International Law & The (De)Regulation of Racial Capitalism: Imaginaries of the High Seas

Arjîn Elgersma (469996)

First Reader: Willem Schinkel

Second Reader: Jess Bier

Erasmus School of Social and Behavioral Sciences: Engaging Public Issues

Het Schip van Jan Backx (Gemeente Rotterdam, 2005), 1978,
entering The Port of Rotterdam.

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Abstract

The Philippines is by far the largest supplier of foreign cheap labour aboard the ships that make up the logistical networks delivering goods to our doorsteps (ICS, 2021). Due to the ways in which international maritime and labour laws are imbricated with national laws, the shipping industry has effectively circumvented labour, environmental, and tax regulations in a bifurcated legal landscape layered on top of colonial geographies. In order to understand the new frontier of racial capitalism – its current vector: logistical capitalism – it remains crucial to research the (de)regulation of the maritime industry. By studying a conflict of laws case brought forward to the Dutch Supreme Court, we seek to explore – using the concept of sociotechnical imaginaries – how legal imaginaries of the high seas express and enact racial capitalism.

Keywords: international law, maritime law, racial capitalism, sociotechnical imaginaries

Introduction

As a conscious effort to avoid regulations, inspections, and taxation, shipping companies often do not register their ships in the nations in which their companies are based. Rather they register their fleets in open registries, also known as flags of convenience; Panama, Liberia, and Honduras being the first, though since the 70's having expanded to other countries mostly in the Global South (ITF, 2021). Ultimately these profits are channelled to companies registered in major maritime states, whose regulations are far stricter than those of open registries. The International Transport Workers' Federation (ITF) has been fighting decades long for better working conditions aboard ships flying a flag of convenience (FOC), keeping a list of all open registries considered flags of convenience. Almost all are previously colonized countries, or became open registries under auspices of European and North-American diplomats and representatives seeking colonial profits. Low wage regimes enacted by legal structures in which flags of convenience reside in as well as the hiring of cheap foreign labour with contracts that offer little protection allows companies to cut costs at all corners possible (Khalili, 2020). Currently, as reported by the International Chamber of Shipping (ICS), China is the biggest supplier of officers, followed by the Philippines, India, Indonesia and the Russian Federation. This does not include the distribution of deck ratings – seafarers who are not trained for the highly specialized work which large cargo ships and oil tankers demand, thus relegated to tasks such as mooring, cleaning, reparations. Here the Philippines taking the lead, followed by China, Indonesia, the Russian Federation, and Ukraine (ICS, 2021).

Much has already been said about the colonial and carceral legacies of maritime capitalism, how these legacies persist in new form throughout our current neo-liberal era, as well as how these legacies *have been* and *are still* sites of contestation and struggle (Chua et al., 2018; Cowen, 2014; Khalili, 2017, 2020). Logistics has played a crucial role in the

(de)regulation of maritime capitalism, supply chain management being a distinctly new source of value in 20th and 21st century capitalism. Built on top of capitalist colonial and carceral legacies, its "calculative logic and spatial practices of circulation" allows for a business-as-usual conduct under the guise of apolitical consequences (Chua et al., 2018, p. 618). Being at the forefront of the reorganization of capitalism and war, supply chain management has, and always was, essential for intersecting military and corporate interests – logistics not just being constituted of the transportation of material goods, but abstract universalizing computations through practices of processing that exacerbate the dispossession and expropriation of earlier forms of capitalism (Chua et al., 2018). It is these practices of processing that continue to demarcate populations across racial lines in order to put them in the service of Capital (Bhattacharyya, 2018).

Seemingly banal and mundane, these practices of processing are part and parcel of fervent imaginaries. They "embed… and are embedded within social practices, identities, norms, conventions, discourses, and institutions" (Jasanoff & Kim, 2018, p. 3). Imaginaries are not just fabulations. They operate through a dialectical relationship between structural and inter-subjective modes of maintaining social order and cohesion, and thus are more visible in moments of disruption, struggle, and contestation. These imaginaries are multiple, and institutions such as the law help determine for a particular polity what imaginaries should or should not be sought after; what perceptions of a particular future ought to remain and which ought to be reprimanded (Jasanoff & Kim, 2018). While the colonial and carceral legacies of maritime capitalism are continuously broken down and rebuilt in our society driven by logistical 'practices of processing', international law has done little to mitigate the precariously violent consequences of an industry that operates like "the super capital highways of financial transfers and dealings of the 1980s and 1990s, 'casino cyberspace', or the 'hyper-mobility of capital'" (Barton, 1999, p. 143; Chua et al., 2018). The shipping

industry almost operates as a phantom-like sector, continuously and effectively mitigating inter-state regulations (Barton, 1999).

If we want to understand these recent developments in capitalism, it remains crucial to explore the role imaginaries, as foregrounded by the law, play in expressing and enacting *racial* capitalism. As Khalili notes (2020), in order to understand capitalism, it remains essential to study the (de)regulation of the maritime industry. Therefore, the research question central to this thesis is: *how do legal imaginaries of the high seas express and enact the (de)regulation of racial capitalism*? It should be noted that racial capitalism is a beast of its own. In order to refrain from professing a metatheory of racial capitalism, this account can be seen as a situated located analysis, though it nonetheless speaks on symptomatic patterns that sustain and are sustained by racial capitalism. After all this is a narrative of how international law has played a crucial role in the consolidation of exploitation of populations of workers as delineated by race. Hence the terms express and enact were chosen, since they refrain from seeing the 'racial' in racial capitalism as a category to "name, to describe, to analyse" (Bhattacharyya, 2018, p. 2), rather than how race and its "fictions of embodied otherness continue to play out in the economic formations of a capitalism that seeks to reduce us all to opportunities for value extraction…" (Ibid.).

The term high seas refers to an 'imagined equality' insisted on in international law that has come to determine how supranational and national jurisdictions be imbricated with one another, namely that the sovereignty of a country extends only towards territorial waters, while the high seas (also known as international waters) belong to all as a global commons (Bier, 2020; Cowen, 2014). Cowen's (2014) exploration of the geo-economics of piracy can be seen as exemplary of a situated account exploring how the law consolidates a particular order through the expression and enactment of a particular imaginary. This thesis seeks to understand how imaginaries – in Cowen's case imaginaries of the Somali pirate – express and

enact imperial productions of space to consolidate supply chains essential to further military and corporate interests. It is after all a narrative intimate to what this thesis will explore; one of "the mutual constitution of legal categories, subjects, and spaces in the making of new imperial forms through the politics of circulation and security" (p. 131). In the case of the pirate, a legal entity that is constituted outside of the legal categories of the individual and the state, making the pirate a universal enemy, we see that binary legal categories of inside/outside, as well as its accompanying imaginaries that are "at once products of an instruments of the coproduction of science, technology, and society in modernity" (Jasanoff & Kim, 2015, p. 19) were essential to empire-formation. How can we then, in light of racial capitalism, understand the role international law plays in foregrounding imaginaries that serve to consolidate forms of racial differentiation necessary for capitalist surplus value extraction? Following these accounts of turbulent circulation which the territorial and free seas have become a vector for, this thesis seeks to explore how imaginaries of the territorial/free seas express and enact racial capitalism.

