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## Law and Legality in *Pirates of the Caribbean* and Contemporary Counter-Piracy: More Guidelines than Rules?

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### Abstract

Marine imaginaries—cultural and political ways of imagining order at sea—shape both fictional representations of piracy and contemporary efforts to govern it, reflecting enduring fascination with the ocean as a space of both disorder and morality. As part of this broader imaginary, *Pirates of the Caribbean* dramatises a tension between lawlessness and legality at sea through the Code of the Brethren. Although this fictional code of conduct is frequently invoked by the franchise’s protagonists as the cornerstone of pirate culture, the rules set out in the Code are regularly bent or ignored to serve individual or collective self-interest. Notably, the Code is perceived as “guidelines” rather than actual rules, yet exerts clear normative influence. This article compares this fictional rule of law among pirates in the Disney franchise with contemporary regional regimes governing piracy, reflecting on the tension between formal rules and the operational adaptability of maritime governance in both settings. Similar to the Code in *Pirates of the Caribbean*, not all anti-piracy agreements are legally binding. Drawing on interviews with decision-makers, the article explores the binding nature of regional agreements and draws parallels to the informality of rules in the films. Discussing the practical benefits of soft law for effective anti-piracy cooperation, the article adds to the growing literature on “blue legalities,” exploring oceanic issues from a combined humanities and law perspective.

### Keywords

blue legalities; blue humanities; counter-piracy; law and legality; marine imaginaries; ocean governance; ocean pop; piracy; *Pirates of the Caribbean*

## 1. Introduction

From Hollywood to the Gulf of Aden, questions of law, order, and legitimacy at sea are anything but straightforward. Shaping public understandings of maritime governance and piracy, popular culture has long imagined the ocean as a space lacking governance, where authority is contested, and order emerges in unexpected ways (Sadowski, 2025). The *Pirates of the Caribbean* franchise dramatises this legal ambiguity through a consistent reference to the Code of the Brethren, which is simultaneously binding and malleable. In this article, I juxtapose the fictional code with contemporary regimes to counter-piracy, which differ in their bindingness, and argue that both can be understood as marine imaginaries: despite their legal ambiguity, they are important reference points exerting clear normative influence on actors. Reading the popcultural narrative alongside contemporary counter-piracy regimes not only reveals parallels between fiction and reality, but it also highlights how maritime governance can add insight to the discussion on the polycrisis. At a time when the rule of law in international politics is under increasing strain (Alter, 2023) and international institutions are progressively perceived as unable to address global issues, counter-piracy presents a telling case study that shows how formal legality and informal flexibility affect cooperation efforts between states.

The representation of piracy and pirates in popular media is a rich and active field of research. Introductory works providing a good overview of the general portrayal of piracy in popular media include Jowitt (2005), who offers a concise overview of the ways pirates are understood across different genres, and Sanna (2018), whose edited volume presents a deep dive into popular culture depictions of piracy in history, literature, cinema, and television. Specifically, the *Pirates of the Caribbean* series has been increasingly scrutinised in academia since the release of its first film in 2003, with contributions spanning from disciplines such as literature (Zhanial, 2018), film (Pheasant-Kelly, 2013), pedagogy (Pollock, 2014), to leadership (Kohn & Urick, 2025). One strand of literature discusses the role of female pirates in the films (Porter, 2016; Steinhoff, 2011). To a large part, the literature is concerned with the series' protagonist Jack Sparrow, portrayed by Johnny Depp, studying the character's ambiguous gender identity, sexuality, and nationality (e.g., Fradley, 2012; Steinhoff, 2012), concluding he is framed as an atypical Disney "anti-hero" (Petersen, 2007, p. 72).

The analysis of the role of rules and law in popular depictions of piracy is yet scarce. One exception is Thomson (2011), who scrutinises the decision-making process of pirates in probably the most famous pirate novel, Robert Louis Stevenson's *Treasure Island* (1883), and notes that the pirates' unwavering adherence to a heavily legalistic, formally democratic mode of decision-making in the novel ultimately contributes to their downfall (Thomson, 2011, p. 212). Another exception is Sadowski (2025), who offers a comprehensive discussion of the relationship between popular pirate imaginaries and the law, contrasting the image of pirates as outlaws with their image as symbols of liberty. However, to my knowledge, no contribution to date has investigated the role of the law in *Pirates of the Caribbean* specifically.

A plethora of literature is concerned with contemporary counter-piracy initiatives as well as their legal frameworks. Most recent contributions include Wambua (2022), who critically discusses the United Nations Convention on the Law of the Sea's (UNCLOS) shortcomings, specifically the lack of a concrete legal definition of piracy as well as the lack of a definitive enforcement mechanism. Similarly, Otto (2018) argues that the legal definition of piracy under UNCLOS is inadequate, as it excludes criminal activities in the territorial waters of states. Menefee (2020) gives an overview of the treaties and agreements dealing with

piracy over the last century, including not only international but also regional initiatives. Finally, Menzel (2018, 2022) scrutinises regional agreements to counter-piracy and also discusses their legal status. Nevertheless, no contribution has thus far engaged with the effect of the legal status of these regimes on the actual cooperation between states to counter-piracy.

