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EDITORIAL

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Maritime Justice: Socio-Legal Perspectives on Order-Making at Sea

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Abstract

Illicit maritime activities generate significant scholarly and policy attention. While diverse in nature, governance responses share many regulatory features. This introduction advances the notion of maritime justice, a socio-legal research agenda. Different from broader maritime security studies, it places law at the centre of the inquiry, studying maritime governance practices through the lens of regulation. Empirically, it covers operational, spatial, and structural junctions between illicit maritime activity and regulatory responses deriving from international and domestic law. Analytically, it is heterogeneous but holds a methodological commitment to studying everyday law enforcement practices of maritime security governance to disentangle its meanings and effects. The introduction posits the junction between illicit maritime activities and regulatory responses as a productive space to study the varied norms that shape order-making at sea, and vice versa.

Keywords

law enforcement; maritime crime; maritime justice; maritime security; socio-legal studies

1. The Socio-Legal Study of Maritime Security Governance

Piracy, illegal fishing, and drug smuggling are but three types of illicit maritime activity with major human, environmental, and economic costs. Over the past decades, maritime threats and crimes have been subject to increased attention in scholarship and policy. This thematic issue starts a conversation about how a distinctly socio-legal inquiry into maritime security governance may inform debates on crime, security, and order-making. We call it *maritime justice*.

Empirically, maritime justice covers the myriad operational, spatial, and structural junctions between illicit maritime activities on the one hand and the regulatory and law enforcement responses on the other hand, performed across geographies and under various constellations of international and domestic law. Maritime justice is a research agenda that emerges from maritime security studies, the body of scholarship that frames oceans and related spaces as sites of governance and examines the politics and practices of how maritime threats and crimes are sought addressed. Yet maritime justice places law enforcement at the centre of the inquiry and studies governance practices through the lens of regulation.

Analytically, maritime justice does not promulgate any disciplinary boundaries. However, its scholars unite in a methodological commitment to studying maritime insecurities and their regulatory responses from a socio-legal perspective. Hailing from anthropology, criminology, and law—but attributed to any scholar applying a practice-based study of law—socio-legal approaches have the benefit of being particularly sensitive to the everyday effects of maritime insecurity and how law enforcers respond, bridging substantive binaries such as licit/illicit, public/private, and sea/land.

The effort to delimit maritime justice as a distinct research agenda is born out of two observations. Firstly, (maritime) security implies protection from threats and crimes. Were it not for the law, whether it be codified or state practice, illicit maritime activities would not be illicit, and agents would not enjoy the authority to respond. It follows that law and enforcement stand as basic tenets of security governance. However, secondly, while legal scholarship and political science have delivered widely to maritime security studies on questions of maritime law, governance, and policy, the socio-legal perspective to deepen the understanding of their meanings and effects remains scattered (Larsen, 2022).

With this thematic issue, we advance a dedicated space within maritime security studies, which allows scholarship to specifically delve into the legal aspects as they play out in theatre. It invokes practice-based rationalities to the field as characteristic of socio-legal approaches and promises not only to uncover the practical effects of law enforcement but also to bring conceptual innovation of the constitutive, distributional, and agentive power of law (Larsen, 2023).

2. Defining Features of Maritime Justice

As with any scholarly term, maritime justice has no exhaustive definition. But its features of course need closer inspection. Maritime justice nests in the junction between *illicit maritime activities* and relevant *regulatory responses*.

Regarding illicit activities, "blue crime" has been suggested as a blanket term for transnational organised crime (Bueger & Edmunds, 2020). Yet we wish to encompass illicit maritime activities in all their expressions. We may think of illicit maritime activities according to three general categories: inter-state disputes and conflicts, non-state actors' militancy and terrorism, and maritime crimes and risks. Each category has distinct features, which are key to consider when examining the governance perspective. Firstly, not everything is an actual transgression of law. While illicit (n.d.) can be synonymous with "illegal," it is used here in its broader lexical meaning to describe activities that are disapproved by society writ large—whether criminal or merely immoral. Think of illegal, unregulated, and unreported fishing, the (il)legal status of which depends on the waters in which it takes place. Think of inter-state disputes over maritime boundaries or resources, which

may lead to claims that are deemed a transgression of law by one party but not the other—yet still producing significant tensions in the maritime domain. Secondly, while all three categories affect security in different ways, they have overlaps and are sometimes even interrelated. Think of the Chinese civilian maritime militia's aggressive behaviour in the South China Sea, or cartels smuggling drugs and relying on cooperation with port operators. We are thus dealing with complexes that are not neatly divided into legal/illegal, crime/policing, state/non-state, and public/private. Thirdly, while the most recognisable parts of illicit activities take place at sea, their planning and facilitation necessitate consideration of the land-based functions, drivers, and enabling conditions of maritime operations—on both sides of the law.

Regarding regulatory responses, the UN Convention on the Law of the Sea (UNCLOS; UN, 1982) provides a framework for peaceful co-existence at sea but is silent on crime save piracy and slavery. Regulation of illicit maritime activities is scattered across international law, often referred to as a patchwork. Add to that the necessity to invoke domestic regulation for enforcement purposes, and regime complexity (and complications) surely materialise. Even defining what is relevant law can be complicated, not to mention what guides law enforcers, and we see here the value of a socio-legal perspective to scrutinise the myriad connections and disconnections between applicable law and applied law (Larsen, 2023, pp. 5, 67–68).

Such a multi-faceted theatre has implications for how maritime justice is conceived. The scope of law enforcement and regulatory responses stops short of naval warfare, but necessarily includes warships, as these are mandated in international law to suppress maritime crimes and are generally equipped to police beyond territorial waters—but not only. Coastguards and maritime police also play roles, invoking different legal paradigms and bringing both military and civilian expertise into the picture with distinct lines of command and operational cultures. The marketisation of force also applies at sea, and both public and private actors bring their services and security imaginaries to the maritime domain. Domestically, port authorities, judicial functions, and maritime agencies introduce horizontal lines of enquiry. International organisations and NGOs promote larger agendas of coordination, development, and sustainability, which bring questions of vertical integration in complex patterns of regulatory action. Cross-cutting all of this, legal sources—hereunder the extent of criminalisation—affect the type of possible response(s). But so does the political-institutional design to implement regulation and the ever-evolving technological mechanisms to support operations—both licit and illicit.

Maritime justice is thus a composite term, rather than a conceptual definition. And a moving target at that. The adjective "maritime" implies distinct social, spatial, and material dimensions but with geographies necessarily extending onto land. The noun "justice" connotes regulatory responses and different forms of redress that set it apart from both policy management and executive military operations. It goes beyond distributive action and the immediate connotations of justice, such as adjudication and advocacy. It broadens the focus to cover regulatory practices across public and private law enforcement and security agents. This invokes diverse questions about (cross-territorial) jurisdiction, patterns and changes in authority, and the status of legality and equity. Maritime justice therefore also presents a research agenda of practical and ethical import that begs the question: justice for whom? And this question, importantly, relates to both sides of the law.

3. Setting Sail

The contributions in this thematic issue are the first scholarly efforts to operationalise the notion of maritime justice. Geographically, they anchor the analysis in diverse waters of the world and address varied legal aspects of maritime security. Thematically, they show at once the breadth of possible scholarly discussions and the urgency of addressing maritime justice.

Lindley and Lothian (2024) take us to the vast expanses of the Pacific Ocean, increasingly vulnerable to organised crimes. Maritime justice is here a desired end state; the authors reflect on how existing regulatory frameworks in international law provide tools for the region's diverse nations to strengthen resilience towards maritime crime through concerted efforts. Maritime crime, they emphasise, knows no boundaries and operates across jurisdictions. Responses require regional approaches, especially with differing ratification and enforcement status across the region.

In a northern European context, Boelens and Eski examine an innovative Dutch policing approach. They focus on its ability to enhance maritime justice, defined broadly as reducing the impact of crime on society (Boelens et al., 2024). If the aim is to reduce societal harm rather than merely preventing crime, they find that innovative collaboration is not enough. It requires new performance indicators, procedures, etc. across organisations. Indeed, as long as "catching criminals" is what counts, reducing societal harm through prevention will not be a defined goal, even if this is what truly enhances maritime justice.

VandeBerg et al. (2024) inject affect into the discussion of maritime justice, asking how fear shapes plausibility in piracy prosecution. Looking at Kenyan trials concerning Somali piracy, they reveal that little material evidence was part of court cases. Instead, fear seemed to move judicial decisions along a certain evidentiary trajectory, that is, towards culpability. In discussions on maritime justice, they flesh out an area of research begging further research.

Schandorf (2024) raises the discussion of maritime justice to the global level. She takes us into the machinery of international law-making, specifically the birth of maritime zones in UNCLOS—a precondition for even establishing rights and obligations in addressing maritime crime and insecurity. She posits UNCLOS as an agent of maritime justice and shows the state–state power relations expressed in negotiations. Given the current (re)turn to geopolitics in international relations, Schandorf (2024) rightly posits that it deserves much more attention to avoid the reproduction of power imbalances. It intelligently places us back at the starting blocks of defining what is maritime justice.

Finally, in a forward-looking piece, McLaughlin et al. (2024) broaden the scope. They examine the relation between maritime justice and ocean resilience, specifically relating to SDG 14 "life below water." They ask how we may learn from responses to maritime crime to plug the enforcement gap concerning environmental crime. Here, maritime justice is an international imperative, and they explain how it can assist a stronger response to tackling environmental crimes in the maritime domain. Maritime justice is already proving useful, beyond itself.

4. Future Perspectives

Maritime justice is descriptive as well as prescriptive. It promises to explore both mundane practices and the normative underpinnings of law and governance in efforts to create, improve, and maintain order at sea. Its scholars build a common terminology founded in socio-legal rationality with which to create typologies of ocean governance that are distinctly legal—and understand their mechanisms. It is a research agenda that facilitates cross-pollination between scholarship and practitioner environments. It holds policy implications, uncovering best practices and bringing inspiration for innovative ways of addressing specific illicit maritime activities. This thematic issue hopes to inspire an avenue of research that can be broadened and deepened by scholars with similar methodological orientations. To give further granularity to the politics and practices in the field of maritime security.

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Conflict of Interests

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ARTICLE

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Exposure to Transnational Maritime Crime in the Pacific Islands Region

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Abstract

Although the Pacific Islands are strategically located alongside important trade routes, between the Global North and Global South countries and among plentiful fishing grounds, this region is considered among the lowest risk for land-based organized crime. Grouped as a uniform region, collectively, the Pacific islands are anything but. The region consists of three ethnogeographic subregions with varying colonial, cultural, and legal legacies. Geographically, the Pacific Island states are remote, with small populations dispersed across many islands, some of which are uninhabited, limiting the ability to adequately surveil and protect this extensive maritime domain, creating porous land and sea borders. These challenges increase the complexity of policing the large exclusive economic zones of the region and therefore increase its vulnerability and potential exposure to various transnational organized crimes on land and at sea. Drawing on Kelling and Wilson's broken windows theory, this article considers from a theoretical perspective, how international law can be used as a framework to guide Pacific Island states in achieving strengthened, region-led resilience to transnational maritime crime in the pursuit of maritime justice.

Keywords

broken windows theory; maritime justice; Pacific Islands; Small Island Developing States; transnational maritime crime

1. Introduction

The Pacific Islands region is recognized by the UN Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries, and Small Island Developing States (SIDS), and consists of sovereign states and overseas territories, namely: the Cook Islands, Fiji, Federated States of

Micronesia, Kiribati, Marshall Islands, Nauru, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Timor-Leste, Tonga, Tuvalu, and Vanuatu (UN, n.d.). In addition, associate members include the US overseas territories of American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the French overseas territories of New Caledonia and French Polynesia (UN, n.d.). Smaller overseas territories of the region include the Pitcairn Islands (UK), Tokelau (New Zealand), Wallis and Futuna (France), Norfolk Island (Australia), and the Easter Island (Chile). The Pacific Islands region is further categorized by three ethnogeographic subregions: Melanesia in the south-western zone of the Pacific Ocean, Micronesia in the north-western zone of the Pacific Ocean, and Polynesia in the central and southern zones of the Pacific Ocean. Collectively, these geographically dispersed islands form a complex and abundantly heterogeneous region and are home to a large number of SIDS (see Figure 1).

Transnational crime thrives on sympathetic legal, geographical, political, and financial environments and the islands that comprise the Pacific Ocean region offer a fusion of opportunities for criminals to base, transit, or target their illicit activities. Given the vast oceanscapes of the Pacific Island region, vulnerability to transnational maritime crime is particularly problematic. Maritime criminal threats include but are not limited to: illegal fishing; piracy and armed robbery at sea; underwater cultural heritage looting and trafficking; and trafficking of people, narcotics, arms, marine flora and fauna, or waste. It is challenging to definitively confirm the nature and extent of these maritime crimes. This is due in large part to the limited reporting, capacity constraints, and the fragmented nature of data collection (Lycan & Van Buskirk, 2021). Data on maritime crimes is oftentimes spread across different global, regional, and national organizations and institutions without an overriding coordinating mechanism (Lycan & Van Buskirk, 2021). However, the available data "suggests the effect of organized crime is increasing across all three Pacific Island sub-regions" (Comolli, 2024, para. 4; Global Initiative Against Transnational Organized Crime, 2023).

During the UN Security Council Open Debate of 30 July 2015, speakers stressed that transnational criminal networks were increasingly targeting SIDS, such as those found in the Pacific Islands region, because of their

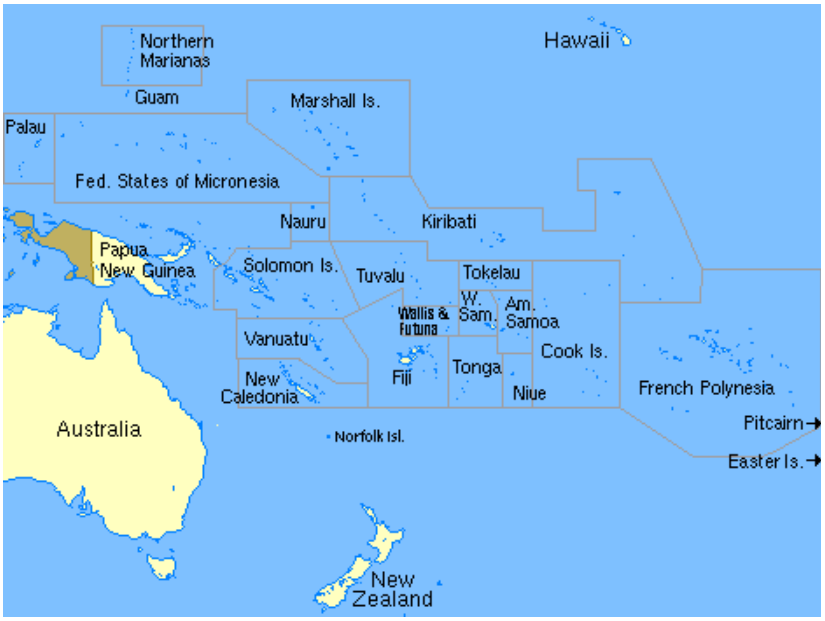

Figure 1. Map of the islands of the Pacific Ocean. Source: Pacific Islands Legal Information Institute (n.d.).

location along, or nearby major trade routes, abundant fishing grounds, and slow rates of economic growth and high rates of unemployment (New Zealand Ministry of Foreign Affairs and Trade, 2015). In addition, it was noted that many SIDS faced difficulties in patrolling and protecting their extensive exclusive economic zones (EEZs) and "the integrity of their borders" (New Zealand Ministry of Foreign Affairs and Trade, 2015). Consequently, Pacific Island countries may be targeted as suitable transit or safety locations for criminals operating transnationally. Pacific SIDS are also the target for transnational criminal networks due to increasing poverty in the region and un(der)employment. Available estimates suggest that approximately 12% of the population of Pacific SIDS live below the international poverty line (Food and Agricultural Organization, 2021). All these factors, coupled with the traditional pressures of limited public funds, political instability, and emerging stressors such as climate change, combine to increase the likelihood of criminal threats.

Pacific Island countries also have extensive EEZs. The EEZs extend to a maximum distance of 200 nautical miles measured from the coastal states' territorial sea baselines and comprise the waters superjacent to the seabed as well as the seabed and subsoil itself (UN, 1982, Arts. 56 and 57). In EEZs, the coastal state has sovereign rights for exploring and exploiting, conserving, and managing the natural resources and has jurisdiction over economic activities in the water column and seabed, marine scientific research, and matters dealing with environmental protection (UN, 1982, Art. 56). Given their extensive EEZs, Pacific Island states share a longstanding historical and cultural relationship with the ocean. Specific to the Pacific Islands region, each nation may be vulnerable to maritime crime for a range of reasons linked to their geography. For example, the location of the region to important trade routes links the Pacific region to South and Southeast Asia, the US, and Australia and New Zealand as source, transit, or destination countries. These important trade links increase the potential influx of commercial shipping, fishing, and pleasure craft vessel traffic and make it challenging to police criminal activities. Oftentimes, the vast and bordering EEZs in the Pacific region can result in limited and inadequate oversight over smaller vessels, increasing the potential for illegal operators to continue criminal activities undetected. Failure to address these challenges may also spillover onto land or may worsen at sea.

In addition to the region's geographical location along strategic navigational routes, Pacific Island countries rely on imports to supply essential goods. With vast numbers of vessels transiting through and calling into ports in the region, it increases the potential for crimes to infiltrate maritime traffic and the many and varied supply chains within it. Supply chains provide opportunities, protection, and potentially legitimize nefarious commodities, actors, and activities. Oftentimes, it is not "the what" that is illegal, but "the how" that makes it illegal. For example, fish are legal commodities (the what), but fishing and landing those resources in a manner inconsistent with the license issued (the how), is what may make an activity illegal. Therefore, it is not always necessary to regulate what (i.e., the goods and services that are used illegitimately), but rather how those goods and services are obtained and who is undertaking the activity in question. Notably, at times it may be the commodity that is illegal (such as narcotics), contrasted with the movement being the illegal element (such as people smuggling). Rarely are "the what" and "the how" noted together in international instruments. Take, for example, narcotics trafficking (UN Office on Drugs and Crime, 2013). The international legal framework discussed in this article provides building blocks to address "the how" and "the who," but not "the what" as this would render relevant instruments quickly out of date as transnational organized crimes evolve. The regulation of supply chains is therefore incredibly complex.

We look to Kelling and Wilson's (1982) broken windows theory applied in a contrasting setting for explanation. The theoretical model posits two facets, firstly, "if a window in a building is broken and is left unrepaired, all the rest of the windows will soon be broken" (Kelling & Wilson, 1982, p. 31). Secondly, the theory suggests that serious crimes emanate from mild disorder. Thus, eliminating mild disorder and incivility within a community or neighborhood will prevent the onset of serious crimes, or a failure to address and prevent urban decay, inevitably one broken window will lead to many (Kelling & Wilson, 1982). In applying the broken windows theory in the context of maritime crime, and more specifically in the "neighborhood" of the Pacific Islands region, if "maritime decay" is left unchecked, whereby a small number of crimes within the territorial waters and/or EEZs of the Pacific Island states (i.e., illegal, unreported and unregulated (IUU) fishing) is tolerated, this will inevitably lead to the proliferation of more serious and widespread crimes within the wider region (Lindley, 2020).

A lack of consistency between the Pacific Island nations in preventing and regulating against "maritime decay" potentially threatens national and regional security. Harnessing cooperation between large and small nations as set out in the UN Charter (UN, 1945), a top-down regional approach guided by international law provides a vehicle to harmonize the region. However, given the diversity of the region, it is necessary to review threats from the bottom-up. As threats spread, it broadens the geographic risk profile of the region as a whole. Outlining the potential threats enables progression toward a collaborative, proactive response. Maritime decay prevents maritime justice, a research agenda that "nests in the junction between *illicit maritime activities* and relevant *regulatory responses*" and "brings to the fore the role of law and regulatory practices in the governing of illicit maritime activities" (Larsen, 2024, emphasis added), which is a central concept to this thematic issue. This article focuses on the role of international law as a regulatory tool that exists to address maritime decay and combat illicit maritime activities.

As Pacific Islands-focused bodies and institutions already exist to collaborate on shared regional concerns, including maritime crime, rather than adopting further international instruments or attempting to reinvent the wheel, this article suggests that it is necessary to look to the existing international legal architecture that deals with forms of maritime crime such as piracy, transnational organized crime at sea, and corruption. These existing instruments can guide regionally-led and aligned responses within the disparate Pacific Islands region to mitigate exposure and bolster responses to transnational maritime criminal threats. Looking to international law to guide a regionally harmonized response to these complex issues draws together maritime justice from a political and practical perspective. This maritime justice approach also ensures the region retains its agency.

Through the lens of the broken windows theory, a novel theory to apply in the maritime domain, the purpose of this article is to outline how international law can play a pivotal role in supporting the Pacific Islands to build awareness of, and resilience to transnational maritime crime and achieve maritime justice by tackling "maritime decay." To achieve this goal, from a theoretical perspective, this article provides an overview of catalysts that may cause, or exacerbate "maritime decay," and links them to existing international law that may guide states to prevent and address those threats, noting that without the increased awareness provided by the framework, capacity to respond may be limited. While it is important to acknowledge the uniqueness of the countries within the Pacific region, commonalities shared between the island nations invite a collective, harmonized response.

2. Applying a Broken Windows Theory Perspective to the Pacific

Taking into account the potential vulnerability of the Pacific Islands region to maritime crime, the broken windows theory provides a rationale as to why Pacific Island states should look to regionalize responses to prevent transnational maritime crime and how this novel approach can be used to address such threats. The premise is that if maritime crime is tolerated within the region, other crime within the "neighborhood" will proliferate, such that an unrepaired broken window will soon become many (Kelling & Wilson, 1982). Kelling and Wilson (1982, p. 31) also postulated that this "is as true in nice neighborhoods as in rundown ones," implying that no Pacific Island state should be considered immune from the potential domino effect of transnational maritime crime.

Further, Kelling and Wilson (1982) theorized that crime emanates from mild disorder and that if disorder was eliminated, then serious crimes would not occur. These results were found in experiments conducted in New York City in the 1990s under Rudy Giuliani's mayorship whereby addressing lower-level crimes, such as subway graffiti and solicitation, resulted in lower rates of more serious crimes such as murder, assault, and rape (Friedersdorf, 2020). Transferring this novel perspective to the Pacific Islands region, the application of the broken windows theory could refocus law enforcement efforts targeting ports, for example, to confirm adherence to correct fishing licenses, eliminating overfishing of landed catches, and controlling contraband taken on/off vessels, leading to a reduction in the amount of maritime decay. While the transferability from city to seascape is unclear, and notwithstanding limitations and criticism of the theory (see Lanfear et al., 2020; O'Brien et al., 2019; Shelden, 2004), it is worth attempting to promote a more united front against maritime crime in the region. It is important to note that through the lens of the broken windows theory, we are not establishing causality between lower-level crimes and transnational maritime crimes, merely suggesting that causality is possible. As such, collective approaches to prevent transnational (maritime) crime put criminals on notice that the Pacific region is not sympathetic towards organized criminals to base, transit, or target their operations, and it will not be tolerated. Vulnerabilities to transnational maritime crime will now be discussed within the framework of the two elements of the broken windows theory.

