operate unhindered, and opens them up to contempt of court proceedings if it is deemed to have contravened the injunction.<sup>645</sup> Further, the court action has forced Watson to step down as the public face of the group to avoid facing criminal charges for SSCS operations, but he still appears to wield a great deal of influence. Watson maintains that he will not be in charge of the Antarctic anti-whaling campaign "Operation Relentless" in Antarctica for the 2013–14 whaling season due to the United States injunction prohibiting him from being involved in such activities.<sup>646</sup>

Watson's choice to flee the Australian jurisdiction has left him an international fugitive who can be arrested pursuant to the Interpol notice by any government willing to do so.<sup>647</sup> Rather than risk being arrested in previously friendly states such as Australia and New Zealand, Watson chose to stay aboard the SSCS flotilla in international waters.<sup>648</sup> Whilst Watson has been granted a visa entry into Australia if he wishes to in the future, it appears uncertain whether he will exercise that option due to the possibility of being arrested.<sup>649</sup>

After fifteen months at sea, Watson finally came ashore in the city of Los Angeles in late 2013 to face court in Seattle, and was not arrested.<sup>650</sup> He had not been back to the United States since the Interpol notice was issued and he maintained at the time the notice had been rescinded (although the Japanese request is still active).<sup>651</sup> However, after one week of Watson being in the United States, Costa Rican judicial officials from the First Circuit Penal Court of San Jose formally requested that Watson be extradited to Costa Rica to stand trial over the 2002

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<sup>644</sup> *Inst. of Cetacean Research v. Sea Shepherd Conservation Soc'y*, 702 F.3d 573 (9th Cir. 2012) (order granting preliminary injunction).

<sup>645</sup> *Id.*

<sup>646</sup> *Activist Watson Gets Australian Visa*, JAPAN TIMES (Nov. 3, 2013), <http://www.japantimes.co.jp/news/2013/11/03/asia-pacific/activist-watson-gets-australian-visa/>.

<sup>647</sup> Stylianou, *supra* note 495.

<sup>648</sup> *Id.*

<sup>649</sup> *Activist Watson Gets Australian Visa*, *supra* note 646.

<sup>650</sup> *Fugitive Eco Activist Lands in US, Vows to Pursue Fight*, AGENCE FRANCE-PRESSE (Oct. 31, 2013), <http://www.google.com/hostednews/afp/article/ALeqM5gxscapTb2tZqjCW33wK3kXowWvLA?hl=en&docId=a1455c8f-5ad1-4b8c-b7ba-7144a29088bd&index=0>.

<sup>651</sup> *Id.*

offences.<sup>652</sup> Watson's Costa Rican lawyer Federico Morales understood that the Costa Rican authorities had reactivated the Interpol arrest warrant that had been conveyed to U.S. authorities.<sup>653</sup> To date, the United States has not officially responded and Watson has not been arrested.<sup>654</sup>

What impact all of the recent legal issues will have on the viability of the group remains to be seen. The organization has always been a top-down organization, led by the charismatic leader, Paul Watson.<sup>655</sup> The autocratic approach favored by Watson, where all major decisions are decided by him,<sup>656</sup> runs the risk of fatally weakening the organization if he is not at the helm. His potential imprisonment by Costa Rica or Japan, or limiting him to operating only on the high seas, could lead to the collapse of the organization without its totemic head. Or it might lead to an invigoration of the SSCS with Paul Watson as a martyr languishing in jail using a global megaphone to promote both his plight and his cause while others assume the mantle of leadership. Given the current reach and stability of the group Watson has built, it may very well be able to exist without his leadership, but given how the organization relies on his presence for fundraising and media presence,<sup>657</sup> its future without Watson at the helm is uncertain.

Watson's leaving Greenpeace in dubious circumstances left him free to go on to create his own organisation, free of the strictures of the Greenpeace ethos to merely "bear witness" and able to take on his "enemies" in a direct fashion.<sup>658</sup> For Watson, change through nonviolent means has historically been mostly a failure.<sup>659</sup> He argues that the modern environmental movement, faced with violence against humans, animals and the planet, has been overly passive.<sup>660</sup> Rather, he argues there are times when it is necessary to break the law in defense of larger objectives.<sup>661</sup> The SSCS's direct action strategies and tactics have within them the seeds of the

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<sup>652</sup> David Boddiger, *Costa Rica Seeks Arrest, Extradition from US of Sea Shepherd's Paul Watson*, TICO TIMES (Nov. 12, 2013), <http://www.ticotimes.net/2013/11/13/costa-rica-seeks-arrest-extradition-from-us-of-sea-shepherd-s-paul-watson>; Dan Stevens, *CR Wants Sea Shepherd's Captain Watson*, COSTA RICAN TIMES (Nov. 18, 2013), <http://www.costarican-times.com/costa-rica-wants-shepherds-captain-watson/22547>.