In analysing both the legal status of the fictional pirate code in *Pirates of the Caribbean* and the legal status of contemporary regional counter-piracy regimes, this article therefore aims to address the two gaps in the literature identified above. In doing so, it adds to the growing literature on “blue humanities,” which highlights how culture and literature shape human–ocean relations (DeLoughrey, 2017; Mentz, 2009), as well as to the discussion on “blue legalities” focusing on the constitution of formal and informal legalities regarding ocean law and governance (Braverman & Johnson, 2020). Methodologically, this implies the examination of legal norms as products of cultural meaning-making, interpreting them within the wider imaginative frameworks through which the ocean is understood (Steinberg, 2001). Yet, a comparison of a fictional piracy code and non-fictional counter-piracy codes is not straightforward, as it compares distinctively different phenomena while spanning across different disciplines and literatures (cultural and media studies vs. international law and international relations). The juxtaposition between fiction and reality should therefore not be understood as a causally robust empirical comparison, but rather as a creative, exploratory approach to the issues of legality and bindingness. I am convinced that adding contemporary counter-piracy into the analysis offers various added benefits. First, I can utilise the extensive data I have collected for another project on counter-piracy regimes, which gives in-depth insights into the role of legality in the combat of piracy. Second, and more importantly, it allows me to draw parallels between fiction and reality, which underlines how even flexible rules can shape behaviour and facilitate cooperation, eventually offering lessons for designing more effective and adaptable counter-piracy policies.

To juxtapose such different cases, I am utilising the concept of marine imaginaries to explore the legal nature of both the rules of pirates in *Pirates of the Caribbean* and contemporary counter-piracy regimes. To this, I add the concept of legality, taken from international relations (IR) literature, to explore the degree of legal obligation in the films and counter-piracy cooperation. Combining these two perspectives, I argue that both in fiction and reality, the (counter-)piracy codes can be understood as imaginaries—despite a differing degree of legality, they act as reference points around which the expectations of protagonists/actors converge, and therefore have an impact on the actual behaviour of actors. In doing so, the article proceeds as follows: First, I introduce the concept of marine imaginaries and legality and discuss my methodology and data. Second, I examine marine imaginaries in *Pirates of the Caribbean*, with a specific focus on its pirate code. Third, I introduce contemporary regional counter-piracy regimes. Considering why some agreements are legally binding while others are not, I discuss the implications of their legal status on actual policy outcomes. Fourth, I draw parallels between marine imaginaries of law and legality in both fiction and reality. Finally, the article closes with an outlook on further research potential.

## 2. Central Concepts

Marine imaginaries can be understood as “epistemological and ontological constellations that suggest a particular way of visualising, knowing and relating to ocean spaces” (Ntona & Schröder, 2020, p. 245). In other words, marine imaginaries are collective narratives and assumptions of how actors make sense of the ocean, in turn influencing how they interact with oceanic spaces. This may refer to different dimensions,

which are often intertwined (Montana & Hartman Davies, 2024): Politically, states and (non-)governmental international institutions imagine the ocean for political purposes, whether for geopolitical claims, power projections, security purposes, or cooperation efforts. Socially, different communities interact with the ocean, whether that concerns migration, labour, leisure, or other social practices. Technically, the ocean is perceived as a space that can be explored, measured, and controlled, resulting in scientific knowledge, but also framing the ocean as an actionable environment to be protected or exploited. Economically, the oceans can be perceived as a site of resources, development, and trade, which also shapes environmental and social outcomes. Culturally, the ocean is imagined in history, art, literature, and other media, including popular media, thereby shaping public perception of marine spaces and issues. In sum, the way we think about the ocean influences how we interact with, govern, exploit, or protect oceanic spaces (Gehrke & Menzel, in press).

IR literature has long considered why some international agreements are legally binding, while others are not, and what this institutional design means for the effectiveness of an agreement (Raustiala, 2005, p. 581). If “an international agreement [is] concluded between states in written form and governed by international law” (Vienna Convention, 1969, Art. 2) it is formal law and can be considered legally binding. Non-binding agreements, often also referred to as “soft law,” are more indeterminate to define, but are generally not governed by international law. The literature discusses several advantages and disadvantages that states consider when they decide on the legal status of an agreement. Non-binding agreements offer flexibility to states, which is particularly important if domestic ratification processes are complicated, if they need to negotiate the agreement in a timely manner, if states have significantly diverging preferences about issues, if they face uncertainty about the policy issue at hand, or if they face high sovereignty costs (Abbott & Snidal, 2000, pp. 434–450; Shaffer & Pollack, 2009, p. 719). Under these conditions, states may prefer soft law, which offers the opportunity to agree to a swift compromise without having to legally commit outright—adjustments are still possible at a later point in time (Guzman, 2005, p. 591). For these reasons, informal or soft law is indeed considered to be particularly important in ocean governance, as the flexibility and speed that are typically associated with informal lawmaking are especially important when there are emerging or pressing issues to address (Klein, 2022, p. 16), which was the case specifically for piracy during the 2000s and 2010s.