International law in its historical context allows us to interrogate international law's self-perception as the stipulation of what *ought* to universally be considered as justice/injustice, and in doing so rather than mitigating labour abuse, is in practice serving as a technology of imperial political orders. Therein the term (de)regulation describes the laws, procedures, and legal practices that are implemented for the benefit of all while only serving particular interests. Instead of employing a legal technical analysis solely, this thesis serves to study the imaginaries enacted and foregrounded (as well as those that are reprimanded) by international law, allowing us to better understand how and why it has led to the (de)regulation of maritime capitalism; practices of the law that express and enact racial capitalism through means that are anything but equal for all nations and different populations.

In order to fight for better working conditions, the ITF has, and still is, conducting an anti-FOC campaign. During the 70's and 80's this campaign included a variety of actions. Boycott was often the only method of ensuring companies pay fair wages to their employees aboard ships travelling across multiple jurisdictions. To counteract this campaign, several cases have been brought in front of numerous courts of which only a Swedish case favoured the ITF's action. Muchlinksi (2021) notes that the international dimension of these disputes often meant that courts ruled in favour of the company's filing suit. The same occurred when the MV Saudi Independence entered the port of Rotterdam. The local ITF inspector helped crewmembers aboard the ship go on strike in an effort to pressure their employers to sign an ITF collective agreement which would ensure fairer wages to be paid on time.

International law functions by positing itself as a neutral and apolitical arbitrator of rules, rules then referring to the sometimes-conflicting imbrication of supra-national and national laws. The case analysed here allows us to delve into the rhetoric involved in similar dispute settlement cases concerning conflicting jurisdictions in labour regulations (Koskenniemi, 2019). An exploration of this symptomatic issue cannot be solely held to the realm of academia, but is one of societal interest as well. Firstly, this thesis rejects the apolitical depiction of the field of logistics (Chua et al., 2018). Moreover, it strives to reject the attempt made to make of international law an apolitical arbitrator of disputes, and therein render visible that international law is not exogenous from the many political disputes it aims to settle through its supposedly neutral rules (Koskenniemi, 2019). It remains crucial here to explore how and why international law as a political actor, rather than mitigating abuses, is in practice expressing and enacting them in light of racial capitalism.

Theoretical Framework

The focus of this research refrains from a purely technical legal analysis resulting in some sort of moral judgements about what international law *ought* to be. Rather, what is of interest here are the co-produced realities – i.e., imaginaries – at play in the practice of international law which allow for us to tie together the structural and inter-subjective dimensions of forms of racial differentiation that express and enact racial capitalism. It is of interest here to study sites of friction and contestation over what international law ought to be, what realities express and enact this, and moreover how these realities are embedded within particular political orders and regimes. The theories and relevant literature that are then central to the research questions concern socio-technical imaginaries and the politics of circulation. These theories share similar genealogies, though they also contain some differences as will be outlined below. What remains crucial is being sensitive to these differences since it is a theoretical aim of this research to contribute to existing literature on the politics of circulation by allowing the concept of legal imaginaries to inform on how practices of racial differentiation occur through the law.

The concept of socio-technical imaginaries, as coined by Jasanoff and Kim (2015) in their collection of articles that explore the 'Dreamscapes of Modernity', helps situate this research through uniting the political with its respective onto-epistemic regimes. In the introduction of the book Jasanoff deals with the seemingly irreconcilable differences between the concerns of social and political theorists on the one hand and STS scholars on the other by introducing socio-technical imaginaries as occupying its "theoretically underdeveloped space" (Jasanoff & Kim, 2015, p. 19). As is best said in Jasanoff's own words: "the normativity of the imagination" lacks insight into "the materiality" of socio-technical networks (Jasanoff & Kim, 2015, p. 19). While the flat ontology of actor-network theory can lead to the flattening out of power structures, its relational and non-possessive agency helps

to critically evaluate the nature of the sociotechnical rather than taking it for granted. The imagination is no stranger to the materiality of reality, while simultaneously it is crucial to remain sensitive to the subject formation that is not *bound* to the human realm, but occupies it primarily (Jasanoff & Kim, 2015).

Khalili (2017) notes that the sea as a social space is not subject to the same regulations and constraints as is the territorial. Its "unreachability, indivisibility, and divisibility" is a testament to the sea's material unruliness and the troubles regimes go through to take advantage of this distinction between the territorial and high/free seas as a vector of their sovereignty (p. 51). The material unruliness of the high seas has long been part of fervent imaginaries of the high seas. Grotius' *Mare Liberum* (first published in 1609) for instance sought to tame this unruliness, enacting a tradition in jurisprudence that allowed for consolidating the unruly, free, and high seas as a global common; the legal imaginary consolidating the extractive interests of the Dutch East India Company (VOC) (Russ & Zeller, 2003). International law, then and now, serves as an especially fruitful site to study the ways in which space and time are made meaning of, expressed, and enacted, how these conceptions of space and time serve the interest of particular regimes, and more generally how they express and enact racial capitalism.

Academic critical engagement with logistics stems particularly from needing to attend to capitalism's 'bigness' while simultaneously remaining cognizant of its heterogeneity. Thinking with Anna Tsing (2009), while an orthodox Marxist analysis seeks a universal progressive definition of labor, critical-logistics excavates the diversity that capitalism preys upon, since "all economic forms are produced with the diverse materials of culture" and "all class formation depends on "noneconomic" arrangements of gender, race, ethnicity, nationality, religion, sexuality, age, and citizenship status" (p. 158). Socio-technical imaginaries share with critical-logistics this main aim, of uncovering the temporal and

cultural specificities and differences in social and political orders while recognizing that they are "collective, durable, capable of being performed" (Jasanoff & Kim, 2015, p. 19). Nonetheless, it should be noted that this thesis is not merely interested in logistical regimes, and though critical-logistics clearly recognizes the regimes that preceded and helped consolidate the logistics revolution, the concept of imaginaries allow for unrestricted insights into how fabulations of the past shapes practices in the present and desires for particular futures shape conceptions of the past (Chua et al., 2018; Jasanoff & Kim, 2015; Tsing, 2009).

International law allows us to study how international disputes often serve the consolidation of racial capitalism through creating consensus as expressed and enacted by foregrounding a particular sociotechnical imaginary. While historically the law governed the new entity called the state, international law set the conditions for which these entities interacted with one another. We cannot forget, then, that the formation of the state as an entity coincided with colonialism. From a post-colonial perspective, international law became a necessary technology of empire formation and therein state formation. As is evident within maritime capitalism, sovereignty does not pertain just to the designated territory of a state, but more so the state's imperial and colonial capacities abroad. As Wilson (2008) notes in his extensive monograph on Hugo Grotius' influence on the VOC and generally the early modern world system, what haunts the colonial legacy of international law, and what must be deconstructed, is "the iterable relationship governing International Law-as-Rhetoric and International Law-as-Colonialism through the temporal conjunction between the discursive emergence of International Law with the material foundations of European colonialism" (p. 72). Hence the rhetoric of international law cannot be seen as separate from the consolidation of material expropriation in order to sustain racial capitalism. The territorial/high seas distinction is then not only positioned as a legal principle to be followed, but part of discursive formations within a nexus of knowledge and power that serve to uphold imperial

regimes. Imaginaries allow us to take this a step further and question how such regimes are made stable, and if there are moments of tension, instability, or contradiction, how power is consolidated through foregrounding imaginaries of the high seas (Jasanoff, 2015).