<sup>653</sup> Boddiger, *supra* note 652.

<sup>654</sup> *Id.*

<sup>655</sup> See EARTHFORCE!, *supra* note 1, at 54–55.

<sup>656</sup> *Id.*

<sup>657</sup> See Hobart, *supra* note 112.

<sup>658</sup> See Khatchadourian, *supra* note 14; *Paul Watson and Greenpeace*, *supra* note 82.

<sup>659</sup> SEA SHEPHERD, *supra* note 30, at 26.

<sup>660</sup> EARTHFORCE!, *supra* note 1, at 53.

<sup>661</sup> *Id.* at 85.

group's destruction as well. The group's use of violence remains problematic, and even if only utilized against property or in "self-defense," involves an element of risk that life could be lost on both sides.<sup>662</sup>

The SSCS has met one of its key objectives in recent years by harassing the Japanese Antarctic whaling fleet to reduce the numbers of whales caught, but how well is the group doing in its broader goal to end Japanese whaling via economic means? While it is true that the consumption of whalemeat in Japan is down, and that the activity is uneconomic, there appears to be no sign that Japan is willing to end its annual hunt.<sup>663</sup> Rather, the Japanese state appears to view Western disapproval of the whale hunt as a form of "Western cultural imperialism" and is determined to continue scientific research whaling.<sup>664</sup>

The Japanese government appears adamant to not be seen as giving in to this type of pressure, so ongoing SSCS operations may be counterproductive. Thus, the SSCS appears unlikely to achieve its stated goal of the whaling fleet's economic ruin since Japan seems determined to support the ongoing whale hunt, no matter how uneconomic or how little the Japanese public desires whalemeat as a staple of their diet.<sup>665</sup>

Further, the group is highly unlikely through its actions to force change at the IWC. Rather, for many member-states and commentators, the SSCS's approach is seen as counterproductive to bringing about a negotiated end to non-commercial whaling.<sup>666</sup> The IWC members perceive the SSCS operations as detrimental to convincing Japan to stop whaling.<sup>667</sup> Actions such as ramming ships do not endear the group to others, even non-whaling nations.<sup>668</sup>

As the figurehead of the group, Paul Watson's zeal and energy has built a force to be reckoned with, not only by the Japanese whaling industry but also by the international law infrastructure itself. Up until recently there had been few legal consequences for Watson and his crew from his aggressive activities.<sup>669</sup> Opaque, weak, and confusing international laws, combined with the problematic nature of enforcing international law, have allowed the SSCS to operate to a degree once thought unheard of by a non-state actor.<sup>670</sup>

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<sup>662</sup> Hoek, *supra* note 506, at 182.

<sup>663</sup> Fackler, *supra* note 512.

<sup>664</sup> *Id.*

<sup>665</sup> *Id.*

<sup>666</sup> Caprari, *supra* note 3, at 1507.

<sup>667</sup> *Id.*

<sup>668</sup> Khatchadourian, *supra* note 14.

<sup>669</sup> Caprari, *supra* note 3, at 1509; Hoek, *supra* note 506, at 162.

<sup>670</sup> Hoek, *supra* note 506, at 182; Roeschke, *supra* note 8, at 108.



The fig leaf of the group's claimed international law imprimatur for their activities is now well revealed to be false.<sup>671</sup> While the SSCS has likened itself to Gaia's navy—whose mission is to protect sentient marine creatures—these claims do not stand up to critical scrutiny. The SSCS's argument that it acts on behalf of the IWC since it “refuses” to act cannot be upheld legally, since only that entity can act on its own behalf if it chooses.<sup>672</sup> The group's oft-mounted claim that its methods are sanctioned under the UN World Charter for Nature is also fallacious. The Charter was deliberately designed to be non-binding, makes no mention of enforcement, and was meant rather to foster state protection of the environment, not direct actions by individual actors.<sup>673</sup> While it is true that Part V of UNCLOS, relating to enforcing EEZ claims, is silent on whether non-state actors such as the SSCS can be instruments of enforcement, it appears highly unlikely such actions were contemplated by the framers of UNCLOS.<sup>674</sup> Further, Australia, as the controlling state of the EEZ, appears far better placed to handle any incursions upon its territory.<sup>675</sup>

