

Whaling on Trial

Japan's whale meat scandal and the trial of the Tokyo Two



GREENPEACE

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This dossier outlines the key elements of Greenpeace's investigation of the Japanese government-sponsored whaling programme and the subsequent arrest, detention and prosecution of Junichi Sato and Toru Suzuki.

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Whaling on Trial

Japan's stolen whale meat scandal and the trial of the Tokyo Two

In early 2010, two Greenpeace activists went on trial in Japan in an unprecedented court case - one that court papers will register simply as a case of theft and trespass but which, over the course of the past two years, has become so much more. Corrupt government practices, Japan's adherence to international law, freedom of speech and the right of individual protest and the commercial killing of thousands of whales are all under the spotlight. Before the verdict has even been rendered, the United Nations has already ruled that, in the defendants' attempts to expose a scandal in the public interest, their human rights have been breached by the Japanese government.

'*Whaling on Trial*' outlines the key elements of Greenpeace's investigation of the Japanese government-sponsored whaling programme and the subsequent arrest, detention and prosecution of Junichi Sato and Toru Suzuki.

For more than 20 years the Japanese government has sponsored a lethal whaling programme in the Southern Ocean Whale Sanctuary under the pretext of scientific research, following a moratorium on commercial whaling by the International Whaling Commission. Repeated requests by the Commission to end the programme - widely condemned internationally as nothing more than commercial whaling by stealth - fall on deaf ears, as successive governments in Tokyo insist that the programme is legitimate.

In January 2008, Greenpeace Japan's Junichi Sato was tipped off by a former whaler that the so-called research was far from legitimate and was in fact, from deckhands to government officials overseeing the programme, riddled with corruption.

The story was sufficiently credible and backed by testimony from at least two other whalers, so Sato, together with Toru Suzuki, decided to investigate further. Using standard research and corroboration techniques employed by investigative journalists the world over and protected under the International Covenant on Civil and Political Rights, they secured the evidence that substantiated the claims, proving that whale meat had been illegally shipped from the expedition for personal gain and with the full knowledge of government officials.

Initially, the claims seemed to be taken seriously and the Tokyo district prosecutor began his own investigation. However, Greenpeace's allegations had struck deep into the heart of the establishment and, one month later, this investigation was shut down without explanation on the same day that Sato and Suzuki were arrested.

Japan's subsequent treatment of the 'Tokyo Two' is a catalogue of failures - which have been specifically and formally condemned by the UN Human Rights Council's Working Group on Arbitrary Detention - to adhere to international law and agreements to which it has given its name and endorsement, as well as its own domestic laws. Police tip-offs to media prior to the arrest, detention without charge for 23 days, questioning without a lawyer present and while being tied to a chair, censorship of basic information requested through Freedom of Information requests and a blanket refusal to disclose documents that would aid their defence are just some of the notable failings.



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Junichi Sato
Greenpeace Japan

Long-time activist Junichi Sato has worked for Greenpeace since 2001. Formerly working on the Toxics Campaign, Junichi was the force behind bringing the 'Zero Waste' policy introduced in countries such as Australia, New Zealand and UK, to Japan. He led the Oceans team on issues such as overfishing, illegal fishing, the Okinawa dugong and whaling.



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Toru Suzuki
Greenpeace Japan

42-year-old Suzuki spent many years as a professional motorcycle racer, competing domestically in Japan and internationally, most notably in Australia. After 9 months as a volunteer, he joined Greenpeace in late 2007 as actions coordinator, swiftly becoming an integral part of the investigation that would expose the whale meat embezzlement scandal.

Whaling on Trial

Cast as a straightforward criminal trial, the case nevertheless bears all the hallmarks of a political prosecution. It will be heard in the northern town of Aomori, but the lead judge has been brought in especially from Tokyo. It will put on trial not only whaling but also wider government policies, raising fundamental questions about their legitimacy.

It is not common knowledge inside Japan that the government spent a billion yen of taxpayers' money on whaling in the previous year, nor that most whale meat is stockpiled in freezers because the appetite for it is so low. The cash-flow between the government, the Institute for Cetacean Research - which sponsors the 'science' - and Kyodo Senpaku - which runs the ships - is very murky; attempts to clarify how money is spent and by whom are met with blacked-out documents and denial. The ancient system of 'Amakudari' - dropping bureaucrats by 'golden parachute' into well-paid retirement jobs in government agencies is also intentionally lacking in transparency. And yet, all of these factors ensure that subsidisation of a programme that is not needed, not wanted and not scientifically robust continues.

It is all these scandals that Greenpeace aims to expose in this trial, as well as the original allegations. Sato and Suzuki know that they risk up to 10 years in jail; they also know that to say or do nothing risks much more.

Allegations: the whaler's story

Greenpeace has been campaigning with the International Whaling Commission (IWC) against commercial whaling for more than 30 years. In 1987, the same year that a moratorium on commercial whaling came into effect for Japan, the Japanese government created and funded the Institute for Cetacean Research (ICR), with the sole purpose of continuing to hunt whales, but for 'science' and not commerce. This so-called research programme became the focus of many Greenpeace campaigns and actions. While the exposure has brought significant international pressure upon the government of Japan, it has also alienated Greenpeace in Japan. It is, therefore, testament to how disillusioned one whaler had become that he chose to turn to the very organisation that had confronted his ships in the frigid waters of the Southern Ocean Whale Sanctuary...

It was a simple matter of honour that prompted a long-time whaler to call Greenpeace in Tokyo and talk about what he saw as corruption and deceit within the Japanese government whaling fleet.

Wishing to remain anonymous for fear of retribution, the middle-aged man explained how proud he was to be involved in whaling, seeing nothing wrong in principle with either commercial or lethal research whaling.

The whaler had believed the Institute's claim that the whales needed to be killed in order to carry out the scientific research. But increasingly he saw inconsistencies with the research that led him to conclude it was simply a charade. What he witnessed was not science as the government claimed it to be, and he believed it was wrong to lie to the taxpayers who fund the annual expedition.

Chief among his concerns were the following:

- **Embezzlement**

Prime cuts were taken home by crew members to be kept or sold, rather than being sold through the government agencies in order to refund tax subsidies.

- **Waste**

Up to seven tonnes of meat a day – usually the cheap cuts – was simply thrown overboard, rather than processed.

- **Non-scientific**

Rather than taken randomly, as required by the research parameters, whales were targeted - suggesting they were being chosen for profit margin potential, not scientific study.

- **Disease**

Some whales showed signs of tumours and lesions. Although the ICR took samples and documented the disease, no reports were made back to the IWC.

The whaler's allegations were extensive and precise. They formed the basis of the Greenpeace investigation.



image Transfer of whales and the flensing of whales continues aboard the deck of the *Nisshin Maru* factory ship of the whaling fleet of Japan. Greenpeace is using every available means to bring the whaling hunt to an early end and make it the last time the Sanctuary is breached by the whalers.

Allegations: the whaler's story

Embezzlement

According to the whaler, the embezzlement of the meat was conducted with the full knowledge of the onboard officials from the ICR and the government's Fisheries Agency. Indeed, the informant claimed that extra meat was often boxed up for government officials ashore. Precise details of how the embezzlement operation was carried out were given; the crew usually took 'unesu' – prime cuts taken from the throat of the whale – preserving them in salt in their cabins rather than freezing them with the remaining stock. The meat was then transported in boxes of personal belongings, which were always collected by the same courier company. When Greenpeace investigators documented the return of the whaling fleet in 2008, the process played out precisely as the informant had described it.

Waste

The whaler, who had spent years working on the Japanese whaling ships, knew full well the whale-processing capacity of the *Nisshin Maru's* crew. Although the scientific rationale for doing so was unclear, in 2005 the government of Japan increased the number of whales to be targeted in the Southern Ocean Whale Sanctuary to over double the previous year. According to the whaler, the crew simply couldn't process the number of whales caught under the new programme and consequently tonnes of meat were thrown overboard every day to clear the decks for the next kill. He was not the only crewman angered by the waste. Additionally, there was no apparent scientific imperative in choosing what to dump and what to keep, and the meat that was kept was the most commercially viable.

Non-scientific

According to the parameters of its own research plans, known as JARPA and JARPA II, the whaling fleet should have been randomly 'sampling' the whales. According to the Greenpeace informant, the reality was the opposite. The research programme divided up the Southern Ocean Sanctuary into sections, and the euphemistically-named 'sampling' was to be taken randomly over the whole region. However, the standard practice was to take the whales whenever they encountered them – the main concern being to reach the number required, not to examine specimens from across the region.

Disease

The data gathered from decades of 'research' whaling is rarely peer-reviewed. Normally, scientific programmes relating to whales are reported to the Science Committee of the IWC. Rarely is anything more than the most basic detail of the JARPA programmes presented to the Committee. There have never been any reports relating to health concerns regarding the whales of the Southern Ocean, yet the whaler claimed that there were numerous examples of suspicious-looking tumours and lesions found on the whales. ICR personnel photographed some, others were simply cut out and the remaining meat processed as normal for human consumption. After scandals in Japan about levels of mercury and other toxins in whale and dolphin meat from around the coasts of Japan, Southern Ocean whale meat is marketed as the cleanest meat available. Clearly, that could no longer be claimed if there were concerns about the health of these whale stocks. Without independent verification, it remains unclear whether the tumours and lesions are of concern.



image The Japanese whaling fleet returns to port. Greenpeace is calling for the whaling fleet to be permanently decommissioned.

The Greenpeace investigation

Basing the investigation on the standard rules of investigative journalism – corroboration, eye-witness testimony and physical evidence, the Greenpeace investigators set out to substantiate the whaler’s claims...

Following the interview with the primary informant, Greenpeace received the same claims from two other whalers, one still sailing and one retired, which confirmed what the original informer had claimed - particularly in relation to the embezzlement allegations. They also confirmed that the practice had been going on for years.

Unable to obtain physical evidence for three of the main allegations, the investigators decided to focus on the embezzlement claims. According to regulations on the sale of whale meat in Japan, the government sets the prices and makes new meat available for public sale only after the annual IWC meeting, which takes place in June or July. Anything on sale before that is either from a previous season or is being sold illegally.

A series of interviews with local traders in bars and markets in nine different locations across Japan in February and March 2008 confirmed that they were expecting supplies of whale meat as soon as the whaling fleet returned in April. Others acknowledged that the theft was planned in advance, one even joking that supplies of curing salt had run out before the fleet had even departed.

On 15 April 2008, the *Nisshin Maru* - factory ship of the fleet - docked at Oi fisheries pier in Tokyo Harbour. Just as the informant had described, trucks from the Seino Transport courier company were waiting on the wharf to load baggage. Approximately 90 boxes, apparently 'personal-use' baggage, were offloaded. The Greenpeace investigation team followed the Seino Transport truck overland.

Investigation at the Seino Transport depot established that more than 23 crew members sent at least 93 boxes to at least 30 destinations. Labels on the boxes were checked and documented; most claimed to contain cardboard, black plastic, salted stuff, although the weight of the boxes made it clear that the contents were far heavier than the contents of the label would suggest.

Greenpeace obtained copies of Kyodo Senpaku employee registers to confirm that boxes were being sent to employees. Of the 23 names and addresses noted, 12 names and addresses matched the personal details on the employee registers. All were listed as 'production workers'. In addition, one of the 12 production workers sent boxes to an ex-production head, an ex-production assistant head and an ex-production worker, all of whom had been named by the informant as being involved in the same operation while they were employed by Kyodo Senpaku. The fact that they were still receiving boxes from current employees suggested continued involvement in the theft of meat. All 47 boxes sent by the 12 production workers were due to be shipped to Hokkaido, Aomori, Nagasaki, Akita, Miyagi and Yamaguchi prefectures.

Following delivery of the boxes to the depot, on 15 April 2008 Greenpeace investigators followed two different consignments to depots in Aomori prefecture and Fukuoka prefecture respectively. At the Aomori depot on 16 April, boxes labelled as containing 'cardboard' were weighed, and were considerably heavier than if they had contained cardboard only. Four boxes were due for delivery to the home address of one of the 'production workers' listed on the Kyodo Senpaku personnel register. Toru Suzuki, one of the Greenpeace investigators, removed one of the boxes in order to verify its contents.



image Junichi Sato weighing 23.5kgs of whale meat found in a personal box of a *Nisshin Maru* crew member. The consignment sheet claimed the box contained 'cardboard'.

The Greenpeace investigation

The 'cardboard' was, in fact, 10 pieces of *unesu* whale meat, weighing 23.5 kilos, cured in salt and hidden in plastic bags under working clothes - exactly as the informant had predicted. It was intended that the box be returned after documentation of its contents had been completed. However, Toru and fellow investigator Junichi Sato agreed that it should be handed in to the authorities because it was both compelling evidence of a crime, and the lawful property of the state, not its alleged 'owner'.

Having established at least two sources to corroborate the allegations, substantiated it further with additional information and finally secured the physical evidence, the Greenpeace investigators then approached government officials in an attempt to rule out any other explanation as to why meat was going to private houses and not government stores. Were employees, for example, given free whale meat as a perk of the job? The informant had warned that the authorities might try to pass off the meat being taken home by the crew members as small-scale 'souvenirs', traditionally given to fishermen returning from long voyages.

What followed was a series of denials, admissions and confusion.

On 8 May 2008, Junichi called Mr. Takahide Naruko, the Fisheries Agency of Japan's chief of Far Seas Fisheries, to investigate whether or not the agency knew that crew members were taking whale meat as 'souvenirs'. Mr. Naruko dismissed the suggestion outright. A similar response came from the same enquiry to representatives of the whaling fleet, Kyodo Senpaku.

On 15 May 2008, Sato went public with the allegations, based on the original informant's claims, noting the official denial that whale meat was given as souvenirs or rewards. On the same day a criminal complaint was filed with the Tokyo Prosecutor's office, and the evidence gathered during the investigation was handed over. In the following days the official line changed, with both the ICR and the Fisheries Agency admitting that 'souvenirs' were given to crew, and that even the governmental Fisheries Enforcement Officer - onboard to verify the validity of the scientific programme - was similarly 'rewarded'.

With the scandal splashed across newspapers across the country, the ICR, the Fisheries Agency and Kyodo Senpaku began to offer yet another, but now joint, explanation for the whale meat. They claimed that Kyodo Senpaku had bought the whale meat from the Institute for Cetacean Research in order to give a 10kg 'souvenir' to each crew member, and that this had been the case since the programme started in 1987.

After defending the practice, the ICR later announced a ban on its researchers from receiving the souvenirs.

Five days after the scandal was exposed, the Tokyo District Prosecutor accepted that there was a case to investigate and began an inquiry into the Greenpeace allegations.

Until this point there was nothing exceptional about the investigation, nor indeed the confused official response. It was a standard investigation into misuse of public funds and a standard response from organisations caught by surprise. What transpired over the subsequent weeks and months has become a matter of deep concern to civil liberties groups, politicians, international lawyers and environmentalists alike.



image Greenpeace Japan Executive Director Jun Hoshikawa and Junichi Sato arrive at the Public Prosecutor's office in Tokyo to file a complaint and hand in a box of whale meat obtained as evidence of large-scale theft of whale meat from the government-sponsored Southern Ocean whaling programme.

© GREENPEACE / NAOMI TOYODA

The backlash commences

The Japanese government is fiercely defensive of its research whaling programme, which it views as an expression of Japanese tradition and a legal venture under international law.

“The research whaling which our country is doing is a lawful activity carried out on the high seas under the International Convention for the Regulation of Whaling.”

Prime Minister Yasuo Fukuda House of Councillors - plenary session 23 January 2008

Critics of the programme, such as international environmental organisations, are often portrayed as being motivated not by concern about the preservation of species or the upholding of the international ban on commercial whaling, but by a Western cultural bias against killing of impressive and intelligent mammals.

When Junichi Sato presented the findings of the investigation into embezzlement, the media initially reported the claims in a factual manner, and the official response was muted. Criticism of research whaling usually came from abroad, not from domestic sources.

Before long, however, a sense of indignation took hold in some quarters against the investigators who had assailed this object of national pride. The media began to question the way in which the investigation had been conducted, focusing on the fact that a box of whale meat had been taken from a mail depot. Greenpeace Japan received a large volume of hate mail and had to put security measures in place. The attention of the police, too, started to turn away from the embezzlement scandal, towards the people who had brought it to light.

On 20 June 2008, just under a month after the complaint was filed, the Tokyo District Public Prosecutor’s Office dropped its investigation into the whale meat embezzlement, without bringing any charges. No reason was disclosed for the decision.

On the evening beforehand, Junichi Satu and Toru Suzuki – the key members of the team of Greenpeace investigators – learned from news reports on television that they were to be arrested the following day...



image Boxes of official whale meat being unloaded from the *Nisshin Maru*. These are to be sold to recoup the cost of the whaling programme.

© GREENPEACE / HIROTO KIRYU

The backlash commences

The internal 'investigation'

The internal investigation by the ICR and Kyodo Senpaku - requested by the Minister of Agriculture, Forestry and Fisheries - concluded on 18 July. The final report covered less than a page in translation and contained no supporting evidence, and reiterated the claim that Kyodo Senpaku officially purchases a volume of whale meat from the ICR each year to be distributed to staff members as souvenirs of the hunt upon return to port.

The report claimed that each crew member received 8kg of salted *unesu* and 1.6kg of chopped red meat, that no crew member had sold his souvenir to a restaurant or retailer, and that there was no inconsistency between the production statistics for *unesu* and the amount carried off the ship. In short, it claimed that there was no evidence for embezzlement by crew members.

This explanation throws up a number of obvious questions – such as why the box of whale meat seized by the Greenpeace investigators contained over 23kg of *unesu* and *no* red meat, and how it was possible for Kyodo Senpaku to purchase whale meat *before* the whaling fleet's return to port - around mid-April - when the government only sets the year's official price for whale meat several months later, after the annual IWC meeting, which convenes in June or July.

The report explained that the box taken by Greenpeace contained not only the *unesu* given to the production worker who sent it to his home, but also the souvenir meat of a number of his colleagues. Furthermore, it claimed that Kyodo Senpaku had purchased the whale meat from the ICR at the previous year's official rate. To forestall the criticism that this amounted to an unauthorised discount, the report promised that - in future - the price would be adjusted once the official rate had been set.

Upon submitting the report to the government, the ICR issued a press release entitled 'Seafarers Cleared of Whale Meat Claims', claiming that there was 'not a shred of evidence to support any of the Greenpeace claims', and accusing the organisation of allowing its judgement to be clouded by zealotry. The responsible minister accepted the report and announced no further measures.