2.1. Reducing Tolerance for Broken Windows in the Pacific: Vulnerabilities to Transnational Maritime Crime

The three ethnogeographic subregions of the Pacific, namely, Melanesia, Micronesia, and Polynesia, all have varying traditions and cultures. Despite differences between the subregions, oftentimes the Pacific Island region is seen as homogenous. However, it is anything but. The differences between the subregions may be linked to their exposure to potential transnational maritime crimes (see Section 2.1.1). There are, of course, commonalities within the region. For example, the disparate and often uninhabited islands spread across the EEZs of Pacific Island states may allow criminals to seek refuge from authorities to continue their illicit activities, and potentially launch expanded transnational criminal operations (Techera & Lindley, 2020). Drawing on the *Global Transnational Organized Crime Index 2023*, within the Pacific region, Melanesia has the highest criminality (4.18) and the lowest resilience (4.73) for the whole of Oceania, which extends to the Pacific Islands states, Australia, and New Zealand (Global Initiative Against Transnational Organized Crime, 2023). Overall, within the Oceania region, transnational organized crime is considered relatively low. Despite this, the potential for nearby regions to take advantage of the scarce surveillance on outlying and potentially uninhabited islands increases the potential threat (Global Initiative Against Transnational Organized Crime,

2023). Drawing again on the broken windows theory, limited surveillance within the Pacific Islands "neighborhood" may manifest into greater threats in the context of maritime crime and therefore some of the potential threats warrant further consideration within the Pacific Islands region and are explored in the following sections, namely corruption, financial crimes, and exploitation of natural resources. Outlining the potential threat enables progression toward a collaborative, proactive response.

2.1.1. Corruption

Enabling illegal activity to cross borders freely and evade law enforcement within a challenging geography, corruption is often central to transnational criminal activity including illegal fishing (Lindley, 2023). Countless corruption scandals have emerged in recent years linked to the fishing industry around the globe, including in the Pacific (see Shubber & Beioley, 2023), and therefore tolerance to corruption is a potential weakness that organized criminal syndicates can look to exploit (Lindley, 2023). According to Transparency International's *Corruption Perception Index*, 2022 data from Pacific Islands states is limited only to Melanesia, and therefore a complete picture of corruption in the Pacific region is unquantifiable. Drawing on available data for Melanesia, the Pacific scored 43 out of 100 (Transparency International, 2022) indicating high-levels of perceived public sector corruption compared to the leading-ranked country Denmark which scored 90 out of 100 (Transparency International, 2022). Corruption links very closely to a lack of transparency in the operations of ports (of convenience) and opaque financial sectors.

2.1.2. Financial Crimes

Obscured financial and banking sectors are common among some Pacific Islands. Across the three diverse subregions, Melanesia, Polynesia, and Micronesia, "economic regulatory capacity" scored among the least resilient systems in response to transnational crime (Global Initiative Against Transnational Organized Crime, 2021, p. 92). Economic regulatory capacity is defined as "the ability to control and manage the economy, and to regulate financial and economic transactions (both nationally and internationally) so that trade is able to flourish within the confines of the rule of law" (Global Initiative Against Transnational Organized Crime, 2021, p. 148). Offshore financial centers, or "tax havens" often lower or provide exemptions for income tax requirements, and the lack of transparency therefore may indirectly attract criminal syndicates who seek to obscure their ill-gotten profits and gains. Noting that not all tax avoiders are criminals, these financial centers are embraced among developing and developed countries alike, and the regulatory framework of tax havens operates under "business-friendly" policies (Global Initiative Against Transnational Organized Crime, 2023). Financial centers operating these "business friendly" policies support international businesses, legal or illegal, and take advantage of legitimate tax regulations that allow illegally obtained funds to be "laundered" through the legitimate banking system (Shaxson, 2019). As such, operating sympathetic tax and regulatory systems within the Pacific region may inadvertently open the door to transnational crime. While definitions vary, tax havens are common among Pacific Island states. For example, American Samoa, Fiji, Guam, the Marshall Islands, Palau, Samoa, and Vanuatu have been referred to as "tax havens" (European Council, 2023). These states may offer their customers legal, yet clement banking options beyond often stricter banking laws predicated by the legitimate international banking system (European Council, 2023), which in turn, can attract criminally obtained funds. As is the case with the financial centers themselves, the perceived benefits to these tax haven states may also be opaque, causing harm within and beyond the region when linked to transnational crime (Shaxson, 2019).

2.1.3. Exploitation of Natural Resources

Given the Pacific region's expansive maritime domain, unsurprisingly there is a heavy reliance on natural oceanic resources. As an abundant fishing ground, IUU fishing has changed the availability of fish stocks across the globe, including in the Pacific region. As fish do not neatly adhere to the artificial legal boundaries established by the 1982 UN Convention on the Law of the Sea (UNCLOS), regional efforts to address IUU fishing have long been established and international instruments are in place to limit its impact (see Lindley & Techera, 2017). Much of the IUU fishing that reportedly occurs in the Pacific Ocean is unreported or misreported, representing a broken window and the potential for maritime decay to exacerbate (MRAG Asia Pacific, 2021). Research continues to suggest an ongoing link between IUU fishing and transnational organized crime (UN Office on Drugs and Crime, 2023). More broadly, the Pacific's blue economy is integral to its prosperity, particularly marine tourism. Protecting the Pacific from the onset of more extreme crimes such as piracy and maritime terrorism, is particularly important. There is the potential for pleasure craft and cruise vessels to be targeted and therefore proactive, regionally aligned responses to maritime terrorism must form part of the response (Kelling & Wilson, 1982; Potgieter & Schofield, 2010).

Criminals may also seek to illegally exploit the Pacific region's other valuable oceanic resources including deep sea minerals and the biopiracy of marine genetic resources. The marine environment of the Pacific region requires protection within and beyond the EEZs of each state. However, this is complicated by the fact that many potential maritime boundaries remain undelimited in the Pacific region, which can prove problematic from both a blue economy and maritime security perspective. Regulating the sustainable management of marine living resources can be "severely hampered where maritime boundaries remain unsettled and potentially broad areas of disputed waters exist" (Voyer et al., 2018, p. 35). As there will be growing demand for Pacific Island oceanic resources in the years to come, the resolution of these maritime disputes will be essential to sustainably manage the region's marine resources and maintain the integrity of its natural environment under the 2050 Strategy for the Blue Pacific Continent (Pacific Islands Forum Secretariat, 2022).

2.2. Targeting Broken Windows to Prevent Crimes: International Legal Architecture Toward Maritime Justice

With increasing focus on global ocean protection and sustainability over the past couple of decades, there has also been an uptick in the number of related international instruments to guide national law and policy direction in this space. While this is positive, frustratingly, many of these instruments are soft law being non-binding and voluntary in nature. Moreover, when it comes to the binding instruments, oftentimes the necessary support and acceptance of these instruments has been slow, delaying their entry into force. One example is the WTO Agreement on Fisheries Subsidies adopted on 7 June 2022 which sets new binding multilateral rules to curb harmful fishing subsidies and prohibits certain forms of subsidies that contribute to overcapacity, overfishing, and IUU fishing (Lindley, 2021; WTO, n.d.). To date, 81 of the WTO members have formally accepted the Agreement on Fisheries Subsidies, however, 29 more formal acceptances will be required to bring the instrument into force (WTO, 2024). While the intention behind instruments, like the WTO Agreement on Fisheries Subsidies, is promising, inconsistency in adoption between states on these issues may hinder effective international and national responses, leaving states vulnerable to risk without a suitable means to legally respond.

International law provides a suitable framework for states to harmonize their domestic laws, reducing complexity in responding to shared threats. In the Pacific region, the potential for transnational maritime crime to infiltrate increases the pressure on each state to respond effectively and creates a potential risk for spillover between the Island states, both on land and at sea. To prevent maritime decay, as predicated within the broken windows theory, we suggest drawing on international law as a building block to harmonize an effective response to transnational maritime crime in the Pacific Islands region.

In 2014, the international community acknowledged the vulnerabilities of SIDS within the Samoa Pathway, which builds on the 1994 Barbados Programme of Action and the 2005 Mauritius Strategy. Specifically, the Samoa Pathway noted: "We support the efforts of small island developing states to combat trafficking in persons, cybercrime, drug trafficking, transnational organized crime and international piracy by promoting the accession, ratification and implementation of applicable conventions" (UN Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States, 2014, p.48). Notwithstanding the existing bodies and institutions that collaborate on shared regional concerns, including maritime crime, this non-binding instrument provides the impetus for collective action to build a regional response.

While the extent of relevant international instruments is potentially endless, Table 1 outlines the most relevant in the maritime crime context for the Pacific Islands region: the UN Convention Against Corruption (UNCAC), the United Nations Convention Against Transnational Organized Crime (UNTOC), and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (TIPP), supplementing the UNTOC, the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (commonly known as the Vienna Convention), UNCLOS, and the Agreement under UNCLOS on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction (BBNJ Agreement).

Table 1. International instruments relevant to transnational organized (maritime) crime and the status of Pacific Islands states.

SubRegion	Country	UNCAC	UNTOC	TIPP	Vienna Convention	UNCLOS	BBNJ Agreement
Melanesia	Fiji	14 May 2008*	19 September 2017*	19 September 2017*	25 March 1993*	10 December 1982	20 September 2023
	Papua New Guinea	16 July 2007	—	—	—	14 January 1997	—
	Solomon Islands	6 January 2012*	—	—	—	23 June 1997	20 September 2023
	Timor-Leste	27 March 2009	9 November 2009*	9 November 2009*	3 June 2014*	8 January 2013*	20 September 2023
	Vanuatu	12 July 2011*	4 January 2006*	—	26 January 2006*	10 August 1999	30 November 2023

Table 1. (Cont.) International instruments relevant to transnational organized (maritime) crime and the status of Pacific Islands states.

SubRegion	Country	UNCAC	UNTOC	TIPP	Vienna Convention	UNCLOS	BBNJ Agreement
Micronesia	Federated States of Micronesia	21 March 2012*	24 May 2004*	2 November 2011*	6 July 2004*	29 April 1991*	3 June 2024*
	Kiribati	27 September 2013*	15 September 2005*	15 September 2005*	—	24 February 2003*	—
	Marshall Islands	17 November 2011	15 June 2011*	—	5 November 2010*	9 August 1991*	20 September 2023
	Nauru	12 July 2012*	12 July 2012	12 July 2012	12 July 2012*	23 January 1996	22 September 2023
	Palau	24 March 2009*	13 May 2019*	27 May 2019*	14 August 2019*	30 September 1996*	22 January 2024*
Polynesia	Cook Islands	17 October 2011	4 March 2004*	—	22 February 2005*	15 February 1995	22 September 2023
	Niue	3 October 2017*	16 July 2012*	—	16 July 2012*	11 October 2006	—
	Samoa	16 April 2018*	17 December 2014*	—	19 August 2005*	14 August 1995	20 September 2023
	Tonga	6 February 2020*	3 October 2014*	—	29 April 1996*	2 August 1995*	26 January 2024
	Tuvalu	04 September 2015*	—	—	—	9 December 2002	20 September 2023
Overseas territories: US	American Samoa, Commonwealth of the Northern Mariana Islands, and Guam	30 October 2006	3 November 2005	3 November 2005	20 February 1990	—**	20 September 2023
Overseas territories: France	New Caledonia, and French Polynesia	11 July 2005	29 October 2002	29 October 2002	31 December 1990	11 April 1996	20 September 2023

Notes: * Ratification and accession; ** The US observes UNCLOS and acknowledges it as reflecting customary international law but is not a state party to the instrument.

As shown in Table 1, there is inconsistency in the adoption of relevant international law across the region. The Melanesian states have adopted fewer instruments, as compared to the states from the other two subregions, and as previously noted, also has the highest criminality and lowest resilience of the Pacific

Islands region (Global Initiative Against Transnational Organized Crime, 2023). Across the three subregions, TIPP has the lowest rate of adoption, however, all Pacific Island states have adopted UNCAC (UN Office on Drugs and Crime, n.d.-a, n.d.-b). The BBNJ Agreement opened for signature on 20 September 2023 and is yet to enter into force. To date, Palau and the Federated States of Micronesia are the only Pacific Island state to ratify the BBNJ Agreement (UN, 2023a). As the protection of biodiversity beyond national jurisdiction is a shared concern that extends beyond individual states and touches on values of national, regional, and global significance, regional resilience can be bolstered by aligning and collaborating on responses to common, potential threats through harmonized building blocks.

Responding to common regional threats in the Pacific may be overwhelming for some SIDS given the disparate adoption of existing international laws, along with a varying political will. Additionally, some states may disregard certain maritime crimes for lack of a foreseeable threat. Importantly, most Pacific Island states belong to the UN community of SIDS. The 2014 SIDS Samoa Pathway provides a collective avenue for cooperation to collaboratively develop responses to common threats beyond crime, such as climate change (UN Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States, 2014, see para. 17, 19, and 21). Again, acknowledging the diversity of the Pacific Islands, and understanding the threats and gaps can guide development towards a toolkit to build a strong and aligned regional and subregional response.

2.2.1. Responding to Corruption

While the threat models may differ across the region, looking at common threats such as corruption (as an essential enabler to transnational maritime crime) may be useful in harmoniously tying the region together (Lindley, 2020). Corruption enables crime, allowing government officials to implicitly or explicitly support criminal organizations in their illicit activities by cutting red tape or allowing threats to go undetected (UN, 2004). Regional coordination in counter-corruption approaches to maritime crime might provide a suitable point of alignment.

The *2022 Corruption Perception Index* identifies the Pacific Island region as facing among the highest perceived corruption globally, implying support for maritime criminal threats especially illegal fishing (Transparency International, 2022). A Western definition of perceived corruption is applied in the Index; often corruption is intertwined or embedded within culture, as is often the case in the Pacific, which may worsen the ranking. In 2004, the UN adopted the UNCAC which sought to disentangle cultural and definitional inconsistencies in the way in which corruption was interpreted and responses applied globally (UN, 2004). The UNCAC requires state parties to actively pursue corruption and any flow-on effects enabling other criminal threats (UN, 2004, see preamble). Having reached almost universal acceptance, the UNCAC has been adopted by every Pacific Island state, thus facilitating harmonized cooperative counter-corruption responses in and beyond the Pacific region (UN Office on Drugs and Crime, n.d.-b).

2.2.2. Responding to Financial Crimes

As noted in Section 1, resilience to economic regulatory capacity scored low across the Pacific Islands. Money laundering is outlined within UNCAC, UNTOC, and the Vienna Convention acknowledging its close links to enable transnational crime. Most relevantly, UNCAC Art. 14(1)(a) notes:

> Each state party shall institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions…that provide formal or informal services for the transmission of money or value and, where appropriate, other bodies particularly susceptible to money laundering, within its competence, in order to deter and detect all forms of money-laundering. (UN, 2004, Art. 14(1)(a))

To prevent corruption, strengthened internal systems drawing from international instruments could assist. For example, the UNTOC outlines approaches for international cooperation and information sharing (UN, 2000, Arts. 26, 27, and 28); while the UNCAC provides states with guidance around money laundering and proceeds of crime control (UN, 2004, Arts. 14 and 52). The acknowledged link to terrorism is also addressed to limit transnational organized crime financing terror (UN, 1999, Arts. 6, 7, 8, and 9). Focusing on limiting corruption to contain the financing of terror through transnational organized criminal activities may be more realistic than attempting to eliminate it (UN Interregional Crime and Justice Research Institute, 2019).

To limit transnational maritime crime, border control is necessary. Aided by corruption, porous borders—both physical and virtual—enable illegal entry of people, electronic financial transfers, and contraband, such as weapons and drugs, and enable landings of illegally caught fish. Removing the opportunity for illegal entry assists in disabling maritime criminal activities. Border strength delivers a strong message that the Pacific region is a hostile environment for transnational maritime criminal groups and terrorist cells to infiltrate and evade law enforcement. Regionally, border strength is an asset as it limits criminals from "shopping around" to another sympathetic entry point within the region to continue illicit activities unabated. The UNCAC sets out preventative measures that could be suitable building blocks to harmonize the region's response, rather than establishing regional policies anew.

2.2.3. Responding to Broader Natural Resource Crime at Sea

UNCLOS remains the pre-eminent framework for the contemporary law of the sea and has among the highest number of ratifications across international instruments. UNCLOS has been signed by 170 state parties, including all Pacific Island states—a notable exception is the US. However, although the US is not a party to UNCLOS, it treats the Convention as customary international law (Kelley, 2011). While UNCLOS does not extend its focus to include crime, importantly it establishes a legal framework of rules for determining the rights and duties of states with respect to their use of maritime space (Lothian, 2023). A critical component of this framework is the division of the ocean into maritime zones, each with its own specific legal regime (Lothian, 2023). These maritime zones include but are not limited to, the territorial sea (UN, 1982, Art. 3), the EEZ (UN, 1982, Arts. 55 and 57), and the high seas (UN, 1982, Art. 86). The high seas regime in Part VII of UNCLOS encompasses the water column beyond the 200 nautical mile EEZ of coastal states and are governed by the traditional Grotian freedom of the seas principle (UN, 1982, Art. 87).

While state parties of UNCLOS welcome the freedoms afforded to them on the high seas, responsibilities may be evaded when addressing collective issues to protect the global commons (UN, 1982, Arts. 87 and 192). Crime on the high seas is becoming increasingly sophisticated, due in large part to the ability of criminal groups to exploit jurisdictional and enforcement gaps and limitations (UN, 2019). Similar problems have been encountered in the protection of biodiversity beyond national jurisdiction leading to the recent adoption of the BBNJ Agreement (UN, 2023b).

2.2.4. The BBNJ Agreement

The inadequate protection afforded to biodiversity beyond national jurisdiction under the current international legal framework is emblematic of the regulatory, governance, and institutional gaps that have characterized the overall fragmented approach to governing marine areas beyond national jurisdiction, including when it comes to addressing transnational maritime crime (Lothian, in press). As the overriding objective of the BBNJ Agreement is to ensure the long-term conservation and sustainable use of biodiversity beyond national jurisdiction (UN, 2023b, Art. 2), its provisions are not intended to directly address transnational maritime crime. However, the BBNJ Agreement's package deal of solutions for combatting the dire challenges facing the world's oceans, particularly the rich array of biodiversity that inhabits the deep-ocean environment (Lothian, 2023), could provide an important vehicle to guide Pacific Island states in developing a harmonized response to achieve sustainable management across the region's vast oceanscape.

Pacific states played an integral role in the BBNJ Agreement negotiation process, and this is evidenced by the inclusion of key provisions that align with and reflect regional priorities, including sustainable ocean management, the recognition of the complementarity between the best available science and scientific information, and the use of relevant traditional knowledge of Indigenous peoples and local communities as well as consultation and capacity-building for SIDS. Given the ocean is of "strategic importance and constitutes a valuable development resource" for SIDs, the Alliance of Small Island States in its submission to the BBNJ Preparatory Committee stressed that the BBNJ Agreement should take into account the "conservation burden" faced by SIDS, as a result of undertaking ambitious voluntary commitments to conserve vast marine areas within national jurisdiction (Alliance of Small Island States, 2017, p. 2). Full recognition of the special circumstances of SIDs is now included as a general principle and approach in Art. 7(m) of the BBNJ Agreement to guide state parties in achieving the objectives of the instrument, which in turn serves to highlight the unique challenges faced by Pacific Island states.

In a recent interview, the president of Palau, Surangel Whipps Jr., emphasized that the BBNJ Agreement will better protect biodiversity within the Pacific region, provide scientific research advancements, promote sustainable fisheries, enhance climate resilience, and reinforce the position of Pacific nations as stewards of the oceans (Reklai, 2023). The Pacific Islands region has led the way in the designation of large marine protected areas within their national waters (Marine Conservation Institute, n.d.). However, given their sheer size, Pacific nations have borne the burden of monitoring and managing these marine areas to ensure they remain protected (Adams, 2022). As Palau's UN representative Ambassador Ilana Seid poignantly points out, "There can't really be a mechanism for ocean governance that's just territorial. It is like having a nice house in a bad neighborhood" (Anthony, 2023). Tying this back to Kelling and Wilson's broken windows theory, in a similar vein to the prevention of transnational maritime threats, the long-term protection of biodiversity beyond national jurisdiction is challenging without cooperation. Instead, it is a global challenge that will require cooperation at the national and regional levels.

The BBNJ Agreement's process to establish area-based management tools, including a network of high seas marine protected areas, for example, could complement and sit alongside existing efforts in the Pacific region and prove to be a promising mechanism for progress in the battle against certain types of transnational maritime crime, such as IUU fishing and marine pollution (Mendenhall, 2023). For instance, the consultation and cooperative mechanisms incorporated into the BBNJ Agreement's process for the

designation of area-based management tools (UN, 2023b, Arts. 21 and 22) could present opportunities to further regional dialogue on fisheries crimes, including regional responses to overfishing, IUU fishing as well as the incidental catch of deep-sea vulnerable fish stocks.

3. Conclusion

Criminal threats undermine maritime security therefore appropriately responding to threats is critical to developing a Pacific Islands region that is resilient to transnational maritime crime. The vast oceanscape of the Pacific region and its geographical positioning along major global trade routes increase its vulnerability to maritime crime threats. An effective response to regional maritime criminal threats requires, as articulated in the UN Charter, a "neighborhood" approach combining cooperation among large and small nations (UN, 1945). As such, leveraging existing international laws enables cooperative regional responses to Pacific threats of maritime crime.

Maritime decay may potentially permeate into wider and more serious criminal threats to the region. From a theoretical perspective, drawing on the broken windows theory, this article suggests that efforts to limit vulnerability to maritime crimes in the Pacific should be prioritized and regional alignment through available international law can be a suitable vehicle to respond. Building on the umbrella framework for ocean governance enshrined in UNCLOS, existing and emerging instruments such as the UNTOC, UNCAC, and the BBNJ Agreement could provide the necessary foundations to support the Pacific Island region in building a strengthened response to maritime crime in the overall pursuit of achieving maritime justice. It is from this perspective that this article suggests maritime justice can be approached to reduce threats, leveraging existing regionally-led institutions guided by international instruments. Future research should consider the role of governance practices, and their limitations linked to maritime crime within the Pacific Islands region.

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Conflict of Interests

The authors declare no conflict of interests.

