MediMARE

Mediation in Maritime Disputes

Book of Abstracts - Final Symposium

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Introduction

This book of abstracts is the written result of the international call for papers opened in the context of the MediMARE Mediation in Maritime Disputes Final Symposium, which happened on June 30th and July 1st 2023, at Colégio da Trindade, University of Coimbra, Coimbra, Portugal.

The Call for papers was open in order to promote discussion in topics related to maritime mediation. Interdisciplinary and international approaches were welcomed, in several dimensions, such as: legal analysis of maritime mediation and its implications, social and political analysis of the mediation mechanism related to maritime activities; diagnosis on current situation and building innovative solutions at the legal and social policies levels; relevance and/or experience of maritime mediation in particular fields, such as (but not limited to) insurance, labor relations, contractual relations, environmental disputes.

As a result of this call for papers, fourteen vibrant papers were received, accepted ad presented (either online or in-person) at the MediMARE Mediation in Maritime Disputes Final Symposium. These papers ranged from perspectives as diverse as Maritime Mediation and the Sustainable Development Goals (SDG), Maritime Mediation “deconstructed” (with a focus on mediation procedure and foundations in maritime disputes) and New Directions for Maritime Mediation (such as online mediation and artificial intelligence).

We invite you to take a look at the abstracts and to develop your knowledge on Maritime Mediation.

PROGRAM

16:45 – 18:00 Panel I - Maritime Mediation and Sustainable Development Goals

16:45 Commercial Maritime Mediation as a means of fulfilling ESG purposes within the Corporate Social Responsibility Norms
Roberta Mourão Donato

16:55 Ocean Dumping and The Use of Mediation
Louise Amorim Beja and Milena Barbosa de Melo

17:05 Cross-Border Waste Disputes: An Examination of Environmental Implications and Legal Frameworks
Laíze Lantyer Luz

17:15 Harmonizing Interests: Mediation as a Pathway for Conflict Resolution between Killer Whale Conservation and the Shipping Industry
Catarina Nobre de Araújo Branco

17:25 Can collaborative process conciliate biodiversity conservation and marine resources exploitation? The Manila clam National Action Plan
Maria João Correia, Paula Chainho, Thomas Goulding, Frederico Carvalho, Sara Cabral, Filipa Gomes Ferreira, and Lia Vasconcelos

17:35 The Relevance of Maritime Mediation to the Achievement of The Sustainable Development Goals
Juliana da Silva Ribeiro Gomes Chediek

18:00 – 18:50 Panel II - Maritime Mediation “Deconstructed”

18:00 The Rise of Med-Arb Processes in Maritime Law: Implications of the UK’s Ratification of the Singapore Convention
Zeynep Damla Işık

18:10 Application of customary rules in the process of maritime mediation
Francisca Bentral

18:20 Techniques for Maritime Mediation: aspects for a better communication
Isabela Moreira Antunes do Nascimento

18:30 Mediation as a “space of reasons” in the global maritime normative order
Luiza Nogueira Barbosa and Niedja de Andrade e Silva Forte dos Santos

18:50 – 19:40 Panel III - New Directions in Maritime Mediation

18:50 The Mediation: An Efficient Tool to Solve The Port Strike at Lisbon and Setúbal Harbors

Rafael Teixeira Ramos

19:00 Who is qualified to be a part in the mediation process?
Carolina Marques

19:10 Are Online Dispute Resolution (ODR) platforms a good way to conduct maritime mediation?
Begoña Fernández Rodríguez

19:20 The Contribution of Artificial Intelligence to the closing process of settlement
Guilherme Vaz Porto Brechbühler

Are Online Dispute Resolution (ODR) platforms a good way to conduct maritime mediation?

Begoña Fernández Rodríguez

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Abstract:

Mediation is an alternative dispute resolution method that enables parties to resolve their controversies without the need to resort to a judge or a Court. Technological advancements make it possible to virtually connect individuals who are physically located in different places. Online alternative dispute resolution platforms are now a reality, but is the use of such platforms suitable for maritime mediation?

Regarding the advantages they present, they are numerous. For the sake of brevity, only the two most significant ones for the parties will be highlighted:

1. Cost reduction: A significant portion of maritime mediation cases will involve two or more parties with their respective domiciles in different cities, or even countries. This situation results in travel costs associated with the mediation process, which may be borne by one, several, or even all parties involved, depending on the location of the mediation center. Thanks to online platforms, these costs can be reduced or even eliminated.

2. Immediacy: The fact that the actors involved in the process do not have to physically travel to another location and can conduct sessions through online platforms, allows for sessions to be scheduled in shorter intervals as there is no need to plan a specific trip in advance.

However, these online platforms can also present drawbacks when it comes to conducting a mediation process. Once again, for the sake of conciseness, the two main ones will be highlighted:

1. Inefficiency by design: The design of the platform is crucial for ensuring that the parties can navigate the process and obtain a resolution. Otherwise, the parties may feel frustrated and abandon the mediation.

As an example of this design inefficiency, we have the European Online Dispute Resolution platform within the European Union. This interactive website was created in 2016 by the European Commission, allowing consumers and traders within the European Union to submit complaint forms regarding consumer disputes arising from online purchases or services. The issues with this platform lie in its design, as it only serves the user to 1) determine the competent alternative dispute resolution entities to resolve their dispute and 2) automatically transmit their complaint to the competent alternative dispute resolution entity.

2. Alienation: The lack of physical presence is a significant limitation in establishing the necessary trust bond between the parties and mediators. Additionally, this absence of physical presence leads the parties to not fully perceive the situation as a genuine process aimed at resolving a dispute, as they feel more detached from it.

While these advantages and drawbacks can be analysed from an objective standpoint, their determination ultimately depends on the user. It is undeniable that with the advancement of society (especially with the

emergence of new generations that have grown up with online platforms) and the development of new technologies, online dispute resolution platforms are a tool that facilitates the society access to the resolution process.

Therefore, resorting to these types of platforms designed according to the usefulness they provide to users, should be an option for the parties and never an imposition. Likewise, the use of online dispute resolution platforms could be considered only for a specific part of the mediation process.

Basic Ideas:

1. ODR platforms facilitate citizens' access to alternative online dispute resolution systems, such as maritime mediation. The advantages and disadvantages of using these platforms should be analysed by the users themselves and should never be imposed by the mediation center.

2. ODR platforms should be designed with the goal of providing utility to users. Poor platform design can lead to frustration for the parties involved and may result in them abandoning the process.

3. It is important to consider the possibility of using digital tools or online processes only for certain parts of the mediation process rather than the entirety.

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Who is qualified to be a part in the mediation process?

Carolina Maria Condeço Marques

Carolina Marques holds a Master's Degree in Law, Criminal Legal Sciences (2020-2022) at the Faculty of Law of University of Coimbra, where she also completed her Law Degree (2016-2020). She participated in the international project ECI A to Z- Erasmus+. and the ECI project dissemination event, where delivered a presentation about the European Citizenship Initiative project that develop with a work group. Furthermore, completed an English course for academic purposes at the University of Coimbra's, Faculty of Letters. Carolina completed the online course for the Medimare project. In addition to, took part in the fourth edition of Law Talks, which focused on criminology and criminal psychology concepts., the AEEC (Coimbra Association of European Studies) course on environmental and digital innovation and attended the first virtual Congress of Sustainability Diplomacy in Brazil and the second virtual International Congress of Sustainability Diplomacy. As a student, was a Member of the Section for the Defense of Human Rights, Academic Association of Coimbra. Carolina volunteered with environmental and animal rights organizations. Her research interests focus primarily on criminal law, criminal justice and environmental law.

Abstract:

The technological and social advancements of the 21st century brought new concerns, questions, and a progressive scientific effort to the table of discussion of the global community in search of solutions.

The legal world is currently experiencing a judicial crisis, with overcrowded courts. The alternative methods for resolving disputes are becoming more visible and appear to be a potential course of action for containing this crisis.

Through critical reflection, this work seeks to explore the subject of who might theoretically participate in a mediation process.

This is the definition as "a form of alternative dispute resolution, carried out by public or private entities, through which two or more parties in a dispute seek to voluntarily reach a settlement with the assistance of a conflict mediator" by the provisions of the Mediation Law.

A question that immediately arises is whether a subject lacking legal personality may participate in a mediation procedure. For instance, the sea, a river, or a lake?

To take part in a mediation procedure, it may be necessary to have a legal personality and legal ability. Can we have mediators in the name of the ocean? Or, when this occurs, is the person acting in their own name to protect their desire to keep their lake clean?

The idea that robots could act as mediators has since gained traction in both the scientific and social media communities. In this work, we also raise the question, "Can a robot be a part in a mediation process?"

