HARBOUR POLICING - A CRIMINOLOGICAL INVESTIGATION

by

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ABSTRACT

"Outlaws of the Ocean? Well, Karlene, we decided to write on that topic because most of the Earth's surface is covered by water, and we couldn't find anything on crimes at sea. Yet, many occur. Piracy. Maritime fraud that sometimes depletes the economy of Third World nations. For example, through a fraudulent sinking of a major cargo vessel, a country may never get products in which they've invested enormous amount of money. In one case, a nation bought a cargo of peanuts to get the oil. But the Captain, in a shady deal, sold the huge cargo to another country and then went back out to sea and sunk the ship, thereby also getting insurance money ... [I]t's a war out there, and it's a war that most people don't think about. Looking at criminality on the seas has been an extremely interesting part of my career."

- Freda Adler[1]

(The Critical Criminologist[2].)

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All in the spirit of harbour policing? (Author's note).

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1. Abstract from "An Interview with Freda Adler" by Karlene Faith of Simon Fraser University, U.S.A.

2. Adler refers, *inter alia*, to crimes at sea such as the fraudulent sinking of a major cargo vessel, where a country may never get the products in which they have invested enormous amounts of money, drug smuggling and water pollution (either by means of dumping garbage or toxic waste in the sea).

DEDICATION

This dissertation is dedicated to my wife Louise, my children Robert (Jnr.), Sharon and Louise (Jnr.) and my mother-in-law, Mrs Dirkie Fabricius.

DECLARATION

I, Robert Peter McIntyre, hereby declare that the dissertation: *"Harbour Policing - a Criminological Investigation"* represents my own work both in conception and execution. All the sources I have used or quoted have been acknowledged by means of completed references.

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Pretoria

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SUMMARY

This research project which is the first of its kind in South Africa, entails a criminological study of harbour policing in South Africa. Firstly, it is primarily concerned with the historical development of harbour policing prior to its inception in 1916 in terms of the proclamation of The Railways and Harbours Regulation, Control and Management Act, Act 22 of 1916, as well as the period following 1916 which paved the way for the dawn of the reorganization of Harbour Policing as an official police force on 1 July 1934 and thereafter.

Secondly, this investigation aims at describing maritime jurisdiction by means of emphasizing the existence of different conventions, such as the Hague Convention of 1930, the Geneva Convention of 1958 and the Law of the Sea Convention of 1982, as no Parliament exists to pass laws pertaining to the sea. It appears from this investigation that maritime fraud, theft of cargoes on the open sea, piracy and the illegal sinking of ships, oil pollution, etc. are matters of great concern for harbour policing.

Functional harbour policing seems to be dependent upon various role-players, such as :

* The Sea Fishery Act (Act 12 of 1988), for the protection of our sea resources;
* The Merchant Shipping Act (Act 57 of 1951);
* The Department of Transport (Maritime section) to ensure a clean and safe sea;
* The Defence Force (Navy) whose main task is to defend;
* The Natal Parks Board for conservation of fauna and flora;
* Customs and Excise Control to protect state funds;
* The National Sea Rescue Institute to assist people in distress at sea; and
* The South African Police Service for execution of the law and law enforcement.

Proactive functional harbour policing is based on short-term crime prevention techniques such as visible role-fulfilment by means of patrolling, while reactive harbour policing entails the investigation of crimes committed on the sea, in the harbour and areas adjacent to the sea, such as crimes *mala in se* and crimes *mala prohibita*.

This investigation rests on documentary studies, personal interviews and an empirical analysis and description of all types of crimes and functional activities handled by the Water Wing of the South African Police Service.

Recommendations include, *inter alia*, the following :

* Follow-up research on harbour policing to keep abreast with overseas development;
* The role of the South African Narcotics Bureau (SANAB) with regard to the smuggling of dangerous producing and habit forming substances such as drugs as well as the illegal smuggling of weapons and other material;
* Closer co-operation between different units of the Water Wing and other "stakeholdres" with regard to creating a sound knowledge of legislation pertaining to the sea:
* Education of criminal justice practitioners on the one hand and the general public on the other hand with regard to legislation applicable to the sea and adjacent areas; and
* The upgrading of security measures in South African harbours.

OPSOMMING

Hierdie navorsingsprojek, die eerste van sy soort in Suid-Afrika, behels 'n Kriminologiese studie betreffende hawepolisiëring. Dit is in die eerste plek hoofsaaklik gemoeid met die historiese ontwikkeling van hawepolisiëring vóór die instelling daarvan in 1916 in terme van De Spoorwegen en Havens Reglement, Bestuur en Beheer Wet Wet 22 van 1916 en die periode nà 1916 wat die herorganisering van hawepolisiëring in 'n volwaardige polisiemag op 1 Julie 1934 voorafgegaan het.

In die tweede plek beoog hierdie ondersoek 'n beskrywing van maritieme jurisdiksie deur middel van die beklemtoning van bestaande konvensies, soos onder andere die Den Haag Konvensie van 1930, die Geneefse Konvensie van 1958 en die See-Wet Konvensie van 1982, aangesien daar geen Parlement bestaan om wette, wat op die see van toepassing is, te promulgeer nie. Dit blyk uit die onderhawige ondersoek dat maritieme bedrog, diefstal van skeepsvrag op die oop see, seerowery, die onwettige sink van skepe, oliebesoedeling, ens. kommerwekkende aangeleenthede vir hawepolisiëring is.

Funksionele hawepolisiëring blyk op die oog af, afhanklik te wees van verskeie rolspelers, soos onder andere :

* Die Wet op Seevisserye (Wet 12 van 1988), vir die beskerming van ons seebronne;
* Die Handelskeepvaartwet (Wet 57 van 1951);
* Die Departement van Vervoerdienste (Maritieme Afdeling) om 'n skoon en veilige see te verseker;
* Die Weermag (Vloot) wat getaak is om te verdedig;
* Die Natalse Parkeraad vir die bewaring van fauna en flora;
* Doeane en Aksynsbeheer om staatsinkomste te beskerm;
* Die Nasionale Seereddingsinstituut om persone wat in gevaar verkeer by te staan; en
* Die Suid-Afrikaanse Polisiediens vir die uitvoering en toepassing van die reg.

Proaktiewe funksionele hawepolisiëring is gebaseer op korttermyn misdaadvoorkomingstegnieke soos onder andere sigbare rolvervulling by wyse van patrollering, terwyl reaktiewe hawepolisiëring die ondersoek van misdaad wat ter see, in hawens en op aangrensende land gepleeg is, naamlik *mala in se* en *mala prohibita* misdade behels.

Hierdie ondersoek berus op dokumentêre studies, persoonlike onderhoudvoering en 'n empiriese ontleding en beskrywing van alle tipes misdade en funksionele aktiwiteite wat deur die Watervleuel van die Suid-Afrikaanse Polisiediens gehanteer is.

Die volgende aanbevelings is gemaak :

* Opvolg navorsing om tred te hou met oorsese ontwikkeling;
* Die rol van die Suid-Afrikaanse Narkotika Buro (SANAB) met betrekking tot die smokkel van gevaarlike en afhanklike stowwe, soos onder andere dwelmmiddels en die onwettige smokkelary in vuurwapens en ander materiaal;
* Nouer samewerking tussen die verskillende eenhede van die Watervleuel en ander belanghebbendes met die oog op die skepping van 'n deeglike kennis betreffende wetgewing wat van toepassing is op die see;
* Opvoeding van strafregsplegingsamptenare enersyds en die algemene publiek andersyds met betrekking tot wetgewing wat van toepassing is op die see en aangrensende gebiede; en
* Die opgradering van sekerheidsmaatreëls by Suid-Afrikaanse hawens.

CHAPTER ONE

GENERAL ORIENTATION

1.1 INTRODUCTION

"Social order is a pattern of harmonious mutual co-existence, in which every person must live up to certain expectations and accept certain obligations, and may demand certain rights from other people" (Van Heerden, 1985:12). Policing entails the maintenance of the social order by means of a variety of functional tasks or methods. These include proactive and reactive policing.

The South African Police came into being on 1 April 1913, and since its inception, they are responsible for the task of maintaining the social order. Simultaneously, the policing of the railways and harbours was conducted on a fragmented basis by members of the South African Railway Administration. However, on 1 July 1934 the Railway and Harbour Police became an official Force to deal with crime on Railway premises and at harbours. Amalgamation of these two Forces materialised on 1 October 1986. The thought that the two Forces should merge was not new, and was actually first raised in the days of Colonel J.G. Truter, the first Commissioner of South African Police.

The present-day task of maintaining law and order at harbours is being entrusted to the various Water Wings of the South African Police. Combating crime through proactive actions (such as patrol) and the enforcement of laws and regulations (by means of detection, arrest, detention, etc.) are the main objectives of these units, but most important is the rendering of a social service to members of society.

1.2 RATIONALE FOR CONDUCTING THE INVESTIGATION

The historical development of the South African Police culminated into its official establishment on 1 April 1913 in terms of the Police Act, Act 13 of 1912. Van Heerden (1986:35) points out that the South African Railway Police originated because of the need to protect the property of the Rail-

ways Administration. Although section 57 of Act 22 of 1916 had made provision for the appointment of a number of persons to keep order on the railways and harbours, this group emerged in 1934 as a fully-fledged police unit along the same lines as the South African Police. This unit was invested with all the powers and authority the law conferred on police officers. However, the activities of the Railway Police were confined to land and property belonging to the erstwhile Department of Railways and Harbours (including airports). Their powers of arrest and entry into premises had been restricted or limited to crimes which had some connection with the Railway and Harbour Administration only. No scientific study into the role and functions of harbour policing has been conducted in South Africa before, and for this reason the researcher deemed it necessary to undertake this study.

Since 1 October 1986, the Railway Police had been incorporated into the South African Police. Administratively, this unit now forms an integral part of the South African Police with duties and authority designated to them by the Police Act (Act 7 of 1958). The police do not possess unlimited powers. Restrictions are placed upon what they may do and what they may not do. In democratise societies the principle, namely that people are ruled by laws and not by people, is accepted as valid. The police who receive their powers and authority from the people (citizens), to whom the power ultimately belong, are not free to exercise their delegated powers exactly as they see fit. They (police) remain accountable to the public and must therefore fulfil their obligations within the restrictions imposed by the law. These restrictions apply *mutatis mutandis* to those policemen charged with the responsibilities of policing (maintenance of the social order) at South African harbours, railways and airports belonging to the South African Transport Services (TRANSNET and PORTNET).

It is with this background in mind that the researcher decided to undertake a study into harbour policing to ascertain to what extent this unit is involved in proactive and reactive policing as a means of maintaining law and order at harbours.

1.3 AIMS OF THE STUDY

The aim of this study arises from the relevance of harbour (water) policing in South Africa, the relevance of the study to the research methodology as well as the theoretical significance thereof.

Although there has been a considerable amount of research conducted on policing issues on land, no attention whatsoever, has been paid to harbour (water) policing in South Africa. The following studies have been conducted with regard to policing in general. It should, however, be noted that the list provided below does not reflect a full account of research on land policing.

(a) The role and image of policing in South Africa

Van Heerden, T.J. 1974. Die polisierol in die samelewing met verwysing na die Suid-Afrikaanse Polisie in Johannesburg. Unpublished research research report. Pretoria: University of South Africa.

Mayet, H.R. 1976. The role and image of the South African Police in society from the point of view of the Coloured people in Johannesburg. Unpublished M.A.-dissertation. Pretoria: University of South Africa.

Du Preez, G.T. 1979. Die beeld van die Suid-Afrikaanse Polisie by plattelandse gemeenskappe. 'n Vergelykende studie. Unpublished M.A.-dissertation. Pretoria: University of South Africa.

(b) Police brutality

Du Preez, G.T. 1990. Die betekenis van polisiebruuskheid: 'n teoreties-empiriese besinning. Unpublished research report. Pretoria: University of South Africa.

(b) Police organisation and training

Smit, B.F. 1979. Die sosialisering van die nuweling in die Suid-Afrikaanse Polisiesubkultuur. Unpublished DLitt et Phil. thesis. Pretoria: University of South Africa.

Potgieter, P.J. 1981. Die invloed van die rasionaliteits-teorie op die ontwikkeling van die Suid-Afrikaanse Polisie. Unpublished M.A.-dissertation. Pretoria: University of South Africa.

Van Graan, O.J. 1979. Analise van die voorsiening en benutting van personeel in die Suid-Afrikaanse Polisie en van vrywillige bedankings van Blanke manlike polisiebeamptes oor die tydperk 1968-1977. Unpublished M.Admin.-dissertation. Pretoria: University of South Africa.

Van Heerden, T.J. 1979. Die praktiese implikasies wat akademisering vir die Suid-Afrikaanse Polisie inhou. Unpublished research report. Pretoria: University of South Africa.

Potgieter, P.J. 1987. Sinisme - 'n polisiekundige ondersoek. Unpublished DLitt et Phil. thesis. Pretoria: University of South Africa.

Stoltz, F.I. 1986. Die invloed van die polisierol op die gesinslewe van die Blanke polisieman in 'n enkele metropolitaanse gebied. Unpublished M.Comm.-dissertation. Potchefstroom: Potchefstroom University for Christian Higher Education.

Rauch, J. 1992. 'n Onafhanklike skatting van basiese opleiding in die Suid-Afrikaanse Polisie. Unpublished research report. Johannesburg: University of the Witwatersrand.

(d) Criminalistics

Van Heerden, T.J. 1965. Die bydrae van die geregtelike geneeskunde in die wetenskaplike bewyslewering by misdaadondersoek met verwysing na die Suid-Afrikaanse Polisie se Regsgeneeskundige Laboratorium, Johannesburg. Unpublished M.A.-dissertation. Pretoria: University of South Africa.

Van Heerden, T.J. 1967. 'n Kriminalistiese ondersoek van falsiteit met verwysing na die probleem in Johannesburg. Unpublished DLitt et Phil. thesis. Pretoria: University of South Africa.

Bosch, J.G.S. 1982. 'n Teoreties-prinsipiële uiteensetting van die rol van die Kriminalistiek in die beheer van misdaad. Unpublished M.A.-dissertation. Potchefstroom: Potchefstroom University for Christian Higher Education.

To make a contribution to this barren field of research with regard to harbour policing, the present study envisages the pursuance of the following aims:

(a) To bridge the gap in our substantive knowledge about harbour policing in South Africa. The research is primarily aimed at understanding various aspects of harbour policing by gaining knowledge of and insight into this phenomenon.

(b) To render a clear account of the functional role of harbour policing with respect to the enforcement of, *inter alia*, the following laws and regulations pertaining to water policing in South African waters -

* Merchant Shipping Act (Act 57 of 1951), Standards of Seaworthiness, Manning and Licensing of Vessels Regulations, 1986 and promulgated under Section 356(1) of the Merchant Shipping Act.
* Sea-Shore Act (Act 21 of 1935).
* Oil Pollution Casualties Act (Act 64 of 1987).
* Prevention and Combating of Pollution of the Sea by Oil Act (Act 6 of 1981).
* Territorial Waters Act (Act 87 of 1963).
* Sea Fishery Act (Act 12 of 1988)(amended version).
* Marine Traffic Regulations (promulgated under Sections 1,2,4,5,9 and 16 of the Marine Traffic Act (Act 2 of 1981).
* Regulations regarding ships or small vessels (craft) used solely for sport and recreation (promulgated under Section 356(1) of the Merchant Shipping Act (Act 57 of 1951).

Harbour policing, of which the functioning is being executed by the Water Wing of the South African Police, operates within twelve nautical seamiles which is equal to an international nautical mile of 1,852 metres from land. For this reason, the present study is also aimed at the following -

(c) To render a clear account of the duties and obligation of the Water Wing as far as the following aspects are concerned:

i) Inspection of all sea vessels in South African harbours as well as on sea;
ii) To ascertain the nature and extent of law enforcement in South African harbours as well as on sea;
iii) Investigation of drownings, sea rescues, etc.;
iv) Traffic control in South African harbours and adjacent seashores; and

v) Investigation of incidences of oil pollution at sea.

(d) To ascertain the nature and extent of reactive policing (law enforcement) with regard to common law crimes and statutory offences under the jurisdiction of the Water Wing for the period 1 July 1992 till 30 June 1993.

1.4 RESEARCH APPROACH

Van der Westhuizen (1977:2) has identified at least four objectives of criminological research which could be of importance to the present study, namely:

(a) description;
(b) explanation;
(c) prediction; and
(d) control (symbolical) over the incidence of harbour policing (phenomenon) being studied.

General scientific approach

Approach in scientific research can be defined as the global view of the research when studying crime. This approach presupposes a given attitude to the field of criminological investigation and the study object in particular, and also to science in general. Attitude refers to the researcher's faith in universality of cause and effect, in other words the question "why"? Attitude also refers to an intense desire to know, a fruitful imagination and the love of experimental investigation. A scientific attitude is the capacity to ask important questions and formulate fruitful hypotheses (Van der Walt, Cronje and Smit, 1985:163).

The general approach as far as functional harbour policing is concerned, is positivistic in nature. Alant, Lamont, Maritz and Van Eeden (1981:199) define positivism as: " ... a theory of knowledge based on the assumption that facts exist as inherent attributes to things; that controlled sensory perception is the only way of knowing and that knowledge has as its primary aim the discovery of the laws according to which society (reality) operates".

To Hughes (1980:16), positivistic orthodoxy refers to philosophical epistemology (i.e. the nature of phenomena and the procedures for determining their existence) which represent the intellectual approach in the social sciences. This positivistic approach consequently leans heavily on epistemology which recognises observation as the only means of viewing the "outside world". Epistemology devotes theory of knowledge, i.e. the ways in which man learns of the existence of "things", whether through discussion, experience, etc. It consequently also includes the establishment of truth (Alant, *et al.*, 1981:197). Epistemology also refers to the nature of things and phenomena (serious crime) as they occur in social reality (society) and the procedures employed for establishing their existence. In summary, then, it could be stated that epistemology is the theory of knowledge which investigated the nature, origin and bounds of knowledge (Hughes, 1980:16). In this regard, Babbie (1989:6) maintains that epistemology is the science of knowing; methodology (a subfield of epistemology) might be called the "science of finding out".

Ontology, on the other hand, may be defined as a philosophical view of the "world" as it is, in other words, how "things" relate to one another in society (Alant *et al.*, 1981:199). Hughes (1980:16) writes: "Claims about what exists in the world almost inevitably lead to issues about how what exists may be known". Ontology and epistemology are therefore inseparable. Hughes (1980:16) opines: "Quite clearly ontological issues and epistemological ones are not unconnected". Ontology deals with the essence of "things", i.e. with its essential characteristics with a view to determining the basic nature of every "thing" that exists.

Positivism, which is predominantly natural science orientated, regards social reality in which phenomena occur as a unified whole, in that the same methods of study may be applied to all phenomena. Study methods in natural science and social orientations consequently have much in common: both require the same precision and objectivity. In positivism the method of study is extremely important. To the positivist, science refers to a technique or method which promotes the attainment of reliable knowledge of any perceivable phenomenon in the world which may be used for purposes of control and prediction. Further characteristics of positivism are, *inter alia*, the following:

* all directly, observable things or facts, together with the correspondences and relationships between them which may be established through reason without exceeding the empirical limits, are regarded as positive. Belief in the sensory perception of empirical phenomena (empiricism) plays a dominant role; and
* positivism aspires to practical knowledge of and control over nature as opposed to the speculation of, for instance, meta-physics.

Positivism has particular significance within the framework of the social sciences, particularly with regard to the study of social problems (such as crime). The point of departure is that the application of the methods and results of the natural sciences in the field of human relations will ensure a new level of efficiency and order in society, since social problems may be eliminated in this manner (Potgieter, 1983:2).

1.5 RESEARCH METHODOLOGY

Binder and Geis (1983:12) write that: " ... methodology may be considered a set of procedures designed to achieve clear thinking ... the search for truth and understanding, and these priceless results can be achieved by a vast variety of approaches that cannot be expressed as a pre-ordained, simple formula".

Methodology is the logic of scientific procedure (Merton, 1968:140). In this regard, Bailey (1987:32) opines that: "By methodology we mean the philosophy of the research process. This includes the assumptions and values that serve as a rationale for research and the standards or criteria the researchers uses for interpreting data and reaching conclusions". A clear definition of the researcher's methodology becomes necessary in determining important factors such as how he or she writes hypotheses and what level of evidence is needed to make the decision whether or not to reject a hypothesis (Bailey, 1987:32).

Methodology represents an overall evaluation of the researcher's work procedure according to certain norms. These norms relate to the methods and techniques of scientific investigation. For this reason, methodology is not only considered to be normative, but also descriptive and comparative. The aims of methodology are *inter alia* the following:

* it makes a study of existing research procedures and standards (norms) as well as the evaluation thereof;
* it is a means according to which applicable standards, procedures and techniques could be selected; and
* it simplifies the task of the researcher with regard to the selection of topics, clarification of terms (concepts), explication of research procedures, the systematising of empirical findings and the writing of research reports (Van der Walt, *et al.* 1985:174-175).

(a) **Traditional research methods**

Quetelet (1797-1974) was the first investigator to point out that crime is a social phenomenon which can be explained by analysing data (crime statistics). He also pointed out that one of the most remarkable facts disclosed by crime statistics, is the consistency with which crime in general, and also particular types of crimes, occur annually with the same regularity, and are punished with the same type of punishment. Furthermore, there is a constant relation between crimes investigated and convictions. The proportion of criminals who are not brought to justice because of lack of evidence or because they are not discovered, also remains constant. Whereas Quetelet applied the method of mass observation (criminal statistics) to explain and predict the crime phenomenon at group level, Lombroso used the case study method to analyse crime as an individual phenomenon (Van der Walt, 1964:118). Each of these methods implies a unique and independent approach to the study of crime as a social phenomenon, which normally leads to particularistic findings and pronunciations. Since the criminologist is expected to produce generally valid and acceptable findings and conclusions, criminology as the scientific study of the crime problem in all its ramifications needs its own unique contemporary method of research. The

pattern of a typical criminological research method should, therefore, leave room for both the group level and the individual approaches to the study of crime and the emphasis should be on the achievement of objectives rather on the collection of data. It should also allow ample room for a possible synthesis of the group and the individual research methods and for designing new and expanding existing definitive measuring, data collection and data processing techniques (Van der Westhuizen, 1977:2-3).

The collection of statistical material on crime is one of the most common features of criminological research. The criminologist who uses statistical techniques often limits himself to the most elementary of such techniques. Much of his work in this field consists of drawing fairly obvious, though often useful conclusions from the official figures. This is done by calculating percentages from the figures presented to make it easier for the reader to grasp the significance of the conclusions and to follow the crime movements over a period of time. From the official statistics, the researcher can further elaborate the picture given in the official volume, for instance, by determining *inter alia*, the age and sex ratios of crime over a given period of years for specific offences thereby laying the foundations for further research (Ndabandaba, 1987:5-6).

(b) **The analytical research method**

The analytical method of research which is non-particularistic in nature, meets all the above-mentioned requirements and, with a view to establishing and securing the identity of criminology, it should be applied as frequently as possible (Van der Westhuizen, 1977:3). The implementation of this method allows the researcher to either employ the individual-human (case study method) or the group (mass observation) approaches or both. In the analytical method, these views (case study and mass observation methods) are regarded and put into operation as <u>techniques</u> and not methods. In other words, each of these approaches loses its status as independent and fully-fletched methods as they are grouped together as aids (techniques) to the analytical method (Van der Walt, *et al.* 1985:175).

The analytical method has the following distinctive functions :-

i) **Goal achievement**

The analytical method is goal-directed and makes provision for descriptive analyses using descriptive techniques, explanatory analyses using explanatory techniques and applicative analyses using prediction and control techniques.

ii) **Adaptive function**

Because the analytical method is committed to the various objectives of an investigation (and thus also of generalisations and theories), the researcher can right from the outset lay down a meaningful relationship between fact and theory.

iii) **Integrative function (synthesis)**

The analytical method is essentially non- particularistic. It confers neutrality on the researcher, thus enabling him or her to study the referent object on the individual and group levels, or both, thereby rendering the opportunity of synthesising the analyses into comprehensive generalisations and systematic theories (Van der Westhuizen, 1977:3-4).

iv) **Pattern maintenance**

The analytical method respects and preserves recognised methodological principles and approved techniques of description, explanation, prediction and control, and yet leaves ample room for change, technical refinement and innovation (Van der Westhuizen, 1977:3-4). The two most widely accepted prediction techniques in criminology are categorisation and extrapolation. Both techniques can be implemented for predicting group and individual behaviour (Van der Westhuizen, 1977:13-14).

1.5.1 Sampling

The purposive sampling technique was used for the study of two categories of law violations, viz. common law crimes and statutory offences. Bailey (1987:94) defines this technique as allowing the researcher to choose "respondents" best meeting the purpose of the study, according to own judgement, without the restrictions of fulfilling a specific quota, or choosing the most convenient "respondents".

Babbie (1989:204) concurs by saying that purposive or judgmental sampling is based on the researcher's own knowledge of the population, its elements and the nature of the aims of the research: in short, it is based on the researcher's judgement and the purpose of the study.

The present study includes the purposive sampling of all common law crimes (*mala in se*) and all statutory offences (*mala prohibita*) over a one year period, i.e. 1 July 1992 till 30 June 1993, recorded by the coastal harbour policing units in South Africa (see par. 1.5.2.3 for a detailed account of these coastal units). Researcher is of the opinion that the inclusion of both categories of crime (i.e. serious and non-serious) would yield the most comprehensive understanding of the reactive component of the police role as far as harbour policing is concerned.