“Hard law,” on the other hand, offers other advantages to states. Legally binding agreements bolster the credibility of a commitment, and when the risk of opportunistic behaviour by other states is high, hard law may present a more enforceable cooperation option (Abbott & Snidal, 2000, pp. 426–430). Yet, (non-)compliance is a crucial variable to consider here. Legally binding agreements may deter states that either intend not to fully comply with an agreement or know they might not be capable of complying from joining. This might lead states to opt for a legally binding, but less ambitious agreement, which may affect the overall performance of the cooperation. Conversely, a non-binding agreement may offer the opportunity to promote deeper commitments, which might eventually be more effective in changing the behaviour of parties (Raustiala, 2005, p. 610). At the same time, compliance with rules is not the sole indicator of the performance of an agreement. Some extent of non-compliance may be acceptable, particularly if it is due to party capacity and not aimed at undermining the whole agreement (Chayes & Chayes, 1993). To sum up, states consider a variety of advantages and disadvantages when deciding on the legal form of agreements. Questions of legal form, in turn, matter for the implementation and finally the success of agreements, and are therefore important to consider.

For my subsequent analysis of the legal status of rules in *Pirates of the Caribbean* and regional counter-piracy regimes, I draw on a variety of empirical material. For the first part on *Pirates of the Caribbean*, the main media are the films of the franchise, particularly the first and third instalments of the series. For the second part on regional counter-piracy agreements, I utilise interview material collected in 2016 and 2017 with practitioners involved in the drafting of the codes, and interview material collected in 2025 with practitioners involved in the implementation of the codes. My interview partners were identified through online research, personal contacts, and a snowball system of recommendations. While this approach is not completely free of selection bias, the practitioners nevertheless add valuable insights into the role of legality when drafting and implementing international agreements. The response rate to my requests was over 70%. In total, I have conducted 13 semi-structured interviews, either in person, online, or via telephone or email. Twelve were in English and one was in French. The interviewees come from diverse backgrounds, such as navies, national governments, international organisations, industry, and/or academia. Their personal details have been anonymised for confidentiality reasons. An overview of the interviews conducted can be found in the Supplementary File.

### 3. *Pirates of the Caribbean*

*Pirates of the Caribbean* is a five-part fantasy swashbuckler film series released between 2003 and 2017. Originally based on an amusement ride at Disneyland established in 1967 in Anaheim, California, the Disney media franchise now also includes books, video games, and various other merchandise. As of 2025, the film series alone has grossed almost 4.5 billion US dollars globally (Awasthi, 2025), and the franchise is considered to have become the currently most formative depiction of piracy in popular culture (Petersen, 2007, p. 79).

The main protagonist of the film franchise is Jack Sparrow, the eccentric and cunning captain of the Black Pearl. His ship was stolen by his mutinous first mate, Hector Barbossa, who shifts between rival and reluctant ally during the series. Another main protagonist is Will Turner, a blacksmith who is later revealed to be the son of a pirate. He becomes entangled in piracy when Barbossa kidnaps Elizabeth Swann, a governor's daughter and Turner's love interest. Over the course of the films, Swann's character sees a change from aristocrat to active participant in pirate culture. Set in the so-called "Golden Age" of piracy (ca. 1650 to 1730), the protagonists' adventures lead them to clash with colonial powers, the East India Trading Company—which seeks to eliminate piracy and enforce law and order to maintain its trade monopoly—and supernatural forces, including cursed treasure, magical objects, undead crews, and the sea itself (Verbinski, 2003, 2006, 2007).

#### 3.1. *Marine Imaginaries in Pirates of the Caribbean*

The *Pirates of the Caribbean* franchise invokes a plethora of marine imaginaries, which draw heavily on historical, romanticising images of pirates first introduced in the 19th century (Zhanial, 2018, p. 168). First, the sea is presented as a supernatural site imbued with otherworldly forces between the living and the dead, effectively constituting a character on its own. It is dangerous, but also a source of fascination. Second, the sea is framed as a site of resistance and freedom. Pirates are portrayed as societal outlaws (e.g., former slaves, prisoners, women, and/or non-Europeans) resisting the imperial and commercial control by the British Empire and the East India Trading Company. This is contrasted with the image of the ocean as a commodified site for trade and profit, as put forward by the East India Trading Company. Third, the sea is

imagined as a lawless, anarchic space, ungoverned or beyond the reach of (imperial) law. Pirates are hunted by the British Empire precisely because they operate outside of imperial law. To sum up, pirates escape the constraints of state, society, and law as they revolt against imperial control. Piracy is imagined as anarchy, which is juxtaposed with the Empire representing law and order.

But does this mean the pirates in *Pirates of the Caribbean* are really lawless? On closer inspection, it becomes clear that pirates are outlaws, but they are by no means lawless. While cooperation between pirates is unstable, trust is low, and alliances shift regularly, they have a unifying charter for collective governance: the Code of the Brethren.

### 3.2. Law and Legality in *Pirates of the Caribbean*

The legal cornerstone of pirates in the *Pirates of the Caribbean* franchise is the fictional Code of the Brethren (also referred to as Code of the Order of the Brethren, Pirata Codex, or Pirate Code), a code of conduct loosely based on real-life examples from the Golden Age of piracy. Historically, pirate codes—so-called “articles”—were written constitutions that specified rules and punishments in case of noncompliance with these rules in order to minimise conflict on board of pirate ships (Leeson, 2007). Although only a few authentic article documents have survived, the basic elements of pirate constitutions display a remarkable similarity across different crews (Rediker, 1987). The articles determined the division of the loot, established rules on decision-making and voting among crew, regulated discipline and behaviour on board, and put forward compensation for injuries (Fox, 2013).

