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Piercing the Veil of Sovereignty: Regional Cooperation as a Solution to Jurisdictional Interplay in the Protection of the Marine Environment in the Western Indian Ocean

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Abstract

The governance of marine pollution in the Western Indian Ocean (WIO) region is shaped by overlapping flag state, coastal state and port state competences. The legal architecture is not a simple hierarchy in which one jurisdiction displaces another. Rather, the United Nations Convention on the Law of the Sea 1982 (UNCLOS) has allocated differentiated powers and duties across the various maritime zones and couples those powers with duties and obligations of cooperation, enforcement and environmental protection [1].

UNCLOS as the "Constitution of the Oceans," delineates rights and obligations and divides the oceans into maritime zones with varying states' jurisdictions [2]. It equally embodies general obligations for States in protection of the marine environment. Even with the explicit cooperation obligation under the provisions of Part XII of UNCLOS, the protection of the marine environment remains hampered by the multiplicity of jurisdictions at play within the ocean space. These jurisdictions may and often overlap, especially the states' jurisdiction with regards to the flag, coastal and port States. This article critically analyzes how regional cooperation under the Nairobi Convention serves as an essential bridge to overcome jurisdictional challenges associated with fragmented enforcement and limitations in flag state control. It examines whether regional cooperation can reduce the practical fragmentation produced by this jurisdictional allocation. It focuses on the relationship between UNCLOS, the Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region (Nairobi Convention) [3]. the Protocol concerning Co-operation in Combating Marine Pollution in Cases of Emergency in the Eastern African Region [4]. the International Convention for the Prevention of Pollution from Ships (MARPOL) [5]. The International Convention on Oil Pollution Preparedness, Response and Co-operation 1990 (OPRC 1990) [6]. The Indian Ocean Memorandum of Understanding on Port State Control (IOMOU) [7].

Drawing on Green Theory and Ecocentrism [8], the study argues that regionalism allows the Western Indian Ocean (WIO) region to collectively address jurisdictional gaps. The research highlights the role of the Indian Ocean MoU on Port State Control (IOMOU) as a complementary enforcement mechanism, enabling States to inspect foreign vessels and take corrective measures against substandard shipping irrespective of the vessel's flag.

Stakeholder evidence from the Kenya Maritime Authority, the Ministry of Environment in Mauritius and the Zanzibar Maritime Authority illustrates the practical value and continuing implementation challenges of regional cooperation. The article contributes a legal framework for understanding how regional cooperation can harmonize the jurisdictional interplay at sea and argues that coordinated Port State action provides an important mechanism for strengthening compliance with MARPOL and OPRC 1990 standards in ecologically sensitive areas.

***Key Words*:** Western Indian Ocean, UNCLOS, Nairobi Convention, Port State Control, flag State Jurisdiction, Marine Pollution, MARPOL, OPRC 1990, Regional Cooperation.

Introduction

The Jurisdictional Interplay at Sea

The governance of the oceans is characterised by differentiated jurisdiction rather than a single, uniform allocation of State authority. UNCLOS establishes a legal framework for the governance of the marine environment, within which coastal States exercise sovereignty in their territorial sea, sovereign rights and jurisdiction in specified respects in the exclusive economic zone (EEZ), while ships on the high seas are generally subject to the jurisdiction of their flag State. The Convention simultaneously imposes obligations to protect and preserve the marine environment and establishes enforcement competences for flag, coastal and port States [9].

This distribution creates an apparent tension in relation to marine pollution. Oil pollution is a transboundary problem. The legal competence to prevent, investigate or prosecute pollution incident may lie with different States depending on where the pollution occurs and where the vessel is located. The problem is, therefore, not simply that States have what may be considered "conflicting" jurisdiction, but that effective environmental protection requires those jurisdictional competences to operate in a coordinated manner [10].

This article interrogates the friction between three primary categories of jurisdiction namely: the flag state jurisdiction under Articles 91, 92, 94 and 217 of UNCLOS as the primary legal mechanism for a flag state exercising jurisdiction and control over ships flying its flag; the coastal state jurisdiction under Articles 211 and 220 providing graduated authority to regulate and enforce pollution standards within maritime zones in exercise of a State's sovereignty in its territorial sea and sovereign rights and jurisdiction in its Exclusive Economic Zone (EEZ); and the port state jurisdiction under Articles 218 and 219 providing an additional enforcement avenue when a foreign vessel voluntarily enters its port. Regional cooperation, specifically through the Nairobi Convention and the Indian Ocean MoU (IOMOU), provides mechanisms for bridging these jurisdictional gaps and strengthening the enforcement of environmental standards against non-compliant vessels within the WIO region.