An analysis of the relevant international law pertaining to SSCS activities reveals that, despite not being held to account for its actions to date, the group is at risk if states decide to pursue legal action against them. There have been numerous breaches by the SSCS of Section Two of COLREGS, which requires captains of vessels to operate their ships in line with the precepts of “good seamanship.”<sup>676</sup> The U.S. District Court of Appeals for the Ninth Circuit also determined that the SSCS breached this section in deliberately steering its vessels close to Japanese whaling ships.<sup>677</sup>

Moffa and Caprari mount persuasive cases that the SSCS has also violated the marine terrorism provisions of SUA.<sup>678</sup> Further, the Ninth Circuit Court of Appeals highlighted the Japanese claims that SSCS tactics could impede their ship's ability to navigate, which went unchallenged by the organization.<sup>679</sup> The Appeals Court determined that, at the very least, SSCS's endangering of Japanese ships was enough to

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<sup>671</sup> Moffa, *supra* note 11, at 211.

<sup>672</sup> See Caprari, *supra* note 3, at 1524.

<sup>673</sup> Moffa, *supra* note 11, at 211.

<sup>674</sup> See Caprari, *supra* note 3, at 1503–04.

<sup>675</sup> See *id.*

<sup>676</sup> COLREGS, *supra* note 568, at rule 2; ALLEN, *supra* note 569, at 87.

<sup>677</sup> *Inst. of Cetacean Research v. Sea Shepherd Conservation Soc'y*, 725 F.3d 940, 945 (9th Cir. 2013).

<sup>678</sup> See Caprari, *supra* note 3, at 1519; Moffa, *supra* note 11, at 210–11.

<sup>679</sup> *Inst. of Cetacean Research*, 725 F.3d at 945.

activate the Convention, even if an adverse finding under the Convention was not obtained.<sup>680</sup>

Most worryingly for the SSCS is whether the appellation of piracy can be applied to its actions. The Japanese government has long argued that incidents such as boarding vessels on the high seas mean that the UNCLOS piracy provision should be levied on the organization.<sup>681</sup> To date, the piracy provisions have not been applied to the SSCS for a variety of factors: the relevant section is vaguely worded; states such as Australia have been reluctant to charge the SSCS for their actions; historically, enforcing the provisions has proved problematic; the provisions cannot be applied inside territorial waters where some SSCS direct actions have occurred;<sup>682</sup> and the definition of “private ends” with its connotations of economic gain incorporated within the Convention was not seen as applicable to the SSCS, which is motivated by other goals.<sup>683</sup>

However, Judge Alex Kozinski of the U.S. Ninth Circuit Court of Appeals was willing to assert that the actions of the SSCS fit within the rubric of piracy.<sup>684</sup> His finding was based on broadening the definition of “private ends” to include environmental protest.<sup>685</sup> This potentially opens up the SSCS to a raft of legal suits for its ongoing activities, and threatens the viability of the organization in the long term if the ruling is allowed to stand.

It is clear, however, that the SSCS, despite the threat of ongoing legal action and the loss of its figurehead, remains determined to end whaling through direct action.<sup>686</sup> While the role of Watson in the SSCS remains unclear and the organization faces an uncertain legal future, one outcome is definite: while marine life is threatened, Paul Watson and the group he founded will continue their self-imposed mission to protect aquatic life.

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<sup>680</sup> *Id.*

<sup>681</sup> Caprari, *supra* note 3, at 1520.

<sup>682</sup> Jesus, *supra* note 612, at 377–79.

<sup>683</sup> Caprari, *supra* note 3, at 1512–14.

<sup>684</sup> *Inst. of Cetacean Research v. Sea Shepherd Conservation Soc’y*, 725 F.3d 940, 942–44 (9th Cir. 2013).

<sup>685</sup> *Id.* at 943–44.

<sup>686</sup> Clashes continued between the Japanese and the SSCS during the 2013–14 Antarctic whaling season, with Japanese and SSCS ships colliding and the SSCS claiming that one of its vessels was damaged by the Japanese boat’s actions. *Sea Shepherd Releases Raw Footage: Yushin Maru No.3 Hits the Bob Barker*, SEA SHEPHERD (Feb. 2, 2014), <http://www.seashepherd.org.au/news-and-media/2014/02/02/sea-shepherd-releases-raw-footage-yushin-maru-no-3-hits-the-bob-barker-1566>.