This reflection will involve thinking about these issues in relation to the general principles of mediation, namely the principle of voluntariness. This is why if you inquire about this potential portion, you could give your express, informed consent. Then, consider the principle of executoriedade, particularly in light of the fact that, among other things, Article 9(b) of the aforementioned Law on Mediation stipulates that "the Parties shall have the capacity for the celebration of the Mediation Agreement" in order for it to have the same legal force as a judgment.

Additionally, it is stated in the cited law's article 18 that parties may appear personally or act as their own representative during mediation sessions while being accompanied by attorneys.

Further, it is stated in Article 36 of the same law that the founding or governing documents of public mediation systems may require parties to participate in person at mediation sessions, even if their representation is not possible. In the case of a criminal mediation, for instance, both parties must participate personally, even if an attorney or arbitrator is present to provide support.

Ideas to be retained:

The general idea is to reflect on what the role of the parts is in a mediation process. Putting questions that relate to the current area of research and trying to determine whether or not they are valid and how they might affect the institution of mediation.

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Mediation as a Pathway for Conflict Resolution between Killer Whale Conservation and the Shipping Industry

Catarina Nobre de Araújo Branco

Catarina Branco is a Portuguese student currently attending the 5th year of the Integrated Masters Course in Environmental Engineering, in the Environmental Systems Engineering profile, at the Faculty of Science and Technology, NOVA University of Lisbon. Her interest in the theme of the sea is manifested, on the one hand, by the fascination she has always had with the sea, and on the other hand, by the growing curiosity to better understand the challenges and conflicts that arise with all the parties involved with the sea and the coastal areas, from their interactions with communities, animal life, environmental protection and economic activities. In addition to the academic background, the experience as a volunteer in several organizations, such as Refood (2016-2018) and GASNova (2019-2022), has granted several capacity building tools, such as facilitating meetings based on participatory learning and non-formal education, where conflict management is managed through techniques that establish collaboration among all members.

Abstract:

Among all marine species, marine mammals and more specifically, cetaceans, are considered to be highly susceptible to sound and impacted by noise, which has the potential to cause adverse impacts when its frequencies overlap with the frequencies of a species' audiogram. With commercial shipping representing approximately 90% of the global trade occurring worldwide (UNCTAD, 2017 in Cominelli et al., 2018), amid the known anthropogenic sources of noise in the oceans, commercial shipping is the most ubiquitous (Cominelli et al., 2018).

A study conducted by Cominelli et al. (2018) aimed to assess vessel-noise exposure levels for Southern Resident Killer Whales (SRKW) in the Salish Sea, a highly traversed area, with approaches to industrial ports and coastal cities, international shipping lanes, ferry routes, and recreational vessel traffic (Burnham et al., 2021). The investigation examined the predidect noise exposure levels derived from commercial vessel traffic within the core areas of the SRKW and determined where high levels of noise from shipping and high probability of SRKW presence could co-occur in the Salish Sea (Cominelli et al., 2018).

Veirs et al. (2016) argues that sound from shipping has the potencial to lower survival rates and reproductive success of the species (Cominelli et al., 2018). SRKW faces a high extinction rate, with only 75 individuals left in the wild, including 22 females capable of breeding (Williams et al., 2021), and is listed as endangered and protected under Canada's Species at Risk Act (SARA) and the United States' Endangered Species Act (ESA). Moreover, the Salish Sea is officially acknowledged as an essential habitat for the SRK (Cominelli et al., 2018).

To address the urgent conservation challenges faced by SRKW, a comprehensive range of solutions and interventions must be considered. There’s evidence that the speed reduction implemented by commercial vessel pilots leads to substantial reductions in broad-sprectrum noise exposure (Joy et al., 2019). Another solution is to modify the existing shipping routes, as suggested by IMO's guidelines (International Maritime Organization, 2014) (Cominelli et al., 2018).

Currently, Canada lacks legislation limiting anthropogenic noise output in the ocean, despite recognising noise as a disturbance in the SRKW recovery strategy (Fisheries and Oceans Canada (DFO), 2016). Without a regulatory framework, the effectiveness of implementing quieting measures relies heavily on the voluntary

compliance of those responsible for generating noise (Cominelli et al., 2018). Marine conservationists call for stricter regulations, however, the shipping industry confronts economic pressures and operational constraints that pose challenges to the implementation of such measures.

The potential for ecnonimc conflicts while implementing recovery actions is high, as federal regulators craft new protections that may impose restrictions on fishing and shipping industries. The U.S. ESA, aimed at safeguarding numerous whale species, has introduced various limitations, covering how fast vessels can travel and where commercial fishing is allowed. However, these restrictions have been met with resistance from shippers, who express concerns about potential difficulties and compromised safety in their line of work. The American Pilot's Association, for instance, raises apprehensions regarding the impact of these regulations on the meticulous speed calculations required for navigating safely in adverse weather conditions (Whittle, 2023).

In contrast to ESA, SARA does not impose restrictions specifically on noise emissions from vessels, therefore, prior to implementing such measures, dialogue with the industry becomes imperative to ensure trust among stakeholders. Mediation emerges as a potential solution to address this challenge, by engaging in constructive dialogue, connecting differences and finding agreeable solutions that prioritize both the conservation of SRKW and the concerns of the industry.

For the mediation process, several parties should be involved to ensure a comprehensive and inclusive approach, such as environmental organizatios (NGO's), Canada's government agencies, decision-makers, different industry representatives, legal specialists, researchers and local stakeholders. In determining the modes of communication for engaging with each party, thoughtful consideration must be given to the type of contact. For this purpose, the following contact categorization was established, considering the relation between influence/power credibility and interest/impact of each party: 1) "follow from distance": local stakeholders; 2) "keep informed": environmental organizations; 3) "keep satisfied": legal specialists; 4) engage: government agencies, decision-makers, industry representatives and researchers.

After careful consideration, the facilitative mediation model is recommended as the most suitable approach to implement in this conflict of interest. The impartiality of the mediator is crucial, as it is important to note that it is preferable for the mediator not to possess expertise in mammal conservation or the shipping industry, as that could lead to some form of conflict of interest. In fact, it is not recommended for the mediator to have a bias towards any particular party or agenda, to prevent potential conflicts arising from having prior knowledge or involvement in the subject matter. So, the mediator's primary focus is to facilitate open dialogue and structure a process to support the parties in reaching an agreement.

Ideas to be retained:

The Southern Resident Killer Whales (SRKW) currently faces a high extinction rate, with only 75 individuals left in the wild. An essential habitat for species survival, the Salish Sea, located in Canada, is subject to a highly traversed area, with international shipping lanes, ferry routes, and recreational vessel traffic.

This significant level of vessel activity poses a risk, due to increased noise exposure, which has the potential to cause adverse impacts in the SRKW, such as lower survival rates and reproductive success. One potential solution to mitigate this issue is the implementation of speed reduction measures by commercial vessel pilots, which has shown promising results, in a variety of studies, in substantial reductions in broad-sprectrum noise exposure. However, with marine conservationists calling for stricter regulations, potential econonimc conflicts arise as the shipping industry confronts economic pressures and operational constraints.

In the present paper, mediation is recommended as a potential solution to address this challenge, prior to implementing measures regarding vessel speed restriction in the Salish Sea, by engaging in constructive dialogue, connecting differences and finding agreeable solutions that prioritize both the conservation of SRKW and the industry interests. To ensure a comprehensive and inclusive process, key parties identified for involvement include environmental organizatios (NGO's), Canada's government agencies, decision-makers, different industry representatives, legal specialists, researchers and local stakeholders.

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Application of customary rules in the process of maritime mediation

Francisca Nassoma Cumandala Bentral

Biographic note (maximum of 250 words): Francisca Nassoma Bentral is a Phd Candidate in Law in the specialty of Legal-Civil Sciences at the Faculty of Law of the University of Lisbon, Master in Civil Law from the same institution and Master in Law and Economics of the Sea from the Faculty of Law of the New University of Lisbon, founding member of the Lusophone Association of Law of the Sea, researcher at the Centre for Studies in Law of the Sea, Vicente Marotta Rangel - USP, guest member of the Law, Politics & Society Magazine of the University of Mindelo, graduate in several postgraduate courses, author of several scientific articles, namely: "Shadow governance in Angolan maritime space"; "The feasibility of state sovereignty in Angolan national waters"; "Reflection on Presidential Decree no. º 183/22, of 22 June, that approves the Strategy for the Angolan Sea 2030: a utopian instrument or lack of perspective for the affairs of the sea?!"; "Which Lusophone maritime identity?"; "The sea in Lusophony"; "The neglect of biodiversity and marine ecosystem in Angolan waters"; last published article, December 2022.