Building on these historical examples, the fictional code in *Pirates of the Caribbean* entails regulations concerning decision-making procedures, hierarchical command authority, and individual rights of pirates. The Code is portrayed to have been established by the second meeting of the so-called Brethren Court, the governing body of pirates made up of nine Pirate Lords, and physically written down in the Pirata Codex. Specific rules of this fictional code include the right to parlay, which allows temporary protection for individual pirates to be brought before the enemy captain to negotiate an issue or a truce without being attacked, and the equal sharing of treasure found between all crew members (Platt & Dakin, 2007, pp. 10–11). The Code is protected by the so-called Keeper of the Code, a specially appointed member of the Brethren Court. To become pirate king, the elective monarch of the Pirate Lords and leader of the Brethren Court, the elected pirate must swear by the Code.

#### 3.2.1. *The Curse of the Black Pearl*

The viewer of the franchise first encounters the Code in the first instalment of the film series, *The Curse of the Black Pearl*. Elizabeth Swann, having been captured by pirates looking for a pirate medallion in her possession, invokes the right to parlay and requests to speak to the captain of the pirates. Her request is granted, and she is brought aboard the Black Pearl, where a crew member slaps her. Captain Barbossa, witnessing the scene, immediately steps in and reminds the crew member of the protection of parlay (Verbinski, 2003, 38). In the ensuing conversation with Barbossa, Swann requests the cessation of hostilities and offers the medallion in return. After Barbossa agrees to the deal, the crew prepares to leave without bringing Swann back to shore:

Swann: “Wait...You have to take me to shore! According to the Code of the Order of Brethren...”

Barbossa: “First, your return to shore was not part of our negotiations nor our agreement, so I must do nothing. And secondly, you must be a pirate for the Pirate’s Code to apply, and you’re not. And thirdly, the Code is more of what you’d call guidelines than actual rules.” (Verbinski, 2003, 40)

While Barbossa seems to follow the rule of parlay in the beginning, he makes it clear that he perceives the Code to be a flexible instrument that can be customised according to one’s preferences. Importantly, he emphasises that it only applies to pirates, although at that moment he cannot be certain whether Swann is a pirate herself, given that she is in possession of a pirate medallion. Yet, as a result of his lax interpretation of the Code’s bindingness, Swann is not released.

A second rule codified in the Code that is mentioned throughout the first film is “any man who falls behind is left behind.” It is first brought up in a scene between Turner, Sparrow, and his first mate Gibbs when Sparrow and Turner prepare to go on shore. Sparrow answers Gibb’s question as to what should happen were the worst to occur: “Keep to the Code” (Verbinski, 2003, 1:07). Sparrow later clarifies for Turner that the Code he was referring to was the Pirates’ Code, indicating his crew should leave him to his own devices and probably his death should he not return to the ship (Verbinski, 2003, 1:09). This becomes important later in the film where Swann is able to free Sparrow’s crew and ship, while Sparrow and Turner are still fighting Barbossa and his men. She plans on rescuing Sparrow and Turner, but the crew refuses to help her, pointing out that, according to the Code, they are not obligated to wait for or rescue any crew member who cannot keep up:

Gibbs: “There is the Code to consider.”

Swann: “The Code? You’re pirates! Hang the Code, and hang the rules! They’re more like guidelines anyway.” (Verbinski, 2003, 1:58)

Unable to convince Sparrow’s crew to ignore “any man who is left behind stays behind,” Swann leaves the ship on her own to rescue Turner and Sparrow. This marks a turning point in the film and symbolises Swann’s slow transition from a civilian to a pirate: While she advocated for the literal bindingness of the Code in the beginning of the film, she has now assumed Barbossa’s position. In doing so, she too has adapted a flexible perspective on the bindingness of the Code serving her best interest. In contrast, the “real” pirates strictly follow the Code. As the rescue is perceived to be dangerous, this is also in their best interest.

Eventually, Sparrow is captured by the British Navy, but manages to escape. He is surprised to find his crew, which was supposed to leave him behind, awaiting him with his ship. As the imminent danger is gone, his crew has followed Swann’s plea and reconsidered:

Sparrow: “Weren’t you supposed to keep to the Code?”

Gibbs: “We figured they were more actual...guidelines.” (Verbinski, 2003, 2:12)

In sum, in *The Curse of the Black Pearl*, the Code serves as a key plot mechanism and establishes that pirates have their own rules and traditions. The returning motif of rules vs. guidelines serves a humorous purpose in the form of comical relief, but also underlines how ambiguous the Code is perceived—it is interpreted arbitrarily or manipulated creatively to further the self-interests of the protagonists.

### 3.2.2. *At World's End*

While the Code plays a central role in the first film of the series, in the second film, *Dead Man's Chest*, the Code is not mentioned. Although the second film revolves around the central motifs of doing the “right thing” and keeping one’s promises, law and legality do not play an explicit role (Verbinski, 2007). Rather, the second film is used to set the scene for the third film of the series, *At World's End*, in which the Code plays an even more important role than in the first instalment.