1.5.2 Delimitation of the study

"Criminological research, using its research methods, aims at establishing reliable and valid pronouncements. To achieve this, the researcher has got to define his field of study and groups being investigated, both qualitatively and quantitatively. This implies delimitation of the investigation" (Mqadi, 1992:5). Van der Westhuizen (1977:39) opines that " ... the rationale for such delimitations or reductions [are] perhaps that he [researcher] lacks the means or the time to analyse all cases or that he is interested in only certain sub-groups within the global group". The present investigation is based on the following delimitations:

1.5.2.1 Qualitative delimitation

Qualitatively, all common law crimes (crimes *mala in se*) and all statutory crimes or offences (crimes *mala prohibita*) for the period 1 July 1992 till 30 June 1993 will be surveyed and analysed. These categories include serious crimes (e.g. murder, theft, robbery, assault, fraud, etc.) defined in terms of codes 1-499 of the Code List of Crimes, as well as non-serious crimes or statutory offences defined in terms of codes 500 and above of the Code List of Crimes. The policing of statutory crimes or offences form the most important part of the reactive function of harbour law enforcement, especially with reference to the enforcement of laws and regulations pertaining to harbours and adjacent coastal areas (see par. 1.3).

1.5.2.2 Quantitative delimitation

Quantitatively, all common law crimes and statutory offences reported and attended to by coastal units of the South African Police Water Wings for the period 1 July 1992 till 30 June 1993 will be surveyed and analysed in tabular format.

1.5.2.3 Spatial delimitation

The following coastal harbours constituting the operational areas of the respective Water Wings of the South African Police have been purposively included in the present investigation:

* Cape Town, including the territorial waters between Yzerfontein and Hout Bay as well as the adjacent internal waters;
* Saldanha, including the territorial waters between Lamberts Bay and Yzerfontein and adjacent internal waters;
* Simonstown, including the internal waters of False Bay and the territorial waters between Hout Bay and Agulhas as well as the adjacent internal waters;
* Mossel Bay, including the territorial waters between Agulhas and the Stormsriver and adjacent internal waters;

* Port Elizabeth, including the territorial waters between the Stormsriver and the Fishriver and adjacent internal waters;
* East London, including the territorial waters between the Chaluma and Great Kei rivers and adjacent internal waters;
* Durban, including the territorial waters between the Mtamvuma and Tugela Kei rivers and adjacent internal waters;
* Richards Bay, including the territorial waters between the Tugela river and Kosi Bay and adjacent internal waters; and
* Walfish Bay, the territorial waters of the Republic of South Africa surrounding Walfish Bay.

Apart from the above-mentioned coastal harbours, the South African Police also take responsibility for policing internal rivers and dams, such as portions of the Orange River, Olifants River, Vaal River, P.K. le Roux Dam, etc. For the purpose of the present study, these internal operational areas will not be included for purposes of descriptive analyses.

1.5.3 **Documentary study and Interviewing**

Apart from an empirical undertone (Chapter 5), a documentary study has also been undertaken to place the developmental history of harbour policing into perspective (Chapter 3). The primary aim of a documentary study revolves around the retrieval of information from official documentation to also account for the role and functions of harbour policing. Cole (1992:157-158) opines that documentary studies render greater reliability and validity than is the case with poorly devised questionnaires, but warns simultaneously that information forthcoming from official documents could turn out to be incomplete or simply unavailable.

Bailey (1982:301) avers that: "Another major source of data that is in my opinion rather neglected is the analysis of documents, by which we mean any written materials that contain information about the phenomena we wish to study". This author distinguished between:

* primary documents, i.e. eyewitness accounts written by people who experienced the particular event or behaviour; and

* secondary documents, i.e. documents written by people who received information necessary to compile a specific document by means of interviewing eyewitnesses or by reading and analyzing primary documents.

Bailey (1987:291-292) identifies several advantages of a documentary study which can be applied to this research as follows:

* it allows the researcher to study the phenomenon of harbour policing as an integral part of the police role in society;
* it is well suited to study this phenomenon which occurred over quite a long period, i.e. from 1867-1984, without allowing a degree of prejudice or error caused by memory failure or selective remembrance;
* the documents, especially the Memorial Album of the South African Railway Police, was written by a member of the erstwhile South African Railway Police depicting the history of the Force since its official inception in 1934 till 1984; and
* it allows for an in-depth study of the proactive and reactive character of harbour policing.

Bailey (1987:292-294) also identifies certain prominent disadvantages associated with a documentary study:

* incompleteness of documents was experienced in the sense that no other official documentation, describing the role and functions of harbour policing, could be detected for consultation; and
* the documentation used was not originally intended for research purposes and for that reason it does not reflect the complete history of South African Railway Police. Only selected facts concerning the origin, existence and contribution of this Force are thus highlighted.

Other related documentation are Force Orders, Special Force Orders, etc. which are in fact official documents classified as "confidential" administrative and organizational information to which researcher has no access.

A documentary study to retrieve information from official documentation concerning the role and functions of harbour policing, included the following:

(a) South African Railway Police Memorial Album, which depicts the historical development of this Force over a period of fifty years, i.e. from 1 July 1934 till 30 June 1984; and
(b) Workshop documentation in the form of papers delivered at annual symposia in Benoni since 1991. These papers are contained in various volumes over a three year period; and
(c) Statutory laws applicable to harbour policing (see par. 1.2); issued by the Government Printer. It is, however, not the aim of the present study to render a comprehensive account of the provisions of all these statutory laws and the reader is therefore encouraged to make an independent study thereof.

The above-mentioned sources have been supplemented by conducting personal interviews with police officials attached to the Water Wing. Bailey (1987:176) describes the interview as "a special case of social interaction between two persons". The interviews were unstructured and conducted to improve knowledge on certain aspects of the field of study.

Although empirical data adequately describe the reactive role of harbour policing, it is believed that information gathered by means of a documentary study and personal interviews will prove to be heuristic in the sense that it could serve as a basis to also uncover proactive aspects of the harbour policing role. This methodology therefore complies with the guidelines of exploratory research as set by both Bailey (1987) and Dale (1990).

1.5.4 Literature study

A literature study has been conducted to orientate the researcher with regard to the role and function of harbour policing in South Africa as far as crime prevention (proactive policing) and law enforcement (reactive policing) in South African harbours and adjacent seashores are concerned.

In order to pursue this objective, the researcher also scrutinised existed literature with regard to the police role in general as contained in the bibliography of this research project.

1.6 THE RELEVANCE OF THE STUDY TO CRIMINOLOGY AND CRIMINAL JUSTICE

Hagan (1988:5) opines that criminology is the scientific study of crime and criminals "for it is in this field that some of the most important theoretical ideas we have about our society and its workings are put to very concrete and important tests".

Reid (1982:17) informs us that the French anthropologist P. Topinard was the first person to coin the term "criminology", and describes it as that body of knowledge concerning crime as a social phenomenon, the development by society of criminal law and its use to define crime, the causes and consequences of law violation and the use of scientific methods in criminology.

Siegel (1989:11) points out that the crime problem became the focal point of study in America during the late 1960's when academic programs devoted their attention to the study of the criminal justice system. Although the terms "criminology" and "criminal justice" may seem similar, there are major differences between them. Criminology explains the etiology, extent and nature of crime in society, whereas criminal justice refers to agencies of social control that deal with crime and juvenile delinquency. Further, while criminologists are mainly concerned with the causes and consequences of crime, criminal justice exponents are mainly engaged in describing, analysing and explaining the behaviour of the agencies of justice, namely the police, courts and corrections (prisons). Since both directions are crime-related, they do overlap to a certain extent. Criminologists, especially those interested in Penology, must be aware of how the agencies of justice operate and how they influence crime and criminals. Similarly, criminal justice experts cannot begin to design programs of crime prevention or rehabilitation without understanding something of the nature of crime.

Other authors claim that Penology and Police Science are both professional fields in Criminology. "Police Science is an applied scientific discipline particularly important in the execution of a given social function. It is its nature as an applied science that emphasises its social relevance and role-boundness or occupational alignment" (Van der Walt *et al.* 1985:43-44). It can, therefore, be accepted that studies in policing may be regarded as an application of a system of knowledge within the framework of scientific criminology. Gould, Kleck and Gertz (1992:1) resolve the tension between criminology and criminal justice by stating that people (practitioners) in criminal justice simply will have to accept the scientific point of view of criminology. Although the terms "criminology" and "criminal justice" seem to create a semantic distinction, Gould *et al.* (1992:1) argue that the reason why there may have been tension between these concepts in the past, is that criminological theory has excluded much that is important to criminal justice and conclude: "The tension arises ... because of a difference in purpose: criminology 'is dedicated to the explanation of crime and to doing something about it in response to the explanations', while criminal justice is dedicated to 'establishing who done it and responding with punishment, or, more broadly, with control".

Van der Walt *et al.* (1985:44) define policing as "that act of power in the formal social control structure by which internal order [through enforcement of laws] is maintained in agreement with the principles of legal competence and individual rights". In the present investigation, therefore, harbour policing is regarded as an applied function of policing within the framework of criminological methodology, conceptualisation and system of knowledge.

Van der Walt *et al.* (1985:24;48) describe the study field of criminology as the science dealing with the crime phenomenon in its totality, namely crime, criminal, victim and criminal justice but claim that penology and police science are integral professional fields of study within a criminological framework.

1.7 DEFINITION OF CONCEPTS

For the purpose of this investigation, it is essential that basic concepts be clearly defined in order to eliminate distortions. To appreciate and understand the role of harbour policing, it is necessary to share a common understanding of these concepts. The following definitions are by no means complete or intended to meet the needs of every situation which will confront the researcher.

1.7.1 Policing

In the general sense of the word, "policing means coercive action of a certain sort; in particular it means the safe-guarding of society" (Van Heerden, 1986:12). Folley (1973:3) opines that the juridical definition of the concept policing is often approached in terms of a theoretical rationalisation of law enforcement; and on this basis law enforcement and policing are regarded as synonymous (Whisenand and Ferguson, 1978:2).

1.7.2 Harbour

"Harbour" means a harbour defined in section 1 of the Transport Act (Act 65 of 1981).

1.7.2.1 Fishing harbour

A "fishing harbour" means a fishing harbour as defined in section 1 of the Sea Fisheries Act (Act 58 of 1973).

1.7.2.2 Fishing zone

Fishing zone means the fishing zone referred to in section 3 of the Territorial Waters Act (Act 87 of 1963).

1.7.2.3 Sea

"Sea" means the water and the bed of the sea below the low-water mark and within the territorial waters of the Republic of South Africa, including the water and the bed of any tidal river and of any tidal lagoon (Sea-Shore Act, section 1).

1.7.2.4 Sea-Shore

"Sea-Shore" means the water and the land between the low-water mark and high-water mark (Sea-Shore Act, section 1).

1.7.2.5 Internal waters

"Internal waters" mean internal waters in terms of the definition in section 1 of the Marine Traffic Act (Act 2 of 1981).

1.8 CHAPTER DIVISION

In Chapter 1 a general orientation to the study is outlined with reference to aspects relating to the research design. Chapter 2 is an exposition of the role of the police in society, with specific reference to the definition of role, restrictions upon policing, policing styles, etc. Chapter 3 entails a discussion of the historical development of the South African Railway and Harbour Police, while Chapter 4 renders an account of maritime jurisdiction. Chapter 5 offers a discussion of functional harbour policing, including a statistical analysis of common law crimes and statutory offences attended to by the Water Wing. Chapter 6 contains the conclusions and recommendations.

1.9 SUMMARY

This research is the first of its kind undertaken to highlight the issue of harbour policing. The rationale for the research resides in the application of knowledge acquired with regard to issues surrounding harbour policing. This exploratory research emphasises the scantiness of litera-

ture dealing with this phenomenon locally and abroad, and should be seen as a humble attempt to address the problem from a criminological point of view. It stands to reason that much is to be done to fully understand the role and functions of harbour policing.

CHAPTER TWO

THE POLICE ROLE IN SOCIETY

2.1 INTRODUCTION

In human societies around the world, which may, and often do, exhibit marked differences from one another, the role of the police is not, in the words of Lee, " ... the creation of any theorist, nor the product of any speculative school, it is the child of centuries of conflict and experiment" (Whitaker, 1979:8).

During these centuries of conflict and experiment, the role and functions of those responsible for social control, i.e. the police in today's terminology, have undergone many changes. These changes have reflected the changing nature and demands of society. Different types of society, or even different styles of life within single societies, even in the modern world, make distinctly differentiated demands on the police. One might contrast, for example the differences in the daily round of policemen stationed in a Karoo town, like Colesberg, and the hyperactive lives led by policemen in a high density urban area like Hillbrow in Johannesburg.

Kirkham and Wollan (1980:353) inform us that the linkage of the police with social control is evident in the use of the word 'police', which origin is the ancient Greek word, 'politeia' which, in turn, is the root of the words 'polity', 'policy' and 'politics'. This links the police by definition to the political community ('polity'), to its governing purposes and principles ('policy') and to the activities, science, art and conduct of public affairs ('politics') . An early meaning of police does not only point to an organisational (institutional) connotation but also to the functional aspect of policing which includes the regulation and control of a community (order maintenance), safety, health, morals, etc.

In the discussion that follows, an attempt will be made to give a broad outline of the police role in general because Harbour Policing, as a specialized unit, forms an integral part of policing.

2.2 UNORGANISED QUASI-POLICE

The history of policing can conveniently be divided into two phases: the era of erratically, or partially-organised efforts to assert moral codes or even laws designed to promote social stability and order, by non-specialist agencies; and the era of organised police, which did not dawn until the ends of the 18th Century. The earlier era is varied and colourful, but the success of the methods employed in different societies was undoubtedly very modest in many cases. In the ancient world, according to Edward Gibbons ('The Decline and Fall of the Roman Empire'), the fundamental objectives were 'Safety, plenty and cleanliness'. Policing was part of the general administration of the community. However, a distinction between military and policing was made by the Roman Emperor, Augustus Caesar, in 27 B.C. when he separated the functions of the Praetorian Guard and the Cohorts, from those of the Vigiles (patrolmen), Lictores (enforcement officers) and Stationarii (residents of a city block). These officials fell under the command of a Magistrate. They were charged with fighting fires and preserving order in the cities (Van Heerden, 1986:28-30).

Other examples of early policing mentioned in the literature, mostly follow a common pattern deriving from the necessity of communities and individuals to protect themselves and their property. Such necessity led to the formation of what might today be called vigilante or simply watchful groups, in which members of the community combined their efforts, sometimes voluntarily and sometimes on direction from higher authority, to keep lawbreakers and human predators at bay. An excellent illustration of this principle at work is the 'King's Peace' instituted in England during the Anglo-Saxon period, (600-1066). Whitaker informs us that "In England, from the time of King Alfred, groups of ten families, known as tithings, and of ten tithings, known as hundreds, were held responsible for keeping local peace and order. They were required to guarantee that none of their members would break the law, and that if anyone did they would arrest him by means of 'hue and cry' or else be obliged to pay a collective fine" (Coffee, Eldefonso and Hartinger, 1971:23-25).

When the Normans took over the country by invasion in 1066, they preserved the King's Peace under a system called 'frank pledge', which, similarly, depended on the raising of a 'hue and cry' to alert the community to its duty to track down and arrest offenders. Under this system, order in the community was maintained through 'watch and ward'. The city was divided into 24 wards. Each ward was headed by a local citizen, called an alderman, and a judicial officer. The streets were patrolled by a separate force called a 'watching march' (Van Heerden, 1986:22-24).

In some places, and particularly between 1500 and 1800, 'hue and cry' and 'watch and ward' were supplemented or replaced by 'constables' and 'baillifs'. In major centres of population, 'high constables' were installed, whilst 'petty constables' kept the peace in small communities. 'Baillifs' were responsible for scrutinising strangers, and prostitution was discouraged by 'the police of the pouters'. Constables (the word derives from the Latin 'Comes-stabuli' meaning 'the horse-master') were often recruited from the military and, so their name suggests, were often mounted police. Their actions were frequently bloody and intimidatory, and the public had serious objections to mounted military police (Hewitt, 1965:10; Van Heerden, 1986:24-25).

But these systems had essential weaknesses. One was the burden which it placed on individuals who either had no liking or aptitude for the onerous duties imposed on them, or who could afford to pay others to do their peace-enforcing duties for them. The other was that communities grew larger as the population expanded, and criminals could be concealed to avoid restitution against the group (Van Heerden, 1986:22).

Similar systems introduced in other countries encountered the same kinds of problems. As more and more 'mercenaries' were hired by the citizenry to carry out their community service the calibre of the individuals tended to decline. Moriarty observes that they were "... usually ill-paid and ignorant men, often too old to be in any sense efficient" (Moriarty, 1955:8).

Commenting upon such formations as 'The River Thames Police', 'The Merchant Police' and the 'Thieftakers', three early mercenary squads, Van Heerden (1986:24) described them as very old and incompetent drunkards. Folley (1973:49) adds that "this probably gave rise to the troublesome conviction that persists into our own time - that policing is an inferior type of work that does not make high demands on an individual's abilities and therefore does not justify much pay".

In England, the citizens increasingly began to depute their protective obligations to watchmen or beadles, while justices of the peace relied on common informers for detective results ... (persons nominated as) parish constables (paid) substitute deputies, popularly known as 'Charlies', who were untrained, (and) not infrequently corrupt ... Henry Fielding described them "as chosen out of those poor decrepit people who are from their want of bodily strength rendered incapable of getting a living by work. These men, armed only with a pole, which some are scarcely able to lift, are to secure the persons and houses of His Majesty's subjects from the attacks of young, bold, stout, desperate and well-armed villains" (Folley, 1973:50; Hewitt, 1965:17).

2.3 THE DAWN OF THE AGE OF MODERN POLICING

The modern age in policing was introduced in London, England, in the mid-18th Century, and its initiators were the brothers Fielding, John and Henry, Robert Peel, Patrick Colquhoun, Jeremy Bentham, John Howard and their associates of this period. The difficulties experienced in the establishment of a professional police force characterised by 'organisation, specialisation, co-ordination, co-operation and standard police practices' centred largely around the objections made against organised police that they would not be democratise, i.e. that to confer such power on a group like the police would threaten the claim to privacy, safety and freedom of the individual. It was argued that existing law and punishment were adequate to protect the community (Inciardi, 1989:156-158).

However, the problems of law-enforcement had become pressing at that time owing to rapid changes which were transforming Britain from an agricultural into an industrialised country, increasing the size and complexity

of cities and depleting the population of the countryside. In highly competitive urban environments, in which slums grew alarmingly and extreme poverty was everywhere present, all forms of crime, including murder and robbery, proliferated. Under the pressure of rapid industrialisation, there was labour unrest, rioting and looting. The actions of the military, sent in to quell unrest, alarmed the public. It was feared that the social order would collapse. These fears opened the way for the ideas of enlightened philosophers, like the Fieldings, John Howard, Patrick Colquhoun and Jeremy Bentham. In 1749, Henry Fielding, a magistrate in Bow street, organised the Bow Street Runners, the first police force in London (Inciardi, 1989:159).

The Bow Street Runners set the stage for further changes and innovations. In 1796, Colquhoun argued with the authorities that there was a need for a properly organised and trained body of men to protect law-abiding citizens from the depredations of law-breakers. The failure to deal with the problems of maintaining order, had led to contempt for the law. Amongst the factors which had given rise to contempt for the law was the extremely harsh penalties, including hanging and deportation to the colonies, imposed for petty criminal acts. By 1798, Colquhoun's arguments had persuaded the authorities to bring into being the Marine Police Establishment to police the Thames docks (Inciardi, 1989:159).

The event which accelerated the next important development, the establishment of the Metropolitan London Police by Sir Robert Peel, was the Peterloo Massacre, which took place in the north of England, in which, to quell a riot, the military sagred and killed almost a hundred people. Many members of Parliament threw their weight behind the reformer Robert Peel who argued that the establishment of an effective police force would be in every way more beneficial than the maintenance of a standing army to contain industrial unrest. Peel's Metropolitan Police Act, which he introduced into Parliament as the Home Secretary in 1829, enabled the formation of the first modern police force. The 'Peelers' or 'Bobbies', as they were called, were modelled on the Irish Constabulary, where Peel had tried out his ideas, and their Commissioners during their first two

decades were two Irishmen, Richard Mayne and Charles Rowan. It was they who developed the basic formula which still guides the police in their duties and purposes today:

> "The primary object of an efficient police is the prevention of crime; the next is that of the detection and punishment of offenders in crime is committed ... Every member of the force must remember that his duty is to protect and help members of the public no less than to apprehend guilty persons. ... He must look upon himself as a servant and guardian of the general public and treat all law-abiding citizens, irrespective of their social position, with unfailing patience and courtesy" (Banton, 1964:167).

Peel argues his case as follows:

i) maintenance of order depended not only on laws, but also on their enforcement by agents acting in accordance with specified rules and norms concerning manner of enforcement, place of enforcement, and time of enforcement;
ii) individual rights would be better protected by an organised body trained to act in accordance with specific principles;
iii) control of policing should be decentralised, giving control to individual communities;
iv) the police should be professionals paid by the authorities;
v) their primary task would be prevention rather than prosecution and punishment;
vi) the police would help to establish an orderly pattern of life in communities, thus obviating the need for brutal methods of enforcement of the law;
vii) policing is a civil function of government (Van Heerden, 1986:26).

The philosophies and principles laid out by Sir Robert Peel and those who had preceded him, were soon to be accepted as valid throughout England and in other states and societies. By 1848 there were 148 police forces in Britain. In 1844, New York emulated London's example, and other American cities followed soon after. The British example, of course, was extended

to the empire, and applied as soon as the state of societal organisation permitted it (Van Heerden, 1986:27). In South Africa, it was not until 1913 that the various police units which had been formed throughout the country prior to Union, were amalgamated. From the beginning, however, the South African police were organised not on a parochial basis, but as a national body controlled by a central command structure.

2.4 DIFFERENTIATED POLICING

The year 1913 marked the turning-point in the history of policing in South Africa. Although the police system operative in the Republic of South Africa is mainly centralised as far as control is concerned, it entails in fact a system of differentiated policing. There is no single police agency or unit which is entrusted with all facets of social control. The various agencies or units are separately controlled and fulfil different functions in different terrains.

2.4.1 The South African Police

The South Africa Police was established on 1 April 1913 in terms of Act 13 of 1912 (Police Act). It is a national police force with centralised command structure. Its territorial limits are the national boundaries which, since 1940, have included the erstwhile South West African (now Namibia). As a centralised police force (with only one commissioner in whom all powers with regard to order maintenance are vested), it holds all the powers (through delegation of authority) granted to its members by the laws of the land, and is composed of members belonging to all racial or cultural groups. Their responsibilities are contained in the Police Act (Act 7 of 1958, as amended) and include the following:

* the preservation of the internal security;
* the maintenance of law and order;
* investigation of any crime or alleged crime; and
* the prevention of crime (Van Heerden, 1986:35-36).

2.4.2 The South African Railways Police

The need to protect the property of the Railways Administration necessitated the establishment of the South African Railways Police. In terms of section 57 of Act 22 of 1916, provision was made for the appointment of a number of persons to keep order on railways premises and harbours. In 1934 this group was reorganised into a fully-fledged police force along the same lines as the South Africa Police, invested with all the powers the laws confine on police officers. However, the activities of the Railways Police are confined to land and property belonging to the Department of Railways and Harbours (including harbours and airports) throughout South Africa. Their powers of arrest and entry into premises are also confined to crimes or alleged crimes which have some connection with the Railways and Harbour Administration. In addition, they are also empowered to pursue activities in terms of the Motor Transport Act (Act 39 of 1930), anywhere in South Africa, and thus form a centralised, independent police force, answerable through their own commissioner to the Minister of Transport (Van Heerden, 1986:35-36) - see chapter 3 for a discussion of the historical development of this police force.

2.4.3 Traffic Police

Traffic control and the enforcement of traffic rules and regulations were originally part of the duties of the South Africa Police, but were gradually transferred to Provincial Administrations and Municipalities or Local Authorities. In 1934, the South Africa Police were finally relieved of their responsibility in respect of city traffic control. At this stage every municipality had its own traffic police division operating within the municipal boundaries. Traffic policing on provincial roads outside municipal boundaries had been taken over by the four provincial authorities in 1956, namely the Cape Province, Transvaal, Orange Free State and Natal. The system is decentralised, since the organisation and control of every unit is managed by the municipality or province concerned and for the sake of uniformity, traffic activities are being co-ordinated, mainly through the Institute of Traffic Officers based at Potchefstroom (Van Heerden, 1986:36).

2.4.4 Municipal Police

Originally, the Durban Borough Police Force formed in 1895 (Van Heerden, 1986:37) was never incorporated into the South Africa Police in 1913 and came to an end in 1936: "The death of Willie Alexander in 1934 and the presumed death of the police force in 1936 both presaged the end of a particular stage in the life of the Durban borough police" (Jewell, 1989:121). However, this police force continued their duties and their main functions were to apply the municipal by-laws and to control traffic. In addition to traffic policing, most of the other cities and larger towns maintain municipal police units (Van Heerden, 1986:37).

Interesting enough is the fact that the Durban Borough Police also had to deal with the Indian influx, stopping Indian immigration and especially to prevent Gandhi from re-entering Durban through the harbour. On 14 January 1897, two ships, the Courland and Nadeni, had been held in outer anchorage for twenty-seven days. Apart from incidences relating to illegal immigration, this police force also dealt with robbery cases in Durban committed by sailors (Jewell, 1989:cf).

2.5 THE ROLE CONCEPT

'Role' is a generic concept of all the social sciences and is used as a conceptual tool in analysis of behaviour. Heinz Eulau (1963:40) observes that:

> "The concept of role is familiar to most people. We speak of the father's role, the teacher's role, the minister's role, the judge's role, and so on. What we mean in all of these instances is that a person is identified by his role and that in interpersonal relations activating the role, he behaves, will behave or should behave in certain ways. In looking at a man's social behaviour or judging it, we do so in a frame of reference in which his role is critical".

Other definitions help to explicate the concept, (Killinger and Cromwell, 1975:212) describes role as " ... a unit of culture referring to the rights and duties, or normatively approved patterns of behaviour for the occupants of a given position", whilst Sterling (Geary, 1975:47) considers role to be " ... a set of expectations, held by individuals or group of individuals, regarding the behaviour and attributes of a role incumbent".

The above definitions expose two aspects of the concept of role, the objective and the subjective. Eulau and Sterling both emphasise the 'expectation' of those observing the role, and thus define it subjectively, whilst Yinger attempts an objective definition endeavouring to bestow on it an 'historical-philosophical meaning' (Van Heerden and Potgieter, 1982:18-19).