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The Maritime Smuggling Project: Challenges Within Collaborative Maritime Policing in The Netherlands

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Abstract

The Netherlands hosts a significant drug industry involving global crime groups targeting local professionals, such as fishers for drug smuggling, real estate agents for money laundering, and harbor masters for marina access. To raise awareness of potential criminal involvement, various government organizations collaborate within an Organized Crime Field Lab. This approach shifts the focus from repressively apprehending criminals to protecting legal businesses and professionals by enabling the public to inform, detect, and report smuggling activities, and by helping relevant sectors identify and regulate activities that facilitate organized crime. This article examines how maritime policing professionals experience the process, outcomes, and challenges within the Maritime Smuggling Project (MSP) and its contribution to building a more resilient society against criminal involvement. Based on 34 interviews, hybrid observations, and an online questionnaire with MSP participants, the study suggests that maritime criminal justice relies on the idea that a resilient community is less likely to engage in or facilitate criminal maritime activities. However, it also indicates that collaboration in itself is not enough to create an impact on policing. Findings reveal that innovations in criminal justice need open-ended, long-term, impact-focused responses from projects like the MSP, along with maritime professionals willing to adopt new policing methods. Yet, traditional, path-dependent criminal justice institutions often undermine these innovations by prioritizing immediate, measurable, short-term results that benefit their organization instead of the overarching goal of preventing maritime crime and societal involvement in it. As a result, even those tasked with developing innovative approaches are limited by institutional constraints and ingrained habits.

Keywords

criminal justice; maritime drug smuggling; maritime policing; organized crime

1. Introduction

The Netherlands hosts a large-scale drug industry involving global crime groups with international trade connections. Europol classifies the Netherlands as one of the two largest cocaine-importing nations for the European market, contributing to an increase in violent crimes in European ports (Europol, 2020). Recent figures show that in 2023, the Netherlands confiscated 60,000 kilograms of cocaine (Rijksoverheid, 2024), representing a significant increase (Driessen, 2024). Despite various efforts, the illegal drug trade appears to be more lucrative and growing rather than diminishing; drug seizures break new records almost every year, and existing measures have not caused the structural disruption of illegal drug markets sought after (De Koning, 2016, 2023). Paradoxically, seizing illegal goods has been considered to increase smugglers' profits, and higher profits fuel violence (Castillo & Kronick, 2020). Meanwhile, the street value of cocaine has remained stable for several years, its quality is increasing, user numbers are not decreasing, and drug-related crime is becoming increasingly more violent (Ester & Driessen, 2009; European Monitoring Centre for Drugs and Drug Addiction, 2023; Politie Nederland, 2022). Consequently, a sense of pessimism, and at times even defeatism (Nelen et al., 2023) emerges in policing organized crime, where the current approach proves ineffective and falls short in disrupting this illicit market (Boutellier, Boelens, & Hermens, 2019; Boutellier, Hermans, & van de Plas, 2019; Cels et al., 2017; Lam et al., 2018; van Wingerde, 2012).

Due to the enormous profits involved, the drug industry becomes entangled with legal structures in society (Boutellier et al., 2020). By using societal actors, organized crime is no longer seen solely as a criminal issue but also as a socio-economic problem (Boutellier et al., 2020; Tops & Tromp, 2017). Consequently, there is growing attention in the Netherlands to safeguarding high-risk locations and professions against organized crime (Nelen et al., 2023). Examples include using the logistics sector for drug distribution abroad (Bervoets et al., 2021), farmers' barns in rural areas for drug production (Boelens & Groothuis, 2020), concealing cocaine among bananas imported by legitimate fruit importers (Tieleman, 2023), involving port companies and personnel in harbor areas in criminal activities (Eski et al., 2020), retrieving drug packages from the North Sea through the fishing industry (Mehlbaum et al., 2021), and laundering money through real estate agents and notaries (Hoogenboom, 2023). These examples illustrate the impact of organized crime and underscore the need to not only target criminal networks repressively but also to protect high-risk locations and professions from criminal influences.

In this article, the concept of maritime justice is conceived as the community's capacity to resist influences from organized maritime-related crime, based on the argument that a secure and resilient community is less likely to engage in criminal (smuggling) activities (Bervoets et al., 2021; Boelens & Groothuis, 2020; Boutellier et al., 2020; Nelen et al., 2023; Steketee et al., 2006; Staring et al., 2019; Struiksma et al., 2020). This conceptualization of maritime justice goes beyond crime control (Anderson & Newman, 1998; Duff, 1998; E. Moore, 2022). In this context, resilience refers to the community's ability to activate social relationships and norms to achieve common societal goals such as enhancing public safety and combating crime (Mehlbaum et al., 2021) by establishing norms that deter them from engaging in criminal behavior (Verwer & Walberg, 2012).

This concept of maritime justice, which includes protecting high-risk locations and professionals from organized crime, aligns with restorative justice theory—a theory that emphasizes the restoration of harm caused by crime and addresses what should happen when a crime is committed (Braithwaite, 1998, 2004;

Claessen, 2022; Menkel-Meadow, 2007). According to Alexander et al. (2024), restorative justice provides an interdisciplinary framework for fostering communities that prioritize the well-being of everyone involved. As such, we would like to highlight and introduce the idea of maritime restorative justice here to guide the study of maritime drug smuggling. Such a conceptual approach supports the idea that justice and restoration—also in the maritime domain—can be achieved through inclusive and cooperative processes (Van Ness, 2004), and both the suspect and the victim are willing to cooperate (Claessen, 2022).

However, in this context, collaborating with suspects is challenging because the impact of organized crime is often conceptualized as a "hidden impact crime" due to its largely invisible consequences (Boutellier et al., 2020). For example, money laundering does not typically produce direct victims, so the public perceives little harm. Nevertheless, restorative justice can still serve as a tool for communities to collectively stand against such forms of crime. This was evident in the 1990s against the Cosa Nostra (Boutellier et al., 2020; Dickie, 2007; Orlando, 2003) and more recently in the Netherlands, where the Dutch minister of justice and security called on society to form a united front against organized crime, following the Italian example ("Dilan Yeşilgöz: 'Met'," 2023).

Furthermore, numerous initiatives and projects have been established to collaborate with local communities and target groups in achieving criminal justice. Various programs have been set up for airports, major port areas such as Rotterdam and Amsterdam, and the Dutch flower industry. Additionally, there are other projects in the Netherlands, such as the Organized Crime Field Lab (Cels et al., 2017), aimed at addressing the complex issues of organized crime in more innovative and alternative ways. As the name suggests, the field lab is intended as a learning and experimenting environment, where a small team tackles one specific problem (Cels et al., 2017; Groenleer et al., 2020). In this field lab, teams experiment with new and different methods to disrupt and prevent criminal processes.

One such collaborative initiative is the Maritime Smuggling Project (MSP), which aims to adopt an alternative approach to disrupt and prevent criminal processes related to maritime smuggling in the province of North Holland, the Netherlands. The focus within MSP is on safeguarding three distinct maritime-related groups from criminal involvement: (a) local fishers who may be targeted for smuggling activities, (b) real estate professionals who can facilitate and oversee the laundering of illegally obtained money from maritime smuggling, and (c) local harbor masters who can promptly identify criminal activities if equipped with the knowledge of what signs to look for and where to report them.

This article offers insights into how maritime professionals in the Netherlands respond in inter/transdisciplinary and practical terms to the effects of maritime smuggling on the community. The challenges, opportunities, and perspectives of maritime professionals examined in this study contribute to the conceptualization of maritime justice, more specifically maritime restorative justice. The central research question guiding this article is: How do various maritime (restorative) justice and policing actors collaborate as a learning organization within the MSP in the province of North Holland? And what factors facilitate or impede this collaboration? The article is structured as follows: It begins with an overview of the context, explaining the project's inception, its objectives, the teams involved, and the methodology employed. Following this, the subsequent section details the research methods. Section 4 presents the findings, which are categorized into the willingness to collaborate, encountered obstacles during collaboration, and perceived outcomes from this collaborative effort. The article concludes with a summary and discussion.

2. The MSP: A Background

In 2018, the North Holland police unit and the Public Prosecution Service analyzed the involvement of fishers, both domestically and internationally, in drug smuggling (Mehlbaum et al., 2021). During an 18-month span (2017–2018), authorities intercepted 18 vessels with Dutch individuals on board in Spain and the Mediterranean Sea (Meeus & Rosenberg, 2020; Mehlbaum et al., 2021). These vessels were found to be transporting a total of 8,500 kilograms of cocaine and 55,000 kilograms of hashish. The outcome of this research led to great concern and, therefore, the start of the MSP. This project is a collaborative effort involving various Dutch governmental bodies in the province of North Holland, including the police, the Public Prosecution Service, the municipalities of Den Helder, Enkhuizen, Haarlem, Hollands Kroon, Velsen, the Fiscal Information and Investigation Service, the Netherlands Food and Consumer Product Safety Authority, customs, and the coast guard (Mehlbaum et al., 2021; Nelen et al., 2023).

The idea of the MSP revolves around collaborative experimentation, aiming to generate innovative ideas. This is reflected in the utilization of the Organized Crime Field Lab methodology, which was collaboratively developed by Harvard, Oxford, and Tilburg University (Cels et al., 2012, 2017; Groenleer et al., 2020; Waardenburg et al., 2020). The aim of using this methodology is twofold: (a) to assist practitioners in developing innovative solutions to complex crime issues, such as maritime smuggling, and (b) to enhance understanding of the design elements that facilitate or impede effective collaboration (Waardenburg et al., 2020). This involves dedicating time to contemplate strategic themes and questions that challenge the current approach to combating drug smuggling. For example, how to address the hidden impact of organized crime, and how to establish common objectives when involved multiple parties possess diverse backgrounds, interests, and priorities (Cels et al., 2012).

This method involves carrying out targeted actions to test hypotheses on a small scale and to gather more data and information necessary for progress (Silberman, 2007). Because, as Cels et al. (2017, p. 162) state, "only by intervening do you learn more." Experimentation and the potential for failure are crucial aspects of a learning environment (Groenleer et al., 2020). Within organizational literature, this concept is also referred to as triple-loop learning. This level goes beyond developing new insights and understanding patterns; it focuses on the entire context (of maritime policing) and explores deeper causes (of maritime smuggling; Romme & van Witteloostuijn, 1999; Snell & Chak, 1998). At this level of learning, it is about the ability to adjust the perspective of motives, identity, culture, and values within the current composition of actors and the approach to combatting maritime smuggling. The MSP directed its efforts towards combating maritime smuggling, necessitating a learning-oriented and pragmatic framework, namely an experimental and exploratory one: learning by doing (Cels et al., 2017, p. 62; M. H. Moore, 1995).

The use of the Organized Crime Field Lab approach by the MSP is not unique. Over the past years, numerous projects have been initiated in the Netherlands that adopt this learning and experimental design to address problems differently and transcend them. Examples include projects focusing on themes such as illegal import and export at smaller airports, criminal investments in commercial real estate, money laundering through virtual currencies, and abuse of carriers to and from medium-sized seaports. While these initiatives often originated from the grassroots, a new collaborative partnership Nationale Samenwerking tegen Ondermijnende Criminaliteit (in English, National Cooperation Against Undermining Crime) was established in 2022 to augment existing methods of government agencies to facilitate innovative and

complementary interventions. Additionally, it initiates new field labs to address complex societal problems. An evaluation study of 30 similar field labs revealed ample room for improvement and identified best practices in both the organization and culture of collaboration, as well as the effectiveness of interventions (Hiemstra & De Vries, n.d.). These findings seem to be inherent to the learning and experimenting nature of this design. Gaining insight into how maritime professionals in the MSP respond to the interdisciplinary and practical effects of maritime smuggling on the community, and how they perceive the effectiveness of their interventions, matters significantly because comprehending the more complex and deeper (often sociocultural) dimensions that are reflected in their perceptions and narratives reveals:

> The way different actors define and characterize a concept, which is relevant for [scientific] research [on undermining]. The interpretation they give to it is connected to the way they think about its causes. This, in turn, impacts the choices made in crime prevention and control. (Staring et al., 2019, p. 15)

As such, exploring the respondents' perceptions and stories on maritime restorative justice from such a vantage point allowed us to gain a thick description, as the following section on our methodological research activities details.

3. Methodology

This study builds on previous research into collaborative processes in (maritime) policing in the Netherlands and draws upon insights from other field labs (Boutellier & Broekhuizen, 2016; Cels et al., 2017; Eski et al., 2020; Mehlbaum et al., 2021; Nelen et al., 2023; Staring et al., 2019; Struiksma et al., 2020; van de Plas & Tanke, 2021). These studies emphasize the urgent need to address the hidden impact of organized crime on society and the involvement of societal actors in criminal activities (Boutellier et al., 2020). Additionally, Nelen et al. (2023) and van de Plas and Tanke (2021) show the need to understand genuine collaboration among various government bodies, assess its effectiveness, and critically, extract lessons from this collaboration The study at the center of this article aims to delve into the perspectives of respondents involved in such collaborative processes providing valuable insights into their viewpoints, beliefs, and attitudes towards unified efforts (Tracy, 2019). Furthermore, this study builds on previous research by Boelens et al. (2023) on collaborative processes aimed at combating organized crime in the Netherlands, conducted between September 2021 and October 2022.

For this study, interviews were conducted with 28 respondents who were selected based on their expertise and involvement in the MSP, either as team members or as experts guiding the teams. The respondents constituted a diverse group representing various governmental bodies, including representatives from The Public Prosecutor's Office, the police, the municipalities of Den Helder, Enkhuizen, Haarlem, Hollands Kroon, and Velsen, the Regional Information and Expertise Centre, the Royal Marechaussee, the Tax Administration, the Fiscal Intelligence and Investigation Service, customs, the coast guard, and the Dutch Food and Consumer Product Safety Authority. Additionally, an individual involved in conceiving the idea of the Organized Crime Field Lab, working at Tilburg University, participated in the interviews.

Throughout the study, participatory (both physical and digital) observations were conducted, involving the observation of activities during weekly meetings, arranged events, and brainstorming sessions (Seim, 2021). These observations provide valuable insights, particularly into the nonverbal communication among

participants (Eski et al., 2021). This approach enables immersion in the challenges and dynamics of the work environment, providing participants with an opportunity to reflect on their social and work methodologies (Petintseva & Zaitch, 2019). In addition to observations and interviews, a survey was distributed among members of the MSP (n = 19), containing qualitative questions to assess satisfaction levels regarding the collaborative process and the perceived outcomes of working together.

4. Findings

This section will examine the results of the data analyses concerning the collaborative processes within the MSP and the perceived outcomes. It begins with an overview of the project itself, followed by an exploration of the collaborative process within the project. The article concludes with an examination of how team members experienced the outcome of this collaboration.

4.1. The MSP

At the start of the project, significant efforts were dedicated to discussing the complexities of maritime smuggling in North Holland. Participants addressed questions such as why maritime smuggling is a problem and how the community is affected by its causes and consequences. The primary goal was to focus on cross-organizational objectives to form a multidisciplinary working group. Cels et al. (2012, 2017) describe this exercise as an essential initial step to collectively identify the common problem and devise relevant interventions. Participating professionals were encouraged to step beyond their organization, tasks, and norms to act collectively against multifaceted issues, such as the effects of maritime smuggling on the community and the involvement of societal actors in this form of crime. This process was facilitated by experts and coaches specializing in change management and social innovation within policing and the public sector (Kegan & Lahey, 2001; M. H. Moore, 1995) with experience in experimental design (Cels et al., 2012, 2017; Groenleer et al., 2020; Waardenburg et al., 2020), primarily from the Dutch police organization and the Public Prosecution Service.

Designing environments for experimentation, learning, and innovation in public policy and governance (Waardenburg et al., 2020) forms the foundation of the framework in which these new professionals must operate. This new way of working was generally well-received by maritime professionals who do not typically engage with such approaches in their daily activities. According to the questionnaire responses and interview outcomes, MSP participants highly prioritize cross-governmental collaboration, emphasizing the exchange of knowledge and experiences among various governmental bodies as crucial. They stress the need for unconventional strategies to disrupt the current nature and scale of maritime smuggling, highlighting that focusing solely on apprehending individuals or isolated cases is neither sustainable nor effective against organized maritime crime. Both the interviews and the questionnaire reveal that merely "catching criminals" is inadequate to effectively resolve the issue of maritime smuggling. This aligns with what Cels et al. (2017), Boutellier et al. (2019), Lam et al. (2018), and van Wingerde (2012) have noted about innovation and change in criminal justice. A respondent from customs mentioned the following in an interview:

> We could try 10 more investigations on cocaine, but it won't make the problem smaller. We need different ways….We've been trying to catch that criminal since 1974, and it hasn't worked well.

> Now, we see cocaine prices are lower, purity is higher, and smuggling happens in many ways. (R3, customs, interview)

According to respondents, maritime justice can be described as ensuring that societal groups such as youth and workers in certain sectors are not being used by organized crime and do not suffer harm as a group from criminal activities—whereas it is exactly these kinds of actors that contribute to prevention as well as restoration, as seen elsewhere in restorative practices (cf. Lohmeyer, 2017; Rosenblatt, 2014). In the example of the fishing industry, some fishers grow up in environments where they become implicitly involved in criminal activities. According to the respondents, justice entails ensuring that these fishers are well-informed about the risks and dangers so that they can make the right choices when confronted with criminal influences. In this sense, respondents' perspectives align with the concept of restorative justice, which aims to repair the damage caused by organized crime to society.

According to the project management, focusing on the fishing industry was a logical step, given the police and Public Prosecution Service research indicating that many Dutch fishers had been arrested in European waters on suspicion of maritime smuggling. Team Volans aimed to inform fishing communities of possible criminal involvement in their sector, enabling them to detect and report smuggling activities and prevent bona fide fishers from drifting into the criminal circuit or being tempted to perform tasks for criminals. Subsequently, attention turned to other maritime themes, particularly the role of the numerous marinas in the water-rich province of North Holland. The prevailing idea, based on factual knowledge from criminal investigations in smaller harbors, was that boats retrieving drugs from the North Sea were more likely to head to smaller marinas rather than larger ports. These locations are attractive to criminals because, overall, marinas are relatively anonymous, allowing them to move freely. Thus, focusing on marinas would mean identifying suspicious behavior by smaller boats or individuals in these areas. Team Kohthai focused on reducing the anonymity of marinas, aiming to discourage criminals from settling there and providing knowledge to harbor masters on recognizing suspicious behavior through training.

A third theme was that the proceeds and illicit money earned from maritime smuggling activities must find their way into the legitimate economy through money laundering. This means that criminals successfully bringing drugs ashore often invest their earnings in local real estate and launder the money. This could involve purchasing local houses or renovating properties off the books. Emphasizing the role of gatekeepers in the local real estate market would help detect signs of criminal behavior and money laundering earlier. Team Estrella focused on raising awareness among real estate professionals about recognizing and reporting money laundering activities. In total, about 35 maritime and financial professionals from various government organizations are involved in this project, consisting of three teams.

The desired outcome that individuals in the MSP strive for, as heard in the interviews and questionnaires, regarding maritime (restorative) justice is to raise awareness of potential criminal involvement in those three teams with the argument that a resilient community and societal actors are less likely to engage in criminal activities. Another ideal outcome of the project, according to respondents, is for the societal sectors the teams focused on to develop a sort of self-cleansing ability, whereby the sector itself attempts to rectify or even prevent vulnerable groups from encountering criminals within their work and living environments. To achieve this, various interventions were devised and implemented. Firstly, the teams primarily used a communication strategy aimed at informing the public to raise awareness of the risks and dangers of

criminal influences. Specifically, they organized webinars and established educational programs, such as those in schools where students are trained to become fishers, or notaries who are legally required to receive annual professional training on relevant topics. Additionally, several animations and films were produced to provide a visual representation of how criminal influence affects the target audience, and extensive social media campaigns were conducted.

Secondly, the teams focused on promoting public–private collaboration. Specifically, this involved the real estate sector organizing its training initiatives on potential involvement in organized crime and associating them with mandatory educational credits. Furthermore, organizations within the fishing sector took it upon themselves to educate their members about the hazards and perils associated with maritime smuggling. Additionally, harbor masters were empowered to take a more proactive stance in addressing anonymity within marinas and acquiring a deeper understanding of criminal opportunities within their harbors. Thirdly, the teams strived to encourage the reporting of suspicious incidents associated with maritime smuggling. Lastly, the teams focused on eradicating criminal opportunities within the fishing sector, marinas, and the real estate domain. As an example, the teams suggested implementing a digital night register to record all boats in marinas, similar to the registration system utilized in hotels. Currently, such a system is absent, and the objective is to diminish the anonymity of marinas. Within the real estate sector, the team noted the involvement of numerous actors with limited insight into each other's activities. Thus, enhancing transparency and comprehension across the entire real estate chain, spanning from real estate agents to notaries, bankers, and financial advisors, serves, according to respondents, as a barrier to criminal opportunities.

MSP members were driven by more than the goal of making significant strides in combating maritime smuggling; they actively sought learning opportunities through partnerships with other organizations and making a change in disrupting the illegal drug smuggling market. The project's team members can be viewed as pioneers striving for change and genuinely seeking innovative approaches to address maritime smuggling. However, this pioneering spirit also led them to face substantial resistance, as detailed in the following section.

4.2. Facing an Uphill Battle: Collaborative Processes Within Maritime Policing

For most team members, the key objective was minimizing the impact of maritime smuggling by involving community actors, as indicated in the interviews and the questionnaire. A successful outcome would be when target communities and industries can protect their members from the risks and involvement in criminal activities without government assistance. In the interviews, respondents referred to this as the sector's "self-cleaning ability to resist criminal interference." These efforts included various initiatives such as awareness campaigns or events to highlight the risks associated with maritime smuggling. However, devising and implementing the interventions conceived in the experimental setting was not straightforward and faced many obstacles and challenges, as revealed in conversations with professionals. The first challenge was very practical: many representatives of government organizations in the project simply did not receive the necessary time off to work on the MSP or poor agreements were made, resulting in individuals having to work their regular shifts within their organizations, such as participating in the police duty roster. The absence of formal agreements between their organizations and the MSP regarding commitment and time allocation forced some team members to balance project tasks alongside their regular responsibilities.