Abstract:

Introduction

The dynamics and complexity of maritime relations influence their operators to resort to peaceful solutions to resolve the conflicts in which they are involved. Mediation is an alternative dispute resolution method characterised by a high degree of voluntary autonomy on the part of the parties.

In the mediation process, the parties are responsible for the decisions they take with the help of the mediator, who establishes the necessary communication so that they can find, by themselves, a favourable agreement to end the conflict. However, mediation is the alternative method of conflict resolution that is most proposed to deepen the problems surrounding the issue, causing a real deepening and understanding of the elements that make up the core of the issue (Nascimento, 2016).

The present work has as object application of the customary rule chose by the mediator for the understanding of the real interests of both parties.

1. Conflict resolution in the Law of the Sea

The history of human integration between peoples has taken place precisely on the oceans, which have served as a dynamic space of cultural interaction, trade, conquest, pacification, contract between peoples and civilizations, and miscegenation. Over time, these interrelationships expanded and projected new tensions that were customarily resolved (Menezes, 2015).

The regulation of issues of the sea was only possible due to the leadership and perseverance of the United Nations Organization and the conferences it promoted until the United Nations Convention on the Law of the Sea (Marques, 1998; Menezes, 2015; Bastos, 2017; Januario, 2000). The aforementioned Convention directs the parties to seek the resolution of disputes by peaceful means indicated in Article 33, paragraph 1, of the United Nations Charter, which are placed at the service of States, so that they may choose to use them to resolve their conflicts of international character, within a certain margin of freedom (Roman, 1996), except in the existence of regional or bilateral agreements in which the States parties have established a specific procedure for conflict resolution.

Mediation is one of these means by which parties (States) can find among themselves the best solution to their desiderata, with the assistance of a conflict mediator.

2. Mediation as an alternative method of conflict resolution

Any legal relationship is subject to conflicts, and in this scenario, it is up to the Law to create various types of methods aimed at satisfying the common interest of the parties involved.

Despite the great importance of the Judiciary, society in all its dynamism has created conflicts of great complexity in which the system itself is not able to solve so that both parties are satisfied, on the other hand, it is clear that the judicial machine will hardly be enough to meet all social demand (Nascimento, 2016).

As the Law is a creation that needs to be c As the Law is a creation that needs constant evolution, it opted for the pluralization of paths with the purpose of pacification of conflicts, without the decisive interference of a state authority. Thus, in mediation, all parties become winners, since a consensual solution is reached and there is no resentment of feeling "loser" by having to comply with what was decided by a judge (Highton and Álvarez, 1996).

The mediator, at the beginning or during the mediation process, may use the customary technique to reach a final agreement on the object of the dispute, and must inform and obtain the informed consent of the parties in the process.

3. Concluding remarks

In summary, the present study seeks in the history of the International Law of the Sea the understanding of how the regulated uses and practices of the activities at sea influenced the constitution of the principles and norms regulating the Law of the Sea and Maritime Law, and in the face of maritime conflict how the mediator, in obedience to the principles of mediation, assists the parties in the attempt of an agreement applying the custom without the violation of the public law.

Ideas to be retained:

- The use of customary rules in the mediation process of maritime conflicts gives its flexibility, since the fundamental principles of the International Law of the Sea have a customary origin.

- Mediation as an alternative means of conflict resolution enables the resolution of conflicts involving maritime issues.

- Analysis of the model and international norms of mediation that the parties consider appropriate for the case.

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The Contribution of Artificial Intelligence to the closing process of settlement

Guilherme Vaz Porto Brechbühler

PhD Candidate in Corporate Legal Sciences at Coimbra University Law School, since October 2022; has completed his Master's Degree (*pre-Bologna*) on July 19th, 2006, by the Coimbra University Law School. Received his Law Degree from the Rio de Janeiro Catholic University (PUC-Rio) on February 25th, 2002. Published articles on arbitration, mediation and judicial reorganization. Has taught at the Rio de Janeiro Catholic University (PUC-Rio) since February 2011 the disciplines of (1) Negotiation, Mediation and Arbitration, (2) Bankruptcy and Judicial Reorganization and (3) Corporations. Has also taught at PUC-Rio Post-Graduation Courses in Private Law and Civil Procedural Law. Acted as Attorney at distinguished law firms in Rio de Janeiro and as in-house counsel hydroelectric generation company and, at a bus-transport Company, as Legal Director for the holding company.

Abstract:

Maritime disputes involve several international conventions, different local rules, international organization rules. In other words, maritime conflicts involve a specific community with the maritime praxis. Crises are signs of new opportunities. Conflicts are natural issues in human life. If we change our behavior and spend energy solving a conflict, it may give us new insights.

After settling major questions of the dispute, the closing of the process is usually entrusted to the parties counsels. Sometimes the wording of the settlement halt on details that wore not subjects of the major mediation. The major aspects regard problems in a terminal or a delay on unloading goods, different interpretation for a charter contract or an insurance clause or, as an example of maritime business disputes, indemnification for a vessel collision. The aspect to be addressed here is the risk of a secondary issue, jeopardizing the entire mediation during the settlement wording process. The "closing mediation" must be held with the same environment as the main case. If the closing team does not believe in mediation or is not acquainted with a consensual process, they we will not act in a cooperative manner. And without cooperation the closing will be impossible and parties may lose good opportunities.

The AI can be an important tool during the settlement wording and its specific issues, because the algorithm can receive all the parties restrictions and concerns as inputs and find out the best offspring for minor questions.

Ideas to be retained:

Fist topic – Mediation and what we call "the settlement closing process" or "the settlement wording". After settling the major aspects of the dispute, a very important task is assigned to lawyers or those who will write down the settlement.

Second Topic – Artificial Intelligence is the revolution which made data the new petroleum and the algorithms it's refinery.

Third Topic – Contribution of AI to the settlement closing process. The AI can help parties to identify the best way to harmonize company policies and different tax systems and other different legal aspects and create new opportunities.

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Techniques for Maritime Mediation: aspects for a better communication

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Abstract:

The "*Alternative Dispute Resolutions*" ("ADR") have gained prominence in the expectation of (effective) resolution of various conflicts, including the maritime ones (Lopes; Patrão, 2016; Xhelilaj, 2022; Caser; Cebola; Vasconcelos; Ferro, 2017; UNCITRAL, 2019; United Nations Department of Political Affairs and United Nations Environment Programme, 2015), inserting itself into the *Multidoor Courthouse System*, according to the techniques necessary to resolve each type of conflict (Goretti, 2016, p. 107).

There are many mechanisms, but mediation is highlighted to investigate its techniques (Takahashi, 2016, p. 38), especially with regard to facilitating communication between those involved. Is possible cite numerous compositional skills: (a) cognitive, (b) perceptive, (c) emotional, (d) communicative, (e) creative thinking, (f) negotiation and (g) critical thinking (Azevedo, 2016, p. 92-100). As well as numerous negotiation and communication tools (Almeida, 2014, pp. 66-127). Emphasizing the communicative compositional competence, we continue with the analysis of some communication techniques as tools (without the pretension of exhaustion of them) to later conclude with the *Non-violent Communication* of Rosenberg (2003, pp. 19-253).

Often, people are unable to dialogue because of emotional factors (Ury, 2015). Until tensions are worked out, it is unlikely that a solution to the conflict will be found. So, among these techniques we can cite: (a) "*reestablishment of communication*" (Tartuce, 2018, p. 232). This implies (a.1) devoting special attention to the way the contents of the speeches are presented (Almeida, 2014, p. 265); (a.2) assist in the identification of alternative or peripheral histories, as "a set of positive events and situations of understanding that are not included in the belligerent narrative, initially portrayed" (Almeida, 2014, p. 293; Schabbel, 2016, pp. 53-67); (a.3) clarify the meaning of words or expressions with multiple meanings (Almeida, 2014, p. 298).

(b) It is also mentioned the "*prevention of conflicts*" because one of the purposes is "to avoid intensification of potential litigation and, through the reestablishment of communication, to prevent other conflicts from escalating in the litigation scenario" (Tartuce, 2018, p. 235) – phenomenon of "remaining litigation" (Tartuce, 2018, p. 236).

(c) In the "*interrogative mode*", in turn, the questions have several functions: "to allow the mediator to speak for himself directly to the other, to reveal feelings, doubts, emotions, to demonstrate the complexity of the conflict and to stimulate the creation of ideas" (Tartuce, 2018, p. 254). The questions are useful to highlight what is missing; question what, when, where, with whom, with what, for what, for where (Tartuce, 2018, p. 254). "They can also be important to evoke memories of the relationship between the parties that allow a broader understanding of the situation" (Tartuce, 2018, p. 254). They are responsible for enabling reflection, the generation of ideas/information/alternatives and the identification of solutions and authorship (Almeida, 2014, p. 255).