In applying the concept of role to the task of the police, it is evident that the subjective expectations of the public may vary from person to person, from class to class and from community to community, and that such subjective evaluations of the role of the police might be in stark contrast to what the police role is intended to be, bearing in mind that the institution (i.e. the police force) has a normative functional pattern which is based upon an objective concept of the role of the police (Van Heerden and Potgieter, 1982:19). The varying expectations of the public regarding the role of the police may result from personal experiences of police actually performing their duties. Van Heerden and Potgieter (1982:19) observes that:

> "If these expectations are unrealistic - whether this results from experience, prejudice, negative attitudes or whatever - the general role concept, too, will be unrealistic".

Examples given by these writers of experiences that result in a negative role concept are the following:

"i) The incidence of crime and the absence of visible police protection services create the impression that prosecution and repression take precedence over the protection of persons and property.

ii) A negative attitude or unsuccessful investigation of a serious crime gives the impression that the police are more interested in applying norms of convenience or mere harassment than in enforcing the penal code.

iii) Indifference and failure to heed the appeals for help make the police appear incompetent to meet the society's needs of service.

iv) Misuse of discretion bordering on discrimination gives the impression that the police are only concerned with the interests of certain groups" (Van Heerden and Potgieter, 1982:19).

The subjective concept of the role of the police cannot be disregarded, and it is necessary that it be noted from time to time in order that operational role activities of the police can be re-structured in order to re-enforce the objective concept of the role in the minds of the role allocators (i.e. the public). The subjective concept of the role of the police should never, however, replace the objective concept of that role (Van Heerden and Potgieter, 1982:19).

2.5.1 **Role Division**

Society is made up of human beings fulfilling a large variety of roles. If society is to be harmonious, these role must complement each other and be in a state of continuous interaction with one another.

Each role contains its specific duties and obligations. These must be carried out in order that society (i.e. the public and the role allocator) may continue to be harmonious.

The role of the police is but one of the roles played out in society, and therefore is part of a pattern of role interaction which goes to make up society.

There are roles in society which are more closely related to the role of the police than others. These are roles which are performed in the function of the administration of justice. There is, within this function, a division of roles which serves to provide the required guarantee of freedom of the individual which so exercised the minds of the pioneers of

police reform. This division of roles, first proposed by the Baron de Montesquieu (1689-1755), divided the task of government into three parts: the legislative, the executive and the judicative. Each part, or sub-system, contributes towards the maintenance of justice in the society - the judiciary function. The result is that no one part can be exercised in a way which would imperil the rights and freedom of the individual. The role of the police falls within the judicative part or sub-system (Van Heerden, 1986:4-6).

2.5.2 Role Content

There are differences amongst scholars and amongst criminal justice practitioners about the precise content of the policing role in society. The following definitions appear in the literature:

i) The word police is currently used to identify that institution of social control which for the community, attempts to prevent crime and disorder and preserve the peace, and which, for the individual attempts to protect life, property and personal liberty (Van Heerden, 1986:42).

ii) "In the broad sense, the term police connotes the maintenance of public order and the protection of persons and property from the hazards of public accidents and the commission of unlawful acts; specifically it applies to the body of civil officers charged with the maintenance of public order and safety and the enforcement of the law, including the detection and suppression of crime" (Encyclopaedia Brittanica, p.105).

iii) * "The prevention of crime and disorder and the prevention of peace; and
* The protection of life and property and personal liberty" (Killinger and Cromwell, 1975:211).

iv) "The average policeman today is called upon to play not one role but a wide variety. ... Only a tiny minority of work is concerned with crime. A police officer needs something of the experience of an arbitrator, a social worker, a lawyer and a doctor, without being trained as any of them" (Whitaker, 1979:60).

As the above definitions show, policing is a social service which is directed towards maintaining harmony and order in the society. The power wielded by the police in the performance of their duties derives from the members of the society who delegate that power to 'authority' (the state, or, where appropriate, the local community). The policies to be implemented by the police are, accordingly, laid down by the authority concerned in accordance with the requirements of the citizens and with a view to the safety, security and freedom of the citizens. The policies adopted by authority will reflect its judgement of the requirements of the citizens and the best use of available resources; but the police, in performing their duties should be constantly aware that the executive branch of government will be held accountable for the manner in which their duties are performed, and should strive to perform those duties in a manner consonant with the constitutional rights of the individual citizen.

In terms of The Police Act, No. 7 of 1958, section 5, the content of the police role includes the following:

i) Safeguarding internal security;
ii) Maintenance of law and order;
iii) The investigation of all crimes or suspected crime; and
iv) The prevention of crime.

These functions should be executed in a manner which complies with the basic principles of policing and " ... extend to whatever interferes with the internal security, order, comfort and economy; to the removal of nuisances and obstructions, to the repression of disorder, the protection of the peaceful citizen and his daily and nightly vocations, the maintenance of the public health and of due observance of the local and general laws intended for the municipal government and regulations" (Wade, 1972:2).

The emphasis should be laid on proactive rather than reactive policing in the carrying out of these functions. It is far easier to obtain the support and co-operation of the public by preventing crime than it is by enforcing the law or investigating crimes already committed. The individual should be made to feel secure under the sympathetic and friendly but alert eye of the police, rather than be simultaneously threatened by criminals and harassed by the police re-actively enforcing the law. Social order should be an all-pervasive element of communal life.

Social order refers to day-to-day interactions between members of the community and has been defined "... a system of people, relationships and customs operating smoothly to accomplish a society's tasks" (Horton and Hunt, 1964:140).

For society to operate smoothly, sources of friction, which are inevitable and perpetual concomitant of human interaction at all levels, (political, religious, family, economic, sexual, generational, cultural, ethnic, racial, linguistic and choice of life-style) must be minimised and mediated. These societal and individual differences threaten the safety of the individual, the society and even the state. The police must cultivate the best possible relationships between themselves and members of the community, on the basis of mutual consideration and respect. As Clift (1956:20) puts it:

> " ... By attending to the 1001 little things that come to their attention each day. These range all the way from complaints about children, to violations of minor regulatory measures which may require a Solomon-like arbiter to settle the questions satisfactorily. No one of the average officers' problems is sufficient alone, but, taken together, they can be sufficiently provocative to cause a serious breach of the peace".

To achieve, and to keep on achieving, day after day, the difficult and complicated goals which the police accept as their role in society, it is essential that they keep in mind the objective role laid down for them.

Impartiality in the enforcement of laws and in dealing with individuals in any capacity is a crucial factor. Thus bias and prejudice or discrimination of any kind, whether social, political, racial or of any other origin demeans and diminishes the police and the role they play in maintaining social order, and may, indeed lead to dissension and disorder in the community.

2.6 ROLE FULFILMENT AND STYLES OF POLICING

Sovereignty of the law implies impartiality, fairness and equality in the application of the law. If policing is defined as the maintenance of order under the law, the inference is that policing guarantees the rights of every individual to impartial, fair and equal treatment regardless of all distinctions not known to the law such as class, race, culture, language, etc. Respect for individual rights is inseparable from the concept of order. The fulfilment of the police role cannot, therefore, be attained in an arbitrary way. The functional content of the role of policing in the society entails the scrupulous observance guarantee of the rights of the individual. It should be noted that the sovereignty of the law should be served as an end in itself in all policing activity in spite of the complexity of the role content of policing (Van Heerden, 1986:59-60).

The following problems of role fulfilment are continuously confronted by the police:

2.6.1 Police service versus police force

These related functions refer, on the one hand, to protection (prevention/maintenance of the peace) and on the other hand to coercive control (law enforcement). They are interrelated objectives but not identical. They might conveniently be viewed as two extremes on a continuum or spectrum of activities (Weston and Wells, 1972:43).

Acting as a service, the police preserve and protect the society; acting as a force, they impartially apply the provisions of the law by detection, investigation, arrest, detention, and prosecution.

The position occupied by policing institutions on this continuum is determined by the degree to which either extreme is emphasised at the expense of the other. The contrasting positions have been summarised by Van Heerden and Potgieter (1982:23-24) as follows:

Law Execution	**Law Enforcement**
Consists mainly of crime prevention (i.e. proactive or preventive policing.	Orientated towards reactive or repressive policing (i.e. criminal investigation).
Resides in persuasive control (i.e. has a positive connotation).	Is a form of coercive control (i.e. has a negative significance).
Refers to police service based on support and aid.	Refers to police force based on arrest and prosecution.
Policeman regarded as a friend, advisor and peace officer.	Policeman regarded as enemy, repressor and enforcer of the law.
Much room for discretion (e.g. warning for minor offences).	Little or no room for discretion (e.g. action strictly according to the letter of the law).
Efficiency not measurable in terms of arrest statistics but in the absence of crime, favourable public image of the police, degree of community support and partnership between the police and the public.	Efficiency measured in terms of number of arrests, prosecutions and convictions, etc.
Dependent on public co-operation.	An exclusive police function (i.e. negates public interference).

Maintenance of social order not the sole task of the police.	Order maintenance is the sole task of the police.
Geared towards voluntary compliance to the law.	Geared towards compulsory (coercive) obedience to the law.

2.6.2 Styles of Policing

Four possible styles of policing are identified in the literature:

2.6.2.1 The War Style

This style, advocated by Hopkins (1931:32) is to be deplored. This theory views the police as the first line of defence against crime in the society. The criminal is the enemy, to be defeated by whatever means are available at any cost, including the administration of punishment (which is not, in terms of the tripartite doctrine discussed above, a police function at all). The concept is a travesty of the true functions of policing and should be regarded as a sober warning of degeneracy of the police function rather than as a model.

2.6.2.2 The Watchman Style

The Watchman style emphasises order maintenance under discretionary action. Minor offences are overlooked whilst major offences are purposefully repressed. Protection of persons and property through patrol and protection services constitute the core of the style. Effectiveness of policing is inversely related to arrest statistics.

2.6.2.3 The Legalistic Style

This style of policing emphasises law enforcement. Concrete situations are viewed from the legalistic viewpoint, and all infringements, including legal misdemeanours are formally dealt with at the expense of energy and time which might otherwise be spent on patrolling and protection. Discretion plays no or little part in this approach. Arrest statistics and administrative skills are highly evaluated.

2.6.2.4 Service Style

This style combines the above two approaches and modifies each. The style attempts to encapsulate the mid-position on the continuum mentioned above, i.e. between law enforcement and law execution. Discretion plays an important part with regard to prosecution and alternatives to arrest (e.g. warning, bail, etc.). Police action is frequent but not formal. The key objective is the maintenance of order in co-operation with the public. Public opinion is thus carefully monitored.

2.6.3 Discretion

In earlier descriptions of the police role (cf. par. 2.5) reference has been made to the importance of good judgement and discretion. Some writers consider the police role to be that of arbiters. The question is 'How is the law to be executed?' - passively or extensibly?

More (1975:81) defines discretion as circumspection, judiciousness and even the freedom or authority to take decisions. Also implied in this definition, is the ability to judge. Discretion also entails the freedom to choose between action and in-action within the limits of one's authority (Davis, 1971:4).

The central difficulty which arises here is the basis on which discretion is to be exercised in order to avoid a situation where discretion becomes discrimination. Some authors take the view that the way out is to prosecute indiscriminately, i.e. without the use of discretion. However, it is undeniably the case that to deny discretion would result in the over-burdening of the police, the courts and the prisons.

Discretion means consideration and good judgement, and the freedom to exercise both. Discretion enables the police officer to decide to act or not to act. The freedom to use discretion does not permit of distinctions which erode equality before the law of every individual (Van Heerden, 1986:52).

Discretion may be limited or qualified in several ways. For example, some actions are specifically prohibited in the law. In such cases discretion is specifically excluded in the matter of execution of the law, but not necessarily in the manner of execution, i.e. the decision whether or not to arrest. Patrick (1972:6) notes that in cases where universal rules of conduct apply, such as murder, rape and high treason, there is no margin for discretion, while in cases of legal misdemeanours discretion is appropriate.

Since the final objective of the law is to ensure that lawlessness is as far as possible obviated, Radelet (1977:90) argues that the individual should be dealt with in a way which will persuade him to give up lawless behaviour, even if this entails declining to prosecute.

Yet another way in which discretion might be exercised is in regard to the attitude of the victim. The following circumstances are noted by Van Heerden and Potgieter (1982:26):

* private settlement;
* disinterestedness;
* lack of involvement;
* time-consuming legal actions;
* police incapacity to solve cases;
* negative police attitude at time of report;
* triviality of cases; and
* darker motives - such as a wish to take unlawful private action or to derive private advantage from (not) reporting the crime.

Another form of discretion discussed in the literature is 'institutional discretion' which flows from the impossibility of total law enforcement. Since the institution must elect to enforce the law more rigorously in some respects rather than others, passive enforcement results, i.e. partial enforcement (Van Heerden, 1986:54).

Finally, it is obvious that the 'line functionary', or the policeman doing the job, must often make the final decision on whether to act or not. His judgement will often be affected by his experience of such factors as

court actions, public attitudes, fear of reprisals and the situation in which he finds himself, as well as by his own short-comings and personal attitudes (Van Heerden, 1986:54).

2.6.4 Peace Keeping and Community Service

It will recall from the historical review covered in the introduction to this chapter that the first legally sanctioned role of the police in Britain was that of preserving the peace, and that this role had roots in antiquity. Bent and Rossum (1976:5) point out that crime fighting is a relatively recent development for police forces, and in many ways is a feature of the twentieth century. Peace-keeping is simply maintaining public safety, and provides the police with a broad mandate from controlling full-scale rioting, at one end of the scale, to 'rescuing kittens from trees'.

These authors also point out that some of the peace-keeping activities may be more properly termed 'service functions', especially those involving care or attention to the private or family needs of members of the community. One of the most difficult problems which confront the police in the performance of these duties is intervention in domestic quarrels which may be 'volatile and dangerous'. Often the participants turn on the officer called in to intervene.

Bent and Rossum (1976:5) go on to say that: "With the stresses of urban living and the breakdown of primary social control institutions - such as the family, the church, schools - government agencies are now expected to fulfil a number of social service functions. The police, as the most visible symbol of government authority, have been generally acting as a social agency of last resort - particularly after 5 p.m. and on weekends - for the impoverished, the sick, the old and the lower socio-economic classes".

It is indisputable that the service role of the police, combined with the crime-fighting role, pose a perplexing problem to the police of understanding and reconciling professional requirements and personal attitudes and convictions. This aspect of police work has been emphasised in some

recent television productions, such as the well-known 'Hill Street Blues', rather than the conventional 'cops and robbers' themes of older series. Observing that the police operate under conflicting sets of rules and demands in their multiple capacities, one writer (Campbell, 1970:226) argues that " ... both the individual police officer and the police community as a whole find not only in consistent public expectations and public reactions, but also inner conflict growing out of the interaction of the policeman's values, customs, and traditions with his intimate experience of the criminal element of the population. The policeman lives on the grinding edge of social conflict, without a well-defined, well-understood notion of what he is supposed to be doing there".

2.7 RESTRICTIONS UPON POLICING

The authority which the police wield in society is delegated to them by society itself via the constitutional processes by which the authority itself is legitimated and legalised. This authority is governed by rules and principles which constitute restrictions of policing. The police do not wield absolute power, neither are they empowered to act arbitrarily, tyrannically, or in a discriminatory fashion; to do so would be to implicate the state in such action and thereby to compromise the state, its authority and the entire democratic foundation of the state and society. The direct and inevitable result of such action would be the opposite of the objectives to which the police aspire, i.e. the maintenance of order. Arbitrary and unrestrained action by the police would lead to antagonism between police and public, anarchy and chaos, insecurity and instability (Van Heerden, 1986:58-59).

The famous American judge, Louis D. Brandeis, is quoted as follows by Black (1969:170): "If the government becomes a lawbreaker, it breeds contempt for the law; it invites every man to be a law unto himself; it invites anarchy. To declare that in the administration of criminal law, the end justifies the means - to declare that the government may commit crimes in order to secure the conviction of a private criminal - would bring terrible retribution".

Restrictions are not impediments, but refer to the fact that delegated authority is limited by the constitutional rights of the individual. Restrictions upon policing concern the nature of authority and the rights of the individual.

2.7.1 Police Authority

Banton (1964:147) defines police authority as "the warrant to perform certain actions while occupying a certain position". Van Heerden (1986:62) points out that although the concepts 'authority' and 'power' are used synonymous, there are differences of meaning between these concepts. Authority includes power, but power does not necessarily imply authority. Police power refers to the right or competence of the police to perform certain acts on the basis of the authority they possess.

Police authority is rooted in the delegation of power to the state by its citizens. Police officers have a dual responsibility in maintaining order in the society: as ordinary citizens they are bound to observe the rules by which the individual is bound in society; and as police officers they enjoy the authority conferred upon them, and must meet the obligations imposed upon them as representatives of the citizens. The power delegated to the police relates only to the executive functions of the judicature, and specifically to the functions of the police (Van Heerden, 1986:62-63).

The effect of this limitation is that the authority of the police to control behaviour is circumscribed by various laws which prescribe, prohibit or permit the execution of this authority. In South Africa, limitations on police actions are laid down by statute in terms of the Criminal Procedure Act (Act No. 51 of 1977).

In the exercise of the authority delegated to him, the policeman must constantly bear in mind that his authority will only be respected if citizens hold him, his actions and authority in high regard. Such regard cannot be won by violence, force or by threats. As Epstein (1970:8) has put it, the police officer " ... cannot rely upon the authority of his uniform, but in dealing with subjects must establish a personal authority by providing what a good guy he is, or what a dangerous one. For the relationships be-

tween the policemen and the non-criminal subjects to serve both parties ends, they must understand each other. They must both be members of a community, sharing values and modes of communication".

Often the hostility and antagonism experienced by the police officer is not directed primarily at him but at the uniform which he wears being the symbol of the authority which he represents (Epstein, 1970:8).

It should be borne in mind that accountability is the basic principle underlying the delegation of authority and power. A policeman is required to account to the authorities, the society, and the institution.

2.7.2 Individual Rights

Every citizen in a democratic society enjoys fundamental, inviolable rights to privacy and freedom. Basic rights are not absolute, but are restricted when the exercise of rights interferes with the rights of others, the social order and peace and harmony. It follows that in certain (not necessarily uncommon) situations, freedom is sacrificed in the interests of collective security. In these situations it is the task of the police to maintain the balance between individual rights and collective security (Van Heerden, 1986:60-61).

The concept of individual rights, one of the foundation stones of the ideal of liberal democracy, derives from the 17th century and in particular from the philosophical writings of John Locke (1632-1704). Three fundamental rights constitute the doctrine of individual rights:

* **Freedom of the individual:** The recognition of human dignity, freedom of religious worship, freedom to engage in economic activity, and freedom under the law.
* **Restricted government:** Limitations placed on the power of government and the manner and scope of the exercise of authority; the rule of law (i.e. sovereignty of the law).
* **The rights of ownership of private property:** Private property of the individual is protected against unauthorised use, trespass or seizure (Epstein, 1970:165; Westin, 1970:330).

In Britain, the United States and many western and other countries, the rights of the individual are enshrined in a Bill of Rights. There is no Bill of Rights in South Africa, since the rights of the individual are protected under the Republican Constitution as well as under a number of statutory laws. From time to time there is agitation in South Africa for the passing of a Bill of Rights in which the rights of the individual would be encapsulated, in the belief that such a specific piece of legislation would provide a surer guarantee of individual rights. It is, however, believed that the recent appointed Transitional Executive Council (TEC) has already given due consideration to the incorporation of a Bill of Human Rights within the frame of a new democratic constitution for South Africa.

It will be appreciated that:

* freedom of the individual is intrinsically bound up with individual rights; the individual is guaranteed protection against deception, oppression and intimidation by fellow citizens and by the state. This guarantee is backed up by the power of authority to enforce individual rights by penal and statutory laws, proper trials and impartial law enforcement.

* freedom also entails the rights of individuals, groups and institutions to impart and exchange information concerning themselves to others. This right is assured under the right to privacy. In terms of this right, restrictions are placed on the authority of the police to use methods of detection which impinge on privacy such as lie detectors, truth serums, surveillance, wire tapping and similar procedures (Van Heerden, 1986:60-61).

Inevitably, in the course of investigations, the police are obliged to use techniques (excluding the above-named) which temporarily encroach on the rights of the individual to privacy. But such encroachments are authorised on the understanding that they may only be employed if the police have reason to suspect the commission of crime. In line with the doctrine of individual rights, the arrest of and individual should be

carried out with the minimum application of physical force and discomfort to the individual. Any application of force is only justified when resistance is offered. Firearms may only be used when the life of the officer is in danger or when an offender tries to escape. The protection of the rights of individuals is a crucial function of the police. It follows that in the execution of their duties, the rights of the individual must, under all circumstances, be a prior determinant of the manner of execution of those duties. To act in a manner prejudicial to the rights of the individual would be to transgress against the principles underlying the establishment of policing as a function of authority (Van Heerden, 1986:61-62).

2.7.3 **Law and Morality in Police Work**

Banton (1964:146) makes the following comment on the role of morality in police work: "The observer who tried to predict, from a knowledge of the criminal law alone, what actions an ordinary policeman would take, would not be very successful. To explain what the policeman actually does, it is necessary to see his actions as being governed much more by popular morality than by the letter of the law; most often morality and the law coincide, but when they do not, it is usually morality which wins".

The proposition may seem startling insofar as it appears to conflict with the notion that the role of the police is to ensure the enforcement of the law. But a moment's reflection will show that police recognition of the force of 'popular morality' is nothing but recognition of the principle that the police function best when they use their discretion sensitively and intelligently in order to maintain the best possible relations with the public in the complex job of preserving the peace. Banton's examples of popular morality at work illustrate the attitudes which the police would ignore only at their cost:

> " ... it is right that people should have a little extra leeway on Christmas eve; right that roughnecks and criminals should be treated more severely; right that a man who is bullying his unoffending wife should receive some correction" (Banton, 1964:146).

One reason why policemen will try to work within the popular morality is that they should persuade rather than prosecute. Moreover, there is the expectation of the public that the police will exercise moral authority as well as legal power. In other words, the actions of the police must be seen to be 'rightful'. Rightful action carries the endorsement and the sympathy of the community because it supports the norms by which the community judges not only the actions of other members, but also of the police, who are themselves members of the community. It is very much in the interests of the police to persuade offenders to abide by these societal norms.

It should also be noted that popular morality is not a uniform conception throughout the entire state, and that even within single communities it is subject to change over time. Banton's (1964:147) example, here again, illustrates this point well:

> "A generation ago a policeman could punish a troublesome juvenile by giving him a good cuff on the head, or he could clear up a case of wife assault by giving the offender a taste of his own medicine. ... Public opinion used to support such sanctions. ... Now it no longer does so".

One of the reasons for changes is that the public may lose confidence in the impartiality or good judgement of the police. The reasons for this may be simple abuse by the police of the trust of the public, or more complex (e.g. politics may enter the picture). Whatever the case, maintaining the peace becomes much more difficult when formal measures must always be taken against offenders.

2.8 THE ENVIRONMENT OF THE POLICE ROLE

So far in this chapter reference has been made to 'the public'. However, it is clear that in no state is there one homogeneous public. Even within single communities, such as Johannesburg or Cape Town, there is a wide

range of variation of perspectives related to the police and their role. These perspectives determine that nature and degree of relationships which exist between the citizens and the police.

The environment in which the police operate is in a continuous state of flux and change. Factors which vary obviously influence the environment are:

2.8.1 Cultural Values

Cultural values strongly influence the perception of members of the community with regard to morals and ethics, interests and preferences. In a plural society, such as South Africa, where cultural values may differ very widely from one situation to another, the police must acquaint themselves quickly with the values of the community in which they serve and learn to be as sensitive as possible to the demands of the community. In developing societies, like South African society, cultural transformation, especially in urban communities, occurs rapidly (Strecher, 1971:57).

2.8.2 The Structure of the Social System

In every community the social system is structured. There are privileged and under-privileged, or perhaps socially and economically deprived sectors; some individuals enjoy high status, and others low status. Sometimes the social divisions relate to wealth and poverty, sometimes to work differentiation. Often social divisions stem from ethnic or racial factors. In recognising these divisions, the police should also note that regardless of the group into which individuals might fall, and although they will accommodate themselves to the sector in which they are called upon to work, they should always guard against discriminatory treatment of individuals. In the eyes of the law, members of the community are equal in status, though in terms of the social structure they might differ widely from one another. The social structure is in a continuous process of change and adaptation (Strecher, 1971:5).

2.8.3 Cultural Institutions

Cultural institutions on the one hand reflect, and on the other determine the changes with occur in the community. The institutions to be noted are schools, churches, the judiciary system, government institutions, trade unions, technology and the economy.

In order to realise the ideals of maintaining order, peace and harmony in the community, both the police and the community must share these ideals. Police and public, therefore, form a tacit partnership. When the partnership fails to function, a gulf opens up between police and community. Each seeks to go its own way: the public avoids contact with the police and the police resist public examination of their activities. Such relationships breed mutual distrust and contempt (Norris, 1973:16).

In view of the fact that the police occupy a position of authority in the community which often appears to be supervisory in its character, it is inevitable that many people will develop hostile attitudes towards policemen. The impact of police uniforms and the fact that the police may carry arms often exacerbates the hostility. The nature of their functions, which may occasion public inconvenience, may add to the antagonism of the public. Moreover, the attitudes in the community towards authority in general, i.e. the state and its demand on the individual, may also colour the attitudes of the public towards the police (Van Heerden and Potgieter, 1982:29-30).

In this environment, not created by the police, they must attempt to render a service which frequently touches the seamier side of life. The police are often exposed to danger and violence. The occupational environment in which the policeman finds himself is often threatening and by no means conducive to sympathy and understanding. The policeman may begin to see all citizens as potential criminals and as enemies. He may seek to isolate himself and seek only the company of his colleagues. Such isolation would have a marked influence on the performance of their duties (Van Heerden, 1986:90-91).