December 2010, roughly four months after the Tokyo Two trial verdict, the Fisheries Agency of Japan (FAJ) acknowledged the existence of corruption, with a public admission that five of its officers had accepted whale meat 'gifts' totalling around \$3,000 US dollars from Kyodo Senpaku – the company that conducts the hunt. It apologised, claiming that these officials had been reprimanded, and that a further two senior managers had also received warnings. One of these officials was FAJ second-in-command and prominent IWC negotiator Jun Yamashita, who resigned shortly afterwards.



image Greenpeace witnessed the killing of whales in the Southern Ocean by the *Yushin Maru* and the *Kyo Maru* No. 1 ships of the Japanese whaling fleet, and the transfer of the whales to the *Nisshin Maru* factory ship. Signs on the whaling ship read "Greenpeace Misleads the Public!" and "Science-Based Lethal Research".

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The arrest of the 'Tokyo Two'

On the evening of 19 June 2008 – the day before the Tokyo Prosecutor dropped his investigation into the whale meat scandal – Junichi Sato and Toru Suzuki learned from news reports on television that they would be arrested the next day.

The two had previously offered to make themselves available to police at any time to answer questions about the Greenpeace investigation. They had also provided voluntary depositions, explaining in detail how and why they had secured the box of whale meat. Nevertheless, the next morning, a sizeable police force staged dramatic-looking arrests in the full glare of the media, which had been tipped off in advance...

The 'Tokyo Two', as they quickly became known, were taken to the northern port city of Aomori and detained in a police-run jail. Meanwhile, about 40 police officers conducted a 10 hour search at the Greenpeace Japan offices, seizing boxes of documents and computers, including the office server. The homes of four Greenpeace staff members were also raided. In total, about 75 police officers were involved in the operation.

Sato and Suzuki were held in pre-charge detention for 23 days, the maximum period allowable under Japanese law, and questioned daily. On 11 July they were finally charged with trespass on the Aomori branch office of Seino Transportation, and theft of 23.1 kg of whale meat valued at ¥58,905 (approximately \$550 US dollars at the time). These charges carry maximum penalties of 3 years' and 10 years' imprisonment, respectively.

Once the charges were announced, the Aomori District Court granted Sato and Suzuki bail pending their trial. Although the conditions of the bail were very strict – the defendants were prohibited from speaking to each other or with any other Greenpeace staff member, except through their lawyers – the prosecutor vigorously opposed the bail. He filed two appeals, arguing that Sato and Suzuki might use their freedom to destroy evidence, even though neither had at any point denied his role in obtaining the box of whale meat. The appeals were dismissed and Sato and Suzuki were set free on 15 July, although they remained unable to return to work until their bail conditions were relaxed somewhat eight months later.



image The Japanese whaling fleet unloads whale meat boxes in the port of Kanazawa, Japan. Greenpeace is calling for the whaling fleet, which is carrying nearly 1,000 dead whales from the Southern Ocean Whale Sanctuary, to be permanently decommissioned.

© GREENPEACE / MASAYA NODA

The arrest of the 'Tokyo Two'

Defence lawyers targeted

After their arrest, Sato and Suzuki were vilified in the media. Images of them being bundled into police cars like mafia kingpins were shown repeatedly on television. The public backlash against Greenpeace generated by the reports was such that even representing Sato and Suzuki became risky business.

At a press conference on the day of the arrests, the defence lawyers assigned to the case stated that, in their view, the acts of Sato and Suzuki did not constitute any criminal offence. A member of the public, reading a newspaper report on the press conference, wrote to the Tokyo Bar Association, complaining that it was unethical for a lawyer to defend a criminal act in this manner. Remarkably, the Bar Association proceeded to open an investigation, questioning two members of the defence team in some detail about their relations with Greenpeace, and the extent to which they had known in advance about the investigation into the embezzlement. Ultimately, however, the complaint was dismissed as unfounded.

The Tokyo metropolitan government moves against Greenpeace Japan

Japanese criminal law does not allow legal entities to be charged with an offence, so it would not have been possible to charge Greenpeace Japan alongside Sato and Suzuki. However, under the *Law to Promote Specified Non-profit Activities*, non-profit organisations (NPOs) in Japan are subject to administrative oversight by the government. The responsible agency is the local government in the prefecture where the NPO is located; in Greenpeace Japan's case, this means the Tokyo Metropolitan Government (TMG).

Four days after the arrests, on 24 June 2008, the TMG opened an investigation into Greenpeace Japan, issuing an 'Order to Report on Business Activities'. The Order noted that two Greenpeace Japan employees had been arrested on suspicion of trespass and theft, and demanded clarification on whether the box of whale meat had been taken as part of an activity of the organisation. The TMG also ordered Greenpeace Japan to provide copies of a range of documentation, such as employment contracts and salary slips for Sato and Suzuki.

Further Orders followed on 9 September and 27 November. The TMG claimed it had received a substantial volume of enquiries from members of the public who were concerned by Greenpeace Japan's activities, and requested the organisation to publish its responses online in order to address some of these concerns.

The three Orders, viewed in the light of the authorities' overall handling of the case, leave little doubt about the TMG's intention to take concrete action against Greenpeace Japan, in the event that Sato and Suzuki are found guilty by the Aomori District Court. According to the *Law to Promote Specified Non-profit Activities*, the TMG could impose two types of sanctions: it might issue an 'Order to Improve' requiring Greenpeace Japan to take certain action within a specified timeframe, or face dissolution; or it could move to immediately disband the organisation.



image Greenpeace activists met the whaling factory ship *Nisshin Maru* with a banner saying 'Failed', when it arrived in Tokyo to unload whale meat. The ship failed to meet its quota of 935 whales by nearly half, in part because the Greenpeace ship *Esperanza* stopped the entire whaling operation for 15 days as it chased the *Nisshin Maru* across the Southern Ocean, over a distance of 4300 miles.

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Harsh justice

Outwardly, Japan's criminal justice system resembles that of other modern democracies – there are ostensibly independent courts and prosecutors, a criminal code based (like many others around the world) on a French model, and a constitution which guarantees basic human rights, such as the right to a fair trial. But this façade, as Sato and Suzuki have discovered, hides a system in which the presumption of innocence accounts for little, and prosecutors appear more concerned with obtaining convictions than ascertaining the truth.

A person arrested in Japan on suspicion of a criminal offence can be detained for 72 hours before being either charged or released for lack of evidence. This is similar to other democracies, where the police often have 24 or 48 hours to question a suspect. Japanese prosecutors, however, are able to apply to a judge to extend the pre-charge detention twice - by 10 days each time - and such requests are rarely denied.

The result is that suspects are routinely questioned for the maximum 23 days in police-run substitute prisons (*daiyō kangoku*), as happened in Sato and Suzuki's case. The two Greenpeace defendants were questioned for up to eight hours daily, bound to a chair, without their lawyers present, and without the interrogation recorded – all standard practice in Japan. They recall that much of the questioning on the first three days was about issues entirely irrelevant to the case – their families, their interests, and so on. Subsequently, the prosecutor went before the judge, claiming that more time was needed for the interrogation.

A short pre-charge detention is important for a number of reasons. The suspect is presumed innocent, and may in fact have done nothing wrong. Prolonged questioning by the police is often not productive, and may pressure the suspect into making a false confession. Moreover, the police are supposed to have substantial evidence against the suspect before making the arrest in the first place.

With such long pre-charge detention, perhaps it is not surprising that Japan has an extremely high confession rate – 91.2% in 2004, the last year for which the Supreme Court has published figures.¹

Defendants who do plead innocent find the odds heavily stacked against them. Although the courts are formally independent, in practice they show a great deal of deference to the prosecution. The defence is often not granted full access to relevant files held by the prosecutor, and is severely constrained in the witnesses it can call. Acquittals are a great rarity in Japan. In 2004, out of 13,698 cases at the District Court level, where Sato and Suzuki will stand trial, only 24 ended in acquittal – a conviction rate of 99.8%.



image At Japanese embassies around the world activists have stood in solidarity with Junichi and Toru and declared themselves as 'co-defendants', asking the Japanese government to "Arrest Me Too" and to put "Whaling on Trial".

©GREENPEACE / JOHANNA HANNO

Harsh justice

The Japanese government views the almost perfect record of prosecutors as evidence that the justice system is functioning well and that no innocent people are being put on trial. The United Nations takes a very different view. In a 2007 review, the UN Committee Against Torture expressed unusually strong concern about the Japanese justice system. Among others, it made the following comments:

"The Committee is concerned at the insufficient level of independence of the judiciary, in particular the tenure of judges and the lack of certain necessary safeguards.

[...]

The Committee is deeply concerned at the prevalent and systematic use of the Daiyo Kangoku substitute prison system for the prolonged detention of arrested persons even after they appear before a court, and up to the point of indictment. This, coupled with insufficient procedural guarantees for the detention and interrogation of detainees, increases the possibilities of abuse of their rights, and may lead to a de facto failure to respect the principles of presumption of innocence, right to silence and right of defence. In particular the Committee is gravely concerned at:

[...]

(d) The length of pre-trial detention in police cells before indictment, lasting up to 23 days per charge;

[...]

(h) The limitations of access to defence counsel for detainees in pre-trial detention, and in particular the arbitrary power of prosecutors to designate a specific date or time for a meeting between defence counsel and detainees, leading to the absence of defence counsel during interrogations;

(i) The limited access to all relevant material in police records granted to legal representatives, and in particular the power of prosecutors to decide what evidence to disclose upon indictment;

[...]

The Committee is deeply concerned at the large number of convictions in criminal trials based on confessions, in particular in light of the lack of effective judicial control over the use of pre-trial detention and the disproportionately high number of convictions over acquittals. The Committee is also concerned at the lack of means for verifying the proper conduct of interrogations of detainees while in police custody, in particular the absence of strict time limits for the duration of interrogations and the fact that it is not mandatory to have defence counsel present during all interrogations."ⁱⁱ

The UN Human Rights Committee, which periodically examines Japan's compliance with the International Covenant on Civil and Political Rights, one of the main international human rights treaties, has voiced similar concerns in its last three reports.ⁱⁱⁱ

Sources

ⁱ See http://www.courts.go.jp/english/proceedings/statistics_criminal_cases_index.html.

ⁱⁱ UN Committee Against Torture, Concluding Observations on the Initial Periodic Report of Japan submitted under Article 19 of the UN Convention Against Torture, 3 August 2007, UN Doc. CAT/C/JPN/CO/1, available through <http://tb.ohchr.org/default.aspx>.

ⁱⁱⁱ UN Human Rights Committee, Concluding Observations on the Third, Fourth and Fifth Periodic Reports of Japan submitted under Article 40 of the International Covenant on Civil and Political Rights, 5 November 1993, 19 November 1998, 18 December 2008, UN Docs. C/PR/C/79/Add.28, C/PR/C/79/Add.102, C/PR/C/JPN/CO/5, available through <http://tb.ohchr.org/default.aspx>.



image Junichi and Toru and their lead counsel Yuichi Kaido attend a press briefing following their first pre-trial arrangement hearing at Aomori District Court in Aomori.

©GREENPEACE

The pre-trial process

In July 2008, shortly after Sato and Suzuki had been released on bail, the prosecutor took the unusual step of requesting the Aomori District Court to conduct 'pre-trial arrangement proceedings' ahead of the trial. This was a new procedure, devised as a counterpart to the introduction of jury trials in Japan. Jury trials - or 'lay judges' in Japan - commenced in May 2009. Most cases brought prior to that date were handled according to the old procedure.

The purpose of the pre-trial procedure is to determine, in closed hearings, which evidence and witnesses are relevant and may be presented during the trial in open court, and to sort out which files the prosecution must disclose to the defence. By resolving these questions in advance, the actual trial can be conducted more quickly, and the lay judges are not exposed to inadmissible evidence which may confuse or mislead them.

Sato and Suzuki's case will not be heard by a jury, but by a panel of three professional judges. Ordinarily, the case would therefore not have been subject to pre-trial hearings. But the new procedure offered the prosecutor something attractive – the opportunity to seek the exclusion of the evidence of embezzlement prior to the trial, during closed hearings, so that the case could be presented in open court as a simple one of theft and trespass, without considering the possible justification for the taking of the box. A trial in which the defendants would attempt to demonstrate they were being put on trial in retaliation for blowing the lid off a genuine scandal, and causing embarrassment to the authorities, was something the prosecutor was apparently keen to avoid. The defence argued strongly against the motion, but on 1 August, the Aomori District Court announced the case would proceed according to the pre-trial procedure.

Thus began a long battle between the prosecution and defence over the question whether the embezzlement evidence would be admissible during the trial, and whether the prosecutor would have to open his own files on the matter to the defence.



image Junichi and Toru arrive with their lawyers at Aomori District Court in Aomori, northern Japan for their first pre-trial arrangement hearing.

The pre-trial process

Challenging the official explanation

Because the essence of the second and third defence arguments (see 'The Three Pillars of the Defence Case') would be that Sato and Suzuki's acts were justified because they helped bring a significant scandal to light, it was going to be necessary to debunk the authorities' version of events, according to which there never was a scandal, and the box taken by Sato and Suzuki contained legitimate 'souvenir' whale meat.

Viewed by itself, the official version of events seemed fanciful. Prior to publishing the exposé on the embezzlement scandal, Sato had telephoned Mr. Takahide Naruko, one of the officials responsible for whaling at the Fisheries Agency of Japan, and asked him whether there was any way in which a crew member might legally take any whale meat home from the whaling fleet (see 'Evidence – The Greenpeace Investigation'). Mr. Naruko had strenuously denied the possibility – and Sato had recorded his remarks.

After the exposé was published on 15 May, the ICR and Kyodo Senpaku had provided highly contradictory explanations for the box of whale meat obtained by Greenpeace Japan, before finally agreeing on a definite position in their report on 18 July (see 'The Backlash Commences – The Internal 'Investigation'). Now, they were saying that the Kyodo Senpaku had legitimately bought a large volume of whale meat from the ICR, in order to provide all the crew members (about 240) with 8 kg of the prized *unesu* cut, and 1.6 kg of red meat, as a souvenir at the end of the whale hunt. This arrangement had been in place for years. Since the official price for whale meat was not set by the government until several months later, the transaction had always been conducted according to the previous year's official price. The box of whale meat taken by Sato and Suzuki contained the *unesu* given to a number of different crew members, who had sent their souvenirs together. Nobody had sold their souvenirs on to restaurants or retailers.

However contrived this explanation seemed, it had been accepted by the government and the prosecutor, who had dropped his investigation into embezzlement and decided not to charge anyone. Greenpeace and the defence lawyers set about demonstrating that the truth had been covered up...



image Junichi and Toru appear at a press conference with defence counsel Yuichi Kaido following the August 4 pre-trial in Aomori.

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The three pillars of the defence case

Most cases involving theft and trespass revolve around the purely factual question whether the defendant entered the property and took the object as charged, or not. Sato and Suzuki's case raises more complicated issues. Neither of them disputes his role in obtaining the box of whale meat. Rather, their defence is that viewed in the context, taking the box was entirely justified and should not be considered a criminal offence. Specifically, the defence case rests on three related legal arguments.

The first and most basic argument is that Sato and Suzuki lacked any criminal intent in taking the box of whale meat. As in other legal systems, the definition of 'theft' in Japan has two elements – a factual one, and a mental one. The fact of taking property belonging to another is not by itself an offence; the person may be taking the property accidentally, with permission, or with a legitimate purpose. What is necessary is that the person taking the property acts with criminal intent. Under Japanese criminal law, a person has criminal intent if his purpose is to appropriate the property of another person else to himself. The defence lawyers argue that Sato and Suzuki had no intent whatsoever to appropriate a box of whale meat for themselves. On the contrary, their intent was to expose others who were embezzling whale meat on a large scale. They filmed and photographed their act – hardly typical behaviour for someone with criminal intent. Subsequently, they returned the box of whale meat to what they regarded as its rightful owner, the State, well before any theft had been reported.

The second argument is one of justification. Many legal systems recognise that an act should not be considered criminal if it is a proportionate and necessary measure to prevent a greater evil. For example, breaking down a neighbour's door would normally be unlawful, but may be justified if it is necessary to put out a beginning fire. Article 35 of Japan's Penal Code, entitled 'Justifiable Acts', recognises that an 'act performed ... in the pursuit of lawful business is not punishable'. Sato and Suzuki's objective in taking one box was to trigger a police investigation into the suspected embezzlement of hundreds of boxes a year over several years. The act was not only proportionate, it was also necessary – Sato and Suzuki believed that without a piece of very tangible evidence, it was unlikely that the authorities - who were known to have previously turned a blind eye to the embezzlement - could be moved to conduct a genuine investigation. Subsequent events have borne this belief out.



image Following the 2007-2008 hunt, workers from the whaling factory ship *Nisshin Maru* unload boxes of what appears to be personal baggage to a Seino Transport truck.

The three pillars of the defence case

The final and central defence argument relies on international human rights law, and in particular on the right to freedom of expression. Japan has ratified the International Covenant on Civil and Political Rights (ICCPR), one of the main UN human rights treaties, and defendants in criminal trials in Japan may invoke this treaty, which prevails over any conflicting domestic laws.

The defence is highlighting the fact that the undercover investigation undertaken by the Tokyo Two was intended to bring to light wrongdoing in a programme funded with significant amounts of taxpayers' money, and to challenge the scientific credentials of what the government steadfastly maintains, in the face of international criticism, is a legitimate research programme. Bringing to light official wrongdoing and stirring critical debate about government policy are classic examples of the exercise of freedom of expression, a human right which is guaranteed under Article 19 of the ICCPR. This right encompasses not only the freedom to publish information on the activities of public bodies, but also to gather it first.

International courts have stressed the importance of freedom of expression to democracy – without a high level of respect for this right, the open debate about the direction of government policy which is central to democracy will be undermined. Criminal prosecutions of government critics should be used only as a last resort, because they are likely to deter such debate. Moreover, international courts have recognised that NGOs, together with the media, fulfil a key role as the 'watchdogs of society', bringing matters of general concern to the attention of the public. Therefore, their freedom of expression should be particularly carefully guarded.

The defence team will stress it is not arguing for an unconditional 'licence to break the law' for NGOs which conduct investigations. Rather, the Aomori District Court should apply the criteria for restrictions on freedom of expression found in Article 19(3) of the ICCPR. According to this provision, governments may restrict the right through the adoption and enforcement of laws (such as a criminal code) – but only if the restriction serves a legitimate purpose, and is genuinely necessary and proportionate to achieve that purpose.

In this case, the defence will point out, the legitimate purpose the prosecution claims to be serving is the protection of private property of others against unauthorised interference. But in reality, it is highly questionable whether the whale meat Sato and Suzuki intercepted was ever the lawful property of the 'owner' of the box. Indeed, a conviction of Sato and Suzuki would do more to discourage other individuals from investigating and exposing theft, than it would do to discourage theft itself. Therefore, in the specific circumstances of this case, respecting the defendants' right to freedom of expression is more important than defending the right to private property. A conviction of the defendants is not genuinely necessary for any legitimate purpose, and would violate Article 19 of the ICCPR.



image A personal box, one of four, couriered from the *Nisshin Maru* to the home address of a senior crew member. The box contained 23.5kgs of stolen whale meat; the consignment sheet claimed the box contained cardboard.