Against this background, the article seeks to address how UNCLOS structure the relationship between flag, coastal and port state jurisdiction in marine pollution control. It looks at the implementation gaps arising in the WIO and how the Nairobi Convention and the IOMOU address those gaps. It further looks at the institutional reforms that could strengthen regional preparedness and enforcement. Regional cooperation does not remove sovereignty, but enables States to exercise their existing sovereign and treaty-based powers collectively and more effectively.

The study adopts a primarily doctrinal, qualitative and comparative methodology, supplemented by limited primary stakeholder evidence. The doctrinal analysis examines UNCLOS, MARPOL, OPRC 1990, the Nairobi Convention and its Emergency Protocol, and the IOMOU framework, with particular attention to the allocation and interaction of flag, coastal and port state jurisdictions and the duty to cooperate. Relevant jurisprudence of the International Tribunal for the Law of the Sea (ITLOS) is also considered, particularly in relation to ship nationality, the "genuine link" and the distinction between nationality and effective flag state control [11].

The empirical component is limited to questionnaire responses from selected WIO maritime and environmental authorities, namely the Kenya Maritime Authority, the Ministry of Environment in Mauritius and the Zanzibar Maritime Authority, as reflected in the sources cited in section 7. These responses are used illustratively rather than as a statistically representative regional survey. The analysis triangulates stakeholder observations against treaty provisions and official institutional materials, including published IOMOU Port State Control information and Nairobi Convention/UNEP documentation.

The principal analytical criteria include the allocation and interaction of jurisdiction, the implementation of international and regional obligations, the cooperation and information-sharing, the Port State Control and enforcement capacity and preparedness and response to marine pollution. The study does not purport to establish a causal or statistically generalizable measure of the effectiveness of regional cooperation, but rather, it assesses the legal and institutional mechanisms through which regional cooperation may mitigate jurisdictional gaps.

Methodology

This article adopts a qualitative doctrinal research methodology, supplemented by limited empirical inquiry into the operation of regional marine environmental governance mechanisms in the Western Indian Ocean (WIO)region. The doctrinal component examines the applicable international, regional and, where relevant, national legal and institutional frameworks governing jurisdiction, marine pollution prevention, preparedness, response and enforcement. The principal instruments considered are the United Nations Convention on the Law of the Sea (UNCLOS), the International Convention for the Prevention of Pollution from Ships (MARPOL), the International Convention on Oil Pollution Preparedness, Response and Co-operation 1990 (OPRC 1990), the Nairobi Convention and its Protocol Concerning Co-operation in Combating Marine Pollution in Cases of Emergency in the Eastern African Region, together with the Indian Ocean Memorandum of Understanding on Port State Control (IOMOU).

The legal materials have been analysed through a jurisdictional and functional lens. The study examines how flag state, coastal state and port state jurisdictions interact across different mari-

time zones as demarcated under UNCLOS and identifies points at which overlapping or fragmented jurisdiction may affect the prevention, detection, response to and enforcement of marine pollution standards. Particular attention is given to the relationship between UNCLOS obligations and the regional mechanisms established under the Nairobi Convention and the IOMOU. The analysis also considers the extent to which regional cooperation can facilitate implementation of internationally agreed standards without treating regional cooperation as a transfer or abandonment of State sovereignty.

The study further uses a comparative review of official institutional materials from WIO States and regional bodies to contextualise the legal analysis. These materials include information and responses obtained from maritime and environmental authorities referred to in the article, as well as official material concerning regional exercises, contingency planning and port state control. The empirical material is used illustratively to identify implementation experiences, institutional constraints and areas in which regional cooperation may address capacity gaps. It is not presented as a statistically representative survey of all WIO member States.

For purposes of this analysis, regional cooperation has been assessed against five related criteria being, the alignment between global and regional legal obligations, implementation and integration of those obligations at national level, regional preparedness and contingency planning, information sharing, monitoring and coordinated port state control and enforcement and mutual assistance. These criteria provide a framework for assessing whether the regional arrangements examined in this article merely reproduce international obligations in regional form or provide additional institutional mechanisms capable of addressing jurisdictional fragmentation and practical enforcement constraints. The study is, therefore, primarily doctrinal and normative, with empirical material serving a contextual and corroborative function. The approach recognises that the availability and comparability of institutional data across WIO States is uneven. Accordingly, conclusions drawn from individual State experiences or questionnaire responses are treated as indicative rather than representative of the entire region. The methodology is designed to connect the legal rules governing jurisdiction with the institutional mechanisms through which those rules are implemented, thereby enabling an assessment of whether regional cooperation can practically bridge jurisdictional gaps in marine environmental protection.

Theoretical Underpinnings: Green Theory and Ecocentrism

To understand why sovereign states would cede their authority to regional frameworks, one must look to Green Theory. Green theory re-examines the relationship between the State, the economy, and the environment [12]. It introduces ecocentrism, which prioritizes healthy ecosystems as a prerequisite for human well-being, standing in contrast to anthropocentric, short-term economic interests [13]. Green Legal Theory questions legal arrangements that treat environmental resources primarily as objects of economic exploitation and asks how legal institutions can reflect ecological limits [14]. Ecocentric approaches extend this concern by treating ecological integrity as an independent value rather than merely an instrument of human welfare. In the WIO, these perspectives are relevant because marine ecosystems, fisheries, tourism, coastal communities and maritime commerce are interconnected across national boundaries.

