

日本 「在領海及內水內有關外國船舶 航行的法律」簡介

Introduction to Japan's Law for Foreign Shipping on Japanese Territory.

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壹、前言

日本「海洋基本法」及「海洋構造物安全水域設定法」於2007年4月27日正式公布（日本平成19年法律第33號及第34號），並於7月20日施行（政令第201號及203號）。日本政府積極檢討周邊海域法律執行體制，進行全面性法制整備工作。2008年2月26日日本內閣會議決定向國會提出「在領海及內水內有關外國船舶航行的法律」（「領海等における外国船舶の航行に関する法律案」，以下簡稱本法）。¹ 嗣經國會通過，2008年6月11日公布（平成20年6月11日法律第64號），並自7月1日施行。日本國土交通省並同時發布「在領海及內水內有關外國船舶航行的法律施行規則」（平成20年6月11日國土交通省令第40號）。由於本法為海域執法有關之法律且其係由日本海上保安廳負責執行，具有立法例上參考價值，本文介紹其主要內容供本署同仁參考。

貳、本法立法目的

由於日本四面環海，確保海洋安全非常重要，加上歷年發生不明船舶入侵事件，使日本更重視其領海及內水之安全確保問題，此由海洋基本法第3條「海洋安全之確保」之政策理念及第21條「確保海洋之安全」之基本實施對策可得知。

Part I. Forword

The Basic Act on Ocean Policy and Oceanic Building Safety Law of Japan was officially released on April 27th, 2007 (Heisei 19, Law No. 33 and 34) and was enforced in July, 2007 (Governmental Declaration No. 201 and 203). The Japanese Government actively reviewed the law system of surrounding marine territory and began general preparation. In February 26th, 2008, the Japanese Cabinet proposed to the Congress the "Law for Foreign Shipping on Japanese Marine Territory" (領海等における外国船舶の航行に関する法律案, here stated as the Marine Territory law). Approved by the Congress in June 11th of 2008 (Heisei 20, Law No. 64) and enacted on July 1st, the Ministry of Land, Infrastructure, Transport and Tourism (MLITT) simultaneously released the "Law for Foreign Shipping on Japanese Marine Territory Enforcement Regulations" (Heisei 20 June 11th, MLITT Release No. 40). Due to the referential value of the law regarding enforcement by the Japan Coast Guard, the law is summaries for fellow coast guards.

Part II. Purpose of the Marine Territory Law

Surrounded by sea, and historically invaded by unknown foreign ships make Japan very care

海洋基本法第3條「海洋安全之確保」之政策理念：「海洋對於四面環海之我國而言，確保海洋安全非常重要，應積極地推動確保海洋安全之措施。」及海洋基本法第21條「確保海洋之安全」之基本實施對策：「鑒於我國四面環海，且對於主要資源大部分依賴於進口之我國經濟社會而言，海洋資源開發利用、海上運輸等安全確保及海洋秩序維護是不可或缺的，國家應針對海洋採取必要之措施，確保我國之和平與安全，及確保海域安全及治安。」

因此，由於現行日本法令對於並未違反日本船舶法、規制外國人漁業之法律、出入境管理之難民認定法、關稅法等，而在領海任意停留、徘徊之外國船舶，並無處置之法律依據，² 為確保日本領海及內水之安全、維護外國船舶航行秩序、抑止外國船舶不明及可疑活動，有必要針對外國船舶之航行方法、相關航行規則之處置措施，加以規範，故日本採取法制上之應對措施，制定本法。

參、本法之體系架構

本法分為4章，共12條條文：第1章總則（第1條、第2條）、第2章外國船舶之航行方法等（第3條至第7條）、第3章雜則（第8條至第10條）、第4章罰則（第11條及第12條）及附則。有關各條文之要旨，整理如下表：

「在領海及內水內有關外國船舶航行的法律」	
章名	條文
第1章 總則	第1條 目的 第2條 定義
第2章 外國船舶之航行方法等	第3條 領海等外國船舶之航行方法
	第4條 領海等外國船舶停留等之理由
	第5條 外國船舶之通報義務
	第6條 對外國船舶之登陸檢查
	第7條 對外國船舶之驅離命令
第3章 雜則	第8條 權限之委任
	第9條 行政手續法之適用除外
	第10條 國際規範的誠實履行
第4章 罰則	第11條 違反第7條之罰則
	第12條 違反第6條第1項等之罰則
附則	施行日期 海事代理士法之一部修正 船舶法等法律之一部修正

the safety of its marine territory. Thus, the enforcement and safety of Japanese marine territory has always been important. This can be supported when reviewing the policy direction of Basic Act on Ocean Policy No. 3 “Protection of Marine Territory” and the enforcement procedures of No 21 of Basic Act on Ocean Policy.