©GREENPEACE

The Fisheries Agency denies disclosure

To provide over 240 crewmembers with a souvenir of almost 10kg each, Kyodo Senpaku would have had to buy 2.4 tonnes of whale meat. Since the souvenirs consisted mostly of the expensive unesu cut, this meant a sizeable transaction involving public funds, allegedly conducted every year. Surely, the defence team reasoned, there would have to be a paper trail for these deals, if they really took place.

In 1999, Japan adopted the *Law Concerning Access to Information Held by Administrative Organs*, a freedom of information act which allows citizens to obtain copies of government files. Relying on this law, Greenpeace Japan requested and obtained a copy of the *Special Research Operation Procedure*, the rules set by the government for the ICR's use of the subsidies it receives, and the whale meat it produces.

Although parts of the document were blacked out, Article 13 confirmed that no whale meat can be sold without prior approval from the Director-General of Fisheries Agency of Japan (FAJ). In order to obtain approval, the ICR must submit a form detailing the volume of each type of whale meat produced, the amount being sold, the sales method, and the party to which the meat is being sold.

Article 13 of the *Special Research Operation Procedure* states that:

- 1) With respect to the processing of whales captured in the Cetacean Capture Research, in view of effective utilisation, the whale products can be sold domestically and the proceeds from the sale can be considered as income. However, the sale of whale products requires prior approval of the Director-General of Fisheries Agency of Japan per research.
- 2) In obtaining the approval as described in the above paragraph, ICR shall indicate the volume of production for each type of whale product in the separate form; and when making such sale on its own, a projected sales volume and sales method; when consigning to a third party, the names of the consignee and commission to the consignees, etc shall be indicated in the application form respectively.
- 3) Upon completion of the sales of whale products, ICR shall immediately report the sales figures to the director-general of Fisheries Agency of Japan in a separate designated form.

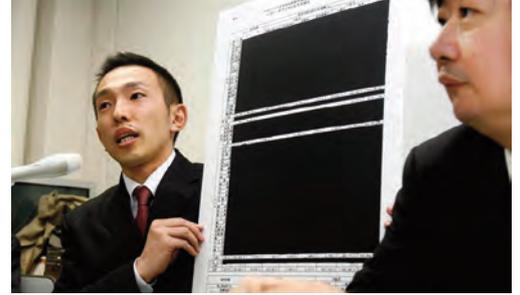


image Junichi Sato displays the whale meat production statistics 'disclosed' by the FAJ. The blacked-out rows detail the amount of each different cut of whale meat produced, how this meat was apportioned between different uses (such as distribution in schools and hospitals, and commercial sales), and the proceeds.

The Fisheries Agency denies disclosure

Next, Greenpeace Japan asked the FAJ to disclose the 2006 and 2007 sales statistics for whale meat produced by the Southern Ocean whale hunt, as reported by the ICR to the FAJ. If Kyodo Senpaku had really bought whale meat for use as souvenirs from the ICR, the sale would have to be registered in these documents. What is more, these documents might also tell another story – if crew members had been pilfering the best cuts of whale meat, and the statistics had not been doctored, a shortfall would be visible in the amount of choice cuts produced.

Furthermore, Greenpeace Japan requested a copy of the sales contract between the ICR and Kyodo Senpaku. It might be expected that an annual transaction involving over two tonnes of whale meat would be mentioned in this document.

The Fisheries Agency did disclose the requested documents – but virtually all of their contents were masked, and nothing of use remained legible. On the sales statistics documents, the amounts of each type of whale meat produced were blacked out, with only the production sub-totals still visible. This made it impossible to judge whether there was a relative shortfall of expensive cuts, compared to cheaper ones. Moreover, the names of the companies that purchased the meat were masked. Thus, Greenpeace Japan was unable to ascertain whether Kyodo Senpaku had purchased meat for souvenir purposes. In the sales contract, only the heading and footer remained legible – the entire substance of the agreement had been covered up.

Greenpeace Japan appealed the refusal to disclose the documents to the Cabinet Office. This was rejected.

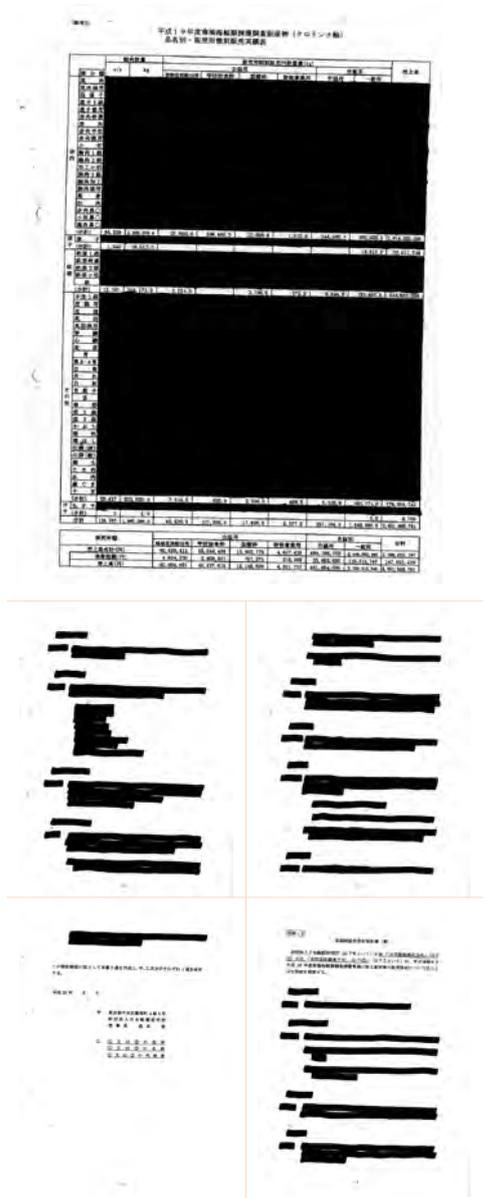


image The sales contract between the ICR and Kyodo Senpaku. The only legible parts are the title of the contract, the names of the parties and the final date and signatures.

The story of A:

Clues for a cover-up emerge from the prosecutor's files

With the FAJ refusing to disclose the documents that could conclusively disprove the official version of events, there was one other place the defence could turn to: the prosecutor's files. For about a month after the publication of Greenpeace's findings on the embezzlement scandal, the Tokyo Prosecutor had conducted an investigation, interviewing several crew members of the whaling fleet, before abruptly dropping the case without bringing any charges – on the very same day that Sato and Suzuki were arrested.

In October 2008, early on in the pre-trial process, the prosecutor agreed to partially disclose an important set of documents to the defence – the statements made to police by the production worker whose box of whale meat Sato and Suzuki had taken from the mail depot. We will refer to him as 'A'.

According to the Preparatory Statement written and circulated by the Defence Council, A had been interviewed by police a number of times in May and June 2008. Examining the disclosed statements, the defence team discovered he had substantially altered his story each time, in the end arriving at an account which was more or less consistent with what the ICR and Kyodo Senpaku had been declaring in public. At his first interview, he claimed to have received 25 kg of whale meat from one other crew member, who in turn had obtained the meat from others who were not interested in their whale meat 'souvenir'. The following day, Kyodo Senpaku submitted its report to the FAJ stating that A had received whale meat from three other crew members. A week later, A altered his statement to say that two other crew members had given him meat, and put the date on which he had obtained the whale meat three weeks later than in the first interview. Another ten days later, he amended his story again, stating he had been mistaken and now realised he had received whale meat from four colleagues.

A's explanation of how he used the whale meat that did reach his house also changed over the course of his interview. At first, he maintained that some of it had been eaten at home and another part given away to friends and family. There was also some left over, which was still in his possession. At a subsequent interview, however, A asked to correct his statement, disclosing that his wife had taken about a quarter of the meat to the snackbar she runs, where she had served it to her clientele, allegedly free of charge.

In addition to the box taken by the Greenpeace investigators, A admitted to having sent himself further whale meat in another box. He claimed to have sent himself four pieces of *unesu*, red whale meat and almost 30 kg of whale meat off-cuts and intestines. This is all in addition to the box of *unesu* intercepted by Sato and Suzuki. Suzuki had noted four heavy boxes with suspicious consignment labels addressed to A's house at the Seino Transportation depot. A also claimed his family had eaten almost all the 30kg of intestines and off-cuts within the month – an extraordinary amount.

An important aspect of the right to a fair trial, recognised under international law, is that the prosecution must in principle disclose all relevant evidence to the defence. This includes not only evidence which the prosecution intends to use against the defendant, but also exculpatory evidence – that is, evidence which may assist in showing the defendant's innocence, or to mitigate the offence.



image International Human Rights lawyer Richard Harvey talks at a press conference held after a delegation from Greenpeace lodged a formal appeal with the Fisheries Agency of Japan, requesting the release of uncensored documents relating to the sale of whale meat by the Institute of Cetacean Research.

The Story of A:

Clues for a cover-up emerge from the prosecutor's files

In the case of Sato and Suzuki, any documents which may help to prove the existence and scale of the embezzlement can be considered exculpatory evidence. Such evidence after all supports the defence argument that Sato and Suzuki's act was a justified and proportionate measure to bring a genuine scandal to light. Based on this, the defence lawyers believed strongly that the prosecutor was under an obligation to disclose more of the files from the police investigation. The extensive contradictions in **A**'s disclosed statements had already helped to put the official explanation into question. With further disclosures, the defence team might be able to eliminate what credibility that explanation still enjoyed, demonstrating in open court that Sato and Suzuki were on trial as part of a cover-up orchestrated by the authorities.

In January 2009, the defence lawyers submitted a request for the disclosure of 16 items to the prosecutor, including: the undisclosed part of **A**'s statements and the connected police notes; the statements made to police by **A**'s colleagues; the statement of **A**'s wife; the statements made by 12 crew members identified by informant as being the ringleaders in the embezzlement scandal; the statements of the officials of the ICR and Kyodo Senpaku allegedly responsible for the sale and disbursement of 'souvenir' whale meat; and the final report of the Tokyo Prosecutor's investigation into the allegations of embezzlement, including the explanation of his reasons not to prosecute anyone.

The prosecutor resists further disclosures

Cracks were starting to appear in the prosecutor's case. In a bid to avoid embarrassment to the authorities, the prosecutor began a series of procedural manoeuvres to prevent further disclosures and exclude the issue of embezzlement from discussion at the trial.

Firstly, although **A** would appear to be the main 'victim' of Sato and Suzuki's acts, the prosecutor decided not to call him as a witness, nor to offer his statements as evidence to the court. Evidently, the prosecutor had his own doubts about whether **A** was as innocent as the authorities had made him out to be. Instead, the prosecutor's case focuses on the harm supposedly done to Seino Transportation, and in particular the deliveryman who was forced to inform **A** of the loss of one box filled with 'cardboard', and allegedly paid ¥30,000 (approximately \$295 US dollars at the time) in compensation, out of his own pocket.

Secondly, at the first pre-trial hearing, the prosecutor made an important concession. He informed the Court he would not dispute the fact that Sato and Suzuki intercepted the box as part of an investigation into embezzlement, rather than for personal gain.

At the expense of weakening the charges against Sato and Suzuki somewhat, the prosecutor had bought himself a new argument to oppose further disclosures or discussion of the embezzlement scandal. He contended that, since he had accepted that the defendants believed they were investigating a real scandal, it was no longer necessary to argue over whether or not that scandal had actually existed or not, or to disclose evidence on the subject. The only point for the Court to consider was whether that belief could justify the decision to enter a mail depot belonging to an 'innocent' private company and take a box from there.

The Aomori District Court weighed this argument and, at the third pre-trial hearing on 15 May 2009, indicated it would not go along with the prosecutor's position. The presiding judge stated that the way in which the crew members of the *Nisshin Maru* had obtained the whale meat intercepted by Sato and Suzuki could 'not be excluded from the evidence to be considered'. The Court also indicated that the prosecutor would have to disclose evidence relevant to this issue, and directed him to make a proposal.



image Co-signed by Shokichi Kina, an Upper House Diet member of the Democratic Party of Japan, Greenpeace's formal appeal was presented by Jun Hoshikawa (Executive Director, Greenpeace Japan), Sarah Burton (Deputy Programme Director, Greenpeace International), Divya Raghunandan (Campaign Director, Greenpeace India), Von Hernandez (Executive Director, Greenpeace Southeast Asia) and international Human Rights lawyer Richard Harvey.

The last hopes for a fair trial

On 11 June 2009, shortly before the fourth pre-trial hearing, the prosecutor provided copies of 26 documents to the defence team. Once again, however, very substantial parts of the documents had been masked. From the sequence of the page numbers, it was clear that a large number of pages were missing in their entirety.

Although virtually all of the important passages seemed to have been whited out, the defence team managed to glean some useful information from the disclosed documents. Crew members had made disparate statements about the amount of 'souvenir' whale meat they had received from Kyodo Senpaku, contradicting the company's public claim that each crew member receives the same gift of 8 kg of *unesu* and 1.6 kg of red meat. One crew member spoke of the preparation of whale skin and bacon for use as souvenirs. These cuts are not among those that Kyodo Senpaku acknowledges handing out to crew members. However, the remark appears consistent with the statements of one of the informants who spoke to Greenpeace Japan. The informant claimed that whale bacon was being made available to the director and board members of the ICR, as well as members of the Diet, Japan's parliament.

Importantly, the disclosed affidavits also apparently confirmed that there had never been any official, documented sale of whale meat by the ICR to Kyodo Senpaku for use as souvenirs. During his police interview, a senior employee of Kyodo Senpaku claimed that the whale meat for use as souvenirs was provided to the company under an informal, verbal agreement. He explained that, due to slow sales, the ICR used to hold a sizeable inventory of whale meat, produced during the hunts of the previous one or even two years. In 2000, Kyodo Senpaku agreed to purchase any inventory remaining in August of each year. Apparently, this arrangement suited the ICR, helping it clear its inventory before the end of the fiscal year. The employee claimed that the deal made no commercial sense from the point of view of Kyodo Senpaku, however, since it encumbered the company with the cost of storing around 2,000 tonnes of whale meat, without the ICR providing any additional discount in return. Instead, ICR and Kyodo Senpaku had reached a verbal agreement, according to which Kyodo Senpaku would not have to pay for the 'souvenirs' handed out to its staff.

It now seemed clear that the 'paper trail' the defence lawyers had been looking for did not exist. The ICR and Kyodo Senpaku had not been telling the truth when they claimed there had been an official transaction between them, with the whale meat for souvenir use being sold at the previous year's official rate. The Fisheries Agency of Japan had abetted the cover-up by blacking out the documents which would have shown that the supposedly regular sale had never been documented.

The 26 documents turned over to the defence represented only part of the files on the embezzlement scandal whose existence the prosecutor acknowledged. Moreover, amongst the disclosed documents were five files which the prosecutor previously had claimed did not exist. The defence lawyers had every reason to suspect that what had been disclosed so far represented only the tip of the iceberg. At the fourth pre-trial hearing on 17 June, they demanded an explanation for the extensive masking.

The prosecutor responded that the undisclosed parts of the documents contained nothing which would be helpful to the defence's case, and therefore disclosing them would unjustly interfere with the privacy of the individuals concerned. He also maintained, somewhat comically, that the parts of the documents which were not masked clearly demonstrated that there had never been any embezzlement scandal. On 3 July, the prosecutor sent a letter to the Court, complaining that the defence lawyers were unreasonably prolonging the pre-trial process by pursuing excessive disclosure requests.



image The Japanese whaling fleet unloads whale meat boxes in the port of Kanazawa, Japan.

©GREENPEACE/MASAYANODA

The last hopes for a fair trial

The defence unsuccessfully appeals for disclosure

It was now clear that the prosecutor would not voluntarily release any further exculpatory evidence. On 17 July, Sato and Suzuki's lawyers filed a motion with the Aomori District Court for a disclosure order.

On 10 August, the Court issued its decision, completely denying the requested order. In a clear departure from its earlier position, it sided with the prosecutor's argument and held that the question as to whether or not crew members of the whaling fleet had engaged in embezzlement of whale meat was irrelevant to the trial. Since the prosecutor had accepted that Sato and Suzuki's objective had been to investigate embezzlement, it was enough to consider, in the abstract, whether this objective justified entering the mail depot and removing the box of whale meat. This also meant that further disclosures on the subject of embezzlement were unnecessary. The Court dismissed the argument that the actual existence and scale of the embezzlement scandal was relevant to the proportionality of the defendants' acts – without stating a clear reason.

With the issue of embezzlement now largely ruled out of discussion in open court, there were strong doubts whether Sato and Suzuki could receive a fair trial and a fair hearing in the media. Their trial would proceed largely as a simple case of trespass and theft. The defence team filed an appeal against the decision on 13 August – an unusual step in Japan, where defendants face virtually certain conviction in every case, and the objective for the defence lawyers is usually to bring the trial to a speedy end with the lowest possible penalty.

The Sendai High Court returned its verdict on 29 September. It completely rejected the appeal, largely restating the arguments presented by the Aomori District Court.

In a final bid to secure a fair trial, the defence made a special appeal to the Supreme Court on 5 October. Support for the appeal came in from across the world. More than 3,000 people, including several leading human rights lawyers, sent letters to the Supreme Court, urging it to uphold Japan's obligations under international law and ensure full disclosure of the exculpatory evidence. Amnesty International wrote that, by ordering disclosure, the Supreme Court could "ensure that it does not condone the improper use of the police power to infringe on the rights of freedom of expression and association of those who seek to expose alleged government wrongdoing."

On 18 November, the Supreme Court issued a five-line ruling, denying the appeal.



image Junichi Sato and Toru Suzuki appear with Tokyo Two defence counsel lawyers Yasushi Tadano and Kazuo Hizumi at a press conference in the Tokyo High Court Judicial Press Club, to announce the launch of an appeal to the Supreme Court. The appeal called for the disclosure of key embezzlement evidence in the Tokyo Two trial, and followed a similar request to the Sendai High Court that was rejected. The appeal asserted that, if the prosecutor did not disclose key evidence, it would be a violation of Article 37(2) of the Japanese Constitution, as well as Article 14(3)(b) of the International Covenant on Civil and Political Rights, which guarantee the right to a fair trial.

Opening and Prosecution Witnesses

15 February 2010: Day 1 of the Trial

After almost 18 months of waiting, on 15 February 2010, Junichi Sato and Toru Suzuki's trial began in Aomori, Japan.

Sato and Suzuki opened the trial by explaining to the Court their reasons for pleading not guilty to the charges (see their *Opening Statements*, included in the 'Whaling on Trial' dossier). Sato asked the court to consider the consequences for society if prosecutors are allowed to get away with prosecuting those who expose wrongdoing, and not those who commit it. Suzuki described his shock when he opened the box of whale meat, and the feeling that the public in Japan and beyond ought to know about the reality of the 'research' whaling programme. He echoed Sato's call for a fair trial and a ruling that will improve Japanese democracy.

