

IS IT POSSIBLE TO ARREST A CRUISE SHIP UNDER THE RULES OF INTERNATIONAL CONVENTIONS?

BASED ON TRUE FACTS

Some of which have been changed to protect the identity of the passengers

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* **The International Convention For The Unification Of Certain Rules Relating To The Arrest Of Sea-going Ships (Brussels, 1952)**

- Under this convention, most signatory countries recognize the arrest based on the following maritime claims:
 - *Damage caused by any ship either in collision or otherwise;*
 - *Loss of life or personal injury caused by any ship or occurring in connection with the operation of any ship;*
 - Salvage;
 - Agreements relating to the use or hire of any ship whether by charter party or otherwise;
 - Agreements relating to the carriage of goods in any ship whether by charter party or otherwise;
 - Loss of or damage to goods including baggage carried in any ship;
 - General average;
 - Bottomry;
 - Towage;
 - Pilotage;
 - Goods or materials wherever supplied to a ship for her operation or maintenance;
 - Construction, repair or equipment of any ship or dock charges and dues;
 - Wages of Masters, Officers, or crew;
 - Master's disbursements, including disbursements made by shippers, charterers or agent on behalf of a ship or her owner;
 - Disputes as to the title to or ownership of any ship;
 - Disputes between co-owners of any ship as to the ownership, possession, employment, or earnings of that ship;
 - The mortgage or hypothecation of any ship.

FACTS

1. On December, 2015, four U.S. passengers book an international cruise to visit the “Happiest Place in the World” (Costa Rica).
2. Due to weather conditions, the ship was not able to dock at the pier in Caldera, Puntarenas (on the Pacific Coast) and the passengers disembarked using tender boats holding about 50 people each.
3. They were seated in the front row across the aisle from the boat’s driver and directly behind a large plate glass framed in aluminum.
4. Shortly after, the transfer boat they were sitting on collided head-on with another tender boat.



FACTS

5. As a result of the accident, the four passengers suffered severe injuries. They remained hospitalized for two weeks in a Costa Rican hospital and sustained broken bones, a permanent face scar, and other medical and psychological traumas.
6. The tender boats were owned by two different companies and the one in which the passengers suffered the injuries argued that the collision was due to the negligence of the second one.



FACTS

7. Since day one, the Cruise Ship denied any responsibility arguing that the owners of tender boats were independent third parties unrelated to the contract and that any claim should have been brought against them directly. **Nonetheless**, the Cruise Ship offered that their insurance company would pay for any expenses and assist the passengers during the claim process.
8. The passengers accepted the offer and initiated a claim with the Cruise Ship insurer.
9. 15 months later, the insurance company denied any coverage based on insufficient medical records and on the evidence that clearly showed that the accident was caused by the negligence of one of the third party agents.
10. Feeling frustrated with the situation, the passengers decided to hire us and after careful consideration and analysis we opted to try to arrest one of the sister ships of the Cruise Line in Chile (WHY NOT COSTA RICA?)

CHILEAN LEGISLATION ON SHIP ARREST

1. A wrongful death or injury (in any jurisdiction) is treated as Privileged Maritime Claim.
2. Any party with a privileged maritime claim may request the competent court to arrest an offending ship or its sister ship.
3. Under Chilean Law, their courts have full jurisdiction to arrest a ship even if the events did not take place in Chile and also considering that a sister ship is any vessel under the same ownership, operation, administration or management (ART. 1234 Commercial Code of Chile)
4. On October 2016, we tried to arrest a sister ship in Valparaíso. The judge ruled against the arrest arguing: “Although under Chilean Law I should grant the arrest, I will not be part of an international scandal and I will not take upon me the responsibility of having 2,000 foreigners stranded in our territory.”
5. 3 days later, we tried a new arrest in Puntarenas, Chile (considering that the ruling of the Judge in Valparaíso is not binding in other Chilean Jurisdictions) and the new judge also denied our request based also on the impact of such a ruling against the tourism industry.