(d) *Active listening*, in turn, refers to the understanding of the needs and interests core to the conflict, rather than the "superficial" demands, that is, the real reasons. At the point, it is not merely about "listening" as natural to everyone who has a functioning auditory apparatus, but about "listening" which implies directing attention to the act of listening (Almeida, 2014, p. 240).

(e) Finally, *Non-violent Communication (NCV)* is built on some foundations: (e.1) communication that blocks compassion; (e.2) observe without evaluating; (e.3) identifying and expressing feelings; (e.4) taking responsibility for our feelings; (e.5) asking for that which will enrich our lives; (e.6) receive with empathy; (e.7) the power of empathy; (e.8) connecting compassionately with ourselves; (e.9) expressing anger fully; (e.10) the use of force to protect; (e.11) freeing ourselves and advising others; (e.12) expressing appreciation in nonviolent communication (Rosemberg, 2003; p. 12).

These techniques, as said, can be applied to the various fields of mediation, including the maritime because good communication (verbal and non-verbal) is the first element to be considered in the (re)encounter between people, whether on land or at sea. Thus, the intention of the work is to contribute to the development of Maritime Mediation by enriching the mediator with communication techniques so that he has better leadership, in the sense of good management of conflicts in their complex concreteness. The better prepared he is, greater his chance to be useful.

Ideas to be retained:

(a) Learn and explore the skills of a mediator in the maritime field.

(b) Communication competences.

(c) Tools to support parties in decision making.

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The Relevance of Maritime Mediation to The Achievement of the Sustainable Development Goals

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Abstract:

Given the particularities and the differences in viewpoints from the different legal systems, the common core definition of mediation is a form of alternative dispute resolution, carried out by public or private entities, through which two or more parties to a dispute voluntarily seek to reach an agreement with the assistance of a dispute mediator (LOPES et. al, 2016, p. 21).

Besides its fundamental elements (namely, dispute, voluntary nature, systematic promotion of communication of parties and resolution for which the parties bear responsibility and where there is no decision-making power on the part of the intermediary), mediation's use is not confined to the resolution of legal conflicts, but can also be considered for conflicts with more than or no legal dimension.

For HOPT (2013, p. 12), by the analysis of different legal systems one can conclude that the strength of the mediation lies in the way it primarily targets social conflict and leaving the legal resolution to an auxiliary function. From this perspective, this paper proposes an approach that analyses how maritime mediation can be a helpful tool to, as a dispute resolution method, help the justice systems to achieve some of the sustainable development goals as better described below.

The first and most important of them is the SDG 16, which refers to justice, peace and efficient institutions. Although there are still some voices questioning the real fairness of the mediation process as a dispute resolution mechanism (GOLDBERG et. al., 2012, p.198), it is common sense[1] that mediation is a significant process of voluntary agreement that contributes to the solution of conflicts – in between them, maritime conflicts – in quicker, simpler and more cost-efficient way to solve disputes[2] than the usual judicial procedure.

Consequently, through negotiation and agreement of the involved parties, mediation contributes to the pacification of the conflicts and to the broaden of the justice feeling, as it diminishes the duration and the costs of the persecution in comparison to the traditional dispute resolution methods. The concept of access

[1] For all, see GOLDBERG, et al. (2012, p. 508): "The dispute-resolution story makes settlement appear as a perfect substitute for judgement, as we just saw, by trivializing the remedial dimensions of a lawsuit, and also by reducing the social function of the lawsuit to one of resolving private disputes: In that story, settlement appears to achieve exactly the same purpose as judment – peace between both parties – but at considerably less expense to society."

[2] "Mediation can provide a cost-effective and quick extrajudicial resolution of disputes in civil and commercial matters through processes tailored to the needs of the parties. Agreements resulting from mediation are more likely to be complied with voluntarily and are more likely top reserve na amicable and sustainable relationship between the parties. These benefits become even more pronounced in situations displaying cross-border elements." Directive 2008/52/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 21 May 2008 on certain aspects of mediation in civil and comercial matters.

to justice includes “promoting access to adequate dispute resolution processes for individuals and business, and not just access to the judicial system”[3].

Finally, there is a growing recognition[4] of the role of mediation in general, and maritime mediation in particular, for preventing and resolving natural resource conflicts (Vargas, 2006, p.82) taking into consideration that environmental conflicts[5] (a particular type of social conflict that has arisen around environmental causes, DI SALVATORE, 2019, p. 28) can occur in a maritime area.

Specifically regarding maritime mediation, it may contribute to the SDGS 12 (responsible consumption and production) and 14 (life below water), as it can prevent a number of conflicts over borders and boundaries as boundary delimitation processes – for eg. the delimitation of Exclusive Economic Zones (EEZs) and maritime boundaries – that can impact the control over natural resources areas and generate apprehensions and dissension due to the critically important environmental, economic and political implications (UNEP, 2015, p.28).

These are some demonstrations of the contributions of the maritime mediation to the SDGs, as it can be a relevant instrument for the accomplishment of the 2030 Agenda.

Ideas To Be Retained:

1. Mediation’s use is not confined to the resolution of legal conflicts, but can also be considered for conflicts with more than or no legal dimension.
2. Maritime mediation can be a helpful tool to, as a dispute resolution method, help the justice systems to achieve some of the sustainable development goals.
3. Maritime mediation may contribute to the SDGS 16 (justice, peace and efficient institutions), 12 (responsible consumption and production) and 14 (life below water).

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[4] UNEP. *Mediation Can Prevent, Resolve Natural Resources Disputes New UN Guide Launched.* Press release. 19 Feb 2015. Available at: https://www.unep.org/news-and-stories/press-release/mediation-can-prevent-resolve-natural-resources-disputes-new-un

[5] According to DI SALVATORE (2019, p. 28), there are 6 broad categories of environmental mediation of disputes: land use; natural resource management and use of public land; water resources; energy; air quality; and toxic substances.

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Cross-Border Waste Disputes: An Examination of Environmental Implications and Legal Frameworks

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Abstract:

Cross-border waste disputes have emerged as significant environmental challenges in today's interconnected world. With the rapid growth of global trade and industrialization, waste generation has escalated, leading to the need for efficient waste management systems. However, inadequate regulations and divergent environmental policies among nations have contributed to the rise of disputes related to the transboundary movement and disposal of waste. This paper aims to provide a comprehensive analysis of cross-border waste disputes, emphasizing their environmental implications and examining the existing legal frameworks governing these disputes.

The paper begins by highlighting the environmental consequences of cross-border waste disputes. Improper handling, disposal, and transportation of waste can result in pollution of air, water, and soil, posing significant threats to human health and ecological systems. For example, studies have shown that the improper disposal of electronic waste (e-waste) in developing countries has led to the release of toxic substances into the environment, causing serious health risks (Manomaivibool, 2019). Additionally, the illegal dumping of hazardous waste in the oceans has led to the contamination of marine ecosystems, affecting biodiversity and fisheries (Galgani et al., 2018). These cases illustrate the adverse effects of cross-border waste disputes on local communities, ecosystems, and global environmental sustainability.

Next, the paper delves into the legal aspects of cross-border waste disputes. It explores the existing international agreements and conventions that govern waste management and disposal, including the Basel Convention, the Stockholm Convention on Persistent Organic Pollutants, and regional initiatives such as the European Waste Shipment Regulation. These legal frameworks aim to regulate the transboundary movement of waste and promote environmentally sound management practices. However, the paper also highlights the limitations of these frameworks, including issues of enforcement and the lack of harmonization of standards. For instance, the Basel Convention has faced challenges in effectively addressing the increasing volumes of electronic waste being exported from developed to developing countries (Boyle, 2017). Thus, there is a need for enhanced international cooperation and stricter enforcement mechanisms to effectively address cross-border waste disputes.

Furthermore, the paper explores the role of national legislation and domestic policies in addressing cross-border waste disputes. It examines the regulatory frameworks implemented by select countries and evaluates their effectiveness in preventing illegal waste trafficking and ensuring sustainable waste

management practices. For example, the Waste Electrical and Electronic Equipment (WEEE) Directive in the European Union has established targets for the collection and recycling of e-waste, as well as placing responsibility on producers for the proper management of their products at the end of their life cycle (Huisman et al.,2017). These national-level efforts provide insights into best practices that can be adopted globally.

The paper also sheds light on the challenges associated with jurisdictional issues in cross-border waste disputes. Conflicts often arise due to conflicting laws and jurisdictions, making it difficult to hold responsible parties accountable. The paper examines the role of international tribunals and courts in resolving these disputes, emphasizing the importance of establishing a clear legal framework that facilitates cooperation among nations. It also explores alternative dispute resolution mechanisms and the potential for arbitration and mediation to provide timely and effective solutions. For example, the Permanent Court of Arbitration has played a significant role in resolving disputes related to the transboundary movement of hazardous waste (Shi, 2020).