Prosecution Witness #1 – Aomori Depot Manager, Seino Transport

After presenting his opening arguments, the prosecutor examined his first witness, the manager of the Seino Transport branch in Aomori where Sato and Suzuki intercepted the box of whale meat. The prosecutor has put Seino forward as the 'victim' in the case; the 'owner' of the box of whale meat has not been called as a witness. It is the belief of the Greenpeace legal defence team that this may have been in order to shield him from cross-examination about the notable contradictions in his claims on how he himself obtained the whale meat.

Responding to the prosecutor's questions, the branch manager sought to establish the harm done to himself and his company. He claimed to have paid the owner ¥30,000 (approximately \$300 US dollars at the time) out of his own pocket in compensation for the loss of the box. He also brought a folder containing hundreds of complaints allegedly submitted to Seino Transport via an online feedback form as a result of the Tokyo Two investigation. The company is still in the process of recovering from the reputational damage, he claimed, and concluded by asking the court to punish Sato and Suzuki for the harm caused.

The defence objected to the admissibility of the complaints as evidence, since the names of those who sent the messages were masked, making it impossible to verify their genuineness. The court in part upheld the objection, deciding that it would treat the messages 'neutrally', meaning their truth will not be presumed.

Under cross-examination by the defence team, the branch manager admitted that not he, but the owner of the box should be regarded as the real victim in this case. He also admitted that the doors to the Seino depot were open and anyone could walk in. Asked why he had paid the ¥30,000 in compensation from his own pocket, he claimed that the paperwork to recover this expense from his employer would have been too complicated. As a result, there was no documentary evidence that the payment had been made. In response to the question how he had calculated the amount, he stated he had been told by the owner that the box contents were 'fresh produce', and without enquiring further had assumed that ¥30,000 would constitute a fair amount of compensation. He denied having known or suspected that the box contained prime whale meat. It should be noted that, while the State and Security Police had spoken to him as many as 20 times about the loss of the box, they had never once questioned him as to whether he had any knowledge of whale meat embezzlement by the whaling fleet's crew. He potentially had knowledge that could have helped the police investigate the embezzlement.

Opening Statements and Prosecution Witnesses

15 February 2010: Day 1 of the Trial

Prosecution Witness #2 - Head of Sales, Kyodo Senpaku

The second (and final) prosecution witness was the Head of Sales of Kyodo Senpaku, the company operating the whaling fleet. He had been called by the prosecutor to testify the prosecution had correctly valued the whale meat intercepted by Sato and Suzuki.

Cross-examination allowed the defence to confront the witness with an article dated 21 May, 2008, published in the respected *Asahi Shimbun*, which quoted the 'Head of Sales' of Kyodo Senpaku as saying that no whale meat souvenirs are given to whaling fleet crew members. After reluctantly admitting the article referred to himself, he claimed there had been a misunderstanding; he had not told the newspaper that no meat is given to crew members, but had denied that there are souvenirs, as the meat is intended as a payment in kind, not a gift. He admitted, however, that he had not contacted the newspaper to complain about the incomplete quote or clarify the misunderstanding.

When posed questions about contradictions in the statements crew members made during the police investigation into embezzlement, the Head of Sales claimed not to have read any of these statements recently, and not to remember their substance. Media reports picked up on the vagueness of some of his answers, with the Kyodo News wire running the headline: *'I don't remember' says Company Manager*. While he stuck to his employer's claim that the whale meat distributed to crew members is legitimately purchased, he admitted that the transaction is not expressly accounted for in the company's books and thus cannot be independently verified.

Opening Statement

Junichi Sato

Opening Statement by Greenpeace Japan Programme Director Junichi Sato, at the start of his trial for exposing large-scale corruption in the Japanese government-funded whaling programme. Delivered at the Aomori District Court, 15 February 2010

I plead not guilty because a society where individuals have the right to expose scandals is one which leads to a more democratic, citizen-orientated society and I would like this trial to be the place where we can start that discussion.

I would like to take some time to talk about the three main reasons why I plead not guilty.

Firstly, the information regarding the alleged wrongdoing on the whaling fleet came from a whistleblower and our investigation was based on that information. The whistleblower said to me, "I am pro-whaling but what is actually done does not deserve to be called 'research whaling'." He said that he couldn't bear the fact that a huge amount of whale meat was being disposed in the Southern Ocean, that crew members were taking away huge amounts of whale meat, and that even if they find diseases like cancerous tumours in whales, they still put out their meat for sale.

I didn't fully realise the significance of the whistleblower's account myself until I saw with my own eyes a large number of boxes being unloaded from the whaling vessel. When I witnessed close to 100 boxes, many of which seemed very heavy, my understanding changed. Further, when I saw premium cuts of whale meat amounting to more than 23 kg inside one of those boxes, I wanted to have this properly investigated by submitting this, along with additional evidence, to the investigative authorities.

After filing a complaint, other whistleblowers came forward to confirm that whale meat was illegally siphoned off. These whistleblowers are risking their own personal security to provide these accounts. I don't want their courage to be in vain. At the same time, I believe that the wrongdoing on the whaling vessel that they came forward to tell us will be publicly exposed here.

It goes without saying that whistleblowing plays an important role in cleansing society. When information is brought to third parties like NGOs by a whistleblower, the right to gather information to verify such information should be guaranteed.

Secondly, we tried to make it known to the public that the whale meat is being siphoned off illegally in the whaling programme, which over the last 22 years has received as much as ¥500 million yen in government subsidies a year at the taxpayers' expense. Our intention was to expose the embezzlement scandal in the whaling industry, we didn't secure the whale meat to consume it ourselves or to sell it off.

The research whaling programme has triggered a huge debate not just within Japan but internationally, and has been the cause of diplomatic tension. The vice spokesperson of the Foreign Ministry once said Japan's whaling programme was the single most asked about topic by the international media. The negative impact from the whaling programme is bigger than any other diplomatic issue as far as Japan's international image is concerned.

I wanted the taxpayers, myself included, to know what was actually happening with the programme that draws so much attention. As a member of an NGO that was in a position to know about this wrongdoing, I wanted to investigate the facts and make them publicly known. If we had intended to steal the whale meat for ourselves, would we have brought the secured whale meat to light and turned it over to the Tokyo District Public Prosecutor's Office to begin with?

Lastly, what I consider most important is to ask which would lead to a better democratic society: rigorously punishing wrongdoing, or rigorously punishing those who try to expose wrongdoing.



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Junichi Sato
Greenpeace Japan

Long-time activist Junichi Sato has worked for Greenpeace since 2001. Formerly working on the Toxics Campaign, Junichi was the force behind bringing the 'Zero Waste' policy introduced in countries such as Australia, New Zealand and UK, to Japan. He lead the Oceans team on issues such as overfishing, illegal fishing, the Okinawa dugong and whaling.

Opening Statement

Junichi Sato

On the very day that we were sensationally arrested, the investigation of the embezzlement by the crew members ended without any charges. In addition, the fact that bureaucrats of the Fisheries Agency of Japan and the staff of the Institute of Cetacean Research were receiving premium cuts of whale meat as though they were bribes was never investigated properly. They only committed not to receive any whale meat in future and were never held responsible.

As this shows, the issue of the illegal siphoning off of whale meat does not just involve individual crew members. This is an issue of corruption involving public authorities. The three parties - the Institute of Cetacean Research, which is the organisation implementing the research whaling programme, Kyodo Senpaku and the Fisheries Agency of Japan - formed a trinity which engaged in this act and covered it up after the wrongdoing was exposed.

As a result, the investigative authorities turned a blind eye to the wrongdoing of the government and chose to hold us criminally responsible for bringing to light the wrongdoing. The Working Group on Arbitrary Detention of the United Nations Human Rights Council has warned the government of Japan, stating that this decision is against international human rights law.

We are pleading not guilty not for our own sake. The reason why we plead innocent is because as a Japanese citizen, I strongly believe that citizens, NGOs, and journalists shouldn't have to be afraid to make their voices heard when they speak out against wrongdoing. In other words, we strongly believe that this trial can be a forum for discussion to build the kind of society that our children can be proud of, where wrongdoing is rigorously punished and the rights of citizens exposing such wrongdoing are guaranteed.

I would like to ask for a fair and impartial trial.

Thank you for your time.

Junichi Sato

Opening Statement

Toru Suzuki

Opening Statement by Toru Suzuki of Greenpeace Japan, at the start of his trial for exposing large-scale corruption in the Japanese government-funded whaling programme. Delivered at the Aomori District Court, 15 February 2010

While the actual facts are not in dispute in this case, it is my belief that NGOs and citizens have the right to question the unlawful use of public funds.

Thirty-eight security policemen and thirty-seven Aomori Police Department Officers (seventy-five in total) were assigned to arrest us, only two NGO members. On the day of the arrest, the Tokyo District Public Prosecutor's Office dropped the investigation of the whale meat embezzlement without bringing any charges. The Prosecutor has presented a staff member of a courier company as the 'victim' in this trial, not the actual owner of the box containing the embezzled whale meat. The evidence disclosed to us was largely blacked out. During the pre-trial procedure, the Aomori Prosecutor's Office consistently objected to our requests for witnesses and our evidence on embezzlement. I can't hide my bewilderment at all the strange turns of events that I've experienced as a defendant. These facts form an important context which should not be ignored by the Japanese and international public.

This case began as a result of concerns and information from a whistleblower, an ex-crew member who said he couldn't remain silent about the wrongdoing that was going on. We undertook an investigation over several months to establish the facts regarding the whale meat.

One fact that we established through our investigation was that, among whale meat traders, the embezzlement of whale meat by crewmembers was an open secret. Everybody in the industry knew about it.

After four months of research, we discovered that over 90 boxes were being sent by crew members via the Seino Transport Terminal in Tokyo. We followed these boxes to Aomori. When we scouted the Seino branch in Aomori, we found over ten boxes piled up. The name of [A] had been mentioned to us by the whistleblower as one of the people deeply involved in the embezzlement, and we found boxes with his name written on them. I picked up a box and confirmed that it was very heavy – I was confident it contained embezzled whale meat. I was originally just scouting to document the pile of boxes, but as soon as I felt the weight of the box with [A]'s name on it, I realised that if we didn't secure this as evidence now, we would not be able to convincingly prove the embezzlement and I decided to carry the box out.

I opened the box at the hotel room we then booked, and because I hadn't prepared for this, I was taken aback by what I saw. It was as if I had discovered parts of a corpse. I realised instantly that we were the only ones in the world who had discovered this and it was our responsibility to make it known to the public.

These were stolen goods, which we would be able to use as key evidence. The whistleblower who had risked his safety to provide this information had said: "If the world finds out about this embezzlement, Japan's so-called research whaling will be brought to an end." It was natural that the whaling industry tried desperately to cover the scandal up. The whole sequence of events exposes what was really happening in the whaling industry.

Having seen, heard and experienced all of this, I am certain the unlawful embezzlement of whale meat was taking place. However, this is only the tip of the iceberg. Beyond those who have been exposed, there are many more who are involved. Many supporters of whaling are complicit in the taking of whale meat.



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Toru Suzuki
Greenpeace Japan

42-year-old Suzuki spent many years as a professional motorcycle racer, competing domestically in Japan and internationally, most notably in Australia. After 9 months as a volunteer, he joined Greenpeace in late 2007 as actions coordinator, swiftly becoming an integral part of the investigation that would expose the whale meat embezzlement scandal.

Opening Statement

Toru Suzuki

However, the greater injustice occurred after we brought the scandal to light. A false explanation was concocted and the truth was covered up, muzzling freedom of expression. This kind of behaviour should not be permitted in a democratic society. Our arrest by seventy-five officers in full view of the media, the discontinuation of the embezzlement investigation by the Tokyo Public Prosecutor, being put on trial without the 'owner' of the box presented as the victim, the censoring of evidence, the resistance of the Aomori Prosecutor's Office against the admission of embezzlement evidence – all this should not be accepted in a mature democratic society.

Despite the fact that only 60% of ICR's planned whale quota was killed, and despite the presence of several maritime safety agency officers, whale meat was embezzled on a large scale as usual. We're talking about an operation funded with taxpayers' money. We are certain they witnessed the embezzlement happening on the ship – and wonder whether they were questioned at all about it.

I vividly recall the words of a police officer right after I was arrested. "If I weren't a police officer, I would say what you did was great." As he said, we did nothing wrong – we exercised the freedom of citizens to expose serious wrongdoing in the public interest.

We're sitting in the dock here in court, but in this hearing, the conduct of the prosecutors and police is what will be under the spotlight. This hearing will show what level of democracy we have in Japan. I will fight this case with the intention to expose the lies which permeate the research whaling industry.

Toru Suzuki

Defence Witness #1

8 March 2010: Day 2 of the Trial

Ex-Production Worker from the *Nisshin Maru*, 'C'

Opening the first of four days of witness testimony, the defence introduced its first witness, an ex-production worker onboard the factory ship *Nisshin Maru*. We will refer to him as 'C'.

In his first police interview, **A**, the 'owner' of the box intercepted by Sato and Suzuki, claimed he had received 25kg of whale meat from **C** (see *The Story of A in the 'Whaling on Trial' dossier*). **C**, by contrast, told police he had given **A** 15kg of whale meat. In his second interview he reduced this to 8kg.¹ To clear up these contradictions, the defence had called **C** as a hostile witness.

C continued to deny in court that crew embezzled high quality whale meat for themselves without permission. He maintained that the meat he provided to **A**, and which Sato and Suzuki found in the intercepted box, was an official gift from the company, Kyodo Senpaku, to him as a member of the crew. **C** told the Court that **A**'s statement to police, that he had received 25kg of whale meat from him, seemed to be a lie. The actual amount, he claimed, was 15kg – still almost twice the amount which Kyodo Senpaku says it provides as a gift to each crewmember (see *The backlash commences – The internal 'investigation'*).

According to Greenpeace's estimate, the value of this alleged gift of 15kg of whale meat in April 2008 would have been between \$650 and \$2000 US dollars. Even at the artificially low rate used by the prosecutor to compute the value of *unesu*,² **C** would have been giving **A** meat worth \$357.

C stated that he had never seen anyone salting whale bacon in their rooms, and didn't know anyone else who sent whale meat by Seino Transport. The only person he was aware of doing this happened to be **A**.

C and the internal 'investigation' by Kyodo Senpaku

C told the Court that he had never been questioned by Kyodo Senpaku or the ICR since Greenpeace exposed the embezzlement scandal on 15 May 2008 – raising further questions about how meaningful the internal 'investigation' conducted by the two whaling organisations on the instructions of the government actually was. The investigation report of 18 July 2008 expressly claims that Kyodo Senpaku investigated all crew members to find out the contents of the boxes sent by each. This report led to the Fisheries Agency of Japan finding that the accusation of embezzlement was without grounds.

Best meat from young whales is given away as 'souvenirs' for crew

C said that the souvenir whale meat given away to crew by Kyodo Senpaku is chosen by the crew, who pick the meat that looks good. When asked if souvenir whale meat is young whale, he replied, "*Young whales are tender, so we keep that.*"

As a production worker, **C** was responsible for processing the whale meat. He explained the souvenir whale meat is selected and separated out from the rest while the whale is still on deck. The 'souvenir' meat is then salted on deck before it is put in to the freezer.

If the souvenir meat is selected before the whale meat catch is logged, it appears that it is not included in the statistics on the total amount of whale meat captured. Therefore, there is no record of how much whale meat is set aside for crew.

The defence asked **C** to comment on the fact that prime cuts of whale meat are set aside for crew, which results in the loss of profit to Kyodo Senpaku (and in turn the taxpayer). He simply said, "*I don't know. I only do what I am told.*"

¹ It should be noted that six pages of this witness' statement were not disclosed to the defence by the Prosecutor, despite repeated requests and an appeal all the way to the Supreme Court. See *The last hopes for a fair trial - The defence unsuccessfully appeals for disclosure in the 'Whaling on Trial' dossier*. Thus, it is not known whether C made further inconsistent statements.

² The prosecutor charged Sato and Suzuki with theft of 23.1kg of whale meat, valued at ¥58,905 (approximately \$550 US dollars at the time). The value of the allegedly stolen goods appears to have been substantially underestimated. This may be because even at the prosecutor's rate, the 8kg of *unesu* whale meat the authorities claim each crew member is given would be worth about \$190 – a generous gift for workers in a publicly funded programme. See *The backlash commences – The internal 'investigation'*.

Defence Witness #1

8 March 2010: Day 2 of the Trial

What did this witness send home from the Nisshin Maru in his own 12 boxes?

C sent home 12 boxes from the *Nisshin Maru* in April 2008, seven of them via cool courier. When first questioned in court about their contents, he said that three of them contained whale bacon (up to 45kg), which he had received as gifts from three other crew members – again in spite of the fact that Kyodo Senpaku claims to hand out only 8kg of *unesu* (from which whale bacon is made) to each crew member. He said that he and his extended family had eaten this whale bacon, and he had not sold any of it. However, **C** had no response to the question why he had allegedly given 15kg of his own whale bacon to **A** ‘because he wanted it’, while accepting up to 45kg of whale meat from others.

Initially **C** said that he had also sent home three boxes full of Antarctic ice and a quantity of whale fins, guts, throat and red meat. He later changed his testimony and said he didn’t send this extra whale meat that year; it was the following year.

Greenpeace has video footage of a consignment label on one of the boxes that **C** sent from the *Nisshin Maru* in 2008. The label said ‘cardboard’, yet when its weight was tested at the Tokyo depot by Greenpeace investigators, it was considerably heavier than it would have been if it had contained only cardboard. During his testimony in court, **C** countered that the box had probably contained bottles of beer or sake. He claimed there was nothing wrong with his decision to label the box as ‘cardboard’, saying he did not see why there was anything wrong with that.

Discussing the contents of the five boxes he sent via Seino Transport Courier Company, **C** said he had sent home three and a half boxes of alcohol (shochu and beer) including 36 350ml bottles of beer. He said he sends alcohol back home every year – despite having earlier told the court he was not a drinker. **C** did not respond to the question why he goes to the trouble of sending alcohol home, even while giving away prime cuts of whale meat of far greater monetary value.

A is due to give evidence to the court on 14 May 2010.

Defence Witness #2

9 March 2010: Day 3 of the Trial

The third day of trial heard evidence from the second whistleblower to come forward - a life-long whaler and ex-crewmember on the *Nisshin Maru* - and Junichi Sato, Programme Director of Greenpeace Japan.