In *At World's End*, Lord Cutler Beckett, chairman of the East India Trading Company, is set to expand the company’s business into the Caribbean, and to this end, wants to eradicate piracy completely. Under the order of the British king and aided by the Royal Navy, a “war against piracy” is proclaimed. Beckett executes hundreds of persons suspected of being pirates and wants to exterminate the Brethren Court. Barbossa, one of the nine Pirate Lords, recognises the danger posed by Beckett and the East India Trading Company, and urges his fellow Pirate Lords to convene in order to set free Calypso, the goddess of the sea, as a measure against Beckett (Verbinski, 2007, 13). Although some Pirate Lords, such as Sparrow and Sao Feng of Singapore, are sceptical that the Court can initiate a meaningful intervention, Barbossa insists it would be their only hope (Verbinski, 2007, 1:01), as the English are not bound by the honour of the Code of the Brethren (Verbinski, 2007, 1:07).

Upon convening the Fourth Court of the Brethren, it becomes clear that Sao Feng has been killed by Beckett’s crew. Before his death, Sao Feng named Swann as his successor, and she joins the other Brethren, completing the Court. A lively discussion ensues about whether Calypso should be freed. When news spreads that the Court’s location has been betrayed and that Beckett is on his way to attack it, it is agreed that the pirates should fight and that war should be declared:

Barbossa: “As per the code, an act of war, and this be exactly that, can only be declared by the Pirate King.”

Sparrow: “You made that up.”

Barbossa: “Did I, now? I call on Cap’n Teague, Keeper of the Code.”

Representative of Pirate Lord Sumbhaje: “Sri Sumbhaje proclaims this all to be folly. Hang the code! Who cares a--- [A gunshot is fired, killing the representative of Sumbhaje. It is revealed that the gun was fired by Teague].”

Teague: “Code is the law.” (Verbinski, 2007, 1:43–1:44)

Edward Teague, who is revealed not only to be the Keeper of the Code but also Sparrow’s father, then consults the physical copy of the Code labelled *Pirata Codex* and confirms Barbossa’s claim that only the Pirate King can declare war. As Keeper of the Code, Teague is appointed to protect the Code and makes plain that the Code is not something that can be freely interpreted, challenged, or ignored, linking to the running gag of “guidelines rather than rules” in the first film. Teague even physically enforces the Code by shooting the representative of Pirate Lord Sumbhaje, who dared to openly oppose the Code. The reaction of the pirates attending the

Brethren Court shows that they not only respect Teague because of his violent action, but also because he has a palpable authority by virtue of the office he holds.

However, the pirates assert that a successful election is unlikely, as the Pirate King is elected by popular vote and each Pirate Lord traditionally only votes for himself. Yet, Sparrow calls for a vote. Eight of the nine Pirate Lords vote for themselves until Sparrow finally votes for Swann. A heated discussion ensues, to which Sparrow defiantly responds: “Am I right to understand that you lot will not be keeping to the Code then?” (Verbinski, 2007, 1:46). The camera cuts to Teague, a stern look on his face. Intimidated by him, the pirates sit down and accept the vote—Swann is confirmed as King of the Brethren Court, and in this function, she immediately calls to war, which is ultimately won by the pirates.

This key scene in the film changes the whole trajectory of the plot. In contrast to the first film, where it was underlined that the Code is a rather blurry instrument that can be arbitrarily interpreted to further one’s own self-interest, the Code is now presented as a legitimate legal framework in written form, and as such, “legally” binding. Although the Code is still used to pursue egoistic motives (e.g., the Pirate Lords mostly vote for themselves), it is also highlighted that the Code gives official authority to offices such as the Keeper or the King. The Code is “the law,” according to Teague, and must be followed verbatim, even physically enforced if needs be. As a result, the pirates are compliant with the decision of the Brethren Court and legitimise Swann as the Pirate King despite their obvious disdain, which not only highlights the political importance of the Code but also serves as a symbol of unifying the fragmented society of pirates against a common enemy.

In the fourth and fifth instalments of the franchise, *On Stranger Tides* and *Dead Men Tell No Tales*, the Code is not relevant to the respective storylines and is thus not mentioned anymore.

#### 4. Contemporary Counter-Piracy Regimes

Maritime piracy is regulated by the 1982 UNCLOS, which legally defines piracy and grants states universal jurisdiction in international waters to seize pirate vessels and prosecute offenders. It currently has 169 UN state parties (Division for Ocean Affairs and the Law of the Sea, n.d.). UNCLOS is complemented by the 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA), which broadly criminalises behaviour endangering the safety of maritime navigation and has 165 UN state parties (International Maritime Organization, n.d.). Although SUA does not explicitly mention maritime piracy, most of the acts it criminalises correspond in whole or in part to actions committed by pirates in international or territorial waters (the latter is legally referred to as “armed robbery” against ships; Treves, 2013, p. 147). Both UNCLOS and SUA are legally binding.