The theoretical insight here, is not stated as requiring States to "cede" sovereignty. International environmental cooperation is better understood as an exercise of treaty-based sovereignty where States voluntarily assume obligations, establish institutions and agree on procedures through which national authorities cooperate. The Nairobi Convention exemplifies this model by providing a regional framework for cooperative protection and management of a shared marine and coastal environment [15].

The concept of collective or coordinated sovereignty is therefore used in this article as an analytical description, not as a proposition that regional institutions possess a superior sovereignty over WIO States. The distinction matters because the effectiveness of regional cooperation depends on domestic authorities retaining legal powers, resources and institutional responsibility while using common regional mechanisms to address problems that cannot be contained within a single jurisdiction.

The Flag State, the "Genuine Link" and Effective Control

Flag State jurisdiction is a central expression of maritime authority. Under UNCLOS Article 94, a flag state is obligated to exercise effective jurisdiction and control over its vessels in administrative, technical and social matters. This jurisdiction is based on the nationality principle, under which a ship acquires the nationality of the State whose flag it is entitled to fly. The distinction between the requirement under Article 91 for a "genuine link" and the obligations of the flag state under Article 94 to exercise effective jurisdiction and control is important. These two provisions are related but should not be treated as being legally identical.

The rise of the Open registries (now commonly referenced as Flags of Convenience (FoC) generates a continuing debate about the capacity of some flag states to exercise effective control over large numbers of vessels. It is worth noting that these FoC presents the largest in world tonnage (Panama, Liberia and Malta) [16]. However, the mere existence of an open registry does not, by itself, establish a breach of UNCLOS. States like Malta for instance, although an open registry, has very strict enforcement measures over ships flying its flag. This may be attributed to its membership to the European Union, which has in place certain measures to ensure compliance coupled with the fact that it is a member and within the Paris MOU region. Article 91 of UNCLOS requires a genuine link between the State and the ship, but ITLOS has cautioned against treating the absence of such a link as automatically invalidating the nationality granted by the flag State [17]. The more direct legal question for environmental governance is whether the flag State is effectively performing its obligations under Article 94 and the applicable IMO instruments.

The legal significance of the requirement for genuine link under Article 91 has been contested, and the Convention does not define the content of the link in operational terms. More importantly for this article, the environmental enforcement obligations in Article 94 and Article 217 apply independently of any conclusion about whether a particular registration satisfies the genuine link requirement. The practical policy issue is, therefore, not to establish that every open registry is ineffective, but to identify circumstances in which flag state enforcement may be insufficient and to examine the complementary mechanisms available to other States to mitigate this insufficiency [18].

The practical concern, therefore, is not simply the existence or absence of a genuine link, but whether the flag State has the institutional capacity and willingness to exercise effective jurisdiction and control over ships flying its flag. Where that control is weak, coastal and port states may bear a disproportionate part of the regulatory burden. Regional cooperation can reduce this implementation gap by supporting the sharing of information, coordinated inspections and mutual assistance without displacing the primary responsibilities of the flag state. This distinction is supported by the structure of UNCLOS itself. The Convention recognises the exclusive flag state jurisdiction on the high seas as a general rule, but it also simultaneously provides coastal and port state enforcement mechanisms in defined circumstances. The existence of Articles 218 through to Article 220 indicates that effective marine environmental governance was designed to involve more than one jurisdictional actor.

The flag state jurisdiction is, hence a key jurisdiction in marine environmental governance. Its role in ensuring compliance of ships with internationally set standards against pollution cannot be overemphasized. To strike a balance between the freedom of the high seas and the need to maintain the public order at sea, under international law, states have jurisdiction over vessels flying their flags on the high seas. This grants them rights as well as obligations over the vessels granted their nationality [19]. Flag states therefore play a key role in ensuring their vessels essentially comply with anti-pollution laws and standards geared towards the protection of the marine environment. Regional cooperation then becomes an essential tool to ensure that the limitations of FOC, coastal and port states' jurisdictions do not become a barrier to the protection of the marine environment against pollution or hampers the efforts of the coastal state hence bridging this jurisdictional gap.

Port State Control as the Sword for Regional Enforcement

Given the limitations that may arise in flag state enforcement, Port State Control has emerged as an important complementary mechanism. Under Article 218 of UNCLOS, when a vessel is voluntarily within a port or offshore terminal, the port state may investigate and, where the evidence so warrants, institute proceedings in respect of certain discharges occurring outside its maritime zones, subject to the safeguards and conditions in Article 218. Port State Control is therefore distinct from coastal state jurisdiction. It is principally triggered by the vessel's presence in port and operates as a complementary enforcement mechanism. Article 219 also permits administrative measures to prevent a vessel from sailing where seaworthiness deficiencies threaten damage to the marine environment. These powers are subject to the safeguards and jurisdictional limitations contained in UNCLOS [20].

