

Working Paper Presentation:

Marine Environmental Security in the Areas Beyond National Jurisdiction: The Quest for Criminalisation, Interstate Cooperation and Effective Enforcement

Thursday, 8 September 2022

4.30pm to 5.30pm (SGT)

Federal Bartholomew Conference Room, NUS Law

ABOUT THE EVENT

International law recognises the exclusive jurisdiction of flag states in the high seas, which includes the right to enforce standards against crime, such as illegal fishing, shipping pollution and waste dumping, in addition to fishing and navigational freedoms in the high seas. Yet flag states have been notoriously unwilling or unable to bring enforcement action against their own vessels in the high seas. Hence although an international legal regime has emerged (in particular under the 1982 UN Convention on the Law of the Sea) to facilitate interstate cooperation for the effective and equitable management of shared natural resources, the enforcement of those standards remains deficient and fragmented. Only exceptionally, such as in the exercise of the right of hot pursuit, can a coastal state take enforcement action against a foreign vessel in the high seas.

So unlike other transnational crimes in the seas such as piracy or drug smuggling, where a stronger framework for states to cooperate under the criminal law have been established, the scope for cooperation between international and national enforcement agencies for the conservation of shared natural resources remains limited. This can be explained by the fact that most international environmental agreements lack appropriate enforcement structures. For example even though some international or regional standards have been adopted against illegal, unreported and unregulated (IUU) fishing in the high seas, regional fisheries organisations are given no legal standing to enforce their own allocation regimes against non-members, thus being powerless against illegal fishing by non parties.

This paper assesses the rationales for criminalisation and mechanisms for interstate criminal-law cooperation for protection of marine natural resources present in areas beyond national jurisdiction ('ABNJ'). It also discusses whether existing international environmental bodies and agencies are able to enforce environmental conservation standards effectively, drawing on the experience of international and regional fisheries commissions and the pollution control standards adopted under the auspices of the International Maritime Organisation (IMO). The paper argues that 'environmental security' could provide the overarching theoretical framework for conservation of the marine environment and criminalisation of environmental offences in ABNJ. It also examines whether extraterritorial criminal jurisdiction and the present standards and mechanisms for interstate cooperation in criminal matters (such as the 2000 Palermo Convention against Transnational Organised Crime) could assist interstate cooperation in enforcing conservation standards and ultimately provide a strong deterrent against illegal activities that undermine conservation efforts in the high seas and the 'Area'. Finally, the paper evaluates how far the ongoing intergovernmental negotiations for a treaty on marine biodiversity protection in ABNJ should include mechanisms for interstate criminal-law cooperation.

ABOUT THE SPEAKER



Dr Ricardo Pereira is currently a Reader (Associate Professor) at Cardiff University, United Kingdom(UK) and an Adjunct Research Associate Professor at the Asia-Pacific Centre for Environmental Law, National University of Singapore. He holds a Ph.D. in Environmental Law from the University of Essex, UK, and LL.M. degrees in International Law from Queen Mary, University of London and City, University of London. He is a member of the IUCN World Commission on Environmental Law and regularly acts as a consultant and gives advice to international and regional organisations and NGOs, including UNEP, IUCN and the European Commission. His main research interests lie in environmental and natural resources law, criminal law, international law, the law of the sea and human rights. He has published widely in those fields, which includes the single-authored monograph *Environmental Criminal Liability and Enforcement in European and International Law* (Brill 2015) and the book *Environmental and Energy Law* (Wiley 2012) (co-edited with Karen Makuch). He is currently finalising a book on 'International Natural Resources Law' (with Alberto Quintavalla and Karen Makuch) due to be published by Routledge in 2023. He will be joining the NUS Law School on 29 August-16 September 2022 as Visiting Associate Professor in International Energy Law.

PROGRAMME

4.15PM : Registration
4.30PM : Presentation
4.50PM : Moderated Q and A
5.30PM : End of Event

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Registration close: 05 September 2022