Whistleblower Two, 'WB2'

The Court first heard from the whistleblower (we will call him **WB2**), a seaman on whaling boats for over 35 years. **WB2** is not the original source who alerted Greenpeace to the irregularities on the whaling ships; rather, he is an additional informer who confirmed the first man's allegations. The first whistleblower is unwilling to testify, citing fears for his safety. Speaking from behind a screen to protect his identity, **WB2** gave evidence of widespread embezzlement on Japan's whaling fleet. His identity was concealed from the public gallery as the Court acknowledged his own fear of reprisals if he was recognised. His name, however, was read out in public, to satisfy procedural requirements.

WB2 described how, working as an engineer on the factory whaling ship *Nisshin Maru* in the 1990s, he observed how staff discipline had collapsed and crew members were increasingly siphoning whale meat off and sending it home. He claimed that when he raised his concerns with the management of Kyodo Senpaku, the whaling fleet's operator, no action was taken and instead he was taken off his job and transferred to another position.

WB2 described how production workers had given him portions of prime whale meat to take home, as a kind of pay-off to ensure his silence about what he had seen when inspecting the ship's refrigerators. He testified that souvenir whale meat was prepared for and sent to members of Japan's parliament, the Diet, and officials at the Fisheries Agency (FAJ). He also gave evidence that ICR officials on the *Nisshin Maru* would take large portions of tail meat (one of the most highly prized cuts) for themselves claiming they were for research purposes. On one occasion, when checking one of the ship's freezers, he saw an ICR official try to conceal a box full of tail meat by covering it with his hands. He explained how the behaviour of the ICR officials caused resentment amongst the other crew members.

During his time on the ship, **WB2** noticed that production team managers were given special privileges including the opportunity to dine with the captain and high-ranking officials. Only production workers used Seino Transport (the courier company used by **A**) to send home 'personal belongings'. **WB2** commented that the embezzlement on the *Nisshin Maru* seemed worse now, as in the early 1990s the whale meat was siphoned off by crew *after* the meat had been registered in the production quota. Now, according to **C**, it is separated out as soon as the whale is processed and therefore not recorded in the official statistics.

He testified that when the 'research' whaling fleet was first given a quota for fin whales in 2006, fin whale meat appeared on the market in April, well before the first official sale in July. **WB2** believes this could only have been because whale meat had been taken from the vessel without permission. Two Kyodo Senpaku production managers were forced to retire for their part in this particular incident.

WB2 gave evidence that although he was interviewed by police in the course of the investigation into Greenpeace's allegations, he felt the police had clearly pre-judged that there was no scandal, and asked him to sign a statement which made no mention of the fact that he had witnessed embezzlement by his fellow crewmembers. Moreover, the police asked him to make a positive statement that he himself had never participated in embezzlement and received unauthorised whale meat. He refused to do this because it was untrue.

WB2 said that he had come to court to give evidence to expose the truth of the embezzlement within the whaling industry. He thought the defendants were brave in trying to expose the scandal. He explained that he supports commercial whaling but thinks that the embezzlement in the research whaling industry is wrong and should be stopped.

Defence Witness #2

9 March 2010: Day 3 of the Trial

The Prosecutor ignored **WB2**'s testimony of widespread embezzlement of whale meat on the *Nisshin Maru*. He simply asked **WB2** to confirm that he was not on the *Nisshin Maru* in 2008 and could not explain how **A**'s box contained whale meat. Despite **WB2**'s clear testimony of embezzlement from which even Diet Members appear to have benefited, the Prosecutor argued that **WB2**'s evidence had no relevance.

Defence Witness #3

9 March 2010: Day 3 of the Trial

Defendant, Junichi Sato

Following the second whistleblower's testimony and nearly two years after bringing the embezzlement on the *Nisshin Maru* to the attention of the Tokyo Prosecutor, Junichi Sato was finally able to give evidence in court.

Sato answered questions from his lawyers all afternoon in front of a busy courtroom. He told the Court that while studying in the United States, he had defended whaling, thinking it was part of Japanese culture. However, through his involvement in Greenpeace, an international organisation with millions of supporters, he learned much more about the whaling industry and came to realise that 'research' whaling in the Southern Ocean was never a part of Japanese culture. He went on to explain that he wanted others to fully understand the nature of the whaling industry in Japan.

Sato detailed the allegations of Japan buying votes at the International Whaling Commission (IWC) by promising countries assistance in the form of Overseas Development Aid. He discussed the illegality of 'research' whaling in the Southern Ocean and explained just how costly the programme has become to the taxpayer in Japan, at up to 795 million yen (\$8 million US dollars) a year or more.

He described in detail the whistleblower's allegations which had led him to investigate the embezzlement on the *Nisshin Maru* together with Suzuki. The whistleblower had contacted Greenpeace to expose the embezzlement of whale meat and told Sato how large amounts of the whale meat were thrown straight into the sea, even cancerous growths that could provide valuable for scientific research.

Sato testified that he was determined to make the investigation as detailed and comprehensive as possible, not least to do justice to the risk this first whistleblower ('Mr Whale') took in contacting Greenpeace in the first place. He explained that he was aware the investigation involved certain legal risks but that it was vital that the public be made aware of the embezzlement of taxpayers' money.

Sato gave every detail of how his team had filmed and tracked the boxes sent by production workers from the *Nisshin Maru*. He explained that each step of the investigation seemed to support the whistleblower's allegation of embezzlement; the production workers named by him were indeed sending large numbers of suspiciously heavy boxes via Seino Transportation. Sato told of his shock when he opened the box they had intercepted, finding it filled with whale meat. He felt very strongly that this was illicit and they had to expose it and take this evidence to the authorities.

Sato said that he felt disappointed that key evidence in support of their defence had not been disclosed and that large sections of witness statements (including that of the ex-crew member C) were 'whited out'.

He told the Court how happy he felt that the UN Working Group on Arbitrary Detention's opinion supported his and Suzuki's actions and the right of any citizen who discovers wrongdoing to expose it. He stressed this was a detailed and comprehensive investigation into embezzlement - if this were theft, why would the defendants have documented the investigation carefully, video-taped and photographed it in detail?

Sato recalled how when he studied in the USA, the rights of NGO workers were supported. Concluding his testimony for the day, he asked the court to recognise the right of NGOs and individuals to take necessary steps to expose wrongdoing in Japan, too.

Defence Witness #3

9 March 2010: Day 3 of the Trial

In the morning of the next day, March 10, the prosecution was allotted time to cross-examine Sato. The nature of the short questioning suggested that he was attempting to elicit clues that the decision to seize the box of whale meat from the depot had been premeditated, rather than taken on the spur of the moment by Suzuki. The prosecutor devoted particular attention to the fact that another Greenpeace investigator had previously taken a separate box from another depot, returning it on Sato's instructions, after he found it to contain items of clothing, rather than whale meat.

The prosecutor also made a renewed attempt to question whether embezzlement had really occurred on the whaling ships. He put it to Sato that if meat was being taken quite openly, with the apparent knowledge of the ICR and Kyodo Senpaku, then surely it cannot have been unlawful embezzlement. Sato responded that he is not a lawyer, but his objective had been to expose the waste of taxpayers' money – illegal or not.

Defence Witness #4

10 March 2010: Day 4 of the Trial

Defendant, Toru Suzuki

When Suzuki took the witness stand, the defence began by asking him questions about his background and motivation to become a volunteer, and eventually staff member, of Greenpeace Japan. Suzuki described becoming an entrepreneur following his career as a motorcycle racer, and his decision to set aside time for volunteer work in his community, organising local mothers and setting up food distribution for the homeless. Reading a 'good food guide' published by Greenpeace prompted him to sign up as a volunteer, and eventually he was offered a contract. Not long after, he was taken aside by Sato, who told him about the whistleblower information and asked him to help investigate the claims.

Suzuki proceeded to describe in detail how the investigation had unfolded. He recounted how he had travelled to various destinations across Japan to investigate whale meat restaurants and markets, finding ever more clues for the existence of unofficial distribution channels for whale meat.

When the whaling fleet returned to Japan from the annual hunt in the Southern Ocean some time later, Suzuki said he was asked by Sato to track the shipment of 'personal luggage' of crewmembers via Seino Transportation. Pretending to be a crew member, he entered the Seino terminal in Tokyo with another investigator and submitted a parcel, to be sent along with the other boxes from the fleet. Before leaving the terminal, Suzuki picked up some of these boxes, and confirmed many of them were unusually heavy – particularly those addressed to production workers thought to be involved in the embezzlement.

Suzuki said he then flew to Aomori, with the intention to follow the delivery of embezzled whale meat right up to crew members' homes. The next day, he was able to enter the local Seino Transportation depot through the wide-open gates, passing a number of staff members on the way to the consignment from the whaling fleet. Noticing that one crew member had addressed four heavy boxes to himself, he removed one, whose contents were listed as 'cardboard and vinyl', and carried it outside, where two other investigators were waiting in a car. A decision was taken to open the box, study its contents, seal it and return it. After booking a hotel room and picking up the necessary tape and other supplies from a local shop, the team carefully cut open the base of the box, documenting their actions with cameras.

This footage was played to the court, showing the discovery of the salted whale meat hidden in a plastic bag. Suzuki recalled his shock at the sight, and how the team had agreed this constituted highly valuable evidence which should be kept, rather than returned to the depot.

The defence asked Suzuki to clarify why the investigators had not simply notified the police of the suspected embezzlement. Suzuki explained that, knowing that the findings were politically sensitive, with politicians involved in the scandal, it was questionable a proper investigation would take place, unless media and public pressure was mobilised first. Now, two years later, he feels this suspicion has been proven correct – seeing that the authorities have come down heavily on Sato, himself and Greenpeace, that they denied disclosure of evidence on the embezzlement, and that no charges have been brought against the whalers.

Suzuki went on to speak about his arrest and detention. Seeing the large number of policemen involved in his arrest – in total, 75 officers were involved in the arrests and raids on the Greenpeace offices and homes of staff members – he had asked one of them what would be normal for a minor theft of a box. The policeman answered frankly that such cases generally involve no more than a couple of officers. Another officer complimented Suzuki on his action, saying he would think it was 'great' were he not a policeman.

Defence Witness #4

10 March 2010: Day 4 of the Trial

To protest his detention, Suzuki went on a hunger strike, which lasted nine days. He spoke with some emotion of his gratitude for the support he had received after the arrest from around the world, and how it had sustained him during his detention. He concluded by asking the court not to side with the authorities in their attempt to intimidate citizens who expose wrongdoing.

The day concluded with a short cross-examination by the prosecutor, who posed a range of questions to confirm the sequence of events leading up to the taking of the box, as previously admitted by Suzuki. The questions were similar to those previously put to Sato.

Defence Witness #5

11 March 2010 : Day 5 of the Trial

Expert Legal Witness, Prof. Dirk Voorhoof

The entire day of 11 March was reserved for testimony by expert witness Prof. Dirk Voorhoof of Ghent and Copenhagen Universities, an international authority on freedom of expression law. It is very unusual for a Japanese court to agree to hear a foreign scholar as an expert witness, so the testimony of Prof. Voorhoof was keenly awaited. He had been called specifically to clarify the meaning of Article 19 of the *International Covenant on Civil and Political Rights* (ICCPR). The ICCPR is one of the UN's two principal human rights treaties, ratified by Japan in 1979 (see *The Three Pillars of the Defence Case in the Whaling on Trial* dossier). Article 19 guarantees the right to freedom of expression – including freedom to ‘seek, receive and impart information’.

The defence questioned Prof. Voorhoof on the framework for interpreting Article 19 ICCPR, and he explained that there is little judicial precedent on this provision. To clarify its meaning, international and national courts often resort instead to the rulings of the European Court of Human Rights (ECHR). The ECHR has heard over 600 cases on Article 10 of the *European Convention on Human Rights*, which is worded almost identically to Article 19 ICCPR, as both articles are directly derived from Article 19 of the *Universal Declaration of Human Rights*. Although the ECHR is a regional body, its jurisprudence can therefore be seen as interpreting the meaning of universal rights, and is widely influential outside Europe, too.

Prof. Voorhoof proceeded to clarify the relationship between Article 19 ICCPR and the provisions on theft and trespass in Japan's criminal code. He pointed to statements by the Japanese government, the Supreme Court of Japan, and a leading Japanese scholar, which all indicate that Japanese courts are required to apply Article 19 ICCPR alongside national Japanese laws. Nevertheless, the UN Human Rights Committee has recently criticised Japan's judiciary for giving insufficient effect to this article.¹ Prof. Voorhoof stressed that national courts must specifically assess whether there is a contradiction between the ICCPR and the criminal code, in which case the former should prevail.

Turning to the specifics of the case against Sato and Suzuki, Prof. Voorhoof noted that the box of whale meat had been intercepted as part of an investigation into embezzlement under the cover of state-funded scientific research. As a result, the case concerns the seeking and imparting of information, which is protected by Article 19 ICCPR. These rights belong to ‘everyone’, but the European Court of Human Rights has made it clear that the media and NGOs should enjoy an especially high level of protection, as they are the ‘critical watchdogs of society’. Prof. Voorhoof cited passages from three separate rulings, including the well-known ‘McLibel’ case, where the European Court stated that:

“in a democratic society even small and informal campaign groups, such as London Greenpeace, must be able to carry on their activities effectively and that there exists a strong public interest in enabling such groups and individuals outside the mainstream to contribute to the public debate by disseminating information and ideas on matters of general public interest such as health and the environment.”²

Prof. Voorhoof explained that the purpose of these rulings is to recognise that in a modern democracy, while the press play an important role, NGOs may also have substantial expertise on issues such as health, environment and human rights, and their input helps to keep an eye on policy and to raise the quality of decision-making by authorities.

¹ Prof. Voorhoof specifically cited the *Katsushika* and *Tachikawa* cases, both of which concerned activists who were convicted of trespass after dropping leaflets with political content in private mailboxes. The UN Human Rights Committee stated it in 2008, in an implicit reference to these cases, that it is “concerned about reports that political activists and public employees have been arrested and indicted under laws on trespassing or under the National Civil Service Law for distributing leaflets with content critical of the Government to private mailboxes.” See UN Human Rights Committee, Concluding Observations on the Fifth Periodic Report of Japan submitted under Article 40 of the International Covenant on Civil and Political Rights, 18 December 2008, UN Doc. C/CCPR/C/JPN/CO/5, available through <http://tb.ohchr.org/default.aspx>. The presiding judge of the Aomori District Court in the present case was part of the panel which convicted the defendants in the *Tachikawa* case.

² *Steel and Morris v. United Kingdom*, 15 February 2005, Application no. 68416/01, para. 89. London Greenpeace is entirely separate and independent from Greenpeace International.

The Fifth Day of Trial

11 March 2010

When asked whether criminal law does not make a justified exception to the right of news gathering in this case, Prof. Voorhoof stressed that according to the international treaties, a limitation on freedom of expression must be strictly 'necessary in a democratic society' in order to protect another important interest. In this case, the court must therefore balance the interests of Seino Transportation, and possibly the owner of the box of whale meat, against the right of Sato and Suzuki to investigate wrongdoing in an internationally significant government-funded programme.

³ *Fressoz and Roire v. France*, 21 January 1999, Application no. 29183/95.

Prof. Voorhoof gave a series of examples of comparable cases decided by the European Court of Human Rights. Amongst others, he discussed the judgment in *Fressoz and Roire v. France*.³ In this case, two French journalists had published tax records which showed that the managing director of the Peugeot car company had received very large pay rises over two years. They did so during a strike of workers who were being told there was not enough money to increase their salaries. The journalists were convicted by French courts of handling unlawfully obtained documents, but the European Court considered that the conviction had not been 'necessary in a democratic society', given the significant public interest served by the journalists' action.

Comparing the various European Court rulings to the case of Sato and Suzuki, Prof. Voorhoof identified seven considerations why a conviction of the two would not be 'necessary in a democratic society':

- 1) The information they gathered concerned a matter of clear public interest;
- 2) The alleged offence is minor and their action was the only feasible way to obtain clear-cut evidence of embezzlement;
- 3) The box of whale meat was highly relevant and convincing evidence;
- 4) Taking the box did not cause major financial, physical or emotional harm;
- 5) Sato and Suzuki were not acting for personal gain, but to expose an allegedly illegal activity and to bring this to the attention of the authorities;
- 6) The evidence was used to publish a reliable, thorough report without any undue sensationalism;
- 7) Any conviction of Sato and Suzuki would have a 'chilling effect' on investigative journalists, NGO workers and other watchdogs and discourage the exposure of other wrongdoing.

Recalling the fact that the UN Working Group on Arbitrary Detention had already ruled that the 26-day detention of Sato and Suzuki violated Article 19 ICCPR, Prof. Voorhoof stated he is confident an international court would come to the same conclusion. With regard to the outcome of the trial, he stressed that a prison sentence would certainly be viewed as disproportionate, and that even a slap on the wrist in the form of a fine or admonition might be seen as unnecessary and unjustified, as it would further add to the disproportionate searches and detention in the pre-trial phase.

He concluded his testimony by stating that if Japan wants to develop further and faster on the path towards a modern and open society and improve the quality of democracy, there is a need for more need transparency, pluralism, independent media and NGOs. A conviction in this case would mean a setback to that development.

Defence Witness #6

14 May 2010: Day 6 of the Trial

The sixth day of the trial heard evidence from the two crewmembers at the heart of the embezzlement on the Nisshin Maru.

Deputy Production Manager on the *Nisshin Maru*, 'B'

A Deputy Production Manager on the *Nisshin Maru*, just returned from the Southern Ocean, appeared in Court to answer Defence questions about the whale meat he had allegedly given to **A** (see: *The Story of A*), the wide-spread embezzlement on the *Nisshin Maru* and his personal involvement in it.

His evidence came almost two years to the day after Junichi Sato and Toru Suzuki called upon the Tokyo Prosecutor to investigate him and 11 others for embezzlement of whale meat from the *Nisshin Maru*.

At the start of the hearing, the defence team asked witness **B** to confirm whether the Kyodo Senpaku employee who had conducted the internal investigation into embezzlement in 2008 was in Court. **B** pointed him out in the public gallery. The Court then asked him to leave the room as his presence could inhibit **B**'s honesty.

A, the 'owner' of the box intercepted by Sato and Suzuki had claimed in a statement to police in June 2008 that one of the pieces of *unesu* whale meat found in the box had been given to him by **B**.

B told the Court he had given **A** one piece of *unesu*. However, **A**, when asked by the Prosecutor in Court that same afternoon, failed to remember his own story, denying that he had ever received *unesu* from **B**.

B has worked on the whaling fleet for over 15 years. Yet when asked questions in Court about the handling of whale meat and the alleged distribution of official souvenirs to crew; **B** could remember very little.

Despite being a Production Manager for the last 5 years, **B** told the Court that he didn't know about the ICR's *Special Research Operation Procedure*, Article 13 of which states that no whale meat can be sold without prior approval from the FAJ. The ICR must give details of the volume of whale meat produced and the amount being sold to whom.

He could not say how many pieces of souvenir meat were made on the *Nisshin Maru* during the Southern Ocean hunt in 2007-8 (In 2008 he had told police it was over 400). Nor could he say when or how much *unesu* was distributed to crew, or how the souvenir meat is selected by crew when it is processed.