As Koskenniemi (2019) notes, international law is an attempt to take international actors away from 'politics' and into a "world of abstract and neutral rules" (p. 17). However, in the practice of international law these rules rely on world views that, though seemingly neutral, are heavily contested. Therein Koskenniemi (2019) notes that international law aims to create an equivalence of distinguishing between 'law' and 'politics' resulting in historically specific power relations between international actors – of which some benefit from a structural 'bias' – that are then naturalized. This makes international law not only a site of contestation over world views, it is also a site of conceiving consensus in order to uphold an international political regime. Hence the concept of imaginaries and co-production are relevant here, since its concerns lie precisely with how collective consensus is achieved through epistemic and normative understandings of the world (Jasanoff & Kim, 2015). From a critical logistics perspective this entails the consolidation of colonial-capitalist interests through the creation of value in supply chain management as is sustained by a bi-furcated global financial system (Chua et al., 2018; Koskenniemi, 2019). Following Bhattacharyya's (2018) work, we can define racial capitalism as "an account of how the world made through racism shapes patterns of capitalist development. In this, racial capitalism is better understood as a variety of racecraft in the economic realm" (p. 103).

What this thesis will try to contribute to is an understanding of how 'the world made through racism' and the circulation of capital co-develop with one another, as supported by international law. Specifically, this thesis centres on the legal imaginaries that express and enact racial capitalism. Bhattacharyya (2018) perceives racial capitalism through the lens of class rather than capital. Her discussion of racial capitalism is helpful since she does not

perceive race as a necessary condition of capitalist exploitation – as is Cedric Robinsons central thesis in his seminal works on racial capitalism – but rather holds that "economic exploitation and racist othering reinforce and sometimes amplify each other" (p. 102). In the context of this thesis, then, we question how the consolidation of circulation of capital, through processes of exploitation, is co-amplified with racist othering. It will be evident in the rhetoric of international law that a-historicizing the bi-furcated relationships between nation-states, legal corporate entities, and laborers (specifically seafarers) in practice is done through racialized means.

Method

Socio-technical imaginaries are carried through 'languages of power'. This implies that research conducted on imaginaries be interpretive research, in so far that not all research is considered interpretive. Inductive coding will be used, since excavating imaginaries is largely interpretive work, not only cutting between the binary of structure and agency, but between that of theory and method as well. Inductive coding will allow for the recognition of "verbal tropes and analogies" that take part in particular desires for a particular future (Jasanoff & Kim, 2015, p. 27). The data will come from the published *Saudi Independence* case file, including news articles covering the case as well as other articles in which the ITF inspector was involved in: interviews on the ITF campaign which took place from 1979-1981. Imaginaries are 'particular and situated', hence a variety of data sources will be used since legal documents alone provide insight into which imaginaries ought to exist and which reprimanded, but tells us less of the social context in which normative judgements based on collective particular desires for a polity are expressed and enacted. On the other hand, it is also therefore important that some demarcations be made for the sake of clarity and consistency where this research ends, since the studying of socio-technical imaginaries can cut far through space and time (Jasanoff & Kim, 2015). This means that though other media outputs touching upon other developments in the wider ITF campaign will be discussed, the *MV Saudi Independence* case will be delved into fully, remaining as the central node to this exploration of an incredibly wide and gargantuan network of actors that make up logistical capitalism *then* as well as *today*.

International legal disputes are often disputes over how a particular polity perceives what is good and what is bad. Dispute settlement cases concerning international private law are particularly helpful; they are cases that more clearly delve into what is seen as a legitimate ethical and epistemological commitment and what is not. What remains crucial is

to distinguish between the structural and inter-subjective modes of expression and enactment of imaginaries, as well as sticking both to the commitments of typical STS research as well as political and social research (Jasanoff & Kim, 2015). For example, an article framing the issue as 'foreign' workers being exploited on board a ship that does not belong to 'Dutch soil' says a lot about how this issue is articulated, as well as how this fits within certain social normative frameworks and the imaginaries that international law foregrounds through its territorial/high seas distinction, demarcating possibilities and implied impossibilities for actions.

Data

Rather than answering the research question by accounting for the full scope of the issue, a legal case will be analysed to explore a situated account of the symptomatic silence that serves to continue the exploitation of populations of bodies divided across racial lines in the service of Capital. In tandem with the decade-long ITF campaign spanning from 1983-1995, Filipino seafarers working onboard the *MV Saudi Independence* – flying the Saudi Arabian flag and owned by Greek nationals – held a strike after abhorrent working conditions and food rationing left them with no other option but to catch their own fish. The ITF campaign – taking place during a pivotal period in the internationalization of shipping regulation as well as a fall in unionization of seafarers and rise of neo-liberal regimes – consisted of inspecting working conditions for seafarers, in order to negotiate for fairer wages and working conditions (Northrup & Scrase, 1996).

The case considered for this thesis, in legal terms, is considered a 'conflict of laws' situation (Anderson, 1996). This entails cases brought in front of national courts whereby it is unclear, due to the imbrication of international and domestic laws, which jurisdictions are applicable. Considering the UNCLOS III articles 91 (Nationality of ships) and 94 (Duties of the flag state), typically a court ought to apply the law of the flag state since article 94 states:

"Every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag" (United Nations, 1983, pp. 54-55), unless there is an exception which for the *Saudi Independence* case is that the seafarers were contracted for Philippine law (law of the contract), meaning that Philippine law ought to rule over the relationship between the different parties involved. This case embodies what Anderson (1996, p. 148) calls "forum shop[ping]", where owners can shop for favourable labour laws. Though the case itself is from the 1980's, it was a dispute that could not be settled through legal technical means (though the Judges involved claimed to do so). Rather it was a case that had to reconcile contradictions in international law through reconciling epistemic and normative understandings of how international law *ought* to be applied. More crucially, it had settled a precedence for how cases in the Rotterdam District Court (which is highly favoured for use by maritime companies currently due to its fast-decision-making process) be settled when there is a situation of conflicting laws (Anderson, 1996). Considering this case happened in a formative period in which unionization was declining and Raeganism and Thatcherism were on the rise, the conclusion of the case is telling of a precedence set for how we ought to perceive and deal with labour rights today.