Moreover, the paper emphasizes the importance of public participation and stakeholder engagement in addressing cross-border waste disputes. It recognizes the role of civil society organizations, communities, and grassroots movements in advocating for sustainable waste management practices and holding governments and corporations accountable. The paper highlights successful case studies where community engagement and public pressure have led to positive outcomes in waste management practices. For instance, the "Zero Waste" movement in cities like San Francisco has demonstrated the feasibility and benefits of reducing waste generation through recycling and composting (Briamah et al.,2019).

In conclusion, this paper underscores the urgent need for a comprehensive and collaborative approach to address cross-border waste disputes. It calls for stronger international cooperation, harmonization of regulations, and the development of effective enforcement mechanisms to ensure responsible waste management practices. The paper advocates for the incorporation of sustainable waste management principles into national legislation and domestic policies, promoting waste reduction, recycling, and extended producer responsibility.

Furthermore, it emphasizes the importance of stakeholder engagement and public participation in finding sustainable solutions to cross-border waste disputes. By addressing these challenges comprehensively, the international community can work towards a more sustainable and environmentally sound future.

Keywords: cross-border waste disputes, environmental implications, legal frameworks, waste management, international cooperation. jurisdictional issues, public participation.

Ideas to be retained:

1. Environmental Implications of Cross-Border Waste Disputes: The text emphasizes the significant environmental consequences of cross-border waste disputes, including air, water, and soil pollution that pose risks to human health and ecosystems. Instances of improper e-waste disposal and illegal dumping of hazardous waste are highlighted as specific examples. This underscores the urgent need for effective waste management practices and regulations to mitigate these environmental impacts.

2. Legal Frameworks and Challenges: The paper discusses the existing legal frameworks governing cross-border waste disputes, such as the Basel Convention, Stockholm Convention, and regional initiatives like

the European Waste Shipment Regulation. It acknowledges the strengths and limitations of these frameworks, stressing the importance of enhanced international cooperation, enforcement mechanisms, and standards harmonization. Challenges related to jurisdictional issues and the role of international tribunals and alternative dispute resolution mechanisms are also explored. Clear legal frameworks are crucial to ensure accountability and facilitate cooperation among nations.

3. Public Participation and Stakeholder Engagement: The text highlights the significance of public participation and stakeholder engagement in addressing cross-border waste disputes. It recognizes the vital role of civil society organizations, communities, and grassroots movements in advocating for sustainable waste management practices and holding governments and corporations accountable. Successful case studies, like the "Zero Waste" movement in San Francisco, demonstrate the positive impact of community engagement and public pressure on waste management practices. This underscores the importance of involving stakeholders at various levels to promote sustainable solutions and ensure the effective implementation of waste management strategies.

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Ocean Dumping and The Use of Mediation

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Abstract:

Introduction

Discussing the benefits of the marine environment in the development of society becomes repetitive, especially because of its natural wealth. However, considering the reality of the beaches in World, it is worth noting that the marine environment, beyond its benefits to human health, enables the economic development of society. The interest in exploring the coastal zone seems to be contradictory since there is a mismatch between the need to explore it and the importance of caring for it.

A Thinking Beyond the Sea

Many legal systems establishes, natural resources are limited, and the current society must know how to take care, explore, and utilize the environment's resources so the future generation can have access to its benefits. Nonetheless, despite being a right established in the legal systems, the reality of several beaches on the coast around the world seems to be far away from the constitutional reality, since ocean dumping is quite frequent. Reality on these beaches, most of them urban, scares environmental protection specialists, since according to the BRK (2019), in 2017 alone about 5.622 Olympic pools of untreated sewage were thrown in the ocean.

Therefore, dumping sewage in the environment not only violates the many legal systems, but all the other Conventions and international deals that manage environmental protection and specially, the marine environment.

On the damages done, it is possible to identify three perspectives, namely, the environment, local population, and society. Regarding the environment, sewage dumping on the beach is extremely prejudicial to the biodiversity, because it endangers the lives of animals, seaweed, and other marine species.

Sometimes, what can happen is eutrophication, a decomposition process of organic elements originating from the sewage that multiplies the superficial algae, which reduces solar light in the waters and subsequently, the level of oxygen in the ocean.

This can impact society thanks to the possible reduction of tourism, followed by a decrease in the local economy, as the absence of tourists results in less spending and less monetary gain for the local tradespeople. And when the population's income decreases, the whole social and political system suffers, because it is necessary to spend public resources to help these people in a state of economic emergency.

Thus, it is evident that dumping sewage on the beach not only harms the constitutional device which deals with an ecologically balanced environment, but fundamentally, the quality of life, right to freedom and leisure, that is, the Human Rights established in the Universal Declaration of Human Rights.

Public responsibility

The responsibility of the public authority to reinforce what is shown in normative texts and, if we conclude that it's a tool deserving of complement by another guideline, it's worth pointing out that the UN (United Nations) summons all their members to work hard on fulfilling the development goals, especially Objective 14, which denotes the importance of establishing measures to maintain and protect the usage and the resources of the oceans.

Since, looking at the paths outlined for goal 14, we are already almost to 2025, but still a long way from achieving the ideal in terms of prevention and significant reduction of marine pollution of all kinds.

The biggest challenge in this regard will undoubtedly be to guarantee the conservation and sustainable use of the oceans and their resources by enforcing international law, as reflected in the UNCLOS - United Nations Convention on the Law of the Sea, which establishes the legal framework for the conservation and sustainable use of the oceans and their resources, as recorded in paragraph 158 of the "Future We Want". Thus, maritime mediation has been seen as an important instrument for the realization of international law and the application of the guidelines outlined by goal 14. This objective, in which we still have a long way to go.

In this sense, there is a mismatch between environmental preservation and the behavior of society regarding the disposal sewage in the seas. And, therefore, it is believed that the use of the consensual means to facilitate communication between the parties involved is the most appropriate solution.

The solution of mediation

Thus, it is believed that the use of mediation will be able to expand the capacity of reflection of companies, public power and also of the population itself with regard to the inappropriate use of the seas and, thus, to be able to prevent environmental and, consequently, social damage. For this to happen, the population must be aware that it is up to every citizen to keep the beaches clean and in this fight, the most important thing is the union between society and public authorities.

Concluding remarques

Therefore, it is understood that mediation in line with the fulfillment of the sustainable development goal 14, is a powerful tool with regard to the inspection and control of the maritime environment, as it enables the reduction of environmental impacts and procedural costs, facilitating access to justice for all parties involved.

Ideas to be retained:

- The use of maritime mediation as an important tool for the development and sustainability of environmental preservation.

- Public-private partnerships regarding the preservation and inspection of the marine environment.

- The importance of fulfilling goal 14 of sustainable development, which consists of the intention to prevent and reduce any type of marine pollution, minimize and face the effects of ocean acidification, and regulate the exploitation of fishing resources, among others.

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Mediation as a "space of reasons" in the global maritime normative order

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Abstract:

Due to its inherent nature and intertwined activities, the complexity of the normative background of maritime commercial disputes traces back to the early centuries of Middle Ages, specifically to the first unwritten maritime commercial rules of the Rodhian Sea Law (Benedict 1909; Tetley, 1994). The existence of multiple norms and the need of swift resolution, in contrast to the lengthy procedures of common law, were a reality in this industry. In order to address this issue, procedural privileges were granted to merchants, which were collectively known as *lex mercatoria*[1] (Fortunati 2005). Nevertheless, the material norms that surrounded

[1] The term was used to denote procedural commercial rules merchants in England until the 17th century. After some theoretical and practical efforts also to unify or harmonize the material norms od (maritime) commercial activities, there was a mutation in its meaning.

maritime industry were formed by a multitude of regional norms and customs until the late 17th century, when it underwent a broader unification (Maurer 2012, 29-33; Mitchell 1904, 1-21).

The complexity of this scenario has increased with globalization, as regional and international maritime activities have acquired a transnational dimension. Challenging the traditional legal-centric perspective of law, multiple actors, both private and public, have become involved in the creation of normative objects regulate maritime transactions and activities, both materially and formally. In this sense, the term *lex mercatoria* gained a new meaning among legal theorists and practitioners (Michaels 2007). What today is called ("new") *lex mercatoria* is a normative body formed by (hybrid or non-state) soft law and legally recognized instruments (be they national, regional, or international), with *lex maritime* being a specific subset. This global law – or global normative order[2] – emerges by virtue of actor's specialization[3]. Through different objects, such as conventions, contracts, model laws, charterparties, bill of ladings forms and regulations, those involved in the industry have the autonomy to create reasons and justify which norms are most suitable to be applied in their maritime activities[4].