B said that he had no time to choose the souvenir whale meat as the result of the workload, suggesting that the selection of alleged souvenir whale meat on deck is left to crewmembers; entirely unsupervised and undocumented.

The Greenpeace investigation had uncovered that this witness sent himself a suspiciously large number of boxes home, at least six via Seino Transport. When asked in Court what these boxes contained he said that two boxes would have been filled with clothes. The other four boxes may have contained red meat or Antarctic ice. The Defence pointed then out that the ice would melt and the red meat would go off as these boxes were transported at room temperature. **B** said he couldn't remember.

Defence Witness #6

14 May 2010: Day 6 of the Trial

B admitted sending two ex-Production Managers one piece of *unesu* and red meat each from his home address in 2008. He was shown Greenpeace photos of boxes being sent to the two by another crewmember that same year. **B** said he did not know what other people sent them from the *Nisshin Maru*.

These two ex-Production Managers had been fired in 2006 as a result of an incident where fin whale meat appeared on the market prior to the official sales date. This was something of a scandal as it was the first time in decades that fin whale meat had been hunted by the Japanese whaling fleet.

B claimed that he did not know why the two had stopped working on the whaling ship, despite knowing them well enough to send them souvenir whale meat, working on the *Nisshin Maru* for 15 years and the media coverage of the incident.

B told the Court that he thinks he received one or two pieces of extra *unesu* (about 4-5kg each) because of his position as a production manager. He therefore claimed to have received a total of four pieces of *unesu* in 2008, two of which he gave to the two ex-Production managers, one to **A** and one to relatives. When the defence pointed out he would have given all four *unesu* pieces away and had nothing left for himself, **B** stated that his memory wasn't clear and he may have given his relatives red meat after all.

The Defence reminded **B** that he had told police in 2008 that he had received a total of seven pieces of *unesu*, including five extra pieces of *unesu* from his manager, the Head of Production on the *Nisshin Maru*. **B** said he didn't remember ever saying that to police.

He admitted that production crew on the whaling ships receive instructions to prepare souvenir whale bacon for the Whaling Association, a group with close ties to Kyodo Senpaku management and pro-whaling politicians. He claimed he had no idea how many boxes of bacon were sent to the Whaling Association and could not even approximate. **B** denied receiving any whale meat bacon himself contradicting his statement to police in 2008 that he had received ten pieces of bacon.

B told the Court that if a pregnant whale is caught and a foetus found it will either be dumped at sea or taken away for research by ICR officials. He also explained that ICR send their scientific samples from the ship by freezer truck on the day the ship arrives at port.

When shown a Greenpeace photograph of an executive of the ICR carrying a box marked 'sample' to his own car rather than the waiting freezer truck, the contents of which were not frozen but at room temperature, **B** said he couldn't comment as he as a Production worker was not involved with ICR samples.

Defence Witness #7

14 May 2010: Day 6 of the Trial

Sender of the Box intercepted by Sato and Suzuki, 'A'

A, the sender of the box of whale meat intercepted by Sato and Suzuki, and the crew member at the heart of the embezzlement scandal exposed by Greenpeace, finally appeared in Court as a witness.

A is a life-long fisherman and has worked for the whaling industry for the last 14 years. Recently returned from the Southern Ocean, he continues to work as a production worker on the *Nisshin Maru*.

How much unesu did A receive and from whom?

In Court, **A** struggled to remember how much *unesu* each crew member was meant to have received as 'souvenirs' from Kyodo Senpaku. He also could remember little of the basic details: how much *unesu* whale meat he had allegedly received, when, and from whom.

The statements by **A** to police in 2008 that were disclosed to the defence were full of contradictions. Interviewed by police five times in May and June 2008, **A** gave different accounts of who had given him the 23.5kg whale meat, when he had received it and how he had used the whale meat that did reach his house. (See 'The Story of A')

In response to Greenpeace publishing the allegations, Kyodo Senpaku's official explanation as to why crew were sending whale meat home was that each crewmember receives approximately 8kg of *unesu* and 1.6kg of red meat as an official 'souvenir' or reward.

In May 2008, **A** told police that he been given a total of 35kg of *unesu* whale meat whilst on the *Nisshin Maru* that year, 23.5kg of which had been intercepted by Sato and Suzuki. **A** had sent home far more meat than his 'official' quota so sought to explain where the additional *unesu* had come from.

In his first statement to police he claimed that **C**, a fellow crewmember on the *Nisshin Maru* (see 'Defence Witness #1') had given him 25kg of *unesu*. However when questioned about this in Court in February, **C** said that **A** was lying as he had only given **A** 15kg – still almost twice the amount which Kyodo Senpaku says it gives out as gifts to each crewmember. When asked about this contradiction in Court, **A** simply claimed he couldn't remember how much *unesu* **C** had given him but it was less than 25kg.

In his second police statement **A** named two others who had given him *unesu* whale meat as a gift. In his third, he named four people including the Deputy Production Manager, **B**. (See 'Defence Witness #6')

When giving evidence, **A** could not recall when he had allegedly been given the whale meat by Kyodo Senpaku and other crew members. Nor could he explain why other production workers in his department had given different dates to police.

A also now claimed he had received *unesu* from three people rather than the four he named in his earlier police statement. He named Witness **C**, another production worker and a third man whose real name he could not remember. Importantly, when asked by the Prosecutor, he denied ever receiving *unesu* from **B**. **B** had told the Court that very morning that he had given a piece of *unesu* to **A**.

A's testimony therefore contradicted his own statements, that of **B** and the Prosecution case.

In his police statements, **A** had admitted sending 14 pieces of *unesu* home, but claimed that he had received two from Kyodo Senpaku and five from fellow crew members. He claimed that he had cut each piece in half length-wise into his boxes – making 14 pieces.

In court at Aomori the defence showed **A** strong evidence that the whale meat was never cut in half and that he had obtained 14 pieces of *unesu* for himself. This is far more than the two pieces of *unesu* that Kyodo Senpaku claims to distribute to crew and far more difficult to explain.

A claimed that he had cut five pieces of *unesu* in half and put the ten resulting pieces in the box intercepted by Sato and Suzuki. DNA tests of the whale meat, very recently disclosed to the defence, prove that there were not five pieces of *unesu* cut in half as there were an odd number of pieces from two different whales.

Defence Witness #7

14 May 2010: Day 6 of the Trial

What was in the other three boxes sent by A via Seino Transport?

In 2008, **A** admitted to police that in addition to the box intercepted by Sato and Suzuki, he had sent four pieces of *unesu* whale meat home in another box. He claimed to have eaten some *unesu* at home and given the remainder away to friends and family. In his third interview with police he changed his story and admitted that he had given some to his wife to serve in her snackbar.

A explained to police then that he had not mentioned it before as it could be 'disadvantageous'. In court, the defence asked what he meant by this. **A** responded that he could not now think of any disadvantage.

In Court, he continued to deny ever selling the whale meat for profit. He did admit that he did not know until the Greenpeace investigation that he was not allowed to do so.

During his police interviews **A** also revealed that he had sent home 30kg of off-cuts including head meat, fin, and intestines via Cool Courier. He claimed his family had eaten all these off-cuts within the month. This would amount to 1kg a day – while his wife was abroad for part of that time.

When asked in Court what he must have had in the remaining boxes **A** claimed that the box intercepted by Sato and Suzuki was the heaviest and the only one that was full of *unesu*. He said one box contained the remaining four pieces of *unesu*, the others contained beer, whisky and other 'unused items'. When asked to explain what 'unused items' meant, **A** said they may have included unused rubbish bags.

The whistleblower informed Greenpeace that crew bring salt, bin liners and boxes on board to embezzle whale meat.

Asked whether he had brought any salt onboard the ship, '**A**' said he had brought 5kg for the 5-6 month trip for his own cooking. He denied that he was using the salt to preserve embezzled whale meat. It is worthy of note that the recommended daily salt intake is six grams, or 180 grams per month.

Payment of compensation by Seino Transport

A told the Court that he wasn't aware that the box was missing until his three remaining boxes were delivered unannounced by Seino Transport. He said once he realised the missing box was the one which contained *unesu* whale meat, he informed Seino Transport of this (The Head of Seino Transport's Aomori Depot denied ever being told the box contained whale meat. He claimed that **A** had told him it contained "*fresh produce*" and it was on that basis that the company paid him 30,000 Yen in compensation). **A** could not explain why he accepted 30,000 Yen for the lost box when, according to his own statement to Police and the Prosecutor's assessment it was worth at least 54,000 Yen. **A** simply said; "*it was not about the money.*"

What happened once Greenpeace exposed the scandal?

A told the Court that he had been called by Kyodo Senpaku on the day Greenpeace exposed the scandal. He travelled to Tokyo that night from the northern island, Hokkaido to discuss the box intercepted by Sato and Suzuki. However, he denied that Kyodo Senpaku asked him about the whale meat and why he had so much of it. He did admit that the Kyodo Senpaku Manager who called him was the leader of the internal investigation into the embezzlement and the same individual who had been removed from Court that day so as not to influence **A**'s testimony.

A was not called by the Prosecution as the 'victim' of Sato and Suzuki's actions in this case. The alleged victim in this case, the Head of Seino Transport's Aomori Depot who gave evidence for the Prosecution on 15 February, said that he thought **A** was the victim in this case. **A** himself said would like to know why he was not considered a victim.

The Prosecutor asked **A** whether he wants Sato and Suzuki to be punished. **A** did not say yes but said "*I want to say something to them*", namely complain about their conduct. Asked the same question by the Judge, **A** then agreed that he did want them to be punished. The Judge's question appeared to be in order to gather more justification for punishment of Sato and Suzuki.

Closing Arguments

8 June 2010: The Final Day of Trial

Almost two years since the initial arrest of Sato and Suzuki, the final day of trial took place in Aomori, Japan on 8 June. The Court set a date for the verdict: 2pm on 6 September 2010.

The final day of trial saw the prosecution and defence lawyers make their Closing Arguments, and Sato and Suzuki give final speeches to the Court. The prosecution asked the Court to convict Sato and Suzuki of both theft and trespass and sentence them to one year and six months imprisonment. The defence continued to call for the Greenpeace activists to be acquitted in accordance with international law.

DNA Evidence

A significant defence argument was settled when the Court finally decided to admit key DNA evidence requested by the defence. The Tokyo Metropolitan Police had tested the whale meat intercepted by Sato and Suzuki in June 2008, yet these DNA test results were not disclosed to the defence until the last week of trial. The results showed that the sender of the box, A, had not cut five pieces of unesu in half as he told the Court – as three of the ‘halves’ came from one whale, and the remaining seven from another. The DNA results appear to support the defence argument that A had obtained significantly more pieces of whale meat while on the Nisshin Maru than he wished to admit to the Court.

Prosecution Closing Argument

Despite at least four out of six days of evidence relating directly to the issue of embezzlement on the Nisshin Maru - including evidence from a prosecution witness from Kyodo Senpaku - the Prosecutor did not address the issue of embezzlement at all. Instead, he simply focused on this being a case of theft of a box. His Closing Arguments lasted little more than five minutes.

The Prosecutor responded in a very minimal way to the three pillars of the defence case (see *‘The three pillars of the defence case’*). While he accepted that Sato and Suzuki had taken the box for the purpose of creating a report about it, he maintained this still constituted theft - despite the fact the box was handed into the Tokyo Prosecutor’s Office as evidence of an offence even before it was reported stolen (See *‘The Story of A’*).

He did not respond to Sato and Suzuki’s second defence argument that they were justified as they were acting to expose a greater crime - the widespread embezzlement of public funds in the whaling programme.

The Prosecutor denied that Sato and Suzuki’s investigation was an exercise of freedom of expression. He put forward a very restrictive interpretation of Article 19 of the International Covenant on Civil and Political Rights (ICCPR), which guarantees freedom to seek and impart information. He asserted that ‘information’ does not mean an object, for example a box of whale meat. In his expert testimony, Professor Voorhoof had told the Court that Article 19 encompasses information whatever form it takes, including information contained in a physical object or a behaviour. He had cited several examples, including a case of a Danish journalist who exposed a lack of airport security by carrying a knife into the departure area. In that case, too, Article 19 ICCPR was deemed applicable.

Closing Arguments

8 June 2010: The Final Day of Trial

The Prosecutor asked the Judge to convict Sato and Suzuki of theft and trespass and sentence both to one year and six months in custody. In order to justify the prison sentence, he stated that Sato and Suzuki's motive in obtaining the box was self-righteous and over-simplistic. They lacked remorse and would do this again. He argued that they had wrongly decided that the whale meat was illegally obtained; they had leapt to conclusions and should have left it to the authorities. The taking of the box was audacious as it was committed in broad daylight, as part of a malicious pre-meditated conspiracy. Their act had resulted in loss of the box worth \$550 US dollars - although the prosecutor didn't deal with fact that Sato and Suzuki handed the box and all its contents to the Tokyo Public Prosecutor.

The Prosecutor also claimed a one year and six month prison sentence was justified by the grave consequences of Sato and Suzuki's act. He argued that the loss of the box in transit, the delivery of **A**'s three remaining boxes and the payment by the Seino Deputy Manager of 30,000 Yen as compensation for the loss was an unforgivable result. The Prosecutor also claimed that Seino Transport had suffered a loss of reputation, was forced to handle emails of complaint and visit 30 clients to explain what had happened.

Defence Closing Argument

The defence's closing speech included video clips and photographs taken during the Greenpeace investigation into the embezzlement in April 2008. The defence detailed the compelling evidence gathered by Sato and Suzuki up to the moment they intercepted the box and also the evidence heard in Court from the second whistleblower ('**WB2**') of wide-scale embezzlement within Japan's government-funded whaling fleet. The lawyers took over two hours to remind the Court of all the inconsistencies in evidence from both prosecution witnesses and the three crew members on the handling of whale meat on the *Nisshin Maru* in 2008 - not least the fact that **A** himself could not remember who had given him the unesu whale meat found in the box, and how much.

The defence also highlighted the lack of meaningful investigation by Kyodo Senpaku into the allegations of embezzlement in 2008, as it has become clear that not all crew involved in the sending of the whale meat were questioned. Crew members and prosecution witnesses gave evidence that the company had never questioned them about the embezzlement of whale meat on the *Nisshin Maru* as alleged by Greenpeace. Moreover, **WB2** gave evidence earlier in the trial that the police had asked him not to include his allegations of embezzlement or his involvement in it in his police statement.

The defence reiterated the domestic and international law arguments as to why Sato and Suzuki should be acquitted (See '*The three pillars of the defence*'), and underlined the concern raised by lawyers and campaign groups across the globe and in particular the UN Working Group on Arbitrary Detention, which recognised Sato and Suzuki's pre-charge imprisonment as arbitrary, and that their freedom of opinion and expression has not respected by the Japanese authorities

Defendant Closing Speeches

Sato and Suzuki addressed the Court personally for three minutes each. Both asked that it recognise that the evidence heard at trial has consistently supported the whistleblower's allegations of embezzlement in the Japanese whaling fleet. They asked for the Court to acknowledge the importance of this case for the right of freedom of expression of individuals and NGOs to investigate official wrongdoing (see *Sato and Suzuki's Closing Speeches*).

The Judges confirmed the verdict date will be 6 September 2010 at 2pm. If Sato and Suzuki are found guilty, then sentencing will also take place on that date.

Closing Statement

Junichi Sato

Closing Statement by Junichi Sato of Greenpeace Japan, on the final day of trial.

Delivered at the Aomori District Court, 8 June 2010

It has been more than two years since Toru Suzuki and I first exposed wrongdoing in the Japanese research whaling industry. We produced evidence that high grade whale meat was being taken off the research whaling vessels by crew members and the staff of both the Fisheries Agency of Japan (FAJ) and the Institute for Cetacean Research (ICR) without formal permission or documentation. In those two years, not one piece of objective evidence has been produced to justify their acts. On the contrary, as the defence team and my co-defendant Suzuki have stated, this trial has instead exposed endless contradictions about what really happens concerning the handling of the whale meat on the *Nisshin Maru*.

In addition, we have shown through incontrovertible DNA testing of the whale meat in the box that the testimony of the crew member who sent the box cannot be true.

The existence of embezzled whale meat on the research whaling vessels was brought to our attention by a former crew member. It was he who requested that we investigate and make the public aware of it. Other former crew members also came forward to give us corroborating evidence. In this very court, one of those former crew members gave testimony, exposing wrongdoing inside the whaling industry and illustrating the extent and severity of that wrongdoing.

After our exposé was published, the ICR and Kyodo Senpaku decided to publish the amounts of the souvenir whale meat distributed, in order – they claimed – to be transparent about the practice. At the same time they alleged they had ended the distribution of whale meat to Fisheries Agency inspectors and staff of the ICR. Another whistleblower informed us that it had become much harder to take whale meat off the ships than before. But, to this day, not one person responsible for the wrongdoing that we brought to light has been held accountable for their conduct. Instead, after filing an official complaint into the misconduct and wasteful use of taxpayers' money in the research whaling industry, it is my colleague and I who stand charged in this court room.

In September 2009, the Working Group on Arbitrary Detention of the United Nations Human Rights Council lodged its opinion of our case with the Japanese government, saying that the arrest, detainment, interrogation and charging of Suzuki and I was arbitrary and that the Japanese government needed to recognise [the right of] the public to expose wrongdoing. Over the course of this trial we have received messages of support from half a million people, not only from those in Japan, but from around the world. Recently, the UN High Commissioner for Human Rights, Navanethem Pillay, was quoted in a newspaper interview saying that she is "concerned about the whale meat case" and that "Investigations by NGOs have an important role to play in society." This shows that this trial is drawing international attention.

I believe that NGOs play an essential role in democratic societies, and this role will grow in the future. Professor Dirk Voorhoof, the international law expert called as a defence witness, acknowledged that no group or individual has an absolute right to break any law at any time. I do not believe that we have done that. I believe our act passes the legal test outlined by Professor Voorhoof that it was proportionate and necessary in order to expose a significant crime. I strongly hope that the Court recognises that publicising and informing our society of matters of public interest, such as our action to show the wrongdoing of government and private corporations, is justified. More broadly, I also hope that the Court takes into account international human rights law and recognises the right of NGOs to investigate wrongdoing without undue punishment, which restricts freedom of expression and has a chilling effect on society.

Closing Statement

Junichi Sato

We again assert our innocence. We believe that obtaining a 'Not Guilty' verdict in this case is essential to honour and uphold 'freedom of expression' and 'the rights of NGOs' in Japan.

I want to appeal to the conscience of each one of the Judges: which is instrumental in forming a truly democratic society in which citizens can play a leading role? Rigorously punishing wrongdoing, or rigorously punishing those who try to expose that wrongdoing?

Thank you for your time.

