



CRIMES ON HIGH SEAS

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PACHECO COTO

Based on a true story

The Brussels Convention of 1952 relating to Arrest of Sea-going Ships

ARTICLE 1

In this Convention the following words shall have the meanings hereby assigned to them:

(1) "Maritime Claim" means a claim arising out of one or more of the following:

(a) damage caused by any ship either in collision or otherwise;

(b) loss of life or personal injury caused by any ship or occurring in connection with the operation of any ship;

(c) ...

The Brussels Convention of 1952 relating to Arrest of Sea-going Ships

ARTICLE 2

A ship flying the flag of one of the Contracting States may be arrested in the jurisdiction of any of the Contracting States in respect of any maritime claim, but in respect of no other claim...

The Facts of the Case

1. On a sunny Sunday day, the Costa Rican fishing vessel “FINDING NEMO” was sailing in international waters (250 miles from the Guatemalan coastal line).
2. That same day, the Conservationist USA vessel “THE REVENANT” was sailing in route to Costa Rica to receive a Presidential award for protecting the seas.
3. The M/V Revenant spots FINDING NEMO doing shark finning.
4. The Captain of FINDING NEMO alleges that the fishing boat lost her Power generator, is adrift and being dragged into Guatemalan waters, and that they are not doing any shark finning.
5. The Captain of the Revenant orders FINDING NEMO to pick up their fishing gear and not to take any more Sharks on board.
6. “We are not even fishing” argued FINDING NEMO, “our engine broke and we are adrift”.
7. Both captains continue the argument for more than 24 hours.

THE VIDEOS







Back to the Facts of the Case

8. After the fisherman throws the shark head in front of the cameramen, the Captain of THE REVENANT decides to stop the “slaughter”

9. They approach FINDING NEMO with water hoses guns and hell broke loose...

A PICTURE IS WORTH A THOUSAND WORDS

LETS SEE...



What happened after the Collision

1. Obviously the engine was not broke and FINDING NEMO was not adrift.
2. It also quite clear that the Revenant took the law into his own hands.
3. FINDING NEMO returns to Costa Rica and accuses the captain of the Revenant with attempted murder. Latter they change the charges to Shipwreck Endangerment.

“It shall be punished with imprisonment from 2 to 6 years anyone who knowingly performed any acts that jeopardize the safety of a ship, floating structure or air transport.

If the offense produces shipwreck, stranding or air disaster, the penalty is 6 to 12 years in prison.

If the accident causes injury to a person, the penalty is 6 to 15 in prison and if it causes death, imprisonment from 8 to 18.”

What happened after the Collision

4. One of the fisherman of FINDING NEMO claimed the he suffered a sprained thumb on his right hand and the Judicial Appointed Doctor gave him 15 days of leave of absence...
5. Now there is an injury and the Captain of the Revenant faces imprisonment from 6 to 15 years.
6. The Reventat arrives 3 days latter to the port in Costa Rica and his Captian is ready to recieve the Presidential Award.
7. Instead he receives an indictment and the District Attorney seeks the highest penalty under the law (15 year of prison).
8. REMEMBER THE COVENTION... Although the Revenant is worth over 5 million dollars, no ones tries to arrest the vessel. No one (???)

The Bad, the Good and the Ugly

THE INFAMOUS INDICTMENT

According to the facts set forth in the indictment FINDING NEMO “***was fishing in international waters at 11 degrees, 50 minutes north latitude and 92 degrees 15 minutes west longitude from the Guatemala Port of San José***”. In that precise location, “Finding Nemo” was hit by another vessel named “The Revenant”, which was commanded by Mr. John Doe, a foreigner citizen. Such incident caused “Finding Nemo” to lose control producing the Shipwreck endangerment and injuries to the a crew member.

For over 12 years, criminals attorney on both sides, battled the case ferociously and without obtaining any result. Then the Supreme Court requested the opinion of a panel of Maritime Lawyers...

and of course, everything changed.

International Waters, really?

11 degrees, 50 minutes north latitude and 92 degrees 15 minutes west longitude locates the incident 135 nautical miles away from the Port of San José, Guatemala.

“Finding Nemo” was not fishing in international waters but in Guatemala’s exclusive economic zone, which expands up to 200 nautical miles from the base line.



Location, Location, Location!!!

Does it really matter?

The United Nations Convention on the Law of the Sea, also known as the “Montego Bay Conference” defines the exclusive economic zone as an area located beyond the territorial sea and adjacent thereto...

This zone may not extend beyond 200 nautical miles from the baselines from which the width of the territorial sea is measured.

The coastal State in the EEZ, has Sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters above the bed and reclining bed and subsoil of the sea (...) ”.

In exercising their rights and fulfill their duties in the exclusive economic zone under this Convention, any ship shall have due regard to the rights and duties of the coastal State and shall comply with the laws and regulations of the coastal State in accordance with the provisions of this Convention (...) ”.

To make things a little bit more interesting...

The national Constitution of the Guatemalan Republic provides in Article 142 that: "The State exercises full sovereignty over:

a. (...)

b. (...)

c. The existing adjacent coastal waters beyond the territorial sea and the living and natural resources of the seabed and subsoil and which constitute the exclusive economic zone, to the extent prescribed by law, in accordance with international practice. "

Last but not least

Illegal fishing is a crime under Article 347, E of the Guatemalan Criminal Code, which provides an "imprisonment from one to five years to anyone hunting animals, birds or insects, without a State authorization or when the conditions of that authorization are being violated.

Guatemala Criminal Procedural Code provides in Article 257 that "the police will apprehend anyone who is surprised in a flagrante act. It is understood that there is a flagrant act when the person is caught in the very act of committing the crime and any person is authorized to make the arrest and prevent further consequences..."

CIVIL ARREST is JUSTIFIED AND AUTHORIZED UNDER GUATEMALAN LAW

Furthermore, Article 28 of Governmental Agreement No. 223-2005 authorizes the commercial shark fishing in the Pacific from 20 nautical miles measured from the baseline in accordance with Montego Bay Convention, as long as a permit has been duly issued.

FINDING NEMO NEVER OBTAINED THE REQUIRED PERMIT

**AS OF TODAY, 14 YEARS AFTER THE COLLISION,
COSTA RICA IS STILL PROSECUTING THE CAPTIAN OF
THE REVENANT**

**CAPTIAN JOHN DOE HAS BEEN A FUGITIVE OF THE
LAW FOR MORE THAN 14 YEARS.**

**THERE IS A RED NOTICE ISSUED BY THE INTERPOL
REQUESTING HIS IMMEDIATE ARREST**

**THE CASE IS NOW BIENG HEARD BY THE INTER-
AMERICAN COMISSION ON HUMAN RIGHTS**

AWARDS AND RECOGNITION

Law Firm of the Year- Costa Rica, 2009, 2010 and 2012
Chambers Lifetime Achievement Award for our Senior Partner
Chambers & Partners Client Service Award 2011 and 2013
Leading Firm in Costa Rica, Guatemala, El Salvador and Nicaragua