Regional agreements and governance mechanisms with a differing degree of formality also play a crucial role in coordinating anti-piracy efforts and fostering capacity-building. The focus of this article lies on three regional agreements to counter-piracy which cover different world regions: the Regional Cooperation Agreement on Combating Piracy and Armed Robbery Against Ships in Asia (ReCAAP), the Code of Conduct Concerning the Repression of Piracy and Armed Robbery Against Ships in the Western Indian Ocean and the Gulf of Aden (also Djibouti Code of Conduct [DcoC]) and the Code of Conduct Concerning the Repression of Piracy and Armed Robbery Against Ships, and Illicit Maritime Activity in West and Central Africa (also Yaoundé Code of Conduct [YcoC]). These codes have been established successively and heavily draw on each other in terms of

their institutional design (Menzel, 2018), yet differ in their degree of legal obligation, which makes them an interesting case study.

#### 4.1. Regional Counter-Piracy Regimes

ReCAAP was finalised in 2004 during the heyday of piracy and armed robbery in Southeast Asia. It aims at fostering data collection on piracy and facilitating capacity-building efforts in Asia. Membership is open to all states, and currently, 21 states are contracting parties, including 14 Asian littorals, the US, Australia, and several European states (ReCAAP, n.d.). Indonesia and Malaysia, although two of the three states in the region most affected by piracy, have not joined ReCAAP due to concerns over extra-regional influences. They were, however, involved in the drafting process. ReCAAP is legally binding and obliges member states to prevent and suppress piracy and armed robbery against ships, and to arrest pirates or persons who have committed armed robbery against ships (ReCAAP, 2004, Art. 3.1), but only in their own territory (ReCAAP, 2004, Art. 2.5).

The DCoC was established in 2009 under the auspices of the International Maritime Organization to repress piracy and armed robbery against ships in the Western Indian Ocean and the Gulf of Aden. Membership is restricted to littoral states of the Indian Ocean region, and 20 out of 21 eligible states have signed the agreement (DCoC, n.d.-a). The DCoC's institutional design is, in large parts, inspired by ReCAAP and includes similar provisions on prosecution, data collection, and capacity-building (Menzel, 2018). The DCoC was amended in 2017, when the Jeddah Amendment was adopted. It broadened the scope of the agreement, which now also covers maritime crime more generally, including human trafficking and smuggling, illegal, unreported and unregulated (IUU) fishing, illegal trade in wildlife, crude oil theft, and the illegal dumping of toxic waste. As of 2025, 18 of 20 DCoC member states have signed the Jeddah Amendment (DCoC, n.d.-b). Neither the DCoC nor the Jeddah Amendment is legally binding.

The YCoC focuses specifically on the combat of piracy and armed robbery, but also more broadly on transnational organized crime in the maritime domain, which, among others, includes maritime terrorism, IUU fishing, illegal arms and drugs trafficking, money laundering, illegal oil bunkering, and illegal dumping of toxic waste. It was established in cooperation with the Economic Community of West African States, the Economic Community of Central African States, the Gulf of Guinea Commission, and representatives from the International Maritime Organization, and was adopted in 2013 by 25 eligible West and Central African states (Vreÿ, 2014, pp. 26–27). Its institutional design concerning prosecution, information-sharing, and capacity-building is heavily inspired by the DCoC, with over half of the document being a verbatim copy of the DCoC agreement text (Menzel, 2018, p. 162). Like the DCoC, the YCoC is not legally binding.

This poses an interesting question: If the regional agreements build on each other and are therefore very similar in their institutional design, why did the DCoC and YCoC not adopt the legal bindingness of the ReCAAP agreement? Does the legal status of regional agreements to counter-piracy make a difference in their implementation and success, and are there any plans to change the legal status quo of the DCoC and YCoC?

#### 4.2. *The Legal Status of Regional Counter-Piracy Regimes*

Legally binding regimes are conventionally assumed to support cooperation efforts (Raustiala, 2005, p. 613)—after all, a binding agreement can hold all parties legally accountable and incentivise compliance with rules. Indeed, when the DCoC and YCoC were set up, there was an intention among policymakers to make the regimes legally binding for member states, and the original agreement texts contain provisions to this effect. The DCoC calls for consultations within two years of the code’s effective date to arrive at a binding agreement (DCoC, 2009, Art. 13). The Jeddah Amendment to the DCoC contains the appeal for consultations within five years of the effective date on the merit of developing a binding agreement (DCoC, 2017, p. 33), and the YCoC calls to turn the code into a binding multilateral agreement within three years of being in effect (YCoC, 2013, Art. 17).

Policymakers were aware that the legal status of the agreements would be pivotal to interested parties during the drafting process. Interviews shed light on the cost-benefit calculations being made during drafting. Many decision-makers highlighted that a legally binding status would have made the internal legal processes to join more difficult, as many states did not have adequate national legislation to prosecute piracy (Interview 1, 2016; Interview 11, 2025; Interview 12, 2025). Specifically for the DCoC, it was a concern that this would add significant time to the process, and that the whole project would lose the international momentum it had around 2008 at the height of Somali piracy, resulting in states potentially losing interest in accession (Interview 3, 2016). Sovereignty concerns and border-related tensions also played a role in both the DCoC and YCoC setups, and non-binding agreements were a way of ensuring that these concerns did not prevent accession (Interview 9, 2025; Interview 11, 2025). Instead of insisting on a binding code, it was more important for policymakers to have as many littoral states as possible on board to signal a strong, cohesive regional commitment to combating piracy.