Junichi Sato

Closing Statement

Toru Suzuki

Closing Statement by Toru Suzuki of Greenpeace Japan, on the final day of trial.

Delivered at the Aomori District Court, 8 June 2010

The evidence heard in court during this trial has consistently supported the whistleblower's allegations of embezzlement within the research whaling programme.

The testimony from witnesses that the whale meat was an 'official souvenir' given as payment in kind was inconsistent and lacked credibility.

The evidence of a Kyodo Senpaku executive was self-contradictory. He described the 'souvenir whale meat' as 'second grade', 'equivalent to first grade' or as 'off-cuts of first grade'. He then asserted that 'it is reported as first grade, but treated as second grade for settling the accounts'. This is in addition to testimony that the settlement referred to an offset based on a verbal agreement. No documentary evidence has been produced to substantiate Kyodo Senpaku's claims.

The Head of the Aomori Depot of Seino Transport testified that he had been told that the content of the box was 'fresh produce that will keep for a month', and that he 'did not know it was whale meat'. Despite evidence from the sender of the box that he had told Seino Transport that 'the box contains whale meat', the company has not admitted that it had any idea that the box contained whale meat.

The whistleblower, who was a former crew member, gave testimony that the whale meat had been openly embezzled over a long period of time, and that members of the Japanese Diet, staff of the Fisheries Agency and staff of the Japan Institute for Cetacean Research (ICR) were involved.

The whistleblower also gave evidence that officers from the Aomori Prefecture Police drafted a witness statement for him to sign that omitted any mention of the embezzlement of whale meat and his involvement in it. This is of great concern and should not be overlooked.

Furthermore, the testimony of the three crew members on the *Nisshin Maru* lacked consistency and credibility, and we also heard evidence from both the whistleblower and the crew that suggests that the Tokyo District Prosecutor's Office did not take steps to fully investigate the alleged embezzlement of the whale meat.

The crew member who sent the box said that it is unreasonable that he should not be treated as a victim.

There are many questions that remain unanswered:

- Why is it that each crew member's evidence was inconsistent with the others?
- Why was the recollection of the sender of the box regarding the whale meat he allegedly received from Kyodo Senpaku and other crew so vague? Why were his statements and testimony in that respect mutually inconsistent?
- Why did the sender of the box say that he sent home more than 30kg of unesu and close to 30kg of off-cuts, and that his family consumed more than 30kg at home in less than a month?
- Why were the crew not aware of Kyodo Senpaku's official procedure regarding the handling of whale meat on the *Nisshin Maru*?
- Why have Kyodo Senpaku and the ICR not yet carried out a comprehensive internal investigation?
- What exactly was written in the blacked-out sections of the witness statements that were eventually disclosed?
- Who exactly were the Japanese Diet Members, the bureaucrats of the Fisheries Agency and the staff at the ICR who were sent whale meat? How much did they receive?
- To what extent did the Tokyo Prosecutor's Office investigate the embezzlement of the whale meat?
- How reliable are the statements taken by the Aomori Prefecture Police and the Tokyo Metropolitan Police?

Closing Statement

Toru Suzuki

I hope that the Court addresses these questions directly and takes them into account when delivering judgment.

The first whistleblower gave us three key pieces of information which triggered our investigation into the embezzlement within the whaling industry:

- “As a result of over-capture of whales, there was a huge quantity of whale meat which the crew was unable to process and was thrown overboard into the sea.”
- “There is systematic embezzlement of the whale meat onboard the whaling fleet.”; and
- “There were many instances of cancer found in the whales, but these instances were not recorded.”

This appears to be just the tip of the iceberg, of the multiple acts of wrongdoing within the research whaling industry.

What is at issue is how to consider the actions of NGOs and civil society in trying to expose wrongdoings within a publicly-funded programme to society at large. In our case, this is within the research whaling industry.

The fact that Sato and I were arrested and detained for 26 days has led the international community - including the UN Human Rights Council Working Group on Arbitrary Detention - to express concern. I sincerely hope that the Court directly addresses these concerns. We hope that the decision made by this Court will become a landmark regarding the right of the citizens to gather and impart information.

We secured the whale meat in order to inform the public of wrongdoing and to call for prosecution of those involved. As a result of our investigation, this wrongdoing has now come to light and we have seen reports of improvements in the handling of whale meat by the whaling fleet.

Our actions were carried out in the public interest and I believe that they have been important in civil society.

I strongly hope that - as members of the public and as NGO workers who has exposed wrongdoing in a publicly-funded programme - we will be found not guilty, so that citizens' activities in the public interest will continue to be respected in the future.

Toru Suzuki

The Verdict

6 September 2010: The Aomori District Court announces its judgement

In the afternoon of 6 September 2010, Junichi Sato and Toru Suzuki attended the Aomori District Court for the last time, to hear the verdict in their case.

After the video cameras had left the room and Sato and Suzuki had stood up in front of the judges, presiding judge Kenji Ogawa proceeded to immediately announce the court's decision. The defendants had been found guilty of both theft and trespass, and would be given a one-year jail sentence, suspended for three years. In the ensuing minutes, Ogawa read out a summary of the reasons for the decision, responding to the various arguments presented by the defence (see '*The three pillars of the defence case*').

The first defence argument had been that Sato and Suzuki lacked any intent to appropriate the property of another person for themselves – a requisite element of the definition of 'theft' under Japanese law. Their intent had rather been to put an end to unlawful appropriation by others. The Court, citing various precedents, ruled that by opening the box, sampling its contents and publicising their findings, the defendants had disposed over the box as though they were its owner. Consequently, the element of intent was proven and the two could be convicted of theft.

The Court similarly dismissed the second argument, that Sato and Suzuki's acts, even if they were unlawful at face value, were justified as they were necessary to prevent a substantially greater harm. The defence argued that intercepting one box of whale meat and delivering it to authorities was the only effective way to prove and thereby stop the embezzlement of hundreds of boxes a year. However, the Court opined that - even if an act is undertaken for the public good - if it violates the criminal law and infringes the property and management rights of others 'it is not something which either the law or society can condone'. In coming to this conclusion, the Court cited its perception that while 'there were some unclear points concerning the handling of the whale meat', there was 'no evidence to support a determination that the whale meat in this case was obtained by [the owner of the box] through misappropriation'.

Finally, the Court gave short shrift to the arguments based on the guarantees of freedom of expression in international law and Japan's Constitution. The defence had underlined that the Court was bound to apply the 'three part test' contained in Article 19(3) of the *International Covenant on Civil and Political Rights* (ICCPR). According to this test, national authorities, including courts, may only interfere with freedom of expression, including information gathering, 1) on the basis of a law, 2) in pursuit of a legitimate objective; and 3) if the interference is genuinely necessary to achieve the objective. In this case, while the prosecutor was ostensibly defending a legitimate objective, namely prevention of theft, in reality a substantial sentence would have the opposite effect – it would send the message that those who investigate misuse of public funds will be punished while those who commit it will walk free.

The Court duly noted that Article 19(3) of the ICCPR permits restrictions on freedom of expression that are provided by law and serve a legitimate objective. Ignoring the essential third part of the test, however, the Court concluded that convicting the defendants for trespass and theft would be fully consistent with Article 19(3). It dismissed as 'inconceivable' the notion that the conviction could have a chilling effect on legitimate enquiries by journalists, NGOs and the public, since the defendants' acts were unlawful and 'akin to a search and seizure operation'.



image Accompanied by Greenpeace International's Executive Director Kumi Naidoo, Toru Suzuki and Junichi Sato depart Aomori Court after receiving a 1 year sentence suspended for 3 years

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The Verdict

6 September 2010: The Aomori District Court announces its judgement

The Court noted a number of mitigating circumstances, including that Sato and Suzuki had lacked a financial motive, that their acts had led to improvements in the way whale meat is handled, and that they had no prior criminal record. Nevertheless, taking into account the inconvenience caused to the victim, Seino Transportation - including time expended on dealing with the aftermath of the removal of the box, complaints received from members of the public and emotional harm to the branch manager - the Court deemed that a fine would be too lenient and concluded with the imposition of the one-year suspended sentence.

At a press conference following the conclusion of the trial, Sato and Suzuki announced that they would appeal to the Sendai High Court.

Unanswered questions



- If the whale meat was a 'souvenir' as the whaling companies claim, then:
 - Where is the proof that it was legitimately purchased?
 - Why did only a small number of crew take home large quantities of the meat, using Seino Transport, if all are entitled to it?
 - Why was it salted rather than frozen like the rest of the meat if it was an official gift?
 - If it was a gift, why were the boxes given obscure labels such as 'cardboard', and why was the meat hidden under dirty clothes?
 - If this was a legitimate practice, why have all the whale meat sales figures and other related documents requested by Greenpeace under freedom of information laws been heavily censored?
- Why did the transport company only report the 'theft' of the box after Greenpeace's press conference presenting it, weeks after it happened? Why wasn't it reported immediately?
- Why was the criminal complaint not filed by the person who is supposedly the real victim – the 'owner' of the box?
- Why did the prosecutor drop the investigation into the whale meat scandal on the same day Junichi and Toru were arrested?
- If this is a trial about a 'theft', then:
 - Why are there three judges instead of the usual one?
 - Why were there extended raids on Greenpeace offices by upwards of 70 police officers?
 - Is this not overkill for a box of whale meat the prosecutor alleges to be worth no more than \$500 US dollars?
- If the crime was so minor, why was bail set at 4 million yen (around \$45,000 US dollars, or roughly 10 times what the box of meat was allegedly worth according to the prosecutor)?
- Why does the government prop up a programme that is:
 - harmful to Japan's international reputation
 - loss-making
 - environmentally unsustainable
- Why did the police try to get the second whistleblower to deny his role in the embezzlement of whale meat in his written statement?





- Why did the prosecutor deny disclosure of large parts of the statements of the whalers to police, if the whalers had really done nothing wrong?
- Why did the prosecutor not decide to designate the owner of the box taken by Sato and Suzuki as the victim of the theft?
- Why did the owner of the box change his count of the number of people he had obtained whale meat from at least three times?
- Why were crew members of the whaling fleet supposedly giving large volumes of precious 'souvenir' whale meat away to each other for free?
- Why was a single page, unevicenced statement from Kyodo Senpaku and the ICR that they 'thoroughly investigated' the claims of embezzlement, accepted by the Public Prosecutor as proof that there was no embezzlement when held up against the Tokyo Two's thorough investigation and hard evidence?
- Now that sworn witness testimony in court has shown key suspects were never questioned, will the government order a proper, independent investigation?
- Now that DNA evidence from the box of whale meat intercepted by Sato and Suzuki has scientifically proven the owner of the box lied about how he obtained the whale meat, will the prosecutor re-open the criminal investigation?
- How reliable are the statements taken by the Aomori Prefecture Police and the Tokyo Metropolitan Police, given that witnesses in the court have contradicted these sworn statements on several occasions?
- Who were the Japanese Diet Members, the bureaucrats of the Fisheries Agency, the staff at the ICR and the members of the Japan Whaling Association who were sent prime whale meat at the expense of the taxpayer? How much did they receive?
On 22 December 2010, the Fisheries Agency announced on NHK national television that five officials involved with overseeing the whaling programme had, contrary to earlier statements, accepted whale meat gifts totalling approximately from Kyodo Senpaku, the company that conducts the hunt. It apologised, claiming that the officials had been reprimanded, and that a further two key officials - including the FAJ's second in command and prominent IWC negotiator, Jun Yamashita – were handed warnings, as they were ultimately responsible for the actions of their staff. Yamashita resigned shortly after.
- Now that it has been officially and publicly recognised that illegal 'gifts' were accepted at the highest levels, corroborating evidence and key witness statements given in court, will the government re-open the investigation into Junichi and Toru's original embezzlement claims? Will the court acquit them on appeal for exposing a scandal that has now been officially admitted?



Timeline



This complicated case has had many twists and turns over the two-plus years it has taken for the whale meat embezzlement scandal to be investigated, exposed, covered up, and finally culminate in the wrongful trial of the Tokyo Two. Here is a list of all significant developments:

2008

January: Greenpeace approached by former whaling fleet crew member who says that crews regularly take large amounts of whale meat off the ship to sell for personal profit. Greenpeace launches investigation that will run for 4 months.

15 April: *Nisshin Maru* docks in Tokyo and crew members unload at least 93 boxes of suspicious 'personal baggage' – labelled 'cardboard', 'salted stuff', etc – shipping them to 30 destinations.

16 April 16: Greenpeace activists track one box to the Seino Depot in Aomori and remove it to verify its contents and gather evidence of the informant's claims.

8 May: Junichi calls Mr Takahide Naruko, Fisheries Agency of Japan chief of Far Seas Fisheries to question him about whale meat 'souvenirs'. Naruko dismisses the concept of 'souvenirs' outright.

15 May: Greenpeace holds press conference in Tokyo to present investigation findings and the box of meat to media, exposing the embezzlement scandal. Criminal complaint against 12 crew members of the *Nisshin Maru* lodged with Tokyo District Public Prosecutor's Office.

20 May: Tokyo District Public Prosecutor's office confirms there will be an investigation into the whale meat scandal.

27 May: Junichi and Toru send detailed statements of what they did to Aomori police.

11 June: Prominent news outlets report that embezzlement case is to be dropped while investigation against Greenpeace would continue. Pro-whaling politicians meet in the evening.

19 June: Junichi receives phone call from TV news reporter who says: "you will be arrested tomorrow, so I would like to have an interview with you now."

20 June: Junichi and Toru arrested by 10 police officers, while more than 70 police raid Greenpeace Japan's offices and homes of 4 staff members. Servers and many documents confiscated. Media are tipped off, so arrests and raids are heavily reported, effectively 'tar and feathering' Greenpeace in Japan; most news reports critical of Greenpeace, however, opinion pieces argue that 'scientific whaling' should also be investigated. On very same day, Tokyo District Prosecutor's office announces it has dropped investigation of embezzlement by crew members.

30 June: Peaceful protests held at Japanese embassies around the world.

10 July: Joint statement of concern issued by 35 international NGOs.

11 July: Junichi and Toru charged with trespass and theft, remain in custody.

14 July: Amnesty International expresses concern to Japanese Prime Minister.

15 July: After 26 days in custody - 23 without charge or their lawyers being present during interrogations - Junichi and Toru released on 4 million yen (around \$40,000 US dollars) bail each.

18 July: Responding to instructions from Fisheries Agency of Japan that they conduct an internal investigation into embezzlement scandal, the ICR and Kyodo Senpaku hand back a 1-page document claiming no embezzlement as meat was a 'souvenir'.

2009

19 January: Greenpeace receives documents released following freedom of information request for material related to whale meat sales and reports submitted by ICR over last few years. Documents are so heavily censored they contain almost no information.

13 February: First pre-trial meeting takes place.

19 March: Greenpeace launches appeal for release of uncensored versions of documents received on 19 January.

23 March: Pre-trial meeting sees Aomori judges rule that prosecution must justify why embezzlement evidence is to be excluded.

14 April: *Nisshin Maru* docks in Shimonoseki after another season in Southern Ocean. Practice of giving crew 'souvenir' whale meat has been discontinued, according to insider reports.

15 May: Aomori court agrees to hear evidence of whale meat embezzlement.

4 August: Pre-trial meeting sees judges request prosecution submits all embezzlement evidence to them for evaluation.

11 August: Aomori court denies defence counsel requests for disclosure of important evidence including police files and statements by owner of box of embezzled whale meat. Junichi and Toru appeal to Sendai High Court.

5 October: Sendai High Court rejects appeal for disclosure of evidence. Defendants take appeal to Tokyo Supreme Court.

November: Over 3,000 lawyers, individuals and organisations, including Amnesty International, write to Tokyo Supreme Court in support of appeal.

18 November: Tokyo Supreme Court rejects disclosure appeal, depriving Junichi and Toru of important means to prove their innocence.

20 November: Another pre-trial hearing passes with no agreement on witnesses or evidence.

Timeline



2010

15 January: The final pre-trial saw the court accept all five key defence witnesses. The full trial is set to commence at 10am on 15 February.

10 February: Junichi Sato and Greenpeace Japan Executive Director Jun Hoshikawa lodge an appeal to Japan's Prosecution Inquest Committee, requesting that it review the Tokyo Public Prosecutor's decision to drop its investigation into embezzlement in the so-called 'research' whaling fleet.

15 February: The trial opens in Aomori with the two and only prosecution witnesses, the Head of Sales for Kyodo Senpaku and the Manager of the Aomori Seino Transport Depot. The prosecution struggled to prove its own arguments, with both witnesses being forced to agree with the defence on key points. (See 'Opening and Prosecution Witnesses')

8 March: Defence witness testimony begins. A former whaler at the centre of the embezzlement scandal gives evidence confirming that officials did not conduct a proper inquiry into the allegations. (See 'Defence Witness #1')

9 March: Another former whaler turned whistleblower details the scale of the embezzlement he witnessed on board the Southern Ocean whaling ships. Junichi Sato takes the stand to give evidence. (See 'Defence Witness #2' and 'Defence Witness #3')

10 March: Junichi Sato takes the stand again to finish his evidence. Toru Suzuki then gives evidence. (See 'Defence Witness #3' and 'Defence Witness #4')

11 March: Key international expert legal witness Prof. Dirk Voorhoof gives evidence arguing that the defendants' actions were justified and that they should be acquitted of any crime as they were revealing detailed information in the public interest. (See 'Defence Witness #5')

23 April: The Prosecution Inquest Committee rejects the appeal filed by Sato and Hoshikawa before reviewing additional evidence.

14 May: On the final day of witness testimony, two whalers recently returned from the Southern Ocean, took the stand. They consistently contradicted themselves, each other, their own police statements, the prosecutor's claims, and the official statements from Japanese authorities. (See 'DefenceWitness #6' and 'DefenceWitness #7')

8 June: DNA evidence released by the prosecutor confirms the owner of the box taken by Sato and Suzuki lied about how he obtained its contents. The Prosecutor and the Defence Counsel give their closing arguments, and Sato and Suzuki make their closing statements to the court. The Prosecution asks for a sentence of one year and six months in jail. (See 'Closing Arguments')

9 June: United Nations High Commissioner for Human Rights Navi Pillay voices her concern about the case during a visit to Japan.

6 September: The Tokyo Two are convicted of 'theft' and 'trespass' and handed a one-year sentence, suspended for three years.

22 December: A Fisheries Agency of Japan official appears on NHK national television to admit that five officials involved with overseeing the whaling programme had, contrary to earlier statements, accepted whale meat gifts totalling approximately \$3,000 US dollars from Kyodo Senpaku, the company that conducts the hunt. He apologises, claims that the five officials have been reprimanded, and that two more key officials - including the FAJ's second in command and prominent IWC negotiator, Jun Yamashita - were also handed warnings, as they were ultimately responsible for the actions of their staff.

2011

January: Key FAJ official and IWC negotiator Jun Yamashita resigns.