Following newspaper articles of the strike, the court case ruling (which can be found in the Dutch National Archives), as well as secondary literature on the case like that of Anderson (1996), there is sufficient data to analyse the technical components of law in tandem with interpretive theoretical work on what legal imaginaries are at play and how they relate to the (de)regulation of maritime capitalism. In the *MV Saudi Independence* case, which was brought in front of a Rotterdam District Court (*arrondissementsrechtbank*), later being affirmed by the Dutch Supreme Court (*Hoge Raad der Nederlanden*), the owner won the case due to the seafarers' labour being considered 'vital work' (Journal of Maritime Law and Commerce, 1985). Articles shedding light on the experience of the ITF inspector in such

cases will help analyse the difficulties in navigating a legal system that gives little sympathy to unionization. After all, this case is telling of the ways in which legal imaginaries express and enact racial capitalism, allowing for – as well as sustaining – labour abuses.

The documents used in the analysis include the published case file consisting of the conclusion and summary of proceedings, four newspaper articles commenting on the developments of the *Saudi Independence* case, as well as six newspaper articles that highlight the ITF inspector involved in the *Saudi Independence* case and other strikes that took part in the currently ongoing ITF-FOC campaign. The articles analysed were published around the same time of the *Saudi Independence* case (1979-1981).

It must be noted that the Supreme Court case and corresponding case-file analysed took place in 1983 which is two years after the Rotterdam District Court case. The document is the official publication of the Supreme Court decision. In the Netherlands, civil cases firstly take place in a District Court, in this case the Rotterdam District Court. If a party wants to appeal the decision, the case will be taken to The Hague Court of Appeal. Both the Rotterdam District Court and The Hague Court of Appeal are concerned with the 'facts' of the case as well as interpreting national and supra-national laws (especially in this case due to its international dimensions). If one party still does not agree with the decision made, the case is taken to the Supreme Court. In the Supreme Court the judges are concerned *only* with whether the law has adequately been applied rather than being concerned with the 'facts' of the case.

The case file is divided into two main sections: the conclusion as summarized by the advocate-general's advice to the Supreme Court and the objections (grievances) made by said party. There are some limitations to the use of the case-file since it does not include the arguments made by parties during the proceedings in the Rotterdam District Court and the The Hague Court of Appeal. Since the Supreme Court is specifically concerned with whether

the law has adequately been applied, it is nonetheless telling of the formal bureaucratic imaginaries involved in deciding over ‘conflict of laws’ cases.

Analysis

International Law as a Hands-Off Approach

From the eight grievances for which the ITF appealed to the Court of Appeal and Supreme Court, only one was substantially answered; the magistrates concluded that the crux of this case was whether Dutch law ought to surpass foreign law, and since this claim failed, so did the remaining grievances. It is clear that for the magistrates, who ought to consider whether the law has adequately been applied rather than considering the 'facts' of the case, the absence of a clear and valid directive of which laws ought to apply led to wanting to refrain from Dutch involvement – leading to a substantive discussion of Dutch principles, a discussion that does not belong in the Supreme Court – and therefore affirming the decision to apply the law of the contract: Philippine law.

> "Here one can speak of a sliding scale: the more the (Dutch) forum is involved, the sooner fundamental Dutch principles should come into effect, and vice versa: the less Dutch involvement, the smaller the need to oppose foreign law" (*Saudi Independence,* 1983, p. 12, para. 4).

This quote from the Supreme Court conclusion is exemplary of Koskenniemi's (2019) analysis of international law as an attempt to remove international actors from the realm of 'politics' in order to implement a framework of 'abstract and neutral rules' which ought to settle disputes over questions of sovereignty and its accompanying bordering. This is also how international law is endowed with authority in a legal liberal international order that functions on a member-state basis and strives towards settling the, at times, conflicting moral differences as foregrounded by a variety of national legal institutions. The question of Dutch

principles is a highly political one, and the magistrates were well aware of this. In resolving – as well as refraining from – this question of Dutch principles, the Supreme Court references several similar court cases questioning the extent of Dutch involvement and states that:

> "Dutch interests are insufficiently involved in the present strike to rule that an invocation of the Philippine right to strike with Dutch public order is well-founded. International workers' solidarity, in the service of improving wages and working conditions, can be considered of great importance, but this does not mean that Dutch interest is sufficient for an appeal to the Dutch public order - given in every solidarity action carried out in the Netherlands such as the present one from ITF. Related to this is the fact that according to Dutch legal principles a strike is not lawful under all circumstances (objectives and procedures) and that in that sense one cannot speak of 'the right to strike' as a fundamental and absolutely essential part of the Dutch legal order. This is an important difference with a fundamental principle such as the prohibition of discrimination as enshrined in art. 1 of the new Constitution" (*Saudi Independence*, 1983, p. 13-14).

Even though the Supreme Court superficially touches upon the structurally bi-furcated system of (de)regulation of workers' conditions, demarcated along national-racial lines, it then first removes this acknowledgement from the realm of politics – as is discussed whether the Dutch public order has a responsibility towards foreign workers in a Dutch port. In doing so, by striving to maintain the equivalence of distinguishing between 'law' and 'politics', refraining from resolving the political dilemma at the core of this case, and subsequently using a positivist technical approach, in conflict of laws situations the exception becomes the rule, quite literally (Carty, 1991; Koskenniemi, 2019).

In 2001 the *Wet conflictenrecht onrechtmaatige daad* (WCOD, translation: Act Conflicting Laws Unlawful Deeds) came into effect, deciding in art. 5 that in a conflict of law situation whereby it is not clear which laws ought to apply in determining the unlawfulness of, for example, a strike, a legal relationship between the two parties, for example, a contract, can enter as an exception to art. 3 & 4 (former: the law of the place; latter: law of the place where the deed affects competitive relations), therefore superseding local considerations of law (van der Velde, 2006). Though the WCOD was removed after 2011, rules determining how to resolve a conflict of laws situation was relegated to the Dutch Civil Code (book 10) and the Rome II Regulation (European Union Legislation), which nonetheless states that if there is a contractual relationship between the two parties that is closely related to the tort, the deed's unlawfulness ought to be prosecuted according to contractual obligations and therefore the law of the contract (Rampersad & van der Weide, 2016).

In light of racial capitalism, how can we understand this hands-off approach? Considering the principle that the high seas is imagined as a global commons, meaning that it ought to be accessible to all in the name of free trade, the Supreme Court's argumentation leads to an ahistorical and apolitical imagined equality before the law. In wanting to refrain from impeding on Filipino sovereignty precisely because sovereignty is the legal concept that demarcates and is sustained by the liminal space that is the high seas, from the perspective of racial capitalism a hands-off approach to international law – as being mediated through an imaginary of the high seas – becomes an accumulation strategy (Nye et al., 2019).

Legal Exceptions as The Rule of Law

This exception to the law of the place is made use of by companies who operate on a trans-national basis through the simple fix of contractual obligations for individual crew members that explicitly stipulate that working with a union – or collectively going on strike – is deemed unlawful. Essential to this case were the contractual obligations of the 25 crew members who went on strike:

> "It is fully understood and agreed by the second party that officers and crew who are signatory under this contract shall not in any manner voluntarily or otherwise enter into any bargaining or affiliation with any organization such as ITF and or ILO…
>
> This agreement shall be construed, interpreted and governed in accordance with the laws of the Republic of the Philippines and the applicable regulations of the National Seamen's Board of the Philippines and other applicable labor laws…" (*Saudi Independence*, p. 3, in Voorgaande Uitspraak 3.1).