In the final analysis, the role environment of the police is determined by the attitudes and inter-relationships of the public and the police. The role of the police can only be performed with the greatest difficulty in a hostile environment. Moreover, order in the community can only be assured if the public and the police recognise their mutual interest in promoting it. Black (1969:124) makes the following observation on this question:

> "Theoretically in a society of free men the people are responsible for their own behaviour. It is the responsibility of the police to protect the freedom of every man and at the same time to use whatever restraints are necessary for the safety and welfare of the total community. All men share this responsibility in a true democracy. For the policeman it is not just a citizenship responsibility; it is a professional duty as well".

2.9 SUMMARY

"This is a time when to be a police officer is to be the focus of a great deal of public attention. On practically any night of the week media supercops perform in exciting adventures on millions of television screens ... Not to be outdone, the movie industry had done its best to capitalise on the public's interest by producing a larger number of films that either glamorise or vilify police work. ... But as any policeman knows, most of the glamour and adventure in police work is confined to television, the movies and novels. As one police officer recently said: 'Those guys ... have more action in a half hour than i do in one month patrolling my beat' ..." (Bent and Rossum, 1976:2).

As this chapter has attempted to show, the role of the policeman has little in common with the image projected by the entertainment media. Police work is vitally important to the continuation of civilised communities - one might even say of civilisation itself. It is rooted not in sensationalism or glamour but in the quest for orderly social interaction. Like most human tasks, the function of the police is never played out. The need for order cannot be fulfilled by creating ideal societies, as the Soviet Union under former Marxist influence claims to have been doing, or

by eliminating all anti-social and criminal influences, as totalitarian forms of government have tried to do. Peace, order and harmony in the community depend on the sustained efforts of the police, acting out the role described above. That there has always been a need for this to be filled is borne out by the history and development of policing.

Policing is a social service. The police are ultimately the representatives of the community and must respond to the wishes of the community. The community has the right to ensure that the police respond to those wishes by monitoring the police in the performance of their duties. The police, in turn, should strive always to serve the best interests of the community and to bridge any chasm which might open up between them and the community. Experience has shown, and reason dictates, that the best way for the police to serve the public is constantly to bear in mind and to act upon the sound principles which have been developed over the centuries to guide the work of policing.

CHAPTER THREE

HISTORICAL DEVELOPMENT OF THE SOUTH AFRICAN RAILWAYS AND HARBOUR POLICE

3.1 INTRODUCTION

Visagie (Breed, 1984:11-12) states that the birth and historical development of the South African Railways Police should be sought in a nations past. Like the South African Police which has also developed a distinctive character of its own, the South African Railways Police emerged as a product of customs and principles with a long history of development (Van Heerden, 1986:19).

The South African Railways Police came into being with the proclamation of the De Spoorwegen en Havens Reglement, Bestuur en Beheer Wet (The Railways and Harbours Regulation, Control and Management Act, 1916 - Act 22 of 1916), which empowered the Governor-General with authority to appoint, according to the provisions of the Railways and Harbours Service Act of 1912, as many persons as may be necessary to maintain order on the railways and at the harbours. Persons appointed under the provisions of the afore-mentioned Act were actually only guardians who did a limited amount of police work. It was only on 1 July 1934 that the Railway Police was reorganised to emerge as a fully-fledged autonomous Force (Visagie, in Breed, 1984:11).

According to Visagie (Breed, 1984:11), the main objective of having established the South African Railways Police within the social context is the maintenance of law and order within its lawfully prescribed area of jurisdiction. (Van Heerden, 1976:12) defines social order as "a pattern of harmonious mutual co-existence, in which every person must live up to certain expectations and accept certain obligations, and may demand certain rights from other people". The maintenance of law and order on premises belonging to the South African Railways and Harbours by the South African Railway Police was mainly intended to safeguard the activities of the

South African Transport Services, namely the provision of an economical transport service that would meet the needs of the country in an orderly manner and free of interference (Visagie, in Breed, 1984:11).

Apart from the afore-mentioned function allocated to the South African Railways Police, the legislator also assigned the following tasks to the South African Railways Police:

* The preservation of the internal security of the Republic of South Africa and the territory of South West Africa (now Namibia).
* The investigation of any offence or alleged offence.
* The prevention of crime within its area of jurisdiction (Visagie, in Breed, 1984:11).

The area of jurisdiction of the South African Railways Police has been defined by Visagie (Breed, 1984:12) as all the premises of the South African Transport Services which also include harbours and pipelines, as well as government airports. In Govender vs. Rex, 1945 NPD and Regina vs. MacDougall, 1945 EDL, it was also decided by the respective courts that members of the South African Railways Police may legally arrest and/or search any persons away from the Transport Services' premises in connection with any offence or alleged offence relating to the South African Transport Services.

Apart from the Criminal Procedure Act (Act 51 of 1977), the Internal Security Act (Act 74 of 1982), the Abuse of Dependence-producing Substances and Rehabilitation Centres Act (Act 41 of 1971), and many other special powers delegated to members of the South African Railways Police by means of the acts concerned, they are also empowered to exercise any authority that is granted to them by any act of Parliament outside the confines of the South African Transport Services.

Former Minister of Transport Affairs, Mr Hendrik Schoeman (Breed, 1984:4) demarcated the task of the South African Railways Police as being "in the forefront of the battle against crime on the Transport Services' property, be it stations, trains or anywhere else, as well as at harbours or na-

tional airports. They carry out a noble task by maintaining order and at the same time defend the rights of law-abiding people against the onslaught of villains".

In the discussion to follow, several aspects relating to the historical development of the South African Railways Police will be highlighted in order to place the role and functions of Water Policing into perspective. To this end, the historical development prior to 1898, the period 1899-1915, the period between 1916-1933 and the period 1934 and after - especially the organisational development up to 1984 - will be discussed.

3.2 THE PERIOD 1820 - 1898

3.2.1 Introduction

Since the arrival of Jan van Riebeek in the Cape in 1652 up to 1795 when Britain annexed the Cape of Good Hope, no significant development with regard to Railways and Harbour policing took place. The first developments gained momentum at the beginning of the 19th century - specifically during 1806 when Britain formally took over the administration and management of the Cape of the Good Hope (Breed, 1984:14).

The British Settlers arrived in the Cape in 1820 and soon afterwards, the Great Trek begun with the establishment of the Orange Free State, Transvaal and Natal provinces. In 1854, Britain recognised the independence of the Orange Free State and Transvaal, followed by the arrival of the German Settlers in East London in 1857. Development and expansion of the interior, especially in the Cape Colony, necessitated a more efficient transport system as well as more safe and convenient harbours. This need led to the establishment of the first Railway Company in South Africa.

3.2.2 The Cape Railway and Dock Company

The first Railway Company, namely The Cape Railway and Dock Company was established in 1853 and the first Railway line saw its birth on 31 March 1859, erected between Cape Town and Wellington and opened for traffic on 4 November 1863. The Cape Town Railway and Dock Company and The Wynberg Railway Company amalgamated into The Cape Government Railways under the

control of the erstwhile Department of Public Works. The year 1959 saw the establishment of the Natal Railway Company with the first Railway line opened on 26 June 1880 between Durban and Point (Breed, 1984:14).

3.2.3 Development in Transvaal and Orange Free State

The government of the Zuid-Afrikaanse Republic and Orange Free State soon realised the need for extension of their respective Railway lines. The Nederlands Zuid-Afrikaanse Spoorwegmaatskappij came into being in 1887. From 1890 Railway lines were erected in the Witwatersrand, East Rand and in 1891 some of these lines were connected with Bloemfontein and Kroonstad. Before the turn of the 19th century, the harbours of Durban, Port Elizabeth, East London and Maputo (erstwhile Lourenco Marques) were connected and serviced by means of Railway lines (Breed, 1984:15).

3.2.4 Escalation of crime

The economical and population explosion caused by the discovery of gold and diamonds as well as the development of railways and harbours led to a country-wide escalation of crimes. Theft of railway property, goods in transit and passengers' valuables was the order of the day. Authorities realised the need for the policing of the railways and harbours. A definite need for the maintenance of law and order emanated (Breed, 1984:15).

3.2.4.1 Harbour policing in the Cape Province

As far back as 1867, the first harbour police unit was established consisting of one boat officer and four constables. On 16 January 1871, boat officer J. Robotham took charge of this unit and in 1880 it had been expanded to include one boat officer, two corporals and eight constables. However, in 1886, harbour policing had been placed under the command of commissioner Bernard V. Shaw of the Cape Town police (Breed, 1984:15).

3.2.4.2 Establishment of Railway Police in the Cape

During 1875, traffic manager Howell of Port Elizabeth found that the Cape Town police did not meet the expectations and requirements set by the Railways and, consequently, appointed special constables for this purpose. Although these newly appointed special constables had limited powers, their ranks were extended. The erstwhile secretary of Justice, Sir John Graham, was so impressed by the service they rendered that the ultimately promulgated legislation (similar to that of section 57 of Act 22 of 1916) in which their powers were put on record. The appointment of special constables was followed by the appointment of a special police force in the Cape Colony in 1884 to meet the needs and requirements of the Railways. For this purpose, four detectives from Scotland Yard were 'imported' and placed under the command of Alexander Clark who later became chief inspector of the Cape Government Railways. Clark was succeeded by chief inspector J. McL. Brown on 1 August 1892. The so-called Railways Police Department had been abolished in 1893 (Breed, 1984:16-17).

3.3 THE PERIOD 1899 - 1915

The outbreak of the Anglo-Boer War in 1899 contributed to an escalation of crime (especially cases of theft) on Railways premises. The need for a well-founded Railway police organisation again risen. Captain C.J. Lloyd Carson had been appointed assistant-commissioner of the Railway Police under the control of the Imperial Military Railways (IMR). From June till September 1900, the Railway police organisation consisted of thirty members, attached to the Railway Staff Depot for disciplinary purposes. From September 1900 till February 1901, the ranks of the Railway police organisation had been extended to also include four officers and one hundred and sixteen non-commissioned officers. The year 1901 (14 February) witnessed a reorganisation of the Railway police organisation according to the guidelines laid down by Captain Lloyd Carson. The reorganised police organisation consisted of one assistant commissioner, five superintendents, fourteen inspectors, sixteen sergeants and one hundred and nine constables (Breed, 1984:18).

During 1902, three distinctive Railway police divisions were established -

* Division A - Cape Colony with Captain O. Steen in command.
* Division B - Transvaal with Mr. V.E. Davis appointed as commander.
* Division C - Orange Free State with Mr. C.R. MacIntosh as commander (Breed, 1984:18).

3.3.1 Policing in Natal

Initially, policing of the Natal Government Railways had been conducted by the Natal police. Durban harbour had its own water police division and since 1894, this unit consisted of one superintendent, eight White and twenty-two non-White constables (Breed, 1984:21). Although Natal police commissioner, Colonel W.J. Clarke criticised the inclusion of the Natal Railway police under a Railway department, Sir William Hoy in 1911 repudiated Clarke's viewpoints. The Natal Railway police had been withdrawn and substituted by Railway personnel as far as policing of Railway property was concerned.

3.3.2 Union of South Africa : 1910

The establishment of the Union of South Africa in 1910 brought wide-range of changes - also as far as the Railways were concerned. The Cape Government Railways, the Central South African Railways and the Natal Government Railways amalgamated shortly after unification. The popular South African Railway magazine reported J.M. Murphy of the Cape Government Railways (CGR) as having had observed: "With the amalgamation of the three railways systems under the Union Government, many opportunities in the line of betterment, alteration and amendment now undoubtedly present themselves ... subsequent amendments in the many by-laws ... everyone will be able to differentiate and pick up the new order as quickly as their intelligence will carry them in that important subject dealing with lawlessness, fraud, and all crimes and offences committed on railway premises and public platforms, or anywhere on railway property" (Breed, 1984:24-25).

3.4 DIFFERENTIATED POLICING

The first official Railways and Harbour police was introduced on 29 may 1916 in terms of Act 22 of 1916 which empowered members to maintain law and order on railways and harbour premises. The approval of this Act had been initiated by Sir John Graham in 1875, former Secretary of Justice in the Cape Colony (Breed, 1984:29).

3.4.1 Act 22 of 1916

The main objective of the newly approved Act was, inter alia, to provide for the regulation, control, and management, of Railways, Ports and Harbours in the Union, and to declare the powers, jurisdiction, duties and obligations of the Railways and Harbours Administration and for matters incidental thereto. Members of the Railways and Harbour police were duly appointed in terms of section 57 of this Act to "[M]aintain Order upon the Railways and at the Harbours" (Breed, 1984:29).

Act 22 of 1916 also stipulated that: "The Governor-General may, in manner provided in the Railways and Harbours Service Act, 1912, appoint so many persons as may be deemed necessary for the duty of maintaining order upon the Railways and at the Harbours, and when any such person so appointed is carrying out that duty he shall be capable of exercising all such powers and shall perform all such functions as are by law conferred on are to be performed by a police officer or constable, and shall be liable in respect of acts done or omitted to be done to the same extent as he would have been liable in like circumstances if he were a member of a police force of the Union, and shall have the benefits of all the indemnities to which a member of a police force would in like circumstances be entitled" (Breed, 1984:29-30).

3.4.2 Miners' strike : 1922

After the introduction of Act 22 of 1916, no further significant changes took place with regard to the extension of the Railways and Harbour police. Changes that could have been effected were hampered by the on-going Anglo-Boer War. On 10 March 1922, martial law had been proclaimed,

following the miners' strike at the Witwatersrand. Various units of the Railway and Harbour police were called up for duty under command of Chief Inspector O. Steen to curb the unrest. An extract from the report of the Commission of Inquiry into the unrest caused by the miners' strike, reported various acts of sabotage committed upon the Railways between 7-10 March 1922, following the first outrage on 24 January 1922: " ... from that date onward the culverts and bridges upon the various railway lines around Johannesburg were guarded by the Railway Police ... [I]t was due to the vigilance of the Railway and Harbours Police that many attempts which, if successful, would undoubtedly have led to much loss of life and damage to property, were frustrated" (Breed, 1984:31).

3.4.3 Appointment of civilian constables

A need for more members, dressed in civilian clothes, led to a decision in 1922 to withdraw uniformed personnel of the Railways and Harbour police at goodsheds, workshops, warehouses and catering departments. This step probably paved the way for a more functional arrangement of uniformed personnel in 1923 under the command of chief inspector. Provision had been made for the posts of inspectors, deputy inspectors, White and non-White sergeants, White, non-White and Indian constables as well as White constables dressed in civilian clothes (Breed, 1984:33).

3.4.4 Justification for the existence of the Railways and Harbour Police

During 1925, the Commissioner of the South African Police made representations in which the justification for the existence of the Railway and Harbour police had been questioned on the grounds that the existence of two separate police forces would have been superfluous. It was also argued that the existing system should have been regarded as ineffective and uneconomical and that maintenance of law and order was the sole task of the South African Police. However, Sir William Hoy proved the contrary. He pointed out that -

* a change (amalgamation of the two Forces) would in any way not benefit South Africa economically;

* at least ninety percent of the work done by the Railway Police relates to the Railways;
* any police officer, performing work which relates to the Railways, should necessarily possess a sound knowledge of such work, legislation and accompanying regulations;
* the functions of the two Forces differ in nature and extent; and
* in the case of both state or private controlled Railways in overseas countries, a definite need existed for a homogeneous police force (Breed, 1984:33).

3.5 THE DAWN OF REORGANISATION : 1933

The plea for the establishment of a fully-fledged Railways and Harbour Police gained momentum during the beginning of 1933 under chairmanship of Captain T.G. Robinson, a retired member of the South African Police: " ... it was essential for the administration to have a highly qualified officer with general police experience upon whom the responsibility of thoroughly overhanding the present Railway Police organisation in respect of police investigation work ..." (Breed, 1984:36). The appointment of this commission could be regarded as the turning-point in the history of South African Railways and Harbour Police. For the first time had provision been made for the creation of hierarchical posts and rank structures such as Chief of Police, commissioned officers, non-commissioned officers and line functionaries. Due to the depression of 1933 and subsequent prevailing poor economical conditions, it was decided to withhold the post of chief superintendent. However, improvement in the economical sphere led to the creation of this important post on 25 April 1933, with lieutenant-colonel A.A. Cilliers appointed to this post on 1 May 1933 with the explicit task of reorganizing the South African Railways and Harbour Police as a fully-fledged police force (Breed, 1984:36-37).

Eighteen years after the proclamation of Act 22 of 1916 (see par. 3.3.1), the South African Railways and Harbour Police came into being on 1 July 1934. In terms of section 57 of this Act, the Governor-General approved the appointment of officers, non-commissioned officers and other members

for the purpose of maintaining law and order on railway premises and at harbours as well as draft regulations in terms of the Spoorwegen en Havens Dienste Wet (Act 23 of 1925) for the control and management of the Force.

3.6 WATER POLICE (HARBOUR POLICING)

The main objectives of this unit were –

* patrolling and policing of harbours;
* to prevent smuggling;
* the enforcement of harbour regulations; and
* rendering of counter-insurgency services.

On 26 June 1934, the Railways Police took over the policing of Table Bay docks from the South African Police. During this historical event, the South African Railways also bought the boat Maurentania from the South African Police at a cost of twenty pounds. After proper restoration, it was renamed the Silverleaf and later replaced by the Gemsbok (Breed, 1984:81).

During 1935, the following constables were stationed at Table Bay docks:
No. 104 Constable J.B. Bonthuys
No. 472 Constable M.A. Dickson
No. 452 Constable C. Hamman
No. 96 Constable F. Koning
No. 462 Constable M.L. le Roux
No. 89 Constable C. van Bouillian
No. 235 Constable A.J. van der Berg
No. 87 Constable A. Whitehead
No. 100 Constable J.J. van Rensburg (Breed, 1984:81)

In 1936, three sergeants and six constables served in Durban harbour with a boat named Oribi and shortly after the outbreak of World War II, harbour policing was supplemented by the Essential Services Protection Corps (E.S.P.C.) who were responsible for issuing permits to ships and crew members. However, in 1914, the South African Railways and Harbour Police took over the duties of the E.S.P.C. Between 1941 and 1943, the following boats were purchased: Ranger, Cherry, Le Anne, Talisman, Iris and Lamor-

nan. Additional personnel were also appointed and on 1 October 1942, the numerical strength of the harbour police amounted to six sergeants and sixty-six constables. This expansion was followed by the appointment of two White, two non-White constables and two non-White boatswains on 7 August 1943 for purposes of policing the Buffalo River harbour at East London with the boat named Bovelake. During 1947 this unit was expanded to include an additional three lance sergeants, six non-White constables and three non-White boatswains. Also during 1947, the following boats supplemented harbour policing in Durban: Lamornan, Iris and Cherry (Breed, 1984:81).

It should be noted that the historical development of harbour policing in other parts in South Africa remains an unknown factor due to the scantiness of this kind of literature. However, during 1984, the following South African harbours were served by the Railways and Harbour Police with the following vessels:

East London	-	Sparrow
Port Elizabeth	-	Leo
Durban	-	Vink and Osprey
Cape Town	-	Loerie
Saldanha	-	Tobie
Walfish Bay	-	Elsie
Richards Bay	-	Robin (Breed, 1984:81).

3.7 THE SOUTH AFRICAN RAILWAYS WATER POLICE

The new established South African Railways Water Police originally only served in the harbours of Cape Town, Durban and East London. Apart from the required basic training at Esselen Park near Kempton Park, members of the Water Police were also required to have completed a three-month training course in aspects relating to harbour policing. This training course included the following:

(a) Rescue work at sea;
(b) First Aid;
(c) Art of swimming; and
(d) Piloting of small vessels.

In addition, these members had to convince experienced shipmasters of their acquired standard of competency of seamanship before having been appointed as skippers. Theoretical aspects of the training course included, *inter alia*, a sound knowledge of International Regulations pertaining to the prevention of accidents (collisions) at sea (Breed, 1984:83-84).

3.7.1 Durban Water Police

During World War II, the Durban Water Police played a major role in rescuing of drowned persons from sunk commercial vessels. Drowned persons were rescued as far as twenty miles from the Natal coast in the open sea. Initially, this unit consisted of seven sergeants and 14 constables. Part of their duty (harbour policing) included the prevention and/or detection of smuggling or illicit trading, regulation of traffic flow in the harbour as well as in the waterway. Rescue work included the assistance to small craft in trouble, picking-up of bathers in trouble (especially those who went out of the sight of life-savers) and drowned persons (Breed, 1984:84).

Other related operational functions of the Water Police included, *inter alia*, the following -

* observation of navigation lights for the sole purpose of preventing collisions;
* prevention of unlicensed pleasure boats and other boats from entering the harbour;
* prevention of harbour pollution;
* assistance to and rescue of sailing-yachts in stormy weather;
* removal of dead whales; and
* the protection of vessels carrying fuel and explosives (Breed, 1984:85).

3.7.2 Extraordinary functions

According to Breed (1984:85) extraordinary functions do also form part of the duties of the Water Police. It has been recorded that some years ago (no date given) this unit was called out to Congella to rescue an imported Jersey bull from drowning. After its arrival in Durban harbour, the bull was put in quarantine and on completion of its prescribed period in captivity, transferred to the loading pen at Congella to be trucked. However, the bull got flurried (nervous), broke loose, headed for the quay and jumped into the sea. After they have been called in, the Water (harbour) Police were able to rescue it by dragging it to the beach.

Several unusual drowning cases were also recorded, where the harbour police were called upon to rescue persons. However, the nature and extent of all these cases do not allow for a detailed description thereof.

3.7.3 Decorations and medals

Section 31 of the South African Railways and Harbour Service Act, Act 23 of 1925, authorized the award of the first medal to members of the Railways and Harbour police as described in Personnel Regulations, published in the Government Gazette No. 951 on 25 June 1937. Regulation 42 stipulated that: "A medal to be known as 'Railways and Harbours Police Long Service and Good Conduct Medal' may be awarded to a policeman, other than an officer, under such conditions as may be decided by the General Manager from time to time" (Breed, 1984:142).

The first "Long Service Medal" was awarded for the fist time to nineteen members of the Force. On the very same occasion, two members were honoured with the medal and bar, namely No. 2297 Constable F.J. Coetzee, stationed at Hartshill Station and No. 2212 Constable D.N. Potgieter, stationed at the Durban harbour.

While on duty at the Charge Office of the Water Police, Durban on 2 May 1946, Constable Potgieter received a call to the effect that Coloured soldier Marthinus Maartens dropped into the sea at one of the quays. On his arrival at the scene, Constable Potgieter discovered that the soldier

could not swim and had in fact disappeared already under the water. Regardless of his own safety, this member of the Water Police jumped into the sea with full uniform and rescued the soldier from a depth of 10-15 feet (± 30-45 metres) at a spot where the water swarmed with whales and sharks (Breed, 1984:142-143).

The awarding of medals and decorations to members of the Water Police also included the following -

(a) No. 1639 Constable J.U. Vermeulen, who rescued two partly drowned sailors at Santos Beach, Mossel Bay.
(b) No. 2887 Constable J.F. Wolvaardt, who rescued a partly drowned sailor at the Bluff, Port of Durban.
(c) No. 5631 Constable M. Botha, who rescued two puppies in the quay at Point, Durban under dangerous circumstances.
(d) No. 5677 Constable P.W. Annandale of the East London harbour, who rescued a person from the water at the oil quay, close to the oil tanker, the "British Kiwi" (Breed, 1984:144-150).

Unfortunately, no mention is made of other units of the Water Police, for example, the East London and Cape Town Water Police Units.

3.8 SUMMARY

Since its inception on 29 May 1916 and its official establishment (reorganization) on 1 July 1934, the South African Railways and Harbour Police had a colourful history. In his message (Foreword to the S.A. Railways Police Memorial Album), Dr. E.L. Grove', former General Manager of the South African Transport Services remarked as follows:

> "The South African Transport Services is a multi-modal transport organization with activities that extend over many horizons. The South African Railways Police is a service department of the Transport Services, but also an autonomous force which is governed by the same law under which the Transport Services functions ... The Transport Services is proud of this small yet versatile and formidable Force which,

> by means of specialisation in many fields, has kept pace with the demands of time and in so doing has indisputably established its right of existence" (Breed, 1984:7).

In his foreword message, former Commissioner of the S.A. Railways Police, Lieutenant-General J.H. Visagie pointed out that:

> "The embryo of an autonomous S.A. Railways Police Force must in fact, as with many other organisations, be sought in a nation's past. I should like to mention a few events which created the need for a Police Force that could maintain law and order on the Railways and Harbours of that time. During 1867, a Harbour Police Unit was established ... In 1875 a Traffic Manager in Port Elizabeth pointed out the need for persons to be appointed to cope with problems on the Cape Government Railways relating to police science ... In 1884 positive steps were taken to organize a special Police Force to take over police tasks on the lines of the Cape Government Railways" (Breed, 1984:11-12).

The main objective of South African Railways and Harbour policing was, like in the case of the South African Police, to maintain law and order within its lawfully prescribed area of jurisdiction in order to allow the South African Transport Services the opportunity to provide an economical transport service that meets South Africa's need in an orderly manner and free of [criminal] interference.

CHAPTER FOUR

MARITIME JURISDICTION

4.1 INTRODUCTION

Maritime jurisdiction mainly concerns crimes of international nature and involves issues such as international jurisdictions pertaining to territorial waters, ships at sea, crimes, etc. The most common international crime appears to be that of maritime fraud. Ellen and Campbell (1981:1) note that the most notorious fraudster of modern times was Emil Savundra, who in 1959 was said to have master-minded the Costa Rican coffee fraud of over two million pounds - involving 6 000 tons of coffee, one-tenth of that country's entire crop. Likewise, in 1965, Anthony De Angelis, known as the master-mind of the "The Great Salad Oil Swindle" was imprisoned for ten years by a New Jersey court in the United States. Apart from maritime fraud, theft of cargoes on the open sea, piracy, illegal sinking of ships, etc., the question of the use of the sea led to states creating the Law of the Sea Convention (par. 4.2) which created venues for states to enter into conventions. In the discussion to follow, different conventions will be discussed, followed by a classification of maritime crime (such as fraud), the role of certain organizations in maritime crime prevention as well as national legislation and jurisdiction.