Another issue was capacity: Compared to the Asian ReCAAP model, where extra-regional states with high enforcement capacities, such as the US and European states, were among the founding members, the regional cooperation mechanisms in East, Central, and West Africa were open for regional membership only. A high level of legal obligation would not only have meant that states would have been reluctant to join, but also that states with low maritime enforcement capacities would not have been able to deliver on the commitments they had made. A decision-maker expressed it like that: “If you make something legally binding that they [potential member states with low enforcement capacity] can’t achieve, then the moment they’ve signed it, they’ve failed” (Interview 5, 2017). To avoid failure before cooperation had even started, aspirational, non-binding agreements were preferred.

The choices made during the setup of the DCoC and the YCoC concerning their legal status clearly impact the institution’s operations. Membership is important for the success of a cooperation, yet effective collaboration is difficult if key states are not on board due to concerns over the legal status of an agreement. This is the case with ReCAAP. Although ReCAAP is generally considered to be a milestone in counter-piracy cooperation in Asia, to a considerable extent precisely because it is legally binding, two of the three states most affected by piracy in Asia chose not to join ReCAAP. Indonesia and Malaysia claimed concerns over sovereignty as their reason for non-accession (Interview 2, 2016), which is reinforced by the fact that ReCAAP’s provisions are legally binding. This underlines that the degree of legal bindingness is indeed an important consideration during institutional design. While Indonesia and Malaysia regularly cooperate with ReCAAP on a low-key

level, the non-membership of these states, which are crucial in the combat of piracy in the region, impedes the effectiveness of cooperation efforts to a significant extent (Menzel, 2022). In line with this, interviewees across the board expressed appreciation for the fact that virtually all DCoC or YCoC littoral states had joined the agreements, emphasising the importance of a unified approach among member states that was achieved precisely because both agreements were drafted as non-binding from the start.

Whether the non-binding status of the DCoC and YCoC has further implications on effective cooperation to combat piracy is disputed among the interviewees. Some policymakers were critical of the legal status and expressed the opinion that a non-binding agreement resulted in inconsistent implementation and uneven commitments across states (Interview 6, 2025). One interviewee highlighted the negative operational impact of the Codes' legal status, as this would lead to cooperation not being fully effective or transparent during joint maritime operations, leading to delayed or incomplete information sharing (Interview 11, 2025). Similarly, another practitioner argued that a binding code would offer clearer obligations for information exchange as well as greater predictability and uniformity in response measures (Interview 6, 2025). Another issue mentioned was the lack of mechanisms supporting accountability, dispute settlement, and enforcement (Interview 7, 2025). Therefore, some policymakers supported the call for a legally binding agreement with strong enforcement mechanisms, which would force states to comply with the Codes' rules (Interview 13, 2025). Remarkably, this perspective is particularly held among practitioners involved in the direct, day-to-day business of the Codes. It is also remarkable that interviewees working in the context of the YCoC specifically highlighted a problem with less committed states (Interview 11, 2025), therefore calling for a legally binding agreement.

By contrast, the majority of interviewees expressed the view that the non-binding nature of both the DCoC and YCoC either did not matter for the implementation of the agreements or that it would even be conducive to cooperation. Many interviewees underlined that a non-binding agreement allows for flexible and voluntary participation of regional and extra-regional states, and promotes informal but effective cooperation across jurisdictions with differing legal systems (Interview 6, 2025; Interview 9, 2025). In a similar vein, several practitioners highlighted that political acceptance within the member states would be more important than the legal status of the agreements. One argued that the member states would be able to follow deeper ambitions with a non-binding agreement, as member states would retreat to the lowest common denominator if the agreement were to be made legally binding (Interview 8, 2025). One interviewee stated that the YCoC's operation had gained traction over the last 10 years without legally binding provisions. Instead of changing the legal status of the agreement, it would be more important to further strive for the formulation of harmonised standard operating procedures, which would strengthen the overall collaboration (Interview 12, 2025).

Despite highlighting many advantages of legally non-binding agreements to counter-piracy, none of the interviewees opposed a legally binding agreement. Instead, a legally binding agreement was often perceived as "nice to have, but not necessary" (Interview 9, 2025)—an ultimate goal, but not a high priority for practitioners as long as the cooperation between states works nonetheless. Therefore, interviewees across the board agreed that the legal status of both the DCoC and the YCoC is not likely to change in the short term. Moving the agreements to binding instruments is still the official goal pursued by, e.g., the Chair of the DCoC (Interview 7, 2025) and in high-level meetings related to the YCoC (Interview 11, 2025). There were also single national calls in recent years to make the YCoC binding, such as by Nigeria in 2021 (Nigerian

Maritime Administration and Safety Agency, 2021). Unsurprisingly, this specific call came from a member state with large operational capacities and a high maritime crime rate (Interview 9, 2025). Yet, the conditions for change are currently not favourable in general. Interviewees named a variety of reasons for this, mainly high costs related to adopting adequate legal, operational, or institutional reforms on the domestic level (Interview 7, 2025; Interview 8, 2025). Other issues include concerns over national sovereignty, a fear of creating border-related tensions with neighbouring countries, and a decrease in maritime threat perception in recent years that minimises the pressure to act (Interview 8, 2025; Interview 11, 2025).