Another challenge revolved around project governance, particularly in finding a delicate balance between encouraging team members' autonomy in generating innovative ideas and maintaining control over the direction of the process as management. The MSP aimed to achieve a "one-government" approach, coupled with a "just do it" mentality. However, this required a shift in mindset and skill set among team members; suddenly, they had to assume new responsibilities and activities that extended beyond their traditional roles. Socio-legal theory suggests a distinction between team members' professional norms—their requirements and goals—and what they perceive as innovative to carry out their duties—their practical norms (De Herdt & de Sardan, 2015). Many team members found it challenging to initiate new ideas and take autonomous action, especially if they lacked previous experience in doing so. Granting these individuals freedom felt excessively unrestricted, leading to occasional uncertainty about whether they were proceeding in the correct direction. While the ideal outcomes for the respondents are not necessarily concrete or well-defined, their primary focus is on effecting change concerning the current impasse in addressing maritime organized crime and its societal effects. A respondent from the Public Prosecution Service articulates the challenge of lacking clear goals or direction:

> Are our desired outcomes defined? Not just for the project team, but also for the overarching organizations. What do we want? We, as team Estrella, had to figure out what we wanted to do, and so did the other groups. I believe that is the essence. Do you truly know what you are assembling these teams for? What do you aim to achieve with them? These are all general terms, and it's easy to get lost in vagueness. Have we genuinely made a meaningful impact? That's my question. (R17, Public Prosecution Service, interview)

Another challenge, aligning with Waardenburg et al. (2020), involves the concerns of respondents about the ability of government personnel and organizations to genuinely innovate in criminal policing. According to respondents, change requires creative individuals who can think beyond established norms and pathways. As said by a respondent in an interview:

> To truly generate innovative, out-of-the-box ideas, you need individuals who think differently, not those solely from municipal, police, or Public Prosecution Service backgrounds. (R8, Municipality of Haarlem, interview)

In the interviews, respondents expressed a preference for the project to also focus on a more repressive approach since 100 individuals were already identified as potentially involved in maritime smuggling in North Holland at the start of the project. Particularly, the financial specialists on the team dealing with money laundering would have preferred to target this group through various interventions, such as criminal investigations and arrests, while also informing the community about these investigations, which is currently uncommon. However, this aspect was not pursued. Additionally, respondents expressed a desire for more meaningful engagement with target communities and end users, such as real estate agents, fishing communities, and harbor masters, to have input in the project design. Many respondents felt this was a major reason for their doubts about the project's impact on these groups, perceiving it as a top–down initiative with many advisors but lacking real contact with local and grassroots implementers. Despite this, such engagement faced considerable resistance from the parent organizations, particularly regarding information sharing with these parties. This argument is countered by the respondents, who highlighted that the focus on preventive actions required little confidential information, thus allowing for more

information to be shared. Moreover, certain team members may have overlooked the potential to involve other organizations.

In line with Groenleer et al. (2020), working with an experimental design to shift towards a more preventive approach in maritime policing poses another challenge for the teams. Many respondents indicated in the interviews that prioritizing preventive interventions like education programs and communication sparks significant skepticism and resistance among direct management from the parent organizations. This resistance stems from the perception that these interventions do not contribute to their objectives and authority. For instance, the goal of the Public Prosecution Service is to prosecute and convict criminals, while the police aim to maintain public order and safety. However, individuals involved in the collaboration focus on broader objectives, leading direct management to question how their employees' efforts align with their organization's specific goals, even if they contribute to a broader goal of reducing criminal involvement in the community. Specifically, a police professional received critical questions when he mentioned working on a webinar, with management questioning how this activity contributed to their policing duties. Management often prefers traditional modes of operation, showing reluctance to embrace change. They adhere to familiar methods, such as relying on checklists, regular policing activities, and "filling the rosters," according to respondents in both the questionnaire and interviews. This resistance to innovative, unconventional thinking hinders social innovation within maritime policing and illustrates the current difficulty of fostering innovation in this field.

4.3. Experienced Outcome of Collaboration: A Drop in the Bucket of Maritime Restorative Justice

In the interviews, respondents perceived that they accomplished their objectives in four primary areas: (a) effectively using communication; (b) fostering collaboration among public and private sectors (such as real estate, fishing, and among harbor masters); (c) encouraging the reporting of suspicious incidents; and (d) diminishing criminal opportunities associated with maritime smuggling. Respondents shared in the interviews their experiences, shedding light on several areas of acquired knowledge. Understanding each other's organizations, including their strengths and limitations, was a significant aspect into which they gained insight. They adjusted their approach to prioritize preventive interventions, departing from their usual practices. For instance, one respondent articulated this shift:

> We're approaching things from a new angle. I come from a police background, but in this setting, it's somewhat unique. I'm part of a team working towards improving and safeguarding the industry.…Our aim is to bring about changes in the real estate sector. How do we achieve that? It's not only the goal of the police, the Fiscal Information and Investigation Service, or the Tax Authority individually, but a collective aim as a government entity. (R22, police, interview)

While teams have undertaken numerous preventive interventions and measures, these prove to be scarcely measurable or challenging to define. For instance, how can one ascertain if engaging in numerous conversations with fishers indeed results in fewer fishers being involved in maritime smuggling? Or if better coordination across the entire real estate chain genuinely prevents criminals from exploiting gaps within that chain? Or whether increasing resilience and vigilance in marinas through awareness campaigns effectively reduces criminal activities? These are the questions that respondents are contemplating and expressing in the interviews. According to them, this necessitates a different perspective on defining success and outcomes:

> The problem is, if we don't catch criminals, we're not ticking the box, even though we're preventing some incidents. Organizations might need to reconsider if the current checkbox truly reflects our objectives. (R3, customs, interview)

Reflecting on the project's outcomes, respondents perceive it as merely a drop in the bucket in the fight against organized crime. This resonates with Nelen et al.'s (2023) findings, suggesting a "certain pessimism" concerning the effectiveness of the current approach:

> On one hand, there's a sense of accomplishment and optimism in our extensive collaboration among various government bodies, each with its own priorities. Overall, it is progressing fairly well and yielding success. However, on the other hand, there's this lingering sense that we've been in this phase for years, and there's ample room to enhance our effectiveness and efficiency. Especially in policing criminal activities, I'm skeptical of our progress. Sometimes it feels like we're magnifying minor issues. The big question remains: When will we collectively take that significant leap forward? (R7, Municipality of Haarlem, interview)

Collectively taking that significant leap forward is a common thread felt by virtually all respondents. A respondent expressed in an interview that they have not made considerable progress, but also have not faced major setbacks. This sentiment resonates with the shared feelings among many team members regarding the lasting impact of the four-year collaboration in the MSP. Additionally, another respondent emphasized in an interview that the extensive collaboration has room for improvement—they believe they should aim higher. The ongoing discussion revolves around "when" the next step will occur, reflecting on the effectiveness and efficiency of the current approach to combating maritime smuggling, particularly within the MSP. While earlier findings highlight sporadic outcomes, team members also contemplate the potential for sustainable, long-term results. They emphasize that the enduring impact of collaboration can only materialize when interventions lead to the establishment of new procedures, workflows, and collaborative structures within participating organizations. They believe it is needed for their respective organizations to integrate the lessons learned, products developed, and established networks to ensure continuity and sustained efforts on specific issues.

5. Discussion and Conclusion

The MSP aimed to raise awareness of potential criminal involvement and prevent maritime smuggling by implementing preventive interventions through an experimental design. This approach shifts the focus from repressively apprehending criminals to protecting legal businesses and professionals. It encourages the public to inform, detect, and report smuggling activities and helps relevant sectors identify and regulate activities that facilitate organized crime. This study highlights the shift from conceptions of justice as restricted crime control to a more proactive reduction of negative impact on society but also presents significant challenges.

While the concept of innovative and preventative maritime justice, in particular maritime restorative justice, may seem promising, to see collaboration as a result and as innovation is not a step forward or disrupting criminal involvement in society. If innovation and integrated policing projects fail to demonstrate lasting impact, there is a risk of succumbing to "toxic positivity" in collaborative policing—the belief that success

results solely from extensive collaboration without substantial outcomes (Colley, 2004; Foucault, 1980; Goodman, 2022; Lecompte-Van Poucke, 2022; Scott, 2010). Effective innovations in criminal maritime restorative justice demand sustained, impact-oriented responses, as exemplified by initiatives like the MSP. Maritime professionals must be prepared to adopt new policing methods beyond those to which they are accustomed (Cels et al., 2012, 2017; Groenleer et al., 2020; Waardenburg et al., 2020). This approach encourages a consultative, bottom-up, emergent practice and policy response in criminal justice.

However, focusing on and adapting a single approach is insufficient. The concept of maritime restorative justice involves multiple simultaneous interventions, such as outreach, victim support, and training for societal and municipal staff, similar to restorative justice, while including social and youth workers (Alexander et al., 2024; Braithwaite, 1998, 2004; Claessen, 2022; Lohmeyer, 2017; Menkel-Meadow, 2007; Rosenblatt, 2014; Van Ness, 2004). It also requires collaboration with (maritime) organizations like the International Maritime Organization and European counterparts like Europol and within the concept of maritime domain awareness. Addressing issues such as maritime smuggling and criminal infiltration necessitates long-term, interdisciplinary processes involving various stakeholders (Van Arkel & Tromp, 2023). Literature on maritime security governance also underscores the importance of engaging all stakeholders, from political authorities to all maritime actors (Bateman, 2005; Bueger, 2019; Bueger et al., 2020). Regarding MSP, respondents noted that the project's limited impact stemmed from insufficient involvement by these stakeholders concerning the target real estate agents, fishing communities, and harbor masters in its design. They argued that incorporating these stakeholders would have significantly strengthened the project's effectiveness and could contribute to maritime restorative justice.

Based on this research, it appears that solely focusing on preventative interventions is also questionable. It remains uncertain whether a well-informed community can better resist criminal influences and contribute to maritime (restorative) justice, or if MSP interventions effectively reduce community involvement in criminal activities. Serious concerns have been raised about the effectiveness of such interventions, suggesting they may even have counterproductive effects (Albarracín et al., 2024; Boertien et al., 2024; Hendrik & Stams, 2024; Nelen et al., 2023; van der Put et al., 2021; Van Petrosino et al., 2013).

Additionally, respondents, in line with the restorative justice principles, highlighted the project's shortcomings in understanding the root causes of maritime smuggling and the motivations driving societal actors' involvement. These insights underscore that effective maritime (restorative) justice and policing require more than acquiring new insights and recognizing patterns, it necessitates understanding the broader context and motivations behind maritime smuggling activities (Romme & van Witteloostuijn, 1999; Snell & Chak, 1998). Therefore, maritime policing must also allow for prudent innovation, which includes developing new interventions or recalibrating existing ones, complemented by the practical wisdom of the targeted communities.

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Conflict of Interests

The authors declare no conflict of interests.

Data Availability

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Supplementary File

Supplementary material for this article is available online in the format provided by the author (unedited).

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ARTICLE

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Fear and Loathing on the High Seas: Affective Dimensions of Justice in Kenya's Piracy Trials

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Abstract

Piracy off the coast of Somalia captured international attention in the early 2010s. The regional approach to prosecuting piracy in East Africa required multi-state participation and involved an array of local and international actors that ultimately reshaped criminal justice systems and understandings of maritime crime. Kenya was the first country in the region to agree to try suspected pirates as part of the UN regional model for prosecuting pirates. As they updated their piracy laws with the assistance of international legal advisors, many of the details concerning who could be tried in Kenyan courts, what constitutes evidence, and the rights that should be afforded to suspected pirates were continuously modified as court proceedings unfolded. Employing an iterative thematic content analysis of piracy trial transcripts obtained from the High Court of Mombasa in Kenya, this study explores how weapons and fear became central components of establishing guilt in piracy prosecutions. Accordingly, it highlights the dynamic relationship between fear, relative plausibility, and maritime justice that constitute the affective dimensions of justice at work in East Africa's regional piracy prosecution model.

Keywords

East Africa; Kenya; maritime justice; piracy prosecution; piracy trials

1. Introduction

Despite the world's fascination with piracy, little details are known about how contemporary piracy trials unfolded in East Africa. This study analyzes piracy trial transcripts from the High Court of Mombasa, Kenya to understand the evidentiary complexities of prosecuting a sea-based criminal event fraught with investigative challenges. As judges attempted to deliver justice with minimal physical evidence, they relied

heavily on testimony and relative plausibility. Tasked with making sense of a series of events that took place beyond the borders of their state on the high seas, they sifted through evidence collected using a myriad of investigative procedures and gauged witness credibility amidst a background of legal dualism and global moral panic.

Pirates have long been labeled *hostis humani generis* (enemies of all mankind) to mobilize global military and punitive responses that simultaneously gloss over underlying structural causes and exploitation while productively transforming maritime spaces. Beginning in late 2008, piracy off the coast of Somalia caught the attention of the world. The country was reeling from decades of civil war and attempting to reestablish stability through a transitional federal government. By 2009, there were nearly 200 piracy attacks, disrupting maritime trade and terrorizing seafarers, prompting an international response. As a coalition of naval forces descended upon the Gulf of Aden and the Indian Ocean, what to do with apprehended piracy suspects became the central question. After a brief period of "catch and release," apprehending suspects, destroying their weapons, and then returning them to their boats or the Somali shoreline, the international community settled on the long-term solution of providing support to prosecute pirates in the East Africa region. Kenya, the Seychelles, and Mauritius eventually signed memorandums of understandings (MOUs) with the apprehending states agreeing to accept the transfer of, prosecute, and incarcerate pirates until they could be repatriated to Somalia. The UN Office on Drugs and Crime facilitated this regional approach by assisting the states with codifying piracy laws, training law enforcement and judicial personnel, and refurbishing and constructing prisons to ensure pirates were detained in humane facilities.

Media headlines and stories covering the issue of piracy off the coast of Somalia progressively increased from 1992 to 2010 creating a moral panic defining pirates as a serious threat and frequently linking it to terrorism. Media, politicians, and the shipping industry reinforced depictions of pirates as "bad" and "evil" stressing the danger, violence, and potential for death posed by pirates (Collins, 2012). Much like Scheingold's (1995) compelling analysis of the creation of "public anxieties" around street crime, piracy coverage created a "public of feeling spectators" remotely exposed to the fear and anxiety of the criminal events. What followed was a public and state-driven "collective yearning" for punitive measures to address piracy off the coast of Somalia (Feldman, 2012).

Affect is a term with a psychoanalytic theory pedigree used in relation to emotions, instincts, and impulses. Although many scholars continue to debate the relationship between affect and emotions (Ahmed, 2010; Cvetkovich, 2012; Tomlinson, 2010), Thein (2005) argues that affect is the *how* of emotion, i.e., how emotion *moves*. Affect theory or the critical study of feelings, argues that social problems stem more from social structures and cultural assumptions than from individuals. This theoretical approach enables the academic examination of emotional responses to real-world occurrences and structures that affect people (Cvetkovich, 2012). Research on affective transfer in psychiatric clinics reveals the ability of individuals to borrow or share states of mind. The emotions and energies of one person or group can be absorbed by or can enter directly into another (Brennan, 2004). They are socially, culturally, and contextually specific and grounded in a complex web of power relations. Affective studies help illuminate how emotional expressions are not only performative but also productive. Accordingly, affect is characterized as situating "the individual in a circuit of feeling and response" (Hemmings, 2005, pp. 551–552) that can modulate and direct the governance of social interactions (Dewey et al., 2019).

Fear, anger, and resentment associated with crime, and in this case, piracy, energizes punitive policies (Feldman, 2012). There is a large body of literature that studies piracy from the perspective of security and international law attributing the emergence of piracy off the coast of Somalia to various factors such as weak governance, weak law enforcement, economic turmoil, maritime insecurity, geography, and cultural acceptability. In 2008, the EU launched a Combined Naval Force named ATALANTA to monitor the Gulf of Aden. In 2009 it was assisted by the US Naval Force Combined Task Force 151. Subsequently, other countries provided naval support to help protect the World Food Program aid deliveries, protect vulnerable vessels, and deter, prevent, and oppress acts of piracy off the coast of Somalia (Chalk, 2010). Patrolling the vast expanse of the Gulf of Aden and the Indian Ocean proved to be a daunting task. Naval forces were eventually forced to make tactical adaptations from disrupting pirates during an attack to disrupting *potential* pirates (Sörenson & Widen, 2013).

The limits of military interventions resulted in a paradigm shift to more regional informal and cooperative law enforcement collaborations. This shift was informed by internationally guided best practices established by the Contact Group for Piracy off the Coast of Somalia and the Shared Awareness and Deconfliction process to help direct Gulf of Aden missions (Guilfoyle, 2012). The Contact Group for Piracy off the Coast of Somalia lacked any direct regulatory power, yet was praised for its flexible, revisable guidelines that could be adapted into law at the national level (Guilfoyle, 2013). As regional states began adopting the UNCLOS definition of piracy and codifying piracy laws to enable prosecution, legal scholars and human rights groups began to raise concerns regarding the definition and ontological foundations (Bueger, 2013; Nyman, 2011), use of force (Treves, 2009), the treatment of suspected pirates on board naval vessels and concerning trial and incarceration (Guilfoyle, 2010; Osiro, 2011), and jurisdictional applicability (Sterio, 2011). This was further compounded by the general challenges of investigating and prosecuting crimes committed in international waters and on ships more broadly, such as processing the crime scene, securing physical evidence, recovering forensic material, and locating and interviewing witnesses at the crime scene (Fouche & Meyer, 2012). In the case of piracy off the coast of Somalia, evidence was intentionally or inadvertently sunk due to sea conditions and damage to vessels, investigative teams often took hours to arrive if at all, and language barriers inhibited interviews from witnesses until interpreters could be located, sometimes days after the event.

Despite the breadth of studies from the perspective of international law and criminal law addressing these issues, very few scholars have studied piracy trials (Gathii, 2010; Geiss & Petrig, 2011; Larsen, 2023; Muller, 2013). This study employs an iterative thematic content analysis of over 1,000 pages of trial transcripts from eight piracy trials conducted in Kenya between 2008–2012 to contribute empirical findings of an aspect of piracy that have thus far eluded researchers, the affective dimensions of justice at work in the regional prosecution model. We begin by providing an overview of the jurisdictional challenges of piracy trials in East Africa, and Kenya in particular. Then, we discuss the concepts of judicial proof and fear as an evidentiary factor, explain data collection and methods, and present selected piracy trial case studies. We conclude with a discussion of the relationship between fear, relative plausibility, and maritime justice as evidenced by Kenya's guilty verdicts.

2. Kenya's Jurisdictional Quagmire

The prosecution and imprisonment of over 300 pirates in East Africa through third-party MOUs caught the attention of human rights organizations and legal scholars alike. Kenya, the first country in the region to begin

accepting piracy transfers, entered into agreements with the UK, the US, the EU, and Denmark (Gathii, 2010). Accordingly, Kenya was the primary destination for prosecuting suspected pirates during 2008 and 2009. Until 2009, Kenya's piracy laws were outlined under Section 69(1) of the Penal Code that "any person who, in territorial waters or upon the high seas, commits any act of *piracy jure gentium* is guilty of the offence of Piracy" (The National Council for Law Reporting, 1930, Section 69(1)). The relatively broad language of Section 69 did not expressly establish the jurisdiction of Kenyan courts over nonnational piracy suspects captured on the high seas by other states.

The very first piracy trial in Kenya, *Republic v. Hasan Mohamud Ahmed* (2006), raised the issue of whether Kenya had jurisdiction to try suspected pirates when none were Kenyan citizens or captured by Kenyan forces. Initial court rulings found in favor of the prosecution arguing that piracy is a crime against mankind, which lies beyond the protection of any state. However, in 2009 after several appeals to the High Court, Kenya adopted the Merchant Shipping Act of 2008. Section 370(4) of the 2008 Act provides a more explicit grant of jurisdiction, providing that the piracy provisions of the 2008 Act shall apply "whether the ship…is in Kenya or elsewhere," whether the offenses were "committed in Kenya or elsewhere," and "whatever the nationality of the person committing the act" (Republic of Kenya, 2012, Section 370(4)).

Based on the UNCLOS 101 definition of piracy, Section 369(1) of Kenya's Merchant Shipping Act (Republic of Kenya, 2012) defines piracy as:

> 1. Any act of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed against (a) another ship or aircraft, or against persons or property on board such ship or aircraft; or against (b) a ship, aircraft, persons or property in a place outside the jurisdiction of any state.
>
> 2. Any voluntary act of participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft.
>
> 3. Any act of inciting or intentionally facilitating an act described in points 1 or 2.

With the passage of the Merchant Shipping Act seemingly clarifying Kenya's right to prosecute, two other jurisdictional issues surfaced during subsequent piracy trials relating to the use of video evidence and the location of the crime scene. First, the issue of video evidence was first raised in *Republic v. Kheyre* (2009) by the defense counsel for the accused. The argument was that at the time of the trial Kenya's Evidence Act allowed for the use of electronic recording media to record a confession, but the accused person had to be notified of such recording. However, the Evidence Act did not expressively discuss the admissibility in court of electronic recording media used as surveillance without the consent of the accused. Ultimately, the magistrate ruled that even though the investigation took place beyond Kenyan jurisdiction, and that parliament had not provided/legislated parameters for the acceptance of such evidence, the video evidence was admissible.

The second issue, prompted by the overwhelming reliance upon third-party testimonials and evidence during piracy trials, was whether a court could have jurisdiction over a crime in which there was no option to visit the crime scene. The defense counsel in *Kenya v. Haji* (2009) argued that Kenyan law requires the option for the defense, witnesses, and the jury to visit the crime scene to verify the existence of the location where the

crime took place, the existence of evidence, and demonstrate investigative procedures. The judge ruled that visiting the scene of the crime would not help, that it is known that the Gulf of Aden exists and suffers from piracy and that witnesses can attest to the fact that the ships exist, thereby, the court has jurisdiction over the case.

These jurisdictional challenges highlight the centrality of witness testimony and third-party video and photography as evidence in Kenya's piracy trials. Without physical confirmation of damage to shipping vessels, injury to crewmembers, or standardized arrest and evidence collection procedures, the judges put considerable trust in witness qualifications and credibility. Fear and urgency loomed over these trials as the Horn of Africa was experiencing an unprecedented amount of piracy attacks, seafarers were afraid to travel along regular maritime routes, and regional states like Kenya were asked to receive and bring to justice presumably dangerous foreigners. Uncertainty surrounded the investigative and legal processes (police did not have experience with maritime evidence and laws were being modified to establish jurisdiction and prevent acquittals), the identities and nationalities of the accused were unverifiable (most did not have identification documents and provided false names), and understanding what transpired at sea was pieced together by witnesses trying to make sense of what happened and naval personnel whose sole mission was to find pirates.

3. Judicial Proof and Fear of Crime

The Kenyan judiciary is based on the British court system but does not have a jury system. The three-tiered system consists of lower courts presided over by magistrates, the High Court presided over by judges, and a Court of Appeals (Kuria & Vazquez, 1991). The piracy trials were tried in the High Court of Mombasa giving the judge sole discretion over the verdict. Judicial discretion has long been critiqued as giving judges too much freedom as the sole decision-makers not completely bound by the standards established by another authority (Etcheverry, 2018). Judicial discretion also raises questions about whether judges "make" or "declare" law as they are invested with the power to uphold or overrule precedence and oversee the judicial proof process (Baude, 2020). The judicial proof process, the evaluation of evidence, is one of the most important aspects of judicial discretion. Judges evaluate the evidence under legislative instructions to determine its relevance and admissibility. The burden of proof underlies the evidentiary proof process and typically falls on the prosecution. According to Kenyan legal codes, the burden of proof in criminal cases falls on the state and the standards of proof are "beyond a reasonable doubt."