The policy direction of “Protection of Marine Territory” of Article 3 of Basic Act on Ocean Policy states that: “Surrounded by sea, it is of the utmost importance for the nation to protect its marine territory, and should be enforced actively”. In addition, enforcement procedures of “Ensuring Marine safety” of Article 21 of Basic Act on Ocean Policy mentions that: Surrounded by Sea, the nation's economy and resources are reliant on the safety of the marine territory to protect transport and development of marine resources. The nation must take necessary precautions to ensure peace and safety to the territory waters.

There was no clear guideline regarding laws and punishment for breaking Japanese Shipping Act, foreigners fishing in territory waters, immigration guideline regarding refugee and its definition and also tax laws. In addition, other infringements such as stopping or travelling without permit in territorial waters do not have clear legal punishment for these infringements. The purpose to enact the Marine Territory Law is to provide guidelines and punishments for the above problems by “ensuring the safety of Japanese territory waters, maintaining the traffic order of foreign ship and prevention of foreign ships or suspicious activities.”

Part III. Marine Territory Law's System Structure

The law is separated into 4 chapters, 12 articles: Chapter 1 General Rules (Articles 1 and 2), Chapter 2 Foreign Ship's Sailing Rules (Articles 3

肆、本法適用範圍及對象

一、適用範圍為日本之領海及內水

本法適用海域範圍為日本的領海及內水，由本法名稱揭示適用範圍為「領海等」，依第2條第1款立法解釋，係指領海及內水可得知。依據日本「領海及鄰接區法」規定，日本領海為自基線起12浬，但宗谷海峽、津輕海峽、對馬海峽東水道、對馬海峽西水道及大隅海峽等「特定海峽」之領海則為3浬。由於日本國土地形有許多海灣及海峽等，其劃定基線之方法甚多，故有關基線包括低潮線、直線基線及灣口、灣內、河口連接之直線。³

有關「內水」之範圍，概念上潮間帶、海灣、河口、港口為內水，直線基線與海岸間之海域亦為內水。依1982年聯合國海洋法公約第8條第2款規定，採直線基線所劃定之內水，外國船舶得享有無害通過權（innocent passage）。本法相關條文在範圍上為區分港灣等內水及採直線基線所劃定之內水，故本法第2條第2款將依直線基線所劃定之水域，稱為「新內水」。

二、適用對象限於外國私船，但不包括外國公船

本法適用對象為「外國船舶」，係指日本船舶法第1條所定日本船舶以外的船舶，但不包括軍艦及各國政府所有且僅供非商業目的使用之船舶（warships and other government ship operated for non-commercial purposes）⁴。換言之，主要適用對象為外國之民用船舶，即私船。由於軍艦或政府所有供非商業目的使用之船舶（例如公務船舶），在習慣國際法上享有豁免權，不得登臨檢查或予以訴追，故本法有關登臨檢查及刑罰之規定不適用於公船。（第2條第3款）

伍、外國船舶之航行方法及應遵守義務

一、航行規則及禁止行為

（一）應繼續而迅速地進行通過領海及內水

依習慣國際法及聯合國海洋法公約第8條第2款規定，外國船舶在沿海國領海及依直線基線所劃定之內水，享有無害通過權。聯合國海洋法公約第18條對於無害通過（innocent passage）之「

「Law for Foreign Shipping on Japanese Marine Territory」	
Chapter	Article
1. General Rules	1. Purpose
	2. Definitions
2. Foreign Ship's Sailing Rules	3. Foreign Shipping Laws in Territory waters
	4. Accepted Foreign Ship Docking Reasons
	5. Foreign Ship Notification Requirements
	6. Foreign Ship Boarding Inspections
	7. Foreign Ship Expulsion Orders
3. Other Rules	8. Appointment of Authority
	9. Administration Procedures
4. Penalties	10. International Premise of Honest Action
	11. Penalties of Breaking Article 7
Appendix	12. Penalties of Breaking Article 6.1
	Date of Law Activation
	Amendments of Maritime Procedure
	Commission Agent Act
	Amendments of Seaman Act

to 7), Chapter 3 Other Rules (Article 8 to 10) and final Chapter 4 Penalties (Article 11 and 12) and an Appendix. The structure is represented as follows:

Part IV. Marine Territory Law Spectrum and Subjects

I. The Law Spectrum is for Japanese Territorial Waters

The law is only for Japanese territorial waters, a detail of territorial water is defined as outlined by Article 2.1. According to definition of Japan's "Territorial Sea and Borders Act", Japanese territory extends 12 NM from the baseline, not including La Pérouse Strait, Tsugaru Strait, East and West Tsushima Straits and Osumi Strait. These special straits have a baseline of 3 NM. Due to the many bays and ocean straits in the Japanese islands, the definition of baseline depth varies, some including low tide baselines, straight-line baseline and bay mouth and inner bay as well as estuaries lines. Regarding inland water territories, these include inter-tidal regions, bays river mouth and harbours. Straight baseline and the coast are also classified as inland water territories. According to Article 8.2 of 1982 United Nations

通過」要件規定：「1.通過是指為了下列目的，通過領海的航行：(a)穿過領海但不進入內水或停靠內水以外的泊船處或港口設施；或(b)駛往或駛出內水或停靠這種泊船處或港口設施。2.通過應繼續不停和迅速進行。通過包括停船和下錨在內，但以通常航行所附帶發生的或由於不可抗力或遇難所必要的或為救助遇險或遭難的人員、船舶或飛機的目的為限。」

因此，本法第3條規定外國船舶在領海及內水之航行，應以通過新內水或以往來水域設施等為目的，繼續地迅速進行。

(二) 無正當理由不得任意停留、錨泊、繫留、徘徊

本法第4條規定，在領海及內水不得有「(1) 停留、(2) 錨泊、(3) 繫留、(4) 徘徊（按照氣象、海象、船舶交通狀況、航路前方有無障礙物等其他周遭情況，其航行並非船舶航行通常所必要之航路及航速者）」行為（以下簡稱「停留等」）。

然有下列正當理由者，則例外地得為「停留等」行為：（『施行規則』第4條）

1. 避免暴風雨、海難及其他危險者；
2. 救助人身、船舶或飛機者；

Convention on the Law of the Sea, foreign ships have innocent passage in inland water territories when using straight baselines. The marine territory law uses straight baseline when defining harbour areas and the name for territory defined this way “new inland water territories” according to Article 2.2 of Marine Territory Law.

II. The Law Only Applies to Private Ships, excluding warships and other government ship operated for non-commercial purposes
The target of the law is foreign ship, but does not include warships and other government ship operated for non-commercial purposes as defined by Japanese Shipping Laws (article 1 regarding non Japanese vessels). In another words the law only applies to foreign private ships. Warships and other government ship operated for non-commercial purposes have immunity against boarding or prosecution and is not subject to the marine territory law (Article 2.3).

Part V. Foreign Ship's Sailing Rules and Responsibilities

I. Navigation Rules and Prohibited Activities
(I.) Continuous and Speedy Travels Through Marine Territorial Waters and Inland Territorial Waters.

According to the International Law and Article 8.2 of United Nations Convention on the Law of the Sea. Foreign ships in coastal territories or inland marine territories have innocent passage. Innocent passage as according to Article 18 of United Nations Convention on the Law of the Sea required that passage: 1. Passage is to reach the following objectives: (a) transverse through territorial sea but does not enter inland marine

3.船體或輪機受到嚴重損壞或遭到天災等不可抗力，船舶操縱性能受到限制者；

4.遵守《海上衝突預防法》或其他法律法規者；

5.聽從行政指導者；

6.為順利而高效率地進行以下業務、工程或作業（以下簡稱「業務等」。）而確須進行「停留等」行為者：A.按照國家行政機關的委託或承包契約進行的業務等。B.按照行政機關許可等條件進行的業務等、按照向行政機關提出申請等行為進行的業務等以及被認為與其同等的業務等。

7.進入領海及內水之後變更目的港時，連續而迅速地駛向變更之後的目的港者。

（三）禁止非以出入日本的港口為目的而通過內水之行為

港灣、內海等內水（例如瀨戶內海等），未如新內水中外國船舶得享有無害通過權，故外國船舶除有前述正當理由得停留或進出港灣水域設施等為目的之航行（以下簡稱「通過航行」）外，不得任意在港灣、內海等內水航行。（第4條第2項）

territory or dock in non inland territorial harbours or facilities; or (b) Passage into or out of inland territorial waters or docking in non inland territorial harbours or facilities.

