



WHALES, PROTESTERS & LAWYERS (and some drugs to finish with)

BY MARTY LOGAN

Your editor has expressed an interest in the hot topic of whaling, and has questioned some of the legal issues which arise. Leaving to one side the ethical issues, whaling and, perhaps even more so, the protests it inevitably attracts, can also raise interesting legal issues.

Firstly, there is the issue of whether whaling which takes place on the high seas is legal. As this hunting takes place on the high seas, one issue is whether it is lawful in terms of the domestic jurisdiction of the flag state of the whaling vessel (in this case Japan).

The International Convention for the Regulation of Whaling, like any convention, does not take on any actual legal standing until it is incorporated into a state's domestic legislation. I am not an expert on Japanese law, so I'm not sure what their equivalent of our Marine Mammals Act is. However, I understand that even if the convention is incorporated into Japanese law, the Japanese believe it is authorised under the convention as a lawful research programme. Clearly others have a different view.

Secondly, there is the issue of the legality of some of the protest actions taken against the whaling fleet. A lot of these issues are also relevant to other protest action on the high seas, including actions against New Zealand fishing vessels.

These issues can be complex, and even the simple application of the collision rules can get contentious in the emotionally charged environment of protest action.

The writer recalls attending a maritime lawyers' conference a couple of years ago where a Greenpeace presenter showed a video of a close-quarters situation between the Greenpeace vessel and a Japanese whaling vessel in the Antarctic Ocean.

The Greenpeace lawyer proclaimed that the video clearly showed that the Japanese vessel had been in the wrong in terms of the collision rules. This was a very bold statement to make in front of this particular audience, and immediately questions began to fly and arguments develop about who had right of way in what appeared to be an overtaking situation.

The result was far from clear-cut, with the general consensus being that both parties were at fault, because in clear visibility, open water situations such as this, collision should never occur regardless of who technically has right of way under the collision rules.

Given that the events occur on the high seas, there are also jurisdictional issues as to which country's courts are an appropriate venue for bringing any legal action, should the protest action result in damage or financial loss.

Options include the flag state of the vessels (imagine issuing proceedings against a Japanese whaling vessel in Japan) or alternatively port state law may apply to aspects of the claim once one of the vessels returns to port.

More violent forms of protest may well run foul of national laws designed to suppress piracy and terrorism at sea. These laws implement the Rome Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation. In New Zealand this convention is given effect by the Maritime Crimes Act 1999.

This act deals with crimes relating to ships, and includes using force to seize or exercise control over a vessel or boarding a vessel, and committing an act of violence to endanger the safe navigation of the ship.

The act also makes it an offence to cause damage to another vessel which might endanger the safe navigation (including providing navigation information which the person knows to be false).

The act has extra-territorial effect so that prosecutions can take place in New Zealand even if events take place on the high seas or another jurisdiction, provided that a New Zealand vessel is involved of the offender is a New Zealander.


The act is obviously aimed at violent activities such as piracy, and this is reflected in the fact that maximum penalties include life imprisonment for the most serious offences.

Although it is aimed at violent piracy or terrorism-related incidents there is no reason why the terms of the act cannot be applied to more extreme forms of maritime protests that endanger whaling/fishing vessels or the safe navigation of those vessels.

As well as possible criminal prosecution, protestors may also face civil liability for interference with trade and the like.

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On a completely different subject, but one possibly linked to the festive time of the year, your editor has also asked for clarification on the position of the master of a social cruise vessel hosting a Christmas party when some of the guests liven up the proceedings by using illegal drugs.

If the water police turn up, what is the skipper's liability? Unfortunately, the skipper could be in serious trouble. Section 12 of the Misuse of Drugs Act makes it an offence for any person to knowingly permit any vessel to be used for the purpose of commission of an offence against the act. Possible maximum sentences range from three to 10 years, depending on your guest's drug of choice. It may be best to stick to the traditional rum. 

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