Socio-legal scholars have identified a shift in the process of establishing juridical proof through evidence from probabilism to plausibility. Conventional probability theory defines standards of proof as a threshold on a scale between certain truths and certain falsity. Numbers are assigned to the evidence to compare it with the standard of proof to determine admissibility. Critics of this theory argue that it is inconsistent with how judges (and juries) evaluate evidence and fails to account for how proof proceeds at trial (Allen & Pardo, 2019). Others have staunchly stated that there is no basis for and one cannot allocate mathematical probability to events (Anderson et al., 2005; Tribe, 1971).

The plausibility theory of evidence evaluation underscores the comparative aspect of the proof process by evaluating the relative plausibility of contrasting explanations of evidence. According to Allen and Pardo (2019), the explanatory proof process has two thresholds: the potential explanations of the evidence and

events and a comparison of these in light of applicable standards of proof. Thus, the judge must decide whether the explanation of the party with the burden of proof is at least slightly better, or more plausible than the explanation of the other party—plausibility serves as a yes/no criterion (Kolflaath, 2019). Relative plausibility better accounts for the reality that "facts" in evidence cannot be facts, as they are filtered through memory and credibility. Rather, they are products of drawing inferences and processing evidence, processes that are a measure of plausibility instead of certainty (Zhang & Cao, 2017).

The Kenya piracy trials, like subsequent piracy trials in the region, struggled to produce material evidence. Many of the ships that were the target of the piracy attack proceeded along their shipping routes, unable to be examined as evidence in court. Similarly, the pirate skiffs were either sunk or too damaged to pull into port. Thus, the state's evidence relied heavily upon video and photographic evidence provided by foreign navies and the testimony of witnesses who spoke of fearing for their lives as pirates approached and boarded their vessels. Kenya's only acquittal came on 5. November 2010, when 17 Somali men were found not guilty of allegedly attacking the MV Amira due to insufficient evidence to prove guilt beyond a reasonable doubt. The magistrate blamed the loss of the case on the US Navy neglecting to provide video and photographic evidence (Glenn, 2010). Witness testimony was often essential to substantiate video and photographic evidence that was too vague to provide clear identification of the men on a skiff. As witnesses recounted seeing skiffs of heavily armed men racing towards their vessels, they described their fear of assault and possible death.

Fear of crime is a well-studied phenomenon that is yet to be expanded to the context of maritime spaces and the crime of piracy. Geographers have explored fear of crime as it relates to place and space (Pain, 1997; Smith, 1987; Solymosi et al., 2021), sociologists have engaged with media, social problems, and measuring fear of crime (Callanan, 2012; Ferraro & Grange, 1987; Lewis, 2017), and criminologists have analyzed and theorized the role of victimization, risk perception, and neighborhood disorder in relation to fear of crime (Brunton-Smith & Sturgis, 2011; Jackson & Farrall, 2009). Three of the most widely employed theoretical models of fear of crime are vulnerability, disorder, and social integration. Each of these models provides a starting point for assessing the seafarer testimonials. The vulnerability model predicts that those who are unable to defend themselves will be more fearful. The disorder model states that neighborhood incivilities increase feelings of fear. Lastly, the social integration model focuses on the role of social capital, cohesion, and collective efficacy in inhibiting fear. A comparative study of the three models concerning different types of crimes found that the social integration model was the strongest predictor of fear of violent crime (Alper& Chappell, 2012).

Scholars have also studied the impact of collective efficacy on fear of crime. Similar to the disorder and social integration models, the existence of collective efficacy in communities serves as a protective factor against fear of crime (Camacho et al., 2022). Vulnerability is a key part of understanding why some people are more fearful of others becoming victims of crime. Perceptions of the likelihood of victimization, lower levels of perceived self-efficacy (control), and a higher perceived negative impact (consequence) increase the processes of fearing crime (Jackson, 2009).

Fear of crime is complicated and multi-dimensional. Ferraro and Grange (1987) were among the first to move beyond the situational aspects of fear of crime and explore the cognitive and emotional components. They argue that populations experience fear of crime differently, thus, perceived risk, and avoidance, as well as measures of emotional reactions to crime should be measured to inform programs that seek to remedy these problems. In a similar vein, psychological approaches to the study of fear of crime focus on a person's

perception of an event. Gabriel and Greve (2003) argue that for a state to be labeled as fear, one must consider affect, cognition, and motive. Not all indicators of fear are triggered by an acute fear situation. Rather, fear of crime may be dispositional. A study conducted by Hinkle (2015) teasing out emotional fear from perceived safety and risk revealed that there is a small subset of people who live in a constant state of fear.

4. Data and Methods

In the summer of 2022, the first author traveled to the High Court in Mombasa, Kenya to obtain copies of the piracy trial transcripts. The chief magistrate granted her permission to digitize the case files to create an electronic database for use by the Court, scholars, and legal practitioners. The case files, which were scheduled to be destroyed at the end of the year, were collected from a basement storage area that had recently succumbed to water damage and insect infestation. The chief magistrate provided a list of 18 piracy cases tried at the High Court of Mombasa, however, only eight case files could be located. Of the eight case files, approximately half were missing multiple sections. All documents in the case files that were not damaged beyond legibility were scanned over a period of one week. After scanning all the case files, the first author collated the documents into individual case file PDFs and emailed the electronic copies to the chief magistrate as agreed upon.

This study employs an iterative thematic content analysis of over 1,000 pages of eight piracy trial transcripts. In the first step, authors read through the documents individually to familiarize themselves with the trials. The team then met to discuss and create initial codes for open coding. The team agreed upon the initial codes of violence, weapons, fear, human rights, and representation. Next, each author individually recoded the documents. The results of the initial codes were then grouped into themes according to their similarities: human rights, jurisdiction, and evidence. In the final step, the authors independently extracted all quotations that corresponded to a theme of the analysis. The following section focuses on the theme of evidence.

5. Select Piracy Trials

Judicial proof and witness testimony of fear of victimization coalesced to establish guilt in all but one of the piracy trials tried in the High Court of Mombasa. The following sections highlight excerpts from select piracy trials to explore how material evidence (weapons) and how the witnesses felt about those weapons (fear) became plausible explanations for convicting defendants of piracy. The statements are direct quotes from the transcripts made during the questioning and cross-examination stages or when judges were delivering the judgment.

5.1. Republic of Kenya v. Said and Six Others (Criminal Case No. 1184, 2009)

Seven suspected pirates allegedly attempted to attack the German naval supply ship (mistaking it for a cargo ship) on 29 March 2009 on the high seas. The German naval forces interdicted the piracy suspects and handed them over to Kenya for prosecution on 7 April 2009. The case was determined on 6 September 2010 and the accused were each sentenced to serve five years in jail. Like many of the piracy trials conducted at the High Court of Mombasa, the judge invoked *piracy jure gentium*, where actual robbery is not required—the accused do not necessarily board, capture, or take control of the piracy vessel. Rather, proving beyond a

reasonable doubt that an attempt or a frustrated attempt to commit piracy took place is sufficient grounds for conviction.

Testimony from Stephen Rohde, the chief engineer aboard the Spessart, and Jan Cordes, a private security personnel, describe the event as the piracy suspects approached the target vessel:

> One was aiming at Spessart with a weapon. The weapon he was carrying was a weapon that is large[r] than a pistol. It was aimed at Spessart. Several shots were fired from the boat. Alert was raised in our ship that we get into the ship and get under cover. The shots were aimed at Spessart. (Stephen Rohde, chief engineer, Spessart)

> It was approaching the Spessart and I had seen a person holding a long barrel weapon aimed at the Spessart and shortly shots were fired, the shots were fired by one of the person in the skiff. I can't say how. (Jan Cordes, private security personnel, German Naval Protection Forces)

Both men recount seeing at least one of the accused holding a weapon and hearing shots fired as the skiff approached the Spessart. The crewmembers aboard the Spessart took cover and resumed their position to pursue the suspected pirates, eventually apprehending them. In cross-examination, Mr. Magolo, the defense counsel for the accused, raised the issue with the witnesses' testimony for its lack of clarity and physical evidence:

> There were shots he could not tell the direction they came from. They persuaded the boat and apprehended it. There was no evidence of an attack. The witnesses did not know what direction the shots came from and the Spessart was not hit. (Mr. Magolo, defense counsel for the accused)

The Court was not able to visit the Spessart to assess any damage, nor was there photographic evidence of damage caused by bullets. Photographic evidence presented during the trial did show the accused in their skiff with one holding a rocket-propelled grenade (RPG) pointed at the Spessart. Although the defense counsel argued that whether the accused fired at the Spessart was unverifiable due to a lack of physical evidence, the presiding judge disagreed.

Honorable R. Mutoka found that the testimonies from the six witnesses aboard the Spessart corroborated the photo evidence and the RPG recovered from the skiff. The judgment states:

> As the Spessart moved towards it, it started moving at high speed towards the Spessart and Cordes who had his binoculars saw one of its occupants holding the rocket-propelled launcher on his shoulder and it was trained on the Spessart and at the same time, shots were fired at Spessart….There is no evidence to discount the photos (Exb. 1) taken by Cordes (PW7) as the skiff approached their boat showing clearly a person on the said skiff holding the RPG which RPG was recovered from the very same skiff…The evidence that I have considered above shows clearly that the firing at the Spessart caused the crew to fear and return fire at the same time sending an SOS to the other ships….Each one of them is found guilty as charged and is convicted accordingly. (R. Mutoka, High Court judge)

The judge's statement provides an example of a plausible explanation in action. The explanation of the event provided by the state's witnesses was deemed credible and plausible given the photographs of the men in the

skiff holding their weapons and the RPG recovered at the site. Given that there was no counter-evidence to support the defense's explanation that the accused were fishermen, the judge found the defendants guilty. Notably, the judge references the crew's "fear" as a central factor in the ruling. Whereas Kenya's legal definition of armed robbery includes "threats" as an identifiable component of the criminal act, the definition of piracy does not. The phrase "causing them to be in fear" continued to emerge in subsequent piracy trials despite this being identified in Kenya laws as an actionable offense.

5.2. Republic of Kenya v. Kheyre and Six Others (Criminal Case No. 791, 2009)

The offense was said to have been committed on 11 February 2009 at about 2.20 PM on the high seas of the Indian Ocean, when jointly being armed with offensive weapons, the accused attacked the MV Polaris and at the time of such act "put in fear the lives of the crewman" on said vessel. The MV Polaris, under attack, communicated with the US Navy who proceeded to intercept and take videos of the weapons and grappling hook. The accused's skiff was destroyed because it could not be airlifted by helicopter. The RPG was not test-fired. During the trial, the state presented 11 witnesses. Most were members of the US Navy who came to assist the MV Polaris during the attack, and one was Jojie Dugelia, a duty watchman of the MV Polaris. Dugelia recounted his interaction with the suspected pirates as they pulled alongside the vessel:

> One was holding an automatic rifle AK 47. Two were standing others were sitting. The one with the rifle was standing pointing at me. The rifle had a magazine at the time. He pointed at me with the finger and he was signaling me to lower the ladder. The other was pointing the rifle at me. I got scared I ran to the accommodation side. (Jojie Dugelia, duty watchman, MV Polaris)

Dugelia describes being singled out by the accused who "pointed a finger" at him to lower the ladder so they could board and take control of the vessel. His proximity allowed him the ability to identify the gun as a rifle AK 47 loaded with a magazine, which was later collected as evidence. Despite his stated fear, Dugelia was able to run to the bridge house, take control of the wheel, and steer the ship away as the suspected pirates attempted to board the vessel. While this transpired, the US Navy answered the distress call and arrived on the scene. Getlemert Murtha, an officer with the US Navy, corroborated Dugelia's story stating:

> I was on the bridge all along. I saw them pull out several AK 47's and a grappler hook. I see a photo of the grappler hook they removed other things but I was too far to ascertain what it was. I did see the RPG a grappler hook is used to climb up the side of a ship. (Getlemert Murtha, officer, US Navy)

Murtha not only confirmed seeing the accused in possession of the weapons, but he also provided testimony that he did not see any fishing equipment on the accused's skiff, refuting the defense's argument that the accused were fishermen. He later testified that by the time the US Navy arrived to record his statement, he was still in fear. Sebson Wandera, assistant commissioner of the Kenyan Police, also testified that he had been shown a video of what took place and described: "They [suspected pirates] were armed and they put the sailors in fear and they commanded hurried the ship from where it was going to another direction." The presiding judge, Honorable R. Odenyo found the State's explanation more plausible than that of the defense. In his judgment, he asserts:

> I reject the position that the accused were out fishing as they say. I find that they were up to something else other than fishing and PW2 provided the answers as corroborated by PW1, 3, 4, 5, 7,

> and 10….When the accused's account is weighed against the prosecution's I have no doubt in my mind that the prosecution's account is the correct one. I reject the position that the accused were out fishing as they say. Prosecution's witnesses recovered weapons. Ultimately, the prosecution has succeeded beyond a doubt in proving that the accused guilt of the offense of attempted piracy. They are all convicted. (R. Odenyo, High Court judge)

The judge finds the accused guilty of *piracy jure gentium* based on the recovery of weapons and testimony that the accused were seen brandishing the weapons. Together, this proof was more plausible than the defense's explanation that the accused were out fishing, particularly because a witness testified that no fishing gear was found on the skiff.

5.3. Republic of Kenya v. Ali and Ten Others (Criminal Case No. 1374, 2009)

The particulars of the charge were that on 14 April 2008, on the high seas of the Indian Ocean, the defendants, being armed with offensive weapons (AK 47 and RPG launcher), attempted to highjack the merchant ship Safmarine Asia thereby putting in fear the lives of the crewmen of the attacked vessel. After three attempts, the assailants abandoned their mission. The 11 suspected pirates were interdicted by the Spanish naval forces on 15 April 2009 and handed over to Kenya on 22 April 2009 for prosecution. The case was determined on 29 September 2010 and the accused were each sentenced to serve five years in prison.

The state's only witness of the purported attack was the captain of the Safmarine Asia, Myat Soe. Captain Soe recounts the pirates' second and third attempts to attack his vessel:

> The pirates then tried to board our ship from the left side using a ladder. I turned to the right side and they failed again. Then they retreated again to their bigger goat. Thereafter they came again for the third time. Then they shot at us using AK 47 rifles. Then they shot at us using RPGs. They hit the main mast of our ship with the RPG. They damaged it a bit. (Myat Soe, captain, Safmarine Asia)

He later recalls that he did not see the shots being fired but heard them. There was no photographic evidence produced of the damage to the vessel nor was the vessel made available to the court as evidence. The state produced four AK 47 rifles, three knives, and 199 rounds of ammunition as evidence. The defense counsel criticized the state's lack of evidence in his closing remarks:

> Only one witness was called by the prosecution to testify on the attack on Safmarine Asia. That was the captain of the vessel. He said this vessel was attacked with a RPG. He said he heard what appeared to be AK 47. He did not see anyone fire any AK 47. His evidence is that the mask of his ship was damaged. The accused are not accused of having offensive weapons like a RPG. (Mr. Muyundo, defense counsel for the accused)

As the defense counsel points out, the state's evidence did not include an RPG, which was purportedly the cause of the damage to the ship's mast. Nor did the state enter proof of damage to the mast. Rather, the only evidence of damage to the ship was the captain's testimony. Similarly, none of the weapons produced were shown to have been fired. Despite the defense's best efforts to discredit the evidence or lack thereof, the judge was not convinced. Referring to the consistent evidence and timeline, the fact that the assailants'

ship had been constantly monitored from the time of the attack until the time of the arrest, and the plausible testimony of the witnesses that they were in fear, the court found it proved beyond reasonable doubt that the defendants had committed an act of piracy contrary to Section 69(1) and 69(3) of the Penal Code.

6. Conclusion: Affective Dimensions of Justice

Affective governance was first introduced by Dewey et al. (2019) to explore how affect modulates the relationship between street-involved women and social service and healthcare providers. Their findings conceptualize how the state and institutional actors draw upon affect to construct particular subjectivities as desirable or deviant. In this study of Kenyan piracy trials, we see a convergence of actors (military, legal, media, and witnesses) create a circuitry of affect, a feedback loop, that has helped to institutionalize fear of pirates as strong supporting evidence of guilt within the maritime justice regime. The Kenya trials evidence affective dimensions of justice at work and situated in various affective nodes along this circuitry, namely in the media, on the ocean, of selfhood, and in the courtroom. The media's framing of pirates as violent criminals and the ocean as a dangerous space invoked fear among the public. This fear became a daily lived reality for seafarers who now felt afraid of crossing maritime routes suspected to be at high risk for piracy attacks. Seafarers who experienced the trauma of a piracy attack reported struggling with feelings of fear and vulnerability that they continued to carry with them long after the event. The courtroom becomes a space where these fears are institutionalized into legal processes. Fear is recounted and validated through testimony, tipping the scales of relative plausibility in favor of the state, and eventually becoming institutionalized in judicial rulings as evidence of piracy even in the absence of an attack.

Fear alone did not elicit a guilty verdict. However, admission of fear along with the presence of weapons and Somali men near ships, was enough to rule in the state's favor. For example, most piracy cases tried at the High Court of Mombasa demonstrate several things. First, the presence of weapons on board the accused's skiffs along with testimony from a witness that they saw the accused holding the weapons or a photograph of the accused holding the weapons constitutes *piracy jure gentium*. Piracy trials conducted in the Seychelles used a similar process for identifying someone as part of a Pirate Action Group, a non-legal term for markers commonly believed to be associated with piracy. Larsen (2023) describes how certain "piracy paraphernalia" served as markers such as weapons, hooked ladders, and large amounts of fuel and water. Unlike the Seychelles trials, the term Pirate Action Group was not explicitly used in the Kenya trials. Second, evidence of the accused firing or having fired the weapons is not necessary to prove guilt. There were no photos of the weapons being fired, no physical evidence of the target vessels being fired upon, and no tests conducted to verify if the weapons were fired. Third, affect, or more specifically the crew's fear, became a central factor during testimony and re-engaged during the judges' rulings.

The evidence allowed into the Kenya piracy trials was often challenged on grounds of authenticity (video surveillance and photos) or jurisdiction (whether Kenya has the authority to use evidence submitted by external states) but there was no evidence from the trial transcripts that any evidence was ruled inadmissible. Instead, the state and defense were tasked with providing plausible explanations for all evidence submitted during the trial phase. The defense, unable to visit the crime scene, was unable to produce evidence and struggled to counter the state's facts of the case. It is unsurprising then, that the judges continually found the state's explanation at least "slightly better," or more plausible, than the defense's. Accordingly, the evidence evaluation process in Kenya's piracy trials demonstrates relative plausibility in action and is useful

in understanding how judicial discretion works in trial contexts involving multiple jurisdictions, a myriad of investigatory practices, and evidentiary challenges. It also reveals the judicial power states possess in maintaining order at sea, regardless of geographic location, when they enter into MOUs to prosecute piracy.

The trials also reveal how fear reverberates across various affective nodes and seeps into the minutiae of maritime justice. As the court proceedings were taking place, the moral panic of piracy was infiltrating media outlets across the globe, motivating state navies to create coalition forces, the UN established its first office dedicated specifically to countering maritime piracy, seafarers once hardened to the labor-intensive life at sea now feared routes through the Gulf of Aden and the Indian Ocean. Fear of crime theory demands we inquire more deeply as to whether their fear was event-specific or perhaps generalizable to specific maritime spaces, whether those who had private security on board felt less vulnerable and fearful, or the possibility that they had come to conflate all Somalis with stories of violent, dangerous criminals. The high seas have long been associated with lawlessness and disorder, compounded by the inability to defend oneself can understandably increase a seafarer's fear of violent victimization. In the Mombasa trials, perhaps more so than the Seychelles trials, the presence of fear was the glue that held together hearsay testimony and circumstantial evidence to make the state's recounting of events more plausible than that of the defense. Considering Kenya (and the Seychelles) has received a lot of capacity-building support and funding to ensure that the piracy trials satisfy the highest human rights and international legal standards, it is imperative for scholars to study these trials and better understand their broader socio-legal implications.

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Conflict of Interests

The authors declare no conflict of interests.

Data Availability

Piracy trial transcripts are available at http://bvandeberg.people.ua.edu and made publicly available with the permission of Chief Magistrate Honorable Martha Mutuku.

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Power Relations and Maritime Justice: An Exploration of UNCLOS Negotiations

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Abstract

This article offers a novel perspective on the interplay between power relations among states and maritime justice by exploring various manifestations of power during negotiations for the United Nations Convention on the Law of the Sea (UNCLOS). Here, UNCLOS is perceived as an agent of maritime justice insofar as the Convention's delimitation of maritime zones lays the foundation for establishing the rights and obligations of states in addressing maritime crime and insecurity. It employs Barnett and Duvall's (2005) taxonomy of power to analyse how key contentions during UNCLOS negotiations were reflective of various forms of power. The discussion reveals that compulsory, institutional, structural, and productive power significantly influenced UNCLOS provisions, often favouring developed states but occasionally benefiting developing nations through collective action. This analysis contributes to a deeper understanding of how power relations among states in the global order can shape the formation of international legal instruments and consequently influence their role as agents of justice.

Keywords

maritime legal framework; maritime justice; power relations; UNCLOS

1. Introduction

The United Nations Convention on the Law of the Sea (UNCLOS, 1982) stands as the most comprehensive legal instrument governing the world's ocean space. Four decades since its inception, the foundation laid by UNCLOS in establishing sovereignty and sovereign rights over the ocean space through its delimitation of maritime zones and its regime of flag state jurisdiction continues to shape regulation and enforcement against maritime crimes and threats.

The Convention's centrality extends to other international legal instruments governing the global maritime space, including the 1995 Agreement for the Implementation of Provisions of UNCLOS Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish, the 2005 Protocol to the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and the 2023 Agreement under UNCLOS on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction (BBNJ Agreement).

This article posits that UNCLOS, forged through complex negotiations, embodies the interplay of power and competing interests between developed and developing states (Moraes, 2019). Examining the Convention's negotiation process unveils how broader power relations within the international legal order shaped the provisions of a convention that remains relevant to addressing maritime crimes today. The article presumes that in establishing a maritime legal regime, UNCLOS is an agent of maritime justice, aligning with O. O'Neill's (2001) pluralistic view of justice agents. Through this lens, the article argues that the power relations between states that manifested during UNCLOS negotiations were not merely incidental, but crucial in shaping the very essence of maritime justice. To elucidate the multifaceted nature of power dynamics at play, the article employs Barnett and Duvall's (2005) taxonomy of power, which offers a unique framework for understanding how various forms of power permeated and influenced the negotiation process.