Subsequent to the Philippines becoming a post-colonial state, the nation was met with social unrest amidst harsh economic conditions, superfluous domestic labour that could not sustain its national economy (high rates of unemployment), and a consequent need for foreign exchange. From 1978-1986 several changes were made to the national regulations and policy for overseas labour. The demand of Filipino overseas labour was too grand for government bodies to regulate, and by presidential decree in 1978 the government relinquished total control over the overseas employment program, relegating such tasks to the private sector: companies who recruit and place Filipino workers abroad (Asis, 1992).

Ocean Trade Company, one of many companies who circumvent and enact the (de)regulation of international private laws, weaponized its contract against the ITF and Filipino seafarers. They did so by explicitly deeming unlawful the collaboration with two of the, at the time, largest international unions fighting against the disastrous consequences of FOC ships, ensuring that the contract be interpreted through Philippine law in which the labour code states in art. 264 that "It is the policy of the State to encourage free trade unions and free collective bargaining within the framework of compulsory and voluntary arbitration. Therefore, all forms of strikes, picketing's and lockouts are hereby strictly prohibited in vital industries…" (*Saudi Independence*, p. 6, in Voorgaande Uitspraak 9). In an era of growing internationalization of the ship, the translation of corporate interests into legal categories such as 'vital industries' has effectively been weaponized both by corporations and states.

International private law rests on geographic demarcations which – through legal rhetoric – de-politicize the anything but equal access to the high seas, and even then, does not offer any protection in the only space where ships *can* be reprimanded: territorial waters and port authorities (DeSombre, 2016). The decision by the Court of Appeal and Supreme Court to affirm the use of the law of the contract paves way for European and North-American states to circumvent what we could call a historical responsibility towards the welfare of seafarers who are put in the service of capital in some of the most abhorrent of conditions. While the case file only mentions the low quality of food, in a Report of Commission for Filipino Migrant Workers it was recorded that:

> "For ten months the Saudi Independence has been sailing as a hunger ship. Despite repeated requests of the crew for adequate and varied food, the shipowner has refused

> the crew's request…The shipowner always promised that the food supply would be replenished in the next port. But already after some weeks, the captain at that time was dismissed because of his efforts to improve the food situation on board the ship. His place was taken by a Filipino captain. Soon after he was sent back to the Philippines for the same reason. Later, during the second trip to Europe, the Filipino first mate was also dismissed after making a complaint over radio on the lack of food. Finally, the radio officer was also dismissed. The need became so great that the crew had to improvise making a fish net to try to catch fish and supplement their meager rations of food with fish. At the same time, the shipowner very shamelessly sent a telegram ordering more savings and limitations on food supply. There was in fact no food supply" (Poisson, 1982, Appendix I, p. 9).

In order for us to understand how this – as Khalili (2020) calls it – symptomatic silence haunts the (de)regulation of racial capitalism we need to take a step back to understand the bigger picture. It is clear that international law was written by the very European and North-American powers seeking to consolidate incoming flows of capital after states started decolonizing and logistics became a new source of value in 20th and 21st century capitalism. In this context, how do we understand the 'racial' in racial capitalism, and moreover how can we understand legal categories like 'vital industries', 'law of the place', 'law of the contract', 'the high seas', and the 'territorial seas' when the rhetoric of the Court of Appeal and Supreme Court are not seen as mundane and formal procedure but as partaking in legal imaginaries that express and enact racial capitalism?

Practices of Bordering and Ordering in International Law

> "The key to the post-colonial approach has been the deconstruction of the iterable relationship governing International Law-as-Rhetoric and International Law-as-Colonialism through the temporal conjunction between the discursive emergence of International Law with the material foundations of European colonialism" (Wilson, 2008, p. 72).

Reflecting again upon this quote in the context of the *Saudi Independence* we see how legal rhetoric such as 'vital industries', 'Dutch public order', 'Dutch principles, 'foreign law', modes of property expressed in determining the applicability of laws such as 'law of the place', 'law of the flag', 'law of the contract', are employed to protect the material interests of corporations functioning in a post-colonial liberal world order: post-colonial in so far that colonialism does not exist in the same manner as it did when nation-states had colonies. From a critical legal perspective, it is then possible to de-construct such rhetoric; to shift from a positivist legal ontology to one that recognizes the apoliticization of legal decisions and the ahistoricizing of historical relations that lead to a structurally bi-furcated access to the global economy in order to sustain it. This rhetoric is functional in nature, since such legal categories are mutually implicated in subjects and spaces that Cowen (2014) recognizes as 'new imperial forms' carried through the vector of logistics. While critical-logistics aptly recognizes how logistical capitalism exacerbates "existing patterns of uneven geographical development" (Chua et al., 2018), racial capitalism allows us to understand the "place of racialization in particular capitalist formations" (Bhattacharyya, 2018, Introduction, ix), in this case the racialization of access to workers' rights. More so, it allows us to understand 'everyday practices of bordering and ordering', a recent technology of the government in controlling the differential access to particular forms of economic activity (Bhattacharyya, 2018).

This differential access is expressed numerous times, not just in the *Saudi Independence* case, but in several of the news articles, including interviews with the ITF inspector involved, as well. The inspector tells a newspaper that:

> "In Panama you can register your ship under easier circumstances. There there are worse maritime laws and an employment contract is not obligated…Seafarers are for example recruited in the Philippines, and get 100 dollars a month and notice that they can just go out for a night in Rotterdam with that" (Provinciele Zeeuwse Courant, 1980, p. 5, para. 3).

Panama is notoriously known for being one of the first widely used open registries next to Liberia and Honduras, allowing for U.S. and Greek freight companies to circumvent taxes and pay low wages to their employees aboard ships. The 70's saw a period of intense national deregulation, making open registrations common practice (Carlisle, 1981; Khalili, 2020). Interestingly, here, the inspector not only speaks of the bi-furcated legal landscape and its consequent working conditions aboard ships, but also touches upon another essential component to the differential access which logistical capitalism, as racial capitalism's new frontier, preys upon. The national-economic difference between the Philippines and the Netherlands as result of the endowed indebtedness subsequent to the Philippines becoming an independent republic, mediated by the IMF and World Bank, are forms of economic differentiation well known to most post-colonial states in the Global South. Economic nationalization of newly independent states, the 'Third World project', served as a threat to incoming flows of capital to the Global North, allowing for supply chain management to become the new frontier of economic extraction through its use of foreign cheap labour (Chua, 2021). Promises of

political independence would become new forms of economic dependence. As is expressed by the inspector, wages for Filipino seafarers are hardly not enough when the ships they work on travel across colonial geographies of exchange rates.

The Supreme Court expresses this economic inequality and differential access by stating that:

> "When one tries to delve into the background of this case and takes note of the considerations…then one can see grievance 16 of the judgment under appeal: those backgrounds are extremely difficult to assess and there are also political aspects at play, in which the relationship between rich and poor countries plays a role" (*Saudi Independence*, 1983, p.11, para. 1).