From a political philosophy perspective, these normative orders must also be orders of justification to be considered legitimate. This implies that they enable actors to participate in the space of narrative justifications (Forst 2011a). Functioning as resources oriented towards order, these narrative justifications represent forms of embodied rationality condensed into discourse (Forst and Günther 2011, 16-20). The exercise of a person's right to justification is what grants validity and enforceability to their norms, thereby binding the parties subject to them. Therefore, it is crucial that these spaces are granted by and for the participants of normative orders, allowing every person as an autonomous agent with the right to justification to morally assert reasons and demand adequate justifications for any political or social structure or any legal norm seeking to bind them (Forst 2011b).

Mediation has the potential to address two inherent legal uncertainties in maritime disputes: the determination of applicable law and the jurisdiction competent to resolve the dispute[5]. The argument put forth is that mediation can serve as a space for parties to reach a mutual agreement on a dispute while providing normative reasons and refusing what they perceive as inadequate or unjust. Consequently, the use of this mediation by maritime actors can also bring relevant legal-political inputs to the normative order within this domain. On one hand, mediation allows parties to explore more favorable solutions while applying the global normative framework of lex maritima. On the other hand, the practice of mediation, and the pursuit for such solutions within a such flexible procedure (mediation) create a "space of reasons" in which parties can present their justifications for either applying or rejecting a given norm. This ensures the legitimacy of the maritime normative order itself.

[2] The concept here that from the investigation cluster "*Die Herausbildung normativer Ordnungen*" from the Goethe University Frankfurt.

[3] Those actors and normative instruments are more extensively mentioned in the article written by the authors and Dr. Dulce Lopes in a previous research to be published (Barbosa, Santos, & Lopes, n.d.).

[4] Through contractual clauses of choice of law and forum, the multinormativity is broadly recognized at the global level and also by national legal system.

[5] This argument was exhaustively debated in a previous work of these actors (Barbosa; Santos; Lopes, 2023). Other advantages are also mentioned in the article, such as the costs of procedure, the flexibility and possible celerity in achieving an agreement that, by its consensual nature, might be more efficient to all parties involved.

Ideas to be retained:

- The normative framework of the maritime commerce is a complex and intertwined set of norms that arises within the context of transnationalization. Adopting a global legal pluralism perspective, these norms emerge from the networks of specialized actors engaged in maritime activities, constituting their normative order.

- From the standpoint of political and legal legitimacy, it is crucial to provide the actors within these orders with the space to exercise their right to justification through discourse. Without this opportunity, any norm presented as a reason for action becomes more of a power imposition and domination rather than of a legitime socio-political order.

- In addition to the common advantages it offers, resolving maritime disputes through mediation provides relevant benefits. On one hand, mediation allows parties to find better solutions by applying the global normative framework of *lex maritima*. On the other hand, the process of mediation, with its flexibility, enables parties to present their justifications for either applying or rejecting a given norm. This contributes to the legitimacy of the maritime normative order itself.

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Can collaborative processes conciliate biodiversity conservation and marine resources exploitation?

The Manila clam National Action Plan

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Maria João Correia graduated in Biology in 1995 and engaged in academic research in fisheries management, ecology, and dynamics of coastal systems at the Marine and Environmental Sciences Centre in Lisbon. Maria is also active in the education field, working with several actors (e.g. municipalities, ONG's). She has coordinated dozens of local, national, and international projects, and joined the board of the Portuguese Association for Environmental Education between 2006 and 2019, where she developed interest in action-research, with a focus on participatory and transformative forms of generating knowledge, which led to the MSc course in Human Ecology, concluded in 2007. In 2022 Maria finished her PhD in Sea Sciences focused on the development of tools to help decision-makers in the conciliation between exploitation and the conservation of the European Eel, and she is a member of the Eel Governance Platform, which has been built to facilitate the governance of eel in the SUDOE area and to foster dialogue between stakeholders. Her expertise in fisheries governance increased in the OURICEIRA project, through the mediation of the dialogue between the fisherman and the management authority, concerning management measures for the sea-urchin exploitation. Currently she is a researcher at MARE-UL and is developing the National Action Plan for the invasive Manila clam. She is responsible for the identification and engagement of stakeholders, the promotion of collaboration links, the management of the social network and reporting.

Paula Chainho is a PhD in Biology, from the University of Lisbon, in 2008, she has developed research in the ecology of aquatic systems, in particular within the scope of the assessment of ecological status, introduction of non-indigenous species and management of shellfish fisheries. She has collaborated in the implementation of the Water Framework Directive and the Marine Strategy Framework Directive and has been a national representative in the ICES Working Group on Non-Indigenous Species since 2011. She is part of the Coastnet Infrastructure team, a coastal monitoring system that integrates the Portuguese Roadmap Research Infrastructures. She promotes the dissemination of science to civil society, through awareness-raising actions, publication of articles and chronicles in the national press and organization of events for the general public.

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Frederico Carvalho has completed the MSc in Ecology and Environmental Management in 2017 and graduated in Biology – Marine Profile in 2014 (both in Faculdade de Ciências da Universidade de Lisboa). As researcher, he has been developing and collaborating in numerous projects in marine ecology focused on macro invertebrate communities and exotic species, having worked mainly on the status of the manila clam populations in Portuguese estuaries. He is currently developing his PhD in Marine Science with a project titled "Changes in Ecosystem Services with the introduction of marine invasive species" at MARE-ULISBOA, cE3C, and UKCEH. Through an innovative perspective in Portugal, this project will assess the

ecosystem services and disservices provided by invasive species and how they change with their introduction, using the case study of manila clam and the tunicate *Styela plicata*, thus contributing to the sustainable management of invasive species.

Sara Cabral completed the ERASMUS MUNDUS Master in Marine Biodiversity and Conservation (Ghent University) in 2014 and graduated in Marine Biology (Universidade do Algarve) in 2012. She participated in several projects related with invertebrate macrofauna, fisheries management and biodiversity conservation. She is currently a PhD candidate at the MARE - Marine and Environmental Sciences Centre (University of Lisbon) and ISMER - Institut des Sciences de la Mer de Rimouski (Université du Québec à Rimouski), developing a thesis entitled “Assessment of impacts of marine non-indigenous species”. This project is focused on bivalves and macrobenthic invertebrate communities of estuaries and coastal lagoons and is relevant to promote the sustainable management of bivalve fisheries and aquaculture and to develop effective methods to assess the impacts of marine non-indigenous species.

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Lia Vasconcelos has a PhD in Environmental Engineering-Social Systems. She is Professor at the DCEA at FCT-UNL and researcher at MARE. She focuses her research on innovative decision-making processes and new forms of collaborative governance in environmental public policies. She is coordinator at UNL of the Network of Environmental Studies of Portuguese Speaking Countries (REALP). The book Sustainability in the 21st century – The Power of Dialogue (2015) stands out from the publications. She has coordinated national and international projects, specifically in the collaborative component, having received several awards and recognitions: Prize of Iconic Women Creating a Better World For ALL - Associations that Work 2019, Responsible Research Innovation 2015, Significant Participatory Practices, Prize of Collaborative Research 2013- 2014 and Communication Award 2013.

Abstract:

Portuguese coastal zones, lagoons, and estuaries have a high number of non-indigenous species (NIS) (Chainho et al., 2015). Most of the NIS identified in coastal systems are well-established populations, and some are considered invasive species, such as the Manila clam (*Ruditapes philippinarum*). This species has been introduced worldwide, often as a response to the overexploitation of native clam stocks. The high reproductive success, fast growth, and high tolerance to environmental variability of the Manila clam are beyond the invasive nature of the species and its relevance for commercial exploitation.

The proliferation of invasive exotic species is one of the main threats to biodiversity, and a priority in nature conservation strategies. The Portuguese List of Invasive Species includes the Manila clam (Annex II of Decree-Law No. 92/2019), which means that an Action Plan for the species must ensure the control, containment, or eradication of the species. Since eradicating is not possible due to the life cycle of the Manila clam, sustainable fishing is considered a suitable measure for the control of the populations and minimization of impact on other species. The Action Plan requires multi-institutional planning efforts, involving a wide range of key stakeholders with recognized interests in the problem, namely administration institutions with competences on nature conservation, marine resources management, enforcement authorities and local

authorities, harvesters and local associations, among others. The aim of the Action Plan is to define objectives, indicators, and goals that contribute to a compromise between the interests of different positions and needs of stakeholders.