MARPOL reinforces the role of port-State authorities under Article 6(1) by requiring cooperation in detecting violations and enforcing the Convention using all appropriate and practicable measures of detection and environmental monitoring, adequate procedures for reporting and accumulation of evidence. Port-State control is consequently not a replacement for flag state responsibility, but rather a second line of regulatory measures that operates when a vessel enters a port. Its effectiveness increases where States use common inspection procedures and exchange information [21].

Port state control is an innovation meant to monitor and enforce compliance of ships to the international set standards on safety as well as marine environment protection when vessels call on a particular port. The most effective manifestation of this power is through regional Memoranda of Understanding (MoUs). The Indian Ocean MoU (IOMOU), which includes WIO States such as Kenya, Mauritius and Seychelles, promotes harmonized inspection procedures, information exchange and coordinated port state control. The IOMOU does not itself extinguish national jurisdiction. It strengthens the consistency with which participating authorities apply the relevant international standards. Its regional effect is therefore to reduce the opportunity for substandard vessels to evade scrutiny by moving between ports within the region. The IOMOU provides an institutional framework for such cooperation within the region. Its official materials describe annual reports that consolidate port state control activity by ship type, flag State and recognised organisation and provide inspection statistics and analysis [22]. This information architecture is important because it converts individual inspections into regional regulatory intelligence. For WIO States, participation in the same regional port state control regime can reduce the possibility that a vessel's compliance history is treated as isolated information at each port of call [23].

The IOMOU does not confer an unlimited regional power to "deny port access" irrespective of the flag. Rather, it supports the coordinated exercise of port state control by participating maritime authorities in accordance with applicable international instruments and national laws. The regulatory effect arises because a vessel seeking to use participating ports is exposed to harmonised inspection and enforcement practices. This harmonization stems from commitment by the Member States' Maritime Authorities, under section 1.2 of the MOU to establish and maintain an effective system of port state control with a view to ensuring that, without discrimination as to flag, foreign ships visiting the ports of its State comply with the standards laid down in the relevant instruments defined in section 2 of the MOU.

The IOMOU can therefore be understood as a complementary enforcement mechanism operating alongside the Nairobi Con-

vention. Its cooperation provisions support the regional implementation of internationally agreed standards for ship safety and pollution prevention, while the Nairobi Convention provides the broader regional environmental cooperation framework.

Bridging the Jurisdictional Gaps

There has been a considerable expansion of the coastal state jurisdiction and reinforcement of the port state enforcement jurisdiction. This has been necessitated by the multiplicity of jurisdictions which causes an overlap in States' jurisdiction within the ocean space [24]. The Ocean space is demarcated into various maritime zones like the Territorial Sea, Contiguous Zone, Continental Shelf, Exclusive Economic Zone and the High Seas. The jurisdiction exercised by the coastal state changes from one maritime zone to another ranging from the sovereignty over its territorial sea to the sovereign rights it enjoys within its EEZ. Regional cooperation presents a bridge to close the gap created by this jurisdictional interplay. UNCLOS Article 197 requires States to cooperate on a global and, as appropriate, regional basis in formulating and elaborating rules, standards and recommended practices for the protection and preservation of the marine environment. The Nairobi Convention puts this cooperation within a WIO institutional context. Its value is therefore not merely symbolic. It provides a regional platform through which common environmental problems can be addressed through coordinated programmes, protocols, capacity building and technical cooperation.

The Nairobi Convention therefore operationalizes the mandatory duty to cooperate enshrined in UNCLOS Article 197. Its Emergency Protocol specifically targets marine oil spills, providing a legal basis for joint response and mutual assistance. The interaction between the Nairobi Convention and the International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC 1990) demonstrates a legislative bridge demonstrated through the Emergency Protocol and the development of the Regional Contingency Plan (RCP) [25].

The WIO Regional Contingency Plan has now been adopted at COP 12 in October 2026. This has consequently shifted the institutional question from the Plan's development and adoption to its implementation. That is, whether Contracting Parties have the national legal arrangements, designated authorities, operational procedures, trained personnel, equipment and financing needed to activate it effectively. The adopted Plan should therefore be assessed alongside national contingency plans and the Nairobi Convention's Emergency Protocol, rather than treated as a substitute for national implementation.