Seemingly a trivial statement, the diction used has underlying implications for the framing of the issue of differential access. Here the terms 'rich' and 'poor' are ripped from its colonial context and instead take part in an imaginary that rhetorically presumes equal access to the global economy, and in the context of the Supreme Court's decision to affirm the unlawfulness of the strike, relegating being 'rich' or 'poor' to an illusion of choice. For the Supreme Court economic inequality is a factor to consider in so far that being 'poor' is merely the Philippines' problem.

In another interview, the inspector also delves into the practices by which shipping companies ensure employees do not resist through actions such as strikes:

> "A boycott has a lot of benefits…because these people often come from countries, where there is rarely the right to speak, let alone the right to strike…For the Philippines – a known supplier of 'cheap crews' – holds for example that

> crewmembers who take part in actions are black listed, if their employer wants to. Other methods are borderline blackmail. Shipping companies often let their new crewmembers sign a statement, so that they do not collaborate with the ITF. This is a condition for getting the job" (Reformatisch Dagblad, 1979, p. 1, 'Onder druk', para. 1-2).

Interestingly this interview took place before the *Saudi Independence* case, showing us the extent of how symptomatic this issue is. More so, this quote touches upon the lack of legal protection Filipino workers experience when sent abroad, particularly since the Philippines labour code weaponizes 'vital industries' in favour of corporations while the overseas employment program simultaneously became a task of the private sector whose intentions should be suspect. Here the private sector cunningly uses 'the law of the contract' to consolidate ongoing processes of accumulation by dispossession in this new frontier of capitalism (Bhattacharyya, 2018). Access is not only differentiated by the ways in which imaginaries of the high seas enact racial capitalism, difference being ordered in particular ways so "imagined equality" can be "mobilized to reproduce global injustice", but also in vivid structural terms (Bier, 2020, p. 1292). "Even the 15 non-strikers, including the captain…[were]…deprived of food by the ship owner" (Leidsche Dagblad, 1981, p. 25, in Kort & Zakelijk). Though the Supreme Court did not give sympathy to the ITF and 25 Filipino seafarers, the other crew members were offered no legal protection at all due their differentiated citizenship status.

These excerpts give insight into the practices of bordering and ordering present in some of the ways in which the law expresses and enacts the racial differentiation necessary for sustaining racial capitalism – namely across national lines as interpreted in ahistorical categories of wealth and access: rich/poor, domestic/foreign. Racial capitalism, hence,

reminds us that the race in racial is no reference to prioritizing identity and skin colour as an essential component to racial capitalism. Rather, as Stuart Hall famously stated, "race is… the modality in which class is 'lived', the medium through which class relations are experienced, the form in which it is appropriated and 'fought through'" (Hall et al., 1978, p. 341). Chua's (2021) ethnographic research aboard a cargo ship travelling across the North-Pacific Ocean provides a situated and relational insight into how structural forms of racial differentiation are co-produced with inter-subjective forms of racial domination. The Filipino and German crew were contracted with differing national jurisdictions and subsequent working conditions, meaning the former crewmembers were to work 5-7 months aboard the ship with 3 months of unpaid leave, while the latter worked 3 months on and 3 months off with paid leave. The Filipino crew received almost 1/5 of what the German crew got. Most notably, the ways in which the German and Filipino crews accounted for these differences, as well as for differences in the capacity to work, were expressed through racialized tropes similar to the ones the Philippines used to promote their labour pool during the period of American imperialism, as well as internalized racial tropes that deemed the Filipino crew's bodies as 'made' for this type of work (Chua, 2021).

International law as enacting structural forms of racial differentiation in order to put racially demarcated populations in the service of capital is not just produced by, but also produces the schemas of normativities which express and enact the (de)regulation of racial capitalism. In an interview with the ITF inspector involved in the *Saudi Independence* case – just having been laid off from the FWZ, a trade union that is now called Nautilus International – spoke of seafarers as those "poor people from the third world" (Herbergs, 1981, para. 2). Insight into how the unions view their work, as well as the excerpts from newspapers and the case file, helps us trace these normativities in which structural inequality is spoken of. Inequalities between 'them' and 'us' that are telling of the social reproduction

sustaining the racial differentiation which racial capitalism preys upon. The Philippines is spoken of as a nation with less protection offered to its workers. Companies are spoken of as predatory, as exploiting these 'poor people', whose implied self-imposed economic conditions leave them no option but to sign contracts with (de)regulatory clauses. It is mentioned that some on the ship are suffering under the same abhorrent conditions of the Filipino crew, even though they do not have access to legal protection – and even then, lack thereof – since they are not unified by a single nationality.

Scattered and fragmented, the quotes make more sense in the context of an economic imaginary – foregrounded by the law – that is as old as *Das Kapital*. Those tales of intelligent and frugal people whose descendants can become capitalists, and those who do not spend their money wisely, are lazy, incompetent; to blame for their own economic conditions (Melamed, 2015). What is left out of this tale is the violence incurred on people considered unworthy; the violence, conquest, and enslavement which European modernity built itself on. Melamed (2015) poignantly puts it as "The division of humanity into "worthy" and "unworthy" forms [that] is the trace of the violence that forces apart established social bonds and enforces new conditions for expropriative accumulation" (p. 80).

Modernity's Fairy Tales: Notions of Freedom and The Illusion of Choice

In light of this case, where can we concretely trace the ways in which 'practices of bordering and ordering' in international law take place as a practice that expresses and enacts racial capitalism? When we speak of legal imaginaries of the high seas, we are speaking of imaginaries that rhetorically express equal access, while in practice delineating access based on co-produced normativities of who is 'worthy' and 'unworthy' (Melamed, 2015). For Cowen (2014) the relation between imaginaries of the high seas and the legal category of the pirate is clear. After all, the pirate is a legal entity located precisely and exclusively in the

"exceptional space of the high seas" (p. 151). From the perspective of racial capitalism and its current vector, logistics, the figure, as well as legal category, of the pirate has been weaponized to deem illicit the activities of people deemed 'unworthy' – previously Somali fishermen whose income was cut off as a consequence of European owned ships dumping ballast water along the coast – in order to continue those activities deemed licit by the means of exorbitant violence rhetorically euphemized as mere security practices (Bhattacharyya, 2018; Cowen, 2014).

Nonetheless, the story of the *Saudi Independence* is still one of carceral legacies veiled by the notion of 'freedom of the high seas' and illusions of choice. While the pirate is a legal entity that stands in contradistinction with that of the individual and the state, concretized in international law as a universal criminal, this case shows us that the individual is not a homogenous category. Rather, it is one that in the practice of international law is differentiated across national-racial lines. This differentiation is expressed, more so enacted, through the contract which the Filipino seafarers signed. The 'freedom of the high seas' as an international legal principle thus becomes the nexus upon which the contract becomes the mode of property that enacts racial capitalism. International legal scholars, as well as the magistrates involved in this case, still believe the current world order consists of distinct states, while logistical capitalism and the legal structures governing its proliferation show us that liminal sites such as the high seas are just as, if not more, constitutive of sovereignty than the territories that supposedly demarcate it (Chua, 2021; Cowen, 2014).