The NIPOGES project was developed by the Faculty of Sciences at the University of Lisbon to assess the status of the Manila clam population in Ria de Aveiro, Óbidos lagoon, and the Tejo and Sado estuaries in 2019, gathering scientific knowledge for the sustainable management of the species (Chainho et al., 2022). The project evaluated the status of the clam populations, characterized the harvesting community and value chain associated to this resource and simultaneously settled a stakeholders' network concerned with the resource exploitation, particularly local fishermen and their representatives. Knowledge transfer between the scientific and the fishing community was pursued and ensured through meetings in each of the coastal systems studied. Simultaneously, the fishing community has been providing valuable insights of issues to be considered for the local management. Management options were identified and discussed in regional meetings, contextualized to the problems of each system, ensuring that the chosen measures were suitable to the interests and needs of either the communities and ecosystems conservation.

The socio-ecological nature of the Manila clam exploitation required a deeper understanding of the organizational contexts and the addressment of a broad range of issues: fishing regulations, public health, water use conflicts, and Illegal, Unreported, and Unregulated (IUU) fishing (Xavier, 2021). IUU fishing is a threat for the sustainable management of fisheries and the biodiversity conservation, and was observed mainly in the Tejo and Sado estuaries: In these systems, the IUU fishing of the Manila clam, combined with its invasive nature, has contributed to the decline of the native clam populations (Chainho et al., 2015; Ramajal et al., 2016).

The Theory of Communicative Action by Habermas framed the participatory process that was implemented, which meet the assumptions of the collaborative planning theory (Renn, 2006). A dynamic process was developed to promote the contribution of all stakeholders, characterized by its flexibility and adjustment ability, in order to meet the characteristics of each studied system. The process consisted of three main stages: a) Preparation period, identification and mapping of stakeholders and issues to be addressed; b) Implementation of collaborative sessions, assuring a constructive dialogue, and; c) development of management proposals for the Manila clam.

In 2023, following a first phase that occur between 2019-2022, the dialogue with stakeholders was expanded for the development of the Manila clam National Action Plan, through a new cycle of meetings organized in Aveiro, Óbidos lagoon, and in the Tejo and Sado estuaries. Stakeholders point of views were discussed, and fishing management issues clarified to support the definition of priorities for the Action Plan. The meetings gathered a wide range of stakeholders and generated specific proposals, which will be structured by the team project and discussed in sectoral meetings with the competent authorities. The process will be concluded with the preparation of an Action Plan proposal, which will be reviewed by the stakeholders before submission to be approved through a Resolution of the Portuguese Council of Ministers.

Ideas to be retained:

Collaborative approaches were adopted for the development of governance models for the Manila clam fisheries, with specific goals: (1) to improve the common understanding of the problems associated with the management of the Manila clam in the studied systems; (2) to establish collaborative networks for the future;

(3) to promote knowledge transfer - both ways, from the scientific community to the fishing community and the other way around - and contribute to the individual and social learning of stakeholders; (4) to collectively support the development of proposals for the management of the Manila clam.

A set of participatory sessions were implemented to promote the dialogue and the engagement of stakeholders, ensuring inclusion, and stimulating ideas generation and sharing. The feedback at each cycle of sessions have strengthened the engagement of participants and enabled the conception and legitimacy of the Manila clam management proposals.

The collectively generated knowledge about the Manila clam exploitation revealed the differences between the socio-ecological systems and their respective problems and social structures. The acknowledgment of context variability required the engagement of a different set of stakeholders depending on the situation and problems identified. Consequently, specific solutions were identified for a common problem - the management of the Manila clam in Portugal - depending on the coastal system addressed.

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The Mediation: an efficient tool to solve the Port Strike at Lisbon and Setúbal Harbors

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Abstract:

Introduction

This subject has been chosen because it represents a interdisciplinary real case between Maritime Mediation Law and Labour Law that is going on Portugal nowadays and the intention is to present one efficient way to solve the hard core of the main problem.

1 The Real Dock Employee Strike at Lisbon and Setúbal Harbors

Dock Employee Trade Union of Portugal (SEAL) have sent early this month of June a notice strike to Operators Companies Port, The Portuguese Government and whole society. There will be a dock workers strike beginning on fifth of July and probably it goes on until fifth of November at Lisbon's and Setúbal's sea ports.

The Trade Union referred justify the strike by claiming that all the Companies Port have not been respectfully their constitutional right to strike (article 57.º of Republic Constitution of Portugal). During the last years of strike the Operators Companies Port have left the Port Labour Intermediation Company which monopolizes the assignment of labours to work in the port.

This provoked the bankruptcy of this company and consequently the lack of work for employees come back to their jobs from the strike times. Then the strikers didn´t have any chance to come back to work without job places.

2 The Prohibited Measures Used By The Operators Companies

In addition, Operators Company Port have been contracting a temporary workers to substitute most of the strikers during the strike time. This type of arrangement has the power to frustrate the right to labours strike (articles 530.º to 543.º of Labour Law Code of Portugal).

Moreover, any kind of instrument used by Companies Port to frustrate the labour´s strike is forbidden by article 535.º, except the reasons exposed on this same article 535.º, numbers 1 and 2 of Labour Law Code of Portugal.

3 Mediation as Good Instrument To Solve The Strike at The Lisbon and Setúbal Harbors

Despite of labour strike been in Portugal a fundamental right regarding by Constitution and Labour Law Code as demonstrated above (Fernandes, António M., 2022), since the dock workers is represented by their Trade Union in front of Companies Port there is a collective labour conflict which means they are equal parties in this kind of conflict.

Therefore, under Labour Laws among various countries in the world into this type of a conflict is very efficient the tool of mediation (Goldberg; Sander; Rogers; Cole, 2012). Even in Portugal the law has been open for alternative dispute resolution over labour collective conflict (Reis, João, 2017). The doors were really open when the labor code provides for voluntary arbitration and mandatory arbitration that opens space for mediation (articles 506.º to 509.º of Labour Code). At law there is an interpretation doctrine that supports "if the law provides a similar instrument to solve a conflict without prescribe the other mechanism as a solution, then it means the similar ones is authorised by the law too".

However, some indoctrinator may summon up with an argument that mediation can not be applied into the labour collective conflict because there is no specific Portuguese law to provide it. The Labour Code, the specific law for dock worker or law to license companies to do business and operate in the ports, non of them predicts any norms to regulate the mediation as a mechanism to solve the labour collective conflict.

Thus, according to mediation law of Portugal (Law number 29/2013) combined with articles 506.º to 509.º of Labour Code of Portugal it is quite supported by Portuguese system of law that mediation could applied so well for these cases of labour collective conflict because the two entity in opposite sides of the conflict are equal in bargaining power, it´s way different from labour individual conflict (Hopt, K. J.; Steffek, F., 2013).

Besides, world wide the experience of using the mediation for labour collective conflict it has been very well done in the countries whom had introduced in their system. Along the past years the reality has shown that the trade unions get more satisfied, exactly because the parties discuss their own problems then end up with their own solution (Hopt, K. J.; Steffek, F., 2013).

The writers of labour law use to defend that this kind of a solution for labour collective conflict empower the both entity representing the opposite sides of the conflict, nevertheless give an opportunity to trade unions become stronger through dialogue that improve the working relationship between them. The trade unions and companies will find it out together a way to solve their issues that sometimes are beyond the labour rigths.

In this scope, even so Portugal does not have a intensive tradition as other countries about adopting mediation models to solve their labour collective conflict, although, some labour law author defends the mediation is already a tradition for solving labour´s conflicts (Reis, João, 2019). It is more important to know that Portuguese system is open so much to apply any alternative dispute resolution into these types of a

labour collective conflicts (Xavier, Bernardo G. L, 2020). It is also important to remind that in Portugal even in some labour individual conflicts the arbitration is used a lot of times like in the sports labour law.

Conclusion

In conclusion, for this further big strike by Dock Employee Trade Union of Portugal (SEAL) against Operators Companies Port which effects the whole Portuguese society by reflection above transportation of sources like foods, kinds of fuels and many goods, there is a strong belief that mediation can support to figure it out the mainfull problem and find it out a greatful solution.

Ideas to be retained (three topics)

- A labour collective conflict into the Lisbon and Setúbal Harbors brigs a interdisciplinary studies between maritime mediation law and labour law, it is an important to show which type of alternative dispute resolution it can be more efficient to find a solution.

- The real case of a strike it might be very interesting to analyze the mediation method to solve the labour collective conflict into the Harbors that repercusses on maritime business.

- It is the meaning of this paper suggest that mediation is an effective tool to solve a relevant strike which is about to begin and it will affect maritime business and the whole Portuguese society.

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Commercial Maritime Mediation as a means of fulfilling ESG purposes within the Corporate Social Responsibility Norms

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Abstract:

Introduction

There has been recently a continuous search for more sustainable means of solving conflicts as well as for means for saving public and private resources in all forms. In the maritime area, this is specially true. A ship, laid at the port must pay an enormous amount of money in demurrage, in labor costs and losses of gains. Therefore, it is important to find means for solving maritime conflicts in a speedier way. Besides financial costs, mediation would constitute part of an economic sustainability strategy since it is a means of saving other corporations resources and fulfilling corporate social responsibility goals.