2. Passage requires continuous and speedy travel. Passage includes stops and anchoring, but only in situations of rescues or accidents involving irresistible force.

Therefore, article 3 requires foreign ships to travel through territorial sea and Inland water territories speedily and without delays.

(II.) Ships May not Linger, Anchor, Moor or Circle without Proper Reasons.

The Marine Territorial Law, Article 4 state ships may not (1) Linger, (2) Anchor, (3) Moor or (4) Circle (according to weather and traffic conditions, obstructions and other conditions, and travelling in a course uncommon to shipping courses. These behaviour are defined as stopping. The following reasons do allow ships to stop (Law for Foreign Shipping on Article 4, Japanese Marine Territory Enforcement Regulations):

1. Avoid storm, marine accidents and other dangers.

2. Rescue of human, ships or planes.

3. Severe ship or engine damage or in cases or irresistible force which limits ship control.

4. Following Marine Conflict Prevention Law or other laws.

5. Following administration guidelines

6. To speed up works of engineering or operations (here termed work) and need to stop: A) Following national administration contract or the contractors work. B) Following work permitted by the relevant governmental administration. Following procedural

二、外國船舶之事先通報義務

本法第5條規定，外國船舶在領海及內水為「停留等」，及有必要航行通過內水時（依前述『施行規則』第4條(1)至(7)），外國船舶船長或代理船長指揮船舶的人（以下簡稱「船長等」）應將該外國船舶名稱、船籍港、停留及通過航行之理由及其他國土交通省命令所定事項，通報最近之海上保安廳單位。但停留等及通過航行之理由顯然係下列情形者，不在此限：(1)基於行政廳的命令及其他處分，或遵從行政指導。(2)為引航員上船，掛著規定的國際信號旗而進行停留等之情形。（『施行規則』第5條）

前項情形，因避免急迫危險而無法通報者，外國船舶船長等在該避難危險過後，應立即將通報事項通報最近之海上保安廳單位。

受理前二項通報海上保安廳單位主管，認有必要時得對通報之外國船舶船長等，予以協助指導。

依『施行規則』第6條，外國船舶應通報事項如下：

application and similar works.

7.Change or destination after entering inland territorial waters and afterwards quickly change course towards the new destination.

(III.)Prohibit using entering Japanese ports as excuse to passage through Inland Marine Territories

Harbours and such inland marine territory (such as the Seto Inland Sea), are not subject to new inland marine territory's innocent passage protection to foreign ships. Therefore without valid reasons to stop or enter harbour facilities as the destination, foreign ships may not pass through harbour and other inland marine territories (article 4.2)

II. Foreign Ship Notification Requirements

Article 5 of the Marine Territory Law states that foreign ship stopping in territorial water and inland marine territories must declare before entering into these territories (as defined by Law for Foreign Shipping on Japanese Marine Territory Enforcement Regulations, article 4-1~4-7). Ship Captain or his replacement commander (here simplified to captain) are required to give the ship's name, ship nationality, stopping or passage reasons or other requirements of the Ministry of Land, Infrastructure, Transport and Tourism to the Japan Coast Guards. The following stopping or passage reasons are not included: (1) The ship follows administration guidance or orders. (2) To allow crews aboard while hanging the appropriate international signalling flags (Article 5, Law for Foreign Shipping on Japanese Marine Territory Enforcement Regulations).

In the case of changing course to prevent hazards and was unable to signal to the Japanese Coast Guards, captain of the foreign ships should inform the Coast Guards as soon as the dangers are avoided.

(1)船名。(2) IMO編號。(3) 船舶類型。(4) 國籍。(5) 船籍港。(6) 總噸位。(7) 船舶所有人的姓名或名稱、地址。(8) 船舶經營人的姓名或名稱、地址。(9) 船長等的姓名。(10) 通報者的姓名或名稱、地址。(11) 在通報時的船位。(12) 停留等或通過航行的理由。(13) 預定停留等的位置、日期時間，預定通過航行的區域名稱以及預定進入該區域的位置、日期時間。(14) 出發港及停靠港。(15) 裝貨的種類及數量。(16) 船舶呼號及海上移動識別碼(MMSI)。(17) 與海上保安廳聯繫的方法。