APPEAL... NOT SO FAST!

1. While we were preparing the appeals against both rulings, the US lawyers of the Cruise Line filed a Temporary Restraining Order against the passengers and their lawyers (local and international).
2. The Cruise Contract contained a Forum Selection Clause and an arbitration clause. Among those we cite:
 - **“ARBITRATION SHALL OCCUR IN KING COUNTY, STATE OF WASHINGTON, U.S.A., TO THE EXCLUSION OF ANY OTHER FORUM. YOU CONSENT TO JURISDICTION AND WAIVE ANY OBJECTIONS TO ARBITRATION IN KING COUNTY, WASHINGTON.”**
 - **“ALL CLAIMS OR DISPUTES ARISING OUT OF OR RELATING TO ANY ASPECT OF THE RELATIONSHIP BETWEEN US AND NOT SUBJECT TO ARBITRATION SHALL BE LITIGATED, IF AT ALL, IN AND BEFORE THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE, OR, AS TO THOSE LAWSUITS AS TO WHICH THE FEDERAL COURTS OF THE UNITED STATES LACK SUBJECT MATTER JURISDICTION, IN THE COURTS OF KING COUNTY, STATE OF WASHINGTON, U.S.A., TO THE EXCLUSION OF ALL OTHER COURTS.”**

THE RULING OF TEMPORARY RESTRAINING ORDER

The Court ruled in favor of granting a restraining order in this case.

The Court also found that the plaintiffs (Cruise Line) faced immediate and irreparable injury, including delay of the vessel in port which would disrupt the carefully planned schedule and itinerary of the vessel and result in missed ports, missed shore excursions and other inconveniences to the passengers, complications in the fueling and provisioning of the vessel, and disruption of the orderly turnaround of the vessel at the end of the present voyage and beginning of the next, if a restraining order was not issued.

IT WAS THEREBY ORDERED, therefore, that plaintiffs' motion for a temporary restraining order was GRANTED. Defendants JOHN DOE, Et. Al., their attorneys and all persons acting on their behalf are restrained from proceeding with the arrest or attachment of any ocean going vessel owned or operated by plaintiffs in any jurisdiction other than in the United States District Court for Western District of Washington at Seattle based on personal injury claims against plaintiffs arising out of an accident that occurred in Costa Rica while they were on a cruise through Central America. No bond was required.

CONCLUSIONS

1. Almost ALL Cruise Contracts have similar forum selection and arbitration clauses.
2. The International Convention For The Unification Of Certain Rules Relating To The Arrest Of Sea-going Ships (Brussels, 1952) was drafted as a general convention which includes, without distinction, both passengers and cargo ships. However, it is quite clear that judges around the world will treat the arrest of a cruise ship completely different than the usual arrests against cargo vessels.
3. If the flag of a Cruise Ship is sailing under a jurisdiction that did not adopt the convention, it is highly unlikely to obtain an arrest against a Cruise Ship.
4. The Temporary Restraining Order issued by a foreign tribunal should not be binding in other jurisdictions. However, given the exposure of economic responsibility against the passengers (such as in this case), it is more likely than not, that no one in their right mind will ignore such rulings.
5. The law is not blind and any arrest of a vessel will “disrupt the carefully planned schedule and itinerary of the vessel and result in missed ports, complications in the fueling and provisioning of the vessel, and disruption of the orderly turnaround of the vessel at the end of the present voyage and beginning of the next”.

CONCLUSIONS

6. It is clear that political and economical factors play a fundamental element when arresting a ship.
7. Before moving to arrest a ship, a careful consideration of those “political and economical” factors should be made.
8. The question we should ask is at this point is: “Is it possible to include forum selection and arbitration clauses (such as the ones indicated in the Cruise Contract) in regular cargo Bills of Lading? And if so, could other courts grant similar temporary restraining orders?”