When questioning the unlawfulness of the strike, the Supreme Court considered whether the case infringed on Dutch principles, therefore possibly leading to the law of the place superseding the law of the contract. It was decided that this grievance, as brought forward by the lawyer representing the ITF and Filipino crewmembers, failed since the right to strike under Dutch law is not a fundamental right compared to "a fundamental principle

such as the prohibition of discrimination as enshrined in art. 1 of the new Constitution" (*Saudi Independence*, 1983, p. 13-14). How can it be that these dense, manifold, interrelated forms of racial differentiation and discrimination as illuminated in this case are not considered an infringement on art. 1 of the Dutch constitution? Here, before the law, race is seen as distinct from class, and even then, class is perceived as a choice rather than a necessary condition for the extraction of surplus value. The *Saudi Independence* case file is riddled with these implied notions of freedom of choice and will, the fairy tales of modernity which the law foregrounds, the same tales which posit the global political economy as 'race neutral' (Chua, 2021; Melamed, 2015).

The ITF inspector involved in this case mentions in a newspaper interview that "A boycott is the only means of actually doing something about slave work, which now often has to be done on ships flying 'cheap flags'" (Reformatisch Dagblad, 1979, p. 1, para. 2). Knowing the difficulties of finding methods other than boycotts and strikes to ensure shipping companies pay wages to their crewmembers, the ITF is cunningly using what Chua (2014) calls logistical capitalism's chokepoints – those central yet diffused and dispersed nodes that concentrate the circulation of commodities taking part in supply chains crucial to the co-maintenance of states, militaries, and corporations – to fight fire with fire: threatening companies with losses subsequent to their ships being halted in ports. Rotterdam is one such node; figures from 2013 showing it as one of the world's biggest bunkering ports after Singapore and Furaijah (Khalili, 2020). Hence the ITF, an organization operating internationally, knowingly performs these actions in port authorities with stricter maritime regulations precisely since they are resisting against the (de)regulation of port authorities where such a strike will not be legally protected. The Supreme Court, replying to the ITF's grievance for the application of the law of the place, states that:

> "It should be stated first of all that the lex loci advocated by the appellants, as being the law of the place of strike, is ineligible, after all, would lead to disastrous consequences: it would, in view of the fact that ships move regularly, mean that in cases such as the present the ITF could go on strike through forum shopping only where it knows the law is on its side, a system that rejects itself, since this would add an improper element to the legal battle. The appellants have explained their preference for the lex loci over the choice of law criterion to be discussed in a moment, inter alia, by stating that the latter criterion is too subjective. However, it is difficult to think of anything more subjective than a system whereby the appellants could unilaterally determine, depending on the ports in question, which right to strike should be applied." (*Saudi Independence,* 1982, p. 5, under Beslissing de HR: 4).

The word 'appellants' – referring to the ITF – in the last sentence of this quote could easily be replaced with 'shipping companies', ironically since the term forum shopping is used by legal scholars to specifically refer to corporations using offshoring as a technique of circumventing regulations. To conflate the term 'forum shopping' with the ITF is telling of how the Court, so to say, epistemically perceives the rules of the game. After all, we know now that the true "disastrous" – dare we say Kafkaesque – consequences come from the easy fix of lex contractus, making it "difficult to think of anything more subjective than a system whereby" shipping companies "could unilaterally determine, depending on the" flag "in question" which labour laws, taxes, and environmental regulations should apply (*Saudi Independence,* 1982, p. 5, under Beslissing de HR: 4). From a critical legal perspective, this neatly fits into how international law is endowed with authority – by removing international law from the realm of political actors into a realm of neutral arbitration, and in doing so, relegating highly political cases that

involve accounting for on-going colonial histories to mere formalistic procedure. Racial capitalism tells us that accounting for these histories might not be enough. Instead, we should problematize the very notions of freedom of will and choice which the law presumes (Koskenniemi, 2019). Therein the ITF inspector's use of the phrase "slave work" is particularly interesting, since the phrase takes place long after the abolishment of slavery, during a formative period of the current liberal and neo-liberal world order, allowing for the term to be used in the context of describing abhorrent working conditions. On the other hand, perhaps it can help us existentially question what definitive indicator there is between the slave work aboard ships during the period of mercantile colonial capitalism and its current aftermath; the contract becoming a new form of ownership (Hartman, 1997).

Conclusion

While the *Saudi Independence* judgement – twice in appeal – took place in 1983, working conditions aboard the many ships travelling across colonial geographies have not improved. Currently the ITF reports 68 cases of ships abandoned by the owner with crewmembers still unpaid (ITF, 2021). These are only reported cases, and considering that most only report with the help of the ITF, the symptomatic silence still to this day continues to haunt the many ghost ships traversing the high seas as well as the seafarers whose bodies are put in the midst of corporate competition. Though the ITF has successfully retrieved millions of unpaid wages, our hope in the law acting as a mitigating force for these symptomatic abuses and silences, should be extremely suspect by now. Amongst the many websites I came across, one particularly stood out; its exact purpose and ownership still mysterious, though very telling of the current role the Netherlands plays in litigating conflict of laws cases.

Dutchmaritimelaw.nl depicts an incredibly pleasing, reputable, and honourable narrative of the competence of Dutch litigation. In all bold capitalized letters, it states: “FOR EXPERT, SPEEDY, AND AFFORDABLE DISPUTE RESOLUTION GO DUTCH” (Dutch Maritime Law, 2016, Home). On the Maritime Nation page, they proudly invoke Hugo Grotius as a Dutch hero taming the unruly seas. They state that “The [Dutch civil] codification is continuously kept up to date making the outcome of a procedure more predictable” (Dutch Maritime Law, 2016, Dutch Law). After all, the website makes choosing the Rotterdam District Court, being described as “highly specialized” to deal with dispute settlement cases, incredibly appealing to say the least, along with the website reporting the 2019 establishment of a special ‘Commercial Court’ in Amsterdam that will use English as

the main language during proceedings (Dutch Maritime Law, 2016, Justice System). Supported by a host of organizations including the Rotterdam Municipality, the Erasmus School of Law, The Dutch Royal Association for Shipping Companies, as well as several consultancy and insurance companies, the language used on the website is reminiscent of the rhetoric evident in imaginaries of the high seas found in the *Saudi Independence* case (Dutch Maritime Law, 2016).

These imaginaries, as illustrated throughout this thesis, express and enact the (de)regulation of racial capitalism and its new frontier, logistical capitalism. Highly political cases involving overlapping histories of exploitation, expropriation, and primitive accumulation are practiced through formalistic and standardized procedure to be made predictable, since predictability has become logistical capitalism's main insurance. International law has therein served to maintain an equivalence between distinguishing 'law' and 'politics', and legal categories like 'law of the contract' allowing for the exception to become the rule (Carty, 1991; Koskenniemi, 2019). These imaginaries 'produce and are produced' by particular practices of bordering and ordering – across national lines, interpreted in ahistorical categories of access and wealth – that invoke an "imagined equality…mobilized to reproduce global injustice", serving on a global capitalist scale as an accumulation strategy (Bier, 2020, p. 1292; Jasanoff & Kim, 2015; Nye et al., 2019). An 'imagined equality' in which the racial differentiation necessary to sustain racial capitalism is perceived as distinct from class – class being perceived as a choice rather than a necessary condition for the extraction for surplus value.