陸、海上保安廳及其人員之權限

一、對外國船舶之登臨檢查權限(外國船舶に対する立入検査)

本法第6條規定，海上保安廳長官(首長)對於在領海、內水停留等或在內水(不含新內水)通過航行，而未依第5條第1項及第2項通報之外國船舶，或者對其通報內容疑為虛偽，就周圍情事合理的判斷，認為該船舶船長等有違反第4條規定之虞，且為達本法之目的認為有必要確認該船舶停留等及通過航行之理由時，得使海上保安官登臨該外國船舶、檢查書類等其他物件，及詢問船員等其他關係人。不過，此項登臨檢查權限，本法明定其不應解釋為犯罪搜查之性質。

Unit chief of Maritime Safety Agency should provide assistance once the before mentioned dangers are notified by the foreign ship captain.

According to Article 6, Law for Foreign Shipping on Japanese Marine Territory Enforcement Regulations, foreign ships must notify of the following:

(1)Ship name. (2) IMO number. (3) Ship type. (4) Nationality. (5) Home Port.(6) Total tonnage. (7) Crew names and address. (8) Owner name, title and address. (9) Captain's name. (10) Notify person's name and address. (11) Location at time of notice. (12) Stopping or passage reasons. (13) Expected stopping location, date, passage through region names and location of entering into the region. (14) Starting and destination ports. (15) Cargo type and volume. (16) Ship callsign and MMSI number. (17) Contact method with the Coast Guards.

Part VI. Japan Coast Guard and Personnel Authority

I.Authority to Board and Inspect Foreign Ships(外国船舶に対する立入検査)

Article 6 of Marine Territory Law states that commandant of Japan Coast Guard may board and inspect foreign ships in territorial waters or inland marine territories (Excluding the new inland marine territories) if he suspects the ship fail to notify the coast guard according to Article 5.1-5.2 of Marine Territory Law, make false notifications or breaking article 4 as deemed unreasonable by the commandant, He then may dispatch officers of the Coast Guard to make boarding and inspection on foreign ship papers and other items, questioning crew and other personnel. The Marine Territory Law states the authority of

執行登臨檢查之海上保安官，應穿著制服及攜帶身分證明文件，於相關關係人請求時應出示之。

二、對外國船舶之驅離命令（外国船舶に対する退去命令）

本法第7條規定，登臨檢查之結果，認為該船舶船長等有違反第4條規定者，海上保安廳長官（首長）得命令該船舶船長等將其船舶從領海及內水駛離（駛離至領海外）。

本法所定屬於海上保安廳首長之權限者，依國土交通省命令規定，委任由各管區海上保安本部長行使之。（第8條）

柒、違法行為之刑事罰

本法對於違反本法強制或禁止命令之違法行為，係以刑事罰方式加以制裁，行為人違反本法強制或禁止命令即成為犯罪嫌疑人，後續逮捕、扣押、訊問、偵查等應依刑事訴訟程序為之。其犯罪類型如下：

一、違反驅離命令罪

本法第11條規定，船長等違反第7條海上保安廳首長所為驅離命令者，處1年以下有期徒刑及50萬日幣以下罰金。

二、拒絕、妨害、規避檢查罪及對詢問不回答或虛偽陳述罪

本法第12條規定，拒絕、妨害、規避第6條第1項所定海上保安官之登臨及檢查，或對於詢問不回答或為虛偽陳述者，處6月以下有期徒刑及30萬日幣以下罰金。

捌、結論

日本因應海洋基本法施行後之法制整備工作之一，制定本法明定取締領海及內水內不明活動或可疑的外國船舶，除天災、海難等不可抗力及人命救助等緊急情況外，無正當理由禁止在領海及內水內停泊等行為。本法賦予海上保安廳登臨檢查及驅離之權限，違反命令者外國船舶或船長等科以刑罰。因此，本法賦予海上保安廳領海及內水警備的法律依據。🌊

（本文作者任職於海岸巡防署法規會）

this search should not be classified as a criminal investigation.

Coast Guard officers carrying out the order must wear uniform and bring identification to be shown when demanded for.

II. Foreign Ship Expulsion Orders（外国船舶に対する退去命令）

Should the inspection result in non-compliance to Article 4 of Marine Territory Law, under Article 7 of the same law, the commandant may order the ship and its captain to leave the territorial waters or inland marine territory into international sea.