The article adopts perceptions of the global order as constituted by binaries—developed versus developing states, advanced versus emerging states, and rich versus poor states (Eslava & Pahuja, 2012). In doing so, it explores how contestations during UNCLOS negotiations between developing states, as weaker actors and developed states, as powerful actors within the global order, shaped the formation of the Law of the Sea.

The article's exploration of power relations during UNCLOS negotiations is threefold: it analyses how these relations influenced negotiation modalities, provisions concerning territorial and sovereignty limits, and provisions on the governance of maritime areas beyond national jurisdiction. These three instances are considered because they underpin the Convention's role in providing a framework for addressing illicit maritime activities within and beyond the jurisdiction of states.

This study builds upon existing literature on power relations in the international legal order and justice concerning the ocean space in two progressive ways. It places the global maritime legal framework at the centre of existing debates about power relations, facilitating a more holistic appreciation of the relationship between maritime justice and power. In aligning with an understanding of maritime justice as positioned at the nexus of illicit maritime activities and regulatory responses (Larsen, 2024), the article extends the discourse on justice to UNCLOS' role in regulation and enforcement against illicit maritime activities. Both contributions are important because the impact of power shifts on the global maritime legal framework requires further scholarly analysis, given the escalating importance of UNCLOS in the wake of evolving power relations among states (Seo, 2024).

The article begins by examining relevant concepts of power, with an emphasis on Barnett and Duvall's (2005) taxonomy. This theoretical framework provides the analytical lens through which it scrutinises the nature of power relations during UNCLOS negotiations. The subsequent section develops an understanding of maritime justice and elucidates the agency of UNCLOS in maritime justice. Building on these theoretical underpinnings, it then delves into specific aspects of UNCLOS negotiations that were markedly influenced by power relations.

This core analysis reveals how these relations shaped the resulting provisions, offering insights into the broader implications for maritime justice. The article concludes with a synthesis of its findings and a proposition of avenues for further research.

2. Relevant Concepts of Power

Many definitions of power adopt realist conceptions that emphasise control over material resources and their deployment to influence other states' actions (Dahl, 1957; Modelski, 1974; Schmidt, 2005; Singer & Small, 1966). However, there has been a progressive transition to multidimensional understandings of power, recognising that the complex social interactions in the global arena necessitate a shift from purely materialist interpretations (Barnett & Duvall, 2005; Coleman, 2017; Hart, 1976). Barnett and Duvall (2005, p. 45) embraced this adoption of the relational by elaborating a multifaceted taxonomy of power, which considers power as the "production, in and through social relations, of effects on actors that shape their capacity to control their fate."

They categorised power along two main dimensions: the social relations through which power operates and the directness or diffusion of effects that influence actors' capacity for self-determination. In the former, power manifests through specific actor interactions, where individual attributes can be deliberately deployed to shape others' actions or conditions, and through constitutive social relations, wherein the interactions between actors influence the formation of particular types of agents and their potential actions. In the latter, the effects of power can be spatially, temporally, or socially immediate/direct or diffused/indirect.

The intersection of these dimensions yields a foundational matrix of power forms. *Compulsory power* emerges when an actor directly influences others' actions or circumstances and is aligned with most realist conceptions of power. However, Barnett and Duvall (2005) expand this concept beyond the deployment of material resources to encompass symbolic and normative resources. This could be exemplified by NGOs leveraging principles of justice to influence state policies or less powerful UN members utilising legal norms to constrain dominant actors. *Institutional power* operates through formal and informal institutions that mediate inter-actor relations. Here, Barnett and Duvall (2005, p. 51) focus on instances where one actor, "working through the rules and procedures that define those institutions, guides, steers and constrains the actions…and conditions of others." *Structural power* encompasses forces that determine social capacities and interests, potentially influencing actors' self-perception. This could mean they fail to recognise their own dominance or accept existing conditions as immutable. *Productive power*, while similar to structural power, manifests through more diffused spatial, temporal, or social interactions. It encompasses social processes and knowledge systems that produce, establish, or transform meanings.

These forms of power are inherently interconnected and often mutually reinforcing. Although Barnett and Duvall's taxonomy addresses the relationship between social context and actors' actions (the agent-structure duality), it does not explicitly address the measurement of power. Baldwin (2013) further critiques it for excluding persuasion, mutual-gain cooperation, and power relations where one actor's power advances another's interests. These critiques pose minimal constraints for the current analysis. The primary objective is not to quantify power but to illuminate the multifaceted ways in which power asymmetries and relations influenced the UNCLOS negotiation process. Moreover, while Barnett and Duvall (2005) originally excluded persuasion and cooperation for mutual gain, this analysis does not disregard them. Persuasion

could be interpreted as a form of compulsory power if an actor influences a peer of comparable standing to voluntarily make decisions that may compromise their interests, drawing from non-material resources such as superior rhetorical or linguistic capabilities. Additionally, mutual-gain cooperation may still be permeated by more diffused forms of power, such as structural and productive power, if they shape perceptions of mutual benefit, even when outcomes disproportionately favour certain actors over others. The taxonomy's strength therefore lies in its ability to capture both overt and subtle forms of power, making it particularly suited to analysing complex multilateral negotiations where influence is exercised through various channels.

The analysis also finds an intersection between Barnett and Duvall's taxonomy and other realist conceptions of power as control over resources, where the discussions that follow refer to "developed" states or "great powers" as more powerful actors versus "developing" states as weaker actors in the global order (explicated further in the next section). The use of these terms in this article does not presuppose that the states in question have continued to fit into the same categorisations post-UNCLOS negotiations.

3. Towards an Understanding of Maritime Justice

The concept of justice, rooted in the Latin word jus meaning right or law, has been a subject of philosophical inquiry for centuries (Beitz, 1975; Cook & Hegtvedt, 1983; Rawls, 1971; Seo, 2024). Within the context of maritime governance, debates on justice have traditionally focused on areas such as the equitable distribution of marine environmental resources and issues surrounding the morality or immorality of their exploitation. More recently, scholarship has introduced the concept of "blue justice," which primarily examines the access, use, and management of oceanic resources, often with a focus on fisheries. This emerging field represents a "bluing" of existing environmental and social justice concepts, adapting them to the specific challenges of maritime domains (Bennett et al., 2021; Chuenpagdee et al., 2022; Ertör, 2023; Jentoft & Chuenpagdee, 2022; B. F. O'Neill et al., 2024).

These conceptions of justice are, no doubt, highly relevant to the maritime governance agenda and offer vast permutations for exploring overlaps between justice and power. However, rather than being constrained by social or environmental justice frameworks, this article aligns with Larsen (2024) in conceptualising maritime justice as a "composite term," encompassing the broad ways in which laws, regulations, and legal principles are applied in addressing illicit maritime activities and other maritime governance concerns.

This conceptual choice is grounded in the understanding that justice does not occur in a vacuum but is delivered through robust legal frameworks and institutions (Groff & Larik, 2020). As Miller (2023, p. 4) aptly notes, "it is a characteristic mark of justice that the obligations it creates should be enforceable." Larsen (2024), also positions law enforcement at the core of the maritime justice inquiry. Building on these insights, this article proposes—perhaps unconventionally—that international legal frameworks like UNCLOS can function as agents of justice.

This perspective resonates with O. O'Neill's (2001) assertion that multiple and diverse agents of justice can coexist. While O. O'Neill (2001) primarily assigns such agency to legal and juridical persons, they also identify primary agents of justice as those that "may assign powers to and build capacities in individual agents, or…may build institutions…with certain powers and capacities to act" (p. 181). UNCLOS meets these criteria in establishing and assigning powers to institutions such as the International Seabed

Authority (ISA), the International Tribunal for the Law of the Sea, and the Commission on the Limits of the Continental Shelf.

Furthermore, UNCLOS' role at the nexus of illicit maritime activities and regulatory responses is twofold. First, its sovereignty regime empowers coastal states to effectively address maritime crimes within their territorial waters. Second, the Convention establishes guidelines for addressing criminal activities in areas beyond national jurisdiction (Usman et al., 2021). This is accomplished through its regime of flag state jurisdiction and the obligation placed on states to cooperate in combating specific illicit activities such as piracy (Article 100), drug trafficking (Article 108), and the transportation of slaves (Article 99).

This new understanding of UNCLOS offers a more direct pathway to exploring the relationship between power and maritime justice; viz, examining how power relations between states shaped the formation of arguably one of the most central agents of maritime justice. It also transcends conventional interpretations of UNCLOS as solely a legal framework and positions the Convention as a manifestation of complex power negotiations with profound implications for maritime justice.

4. UNCLOS Negotiations: A Contentious Affair

4.1. Setting the Scene

UNCLOS was negotiated through three UN Conferences on the Law of the Sea (UNCLOS I, II, and III). Despite resulting in four instruments known as the 1958 Geneva Conventions, UNCLOS I (held from 24 February to 27 April 1958) failed to establish a lasting regime of the Law of the Sea (Joyner & Martell, 1996). Furthermore, it did not duly consider the needs and interests of African states, several of which were either newly independent or still colonised. Only six African states participated in UNCLOS I: Ghana, Liberia, Libya, Morocco, South Africa, and Tunisia (UN, 1958a). UNCLOS II (held from 17 March to 26 April 1960) was considered even less successful due to disputations, resulting in no decisions on substantive matters such as the breadth of the territorial sea and fishery zones, although two resolutions were adopted in its Final Act (UN, 1960).

At the time of UNCLOS III negotiations, held between 1973 and 1982, several Western European states and states of European colonial origin that had achieved significant industrialisation and global influence were considered "developed." Consequently, based on the notion of power-as-resources, they were perceived as more powerful actors in the international arena. These included the UK, the US, the USSR, France, Germany, Italy, the Netherlands, Sweden, Norway, and others. A number of developed states were also considered great powers—a fluid term that encompassed states in a given era whose economic and political policies dominated world affairs (Stevens, 1952), or who had the most military might (Baldwin, 2013). At the time of the Convention, the term was largely used to refer to four of the five permanent members of the Security Council who had played a crucial role during World War II and in its aftermath: the UK, US, USSR, and France.

In contrast, several African, Latin American, and Asian states were considered "developing" based on their colonial or neo-colonial status, weak economic integration, and low levels of industrial and technological advancement. Consequently, these states were perceived as weaker actors in the international system. Despite having permanent membership in the Security Council, China was not generally considered a great power (DeConde, 1953) and often aligned with developing countries during negotiations.

The negotiations, thus, unfolded against a multifaceted geopolitical backdrop, characterised by the lingering effects of colonialism and the emergence of newly independent states seeking to reshape the international order. In his opening remarks at the first plenary meeting of the Conference, the UN secretary-general acknowledged that it was "the first Convention on the subject since the accession to independence of a large number of developing countries, a fact which gave it a very particular and historic significance" (UN, 1973a, p. 1). The negotiations offered these states a crucial opportunity to influence the formation of a more equitable global order (Armstrong, 2024).

According to Meyer (2022, p. 155), developed states shared a "distinct sense of cynicism towards their formal colonies and their eagerness to shape decision-making in the international arena." Although the Cold War had bifurcated global politics into "the East" (representing the USSR and its allies) and "the West" (representing the US and its allies; Brzezinski, 1991; McMahon, 2021; Schlesinger, 1967), developing states' numerical strength posed a greater challenge to both blocs than their ideological differences (Cheever, 1984). In fact, the US and USSR had similar views on several matters of the Convention (Armstrong, 2024).

Perhaps most troubling for their developed counterparts was that developing states started working in unity. Seventy-five UN member states had established an informal working group intended to press for the interests of developing countries during the first UN Conference on Trade and Development. Later, three states joined the group and New Zealand left, bringing its membership to 77 states. From that point on, the group was referred to as the Group of 77. The formation of negotiating blocs added a significant layer of intricacy to the effects of actor power. Banded together, African states in regional or ideological blocs such as the Africa Group or Group of 77 introduced the dynamic of collective action. With African states having the power in numbers to tip the scales in favour of developing countries, negotiations required a delicate balancing of competing interests to ensure that the provisions would be acceptable to all parties.

4.2. The Rules of Procedure

Contentions between developing and developed states were reflected in deliberations concerning terms of negotiations. One controversy lay in the "Gentleman's Agreement"—a declaration approved by the General Assembly during its 28th session and 2169th meeting, which was held to convene the Conference on 16 November 1973. The declaration required that decisions on all substantive matters at the Conference be taken by consensus (UN, 1974a, p. 80).

Despite the declaration, the path towards consensus was hardly a straightforward one. Its weakness was particularly highlighted when a debate sprung up between developing and developed states on the allocation of seats on the conference committees. Amidst a controversy surrounding whether one of the seats allocated to the Western European Group was meant for the US, several African countries, including Ivory Coast, the Republic of Tanzania, Tunisia, Senegal, Kenya, and Uganda argued that Africa was underrepresented in the General Committee of the Conference (UN, 1973b) and that they had agreed to make concessions despite a "lop-sided" formula (UN, 1973b, p. 7). The expectation then, was that the Western European group should also be willing to compromise.

Debates on this continued well into the fourth plenary session, during which China emerged as an advocate for the principle of "one state, one seat." Insisting that the principle was supported by the Asian, African, and

Latin American groups, they stated that no country, however powerful, should enjoy a privileged position at a global conference. Furthermore, China argued that only "super-powers" were asking for more than one seat at the Conference (UN, 1973c, p. 9). Unsurprisingly, this position met resistance from the great powers. The USSR countered by invoking historical precedent, asserting that permanent members of the UN Security Council had consistently been granted multiple seats in past international conferences, both on the General Committee and the Drafting Committee. This argument was supported by fellow permanent UN Security Council members France and the US.

Despite the numerical majority of African, Asian, and Latin American groups supporting the principle of "one state, one seat," progress was significantly impeded by the consensus principle. The US, the USSR, and France continued to oppose this procedural rule, effectively stalling decision-making. By the fifth plenary, the paralysis induced by the consensus principle became a point of contention, with Algeria and Venezuela advocating for a democratic vote to break the impasse. At the sixth plenary, a compromise was reached: no state would be represented on more than one main organ of the Conference. Subsequent plenary debates, however, suggest that this decision may not have been strictly adhered to by the USSR.

The insistence on consensus by developed states, particularly the US, USSR, and France, was a strategic response to the overwhelming numerical strength of developing countries. The USSR articulated this stance emphatically, stating that "no group of states should be allowed to impose its views on others by means of a simple majority" (UN, 1973d, p. 16). After facing strong opposition from the great powers, developing states had to concede to the Gentleman's Agreement, which was added as an annex to the rules of procedure ('United Nations: Rules of Procedure for the Third UN Conference on the Law of the Sea', 1974, p. 1209). By agreeing to consensus-based decision-making, they traded the potential for majority-rule victories for the promise of a more widely accepted convention.

4.3. Negotiating Provisions on Territorial/Sovereignty Limits

The debates on the limits of territorial seas during UNCLOS III were the culmination of a long-standing juridical evolution concerning maritime jurisdiction over offshore offences (Fenn, 1926). While ancient maritime nations had rudimentary concepts of coastal water jurisdiction (Florsheim, 1970), the codification of territorial sea limits in the Law of the Sea became one of the most disputed issues in the emerging international maritime law. The disputation largely stemmed from states' dual, often conflicting interests: ensuring freedom of navigation and maintaining authority over adjacent coastal waters (Reeves, 1930).

In the lead-up to UNCLOS I, several states submitted comments on draft articles adopted by the International Law Commission, including provisions on territorial sea limits. Developed states, many of which were major maritime powers, typically advocated for limits not exceeding six nautical miles (nm). Denmark, Sweden, and Norway adhered to a four-nautical-mile limit in practice, while the Netherlands and the UK supported a three-nautical-mile limit (UN, 1958b). The UK argued that "the true interests of all nations are best served by the greatest possible freedom to use the seas for all legitimate activities" and warned that extending territorial seas beyond three nautical miles could create significant challenges (UN, 1958b, p. 101).

In contrast, developing states such as Chile, India, and Yemen supported the legality of a 12nm limit, while others like Peru believed that given the absence of uniform practice, each state should be able to establish its

own territorial waters within reasonable limits, taking into account a variety of factors, including geographical and biological factors, the economic needs of its population, security, and defence.

By UNCLOS I, the US, which initially sought to establish a three-nautical-mile limit as a rule of international law, revised its position to propose a maximum territorial sea breadth of six nautical miles, coupled with an additional six-mile zone for exclusive fishing rights, with restrictions regarding historical fishing rights of other states (UN, 1958a). Their proposal was framed as a *very* reasonable compromise, developed based on their desire to accommodate other state interests. The UK offered strong support for this position, while France provided qualified backing, contingent upon other states' renunciation of claims beyond six nautical miles.

When the US proposal was put to a vote, several developing countries, including Ghana, Thailand, India, Pakistan, Cuba, and Cambodia, voted in favour of it to advance the negotiations, although some had strong reservations. Ghana, in particular, expressed concerns, noting that less-developed countries would be disadvantaged in accessing traditional fishing grounds under the US proposal, while historically dominant fishing nations would continue to exploit their resources. Peru echoed this sentiment, opposing the proposal for enabling uncontrolled fishing activities near coastal states without their consent.

Despite these challenges, several developing states pressed for the 12nm limit and in some cases, more. A number of Latin American states, including El Salvador, pushed for a 200nm limit; and in one of its draft text submissions, Nigeria proposed a 50nm territorial sea limit. By UNCLOS III, however, the 12nm limit had almost crystalised as the most judicious compromise. Debates about the breadth of the territorial sea were overlayed with a new concept that had also slowly gained traction: the Exclusive Economic Zone (EEZ). The EEZ concept offered African and other developing states an opportunity to push for sovereign rights over marine resources without extending the breadth of the territorial sea.

In May 1973, the Organisation of African Unity stated in its Declaration on the Issues of the Law of the Sea the recognition of the right of African coastal states to establish an EEZ beyond the limits of their territorial sea (International Legal Materials, 1973). Led by Kenya, a group of African nations, including Algeria, Cameroon, Ghana, Ivory Coast, Liberia, Madagascar, Mauritius, Senegal, Sierra Leone, Somalia, Sudan, Tunisia, and Tanzania submitted draft articles on the EEZ to the UN Committee on the Peaceful Uses of the Seabed and the Ocean Floor beyond the Limits of National Jurisdiction for consideration at UNCLOS III (UN, 1973e). Other submissions came from countries such as Uganda, Zambia, Pakistan, China, India, Sri Lanka, Argentina, Colombia, Mexico, and Venezuela, further cementing the concept of the EEZ.

Ultimately, a compromise was reached: a coastal state's territorial sea would extend 12nm from its baseline (Article 3 of UNCLOS). Beyond this, a series of other maritime zones were established. These included an EEZ extending up to 200nm from the baseline (Article 57), where coastal states would have exclusive rights for resource exploration and exploitation.

4.4. Negotiating Provisions on Governance of the Areas Beyond National Jurisdiction

The delimitation of territorial seas under UNCLOS set the stage for debates on governance in areas beyond these newly defined jurisdictions. A pivotal moment came in 1967 when Arvid Pardo, Malta's Ambassador to the UN at the time, proposed that the deep seabed and ocean floor beyond national jurisdiction be designated

as the common heritage of mankind (CHM; UN, 1967). This proposal aimed to ensure that wealth from these areas would help narrow inequalities between developed and developing states. The CHM principle gained significant traction among developing countries, who saw it as a means to secure their interests in areas they lacked the technological capacity to exploit.

Developed states, led by the US, argued that greater regulation of activities in the seabed would result in disproportionate economic losses to the global community. The US position emphasised that a secure investment climate would be essential for successful sea-bed mining operations. Rather than endorsing the CHM principle, the US proposed several articles concerning mineral resource exploitation in "the international sea-bed area" (later referred to in UNCLOS as "the Area") as a draft appendix to UNCLOS (UN, 1974b).

Developed and developing states also differed in their opinions about the institutional framework governing the deep seabed. Developed states, especially the US, largely wanted the ISA—established later in Article 156 of UNCLOS to organise and control activities in the Area—to have limited powers. On the other hand, the Group of 77 advocated that all rights in the resources of the Area be vested in ISA on behalf of mankind as a whole. The Group's submissions emphasised ISA's central role in managing the Area's resources, ensuring control, participation, and benefit-sharing among all nations, while also setting the framework for private and state entities to engage in exploration and exploitation activities under strict regulation and oversight (UN, 1974b). In the end, the CHM was reflected in Article 136 of the Convention, which declares that the Area and its resources are the CHM.

5. Examining Power Relations and Implications for Maritime Justice

5.1. Power Relations in Shaping the Path to Consensus

The discussions in the previous sections reveal how UNCLOS' provisions were shaped by power relations between negotiating states. Two illustrations from deliberations on the rules of procedure for the Convention provide a compelling starting point for understanding these power dynamics. First, in the debate over seat allocation, the USSR invoked its status as a permanent Security Council member to demand representation on both the General Committee and Drafting Committee, even after the Conference had decided otherwise. Their invocation depicted a direct attempt to leverage institutional status for procedural advantage (institutional power) but it also alluded to structures of production that had shaped the USSR's self-identity as an agent with greater responsibility and hence, greater rights or privileges than developing states (structural power).

Second, by threatening non-participation in a majority-vote Convention, developed states wielded their economic might as a coercive tool, whether intentionally or unintentionally. Developing countries were cognisant that a Convention lacking support from global economic powerhouses would be severely compromised in its funding and implementation. Moreover, the non-participation of developed states would leave their resource exploitation activities unrestrained (a factor aggravated by their superior technological capacity), undermining the goal of a more equitable oceanic order. Thus, the numerical superiority of developing states was neutralised by the compulsory power exerted through the economic and technological leverage of developed states, and they were effectively forced to acquiesce. Material and

positional resources were therefore transformed into coercive influence that shaped the very approach through which the provisions of UNCLOS were formed, even in the face of formal diplomatic equality.

The consensus principle may have debatably weakened the potency of UNCLOS as an agent of maritime justice. The desire to formulate provisions agreeable to all parties resulted in several provisions being deliberately crafted ambiguously. However, it is also arguable that agreements reached by consensus consolidate faster into rules of customary international law, as evidenced by the EEZ concept (Joyner & Martell, 1996).

5.2. Mapping Territorial Limits: Power in Historical Context

In negotiations surrounding the limits of territorial seas, there were undertones of compulsory and productive power. While elements of compulsory power were evident in the firm statements by the UK, France, and the US as great powers collectively insisting that the six-nautical-limit was a "reasonable compromise," the pervasive influence of productive power is visible in shaping the very discourse of what constituted "reasonableness" with respect to limits of the territorial sea.

