

Answers to questions of the International Tribunal of the Law of the Sea

1/ Through what process can a fine of the owners of the vessel emanate from any liability of the master?

Answer: The liabilities of the captain on the one hand, and of the operator on the other hand, are distinct. The former never implies the latter. The liability of the operator may be incurred only if all of the constituent elements of the offence can be imputed to him, namely the material element (what is the act or omission held against the operator?) and the subjective element (is the offending behaviour of the operator deliberate?).

In the present case neither the material element nor the subjective element has been proven against the operator; indeed, it has been shown that the operator gave Captain HOMBRE SOBRIDO formal written instructions not to fish in the EEZ (CF. Annex 8 of the application of the Republic of Panama). The operators were particularly concerned with preserving excellent the relations which they enjoyed with the authorities of the French Southern and Antarctic territories and with the company Armements SAMPER, with a view to renewing the vessels charter agreement.

2/ Has any act of accusation for violations of criminal law been brought against the shipowners?

Although the "Enquiry is approaching it's end" (CF: the statement in response to the French Republic), no charges have to date been filed, to our knowledge, against the operator.

3/ Whether pursuant to the French legal system currently in force, the Master of the "CAMOUCO" is facing a penalty of imprisonment?

Yes. Indeed, pursuant to an article of the Law No 66-400 of 18 June 1966, amended by Law 97-1051 of 18 November 1997 (CF. Annex 23 of the application of Panama), The Captain, in addition to the fine, may incur a penalty of imprisonment of six months.

4/ Under the French legal system, what are the precise penalties (fine, imprisonment), if any, which the master and the shipowner for each of the charges brought against the Master?

a/ The captain of the vessel risks the following:

- For unlawful fishing and failure to notify entry into the EEZ, a maximum fine of one million Francs and / or imprisonment for six months. If it should be proved that there were more than two tons unlawfully fished, the legal maximum provided for above is increased by five hundred thousand francs per ton fished

over and above the two tons (article 4, paragraph 1 and 3, of the Law of 18 June 1966 amended by the Law of 18 November 1997).

- For concealment of characteristics of identification of the vessel, a fine of fifty thousand to five hundred thousand francs (Article 2-1 of the Law of 1 March 1888 amended by Law No 96-609 of 5 July 1996 CF. Annex 23).
- For the act of having evaded the surveillance of the fisheries police, a fine of fifty thousand to five hundred thousand francs (Article 2-II of the Law of 1 March 1888, amended by Law 96-609 of July 5 1996 CF. Annex 23)

b/ For the operator as a legal person, and provided that the elements listed above in the answer to question 1 are expressly established against him, the fines applicable to the natural person (that is the captain) may reach five times the amount of the fine applicable to natural persons.

It should be recalled that in this case nothing has to date been alleged against the operator (CF: the answer to question 2). Moreover, to date, no prosecution has ever been brought against the operator to the extent that the master is already the subject of inquiry.

Signed

Signed

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* TRANSLATOR'S NOTE: IT IS NOT POSSIBLE TO DETERMINE THE INTENDED MEANING OF THE LAST SENTENCE BECAUSE IT IS UNGRAMMATICALLY DRAFTED.