After all, Chua's (2021) ethnographic work aboard a cargo ship shows us, thinking with Ruth Wilson Gilmore, that racial capitalism acts as a technology of anti-relationality on both a structural as well as inter-subjective level. These imaginaries of the high seas and its weaponization of legal categories – 'vital industries', 'law of the land', 'law of the

contract' – show us how this anti-relationality is expressed and enacted on a structural level, as well as inter-subjective in terms of the normativities – domestic/foreign and the conflation of nationality with race – that are simultaneously produced by and product of structural forms of anti-relationality, in this case the ways in which national and supranational laws are imbricated (Jasanoff & Kim, 2015). It remains a crucial task then to explore the many institutions whose foregrounded imaginaries - contingent on new forms of racial differentiation built on colonial geographies – continue to provide for 'fast circulation and slow violence' at the cost of the countless bodies on whose back's it was ensured those goods were delivered at our doorsteps (Chua, 2021).

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Appendix A: Checklist Ethics and Privacy Aspects of Research

CHECKLIST ETHICAL AND PRIVACY ASPECTS OF RESEARCH

INSTRUCTION

This checklist should be completed for every research study that is conducted at the Department of Public Administration and Sociology (DPAS). This checklist should be completed *before* commencing with data collection or approaching participants. Students can complete this checklist with help of their supervisor.

This checklist is a mandatory part of the empirical master's thesis and has to be uploaded along with the research proposal.

The guideline for ethical aspects of research of the Dutch Sociological Association (NSV) can be found on their website (http://www.nsv-sociologie.nl/?page_id=17). If you have doubts about ethical or privacy aspects of your research study, discuss and resolve the matter with your EUR supervisor. If needed and if advised to do so by your supervisor, you can also consult Dr. Jennifer A. Holland, coordinator of the Sociology Master's Thesis program.

PART I: GENERAL INFORMATION

Project title: Legal Imaginaries of the High Seas

Name, email of student: Arjîn Elgersma 469996ae@eur.nl

Name, email of supervisor: Willem Schinkel Schinkel@essb.eur.nl

Start date and duration: 22nd of March 2021 – 20th of June 2021

Is the research study conducted within DPAS YES

If 'NO': at or for what institute or organization will the study be conducted?
(e.g. internship organization)

PART II: HUMAN SUBJECTS

1. Does your research involve human participants. NO

If 'NO': skip to part V.

If 'YES': does the study involve medical or physical research? YES - NO

Research that falls under the Medical Research Involving Human Subjects Act (WMO) must first be submitted to an accredited medical research ethics committee or the Central Committee on Research Involving Human Subjects (CCMO).

2. Does your research involve field observations without manipulations that will not involve identification of participants. YES - NO

If 'YES': skip to part IV.

3. Research involving completely anonymous data files (secondary data that has been anonymized by someone else). YES - NO

If 'YES': skip to part IV.

PART III: PARTICIPANTS

1. Will information about the nature of the study and about what participants can expect during the study be withheld from them? YES - NO
2. Will any of the participants not be asked for verbal or written 'informed consent,' whereby they agree to participate in the study? YES - NO

3. Will information about the possibility to discontinue the participation at any time be withheld from participants? YES - NO

4. Will the study involve actively deceiving the participants? YES - NO

Note: almost all research studies involve some kind of deception of participants. Try to think about what types of deception are ethical or non-ethical (e.g. purpose of the study is not told, coercion is exerted on participants, giving participants the feeling that they harm other people by making certain decisions, etc.).

Does the study involve the risk of causing psychological stress or negative emotions beyond those normally encountered by participants? YES - NO

Will information be collected about special categories of data, as defined by the GDPR (e.g. racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, genetic data, biometric data for the purpose of uniquely identifying a person, data concerning mental or physical health, data concerning a person's sex life or sexual orientation)? YES - NO

Will the study involve the participation of minors (<18 years old) or other groups that cannot give consent? YES - NO

Is the health and/or safety of participants at risk during the study? YES - NO

Can participants be identified by the study results or can the confidentiality of the participants' identity not be ensured? YES - NO

Are there any other possible ethical issues with regard to this study? YES - NO

If you have answered 'YES' to any of the previous questions, please indicate below why this issue is unavoidable in this study.

_____
_____
_____
_____

What safeguards are taken to relieve possible adverse consequences of these issues (e.g., informing participants about the study afterwards, extra safety regulations, etc.).

_____
_____

_____
_____

Are there any unintended circumstances in the study that can cause harm or have negative (emotional) consequences to the participants? Indicate what possible circumstances this could be.

_____
_____
_____
_____

Please attach your informed consent form in Appendix I, if applicable.

Continue to part IV.

PART IV: SAMPLE

Where will you collect or obtain your data?

_____

_____

Note: indicate for separate data sources.

What is the (anticipated) size of your sample?

_____

_____

Note: indicate for separate data sources.

What is the size of the population from which you will sample?

_____

_____

Note: indicate for separate data sources.

Continue to part V.

Part V: Data storage and backup

Where and when will you store your data in the short term, after acquisition?

The data will include digital files that are open to the public. These will be held on the student's hardware as well as a copy on the student's external hardware. These files will be saved during the thesis trajectory (March 22nd – 20th of June 2021). The only files which were not open to the public concerns the archives containing the original case-file document, however this file was unfortunately not found in the archive.

Note: indicate for separate data sources, for instance for paper-and pencil test data, and for digital data files.

Who is responsible for the immediate day-to-day management, storage and backup of the data arising from your research?

The student will be responsible for this.

How (frequently) will you back-up your research data for short-term data security?

Weekly backups will be conducted using the external hardware device.

In case of collecting personal data how will you anonymize the data?
n/a

Note: It is advisable to keep directly identifying personal details separated from the rest of the data. Personal details are then replaced by a key/ code. Only the code is part of the database with data and the list of respondents/research subjects is kept separate.

PART VI: SIGNATURE

Please note that it is your responsibility to follow the ethical guidelines in the conduct of your study. This includes providing information to participants about the study and ensuring confidentiality in storage and use of personal data. Treat participants respectfully, be on time at appointments, call participants when they have signed up for your study and fulfil promises made to participants.

Furthermore, it is your responsibility that data are authentic, of high quality and properly stored. The principle is always that the supervisor (or strictly speaking the Erasmus University Rotterdam) remains owner of the data, and that the student should therefore hand over all data to the supervisor.

Hereby I declare that the study will be conducted in accordance with the ethical guidelines of the Department of Public Administration and Sociology at Erasmus University Rotterdam. I have answered the questions truthfully.

Name student: Arjîn Elgersma

Date: 19th of March

Name (EUR) supervisor: Willem Schinkel

Date:

Willem Schinkel