The historical context is crucial to understanding these undertones. The three-nautical-limit, often presented as an established norm of international law, was in fact a product of 18th-century British maritime strategy. Great Britain recognised the benefits of a narrow territorial sea to its dominant commercial, military, and fishing fleet and therefore ardently advocated for it (Strang, 1977). Leveraging its global standing as a great power and garnering support from fellow naval powers, Great Britain successfully entrenched this principle as a widely accepted standard during the 1920s (Swarztrauber, 1970), long before many developing states had achieved independence or developed significant maritime capabilities.

By shaping the discourse and norms of the law of the sea over centuries, maritime powers like Great Britain established the legal context for future negotiations. This productive power manifested in the very language of "reasonableness" and "compromise" used during UNCLOS negotiations—terms that implicitly favoured the status quo beneficial to developed maritime nations. Many developing states played no role in consolidating the three-nautical-mile state practice and yet were expected to accept it as a baseline for negotiations. The marginalisation of more expansive claims, such as the 200nm limit proposed by some Latin American states, further demonstrates the constraining effect of productive power. These proposals, deemed "unreasonable" within the established discourse, were effectively sidelined from serious consideration, revealing how productive power not only shaped what was considered possible but also what was considered worthy of debate during UNCLOS negotiations.

However, it is important to note that the eventual compromise of a 12nm territorial sea, coupled with an EEZ, represented a partial success for developing nations in challenging the established norms. This outcome suggested that while productive power significantly shaped the negotiating landscape, it was not immutable.

Provisions on the territorial limits of states played a major role in shaping the role of UNCLOS as an agent of maritime justice. UNCLOS establishes the rights, powers and obligations of states concerning maritime governance through its delimitation of maritime zones. Sovereignty empowers coastal states to restrict certain rights and freedoms in their territorial sea that might be increasingly interlinked with crime and other

national security concerns (Bateman, 2007). The EEZ, which was a necessary compromise between the interests of developed and developing states, also proffers additional opportunities for coastal states to regulate the exploitation of marine resources adjacent to their territorial sea—opportunities that may not have existed if the demand for greater high seas freedoms of developed states had not been matched against the ambition of developing states for greater sovereignty.

5.3. The CHM: Strengthening the "Weak"?

Beyond the limits of sovereignty and sovereign rights, debates on the CHM principle proved instrumental in shaping the Law of the Sea. Here, institutional power operated appreciably in favour of developing states, at least in part. Arvid Pardo strategically advanced the CHM principle through the UN, recognising its potential appeal to developing countries. These states, aware of their limited capacity to exploit distant marine resources, saw in the CHM an opportunity to advocate for a more equitable international order. The UN, as a global governance platform, provided the institutional framework that allowed the CHM principle to gain traction and proliferate, ultimately serving the interests of developing states.

The negotiations also revealed the subtle workings of structural power, albeit to a limited extent, in favour of developing states. In this context, developing states were positioned as relatively weaker actors in the global arena, a status that paradoxically afforded them certain advantages. Their structural position as weaker actors in a new international order supposedly founded on the principles of justice and equity necessitated a degree of bias towards the interests and needs of developing states. The CHM principle provided a vehicle for expressing this bias. Evidence of this can be found in the Conference president's opening speech, which emphasised that any agreement must promote the well-being of all states, particularly developing ones, by making them beneficiaries of the CHM (UN, 1973a). Consequently, compulsory power was also present, insofar as resulting structural positions implied that developing states could deploy normative resources as "less powerful members" of the UN, such as demands for fairness and equity, to constrain the actions of more powerful actors (Barnett & Duvall, 2005, p. 50). This does not imply that developed states did not wield any compulsory power over their developing counterparts in the matter. Here again, the threat of abstention, along with all its legal and economic connotations was used by developed states.

The contentious nature of the CHM principle and the role of the ISA significantly impacted UNCLOS' ratification process, leading to the abstention of several developed states, including the US, UK, Germany, France, and the USSR. This impasse was only partly resolved in 1994 with the adoption of an Implementing Agreement to Part XI of UNCLOS, which rendered most of the provisions to which developed states were opposed inapplicable so that the Convention would not have to enter into force without their participation (Kawasaki & Forbes, 1996). Thus, ensuing power relations rendered ISA, established under the agency of UNCLOS, far less capable than envisaged by developing states. The Convention was later ratified or acceded to by the UK, Germany, France, and the Russian Federation. However, the US remains a non-party.

Contentions on the CHM principle and other aspects of governance in the ABNJ extended into negotiations towards the BBNJ Agreement, which commenced in 2018 and concluded in 2023. Despite these challenges, the inclusion of the CHM principle in UNCLOS demonstrates consonance with traditional concepts of justice (Miller, 2023; Sher, 2012; Woolcock, 2018), considering the role of the CHM in establishing a just and equitable order for the oceans.

UNCLOS was finally adopted on 10 December 1982 after a decade of negotiations. However, it was not until 16 November 1994—an additional 12 years later—that the Convention came into force based on the requirements of Article 308. This prolonged timeline reflects state ratifications stalled not merely by procedural delays, but by complex processes of diplomatic manoeuvring, shifting global power structures, and evolving perceptions of maritime rights and responsibilities. In the decades since its adoption, several provisions of the Convention have crystallised into rules of customary international law. The Convention's journey from conception to implementation thus mirrors the broader struggle to establish an instrument of maritime justice in the face of power relations resulting from divergent national interests.

6. Conclusion

This article has examined the profound influence of power relations between states on the negotiation and formation of UNCLOS offering significant insights into one of the ways through which power relations can shape maritime justice. The analysis is grounded in a conceptualisation of maritime justice as a composite term encompassing the broad ways in which laws, regulations, and legal principles are applied in addressing maritime governance concerns. This approach, while not claiming to be exhaustive, reorients the discourse away from prevailing social and environmental paradigms of blue justice, positioning maritime legal frameworks as the central focus of analysis (see Larsen, 2024). By framing UNCLOS as an agent of maritime justice, this article argues that power relations among states during its negotiations greatly shaped some of its key provisions and by extension, influenced maritime justice. Barnett and Duvall's taxonomy of power provided a valuable analytical framework, illuminating the multifaceted ways in which power manifested during negotiations. The analysis demonstrated that various forms of power—compulsory, institutional, structural, and productive—were at play in determining the Conference's rules of procedure and in negotiating provisions related to the territorial limits of states and the governance of the ABNJ. While this article highlights selected examples of these power manifestations, their deeply interconnected and mutually reinforcing nature means that examining one form often reveals the operations of others. Thus, the analysis presented here is by no means exhaustive. Power relations also influenced negotiations on other provisions of the Convention not contemplated in this study. This broader impact was evident, for example, in negotiations on marine environmental protection, where developed and developing states clashed over the distribution of conservation costs (Joyner & Martell, 1996).

Importantly, power relations did not uniformly favour traditionally powerful actors but could work to the advantage of ostensibly weaker actors, depending on the confluence of factors under consideration. Furthermore, the discussions revealed that actors may not always be fully aware of the varying forms of power they wield in such processes. However, for scholars across the disciplines of international relations, law, and politics, understanding the multifarious role of power relations and asymmetries in shaping international legal agreements provides crucial insights into their constitutions as agents of justice. Awareness of these insights can potentially allow actors to hedge against power asymmetries that may be detrimental to fundamental principles of justice.

This analysis establishes a crucial foundation for expanding the discourse on the intricate relationship between power dynamics and maritime regulation and enforcement. It paves the way for a rich vein of future research across multiple dimensions. Foremost, it invites scholars to develop more theoretical frameworks for conceptualising maritime justice. Such frameworks can deepen our understanding of

maritime justice effects, as well as how state interests, power relations, and emerging global challenges might shape these effects. There is also the need to critically examine UNCLOS' ongoing efficacy as an instrument of maritime justice, particularly in light of shifting global power structures. This line of inquiry could explore how evolving geopolitical realities reshape the interpretation and application of UNCLOS provisions, potentially altering its capacity to deliver maritime justice. Furthermore, as the international maritime legal landscape continues to evolve, investigating the implications of power relations and asymmetries on recent expansions of the UNCLOS framework like the BBNJ Agreement becomes increasingly crucial.

By revealing the complex interplay of various forms of power in the creation of UNCLOS, this article provides a critical perspective on the challenges and opportunities in pursuing a just global maritime order, even as the international community continues to grapple with emerging maritime security challenges.

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Conflict of Interests

The author declares no conflict of interests.

Data Availability

Summary records and documents from the UNCLOS (I, II, and III) can be found in the United Nations diplomatic conferences repository available at https://legal.un.org/diplomaticconferences

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Maritime Justice, Environmental Crime Prevention, and Sustainable Development Goal 14

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Abstract

SDG 14 "life below water" sets targets for the conservation and sustainable use of the oceans, seas, and marine resources, however, it is increasingly evident that its targets are unachievable without strengthened state-led maritime justice. This article examines the concept of "maritime justice" from an environmental crime perspective and explores the critical link between maritime justice and ocean crime resilience. The article addresses the relationship between maritime justice and SDG 14 and explores various approaches to progress maritime justice in order to better respond to environmental crimes at sea.

Keywords

environmental crime; maritime crime; maritime justice; ocean resilience; SDG 14

1. Introduction

At the UN Ocean Conference in 2022, the UN Office on Drugs and Crime (UNODC), through its border management branch, highlighted the importance of a criminal justice approach in addressing the environmental challenges faced by our oceans and seas (UNODC, n.d.-a). Maritime crime poses major threats to ocean sustainability and ecosystem resilience and leads to biodiversity loss (Lycan & Van Buskirk, 2021). In this respect, this article is premised upon a conception of maritime justice that resonates with the concept of maritime crime in that the focus is on responding to a transnational challenge through state-based regulation and enforcement of human maritime activity. To this end, SDG 14 "life below water" sets out seven targets and three sub-targets for the conservation and sustainable use of the oceans, seas, and marine resources (UN, 2015). However, SDG 14 is unlikely to be achieved unless states take urgent

action to strengthen maritime justice, and more specifically the regulatory and law enforcement responses to crimes that affect the marine environment. This article examines the emerging term "maritime justice" as a sibling to both environmental justice and marine justice. In doing so, we seek to highlight the interrelationship between the SDG 14 goals and maritime justice, as well as seek to draw on existing enforcement measures that have application in areas beyond national jurisdiction. This will highlight how, through the lens of maritime justice, some existing measures from a broad range of international instruments—the 1982 UN Convention on the Law of the Sea (UNCLOS), the UN Convention against Transnational Organized Crime (UNTOC), the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), and the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA Convention)—can be applied to combat the lack of enforcement measures under the environmental scope of maritime justice. The article then applies these existing measures to the examples of maritime piracy and marine oil spills. This analysis demonstrates the way that maritime justice can assist in progressing ocean resilience and provide better responses to tackling environmental crime at sea.

2. Maritime Justice From an Environmental Perspective

To assess the interrelationship between maritime justice, environmental protection, and SDG 14, it is first essential to establish what the notion of "maritime justice" entails. This involves several steps. First, the broad parent concept of "marine justice" must be situated within the overarching concept of "environmental justice." Second, a delimitation between the concepts of marine justice and maritime justice (the focus of this article) must be made. These terms are sometimes used interchangeably, but for the purposes of this analysis, maritime justice must be understood as having a different focus to the concept of marine justice. This may at first glance appear to be unnecessary parsing, but the need for differentiation is important when dealing with the anthropogenic aspects of regulation and law enforcement. The need for this differentiation also becomes apparent when one considers the dictionary definitions of the terms "marine" and "maritime" and the various conceptions of "justice" inherent in the environmental justice and marine justice paradigms.

2.1. Relationship of Marine Justice to Environmental Justice

Marine justice can be seen as a subset of the broader and equally diffuse concept of environmental justice (Bercht et al., 2021). Since the 1990s, the notion of environmental justice has expanded to include elements of "not only local pollution problems, but also to a much broader set of struggles against colonialism, dispossession, modernization, neoliberalism, and globalisation" (Martin et al., 2019, p. 235). Narrower definitions also exist. For example, the United States Environmental Protection Agency (n.d., paras. 13–15) defines the term environmental justice as:

> The just treatment and meaningful involvement of all people, regardless of income, race, colour, national origin, Tribal affiliation, or disability, in agency decision-making and other Federal activities that affect human health and the environment so that people:
>
> - Are fully protected from disproportionate and adverse human health and environmental effects (including risks) and hazards, including those related to climate change, the cumulative impacts of environmental and other burdens, and the legacy of racism or other structural or systemic barriers.

- Have equitable access to a healthy, sustainable, and resilient environment in which to live, play, work, learn, grow, worship, and engage in cultural and subsistence practices.

As can be seen from the definitions given, the broad concept of environmental justice prioritises a social justice perspective, with some scope for "the environment" to be accounted for as an independent object of consideration. Bennett et al. (2023, pp. 1–2) suggest that the concept of environmental justice has expanded globally and now encompasses "a broader set of environmental hazards and harms" from climate change to biodiversity and habitat loss and associated declines in ecosystem services. From a subject and spatial perspective, marine justice is a component of environmental justice narrowed to the ocean space, and in this context reflects and adopts the broad conception of "justice" inherent in the expansive notion of environmental justice. In this respect, the "most popular are tripartite conceptualizations of justice, which distinguish between distributional and procedural aspects and recognition" (Bercht et al., 2021; Schlosberg, 2009; Walker, 2009, 2012). Thus, much like environmental justice, marine justice can be understood as a broad and inclusive notion covering a similar range of justice conceptualisations, albeit focussed upon ocean space and its subjects, objects, and activities. Notably, environmental justice also incorporates an anthropogenic element focused on regulation and enforcement, as in the approach adopted by the UNODC to crimes that affect the environment (UNODC, 2021) as well as the UNODC's approach to sectoral crimes, such as those involving the forest (UNODC, 2020) and waste sectors (UNODC, n.d.-b). This genericism in the broad concept of environmental justice is also reflected in the idea of marine justice, which is why maritime justice, whilst drawing on similar concepts, allows for greater anthropomorphic precision, and thus a brief note on "environmental crime" as a component of environmental justice is warranted for comparative purposes.

In 2016, environmental crimes were the "fourth most lucrative category of crimes in the world after drug trafficking, counterfeiting, and human trafficking" (Aceves-Bueno et al., 2020, p. 1121; McFann & Pires, 2018; Nellemann et al., 2016). There is no universally agreed definition of the term "environmental crime" as its scope necessarily tracks with evolving concerns as to environmental vulnerability. Herbig and Joubert (2006, p. 96) speak of "conservation crime" as "any intentional or negligent human activity or manipulation that negatively impacts on the earth's biotic and/or abiotic natural resources resulting in immediately noticeable or indiscernible (only noticeable over time) natural resource trauma of any magnitude." Other academics, including Greene (2019) and Minkova (2023) have focussed more specifically on "ecocide" as a crime and have argued for its inclusion in the Rome Statute as the "fifth crime" prosecutable by the International Criminal Court.

Arguably, a broad interpretation of the term "environmental crime" would cover any illegal activity that targets or causes significant harm to the environment (Bueger & Edmunds, 2020). In the International Classification of Crime for Statistical Purposes, the UNODC (2015) divides environmental crimes into:

1. Acts that cause environmental pollution or degradation.
2. Acts involving the movement or dumping of waste.
3. Trade or possession of protected or prohibited species of fauna and flora.
4. Acts that result in the depletion or degradation of natural resources.
5. Other acts against the natural environment.

A categorisation of crimes can also be made in the maritime context. For example, Bueger and Edmunds (2020) employ the concept of "blue crime," which they argue has three key components:

1. Crimes against mobility (e.g., crimes that target shipping, supply chains, and maritime trade);
2. Criminal flows (e.g., the sea is used as a conduit for criminal activities, in particular smuggling);
3. Environmental crimes (e.g., crimes that cause significant harm to the marine environment and its resources).

An analysis of how regulatory and law enforcement responses to environmental crimes can assist in achieving SDG 14 and how this implicates the concept of maritime justice is clearly a useful project within the broader marine and environmental justice space. However, to explain how and why this is so requires a further set of definitional explanations. This is necessary to focus on what "maritime justice" entails and can offer. The following sections examine the concept of "marine justice" versus that of "maritime justice." But before undertaking this examination, it is important to first distinguish between the terms, "marine" and "maritime."

2.2. Marine Versus Maritime

The Oxford English Dictionary defines the term "marine" as "of, relating to, or characteristic of the sea; existing, originating, or found in the sea; produced by the sea; inhabiting or growing in the sea" (Marine, n.d.). This definition lends itself to a systemic and "all elements" understanding of ocean space, ocean subjects and objects, and ocean activities. By contrast, the word "maritime" is defined as "connected, associated, or dealing with shipping, naval matters, navigation, seaborne trade" (Maritime, n.d.). This definition has more of an anthropogenic focus, the emphasis being on regulation and enforcement in the context of human activity at and in relation to the sea. The differentiation between these two terms is also evident in the UNODC's choice of contextual labels for its marine-related work—for example, the Global Maritime Crime Programme and the Maritime Crime Manual for Criminal Justice Practitioners (UNODC, 2019). This further supports the argument that the term "maritime" tends to be associated with the regulation of activities and enforcement by humans—noting, of course, that the suitability of top–down and bottom–up maritime governance models differ across issues and population sets (Wilson et al., 2007).

2.3. Marine Justice Versus Maritime Justice

The distinction between the terms "marine" and "maritime" is also reflected in the literature concerning "marine justice" and, more specifically, where "maritime justice" sits within this paradigm. Since 2016, the concept of "marine justice" has attracted considerable academic attention (Bercht et al., 2021; Martin et al., 2019) and is the broad overarching starting point for understanding what the narrower concept of maritime justice entails. Scholars have tended to conceptualise marine justice as the interaction between, time, knowledge, decision-making, and enforcement issues concerning ocean space (Martin et al., 2019). This transdisciplinary integrated approach to achieving marine justice relies upon a broad understanding of the terms "marine" and "justice" in a more systemic and distributive sense. Thus, one of the main objectives of marine justice is to provide a map for how to achieve an integrated and "all issues" sense of justice through an interdisciplinary approach to describing and facilitating interaction and balance. Indeed, the literature on marine justice appears to evidence three conceptions of "justice," namely justice by equity and balance,

justice by empowerment and recognition, and justice by a regulatory and enforcement process. The third conception of "marine justice" is most relevant to maritime justice, which is the focus of this article.

3. The Relationship Between Maritime Justice and SDG14

The adoption of the 17 SDGs and more specifically SDG 14 by the UN General Assembly in 2015 was a landmark step forward for marine justice, as it was the first formally adopted international set of sustainability objectives in the ocean context. Some commentary asserts that SDG 14 fails to adequately create a pathway for marine justice due to a lack of concrete ways to identify and measure progress (Haas, 2023) and neglects to effectively address "the fragmented institutional context which significantly impedes effective action to advance the goals of justice and sustainability at sea" (Armstrong, 2020, p. 239). The targets of SDG 14 are also described as "aspirational" and not strict in nature (UN, 2015). In addition, weak language and the presence of "escape clauses" in the SDG 14 targets have also been noted as barriers in motivating action towards the SDGs (Easterly, 2015), consequentially subverting the overarching need for marine justice. An example of an "escape clause" is that each government is responsible for setting its national targets (UN, 2015). This grants states considerable latitude in respect to fulfilling the targets and sub-targets of SDG 14. This critique is underpinned by an assertion that there has been a generalised shift away from regulatory public policy to voluntary arrangements by state and non-state actors for global sustainability purposes (Kuyper et al., 2018, pp. 5–6). While this debate is significant, it is beyond the scope of this article and will not be further addressed.

3.1. SDG 14 Targets and Sub-Targets

SDG 14 "life below water," sets out seven targets and three sub-targets for the conservation and sustainable use of the oceans, seas, and marine resources. Of these targets, only some lend themselves to a maritime justice analysis precisely because they focus on regulation and enforcement. For example, SDGs 14.1, 14.2, and 14.3 turn on the conception of justice as empowerment and recognition by giving presence and acknowledgement to otherwise voiceless subjects and objects such as the marine environment. Similarly, SDGs 14.7, 14.a, and 14.b evoke more readily the equity and balance conception of justice, as they focus upon the distributional aspect of marine justice, prioritising access to technology, and amplifying the voice of less developed states. By contrast, SDGs 14.4, 14.5, 14.6, and 14.c are underpinned by assumptions around regulation and enforcement and are thus amenable to a maritime justice analysis and approach. A brief description of these four SDGs is necessary to explain why this is the case.

SDG 14.4 requires coordinated global action by 2020 to

> Effectively regulate harvesting and end overfishing, illegal, unreported and unregulated fishing and destructive fishing practices and implement science-based management plans, in order to restore fish stocks in the shortest time feasible, at least to levels that can produce maximum sustainable yield as determined by their biological characteristics. (UN, 2015, p. 24)

SDG 14.4 specifically calls for the regulation of human activity (fishing) with consequences for the marine environment and enforcement to achieve its target. Notably, the UN's *2023 Sustainable Development Goals Report* highlights that despite eight years of action since the introduction of SDG 14, there is still a growing

percentage of fish stocks being overfished, beyond biologically sustainable levels (UN, 2023a). This suggests that SDG 14 is highly amendable to a focused maritime justice analysis and approach.

SDG 14.5 mandates that "by 2020, [global action should be taken to] conserve at least 10 percent of coastal and marine areas, consistent with national and international law and based on the best available scientific information" (UN, 2015, p. 24). While this target aligns with marine justice broadly, the indicator listed under 14.5.1 "coverage of protected areas in relation to marine areas" relies heavily on the capability of states to establish, regulate, and enforce marine protected areas.

Similarly, SDG 14.6 requires that:

> By 2020, [global action to] prohibit certain forms of fisheries subsidies which contribute to overcapacity and overfishing, eliminate subsidies that contribute to illegal, unreported and unregulated fishing and refrain from introducing new such subsidies, recognizing that appropriate and effective special and differential treatment for developing and least developed countries should be an integral part of the World Trade Organization fisheries subsidies negotiation. (UN, 2015, p. 24)

This objective implicates regulation and enforcement as the mechanism to achieve this outcome, and indeed the specified indicator SDG 14.6.1 "degree of implementation of international instruments aiming to combat illegal, unreported and unregulated fishing" is clearly based on a regulation and enforcement approach. In this respect, the UN's *2023 Sustainable Development Goals Report* is more positive about SDG 14.6 than SDG 14.4. The report notes the uptake of the Agreement on Port State Measures (tripling its signatories since 2016 to reach 75 parties, including the EU, to effectively cover 101 states and 60% of port states) thereby signalling significant progress in combating illegal, unreported and unregulated fishing, and providing an example of a successful focus on the regulation and enforcement aspects of maritime justice in support of an SDG 14 target. While this is a positive development, it should not disguise the fact that stronger measures about regulation and enforcement remain necessary in order to meet the SDG 14 targets as a means of achieving the overarching goal of marine (and also maritime) justice.