February: Toru Suzuki travels to Australia to discuss the Tokyo Two trial appeal, the FAJ's apology and the continuing decline of Japan's whaling industry with Australian politicians, media, and the public through a host of speaking engagements.

24 May: The Tokyo Two appeal their conviction before the Sendai High Court.

Support for the Tokyo Two



Public support

When the news of Junichi and Toru's arrest broke, people around the world staged protests outside Japanese embassies. The global day of action saw people hold peaceful vigils, deliver letters of protest and support for the Tokyo Two, and stage other public displays to highlight this injustice in 25 countries around the world. Regular protests outside embassies have continued ever since.

Many prominent Greenpeace staff and lawyers have travelled to Tokyo to publicly protest the case as 'co-defendants' of the Tokyo Two, highlighting the dangerous precedent prosecution of campaigners scrutinising government policy and the use of public money.

Four renowned professors of international law have submitted expert opinions on behalf of the defence. One of these experts, Professor Dirk Voorhoof of Ghent and Copenhagen universities, a leading authority on the law of freedom of expression, came to the conclusion that:

*"The [...] arrest, detention and prosecution of Sato and Suzuki on suspicion of trespass and theft and moreover the searching of Greenpeace offices and homes of Greenpeace staff members and the confiscation of a range of items including the office server are, according to international standards, to be considered as unjustified and disproportionate interferences in the freedom of expression of Sato, Suzuki and Greenpeace Japan."*ⁱ

Over a third of a million people around the world have participated in cyberactions, and more than 140,000 have sent origami whales and signed petitions calling for the release of the Tokyo Two.

International NGO support

In 2008, Amnesty International, IFAW, WDCS and Human Society International issued a joint statement of concern to the Japanese Prime Minister at the time, asking him to "Please release Junichi Sato and Toru Suzuki and provide Greenpeace Japan and all other Non-Governmental Organisations working in Japan with the rights guaranteed under international law to organise and protest peacefully."

In 2009, Amnesty International wrote another letter in support of Junichi and Toru's motives and actions, with its Director of Policy Michael Bochenek saying that "the government's prosecution of these two activists is an unjustifiable interference with their rights to freedom of expression and association."

The UN has criticised Japan's legal system three times in recent years for failing to uphold human rights standards:

- 1) UN Human Rights Committee, Concluding Observations on the Fifth Periodic Report of Japan submitted under Article 40 of the International Covenant on Civil and Political Rights, 18 December 2008, UN Doc. CCPR/C/JPN/CO/5. Relevant paragraphs: 18 and 26.
- 2) UN Committee Against Torture, Concluding Observations on the Initial Periodic Report of Japan submitted under Article 19 of the UN Convention Against Torture, 3 August 2007, UN Doc. CAT/C/JPN/CO/1. Relevant paragraphs: 13 and 15
- 3) UN Human Rights Committee, Concluding Observations on the Fourth Periodic Report of Japan submitted under Article 40 of the International Covenant on Civil and Political Rights, 19 November 1998, UN Doc. CCPR/C/79/Add.102. Relevant paragraph: 26

All available through <http://tb.ohchr.org/default.aspx>



image Executive Directors of several Greenpeace offices protest at Shibuya Crossing in the heart of Tokyo in support of the two Greenpeace activists, Junichi Sato and Toru Suzuki, who face trial for their activities in the anti-whaling campaign. The activists hold protest signs in various languages.



image Thousands of people around the world protest the arrest of Junichi and Toru outside Japanese embassies.



INTERNATIONAL
FUND FOR
ANIMAL WELFARE



Whale and Dolphin Conservation Society

Sources

ⁱ Opinion of 1 March 2009, page 3, available online at http://www.greenpeace.or.jp/press/releases_en/attached/20090323EvidenceVoorhoof.pdf.



Celebrity Support

A range of international stars have pledged their support for Junichi and Toru. Betty Williams, Benicio del Toro, Bryan Adams, Desmond Tutu, Edd Byrnes, Thandie Newton and German rock band The Scorpions have signed an open letter to the Japanese government which reads:

“We are very concerned about the prosecution of these two activists and harassment of Greenpeace for exposing wrong doing. It is contrary to the Japanese government’s obligations under human rights law and raises serious questions about their commitment to freedom of expression and justice.”

“We are also concerned that the Japanese government continues to flout an international ban on whaling, by conducting hunts in the Southern Ocean whale sanctuary under the guise of ‘scientific research’. How can it be that despite killing thousands of whales over two decades Japan has made no useful scientific discoveries? The only answer is that the programme is nothing to do with science, but simply a way of circumventing the internationally agreed whaling ban.”

Other celebrities, including Emma Thompson and William Shatner, have also expressed their support for Junichi and Toru, and Greenpeace’s calls to the Japanese government for it to drop the case against the Tokyo Two, honour its commitment to uphold human rights, re-open the investigation into the whale meat embezzlement scandal, and ultimately end its ‘research’ whaling operation.

Toru in Australia

In September 2009, Toru travelled to Australia to meet with politicians, government officials, media and the public, to raise awareness of the Tokyo Two’s case and the opportunities it and the recent change of government in Japan have created to end Japan’s Southern Ocean whaling programme.

The Democratic Party of Japan has promised more progressive policies than the old government, such as ending wasteful spending of tax money, increase transparency and root out bureaucratic corruption, and its rise to power saw much of the pro-whaling old guard fall. This has created new space for Greenpeace to campaign on ending whaling from the point-of-view of economic and bureaucratic corruption, and has opened diplomatic doors for foreign governments that were previously closed.

This was the message Toru took to Australian politicians such as Shadow Minister for the environment Greg Hunt, Greens Senators Rachel Siewert and Shane Rattenbury, and NSW parliament Member Ian Cohen. He also met with officials from the Minister for the Environment, Peter Garret’s office, and officials from Australia’s department of foreign affairs and trade.

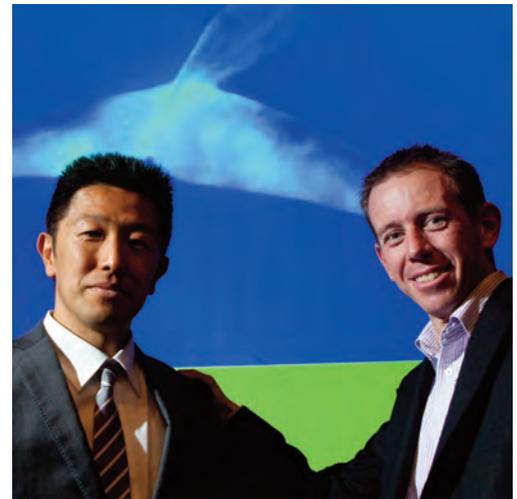
Like Japan, Australia is a signatory to the International Covenant on Civil and Political Rights. This means that Australia has a responsibility to ensure that all parties to the convention uphold its tenets, and ensure Japan’s legal system does not violate Junichi and Toru’s basic human rights.

Toru returned to Australia again in February 2011 to update the politicians, government agents and media he had previously met on the Tokyo Two verdict and the new opportunities to end whaling that the trial, the FAJ’s admission of corruption, and the scaling down of the Southern Ocean hunt have created.



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image Rock star Bryan Adams helps publicise the Tokyo Two trial by painting a manga comic of Junichi and Toru’s story. He has also spoken out publicly on the trial on the BBC.



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image Australian Greens Senator Shane Rattenbury and Toru Suzuki pose for a photo following a presentation by Suzuki on the whale meat embezzlement scandal in Australia’s Parliament House. Suzuki was in Australia to discuss the opportunities to end whaling in the Southern Ocean that are offered by the first real change of government in Japan for 50 years.

Summary of Opinion

Japan's stolen whale meat scandal and the trial of the Tokyo Two



Established in 1991, the Working Group on Arbitrary Detention is a UN-mandated body – residing under the Human Rights Council in Geneva - that investigates cases of alleged arbitrary arrest and detention that may be in violation of international human rights law. The Working Group is made up of respected human rights experts from Senegal, the Russian Federation, Pakistan, Chile and Norway, who are chosen for their expertise in legal matters and for their independence.



Any concerned individual or group can request an investigation. This party is subsequently referred to as the 'source'. The 'source' for the complaint about the treatment of Greenpeace activists Junichi Sato and Toru Suzuki was Amnesty International, who submitted the case for investigation in March 2009.

Following six months of inquiry, Opinion No. 9/2009 (Japan), was adopted by the Working Group on 1 September 2009. In accordance with the established methods of the Working Group, the Opinion was first communicated to the government of Japan, in order to give it the chance to respond, and subsequently passed to Amnesty International on 12 January, 2010. The opinion is available to the public and will also be included in as an Annex to the Working Group's next annual report to the Human Rights Council, in March 2010.

The government limited its response to explaining Japan's criminal justice system and claiming, without substantive explanation, that the 'source' was factually incorrect. The Working Group did not concur. The findings of the Working Group fall into category II – which is defined as 'When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 10 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights'.

The Opinion rendered with regard to the Tokyo Two concluded that the Japanese authorities had breached articles 18, 19 and 20 of the Universal Declaration of Human Rights and articles 18 and 19 of the International Covenant on Civil and Political Rights (ICCPR). It also expressed concern that articles 2, 10 and 14 of the ICCPR, relating to the presumption of innocence and the right to a fair trial, were not being respected.

Key conclusions from Opinion No. 9/2009 (Japan)

"The source, in its communication, has well explained that Messrs.

Sato and Suzuki are two environmental campaigners who acted in the framework of their activities as members of the environmental organisation Greenpeace Japan; that they proceeded to an in-depth investigation into allegations of official Government science trips being used to provide cover for illegal whaling. Messrs. Sato and Suzuki seized a box filled with salted whale meat and took this and other evidence they had gathered on this illegal activity to the Tokyo Public Prosecutor Office in order to demand an official investigation. They acted with transparency, delivering the information about their findings at a press conference and by a press release which received wide media coverage. Everything about their investigative work was made public. The source invokes that the detention of the above-mentioned two persons is in violation of article 19 of the International Covenant on Civil and Political Rights, which refers to the exercise of the freedom of opinion and expression."

"These two persons voluntarily went to the Office of the Tokyo Public Prosecutor, submitted the evidence they had gathered, and offered their cooperation in the eventual public investigation they were requesting. However, the same day that the Tokyo Public Prosecutor announced that he was dropping the investigation on the alleged whale meat embezzlement, they were arrested. Subsequently, almost a month after their arrest, they were charged with trespass and theft."

"The Working Group further notes that the Government has devoted its response to strongly indicate that the Japanese legislation is in accordance with the principles and norms of international human rights law concerning arrest and detention, and has provided detailed information about the Japanese criminal and procedural legislation. However, the Government has not provided enough information on the circumstances of the arrest and detention of these two investigators nor has it given detailed response to the different allegations from the source..."

"In its response, the Government limits itself to conclude that the allegations from the source 'are not factually correct' and concludes that the detention of the above-mentioned two persons is not arbitrary. The Government does not submit information on the activities carried out by Messrs. Sato and Suzuki as environmental activists; about the investigations that were carried out on a major corruption scandal surrounding the whaling programme, on the evidence they had gathered into the allegations of embezzlement; nor on the collaboration they offered to the police and the Public Prosecutor in order to help the authorities to investigate the allegations they had submitted. The Working Group considers that these points are essential."

"The fact that the Government has kept itself silent on these important points is of a nature to accredit the source thesis. Especially, the fact that the Government does not give any precisions or details on the charges brought against these persons and about their participation in peaceful environmental activities and on the other allegations submitted by the source."

"Consequently, the Working Group may conclude that these two persons have acted in the framework of their capacities as active members and investigators of the environmental organisation Greenpeace. They acted considering that their actions were in the greater public interest as they sought to expose criminal embezzlement within the taxpayer-funded whaling industry. Their willingness to cooperate with the police and the Public Prosecutor concerning the manner in which they obtained the evidence of their allegations of corruption and their attitude of conciliation and collaboration have not been recognised. In its response, the Government does not refute these allegations, nor raise in this cooperative attitude a breach."

"The Working Group considers that the right to freedom of opinion and expression, the right to assembly, the right to investigate corruption and to voice opposition to government policies must always be upheld. Citizens have the right to investigate and expose evidence on public servants suspected of corruption."

"The Working Group further notes that these persons have not been allowed to challenge their detention before an independent and impartial court in proceedings which meet international standards of fairness, in accordance with articles 2, 10, 14 and 19 of the International Covenant on Civil and Political Rights, to which Japan is a State party."

"Consequently, the Working Group renders the following Opinion: The detention of Messrs. Junichi Sato and Toru Suzuki is arbitrary and contravenes the dispositions contained in articles 18, 19 and 20 of the Universal Declaration of Human Rights and articles 18 and 19 of the International Covenant on Civil and Political Rights to which Japan is a State party [...] The Working Group requests the Government to ensure that the above-mentioned two persons be subjected to fair proceedings which meet international standards of fairness, in accordance with articles 2, 10, 14 and 19 of the International Covenant on Civil and Political Rights, ensuring that all their rights of defence in trial be fully respected."

The full Opinion can be found at: www.greenpeace.org/tokyo-two/wgad-opinion

Quick Facts



- Greenpeace identified 33 consignment notes showing that 23 crew members sent at least 93 boxes to their homes and other locations.
- The boxes were sent to at least 30 addresses by 23 crew members, out of whom 12 appear on the employee register obtained by Greenpeace. Those 12 were all production workers in charge of processing the whale meat on the *Nisshin Maru*.
- The sender of the box that Greenpeace obtained sent four heavy boxes in total to his home address in Hokkaido. The box taken by Greenpeace contained 23.5 kg of prime cut whale meat called *unesu*.
- The market price of *unesu* bacon in the Japanese restaurants and supermarkets at this time was around 5,000 yen (about \$50 US dollars) to 15,000 yen (about \$150) per kilo. Greenpeace estimates the value of the unfinished product in the box to be between \$1000 and \$3000 US dollars.
- Junichi was interrogated for around 80 hours in total
- Toru was interrogated for around 120 hours in total
- Interrogation took place three times a day
- During the interrogations, no lawyers were present and no recordings made.
- On 11 July 2008 in Aomori, Junichi and Toru were indicted for theft of whale meat worth 58,905 yen (\$550) and trespass at the Seino Transportation depot.
- Only 5% of Japanese people continue to consume whale meat.ⁱ
- Japan's confession rate was 91.2% in 2004, the last year for which figures are available from by the Supreme Court.
- At the District Court level, Japan's conviction rate is 99.8% according to the same 2004 figures.

Sources

ⁱ 'Opinion Poll on Research Whaling, Year 2008, Internet Survey', commissioned by Greenpeace Japan and prepared by Nippon Research Center Ltd (a member of Gallup International). Available at: www.greenpeace.org/international/press/reports/japanese-opinion-whaling-2008

The research whaling triangle



Officially, Kyodo Senpaku catches the whales, the ICR conducts the research, and the Fisheries Agency gives its seal of approval and partially funds the research, but the relationship between the three runs far deeper than this. It is no coincidence, for example, that the ICR and Kyodo Senpaku were both formed in 1987 – the same year as the IWC moratorium on whaling came into force.

Kyodo Senpaku

A private company, Kyodo Senpaku Kaisha Ltd. is the result of several rounds of mergers and restructuring of Japan's pelagic fishing companies. The 1987 IWC moratorium and subsequent contraction of the whaling industry saw a former armada of over 100 boats and 10,000 seafarers shrink to one factory ship - the Nisshin Maru - three catchers, eight ex-catchers and a staff of 321.

Kyodo Senpaku now functions more as a charter operation, renting whaling vessels to only two clients: the ICR and the FAJ. It relies on the government for work.

Institute of Cetacean Research

The ICR was founded in 1987 as a 'zaidan hojin', a non-profit organisation, and exists primarily to conduct 'research' on Southern Hemisphere minke whales.

Kyodo Senpaku provided around ¥1,250 million towards its start up costs, with members of the public providing the remaining ¥50 million. The FAJ also provided a ¥346.2 million fund to cover costs for the remainder of 1987. Since then, the ICR has been given a ¥500 million annual allocation from the FAJ as well as benefiting from the proceeds of the sale of meat 'by-products' of the Southern Ocean hunt.

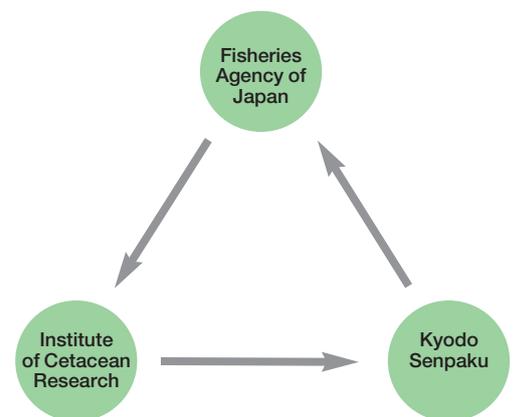
Directors of the ICR have been successive retired officials from the FAJ.

Fisheries Agency of Japan

The FAJ is the government body responsible for licensing and monitoring the taking of fish and cetaceans in Japanese waters or by Japanese vessels. It is the major source of funds for research on cetaceans.

The last six directors of the ICR are ex-FAJ officials. There is a strong incentive for the FAJ to defend and prop up whaling as its senior civil servants are often able to go into early retirement, receive significant bonuses, and take up plush jobs in ICR management. This practice is called 'Amakudari', which translates as 'descent from heaven' – or, as it is more commonly known, 'golden parachute'. If the FAJ were to end whaling, ex-FAJ officials would lose their jobs and the current officials would lose the opportunity to take up these positions.

There are three main organisations behind Japan's 'research' whaling. These are Kyodo Senpaku, the Institute of Cetacean Research (ICR) and the Fisheries Agency of Japan (FAJ).



More spent on PR than Research

The ICR receives around ¥1 billion a year in subsidies from the public purse. According to information it has disclosed, its annual operating cost is ¥740,000,000 after necessary expenses. Amazingly, for an apparently 'scientific' organisation, 70% of this - more than ¥540,000,000 - is spent on public relations. For the research itself, only ¥150,000,000 is appropriated.

Golden Parachutes

The public officer's remuneration paid to the Director General is as much as ¥12,420,000 per annum (equivalent to a deputy chief secretary's salary), and even the Directors receive ¥10,500,000 per annum, for which they are responsible to the taxpayer. As of 16 September, 2009, the Director General is Minoru Morimoto, former deputy head of the Fisheries Agency. The Board of the ICR also includes Yoshiyuki Shige, former head of the Breeding Department of the Fisheries Agency, as Director, and Masao Shimomura, formerly attached to the Resources and Production department of the Fisheries Agency, as Auditor. The Institute is heavily populated by former Fisheries Agency officials.

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GREENPEACE

Greenpeace is an independent global campaigning organisation that acts to change attitudes and behaviour, to protect and conserve the environment and to promote peace.

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