The Nairobi Convention, hence, addresses the implementation gap by facilitating regional cooperation and the development of a Regional Contingency Plan (RCP). The effectiveness of these legal frameworks nevertheless depends on national implementation, institutional capacity and operational coordination. The current WIO Regional Contingency Plan process demonstrates the transition from treaty commitment to operational architecture. In January 2026, the Nairobi Convention Secretariat reported a regional capacity-building programme aimed at strengthening coordination and technical capacity and supporting the technical endorsement and advancement of the WIO Regional Contingency Plan, with a roadmap towards possible adoption at COP 12 [26]. The Secretariat's COP 12 documentation listed a draft Regional Contingency Plan for Preparedness and Response to Major Marine Pollution Incidents as an annex to the implementation report and the Regional Contingency Plan was endorsed and adopted at the 12th Conference of Parties (COP12) in October 2026 [27].

Oil spill preparedness provides a platform for cooperation. The OPRC 1990 establishes an international framework for cooperation and mutual assistance in preparing for and responding to major oil pollution incidents [28]. IMO explains that Parties are expected to establish national response systems, including a designated authority, operational contact point and national contingency plan, supported by equipment, communications, training and exercises [29]. The Convention also facilitates bilateral and multilateral arrangements for mutual assistance. The Nairobi Convention's Emergency Protocol complements this framework at the regional level. This cooperation framework within the WIO assists States to meet their global obligations to cooperate in the management of the marine environment and to bridge gaps created by jurisdictional interplay at sea. The adoption of the Regional Contingency Plan marks an important step towards operationalising the Nairobi Convention's emergency-response framework. What follows is the implementation of the Plan through national arrangements, agreed procedures for mutual assistance, adequate response capacity and regular assessment of operational readiness.

Empirical Insights from WIO Stakeholders

Primary stakeholder evidence from selected maritime and environmental authorities highlights both the practical value of regional cooperation and persistent implementation challenges. The evidence is illustrative rather than statistically representative of all WIO States and is therefore used to complement, rather than substitute for, the doctrinal analysis. In Kenya, for instance, the KMA response indicates that regional cooperation, including exercises such as MASEPOLREX, is important for testing readiness and activating mutual-assistance mechanisms.

In Mauritius, following the MV Wakashio incident, the Ministry of Environment identified resource constraints and the need for stronger operational coordination as important lessons for marine-pollution preparedness and response. The Zanzibar Maritime Authority (ZMA) describes the framework as valuable but identifies the need for stronger enforcement and national integration to move from policy to operational reality. This suggests that the principal implementation challenge is not the absence of regional legal commitments, but the translation of those commitments into consistent national and operational practice.

Official Evidence of Regional and National Implementation

Kenya: National Capacity as the Foundation of Regional Cooperation

KMA's official materials demonstrate that regional cooperation depends on functioning national institutions. KMA is mandated to implement international maritime conventions, undertake pollution inspections, manage and periodically review the national marine oil/HNS spill response contingency plan, conduct response drills and maintain records of oil-spill incidents [30]. Its published materials also identify the National Marine Spills Response Contingency Plan as the operational framework for allocating response responsibilities, contacts, procedures and post-clean-up waste management [31].

The evidence supports the proposition that regional mechanisms can augment national capacity, but they cannot substitute for the domestic authority, equipment, trained personnel and command structures required to activate assistance. Regional cooperation is therefore most effective when national systems are sufficiently organised to request, receive and integrate external assistance.

Regional Training and Mutual Assistance

Official IMO reporting provides direct evidence of regional capacity building. In May 2023, an IMO-supported regional workshop in Nairobi brought together 41 senior personnel and supervisors involved in emergency planning, response or recovery from Comoros, Ghana, Kenya, Madagascar, Mauritius, Mozambique, Seychelles, South Africa, Somalia, Uganda and Tanzania [32]. The training focused on incident-command systems and the implementation of national oil-spill contingency plans, while also strengthening cooperation among Nairobi Convention Contracting Parties.

In June 2024, IMO reported that Comoros had developed an action plan to strengthen its national oil-spill preparedness and response framework, including updating its national contingency plan and enhancing communication, training and stakeholder collaboration [33]. The programme explicitly linked national capacity building with regional cooperation involving Nairobi Convention Contracting Parties and regional operational centres in Madagascar and Seychelles. These activities are concrete indicators that the regional framework is being translated into national preparedness and institutional networking.

Mauritius and the MV Wakashio

The MV Wakashio incident illustrates why jurisdictional coordination must be accompanied by operational preparedness. The Government of Mauritius records that the vessel grounded on 25 July 2020 and that approximately 1,000 tonnes of oil entered the marine environment [34]. The official account records the environmental sensitivity of the affected area and the subsequent national response and monitoring measures [35].

More importantly for this article, Mauritius' revised National Oil Spill Contingency Plan identifies the country's exposure to maritime accidents in the context of heavy Indian Ocean traffic and expressly links the need to update the national plan to lessons learned from the Wakashio incident [36]. The Plan reports that the Indian Ocean carries substantial maritime traffic and that Mauritius' economy depends significantly on marine and coastal resources. The Court of Investigation into the grounding also identified deficiencies in tracking, risk assessment and local capacity to contain and mitigate the environmental risks associated with the casualty [37].