4.2 THE LAW OF THE SEA CONVENTION (LOSC)

Devine (1986:2) informs us that the law of the sea evolved over the past 500 years and that, over centuries, its rules were developed in various ways. Evolution of the law of the sea has its origin in different philosophical schools like writers from both natural law and positivistic schools, while many writers also adopted an eclectic approach drawing on different sources such as natural law, reason, scripture, classical Greek and Roman writers (including Roman Law). The idea of freedom of the seas was introduced by Grotius in the 16*th* century, and for this reason, he is generally known and accepted as the father of international law. The idea of freedom of the seas forms the pillars of today's law of the sea. Territorial issues pertaining to the sea also developed through certain prac-

tices over centuries which finally became customary rules. Treaties or conventions between states on certain matters also provide a source for the evolution of the law of the sea. The essential element in creating this law is acceptance by state. Naturally, it concerns the use of the sea, i.e. what is above it and beneath it - the sea bed, subsoil and the airspace above the sea. Everything in these areas is being regulated by the law of the sea, e.g. a ship, submarine, aircraft, oil rig, fish or mineral.

The law of the sea deals, *inter alia*, with -

* the right of states on and in the sea;
* the zones that states may claim in the sea, e.g. a territorial sea zone of 12 nautical miles from the coast i.t.o. the Law of the Sea Convention, article 3;
* an exclusive economic zone of 300 miles as well as a continental shelf up to certain limits;
* the jurisdiction of states over foreign ships, submarines or aircraft in these zones;
* sea-fishery issues in these zones in terms of article 56 of the Law of the Sea Convention;
* the jurisdiction of states on the High Seas, i.e. the sea beyond national zones (e.g. that states have jurisdiction over their own ships on the High Seas); and
* the principle of no interference with ships of other countries on the High Seas (Devine, 1986:2).

Devine (1986:3) also informs us that no Parliament exists to pass laws pertaining to the sea. Agreements between states with regard to the rights they have on and in the sea are entered into by means of the signing of a treaty. Acceptance of a treaty by becoming a party to it means that such treaty becomes law for it. Further, acceptance of a treaty by states gives stability to rules of international law and custom is still regarded a very important way of creating international law. However, it appears that uncertainty as to the existence of legal rules still exists - especially with regard to whether any kind of practice has sufficiently established itself to be regarded a customary legal rule. It may also

happen that a certain rule of the law may prove not to be satisfactory and that other rules may be desirable. Due to all these deficiencies or shortcomings, attempts have been made to codify the law of the sea or parts of it by means of an International Convention. In this regard, three prominent attempts to codify the law of the sea were recorded:

(a) The Hague Conference of 1930. This conference, however, failed to produce a Convention because no agreement could be reached on certain fundamental issues (Devine, 1986:3; Churchill and Lowe, 1982:13-14). Nevertheless, useful drafts were produced which might have set out what the customary law at that time was.

(b) The Geneva Conference of 1958. After the Second World War, new developments in sea law gained momentum when states became aware of the fact that they had continental shelves off their coasts, containing valuable resources. The question arose, namely whether they possessed a legal right to exploit these off-shore reserves. Long-distance fishing fleets emerged and while many coastal states did not have long-distance fishing fleets, attempts were made to claim exclusive fishing zones of more than three miles for themselves. These claims led to the organization of the Geneva Conference in 1958 which produced no less than four conventions - three of which have been widely accepted by participating states, representing a substantial body of sea law (Devine, 1986:3).

(c) The Law of the Sea Convention of 1982. (Devine, 1986:3-4) points out that certain events after 1958 moved forward and gained even greater momentum leading to the 1958 Conventions to become outdated. Some of these events are:

* Many new states who did not participate in the 1958 Conventions meanwhile became independent and now wanted to be part of the proceedings.

* The realization of exploiting the deep-sea bed beneath the High Seas posed the question whether it could be done legally and if so, what conditions should apply? This aspect was not addressed in 1958.
* Certain coastal states started to claim a 200-mile resource zone as they did not have much of a continental shelf - even if the shelf did not extend that far into the sea.
* Finally, most states started to claim a 12-mile territorial sea instead of a three-mile one. This claim would have had a tremendous effect on straits, because most straits had had high sea lanes in them when the territorial sea was only three miles in extent. This could pose a threat to rights of passage, and was of great concern to maritime trading nations and to naval powers.

The Law of the Sea Convention of 1982 contained 320 articles and has nine annexures, containing a further 125 articles. The Convention is further supplemented by the Final Act of the Conference, containing four United Nations Resolutions, namely -

(a) Resolution I (Preparatory Commission - PREPCOM - for the International Seabed Authority and for the International Tribunal for the Law of the Sea).
(b) Resolution II (Preparatory Investment in Pioneer Activities relating to Polymetallic Modules).
(c) Resolution III (Non-self-governing territories).
(d) Resolution IV (National Liberation Movement)(Devine, 1986:13).

The status of this major Convention is as follows according to Devine (1986:4):

At the beginning of March 1986, it had not been in force but will be valid and binding only after 60 states have ratified it. The United States of America, the United Kingdom and the Federal Republic of Germany have not signed the Convention. South Africa has signed it. Devine (1986:4)

strongly emphasizes that signature *per se*, is not ratification and imposes only one obligation on the signatory, namely it must not act against the fundamental aims of the Convention.

Although the Convention is not yet a legally binding instrument, its content contains rules that are of importance and which cannot be ignored. These rules are divided as follows:

(a) declaratory rules, which refer to those rules that existed before the Convention came into being. The Convention merely confirms them in clear written form, e.g. there would be a rule that a state can claim a 12-mile territorial sea; a 200-mile resource zone; that all states can navigate the High Seas, and that rights of free passage exist.

(b) legislative rules, which did not exist before the Convention, but are to be introduced by it, e.g. that states are not entitled to mine the deep-sea bed under the High Seas without a licence from the International Seabed Authority (ISA) - a body to be created by the Convention. Since these legislative rules are new, they will only be binding on states accepting or subscribing to the Convention.

(c) classificatory rules, indicating that a dispute existed about a rule prior to the inception of the Convention. The status of the Convention allows it to settle such disputes, namely whether such rule existed or not.

(d) doubtful provisions, which also have reference to the existence of a rule that appears to be in dispute. Differences of attitudes among negotiators of the Convention hampered the clarification of a rule and by being able to do so, the Convention does not resolve the issue but instead, it perpetuates the uncertainty. For example, the rights of warships in the territorial sea is denied by those states not having strong navies, while those with naval powers strongly favour such right (Devine, 1986:4-5).

Following is a brief exposition of certain articles of conventions agreed to by states parties. It is, however, not the intention of the researcher to refer to all these articles, as some of them do not apply to the present study.

The three conventions referred to in the following discussion are contained in the Final Act and Annexes of the United Nations Conference on the Law of the Sea, Geneva, 1958 and published by The Society of Comparative Legislation and International Law in London.

4.3 CONVENTIONS OR TREATIES

4.3.1 Convention of the territorial seas and contiguous zone

Part I of this convention deals with the territorial sea, while Part II addresses issues pertaining to the contiguous zone. Researcher wants to point out that only certain matters, as they apply to the present study, will be highlighted.

Article 1: 1. "The sovereignty of a State extends, beyond its land territory and its internal waters, to a belt of sea adjacent to its coast, described as the territorial sea".

Article 14: 1. "Subject to the provisions of these articles, ships of all States, whether coastal or not, shall enjoy the right of innocent passage through the territorial sea.

2. Passage means navigation through the territorial sea for the purpose either of traversing that sea without entering internal waters, or of proceeding to internal waters, or of making for the high seas from internal waters.

3. Passage includes stopping and anchoring, but only in so far as the same are incidental to ordinary navigation or are rendered necessary by *force majeure* or by distress.

4. Passage is innocent so long as it is not prejudicial to be peace, good order or security of the coastal State.

5. Passage of foreign fishing vessels shall not be considered innocent if they do not observe such laws and regulations as the coastal State may make and publish legislation in order to prevent these vessels from fishing in the territorial sea.

6. Submarines are required to navigate on the surface and to show their flag."

Article 19: 1. "The criminal jurisdiction of the coastal State should not be exercised on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connection with any crime committed on board the ship during its passage, save only in the following cases:

(a) If the consequences of the crime extend to the coastal State; or

(b) If the crime is of a kind to disturb the peace of the country or the good order of the territorial sea; or

(c) If the assistance of the local authorities has been requested by the captain of the ship or by the consul of the country whose flag the ship flies; or

(d) If it is necessary for the suppression of illicit traffic in narcotic drugs.

2. The above provisions do not affect the right of the coastal State to take any steps authorised by its laws for the purpose of an arrest or investigation on board a foreign ship passing through the territorial sea after leaving internal waters.

3. In the cases provided for in paragraphs 1 and 2 of this article, the coastal State shall, if the captain so requests, advise the consular authority of the flag State before taking any steps, and shall facilitate contact between such authority and the ship's crew. In cases of emergency this notification may be communicated while the measures are being taken.

4. In considering whether or how an arrest should be made, the local authorities shall pay due regard to the interests of navigation."

Article 20 deals explicitly with civil jurisdiction in relation to a person on board a ship and will not be discussed here.

As stated earlier, Part II of this convention deals with the contiguous zone. As these articles have no significant bearing on this investigation and merit no further discussion, it will rather be left for further research.

4.3.2 **Convention of the high seas**

Article 14: "All states shall co-operate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State."

Article 15: "Piracy consists of any of the following acts:

(1) Any illegal acts of violence, detention or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:
   (a) On the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
   (b) Against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;

(2) Any act of voluntary participation in the operation of a ship or aircraft with knowledge of facts making it a pirate ship or aircraft;

(3) Any act of inciting or of intentionally facilitating an act described in sub-paragraph 2 of this article."

Article 19: "On the high seas, or in any place outside the jurisdiction of any State, every State may, seize a pirate ship or aircraft or a ship taken by piracy and under the control of pirates, and arrest the persons and seize the property on board. The courts of the State ... acting in good faith."

Article 21: "A seizure on account of piracy may only be carried out by warships or military aircraft, or other ships or aircraft on government service authorized to that effect."

Article 24: "Every State shall draw up regulations to prevent pollution of the seas by the discharge of oil from ships or pipelines or resulting from the exploitation and exploration of the seabed and its subsoil, taking account of existing treaty provisions on the subject."

Article 25: 1. "Every State shall take measures to prevent pollution of the seas from the dumping of radioactive waste, taking into account any standards and regulations which may be formulated by the competent international organizations.

2. All States shall co-operate with the competent international organizations in taking measures for the prevention of pollution of the seas or air space above, resulting from any activities with radioactive materials or other harmful agents."

4.3.3 Convention of fishing and conservation of the living resources of the high seas

The development of modern technology and techniques for the exploitation of the living resources of the sea, man's increasing ability to meet the need of the world's expanding population for food, has exposed some of these resources to the danger of being over-exploited. The State parties to this convention have agreed to solve this issue on the basis of international co-operation through collective action.

Article 1: 1. "All States have the right for their nationals to engage in fishing on the high seas, subject (a) to their treaty obligations, (b) to the interests and rights of coastal States as provided for in this convention, and (c) to the provisions contained in the following articles concerning conservation of the living resources of the high seas.

2. All States have the duty to adopt, or to co-operate with other States in adopting such measures for their respective nationals as may be necessary for the conservation of the living resources of the high seas.

Article 2: "As employed in this Convention, the expression "conservation of the living resources of the high seas" means the aggregate of ... Conservation programmes should be formulated with a view to securing in the first place a supply of food for human consumption."

Article 3: "A State whose nationals are engaged in fishing any stock or stocks of fish or other living marine resources in any area of the high seas where the nationals of other States are not thus engaged shall adopt, for its own nationals, measures in that areas when necessary for the purpose of the conservation of the living resources affected."

4.4 CLASSIFICATION OF MARITIME CRIMES : FRAUD

Ellen and Campbell (1981:24) use a broad classification in which maritime crimes could be framed. However, it should be noted that a measure of overlap necessarily exist between these broad groups in many cases and it also appears that there are many occasions when an element of each is bound to exist in a single crime:-

* Documentary fraud;
* Frauds in connection with charters;
* Scuttling; and
* Cargo theft.

Documentary fraud mainly refers to shipping documents and specifically, letter of credit, certificates of quality, certificate of origin and invoices may all have a part to play in the successful perpetration of a maritime fraud. Charterparties are straightforward business arrangements. Each trade has developed a standard charterparty document suitable for its own purposes, using fixed code names. Not all charterers are people with goods to transport: " ... because in this as in every other form of com-

merce, there are opportunities for profit available to the entrepreneur. Most of the recorded maritime frauds in connection with charters are carried out by such people" (Ellen and Campbell, 1981:27).

Scuttling fraud is also known as the "rust bucket" fraud which describes most vessels that became a casualty as a result of being deliberately sunk. These crimes are mostly committed by ship-owners. The essence of the fraud lies in a situation where a ship is approaching or has passed the end of its economic life, taking into account its age, condition and the prevailing freight market. Ellen and Campbell (1981:29) states that: "The crime can be aimed at the hull and its insurers alone, or against both hull and cargo". Ships are scuttled at a price, whether it be in the form of a request by the ship-owner, in which case his own crew scuttle the ship after their dishonest owner paid them a certain sum of money - usually during the course of a voyage, or alternatively, the ship-owner will hire a different crew for this purpose. Cargo theft entails the misappropriation of the whole or a substantial part of a ship's cargo to the eventual detriment of the insurers and is usually committed during periods of recession. Ships are usually diverted to a place where the cargo may be discharged and sold on the quayside or as Ellen and Campbell (1981:48) put it: " ... is diverted to an intermediate country where it is sold as surplus".

The classification of maritime fraud should, however, not be considered as complete. The massive increase in container traffic world-wide, necessitates a more flexible classification of maritime crimes. The following crimes emanating from illegal practices are also noteworthy:

* containerisation, which has brought with it many advantages but perhaps also more than its share of crime problems. Containers lend itself to theft, fraud and deception, as a result of existing opportunities to fake evidence of interference in transit and to gain insurance benefit for a shortage which was either an underloading at the point of origin or an under-declaration of out-turn at the point of receipt;

* barratry, according to the British Encyclopaedia, 1933 (Ellen and Campbell, 1981:33), entails the following: "In commerce, any fraud committed by the master or mariners of a ship whereby the owners, insurers or shippers are injured; as by deviation from the proper course of the voyage by the captain for his own private purposes; fraudulent negligence; theft of any part of the cargo, etc." Ellen and Campbell (1981:33) point out that the term piracy can easily include crimes which fall more accurately under the definition of barratry; and

* piracy, which could be described in two separate contexts, namely as an international crime and as one of a domestic nature:
  (a) In the first instance, piracy *jure gentium* concerns piratical acts against international laws to which a large number of countries subscribe; and
  (b) The second is found in statutes by parliaments of individual countries (nations), seeking to contain crimes committed within their own jurisdictions (Ellen and Campbell, 1981:33).

4.5 INTERNATIONAL ORGANIZATIONS

Shipping, as an industry, has expanded to such extend that protection of international associates has become inevitable. Protection of the shipping industry revolves around a variety of interests, such as:

* the protection of rights of shippers;
* enhancement of crew's conditions;
* the benefit of ship-owners;
* international political issues; and
* the interchanging of information. Ellen and Campbell, (1981:69) declare that there is no single international association or body whose *raison d'être* is to control, investigate or prevent marine fraud or any other form of marine crime.

4.5.1 The International Association of Airport and Seaport Police (IAASP)

Originated in Boston, Massachusetts, and formed as a central organization through which information and co-operation between various North American and Canadian law agencies could develop and work together, the International Association of Airport and Seaport Police (IAASP) has gained tremendous momentum despite the fact that it is both unofficial and voluntary (Ellen and Campbell, 1981:69).

The IAASP has the following objectives:-

* To prevent and detect criminal activity affecting the international shipment of cargo.
* To study and recommend methods and uniform practices for establishing safeguards against loss of international cargo.
* To encourage and develop the exchange of information and material among law enforcement agencies concerned with criminal activities in harbours and airports.
* To encourage co-operation between the segments of the international trade community for the development of improved security measures for international cargo.

During his inaugural address as Director-General of the National Harbour board, Police and Security, Mr Donald Cassidy made the following remark:

> "Crime in the ports and harbours of the world present a serious problem to the society we live in ... It does, however, damage the reputation of the ports and affects the economy of countries ... There is an obvious lack of co-ordinated effort on the part of police agencies with jurisdiction and responsibility in the ports of the world in the common task of fighting crime in these area" (Ellen and Campbell, 1981:70).

The IAASP carries a measure of authority in spite of its voluntary nature, based on its consultative status with the United Nations because it is a corporate member of the International Association of Ports and Harbours

and also has strong links with the International Association of Chiefs of Police (IACP) as well as Interpol. The IAASP has the following characteristics. It is -

* non-governmental;
* non-secretarian;
* non-racial;
* non-political; and
* a preventive body with limited investigative powers (Ellen and Campbell, 1981:71).

4.5.2 International Criminal Police Organization (Interpol)

Interpol only offers membership to recognized police forces sponsored by national governments. Interpol is, in essence, a channel of communication and is based in Paris, France. With regard to maritime crime, Interpol performs the same function as with any other form of international dishonesty, namely that of acting as a channel of communication and a bureau for the exchange of information. It further facilitates, co-ordinates and encourages international police co-operation among one hundred and twenty-seven member countries as a means of preventing crime (Ellen and Campbell, 1981:73-75).

4.5.3 International Maritime Bureau (IMB)

The initial reason for having provided an organization which would be flexible to provide a measure of response in the form of investigating illegal practices, led to the establishment of the International Maritime Bureau. Two functions of the IMB have been identified as being -

* the dissemination of intelligence gained in respect of future crimes; and
* the formulation of proposals for improved commercial practices to enable marine cargo transportation to become self-protecting - especially in the form of education and identification of areas for change in international commercial practices (Ellen and Campbell, 1981:75-77).

The International Maritime Bureau has, as its primary function, the operation of a clearing house for information. Having started operations in London, it renders four types of services, namely -

* an education service - especially to prevent maritime fraud;
* the provision of general information regarding maritime crimes as a preventive function;
* to render advice on whether potential trading partners are known to have previously involved in fraudulent practices; and
* authenticating trading documents for banks and others that may need such assistance (Ellen and Campbell, 1981:77-78).

4.5.4 United Nations (UN)

The United Nations was established between 1943-1945 as a result of a series of conferences. On 25 April 1945, a Charter of some 111 articles was drawn up at a conference and during October of the same year, instruments of notification were filed by a large number of participating members bringing the Charter into force. At its inception, six principal organs were created, namely the General Assembly, Security Council, Economics and Social Council, Trusteeship Council and the International Court of Justice. Although none of these organs are of particular interest to maritime crime *per se*, the role of the United Nations as a source of international law, its commissions and related inter-governmental organizations should not be underestimated. In addition to these inter-governmental agencies (e.g. the World Health Organisation (WHO) and the International Labour Organization), there are a number of conferences held under the UN's auspices, namely -

* the United Nations Conference on Trade and Development (UNCTAD); and
* the United Nations Conference on International Trade Law (UNCITRAL) (Ellen and Campbell, 1981:80-81).

4.5.4.1 United Nations Conference on Trade Development (UNCTAD)

UNCTAD's primary function is that of encouraging the development of trade and other matters, of which international marine carriage forms a substantial part. This conference has no crime investigative powers, except by

means of a committee to examine, collate information and make recommendations with regard to illegal maritime practices (Ellen and Campbell, 1981:81).

4.5.4.2 United Nations Conference on International Trade Law (UNCITRAL)

The enforcement of international law with regard to maritime crime is fraught with difficulty. The United Nations Conference on International Trade Law (UNCITRAL) has the following objectives -

* preparing and promoting the adoption of new international conventions;
* model laws and uniform laws; and
* codification and wide acceptance of international trade terms, provisions, customs and practices (Ellen and Campbell, 1981:82).

UNCITRAL's Inter-governmental Maritime Consultative Organization (IMCO) would seem to be the most effective body in playing an active part in suppressing maritime crime. Ellen and Campbell opine that: "The most effective weapon available to IMCO is that of the Convention, which, when agreed to by members, is published and offered to member states and others as a model law to be adopted in future national legislation". On 15 November 1979, for example, the General Assembly of the United Nations adopted a resolution with regard to the prevention of barratry (see par. 4.4) and the unlawful seizure of ships. This resolution was the outcome of a request by Lebanon to the Secretary-General of IMCO to examine the issue of criminal barratry and the unlawful seizure of ships and their cargoes (Ellen and Campbell, 1981:82-88).

4.5.5 The International Court of Justice

Located permanently at The Hague, the International Court of Justice functions within the terms of its own Statute which forms an integral part of the United Nations' Charter, subjecting each member state within the

United Nations to the Statute. The ICJ consists of 15 judges from different nationalities. Article 36 of the Statute stipulate the Court's jurisdiction, namely -

(1) To deal with all cases which the parties refer to it as well as all matters specially provided for in the Charter of the UN or in treaties and conventions in force.

(2) The acceptance of the jurisdiction of the Court in all legal disputes by states parties concerning declarations pertaining to -
   - the interpretation of a treaty;
   - any question of international law;
   - the existence of any fact which, if established, would constitute a breach of an international obligation; and
   - the nature and extent of the reparation to be made for the breach of an international obligation.

(3) Any declaration made by states parties referred to in 2 above, may be made unconditionally or on condition of reciprocity on the part of several or certain states, or for a certain time.

(4) Such declarations addressed to the Secretary-General of the United Nations shall forward copies thereof to the parties to the State and to the Registrar of the Court.

(5) Declarations made under Article 36 of the Statue of the Permanent Court of International Justice and which are still in force shall be deemed, as between the parties to the present Statute, to be acceptances of the compulsory jurisdiction of the ICJ for the period which they still have to run.

(6) In an event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court (Ellen and Campbell, 1981:88-89).

The above-mentioned authors also indicate the limitations of the ICJ, namely that it has no binding force on parties (states) not being members of the Statue: "The Court performs a vital function in international affairs in settling disputes between states recognising its jurisdiction, but it clearly cannot act in matters where one of the parties is not subject to its jurisdiction" (Ellen and Campbell, 1981:89).

4.5.6 Lloyd's of London

Lloyds seems to have originated in the 17th century when those who wanted to insure their ships and cargoes could find those insurers who were prepared to underwrite the risks at one or other of the City of London coffee houses. Edward Lloyd appears to have emerged as one of the greatest names known in the London insurance market. "From small and informal beginners, underwriters collected into more formal groups until, in 1871 the Corporation of Lloyds was incorporated by Act of Parliament, to provide premises, administrative staff and all the ancillary services required in the management of such a diverse and complicated business as insurance" (Ellen and Campbell, 1981:99).

Lloyds is simply an insurance market where ship owners can insure a risk (e.g. cargo against theft in harbours and on the open sea). All transactions and business are transacted through brokers of whom there are currently about 270 firms who are authorized to operate within the market (Ellen and Campbell, 1981:99).

4.5.6.1 Lloyd's Register of Shipping

Lloyd's Register of Shipping (L.R.) originated from the same source as Lloyd's of London, in that both "started off" in the London coffee houses where merchants met or gathered to transact their business. The underwriters found it beneficial to catalogue and classify the ships they were being asked to insure and that information was written up into a register of ships. After a severe dispute among merchants, separate registers were published in opposition to each other. However, in the early nineteenth century there was a reconciliation of the opposing interests, resulting in Lloyd's Register of Shipping being formed as an entirely separate commercial organization from the insurance market. Lloyd's Register is essentially a ship classification and registration service. In cases of maritime fraud, any enquiry about basic shipping information could be found in Lloyd's Register (Ellen and Campbell, 1981:95-96).

4.6 NATIONAL LEGISLATION AND JURISDICTION

The following Acts are highlighted below as they are of specific importance to maintaining law and order on the sea and contiguous zones:

4.6.1 Sea-Shore Act (Act 21 of 1935)

"ACT. To declare the State President to be the owner of the sea-shore and the sea within the territorial waters of the Republic; and to provide for the grant of rights in respect of the sea-shore and the sea, and for the alienation of portions of the sea-shore and the sea and for matters incidental thereto.

1. Definition. - In this Act, unless the context indicates otherwise -
"Administration" means the South African Transport Services referred to in section 2 of the South African Transport Services Act, 1981 (Act No. 65 of 1981);
"high-water mark" means the highest line reached by the water of the sea during ordinary storms occurring during the most stormy period of the year, excluding exceptional or abnormal floods;
"local authority" means any city council, municipal council, borough or town or village council, town board, local board, village management board, divisional council, local administration and health board or health committee constituted in terms of any law, and include the South African Development Trust referred to in section 4 of the Development Trust and Land Act, 1936 (Act No. 18 of 1936), the Development and Service Board constituted under the Development and Services Board Ordinance, 1941 (Ordinance No. 20 of 1941), of Natal, the Natal Parks, Game and Fish Preservation Board constituted under the Nature Conservation Ordinance, 1974 (Ordinance No. 15 of 1974), of Natal, and the Department of Nature and Environmental Conservation constituted by the Nature and Environmental Conservation Ordinance, 1974 (Ordinance No. 19 of 1974), of the Cape of Good Hope;
"low-water mark" means the lowest line to which the water of the sea recedes during periods of ordinary spring tides;

"**sea**" means the water and the bed of the sea below the low-water mark and within the territorial waters of the Republic, including the water and the bed of any tidal river and of any tidal lagoon;
"**sea-shore**" means the water and the land between the low-water mark and the high-water mark;
"**tidal lagoon**" means any lagoon in which a rise and fall of the water-level takes place as a result of the action of the tides;
"**tidal river**" means that part of any river in which a rise and fall of the water-level takes place as a result of the action of the tides.

2. State President is owner of the sea-shore and the sea. - (1) Subject to the provisions of this Act, the State President shall be the owner of the sea-shore and the sea, except of any portion thereof which was lawfully alienated before the commencement of this Act of may be alienated hereafter under this Act or under any other law.
(2) Any portion of the sea-shore and the sea which was alienated before the commencement of this Act, shall be deemed to have been lawfully alienated.
(3) The sea-shore and the sea of which the State President is declared by this section to be owner, shall not be capable of being alienated or let except as provided by this Act or by any other law, and shall not be capable of being acquired by prescription.