The authority of the Coast Guard commandant is commissioned to regional chiefs under the order of the Ministry of Land, Infrastructure, Transport and Tourism (article 8).

Part VII. Penalties to Infringement of the Law

Behaviour breaking the Marine Territory Law will be enforced in the manner of criminal penalty. Subject breaking the law will be treated as suspect and follows up with the procedure of arrest, incarceration, questioning and investigation. The crimes are classified below:

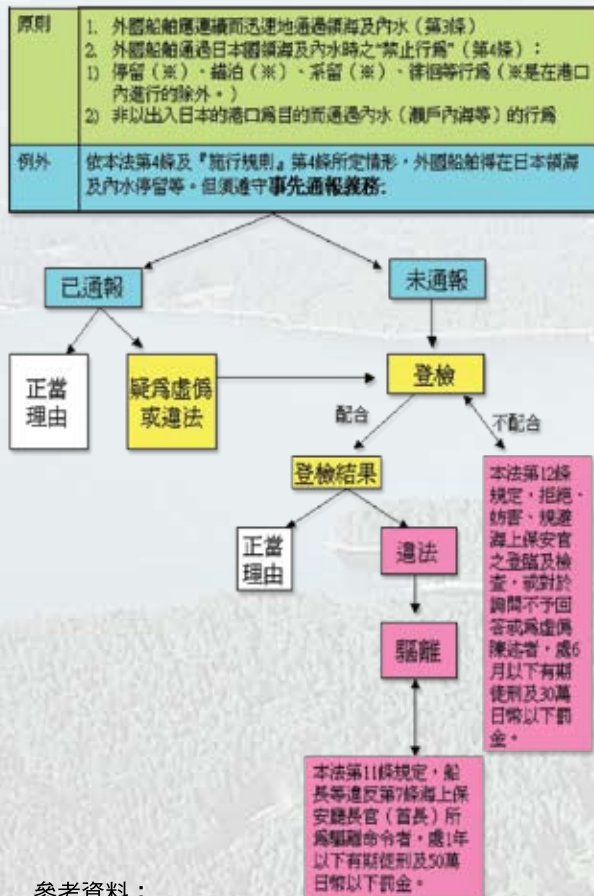
I. Failure to comply with expulsion

According to Article 11 of Marine Territory Law, captains failing to comply with Coast Guards expulsion orders (article 7) will be punished for a maximum of 1 year sentence and 5 hundred thousand yen fine.

II. Refusal, Obstruction and Avoidance of Inspection or Failing to Reply or to Falsify Replies.

According to article 11, refusal, obstruction and avoidance of inspection or failing to reply or to falsify replies to investigations in article 6.1 will be punished for a maximum of 6 months sentence and 3 hundred thousand yen fine.

附圖一：本法規範架構圖(作者整理)



參考資料：

1. 有關法律名稱，依日文字面係「在領海等有關外國船舶航行的法律」，但因該法第2條第1款明定「領海等」之定義，係指領海及內水，為利於了解其適用範圍，故中譯名稱為在領海及內水內有關外國船舶航行的法律。
2. 廣瀨肇，「日本基本法下之海上保安制度」，參見台灣海洋事務策進會舉辦之臺日周邊海域事務論壇資料，2008年4月24日，頁3。
3. 日本基線劃定方法，依日本領海及鄰接區法第1條第1項、第2條、附則第2項。直線基線及特定海域之基線，於日本「領海及鄰接區法施行令」及其附表明定詳細之內容。詳參行政院海岸巡防署編印，亞洲主要國家海域法令彙編，2006年6月初版，頁33-50。
4. 1982年聯合國海洋法公約第31條：「對於軍艦或其他用於非商業目的政府船舶不遵守沿海國有關通過領海的法律和規章或不遵守本公約的規定或其他國際法規則，而使沿海國遭受的任何損失或損害，船旗國應負國際責任。」

Part VIII. Conclusion

The general preparation for the Japan maritime law requires the marine territory law to be enforced to investigate unknown or suspicious foreign ships in Japanese territory and inland marine territory. With the exception of accidents and natural disasters which are irresistible force and require emergency contingencies or rescue. Vessels may not stop within territorial waters without permission. The law gives the Coast Guards the authority to expel, infringing ships and penalise the captain or the ships for breaking the law. In addition the law gives the Coast Guards and inland marine police legal premise to act.

(Author is currently a member of the Coastal Patrol Law and Regulations Commission)

Appendix 1. Marine Territory Law Structure