The lesson is not that a single national authority failed in isolation. Rather, the incident demonstrates the interaction between vessel routing, coastal-state monitoring, emergency response capacity, environmental sensitivity and the availability of external assistance. Regional contingency planning can address part of that vulnerability by establishing predictable procedures for requesting and coordinating assistance before an incident occurs.

Port-State Control and Regional Information

The IOMOU's official reporting architecture provides a further form of empirical support. The IOMOU states that its annual reports summarise port state control activities by member authorities, including ship types, flag states and recognised organisations, and present statistics and analysis of inspections and annual concentrated inspection campaigns. This regionalised reporting structure is significant because it institutionalises the circulation of compliance information rather than leaving inspection outcomes within a single port authority [38].

The available official material supports the proposition that regional port-State control can reduce informational fragmentation. It does not, by itself, establish that IOMOU participation has caused a measurable reduction in oil pollution incidents in the WIO. The article therefore confines its conclusion to the institutional capacity created by the regional port state control system.

From Jurisdictional Overlap to Coordinated Jurisdiction

Jurisdictional interplay should not be understood solely as a conflict. It is also an opportunity for layered environmental governance. Flag state jurisdiction establishes the baseline obligation to control ships flying the flag, coastal state jurisdiction provides additional powers in maritime zones under national jurisdiction, and port state control supplies a practical enforcement point when foreign ships enter port. Regional institutions can connect these layers through information exchange, common procedures, joint exercises and mutual assistance. This model can be described as coordinated jurisdiction. It preserves the legal allocation made by UNCLOS while improving the capacity of States to use that allocation collectively. The Nairobi Convention provides the regional environmental platform. The OPRC 1990 supplies a framework for preparedness and mutual assistance. MARPOL provides detailed ship-source pollution standards, while the IOMOU supports harmonised port state control. None of these instruments abolishes the sovereignty of participating States. Their function is to make sovereign jurisdiction more effective when environmental risks transcend borders.

Institutional and Legal Reform Priorities

First, the priority should shift from finalising the WIO Regional

Contingency Plan to operationalising and implementing the Plan adopted at COP 12. The Nairobi Convention Secretariat, in collaboration with Contracting Parties, the International Maritime Organization and relevant regional institutions, should develop a time-bound and costed implementation framework setting out responsibilities, milestones and reporting arrangements. This should translate the adopted Plan into practical procedures for activation, notification of affected States, designation of national contact points, incident coordination, resource inventories, requests for and provision of mutual assistance, and mobilisation of personnel and equipment. Each Contracting Party should assess its national contingency plan, legislation and institutional arrangements against the adopted regional framework and address any gaps that could impede implementation. The Secretariat should periodically report to the Conference of the Parties on progress, using measurable indicators such as joint exercises conducted, response resources available, notification and mobilisation times, mutual-assistance requests and corrective actions arising from exercises or actual incidents. The adoption of the Plan is an important institutional milestone, but its effectiveness will depend on national implementation, clear operational arrangements, sustained financing and demonstrated readiness.

Secondly, regional contingency planning should be linked more systematically to port state control. Pollution preparedness obligations and ship compliance information are often treated as separate administrative streams. A more integrated regional system could enable maritime authorities to connect vessel risk information, pollution prevention deficiencies, emergency contacts and response resources while respecting applicable data and legal safeguards.

Thirdly, capacity building should be treated as an implementation obligation rather than a peripheral project. The evidence from Kenya, Mauritius and IMO supported regional training shows that the legal framework requires institutional capability to become operational. Regional financing mechanisms, shared equipment arrangements, joint exercises and specialist training could therefore be considered alongside legal harmonization.

Fourthly, future empirical research should establish a common WIO dataset on marine pollution incidents, response times, port state control inspections, detentions, MARPOL deficiencies, contingency-plan activation and mutual assistance requests. Such a dataset would permit future scholarship to test whether regional cooperation produces measurable improvements in environmental outcomes rather than relying principally on institutional descriptions.

Conclusion: Path Toward Collective Sovereignty

The legal problem examined in this article is not that sovereignty necessarily prevents environmental protection. The more precise problem is that sovereignty is territorially and functionally distributed across several States and institutions, while marine pollution is capable of moving across those boundaries. UNCLOS responds to that structural problem by allocating jurisdiction and imposing duties of environmental protection and cooperation. The regional challenge is to make those legal arrangements operational.

Official IOMOU reporting provides additional regional context. The IOMOU reported 5,060 Port State Control inspections in 2022, of which 2,279 involved deficiencies and 199 involved deficiencies serious enough to warrant detention [40]. These figures do not measure marine-pollution enforcement alone, but they demonstrate the scale of the regional inspection system through which international maritime standards are operationalized.