5. Government may use the sea-shore and the sea. - (1) The Minister may authorize the use of any portion of the sea-shore and the sea of which the State President is by section two declared to be the owner, for Government purposes.
(2) The Minister may cause any land in the sea or on the sea-shore to be reclaimed and such reclaimed land shall be State-owned land.

7. Exercise of powers for purposes of public health. - (1) Notwithstanding anything contained in the Health Act, 1977, the Minister of Health and Welfare may by notice in the Gazette declare that any local authority, as referred to in section 1 or 30 of the aforesaid Act, may exercise, in

respect of the sea-shore and the sea situated within its area of jurisdiction or adjoining such area, any of the powers which are conferred by or under that Act on a local authority.

(2) The power conferred by section 31 and 50 of the Health Act, 1977, on the Minister of Health and Welfare, the Director-General or a local authority, as defined in section 1 of the Health Act, 1977, to delegate to certain persons or to a local authority a function or duty vested in or devolving upon him or it under the said Act; may be exercised as regards any function or duty which may vest in or devolve upon him or it under the said Act as regards any portion of the sea-shore or the sea.

8. Application of mining laws. - For the purposes of any law which is or at any time has been in force in any part of the Republic relating to the exploitation of metals, minerals, precious stones, coal or oil, the land of the sea-shore and the bed of the sea of which the State President is by section two declared to be the owner shall be deemed to be State-owned land; and, in the application of any such law, this section shall be deemed to have been in operation as from the commencement of such law.

10. Regulations. - (1) The Minister may make regulations, or by notice in the Gazette authorize any local authority, in regard to any portion of the sea-shore and the sea situated within or adjoining the area of jurisdiction of such local authority, with his approval to make regulations, not inconsistent with this Act -

(a) concerning the use of the sea-shore;

(b) concerning bathing in the sea;

(c) concerning the removal of any material from the sea-shore and the sea;

(d) for the prevention or the regulation of the depositing or the discharging upon the sea-shore or in the sea of offal, rubbish or anything liable to be a nuisance or danger to health;

(e) concerning the control, generally, of the sea-shore and of the sea;

(f) prescribing fees for the doing of any act upon or in relation to the sea-shore or the sea;

(g) providing for the seizure and disposal of anything -

(i) which is concerned in or is on reasonable grounds believed to be concerned in a contravention of or failure to comply with any provision of a regulation made under this section;

(ii) which is intended to be used or is on reasonable grounds believed to be intended to be used in such contravention or failure.

(2) The regulations may provide that any person contravening or failing to comply with any provision thereof shall be guilty of an offence and liable on conviction to such fine, not exceeding five hundred rand, or to imprisonment for such period, not exceeding one year, as may be specified therein, or to both such fine and such imprisonment.

(3) (a) Notwithstanding the provisions of any other law, any regulation may be declared to be applicable to the whole of the sea-shore or to any defined portion thereof or to the whole of the sea or to any defined portion thereof.

(b) The Minister may declare any regulation to be applicable to any State-owned land adjoined or situated near the sea-shore, and for the purpose of the application of any such regulation, any State-owned land to which such regulation has been so declared to be applicable, shall be deemed to be a portion of the sea-shore.

(c) When any regulation applies to any portion of the sea-shore situated within or adjoining the area of jurisdiction of a local authority or to any portion of the sea adjoining such portion of the sea-shore, the Minister may, by notice in the Gazette and in not less than one newspaper circulating in the neighbourhood in which such area of jurisdiction is situated, confer powers or impose duties in relation to the administration of such regulation upon such local authority or upon any of its officers or upon any officer of the State."

It should be noted that the Sea-Shore Act (Act 21 of 1935) was amended by the following Acts:

(a) Sea-shore Amendment Act (Act 60 of 1959);

(b) Sea-shore Amendment Act (Act 2 of 1963);

(i) which is concerned in or is on reasonable grounds believed to be concerned in a contravention of or failure to comply with any provision of a regulation made under this section;

(ii) which is intended to be used or is on reasonable grounds believed to be intended to be used in such contravention or failure.

(2) The regulations may provide that any person contravening or failing to comply with any provision thereof shall be guilty of an offence and liable on conviction to such fine, not exceeding five hundred rand, or to imprisonment for such period, not exceeding one year, as may be specified therein, or to both such fine and such imprisonment.

(3) (a) Notwithstanding the provisions of any other law, any regulation may be declared to be applicable to the whole of the sea-shore or to any defined portion thereof or to the whole of the sea or to any defined portion thereof.

(b) The Minister may declare any regulation to be applicable to any State-owned land adjoined or situated near the sea-shore, and for the purpose of the application of any such regulation, any State-owned land to which such regulation has been so declared to be applicable, shall be deemed to be a portion of the sea-shore.

(c) When any regulation applies to any portion of the sea-shore situated within or adjoining the area of jurisdiction of a local authority or to any portion of the sea adjoining such portion of the sea-shore, the Minister may, by notice in the Gazette and in not less than one newspaper circulating in the neighbourhood in which such area of jurisdiction is situated, confer powers or impose duties in relation to the administration of such regulation upon such local authority or upon any of its officers or upon any officer of the State."

It should be noted that the Sea-Shore Act (Act 21 of 1935) was amended by the following Acts:

(a) Sea-shore Amendment Act (Act 60 of 1959);

(b) Sea-shore Amendment Act (Act 2 of 1963);

(c) Sea-shore Amendment Act (Act 45 of 1969);

(d) Sea-shore Amendment Act (Act 38 of 1972);

(e) Health Act (Act 63 of 1977);

(f) Sea-shore Amendment Act (Act 21 of 1984); and

(g) Transfer of Powers and Duties of the State President Act (Act 97 of 1986).

4.6.2 Territorial Waters Act (Act 87 of 1963)

"ACT. To determine and define the territorial waters and the fishing zone of the Republic of South Africa and to provide for the exploitation of certain natural resources of the continental shelf of the Republic and of the said territory and for other incidental matters.

WHEREAS the rules which in the past applied in connection with the extent of the territorial waters of a State are no longer generally accepted;

AND WHEREAS it is in the circumstances expedient to determine and define the territorial waters and the fishing zone of the Republic of South Africa;

AND WHEREAS it is expedient to provide for the exploitation of certain natural resources of the continental shelf of the Republic of South Africa.

1. Definition of terms. - In this Act, unless the context otherwise indicates -

"fish" means the living resources of the sea;

"low-water mark" means the lowest line to which the water of the sea recedes during periods of ordinary spring tides;

"nautical mile" means the international nautical mile of 1 852 metres;

"sea" means the water and the bed of the sea.

2. Territorial waters of Republic. - The sea within a distance of twelve nautical miles from low-water mark shall be territorial waters of the Republic.

3. Fishing Zone. - The sea outside the territorial waters of the Republic, but within a distance of two hundred nautical miles from the low-water mark, shall constitute a fishing zone in respect of which the Republic shall in relation to fish and the catching of fish have and exercise the same rights and powers as in respect of its territorial waters as defined in section 2.

4. Application of certain laws in fishing zone. - The Republic shall have the right to exercise in the fishing zone as defined in section three any powers which may be considered necessary to prevent contravention of any fiscal law or any customs, emigration, immigration or sanitary law.

5. Application of laws relating to territorial waters, etc. - Any law relating to the territorial waters of the Republic or to the sea within a distance of three miles or three nautical miles from low-water mark, shall apply -

(a) in respect of the territorial waters of the Republic as defined in section two; or

(b) in so far as such law relates to fish or fishing, in respect of the fishing zone as defined in section three.

6. Determination of territorial waters and fishing zone in special cases. - (1) In the determination of the extent of the territorial waters of the Republic referred to in section two, the rules contained in the Convention on the Territorial Sea and the Contiguous Zone signed at Geneva on the twenty-ninth day of April, 1958, shall apply.

(2) The rules referred to in sub-section (1) shall *mutatis mutandis* be applied also in the determination of the extent of the fishing zone referred to in section three.

7. Exploitation of natural resources of, and application of laws relating to mining, precious stones, etc., to continental shelf. - The continental shelf as defined in the Convention on the Continental Shelf signed at Geneva on the twenty-ninth day of April, 1958, or as it may from time to time be defined by international convention accepted by the Republic,

shall be deemed to be part of the Republic for the purposes of the exploitation of natural resources as defined in such convention, and of any law relating to mining, precious stones, metals or minerals, including natural oil, which applies in that part of the Republic which adjoins such continental shelf, and for the purposes of any such law the said continental shelf shall be deemed to be unalienated State land. The Territorial Waters Act (Act 87 of 1963) was amended by the Territorial Waters Amendment Act (Act 98 of 1977).

4.6.3 Prevention and Combating of Pollution of the Sea of Oil Act (Act 6 of 1981)

ACT. To provide for the prevention and combating of pollution of the sea by oil; to determine liability in certain respects for loss or damage caused by the discharge of oil from ships, tankers or offshore installations; and to provide for matters connected therewith.

1. **Definitions.** - (1) In this Act, unless the context otherwise indicates -

"**area of the Republic**" includes the territorial waters of the Republic;

"**Convention**" means the International Convention on Civil Liability for Oil Pollution Damage, signed in Brussels on 29 November 1969 and published for general information under General Notice No. 58 of 1978 in Government Gazette No. 5867 of 27 January 1978, and includes any amendments thereof and additions thereto signed, ratified or acceded to be the Republic of South Africa;

"**Convention State**" means a state which is a party to the Convention;

"**Director-General**" means the Director-General: Transport;

"**discharge**", in relation to oil, means any discharge of oil from a ship or a tanker or an offshore installation into a part of the sea which is a prohibited area and includes any escaping, spilling, leaking, pumping or dumping of oil from such ship, tanker or offshore installation into such part of the sea; and "**discharge**" when used as a verb shall be construed accordingly;

"**Fund**" means the Oil Pollution Prevention Fund referred to in section 26 (1);

"high-water mark" means the highest line reached by the water of the sea during ordinary storms occurring during the most stormy period of the year, excluding exceptional or abnormal floods;

"incident" means any occurrence, or series of occurrences having the same origin, which causes a discharge of oil from any ship, tanker or offshore installation or which creates the likelihood of such a discharge;

"low-water mark" means the lowest line to which the water of the sea recedes during periods of ordinary spring tides;

"master", in relation to a ship or a tanker, means any person (other than a pilot) having charge or command of such ship or tanker and, in relation to an offshore installation, means the person in charge thereof;

"Minister" means the Minister of Transport Affairs;

"natural oil" means natural oil as defined in section 1 of the Mining Rights Act, 1967 (Act No. 20 of 1967);

"nautical mile" means the international nautical mile 1 852 metres;

"offshore installation" means a facility situated wholly or partly within the prohibited area and which is used for the transfer of oil from a ship of a tanker to a point on land or from a point on land to a ship or tanker or from a bunkering vessel to a ship or a tanker, and includes any exploration or production platform situated within the prohibited area and used in prospecting for or the mining of natural oil;

"oil", in relation to a discharge of oil from -

(a) a ship, tanker or offshore installation in that part of the prohibited area which constitutes the territorial waters of the Republic and the sea adjoining the said territorial waters to the landward side thereof, means any kind of mineral oil and includes spirit produced from oil and a mixture of such oil and water or any other substance;

(b) a ship, tanker or offshore installation in that part of the prohibited area which adjoins the said territorial waters to the seaward side thereof, means any kind of mineral oil and includes spirit produced from oil and a mixture of such oil and water or any other substance which contains one hundred parts or more of oil in a million parts of the mixture,

but in relation to loss or damage caused as contemplated in section 9(1)(a) where the discharge in question took place from a tanker, and for the purposes of section 13(1), means oil as defined in paragraph 5 of Article 1 of the Convention;

"**owner**", in relation to a ship or a tanker, means the person or persons registered at the owner of such ship or tanker or, in the absence of registration, the person or persons to whom such ship or tanker belongs;

"**prescribed**" means prescribed by regulations;

"**principal officer**" means the officer in charge of the office of the Marine Division of the Department of Transport at any port;

"**prohibited area**" means the territorial waters of the Republic and that portion of the fishing zone, as defined in section 3 of the Territorial Waters Act, 1963 (Act No. 87 of 1963), situated within a distance of fifty nautical miles from the low-water mark, and includes the sea between the high- and low-water marks as well as any tidal lagoon or tidal river as defined in section 1 of the Sea-shore Act, 1935 (Act No. 21 of 1935), and internal waters as defined in section 1 of the Marine Traffic Act, 1981;

"**sea**" means the water and the bed of the sea and includes the land between the high- and low-water marks as well as any tidal lagoon or tidal river as defined in section 1 of the Sea-shore Act, 1935;

"**ship**" means any kind of vessel or other sea-borne object from which oil can be discharged, excluding a tanker, whether or not such vessel or object has been lost or abandoned, has stranded, is in distress, disabled or damaged, has been wrecked, has broken up or has sunk;

"**tanker**" means any seagoing vessel of any type whatsoever, actually carrying oil in bulk as cargo and in respect of which the provisions of the Convention are applicable;

"**territorial waters of the Republic**" means the territorial waters of the Republic as defined in section 2 of the Territorial Waters Act, 1963;

"**this Act**" includes any regulation made thereunder.

(2) Where more than one discharge of oil results from the same occurrence or from a series of occurrences having the same origin, they shall for the purposes of this Act be regarded as one discharge.

2. Discharge of oil prohibited. - (1) If any oil is discharged from a ship, tanker or offshore installation the master of such ship, tanker or offshore installation and, if he is not the owner of such ship, tanker or offshore installation, also the owner thereof, shall be guilty of an offence unless -

(a) the oil in question was discharged for the purpose of securing the safety of such ship, tanker or offshore installation or of any other ship or tanker or of preventing damage to such ship, tanker or offshore installation or to any other ship or tanker or the cargo thereof, or of saving life, and such discharge of the oil was necessary for such purpose or was a reasonable step to take in the circumstances;

(b) the oil in question escaped from the ship, tanker or offshore installation in consequence of damage to the ship, tanker or offshore installation, and as soon as practicable after the damage occurred all reasonable steps were taken for preventing or (if it could not be prevented) for stopping or reducing the escape of the oil; or

(c) the oil in question escaped by reason of leakage, and neither such leakage nor any delay in discovering it was due to any lack of reasonable care, and as soon as practicable after the escape was discovered, all reasonable steps were taken for stopping or reducing it.

(2) The onus of proving any exception, exemption or qualification contemplated in subsection (1)(a), (b) or (c) shall be upon the accused.

(3) If in any prosecution for an offence under subsection (1) is is proved that a mixture containing oil was discharged from a ship, tanker or offshore installation in the part of the prohibited area which adjoins the territorial waters of the Republic to the seaward side thereof, it shall be deemed, unless the contrary is proved, that such mixture contained one hundred parts or more of oil in a million parts of the mixture.

7. Inspection of ship or tanker and of records, and taking of samples of oil. - Any person authorized thereto by the Minister and any member of the South African Police or of the police force of the South African Railways and Harbours Administration may go on board any ship or tanker in any part

of the prohibited area to ascertain whether any document required by this Act to be carried on board such ship or tanker is so carried on board or, if he has reasonable grounds for believing that any provision of this Act has been or is being contravened in connection with such ship or tanker, may so go on board and inspect such ship or tanker or any part or cargo thereof, inspect and make copies of any documents or records kept in respect of such ship or tanker or in respect of its cargo or oil on board thereof, take samples of any oil on board such ship or tanker, take roundings of tanks, spaces and bilges and test any equipment on board such ship or tanker which is intended for use in preventing a discharge of oil from such ship or tanker.

8. Right of entry upon land. - (1) Any person or member referred to in section 7 and any other person authorized hereto by the Minister may enter upon any land with such workmen, machinery, vehicles, equipment, appliances, instruments and other articles, and may perform all such acts thereon, as may be necessary for the purpose of complying with any provision of this Act, or for the purpose of making any enquiries or undertaking any investigation with a view to determining whether any pollution of the sea by oil has occurred and whether the removal of such pollution is feasible, or for the purpose of erecting camps or other temporary works which may be considered necessary in connection with the removal of such pollution of the sea by oil, or for the purpose of ascertaining whether or not any provision of the Act or condition imposed thereunder is being complied with, and may, for the purpose of gaining access to such land, enter upon and cross any other land with the said workmen, machinery, vehicles, equipment, appliances, instruments and other articles: Provided that -

(a) no such entry shall be made into any building, or upon any enclosed space attached to a dwelling, except with the consent of the occupier thereof;

(b) as little damage, loss or inconvenience as possible shall be caused in the exercise of the powers conferred by this subsection, and such compensation as may be agreed upon or, failing agreement, determined by a competent court, shall be paid from the Fund for any damage, loss or inconvenience so caused.

(2) Any person who prevents any entry authorized or the exercise of any powers conferred by subsection (1) or who wilfully obstructs or hinders any person so entering in the performance of his functions under this Act shall be guilty of an offence.

20. Jurisdiction of court. - (1) Any division of the Supreme Court of South Africa, and within the limits of its jurisdiction as determined in section 29 of the Magistrates Courts Act, 1944 (Act No. 32 of 1944), but subject to the provisions of section 12 (8), any magistrate's court, shall have jurisdiction in respect of all causes of action arising out of the provision of this Act.

(2) Any division of the Supreme Court of South Africa, and, within the limits of its jurisdiction as determined in section 92 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), any magistrates' court for a regional division, shall have jurisdiction in all criminal matters arising out of the provisions of this Act.

(3) No prosecution in respect of an offence under this Act shall be instituted except on the authority, which may be given in writing or otherwise, of the attorney-general having jurisdiction in the area of the court in question.

(4) Any offence under this Act shall, for purposes in relation to jurisdiction of a court to try the offence, be deemed to have been committed at any place where the accused happens to be.

30. Offences and penalties. - (1) Any person who -

(a) contravenes or fails to comply with the provision of -
  (i) section 14 (6); or
  (ii) section 21 (1);

(b) wilfully fails to comply with an order or requirement of the Minister in terms of -
  (i) section 4 (1);
  (ii) section 4 (2)(c);
  (iii) section 5 (3); or
  (iv) section 6;

(c) hinders or obstructs any person in the performance of his functions by virtue of the provisions of -

(i) section 4 (2)(a);

(ii) section 5 (6);

(iii) section 7; or

(iv) section 22 (1),

shall be guilty of an offence.

(2) Any person convicted of an offence referred to in -

(a) section 3 (4), 8 (2), 13 (7), 24 (5) or subsection (1)(a)(i), shall be liable to a fine not exceeding one thousand rand or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment;

(b) subsection (1)(b)(iii), (b)(iv), (c)(ii) (c)(iii) or (c)(iv), shall be liable to a fine not exceeding two thousand rand or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment;

(c) subsection (1)(a)(ii), shall be liable to a fine not exceeding five thousand rand or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment;

(d) section 2 (1) or 13 (6) or subsection (1)(b)(i) or (b)(ii), shall be liable to a fine not exceeding twenty thousand rand or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

This Act was amended by:

(a) Prevention and Combating of Pollution of the Sea by Oil Amendment Act, (Act No. 59 of 1985); and

(b) Prevention and Combating of Pollution of the Sea by Oil Amendment Act, (Act No. 63 of 1987).

4.7 REGULATIONS

Following is an outline of Regulations promulgated under the various acts pertaining to various aspects of marine resources, standards of seaworthiness, forms regulations, marine traffic regulations, etc. Researcher deemed it appropriate to only refer briefly to these different regulations because space does not allow for an in-depth exposition thereof. Further, these regulations, which are of importance in maintaining law and order on

the sea and in harbours by members of the different Water Wings, are fully contained in the Statutes and Government Gazettes of the Republic of South Africa:

(a) Standards of seaworthiness, manning and licensing of vessels regulations, 1986, issued by the Minister of Transport Affairs under section 356 (1) of the Merchant Shipping Act (Act 57 of 1951).

(b) The forms regulations, 1961, under Chapter IV of the Merchant Shipping Act (Act 57 of 1951), section 356 (1) by the Minister of Transport Affairs.

(c) Amended regulations in terms of the Sea Fishery Act (Act 12 of 1988) by the Minister of Environment Affairs.

(d) Marine Traffic Regulations in terms of the Marine Traffic Act (Act 2 of 1981) by the Minister of Transport Affairs.

(e) Regulations regarding ships and small vessels used solely for sport and recreation issued in terms of the Merchant Shipping Act (Act 57 of 1951) by the Minister of Transport Affairs.

4.8 SUMMARY

In this chapter, issues pertaining to maritime jurisdiction and international crimes, etc. have been outlined. It is of crucial importance that the Water Wing of the South African Police Service should take notice of international trends pertaining to laws of the sea. As will be seen in Chapter 5, a contemporary danger on the sea appears to be that of oil pollution. It is also important to take cognisance of the fact that no Parliament exists to pass laws pertaining to the sea, and that conventions or treaties are the only means by which disputes can be settled.

CHAPTER FIVE

FUNCTIONAL HARBOUR POLICING

5.1 INTRODUCTION

Chapter 2 outlines the role of policing in society. In his endeavour to define policing, Van Heerden (1986:12-16) arrived at to the conclusion that the concept policing has different connotations or meanings: "In the general sense, policing means coercive action of a certain sort; in particular it means the safe-guarding of society". In juridical sense, the word 'police' denotes the legally appointed members of the police force (commissioned officers, i.e. lieutenant to general, and non-commissioned officers, i.e. constable to warrant-officer). The functions of the police are often equated with law enforcement (Caldwell, 1972:6). Folley (1973:3), however, points to the police as law enforcers working at a national level and police rendering community service within specific municipalities. The service orientation thus also determine the meaning of the word police. Functionally, then, policing is regarded as the first line of defence against crime, charged with :

* the application of the laws of Parliament;
* crime investigation;
* keeping (preserving) the peace;
* upholding law and order;
* prevention and control of crime;
* settling of domestic quarrels or disputes;
* giving evidence in courts;
* traffic control;
* suppressing riots, unrests and demonstrations; etc. (More, 1972:16).

Sheehan and Cordner (1995:31) opine that the core of police work hinges on three important aspects :

* law enforcement and the use of coercive force;
* the effective handling of problem situations while avoiding the use of force; and

* avoidance of force by means of effective, creative communication.

Effective communication through listening and talking undoubtedly leads to reaching solutions for problem situations. Shearing and Leon (Sheehan and Cordner, 1995:31) argue that law enforcement is an important component of policing and refuse to accept that social service and order maintenance form part of daily police activities, because they usually respond to problems as police officers and not as social workers. However, over the last two decades, social service and order maintenance have been recognized by scholars as also being functions of the police - especially within the framework of social and political systems. A study of patrol work, examining police actions in 60 neighbourhoods conducted in 1977 by the Police Services Study, showed that in 57% of the encounters, people requested service by the police, in 23% of the cases the police gave reassurance and in 11% the police rendered assistance. In only 40% of the actions, did the police interrogate a suspect (Sheehan and Cordner, 1995:33). It seems, therefore, as if the traditional law enforcement-meaning of police work has been changed by adding social service and order maintenance to the functions of policing.

Travis (1995:120) also divides the functions of the police into three broad categories, namely order maintenance, law enforcement and service. Order maintenance as an active approach include: settling of disputes, dispersing crowds, keeping sidewalks and streets clear and traffic smoothly as well as other important activities. The service functions of the police, from a passive point of view, evolved over time out of necessity and include, *inter alia*, the rendering of services (ranging from giving directions to citizens who got lost, assisting people in distress, finding missing children, rescue of drowned people, etc.). Because of a possible link to criminal behaviour, the police service function also include the investigation of traffic accidents, providing of first aid to accident victims and transporting of injured and fatally injured persons to medical facilities. Law enforcement activities directly relate to detection and apprehension of criminal offenders, investigation of crime,

etc. This author clearly states that the police acquired responsibilities because no other agency exists to perform these particular functions in societal context.

Although functionally orientated definitions tend to highlight the complex nature of policing, they in fact point to the methods of carrying out the comprehensive task of order maintenance (Van Heerden, 1986:13).

Clift (1956:1) opines that police power refers to the power of the people to act in the interest of their fellow citizens. In terms of the principle of collective responsibility, which originated and had been introduced during the Anglo-Saxon period and based on the lines of the frank pledge, this power was exercised by each individual, but in the course of time it was transferred by means of delegation to the state, to be exercised by that institution (police organization) in conformity with constitutional principles embodied in a Bill of Human Rights. The actual exercising of this power (by means of which society actually compels adherence to the social objective of peaceful co-existence in an orderly manner), is known as the police function of the state (government).

Society's need for collective internal order did therefore not originate from the juridical definition of the concept police, but from the need for rendering a social service (Mullik, 1969:29). In this regard, Momboisse (1967:307) points out that the close connection between the police role and the government often overshadows the social service function as rather being the visible manifestation of the power structure. Other authors are of the opinion that this very indivisibility of the functional role of the police from the power structure (government), necessarily paves the way for the rendering of a social service order according to constitutional rights of individuals to privacy, freedom and security (Bordua, 1967:20; Banton, 1964:1).

Functionally speaking, the application of laws of Parliament through a system of policing refers analogous to the control of individual behaviour by means of formal control or interaction (i.e. the relationship between the individual and the state). If policing fails to uphold sound

relationships with members of society through the execution of the law and relationships are in fact disrupted (through social disorder), the "upholder of order becomes by implication a participant in conflict and the disruption of order" (Van Heerden, 1986:15).

An intolerable situation prevails when the functional aspect of [harbour] policing is divided or fragmented into separate functions - especially when an over-emphasis is placed on the enforcement of the law (repressive policing), at the expense of proactive policing (prevention). Van Heerden (1986:15-16) clearly points out that "the maintenance of social order involves a great variety of tasks and methods". It is widely accepted that the maintenance of social order relates to either an accepted state of peace and order or a future condition of this nature which has been prescriptively ordered by the power structure (government). The process of preserving peace and order is usually pursued by means of preventive methods (e.g. short and long-term crime prevention strategies, preventative dialogue, etc.), while the restoration of the order is done through repressive methods. Van Heerden (1986:15-16) refers to this process as the gist of functional policing: function entails the special obligations associated with policing, while method or technique are actually indicative of skills, capacities or rules by means of which the function is fulfilled.