Overall, interviewees agreed that the regional agreements are an important tool for counter-piracy cooperation, irrespective of their legal status. While certain aspects of the institutions' proceedings could profit from a legally binding agreement, practitioners across the board highlighted that the agreements work more or less as intended, providing an arena for interested states to deepen their cooperation to combat piracy and other maritime crimes. As one interviewee expressed it: "The binding aspect of it [the agreement] will come, but it is not a necessary condition for it to be effective" (Interview 9, 2025).

## 5. Discussion: The Codes as Marine Imaginaries

Comparing the analysis of the legal status of the Code of the Brethren in *Pirates of the Caribbean* and the regional counter-piracy agreements reveals surprising parallels between fiction and reality: In both, we can observe ambiguity regarding the role of law and legality, yet this does not necessarily impede governance. In the first instalment of *Pirates of the Caribbean*, the Code is regularly ignored or altered for self-interest, yet implicitly changes the behaviour of protagonists in key moments of the film. This highlights how a certain amount of noncompliance, if not undermining the legal framework in general, is acceptable for the Code to still be influential, as discussed similarly in IR literature (Chayes & Chayes, 1993). In the third instalment of the franchise, the bindingness of the Code is even more pronounced—the Code is presented as legally binding and is enforced with authority in situations that are crucial for the legitimacy of the whole framework. In the case of regional counter-piracy agreements, the analysis has highlighted how, despite their legal status, the codes foster cooperation between states, promote information-sharing, and build trust, therefore effectively contributing to the combat of maritime crimes.

As such, both the fictional and the actual codes can be considered "marine imaginaries": They are collective narratives with which actors make sense of ocean governance. In the fictional case, the ocean is portrayed as a space of both disorder and moral code, and order is imagined through a tension between lawlessness and legality. Although legality is often fluid, the Code nevertheless influences the perception of legal and illegal ("right" and "wrong") behaviour and eventually not only impacts the actions of protagonists but also how the audience imagines order at sea. In the real-world case, the non-binding regional agreements to counter-piracy may benefit from a more legally binding arrangement, yet they are functional and promote a change in behaviour of member states. In that regard, the contemporary codes constitute an imaginary of maritime order that resonates with policymakers and governments as well as with a broader public understanding of maritime crime governance.

The parallels between fiction and reality are further highlighted in a comparison of a quote from the first *Pirates of the Caribbean* film with an interview with a DCoC decision-maker (Table 1). In both instances, the codes are understood as an important foundation, but they do not need to be followed at all times in order

to promote meaningful cooperation. In that sense, the legal status of an agreement is not a value in and of itself. Rather, it is a pragmatic assessment of the costs and benefits of legal bindingness, which may vary from instance to instance, as discussed in IR literature on legality (Abbott & Snidal, 2000; Raustiala, 2005). Ultimately, cooperation depends as much on the actual rules provided by the codes as on the willingness of the parties involved. Therefore, although the fictional and real codes vary in their degree of legality, this does not mean that they do not have an impact on the actual behaviour of protagonists or states. On the contrary, the codes are important reference points to which actors align their behaviour regardless of their legal status.

**Table 1.** Comparison of quotes on the bindingness of codes.

Barbossa in <i>The Curse of the Black Pearl</i>	Decision-maker, DCoC
“The Code is more of what you’d call guidelines than actual rules” (Verbinski, 2003, 40).	“Now, that’s [the non-binding status of the agreement] not the end of the world, because actually the Code isn’t ultimately the bottom line” (Interview 2, 2016).

## 6. Conclusion

In the article, I have juxtaposed the legal frameworks of both fictional representations of piracy in *Pirates of the Caribbean* and contemporary efforts to govern it. The analysis revealed that in fiction and reality, protagonists and states constantly navigate between formal rules and informal flexibility. Thus, the codes of conduct constitute marine imaginaries—they are specific ways of understanding order at sea that resonate with and shape public understanding of maritime governance.

As this article took an unconventional approach by comparing fictional and non-fictional codes, expanding the scope of analysis to include historical pirate codes or depictions of pirate codes in other popular culture media would certainly shed light on potential variation across time or between different media or genres. Similarly, future research could benefit from scrutinising not only efforts to combat contemporary piracy, but the practice of piracy itself. Modern pirates are known to form elaborate governance networks (Shortland & Varese, 2016), and it would be interesting to see whether they also establish informal codes of conduct and how these compare to historical or fictional counterparts.

Finally, the results hold important policy implications. Interviews with counter-piracy practitioners have highlighted that non-binding agreements offer important flexibility, underlining how informal law of the sea can play a facilitative or “thickening” role in addition to existing legally binding frameworks (Klein, 2022, p. 18). Minimising concerns over legal bindingness, thus, may allow states to agree on a more ambitious and therefore more meaningful cooperation. As tensions between binding rules and adaptability matter for a multitude of issues beyond maritime crime governance, policymakers should generally be aware of the costs and benefits attached to the legal status of agreements. This is even more important in a world where the legitimacy of international agreements is increasingly challenged.

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## Supplementary Material

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

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