Regionalism in the Western Indian Ocean is not necessarily a surrender of sovereignty, but may constitute a collective exercise of sovereign authority to achieve environmental protection that individual States may find difficult to accomplish alone. Mechanisms such as the Indian Ocean MoU on Port State Control provide an additional layer of regional oversight and corrective action in relation to substandard vessels. By combining Port State Control with the cooperative framework of the Nairobi Convention, WIO States can strengthen implementation of MARPOL and OPRC 1990 standards while preserving the primary legal responsibilities of flag and coastal States.

The evidence examined demonstrates that the WIO already possesses important elements of such an architecture. KMA maintains a national contingency system and undertakes pollution control functions. IMO supported programmes have strengthened incident command and national preparedness across the region. Mauritius has revised its contingency planning in response to lessons from Wakashio and the Nairobi Convention's Regional Contingency Plan has now been adopted at COP 12. The next phase is therefore implementation which ensures that national systems can activate the Plan, request and receive assistance, coordinate responses across borders and sustain the personnel, equipment and financing required for effective action.

Accordingly, regionalism should be conceptualized not as the surrender or displacement of sovereignty, but as coordinated sovereignty where states retain their jurisdiction while agreeing to exercise relevant powers in ways that improve collective environmental protection. This article, therefore, connect the jurisdictional architecture of UNCLOS with the operational architecture of regional cooperation. The effectiveness of that model will depend on the extent to which treaty obligations are translated into national law, adequately resourced institutions, interoperable information systems, tested contingency arrangements and timely mutual assistance.

The adoption of the WIO Regional Contingency Plan does not, by itself, guarantee effective regional preparedness or response. The institutional priority is to move from adoption to implementation through a time-bound programme, national alignment, tested activation and communication procedures, regular joint exercises, transparent monitoring and predictable financing. A regional financing mechanism, including the possible establishment of an oil-spill response fund, should be assessed for legal

feasibility, governance, contributions and compatibility with existing international liability and compensation regimes. The success of regional cooperation should ultimately be assessed not by the existence of the Plan alone, but by whether it improves the ability of WIO States to prevent, prepare for and respond collectively to major marine-pollution incidents

References

1. United Nations. (1982). United Nations Convention on the Law of the Sea (adopted December 10, 1982; entered into force November 16, 1994). 1833 UNTS 3. https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf.
2. Gavouneli, M. (2007). Functional jurisdiction in the law of the sea. Martinus Nijhoff Publishers.
3. United Nations Environment Programme. (1985). Convention for the protection, management and development of the marine and coastal environment of the Eastern African region (adopted June 21, 1985; entered into force May 29, 1996).
4. Protocol Concerning Co-operation in Combating Marine Pollution in Cases of Emergency in the Eastern African Region (adopted 21 June 1985, entered into force 30 May 1996) 1997 UNTS 263.
5. International Maritime Organization. (1973). International Convention for the Prevention of Pollution from Ships (MARPOL) (adopted November 2, 1973; entered into force October 2, 1983). 1340 UNTS 184.
6. International Maritime Organization. (1990). International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC Convention) (adopted November 30, 1990; entered into force May 13, 1995). 1891 UNTS 51.
7. Indian Ocean Memorandum of Understanding on Port State Control. (n.d.). History of the Indian Ocean Memorandum of Understanding on Port State Control. https://www.iomou.nic.in/HOMEPAGE/history.php?l1=9w==&main=9MRxvNnVArYi2M7MgqumAySr0M3cQn7jXrM6SS23bUDsisHauMOx4Pr5JvWo4lbBn+85D+e4qWQVJGrQ7SfPIj2lTDkiqPRsTVGMO3BxTKIsiB5o50TnaDHprpENLRIORqTRL579iz/iQUaDIB+4MUzTt0w/X6s1Zw==&l2=/g==.
8. Dyer, H. C. (2017). Green theory. In S. McGlinchey, R. Walters, & C. Scheinpflug (Eds.), International relations theory (pp. 84–90). E-International Relations.
9. United Nations. (1982). United Nations Convention on the Law of the Sea (arts. 2, 33, 56, 58, 87, 91–94, 192–194). 1833 UNTS 3. https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf.
10. United Nations. (1982). United Nations Convention on the Law of the Sea (arts. 192–194, 211, 217–220). 1833 UNTS 3. https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf.
11. International Tribunal for the Law of the Sea. (1999). M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines v. Guinea) (Judgment). ITLOS Reports 1999, 10, paras. 63–65.
12. International Tribunal for the Law of the Sea. (2014). M/V "Virginia G" (Panama v. Guinea-Bissau) (Judgment). ITLOS Reports 2014, 44, para. 110.
13. Dyer, H. C. (2017). Green theory. In S. McGlinchey, R. Walters, & C. Scheinpflug (Eds.), International relations theory (pp. 84–90). E-International Relations
14. Eckersley, R. (1992). Environmentalism and political theory: Towards an ecocentric approach. State University of New York Press.
15. M'Gonigle, M. (2008). Green legal theory: A new approach to the concept of environmental law. Ökologisches Wirtschaften, 23(4), 12.
16. Nairobi Convention Secretariat. (2026). The Nairobi Convention. https://nairobiconvention.org/.
17. International Transport Workers' Federation. (n.d.). Current registries listed as flags of convenience (FOCs). https://www.itfseafarers.org/en/issues/flags-of-convenience/current-registries-listed-focs.
18. United Nations. (1999). The law of the sea: Nationality and registration of ships (Document A/54/429). https://documents.un.org/access.nsf/get?DS=A%2F54%2F429&Lang=E&Open=.
19. Ready, N. P. (2016). Nationality and registration and ownership of ships. In D. J. Attard et al. (Eds.), The IMLI manual on international maritime law (Vol. 2, p. 19). Oxford University Press.
20. United Nations. (1982). United Nations Convention on the Law of the Sea (Articles 218–219). 1833 UNTS 3. https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf.
21. International Maritime Organization. (1973). International Convention for the Prevention of Pollution from Ships (MARPOL) (adopted November 2, 1973; entered into force October 2, 1983), Article 6. 1340 UNTS 184.
22. Indian Ocean Memorandum of Understanding on Port State Control. (2026). Annual reports. https://www.iomou.org/.
23. Gavouneli, M. (2016). State jurisdiction in relation to the protection and preservation of marine environment. In D. Attard et al. (Eds.), The IMLI manual on international maritime law (Vol. 3, Marine environmental law and maritime security law, p. 5). Oxford University Press.
24. Protocol Concerning Co-operation in Combating Marine Pollution in Cases of Emergency in the Eastern African Region (adopted 21 June 1985, entered into force 30 May 1996) 1997 UNTS 263
25. Nairobi Convention Secretariat. (2026). Western Indian Ocean regional capacity building programme on marine pollution emergency response. https://nairobiconvention.org/clearinghouse/resources/western-indian-ocean-wio-regional-capacity-building-programme-on-marine-pollutio-2.
26. Nairobi Convention Secretariat. (2026). COP 12—Twelfth Conference of Parties. https://nairobiconvention.org/cop-12.
27. United Nations Environment Programme, 'Twelfth Conference of Parties to the Nairobi Convention (COP 12)' (2026) <https://www.nairobiconvention.org/cop-12> accessed 23 October 2026.
28. International Maritime Organization. (1990). International

Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC 1990) (adopted November 30, 1990; entered into force May 13, 1995). 1891 UNTS 51.
29. International Maritime Organization. (2026). Pollution preparedness and response. https://www.imo.org/en/ourwork/environment/pages/pollution-response.aspx.
30. Kenya Maritime Authority. (n.d.). Oil spill response. https://kma.org.ke/.
31. Kenya Maritime Authority. (n.d.). Oil spill response. https://kma.org.ke/.
32. International Maritime Organization. (2023, May 15). Support for African countries on oil spill response incident command. https://www.imo.org/en/mediacentre/pages/whatsnew-1882.aspx.
33. International Maritime Organization. (2024, June 27). Comoros sets out national action plan to strengthen oil spill response. https://www.imo.org/en/mediacentre/pages/whatsnew-2095.aspx.
34. International Maritime Organization. (n.d.). Responding to MV Wakashio oil spill. https://www.imo.org/en/mediacentre/hottopics/pages/wakashio-faq.aspx.
35. Government of Mauritius, Ministry of Environment. (2026). MV Wakashio. https://environment.govmu.org/Pages/wakashio.aspx.
36. Government of Mauritius. (2023). Draft national oil spill contingency plan 2023: Executive summary. https://environment.govmu.org/DocumentsList/DRAFT%20National%20Oil%20Spill%20Contingency%20Plan%202023.pdf.
37. Government of Mauritius, Court of Investigation. (2022). Report on the grounding of MV Wakashio. https://blueconomy.govmu.org/Documents/Publications/Report%20Court%20of%20Investigation-MV%20Wakashio.pdf.
38. Indian Ocean Memorandum of Understanding on Port State Control. (2026). Annual reports. https://www.iomou.org/.
39. Nairobi Convention Secretariat. (2026). COP 12—Twelfth Conference of Parties. https://nairobiconvention.org/cop-12.
40. Indian Ocean Memorandum of Understanding on Port State Control. (2023). Annual report 2022: Port State Control. IOMOU Secretariat. Available at <https://www.equasis.org/Fichiers/Statistique/MOA/PSC%20Annual%20Reports%20Indian%20Ocean%20MoU/PSC_ANNUAL_REPORT_IOMOU_2023.pdf > accessed 29 September 2026.

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