In the discussion to follow, attention will be devoted to a brief historical outline of functional harbour policing as it originated in England, the dual functional execution of policing and lastly, a statistical descriptive survey of crimes investigated by or attended to by members of the Water Wing.

5.2 HISTORICAL DEVELOPMENT OF FUNCTIONAL HARBOUR POLICING IN ENGLAND

As far back as 1953, Martienssen (1953:173) remarked that The Thames and the Port of London created a serious policing problem, because more ships used the Port of London than any other port in the world. The opportunity for crime commission and the risk of accidents in the form of collisions

as a result of a continuous stream of cargoes being loaded and unloaded at the docks placed a high premium on harbour policing by both the Metropolitan Police and of the police of the Port of London Authority.

5.2.1 First Marine (River) Police

The origins of the Thames Division dates back to the 18th century when importers suffered losses of 500 000 pounds annually while cargoes were unloaded on the unpoliced River Thames. In 1797, John Harriot, an Essex Justice of the Peace from Great Hanbridge, devised a plan to protect Thames shipping. Together with this plan and Jeremy Bentham's legal knowledge, Patrick Colquhoun, Queen's Square Police Office bench magistrate, managed to interest the West India Merchants' Committee into financing the first preventative policing of the River Thames. The first Marine Police began to operate on 2 July 1798 in Wapping High Street, after Parliament's approval was obtained (Metropolitan Police; Lines, n.d.:1).

Although initially small, the Marine Police force was well-trained and armed to control the thousands who worked in the river trades. Colquhoun proved that a third (nearly 11 000 workers) were known criminals. Within six months of establishment, the Marine Police (which cost 4 200 pounds to set up and equip), had established its worth by saving 112 000 pounds worth of cargo from being stolen. By 1829 when the Metropolitan Police (Bow Street Runners) was established in terms of the Metropolitan Police Act, the Marine (Harbour) Police had three stations, the original office and two old naval vessels. Patrols by rowing galley commenced at two hourly intervals throughout the day and night lasting six hours, from Battersea to below Woolwich. The lower reaches of the Thames to the Downs were patrolled by a larger sailing cutter, introduced to protect the Kings Stores at Sheerness and to prevent the "shanghaiing" (kidnapping of seamen for enforced service at sea) by outgoing merchant ships (Metropolitan Police).

The year 1839 saw the amalgamation of the separate police services in the London area into the Metropolitan Police. At this time, the Thames Division also emerged, drawing on the experience and equipment of the replaced Marine Police. For a further fourty years the rowing galleys and sailing patrols continued and were found adequate, while the river trades slowly became mechanised and to a large extent, iron replaced wood. In 1878, the loss of more than 600 lives in the disastrous collision between the paddle steamer "Princess Alice" and the collier "Bayward Castle" necessitated the acquisition of more powered craft. In 1884 two steam launches were purchased for supervisory purposes and later a third was added. Between 1901-1903 the first paraffin-engined patrol boats were introduced, so that by 1910, most patrols were power-driven. Also, during this period, the Thames Division had its patrols extended with two additional combined river and land stations at Erith and Barnes (Metropolitan Police).

Naval vessel stations had also been replaced with a floating pontoon at Waterloo Pier and another land station at Blackwall, while patrols extended some 38 miles from Teddington to Dartford Creek (Metropolitan Police).

During 1964, river policing was extended with two additional stations - Hampton Lock and Shepperton - enabling all the Thames within the Metropolis to be effectively patrolled. However, in 1978, a reorganization took place to operate the Division as three sections, namely, middle, upper and lower, with base stations at Waterloo Pier, Shepperton and Wappington respectively. The lower reaches beyond the Greater London boundary are presently the responsibility of the Kent and Essex Constabularies. Liaison is maintained with these forces, the Port of London Authority and the Customs and Excise (Metropolitan Police, n.d.).

Daniel Lines, Honorary Curator of the Thames Police Museum remarked as follows:

> "Although Thames Division is a small group of [police] officers we are equipped and trained to make London's River a safe, and pleasant thoroughfare for everyone's use and enjoyment" (Lines, n.d. p.4).

River police patrols are organized on the same principles as those of the land divisions, each stretch of water. The aim is to protect life and property on ships, barges, private craft on the river and navigable creeks, and prevent crimes at the wharves and waterside. Functional harbour policing on the River Thames also includes the prevention of :

* collisions between vessels;
* fires on ships and other craft;
* salvage of property adrift;
* securing of drifting barges;
* observance and enforcement of the Merchant Shipping Act, as well as other legislation and local by-laws relating to the Thames (Metropolitan Police, n.d.).

5.3 FUNCTIONAL HARBOUR POLICING

As pointed out already (see par. 5.1), the maintenance of social order rests on a variety of functional tasks or methods. The maintenance of order constitutes an accepted state of peace and order or a future state which is directed by prescriptive legislation. For this purpose, it appears that preventive methods are constantly prioritized, followed by repressive measures to restore a disturbed state of affairs. This process includes both function and methods. The functional aspect revolves around special obligations associated with policing while method and technique are those skills, capacities or rules through which the function is fulfilled (Van Heerden, 1986:15-16). In this regard, Sheehan and Cordner (1995:33) remark that:

> " ... although the police authority to enforce the law is an important factor in most situations that the police handle, the police have considerable discretion in deciding whether to invoke the law, and more often than not, they find other means for resolving problems."

And this also apply to harbour policing. Members of the South African Police Service appointed to maintain law and order at harbours, on the sea and adjacent land, have the same powers and authority as those members

designated to perform other duties. Ordinary citizens usually perceive the (harbour) police function simply as law enforcement and the use of force. However, contemporary public opinion also emphasizes the social service and order maintenance functions as being part of the police role (Sheehan and Cordner, 1995:33). It would appear that patrol seems to be the most important component of performing the police role. Gaines, Kappeler and Vaughn (1994:147) label the patrol function as "the most important operation of a law enforcement agency". The dual, functional approach in policing will be discussed below. It should be noted, however, that it is not the purpose of this study to give a comprehensive account of all the functional tasks of policing, but rather to briefly discuss selected issues in this regard as it relates to harbour policing in South Africa.

5.3.1 **Preventive policing**

Wilson (1963:203) avers that the prevention of crime is the primary function of any police institution. Formal social control has as its primary aim the preservation of order, stability and peaceful co-existence through the promotion of voluntary compliance with formal prescriptions, geared towards the protection of society against violations of the rules of behaviour. Crime prevention, also known as preventive policing, is based on measures adopted by a given society for the purpose of strengthening its control over the behaviour of its members (Korn and McCorkle, 1959:627), including -

* fostering respect for the control structure - specifically by means of role-fulfilment. A positive image of the police role tends to enhance voluntary compliance with the laws by the public;
* short-term prevention techniques such as: patrolling and the visible protection of life and property;
* long-term prevention techniques such as educating the public and more specifically the youth about crime and related issues;
* rendering of services through community policing to strengthen mutual respect for and confidence in the power structure (government and the police);

* the elimination of opportunities to commit crimes by creating a sense of omnipresence; and
* any other measure designed to prevent the repetition of crime or the spreading of crime.

5.3.2 Repressive policing

Repressive (or reactive/responsive) policing is concerned with the restoration of the social order. Enforcement of the formal prescriptions (laws) entails the assembling and presentation of evidence regarding law violations to the judicature for the purposes of positive individualisation. This process involves :

* criminal investigation (crime detection);
* techniques by means of which evidence may be assembled; and
* the methods (arrest) by means of which the disrupter of the social order (the criminal) may be caused to appear in a court of law on a formal charge (Van Heerden, 1989:16-17).

The basis of law enforcement through crime investigation is the positive assembling of evidence in strict accordance with the provisions governing the process. It is firstly a form of action which has a deterrent effect, since the potential law violator is assured that he will be brought to book and secondly, it assures the innocent that his/her freedom is guaranteed (Van Heerden, 1986:181).

The Water Wing of the South African Police Service "performs normal policing activities, the only difference being that these activities are carried out on water. Their activities consist of two components, namely reactive action and crime prevention" (SAP Year-book, 1992:189).

In the United States of America, the presence of a large body of water or navigable river creates the need for a water patrol unit. Activities of these units range from combating criminal activities such as drug smuggling to controlling tourists who fail to comply with safety regulations and other precautions (Gaines *et al.*, 1994:159).

5.3.3 Patrol - a short-term crime prevention technique

Patrol is the action of traversing a district or beat or of going the rounds along a chain of guards for observation or the maintenance of security and includes foot patrols, vehicle patrol, horse patrol, aircraft patrol, marine patrol, canine patrol and tactical patrol (Sheehan and Cordner, 1995:65).

Patrol is of specific interest to the present study, because it forms the backbone of the Water Wing in South Africa allowing the different units to render a very important proactive (preventative) service to the public. During 1991-1992, rescue actions along the South African coast have dropped by 60 percent. Patrolling on the sea is of special importance in preventing piracy, illegal oil spilling, assisting the South African Narcotics Bureau (SANAB) in curbing and preventing drug smuggling, fire-arm smuggling as well as assisting Stock Theft units to apprehend stock thieves on rivers and dams (SAP Year-book, 1992:189). Gaines *et al.* (1994:150) indicate that patrol is a complex and comprehensive police function as well as a critical operational activity.

According to Whisenand and Cline (1971:8) patrol is the most important, complex, conspicuous and delicate functional policing activity. It is

* important, because it offers protection, acts as a deterrent and provides certain social services which are not usually regarded as typical police duties;
* complex, because it includes a great variety of tasks, for all police functions find expression in one form of another in patrol;
* conspicuous, because these tasks are performed under the observation of the general public; and
* delicate, because the maintenance of order and the execution of the law have to be achieved in accordance with the principles of individual freedom, equality and justice.

The most important ingredient of patrol appears to be the function of protection by means of the eradication of crime opportunities and the belief that such opportunities exist. The degree to which crime opportunities are eliminated (e.g. fishing in an illegal zone) depends on the degree of omnipresence attained by the police (Wilson and McLaren, 1972:20) - a belief that the police are everywhere and which "would have a deterrent effect on potential criminals and at the same time increase the citizen's feeling of safety" (Gaines *et al.*, 1994:150).

The Water Wing of the South African Police consists of two branches, namely a coastal branch responsible for the coastline from Kosi Bay to Alexander Bay as well as the bordering interior area. The group at Kosi Bay also covers the territories of Lake St. Lucia, Tugela River and the area up to the Drakensberg mountains. The inland branch carries out its activities on dams such as the Hartebeespoort, Loskop and Bronkhorstpruit Dams. At the coast, boats of the deep-sea class as well as coastguard class boats are used. Coastal crafts are manned by a handler (helmsman) and a motorman. Inflatable dinghies are usually used to patrol beach areas. The bigger boats are used for patrolling out at sea (SAP Yearbook, 1993:188-189).

5.3.4 Arrest as a repressive method

Eldefonso, Coffey and Grace (1968:251) inform us that the word arrest is derived from the French arreter, which means to stop a process or call a halt to something. In other words, the process of crime is halted in the interest of society and also in the interest of the criminal himself. Arrest protects society by means of withdrawing the perpetrator from society and by doing so, preventing a repetition of his criminal acts. It is the beginning phase of the criminal justice process which ultimately will lead to the criminal's rehabilitation. Arrest represents the decision to apply force in physical form and although some citizens may regard it as a violation of the individual's right to freedom, it still remains among the investigatory powers (reactive activities) accorded to the police (Van Heerden, 1986:65).

Although arrest may infringe upon the individual's freedom, studies in the United States have shown that the most significant factor affecting an officer's discretion to take a perpetrator into custody, is the seriousness of the offence (Gaines *et al.*, 1994:198).

In summary, it could be stated that both prevention and reactive methods of policing are used by the Water Wing in South Africa. Responsive action should be an indication that proactive measures have failed. The most common technique implemented by the Water Wing is patrol - a short-term prevention technique, while arrest appears to be the most suitable first-hand measure to supplement the criminal investigative process.

In the discussion to follow, attention will be devoted to a criminal justice classification of crimes, followed by a discussion of selected crimes, normally attended to by the Water Wing in the course of their functional operations. A criminological classification of crimes advocated by Professor P.J. van der Walt[1] in his book: 'n Sosiologiese Klassifikasie van Misdade (1964:cf.) will, therefore, be left aside.

5.4 CLASSIFICATION OF CRIMES

Siegel (1989:13-14) points out that crimes are usually classified into non-statutory and statutory crimes. Non-statutory crimes stem from the natural law and are referred to as *mala in se* crimes which are deeply rooted in the value-system of Western civilization. Natural laws are designed to control such behaviour as inflicting physical harm on others by means of crimes such as murder, assault, rape, etc. or taking possessions that rightfully belong to another person, e.g. theft, housebreaking, robbery, etc. These two categories of crime are also known as personal and property crimes respectively.

Statutory crimes, also known as crimes *mala prohibita*, refer to crimes (legislation) passed by legislative bodies such as Parliament, Provincial Bodies and Local Authorities and usually reflect contemporary mores, norms

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1. One of the first South African pioneers in Criminology

and opinions of society. Statutory crimes (also called offences) are believed to violate present-day morality as expressed by the so-called "right-thinking" members of society. "These moral entrepreneurs (as the sociologist Howard Becker calls them) believe it is their duty to convince lawmakers that some particular behaviour offends the conscience of the majority" (Siegel, 1989:14).

This classification of crime is of specific importance to this study, because the Water Wing, in its daily operations, are dealing with both categories of crime, whether it be theft, housebreaking or statutory offences contained in statutory legislation such as the Sea Fishery Act, the Merchant Shipping Act, etc.

5.4.1 Description of selected crimes

Just for the sake of convenience and broadening our knowledge, selected common law crimes will be described below. As far as statutory offences are concerned, a statistical description and analysis of offences attended to by the Water Wing, will also be dealt with later on.

5.4.1.1 Personal or violent crimes

* Murder, as a common law crime, is defined as the unlawful, intentional killing of a human being other than the killer (Du Plessis and Kok, 1989:130), or as "the unlawful killing of a human being with malice aforethought" (Lunde, 1977:3).

* Culpable Homicide is the the unlawful and negligent killing of a human being (Du Plessis and Kok, 1989:130).

* Assault refers to the unlawful and intentional application of physical force to the person of another or the unlawful intentional inspiring of the belief in another that force is immediately to be applied to his person (Du Plessis and Kok, 1989:130). Siegel (1989:266) informs us that the Federal Bureau of Investigation (FBI) defines serious or aggravated assault as the unlawful attack by one

person upon another for the purpose of inflicting severe or aggravated bodily harm. In South Africa, two types of assault are distinguished, namely assault to do grievous bodily harm (infliction of serious injuries on the victim) and common assault (i.e. the absence of serious injuries).

* Rape is defined as the unlawful and intentional sexual intercourse with a woman without her consent. Force is not a prerequisite for rape to have been committed.

5.4.1.2 **Property crimes**

* Theft, as a property crime, is defined as "the trespassory taking and carrying away of the personal property of another with intent to steal" (Siegel, 1989:297). Theft amounts to the unlawful dispossession of another's property or valuables - the intention of the thief must be directed towards depriving the legal owner of his property.

* Robbery is commonly defined as theft accomplished by violence or threats of violence. Snatching something suddenly from one's hand through some degree of force constitutes robbery and not theft (Du Plessis and Kok, 1989:131). According to the FBI, robbery consists of "the taking or attempting to take anything of value from the care, custody or control of a person or persons by force or threat of force or violence and/or putting the victim in fear" (Siegel, 1989:270).

* Housebreaking with intent to commit an offence is committed by anyone who unlawfully and intentionally to commit a crime, "breaks into and enters a house or any other permanent structure erected for human habitation or use, with intent to commit a crime therein" (Du Plessis and Kok, 1989:131). This crime is also known as burglary and appears to be much more serious than theft or larceny (Siegel, 1989:303).

* Fraud involves the mispresentation of "a fact to cause a victim to willingly give his or her property to the wrongdoer, who keeps it (Siegel, 1989:298). This author also informs us that the definition of fraud (or theft by false pretences) had been created by the English Parliament in 1757, to cover an area of law left untouched by theft statutes. The first people who were punished under this definition, were those who "knowingly and designedly by false pretences, [obtained] from any person or persons, money, goods, wares or merchandise with intent to cheat or defraud any person or persons of the same" (Siegel, 1989:298). Attention is once again drawn to the description of maritime fraud as discussed in Chapter 4, par. 4.4.

5.5 STATUTORY LEGISLATION

Du Plessis and Kok (1989:132) clearly state that the same principles of criminal liability applicable to common law crimes, apply to statutory crimes or offences, except for *mens rea*[2]. According to Siegel (1989:27), statutory law is referred to as judge-made law, reflecting existing social conditions such as gambling, drug-related offences, etc. Statutory crimes also include offences in terms of the road traffic ordinances, namely driving under the influence of liquor, reckless and/or negligent driving, etc. Although theft is being classified as a common law crime, certain statutory provisions have been devised to supplement the combating crime of theft, e.g. -

(a) Section 36 of the General Law Amendment Act, Act 62 of 1955 - Failure to give a satisfactory account of possession of goods; and

(b) Section 37 of Act 62 of 1955 - Receiving stolen property without reasonable cause (Snyman, 1992:479-501).

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2. See par. 5.5.1 regarding deviations i.t.o. the Sea Fishery Act, Act 12 of 1988.

5.5.1 Juridical implications: Sea Fishery Act (Act 12 of 1988)

From a perspective of the general principles of criminal law, Devine (1989:39) attempts to discuss certain characteristics of the Sea Fishery Act, 1988 which "appear to depart from the general principles of criminal liability in our law. In this respect the criminal law regime of the Sea Fishery Act would appear to exhibit a number of peculiarities which attract comment from the point of view of general principles" (Devine, 1989:40). The Sea Fishery Act creates specific offences, listed in section 47, punishments (section 48), provisions for remunerating informants (section 49), while ministerial power to create offences, is bestowed by section 45(3).

The following peculiarities inherent in the Sea Fishery Act are briefly highlighted. The reason for having decided to emphasize these characteristics, is to be found in the everyday enforceability of this Act by members of the South African Police Services and more specifically the respective Water Wings.

(a) Creation of offences of strict liability

Mens rea seems to be no defence in terms of offences created by the Act, thereby creating a strict liability. Section 50(5) provides that -

> "In any prosecution for an offence in terms of this Act, it shall be no defence that the accused had no knowledge of some fact or other and did not act intentionally."

Section 47(1)(c), for instance, provides that it is an offence to catch a fish by means of any implement other than a prescribed implement. For example, it would be an offence to kill a fish by detonating any substance in the sea. However, when detonating a substance with a purpose not relating to fish and without having

fish or their possible extinction in mind, the defendant, due to his lack of foreseeablity of the death of fish as a result of such detonation, would have no defence (Devine, 1989:40).

Section 50(5) of the Fishery Act creates numerous offences, excluding the requirement of *mens rea*.

> "Hence mistake of fact (or absence of knowledge of fact) relating to a material element of the *actus reus* is not defence ... The important point is, however, that the requirement of *mens rea* would appear to be excluded totally for offences created by the Act. The Act, therefore, contains a catalogue of strict liability offences" (Devine, 1989:41).

(b) Presumptions

The Sea Fishery Act creates a number of presumptions relating to various material elements contained in the different offences under this Act.

(i) General presumption of guilt

Section 50(2) of the Act creates a far-reaching presumption of guilt in the case of certain offences. The following offences are affected -

* "those in connection with which a fishing boat, vessel or vehicle has been used;
* those relating to any fish found on or proved to have been upon any fishing boat, vessel or vehicle; and
* those relating to any implement by means of the offence was committed and which is found on or proved to have been upon any fishing boat, vessel or vehicle" (Devine, 1989:41).

Section 50(2) raised a presumption of guilt with regard to such vehicle-related offences, because any person present on such fishing boat, vessel or vehicle at the time of the con-

travention of section 50(5), is deemed to be guilty of the offence, thereby creating a shift in the onus of proof. However, if the defendant is to be acquitted, certain facts have to be established in terms of this Act. These are -

* that he/she (defendant) did not commit the offence;
* that the defendant did not take part in the commission of the offence; and
* that he/she could not have prevented the commission of the offence. The burden of proving that the defendant was on the vessel or vehicle at the time of the commission of the offence, appears to rest on the prosecution (Devine, 1989:42).

(ii) Presumptions relating to the elements in the *actus reus*

Three distinctive presumptions relating to the elements in the *actus reus* (physical action or conduct) will be briefly highlighted :

* Presumption as to area

  Section 50(3)(a) provides that in a prosecution under the Sea Fishery Act, if any act or conduct is alleged to have been performed in a particular area, this action or conduct shall be deemed to have been performed in such area until the contrary is proved (Devine, 1989:42).

* Presumption as to accuracy of information

  In a prosecution under the Sea Fishery Act, section 50(3)(b) provides that any information obtained by means of any instrument or chart used to determine any distance or depth, shall be deemed to be correct unless the contrary is proved. This presumption, for instance, appears to be very useful where contravention of the 12 nautical mile-issue is at stake. The onus would again be on the defendant to prove the inaccuracy of any charts or instruments so used (Devine, 1989:43).

* Presumption as to discharge

Section 50(4) provides:

> "If in any prosecution for an offence in terms of this Act it is proved that in any area in the sea within a distance of eight kilometres from any factory or any other installation, any fish or fish food has been or is being injured or has died or is dying or the marketability thereof or of aquatic plants has been or is being adversely affected, or the ecological balance has been or is being disturbed or changed, it shall be presumed, until the contrary is proved, that it has been or is being caused by something discharged from that factory or installation into the sea."

"The result of this subsection is that if the prosecution establishes that any of the deleterious results mentioned have occurred within a distance of 8 kilometres from a factory the factory is deemed to have discharged something into the sea which has brought about the result. The onus thus shifts to the factory which may establish that it did not discharge any substance into the sea. In this event it will be entitled to acquittal" (Devine, 1989:43).

* Presumption as to causation

The provision of section 50(4) apply *mutatis mutandis* regarding presumption relating to causation. Where the prosecution has proved any of the deleterious products within 8 kilometres from a factory, then not only is the factory deemed to have discharged something into the sea, but it is also presumed that such discharge has cause the deleterious result. Therefore, it should be noted that this section creates presumptions both as to

the discharge and as to the causation of deleterious results. If, however, such factory proves that it was not responsible for the discharge of anything into the sea, the question of causation should fall away and entitled to an acquittal. Likewise, if it cannot establish the absence of a discharge on its part, it will still be entitled to an acquittal if it can prove that the deleterious result was not caused by its discharge. In terms of this section, it is also true that the onus of proof resting on the factory, is an onus of proof on a balance of probabilities (Devine, 1989:43-44).

According to Devine (1989:44-45), it would appear that the presumptions in question are of a far-reaching nature :

"(a) Every factory or installation situated on the coast is in fact 'at risk' in relation to an area of the sea within a radius of 8 kilometres from it. If any of the deleterious effects mentioned in section 50(4) occur in that risk area it is deemed to have caused them. It is guilty until it establishes that it is not guilty.

(b) Inland factories and installations within 8 kilometres of the coast are also at risk though in their case the area of risk will be less extensive. For example, if a factory is 4km from the coast, its risk area will extend for 4km into the sea. The presumptions will operate against it in the same way. It might however be easier for such an inland factory to establish that it did not discharge into the sea.

(c) If factories and installations are within 8 kilometres of each other they could have certain risk area in common. If any of the deleterious effects mentioned in section 50(4) occurred in these common risk areas, each would be presumed to have caused it by discharge. If each of them

> could not establish its innocence then both would be guilty of the offence. This might not be an entirely satisfactory result. The particular problem would be aggravated where there were several installations or factories in a particular area. The situation could be further aggravated if there were other agents operative in the relevant area who might be responsible for the deleterious effects mentioned by section 50(4) and against whom no presumptions existed.
>
> (d) Section 50(4) provides general ecological protection in that one of the deleterious effects mentioned is that: 'the ecological balance has been or is being disturbed or changed'. Hence the section crates in effect a general environmental offence. This provision must be regarded as being a particularly strong one, being bolstered as it is by a presumption of discharge, a presumption of causation, a presumption relating to the commission of the act in the relevant area and a prescription as to the accuracy of information on distance (up to 8km) provided by charts or instruments. Finally, like all other offences in terms of the Act, this general environmental offence is an offence of strict liability."

Researcher decided to include the quotation in this dissertation solely for the purpose of drawing the attention of law enforcement officers to the interpretation of section 50(4) and, on the other hand, it could also benefit the needs of environmentalists.

(c) Vicarious criminal liability

According to Devine (1989:45), it would appear that the Sea Fishery Act, 1988 provides for (what might be described as) vicarious criminal liability. Section 50(2) - see par. (b)(i) - creates a general presumption of guilt in the case of a vessel or vehicle related offence. Persons on such vehicle or vessel at the time of the commission of an offence are regarded as guilty, except if they could satisfy the onus of proof. A vicarious presumption of guilt arises when a person who takes part in the commission of such offence must be deemed to have also committed the offence and therefore charged as a perpetrator as co-perpetrator. If, however, such person can prove that he did not commit the offence and fails to prove the third matter, namely that he could not have prevented it, he is likely to be guilty of it.

A second statutory provision appears in section 48(2)(a). A convicting court may declare any implements, fishing boats, vessels or vehicles used in connection with the commission of an offence in terms of section 48(1) to be forfeited to the state. If A, for instance, uses B's boat to commit an offence under the Sea Fishery Act, 1988, B's boat may be forfeited to the state as part of the punishment now also affecting B. However, section 48(2)(a) could act as some remedy, to B's position :

> "A declaration of forfeiture in terms of section (1) shall not affect any rights which any person other than the convicted person may have to such boat, vessel, vehicle or implement, if it is proved that he had taken all reasonable steps to prevent the use thereof in connection with the offence or could not have prevented the commission of the offence."