Finally, SDG 14.c aims to:

> Enhance the conservation and sustainable use of oceans and their resources by implementing international law as reflected in the United Nations Convention on the Law of the Sea, which provides the legal framework for the conservation and sustainable use of oceans and their resources. (UN, 2015, p. 24)

This target implicates regulation and enforcement by virtue of its focus on the implementation of "legal, policy and institutional frameworks [and] ocean-related instruments that implement international law," including the 1982 UNCLOS (UN, 2015, p. 24).

While the analysis in the previous sections has focused on four of the SDG 14 targets, this should not be taken to suggest that the remaining SDG 14 targets are immune to a maritime justice analysis and approach—clearly, they are not, as each implies an axillary interest in regulation and enforcement. However, it is these four targets (SDG s 14.4, 14.5, 14.6, and 14.c) as noted earlier that directly incorporate goals expressible in a maritime justice sense and which are thus the focus of the next stage of analysis.

4. SDG14, Regulation, and Enforcement

Taking into account SDG 14.4, 14.5, 14.6, and 14.c as outlined in the previous sections, how can a maritime justice approach work in practice to address these specific goals, including their targets and sub-targets? A key mechanism is to implement and employ the tools presently provided for this purpose in a perhaps expansive or innovative way—particularly noting the SDG timeframes, and this means it is vital to assess and utilise the current tools available rather than prioritising the creation of new instruments. While there are several instruments relevant to the maritime justice space, the scope of this article will be limited to an analysis of UNCLOS, UNTOC, and CITES. These instruments provide the basis for the enforcement of (environmental) crimes on land and at sea and regulatory action in respect of ocean space. Although there are some specific instances where enforcement is evident on the face of these instruments (e.g., Art. 110 of UNCLOS "right of visit"), it is essential to remember that enforcement is heavily dependent upon state action.

4.1. The 1982 UNCLOS

UNCLOS provides the basis for several regulatory tools. It is a clear "port of call" so to speak when assessing regulation and enforcement capacity. UNCLOS provides a framework of rules for determining the rights and duties of states concerning their use of ocean space (Lothian, 2022). With extensive ratifications (UN, 1982), UNCLOS provides states with the authority to undertake enforcement activities beyond domestic jurisdictional boundaries. For example, UNCLOS supports coastal states in their efforts to curb crimes such as illegal fishing in their Exclusive Economic Zone by providing states with regulatory and enforcement jurisdiction (SDG 14.4; UN, 1982, Arts. 56(1)(a), 62(4), and 73(1)). UNCLOS also imposes a general obligation on all states to protect and preserve the marine environment, including in areas beyond national jurisdiction (SDG 14.5; UN, 1982, Arts. 145 and 192). Legal capacity to enforce activities that venture between the high seas and domestic jurisdiction via UNCLOS also provides a conduit for remedies to respond.

4.2. UNTOC

Legal and illegal movement between borders has never been easier, nor more challenging to control for law enforcement. As noted in the foreword of the UNTOC, "If crime crosses borders, so must law enforcement" (UNODC, 2004). With near-universal acceptance, state parties to the UNTOC are obliged to cooperate generally (UNTOC, 2004, Arts. 26 and 27) and consider concluding bilateral or multilateral agreements to facilitate joint investigations of transnational organised crime (UNTOC, 2004, Art. 19). The UNTOC thereby provides states with a useful tool to build national regulatory capacity and limit legal obstacles to extend their jurisdictional arm further into the maritime domain enabling enforcement over criminal activities at sea. Given the well-established links between transnational organized crime and illegal fishing (SDG 14.4; see de Coning, 2011; Lindley, 2018), enforcement of environmental crimes at sea can be leveraged through UNTOC and UNCLOS as a conduit to extend state powers. As such, the potential to progress towards maritime justice aligning with SDG 14 may not be out of reach.

4.3. CITES

Another relevant instrument is the CITES. The purpose of CITES is to protect wild fauna and flora against over-exploitation through international trade and encourage international cooperation to achieve this (CITES,

1973, para. 4). The species listed within the CITES appendices link to the ocean space in two ways: species derived from the sea or species traded via the sea. States are obliged to take measures to enforce CITES, extending to and from land and sea (CITES, 1973, Art. 8) and the instrument links closely to SDG 14.4, 14.5, and 14.6. Species illegally fished or overfished (SDG 14.4) may be over-exploited to unsustainable levels, incentivised by (illegal) trade. The establishment of marine protected areas (SDG 14.5) and limiting certain subsidies (SDG 14.6) that exacerbate trade should also be regulated and enforced. These tools enable state parties to cooperate to achieve their obligations under CITES and SDG 14.4. CITES thereby draws from and aligns with UNCLOS to further its remit.

5. Building Resilience to Address Environmental Crimes at Sea

While there is an ever-growing range of regulatory tools and mechanisms designed to support environmental protection, respond to or mitigate environmental crime, and promote maritime justice on the high seas, the key gap remains enforcement. In part, this challenge is associated with the enforcement preference to identify both a specific perpetrator and a specific victim, posing challenges to nominating "the environment" as the victim, although this is not uncommon in domestic jurisdictions where the environment is often considered to be an attribute of "the state." Another challenge relates to the difference between "incidental" and "deliberate" environmental crime, which complicates the attribution of a mens rea (unless such crimes are made subject to strict or absolute liability). The enduring prevalence and usefulness of the term "harm," rather than "crime" in this setting also remains relevant.

That said, attempts persist to progress a more comprehensive approach to this enforcement gap, such as the proposal for the crime of "ecocide" to be recognised under the Rome Statute or through the adoption of other instruments. However, this has not borne fruit to date. In 2016, for example, the International Criminal Court explicitly indicated a willingness to investigate prosecutable environmental harm, addressing this issue in a widely referenced policy paper (International Criminal Court, 2016). But there are jurisdictional limits to the International Criminal Court's current capacity to do so, given that only one provision of the Rome Statute specifically criminalises environmental damage (Art. 8(2)(b)(iv)) and only does so in the context of international armed conflict. Therefore, as it stands, the majority of comprehensive enforcement measures in relation to environmental crimes at sea are only applicable in areas under national jurisdiction. A brief overview of two key potentially applicable maritime justice-based options available in areas beyond national jurisdiction will thus illustrate these enforcement gaps, thereby indicating where additional maritime justice responses may be appropriate to achieve the goals of SDG14.

5.1. Piracy

According to Art. 100 of UNCLOS (UN, 1982), all states are required to cooperate to the fullest possible extent in the repression of piracy on the high seas or any other place outside the jurisdiction of any state. This obligation to repress piracy provides for universal jurisdiction and—via Art. 110 of UNCLOS (UN, 1982)—the capacity to board a pirate vessel without flag state consent. This is a powerful enforcement option, but it is only available in limited circumstances. That said, piracy may attract a maritime justice response in support of marine environmental protection in that the definition of piracy in Art. 101 of UNCLOS (UN, 1982), and specifically the reference in Art. 101(a) to "any act of depredation," could be used to incorporate environmental crime at sea so long as the other elements of piracy are met (Rae, 2014). For example, a scenario could arise

where an act of piracy morphs into an environmental issue or could be the cause of a major environmental disaster—such as where a laden vessel is left to steam or drift in the wake of a pirate attack and is no longer under the control of the master and crew, or the threat made for ransom is the release of a toxic cargo from the vessel under attack (Herbig & Fouché, 2013). Such a situation could have occurred recently (but fortunately did not) off the coast of Yemen, when the bulk carrier Rubymar was left to drift after a Houthi attack ("Ship abandoned," 2024). Additionally, using piracy to achieve an incidental environmental enforcement outcome will tend to focus on the perpetrator. This is useful, for while the environment is not a "victim" of the crime of piracy—as victimhood in piracy is traditionally understood—the fact is that counter-piracy enforcement can practically be used to achieve a conscious but jurisdictionally incidental outcome with respect to serious environmental crime situations.

It is also appropriate to note that failures of environmental protection have sometimes been claimed to be a source of piracy. For example, environmental damage caused by destructive fishing, overfishing, and alleged toxic waste dumping by foreign vessels within Somalia's Exclusive Economic Zone have been cited as causes for the piracy spike between 2008 and 2013, that extended to the Gulf of Aden and the Red Sea, as well as the western Indian Ocean (Lindley, 2020). In this respect it could be argued that a failure to regulate and enforce one component of environmental protection at sea in one marine area—waste dumping in the Somali Territorial Sea and Exclusive Economic Zone—has resulted in an increase in piracy, thereby causing a vicious cycle.

5.2. Oil Pollution on the High Seas

The International Maritime Organisation's Intervention Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, otherwise known as the Intervention Convention, deals specifically with pollution or the threat of pollution from the sea by oil following a maritime casualty (International Maritime Organization, 1969, Arts. 1(1) and 2(4)). The Intervention Convention is a useful tool when it comes to incidental environmental protective measures, particularly where a ship has grounded, has become shipwrecked, has been involved in a collision, or is breaking up in weather and a spill could result creating significant environmental consequences. By the late 1960s, awareness of the serious threat of oil spilling into the marine environment posed by large crude oil carriers had become widespread. In particular, the 1967 Torrey Canyon disaster exemplified the scale of oil pollution damage from a modern-day supertanker, when more than 100,000 tonnes of crude oil was spilt off the southwest coast of Britain presenting a direct threat to bird and marine life (Cooper & Green, 2017). The Torrey Canyon disaster was undoubtedly the catalyst for the adoption of the Intervention Convention in 1969, and this authority now also finds a similar—although more ambiguous—expression in Art. 221 of UNCLOS (UN, 1982), which addresses measures coastal states may take beyond their territorial waters in response to a maritime casualty that damages or threatens to damage by way of pollution (Bartenstein, 2017).

While the environmental threat is incidental to the maritime casualty event, there is no requirement that the source maritime casualty be accidental. That is, an intentional act by a group to create the maritime casualty precisely to generate the environmental effect is still a matter covered by the Intervention Convention. Significantly, the threatened coastal state is offered a number of powers under the Intervention Convention. For example, Art. I provides that a coastal state can take "such measures on the high seas as may be necessary measures to prevent, mitigate or eliminate grave and imminent danger to their coastline or related interests from pollution or threat of pollution" (International Maritime Organization, 1969). Art. V of the

instrument provides that these measures "must be proportionate to the damage actual or threatened" (International Maritime Organization, 1969). This is relevant from an enforcement perspective because whilst Art. III(a) of the Intervention Convention requires the acting (or threatened) state to consult with the flag state, this is not subject to the overarching primacy of the default need to receive flag state consent. That is, the acting (or threatened) state can still act, using this authority, without flag state consent, to prevent or mitigate grave or imminent environmental danger. Beyond this, the 2005 Protocol of the SUA Convention, Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf in Art. 3bis provides an alternate legal avenue to address situations in which vessels may be used for potentially terrorist purposes, such as "placing of devices on board a ship which are likely to destroy or damage it" (International Maritime Organization, 2005). However, it must be noted that while it is in force, unlike its parent SUA Convention (International Maritime Organization, 1988), uptake of this Protocol has been limited (International Maritime Organization, 2005). Again, this provides an example of where an existing tool used for regulation and enforcement concerning one anthropogenic (maritime) activity can be useful to support a broader environmental protective purpose.

6. Conclusion

In seeking out an understanding of the intersection between SDG 14, ocean crime resilience and maritime justice, this article has explored the concept of "maritime justice" from an environmental crime perspective. The first section of this article sought clarity around the maritime justice paradigm and elaborated upon the theoretical link between maritime justice and ocean crime resilience. From there, the sections that followed considered the relationship between maritime justice and SDG 14 as well as exploring its relevance to building resilience to environmental crimes at sea.

Not all the targets set within SDG 14 deal with the issue of environmental crime, however, several avenues to enhance regulation and enforcement were touched upon to demonstrate how progress can be made towards maritime justice. Indeed, regulatory measures on the high seas are growing with the recent adoption of the Agreement under the UN Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction (the BBNJ Agreement; UN, 2023b), the WTO Agreement on Fisheries Subsidies (2022), and the ongoing negotiations of a UN Treaty to end plastic pollution. Given the need to progress towards maritime justice in a timely manner, an analysis of these recent developments was intentionally left out of this article. Instead, the focus of this article was on existing mechanisms and tools. While a number of existing instruments provide support for the prevention of environmental crimes at sea and the protection of the marine environment, there remains a serious lack of enforcement.

Acknowledging that the deadlines for several SDG 14 targets have been missed, regulation and enforcement mechanisms and tools must be incorporated into future plans designed to achieve the SDG 14 targets and sub-targets, and as a consequence, the broader objectives associated with marine justice. The collection of articles within this thematic issue on maritime justice will no doubt provide fertile ground for exploring ways to overcome the gaps in regulation and enforcement of environmental crimes at sea to assist with the progression towards achieving maritime justice.

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Conflict of Interests

The authors declare no conflict of interests.

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COMMENTARY

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Maritime Justice: A Commentary

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Abstract

This commentary summarizes the contributions to the thematic issue on maritime justice and aims to extend this ongoing research agenda. Maritime justice has as much to offer scholars and practitioners who work in the field of marine justice and environmental justice broadly as it does to those who work in maritime security studies and its cognate fields. Although there are many potential synergies to explore, two thematic domains offer particularly rich starting points: justice for whom and enforcement.

Keywords

enforcement; environmental justice; history; marine justice; maritime justice; resilience

1. Introduction

This thematic issue on Maritime Justice: Socio-legal Perspectives on Order-Making at Sea sets out an incredibly promising research agenda to bring together scholars, practitioners, policymakers, and many others to start a conversation that is both necessary and urgent.

The articles here highlight several important ocean-related issues—from resource overexploitation and pollution to maritime zoning and piracy—that produce complicated vulnerabilities for peoples, communities, and ecosystems around the world (Bennett et al., 2023; Martin et al., 2019). By introducing the "composite term" of maritime justice in the context of illegal fishing, oil spills, drug trafficking, among other crimes at sea, the contributors demonstrate some of the ways to interrogate the dynamics between illicit maritime activities and associated regulatory responses.

Given their aim to inspire and deepen the research agenda on maritime justice, these articles capture something quite profound that has seemed—in my mind at least—like it has been underexplored in the

marine justice literature for far too long. Namely, they crystalize the importance of maritime security governance. One might argue that these contributors are reviving earlier debates from the 1980s and 1990s about what was called "intergenerational justice" in the global ocean commons beyond state jurisdiction in the fields of international law, political science, and economics (Brown Weiss, 1990; D'Amato, 1990; Hannesson, 1985). But I would argue that this thematic issue's emphatically socio-legal focus offers a re-imagined approach. Gathering inspiration from maritime security studies, this issue is a major contribution to the scholarship on the oceans because it offers an important approach to understanding the theory and practice of order-making (or the lack thereof) at sea.

In that spirit, I am grateful for this opportunity to reflect on what scholars working in environmental justice and socio-legal studies might learn from each other. Two thematic domains strike me as especially promising: justice for whom and justice enforcement. Although we might use different phrases or terms to capture the inequalities and vulnerabilities that grow out of peoples' relationships with the oceans, I would argue that this conversation needs to be as inclusive as possible given the challenges facing the world's oceans and the peoples whose lives depend on its resilience—that is to say, all of us.

2. Justice for whom?

In thinking through dimensions of maritime justice, I must begin with the richness and sophistication of the authors' treatments of the socio-legal system itself and those who find themselves enmeshed (voluntarily and involuntarily) within those systems over time and various geographies. The first theme grows out of several of the articles as well as Larsen's (2024) editorial. As Larsen (2024, p. 3) frames so well, maritime justice "presents a research agenda of practical and ethical import that begs the question: justice for whom? And this question, importantly, relates to both sides of the law." As many of the contributors note, bringing together "both sides of the law" poses significant practical, methodological, and theoretical issues.

For example, VandeBerg et al. (2024) outline the evidentiary challenges of crime at sea in their examination of piracy trials in Kenyan courts from 2008 to 2012. With minimal physical evidence and the 1,000-plus pages of transcripts over eight trials, the prosecution of pirates in East Africa operationalized fear: the ways in which this emotion was expressed and circulated proved crucial for establishing the relative plausibility of the accused person's guilt. Affect, in this case, the fear experienced and expressed by the crew and other witnesses, served to frame a maritime encounter as deviant, illicit, and punishable. In terms of the next steps to flesh out further research in maritime justice, I cannot help but wonder whether and in what ways those persons accused of crimes at sea also attempted to articulate and shape the affective dimensions of justice in the trials. In other words, whose voices will be heard by scholars and practitioners? And for what reasons?

For their part, Boelens et al. (2024) gesture at that very question when they raise the issue of restorative maritime justice. They offer a fascinating account of a collaborative initiative among policing professionals in The Netherlands called the Maritime Smuggling Project that also speaks to the question of justice for whom. The authors track how the innovation of the Maritime Smuggling Project attempted to refocus attention away from apprehending transnational organized crime groups to building resilience to protect legal businesses and professionals, such as fishers, real estate agents, and harbor masters. Crucially, Boelens et al. (2024) outline the shortcomings and nuances of the experiment as the innovations in maritime policing ran up against the institutional cultures that often valued shorter-term or measurable outcomes. Coming from

the scholarship in marine justice, what was most exciting to me was the possibilities of maritime restorative justice as an interdisciplinary framework. Again, I wonder about the possibility of hearing from both sides of the law. What could that possibly look like? Where would it happen? Dockside or in the hallways outside of a legal proceeding? As the authors concede, it is challenging to involve suspects and victims of maritime crime with consequences that are often invisible or indirect. But these are exciting directions for future conversations.

3. Regulatory Responses and Enforcement

Both marine and maritime justice address much more than who gets heard in any one particular setting. In the traditional framings of marine justice, there are concerns over procedural justice, which involves how collective decisions are made, distributive justice, which focuses on the allocation of benefits and burdens in a community or larger society, and justice as recognition, which tracks the marginalization and devaluation of some social groups through everyday and institutional interactions and unequal enforcement (Schlosberg, 2007; Walker, 2012). That is to say that enforcement and regulatory responses can and often do look different from their terrestrial analogs (notwithstanding Larsen's point in her editorial about connections between land and water), given the scale, unevenness, and complexities of the ecologies and politics of the ocean governance. In that context of the oceans, how can we begin to understand the theory and practices of enforcement? Here the contributions that come from scholarship on maritime justice and maritime security studies are absolutely vital.

In the article that addresses the complexities of enforcement, Lindley and Lothian (2024) situate Pacific Island states' efforts to use the existing instruments of international law to build their resilience against the threat of transnational maritime crime. The authors discuss how those efforts are complicated by porous ocean borders and the sheer cultural and political diversity within the region of the Pacific Islands. Perhaps it is not so surprising then that the adoption of relevant instruments of international law among these states is so varied. Furthermore, what we might describe as relevant enforcement mechanisms are also unevenly deployed. I appreciate how Lindley and Lothian (2024) remind their readers, again and again, to make space for the agency of various peoples, communities, nations, and territories across this vast ocean geography. But from a global ocean perspective, as the authors underscore, there is a disproportionate "conservation burden" on the Pacific Island region and elsewhere to work toward, much less enforce, commitments of maritime justice.

In the remaining two articles contributions, there is some overlap in topical focus, especially about instruments of international law, but there is also some productive tension in the conceptualization of maritime justice. Schandorf (2024) makes a number of incisive arguments about the decades-long negotiations that resulted in the United Nations Convention on the Law of the Sea. Its significance, according to Schandorf (2024), lies in its role as an agent of maritime justice; the United Nations Convention on the Law of the Sea reveals the dynamics of unequal power relations among states, often favoring those states with more resources but with some important exceptions that benefit those states with fewer resources. With a focus on the origins of maritime zones, the article addresses the capaciousness of maritime justice on the front-end. Thinking through the manifestations, circulations, and contestations of power is an important step to better understanding the theory and practice of enforcement for maritime justice. This is not wholly new territory for scholars and practitioners coming from the history of science or

marine justice research (Hamblin, 2005; Reidy & Rozwadowski, 2014), but it is an important reminder nonetheless to pay close attention to the relevant socio-legal perspectives.

In their treatment, McLaughlin et al. (2024) unpack the concept of maritime justice as a paradigm in conversation with environmental and marine justice literatures more broadly. The authors render a beautifully concise and nuanced taxonomy of these concepts in the service of their analysis of Sustainable Development Goal 14 "life below water" and its targets. They identify the key barrier or gap in efforts to promote maritime justice on the high seas as enforcement. Whereas Schandorf (2024) discusses the origins of international law as a front-end approach to maritime justice, McLaughlin et al. (2024) identify the enforcement gaps in two examples of environmental crimes on the high seas—piracy and oil pollution—to map out potential options to achieve maritime justice as a more a future-oriented perspective.

4. Potential Future Directions

Picking up that invitation to contemplate future directions, I would like to share a recent insight from environmental justice scholarship that I hope may serve as a potentially useful departure point that speaks to many themes about the oceans that the contributors have raised in this thematic issue—not just the two themes that I have attempted to foreground. In his 2018 monograph, *What is Critical Environmental Justice*, David Naguib Pellow makes an intervention that, however challenging to our attempts to build a conversation around maritime justice, might prove productive to explore together.

Namely, Pellow (2018, p. 12) calls into question the importance or centrality of the state itself as "one of the primary forces contributing to environmental injustices and related institutional violence." Given how much of the academic literature tends to center the state, Pellow helps remind us that social inequalities are so "deeply embedded in society and reinforced by state power" that social movements and others that seek to address the inequalities and other challenges may want to consider carefully their strategy to "reform or transform the criminal legal system" (Pellow, 2018, pp. 54–55). There is a very real danger of co-optation, Pellow (2018) contends, in his careful language, mostly about environmental justice in a terrestrial context, especially when it comes to democratic systems. He points to the lack of enforcement around environmental laws. Ultimately, what I think Pellow is pushing all of us—scholars, practitioners, and activists—to do is to question the social order that reifies state power at the expense of the most vulnerable communities who often experience a disconnect between the theory and practice of the socio-legal systems. Perpetrators, victims, and others impacted by maritime crimes and threats from piracy to drug trafficking to illegal fishing belong in this conversation, not just scholars and practitioners in the fields of maritime security studies and environmental justice. We need to include the persons, groups, and communities whose lives are most directly touched by these issues and topics.

I hasten to add that I am not entirely sure what maritime or even marine justice could look like without the state at its center. In the context of maritime security studies, I will concede here that perhaps the oceans do represent something different, something other. Crime, security, and order-making at sea have characteristics and dynamics that distinguish them from their manifestations on land. Despite that uncertainty, I am highlighting Pellow's (2018) question, not because I think it requires a definitive answer one way or another, but because I do wonder where this departure point might take our conversations about maritime justice into the future. Wherever that may be, I am grateful for the contributors to this

thematic issue and their role in launching us and I look forward to seeing how those of us in environmental justice and socio-legal studies who care about the oceans might continue to learn from each other.

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Conflict of Interests

The author declares no conflicts of interests.

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