1. Maritime conflicts and mediation

Maritime disputes have an intrinsic international character. Goods and persons are transported through the oceans, crossing international borders. Some of the conflict that emerge from these relationships, in special in the merchant activities is related to conflicts of law and regarding what is the applicable legislation (BAATZ, 2012).

Maritime sector has a history of using alternative dispute resolution means for solving their conflicts, in special arbitration (Decker, 2021). The maritime arbitration is very strong in London and New York and growing in other locations, such as Singapore and Hong Kong (Measter and Skoufalos, 2002). But arbitration has become very litigant and bureaucratic, thus parties are searching for other means of solving their disputes. Scholars state that the higher percentage of maritime claims are solved by mediation or direct negotiation (Weiss, 2023). There are not statistics to prove such numbers, since the methods are confidential.

But there are indications, such as the growing number of Rules of Mediations and Mediation Clauses in force and lately updated by the international associations, to use the term mediation instead of alternative dispute resolution or conciliation. Also, States have, in the past years passed legislation to foment the use of

mediation, from which we can refer to the United Kingdom, the European Union member States, Brazil, and India.

Mediation has important gains, such as solving the conflict in a faster, flexible, and confidential way. It is a voluntary procedure, and the settlement agreement tends to be executed by the parties (Clift, 2006), although it may also be enforced (depending on the applicable legislation). It is the best means for restoring relationships, a very important characteristic in the maritime sector, an area with few players.

2. Corporate Social Responsibility (CSR) and Environment, Social and Governance (ESG)

CSR norms are linked to moral obligations and connected to norms that, if not enforced, will only generate social censure (Abreu, 2019). The main goal of corporations is to generate profit for their shareholders. This has been the traditional view, which has been evolving. The theories that explain the social interest of the corporation are contractualism and institutionalism. Contractualism preaches the corporation's interest is directly linked to the shareholder's interest (Abreu, 2021).

For the institutionalist theory, the corporation has a broader interest, which is not limited to its shareholders, but would also encompasses the stakeholders. Corporations are not formed solely to generate profit for their shareholders, also bringing benefits and positive changes in the environment they operate in.

There is not a legal obligation for companies to act in such manner, but there is pressure from the society, that sees responsible companies as more valuable ones. ESG norms are implemented in the corporations through their corporate governance codes, and, although not legally binding, they are a pressure tool for the investors (Abreu, 2010).

CSR is present in the maritime industry but needs to be more developed (Froholdt, 2018). What we are defending, based on the institutionalist legislation, is the inclusion of mediation as a primary attempt for corporations, as a part of their policies of social responsibility. It is by means of their CSR norms that the corporations will be able to regulate, internally, what ESG practices they will implement, so these matters should be regulated expressly in their codes.

Litigation leads to higher costs, higher time to solve the demand, and there is a need for financial coverage of the litigation costs. Money that could be used for generating more wealth for the corporation. Also, an important commercial relationship could be damaged, which is a great loss.

We defend mediation attempt or mediation as a first step towards solving conflicts.

Concluding remarks

In our understanding, the promotion of the use of mediation by maritime mediation corporations fits this purpose, as it leads to more gains to all parties involved, as well as more access to justice by all parties. This is important when we think about power imbalance of the corporations and persons involved in maritime areas. Mediation would support them for solving conflicts without have higher costs and in smaller timeframes. Therefore, we understand it is most beneficial to the corporations' interests if mediation is the primary means of solving conflicts.

Ideas to be retained:

- Maritime mediation has increasingly been more used in the commercial maritime area. For its characteristics, it is an important development and sustainable tool, allowing for the corporation to use

fewer resources to solve the demand. It also faster and confidential, being voluntary. It is also a method for restoring relationships.

- CSR rules are non-mandatory but are part of the norms on how the corporation's administrators will take their decisions.
- it is important for the corporations to include in their corporate governance norms and CSR rules that mediation will be the primary means of solving conflicts, to prioritize such form and direct how the administrators will act, implementing ESG strategies.

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The Rise of Med-Arb Processes in Maritime Dispute Resolution: Implications of the United Kingdom's Signature of the Singapore Convention

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Abstract:

In recent years, there has been a notable surge in the prominence and recognition of Alternative Dispute Resolution (ADR) as a highly effective and efficient method for the resolution of conflicts. ADR mechanisms have been widely integrated into legal systems around the world, often incentivizing or compelling parties to explore these methods before resorting to litigation. As the preference for ADR mechanisms over traditional judicial processes continues to grow, the adoption of a third or hybrid dispute resolution process known as Med-Arb has emerged as a viable solution to manage the consequential increase in caseload. Particularly within the field of international dispute resolution, there has been a substantial rise in the utilization of Med-Arb processes, which combine key aspects of both mediation and arbitration. This hybrid approach aims to provide parties with a flexible and efficient mechanism to effectively address and solve their disputes in a binding manner.

Mediation, as an integral component of the Med-Arb process, facilitates a guided negotiation process supported by a neutral mediator, with the objective of achieving a mutually satisfactory resolution. In contrast, arbitration involves the submission of a dispute to an impartial third party, who delivers a binding decision after careful consideration of the presented evidence and arguments. The Med-Arb process typically encompasses an initial phase of mediation, wherein the involved parties actively engage in endeavors to explore and negotiate potential settlements. In the event that mediation proves unsuccessful in achieving a mutually satisfactory resolution, the Med-Arb process smoothly transitions from mediation to arbitration, facilitated by the mediator assuming the dual role of an arbitrator. By providing parties with the option to proceed to arbitration after an unsuccessful mediation attempt, Med-Arb processes offer a fallback position that ensures the ultimate resolution of disputes in a binding manner. The appeal of this approach lies in its potential advantages, including cost-effectiveness, time efficiency, and the preservation of ongoing relationships among the parties involved.

The Singapore Convention, officially known as the United Nations Convention on International Settlement Agreements Resulting from Mediation, represents a significant international treaty with the primary objective of promoting the utilization and enforcement of mediated settlement agreements in cross-border disputes. The Convention's adoption in 2018 and subsequent entry into force in 2019 have endowed it with a crucial role in facilitating the resolution of international commercial disputes through the mediation. One of the fundamental reasons for the Convention's profound significance lies in its contribution towards the establishment of a harmonized and streamlined framework for the enforcement of mediated settlement agreements. Prior to the Convention, there was a lack of uniformity prevailed in the international arena concerning the recognition and enforcement of mediated agreements, which engendered uncertainty and potential challenges in the enforcement process across diverse jurisdictions. The Convention fills this gap

by providing a standardized and globally acknowledged framework for enforcing mediated settlement agreements, offering greater confidence and certainty for the parties involved in the enforcement process. The Convention's establishment of an internationally recognized benchmark for enforcing mediated settlement agreements promotes the increasing acceptance and adoption of mediation, including the hybrid approach of mediation-arbitration, as a preferred method for resolving disputes.

The signature of the Singapore Convention by the United Kingdom (UK) carries significant weight, particularly given its stature as a prominent global maritime dispute resolution center. The UK's signature of the Convention reaffirms its commitment to creating a conducive environment for international dispute resolution. In addition, the UK demonstrates its dedication to promoting mediation as an effective mechanism for resolving international commercial disputes. This development assumes particular significance in the context of Med-Arb, as the enforcement mechanisms provided by the Convention bolster the enforceability of mediated settlement agreements arising from this process. The Convention's enforcement mechanisms provide parties with certainty and predictability when selecting the UK as a seat for Med-Arb processes, contributing to the country's overall attractiveness for international maritime disputes. Therefore, the UK's signature of the Singapore Convention elevates this topic to the forefront, as it holds substantial implications for the acceptance and enforcement of Med-Arb processes both domestically and globally.

Ideas to be retained:

1. In maritime disputes, Med-Arb process offers a fallback position that ensures the ultimate resolution of disputes in a binding manner. This process is cost-effective, time efficient, and preserves ongoing relationships among the parties involved.

2. Prior to Singapore the Convention, there was a lack of uniformity in the international arena concerning the recognition and enforcement of mediated agreements. This caused uncertainty and potential challenges in the enforcement process across diverse jurisdictions. The Convention fills this gap by providing a uniform and globally acknowledged framework for enforcing mediated settlement agreements.

3. By signing the Singapore Convention, the United Kingdom demonstrates its dedication to promoting mediation as an effective method for resolving disputes. This commitment can contribute to the broader acceptance and recognition of the Med-Arb process as an efficient and successful approach to dispute resolution.

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