"Thus, in this example, B's boat will not be forfeited if he can show that he took all reasonable steps to prevent A using the boat to commit the offence or that he could not have prevented the offence. The onus of proof would appear to rest on B here. If he

cannot establish either of these facts then part of the punishment for the offence, viz. forfeiture may be visited victoriously on him" (Devine, 1989:46).

(d) Provision for informants

"Section 49 makes provision for payment of a remuneration in cash to persons who supply information relating to offences committed under the Act. In order to be eligible for such payment an informer must meet the following conditions (i) he must supply information or material proof relating to an offence in terms of the Act. It does not matter whether this leads to a prosecution or a conviction; (ii) he must not be a person in the employment of the state. As far as quantum is concerned the remuneration shall be such as in the opinion of the Director-General, Environment Affairs, is reasonable and fair in the circumstances. Finally, the payment of such remuneration would appear to be in the discretion of the Director-General and is not obligatory" (Devine, 1989:46).

(e) Deprivation of advantages

"If a person is convicted of an offence in terms of the Act, the convicting court may impose a fine equal to the monetary value of any advantage which the convicted person may have gained in consequence of the offence. This fine may be imposed in addition to any other fine imposed. It will be noted that deprivation of advantages is achieved by imposing an additional criminal fine" (Devine, 1989:46).

5.6 STATISTICAL BREAKDOWN OF CRIMES INVESTIGATED BY THE WATER WING

In order to obtain statistical information pertaining to crimes investigated or attended to by the Water Wing, researcher approached the South African Police Headquarters, Pretoria for assistance in this regard. The main purpose of obtaining such information rests mainly on the idea to

render a brief indication of the functional inclination of the daily activities of the Water Wing. To reiterate, the very *raison d'etre* of the Water Wing can be found in the following statement.

> "The Water Wing of the police performs normal police activities, the only difference being that these activities are carried out on water. Their activities consist of two components, namely reactive action and crime prevention" (SAP Yearbook, 1992:189).

For the purpose of a statistical breakdown of crimes handled by the Water Wing, information in this regard was requested for the period 1 July 1992 till 30 June 1993. Only crimes handled by the coastal Water Wings are included in the statistics[3].

5.6.1 Common law crimes

TABLE 1: BREAKDOWN OF PROPERTY CRIMES FOR THE PERIOD 1 JULY 1992 TILL 30 JUNE 1993

TYPES OF PROPERTY CRIME	FREQUENCY (N)	PERCENTAGE (%)
Theft (ordinary)	95	58,28
Housebreaking[1)]	14	8,59
Possession of stolen property	11	6,75
Malicious damage to property	6	3,68
Robbery	28	17,18
Fraud	9	5,52
TOTAL	163	100,00

1) With intent to steal and theft or to commit an offence unknown to the public prosecutor.

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3. Crime statistics supplied by Lieut. Col. Brian Van Niekerk, SAPS Headquarters, Pretoria.

According to Table 1, a total of 163 cases of property crimes were attended to by members of the respective coastal Water Wings. Theft cases, namely 95 (58,28%) outnumbered other property crimes such as robbery (28 or 17,18%), housebreaking (14 or 8,59%), possession of stolen property (11 or 6,75%), fraud (9 or 5,52%) and malicious damage to property (6 or 3,68%). It is important to note that the above-mentioned crimes are property crimes *per se*, and fall within the scope of the common law (non-statutory) category of crime - see par. 5.4.

TABLE 2: BREAKDOWN OF VIOLENT CRIMES FOR THE PERIOD 1 JULY 1992 TILL 30 JUNE 1993

TYPES OF VIOLENT CRIME	FREQUENCY (N)	PERCENTAGE (%)
Murder	3	3,26
Assault[1)]	80	86,96
Culpable Homicide	9	9,78
TOTAL	92	100,00

1) Both common assault and assault G.B.H. (i.e. to do grievous bodily harm).

Table 2 shows that 80 (86,96%) assault cases were attended to by the Water Wing, while 9 (9,78%) cases of culpable homicide and 3 (3,26%) murder cases received initial attention by these Units.

TABLE 3: STATUTORY OFFENCES UNDER CODE 500 FOR THE PERIOD 1 JULY 1992 TILL 30 JUNE 1993

TYPES OF STATUTORY OFFENCE	FREQUENCY (N)	PERCENTAGE (%)
Possession of or trading in habit-forming drugs (dagga)	54	55,10
Possession of dangerous weapons	11	11,22
Illegal possession of fire-arms	33	33,68
TOTAL	98	100,00

From Table 3 it appears that 54 (55,10%) cases of possession of dagga, 33 (33,68%) cases of illegal possession of fire-arms and 11 (11,22%) instances of possession of dangerous weapons were attended to at harbours and adjacent premises.

TABLE 4: BREAKDOWN OF STATUTORY OFFENCES UNDER THE SEA FISHERY ACT (ACT 12 OF 1988) FOR THE PERIOD 1 JULY 1992 TILL 30 JUNE 1993

OFFENCE	FREQUENCY (N)	PERCENTAGE (%)
General[1)]	128	30,05
Prawn	1	0,23
Abalone	287	67,37
Oyster	10	2,35
TOTAL	426	100,00

1) E.g. possession of undersized fish, illegal possession of bottom fish, etc.

Table 4 shows that 287 (67,37%) cases of illegal possession of Abalone were reported by members of the Water Wing, while 128 (30,05%) cases of general offences under the Sea Fishery Act regulations were handled.

5.2.6 Statutory offences

TABLE 5: BREAKDOWN OF OTHER RELATED STATUTORY OFFENCES FOR THE PERIOD 1 JULY 1992 TILL 30 JUNE 1993

TYPES OF OFFENCES	FREQUENCY (N)	PERCENTAGE (%)
Drunkenness	79	3,41
Unlicensed vessel	279	12,05
Insufficient safety equipment	223	9,63
Merchant Shipping Act (Act 57 of 1951)	394	17,01
Oil pollution	86	3,71
Liquor related offences	5	0,22
Marine Trade Regulations	159	6,87
Trespassing	181	7,82
Road Traffic Act	41	1,77
Pollution (other)	110	4,75
Parks Board regulations	46	1,99
Driving under influence of liquor on water	8	0,35
Nature Conservation - illegal possession of protected game	12	0,52
Prohibited immigrant	317	13,69
Local Authorities' Ordinances	178	7,66
Harbour Regulations	193	8,33
Using of vehicle without owners consent	5	0,22
TOTAL	2316	100,00

Table 5 shows a total of 2316 cases of statutory offences attended to by the Water Wing for the period 1 July 1992 till 30 June 1993. Three hundred and ninety four cases (17,01%) of violation of the Merchant Shipping Act were handled, while 317 (13,69%) prohibited immigrants were brought to book. A total of 279 (12,05%) unlicensed vessels were detected, while 223 (9,63%) vessels (mainly deep-sea ski-boats) were found with insufficient safety equipment. It also appears that 86 (3,71%) cases of oil pollution and 110 (4,75%) cases of pollution other than oil pollution have been attended to during the period under review. Contraventions of the Local Authorities' Ordinances accounted for 178 (7,66%) and in 193 (8,33%) cases, violations of harbour regulations were detected.

The table further reveals that the following cases also occurred :

* 79 (3,41%) cases of drunkenness;
* 181 (7,82%) cases of trespassing;
* 46 (1,99%) cases of Parks Board Regulations;
* 41 (1,77%) under the Road Traffic Act; and
* 12 (0,52%) cases of illegal possession of protected game.

5.7 WORKSHOPS: 1991-1994

Researcher deemed it necessary to also refer to the following Workshops presented by the Water Wing in the form of seminars :

* Water Wing workshop, 1991 (Volumes 1, 2 and 3);
* Water Wing workshop, 1992 (Volumes 1-5); and
* Water Wing workshop, 1993 (Volumes 1-5).

The discussion that follows, is mainly intended to highlight certain issues pertaining to the organization and administration of the Water Wing. Researcher is convinced that information forthcoming from the foregoing workshop documentation, will shed more light on the functional set-up of this specialized unit; that it will yield more crime statistics (especially for 1991); and that problem areas relating to the smooth functioning of this unit can be detected.

It is, however, important to note that these workshop documentation do not render in all respects a complete crime picture by all the different units of the Water Wing. In some instances, only arrest statistics (reactive policing) are furnished. Further, no distinction has been made between property and violent crimes on the one hand and common law crimes and statutory offences on the other hand. Nevertheless, researcher has put every effort to the test to secure as much as possible usable crime data.

5.7.1 Workshops: 25 February till 1 March 1994

In his opening address, Major-General N.H. Acker clearly emphasized the logistical and functional functions of the Water Wing.

Being members of the uniform branch, Major Van Niekerk stressed the necessity of clear guidelines for the Water Wing with regard to its organizational structure. Problem identification mainly centred around determination of a proper command structure, namely whether the Water Wing should serve under the command of a District Commissioner or Station Commander (Workshop, 1991:1).

Major Van Niekerk also explained the task and role of the Water Wing in terms of section 5 of the Police Act, namely the prevention and investigation of crime - on sea as well as the adjacent coastal area.

Captain Watt, Department of Transport, highlighted certain problems pertaining to the Merchant Shipping Act - especially with regard to a lack of a sound knowledge of the provisions of this act. There appears to be "two sets of regulations concerning small boats, i.e. commercial boats of 25 tons and under and boats used for sport and recreation of 100 tons and under" (Watt, 1991:19). The issue concerning contraventions of the Merchant Shipping Act also came under the spotlight, namely that such violations by initiated and channelled through the Department of Transport. It also appears that a lack of knowledge of the Merchant Shipping Act prevails among magistrates and prosecutors:

> " ... we would like to contribute this to the fact that the magistrate and the police knew nothing about the Merchant Shipping Act ... that all prosecutors and those involved with policing are educated on the Merchant Shipping Act" (Workshop, 1991:20).

Close co-operation between the Department of Transport and the Water Wing regarding contraventions of the Oil Pollution Act also received attention. Co-ordination of efforts between the Water Wing and the National Sea Rescue Institute (NSRI) prompted the idea of having a proper understanding of what actual resources are available during rescue situations.

Security issues in and around harbours, the responsibility of PORTNET, also came under discussion and it was pointed out by warrant officer Joubert that: "In Durban, Portnet has its own security system which, at times, is worse than the private organisations doing the same job" (Workshop, 1991:31). Privatization of security functions seems to be an answer, because sub-standard security practices pose a threat (risk) to the social order in the form of commission of crimes.

The Natal Parks Board was formed in 1947 as a statutory body responsible for its own destiny. It is controlled by the Administration of Natal. The Annual Report of the Natal Parks Board shows the following statistics for 1989-1990 :

Beach patrols	:	3436
Boat patrols	:	152
Lake patrols	:	26
River patrols	:	153
Bush patrols	:	184
Arrests	:	900
Admission of guilt (fines) accumulated	:	R149 895,00
Official warnings	:	973 (Workshop, 1992, vol. 2).

In his closing address, Major Van Niekerk summarized the functions of the various role-players in harbour policing as follows :

* NSRI - to rescue human lives;
* Sea Fishery Act - to protect our fish resources;
* Natal Parks Board - to protect the fauna and flora;
* Customs - to protect the financial income of the state; and
* SA Police - to maintain law and order (Workshop, 1992, vol. 2).

5.7.2 Workshop: 24 March 1992

This seminar, presented at the South African Police Mechanical School, Benoni, dealt mainly with police administration aimed as a guideline for members of the Water Wing. The contents will not be discussed any further. The seminar presented on 26 March 1992, dealt exclusively with maritime search and rescue.

Dernier (1992:cf.) pointed out that maritime search and rescue in South Africa and its territorial waters is given effect to in the Merchant Shipping Act, Act 57 of 1951 as well as the 1974-International Convention for the Safety of Life at Sea (The 74 SOLAS Convention). South Africa, as a signatory to this Convention, has the responsibility to ensure that necessary arrangements are made for the rescue of persons in distress at sea around its coast. This is being done by the Department of Transport.

The operational organization of the maritime section of SASAR, an organization acting under the auspices of the Department of Transport, and headed by the head of the Maritime SAR operations who has under his control the Maritime Rescue Co-ordination Centre (MRCC), makes it possible for other organizations such as the Water Wing of the South African Police to act as resources for the rescue co-operation centres (Dernier, 1992:cf.). Figure 1 depicts the organigram of search operations in South Africa, while Figure 2 shows the roles of the maritime force.

5.7.3 Workshop: 26 March 1994

This workshop offered discussions concerning questions pertaining to deep sea angling, as well as an exposition of functional activities of the Richards Bay and Durban Water Wing units.

(a) <u>Deep Sea Angling</u>

In terms of the Sea-Shore Act, no 21 of 1935 the State President can delegate a Local Authority his powers to administrate the sea-shore within that Local Authorities area of jurisdiction.

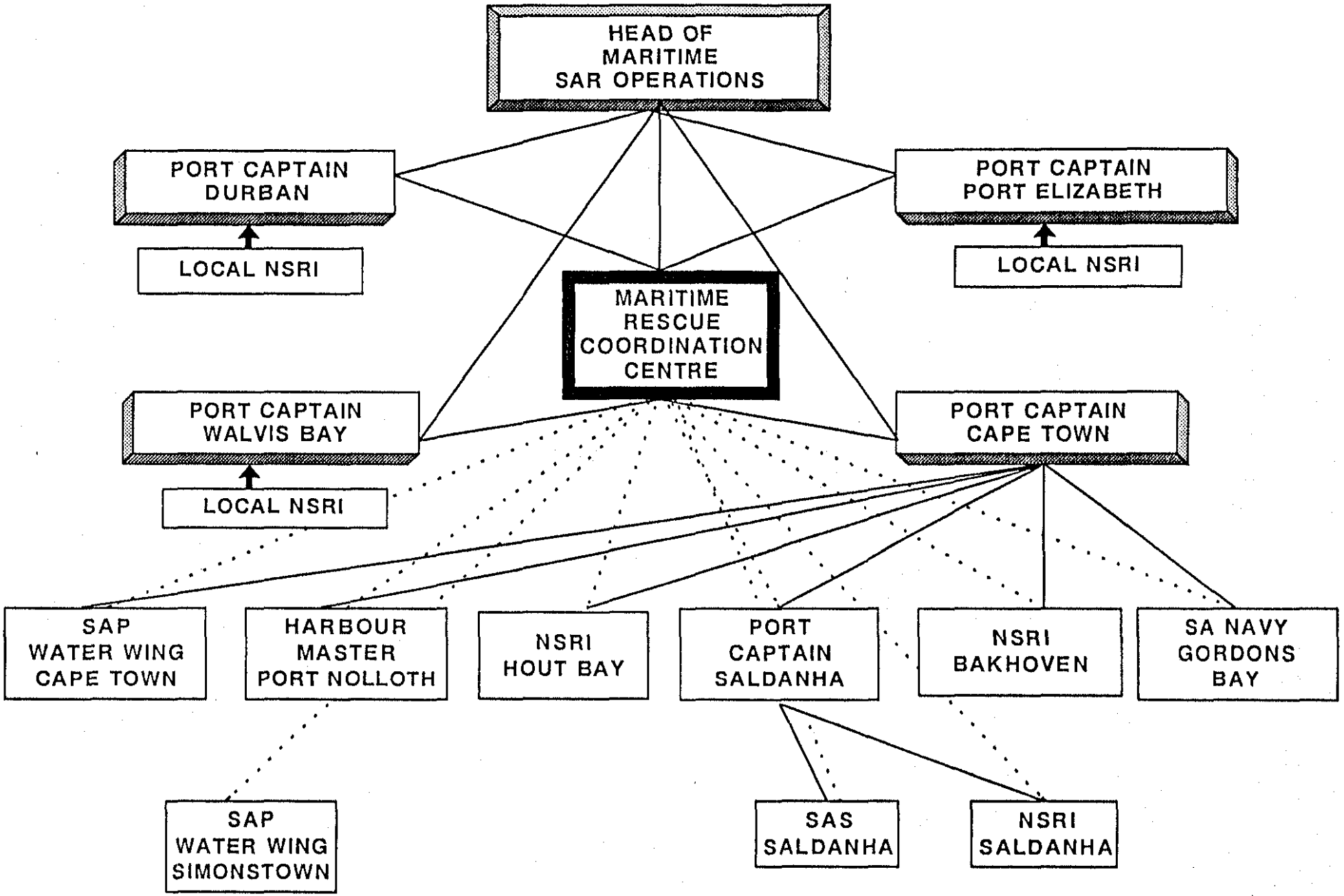
In places along the coast line, Local Authorities in turn have appointed local ski-boat clubs to do the work for them. In most incidents such ski-boat club is affiliated to the South African Deep Sea Angling Association (SADSAA).

The Sea-Shore Act, no 21 of 1935 controls all activities on the sea-shore (on the beach) and in turn, the Merchant Shipping Act, Act 57 of 1951, controls all activities at sea (on the water).

The Sea-Shore Act, no 21 of 1935, makes the State President the owner of the sea-shore and permits any member of the public to use such sea-shore (section 13(c)). The sea-shore is defined as "the water and land between the low water mark and the high-water mark". A local Authority cannot stop any member of the public access or the use of the sea-shore. However, it can build amenities such as parking, change rooms and slipways. A reasonable fee can then be charged if such amenities are used. If the local ski-boat club does this work on behalf of the Local Authority it may only impose such rules as may be laid down by the Local Authority and it may under no circumstances impose any additional rule, such as club or SADSAA rules. Further, the Sea-Shore Act is limited to the sea-shore and such club has no authority to impose rules pertaining to the sea as the Local Authority has no jurisdiction over the sea. Under the Merchant Shipping Act, no 57 of 1951, REGULATIONS REGARDING SHIPS OR SMALL VESSELS USED SOLELY FOR SPORT OR RECREATION (Government Gazette no 10042 dated 20 December 1985, Government Notice R 2799) and STANDARDS OF SEAWORTHINESS, MANNING AND LICENSING OF VESSELS REGULATIONS, 1986 (Government Gazette no 10252 dated 30 May 1986, Government notice R 1025) were gazetted pertaining to the water adjoining the sea-shore (Workshop, 1992:1-5).

FIGURE 1

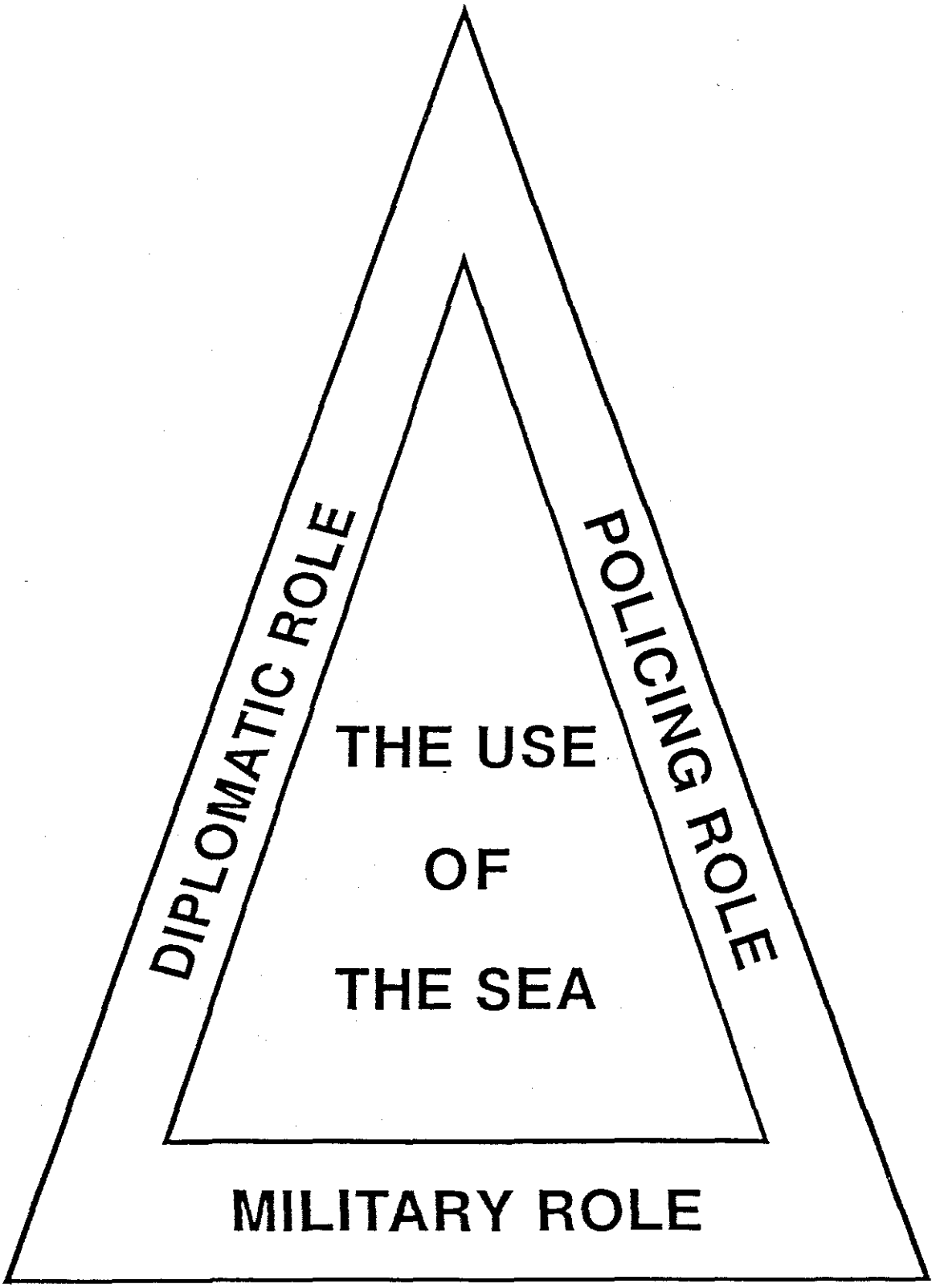
SEARCH OPERATIONS



Source: Workshop, 1992

FIGURE 2

ROLES OF THE MARITIME FORCE



Source: Workshop, 1992

(b) Richards Bay Water Wing

The territorial area of the Richards Bay Water Wing extends from the Tugela River in the South to Kosi Bay in the North.

Crime prevention activities during 1991, included the following :

Sea and coastal patrols: a total of 153 sea and coastal patrols were executed as crime prevention programmes and to also enhance visible role-fulfilment. Vehicle patrol on land accounted for 307 actions, while 93 foot patrols were undertaken in the harbour of Richards Bay and coastal holiday resorts.

Arrest statistics for 1991 are shown in table 6.

TABLE 6: ARREST STATISTICS FOR 1991 - RICHARDS BAY WATER WING

TYPES OF CRIMES	FREQUENCY (N)	PERCENTAGE (%)
Malicious damage to property	1	0,41
Oil pollution	3	1,22
Housebreaking	3	1,22
Theft	8	3,27
Possession of marijuana	4	1,63
Violations of harbour regulations	134	54,70
Violations: Sea Fishery Act	71	28,99
Violations: Merchant Shipping Act	21	8,56
TOTAL	245	100,00

According to Table 6, the majority of arrests were effected under the regulations pertaining to the Merchant Shipping Act, namely 134 (54,70%). A total of 71 (28,99%) persons were arrested for contravention of the Sea Fishery Act and 21 (8,56%) under the Merchant Shipping Act. Eight (3,27%) arrests were effected for theft, 4 (1,63%) for the illegal possession of marijuana (dagga) and 3

(1,22%) each for housebreaking and contravention of the Oil Pollution Act. Only 1 (0,41%) case of malicious damage to property necessitated an arrest.

TABLE 7: BREAKDOWN OF CRIMES ATTENDED TO BY THE RICHARDS BAY WATER WING DURING JANUARY - DECEMBER 1991

TYPE OF CRIME BY AREAS	FREQUENCY (N)	PERCENTAGE (%)
MBAZWANA		
Housebreaking	7	14,29
Theft	41	82,67
Assault	1	2,04
Sub-total	49	100,00
MTUBATUBA		
Housebreaking	23	29,87
Theft	34	44,16
Assault	16	20,78
Malicious damage to property	4	5,19
Sub-total	77	100,00
RICHARDS BAY		
Housebreaking	10	8,26
Theft	60	49,59
Assault	26	21,49
M.I. to P.[1)]	3	2,48
Possession - marijuana	10	8,26
Reckless/negligent driving	6	4,97
D.U.I.[2)]	2	1,65
Armed robbery	2	1,65
Rape	2	1,65
Sub-total	121	100,00
MANDINI		
Housebreaking	8	22,22
Theft	19	52,78
Robbery	2	5,56
Assault	4	11,11
Murder	3	8,33
Sub-total	36	100,00

NYONI		
Housebreaking	2	33,33
Theft	2	33,33
Assault	1	16,67
Illegal trading in liquor	1	16,67
Murder	3	8,33
Sub-total	6	100,00
TOTAL	289	100,00

1) M.I. to P. = Malicious Injury to Property
2) D.U.I = Driving under influence of liquor

According to Table 7, theft outnumbered all the other forms of crimes and statutory offences. A total of 115 (39,80%) cases of theft have been attended to by the Richards Bay Water Wing during 1991. Assault cases, namely 48 (16,61%) also occurred within this jurisdiction and 50 (17,30%) housebreaking cases were attended to. It appears also that 6 (2,08%) murder cases were attended to.

(c) Workshop: Durban Water Wing

During the year 1991, functional policing centred around proactive and reactive actions in and around Durban's Maydon Quay.

(a) Proactive actions

*	Foot patrols	=	1 638
*	Vehicle patrols	=	573
*	Boat patrols	=	394
*	Inspection of ski-boats	=	1 057
	Total	=	3 662

TABLE 8: STATUTORY OFFENCES ATTENDED TO BY THE DURBAN WATER WING FOR 1991

TYPE OF OFFENCE	FREQUENCY (N)	PERCENTAGE (%)
Unlicensed vessel	8	3,39
Unseaworthy ski-boats	6	2,54
Anchoring in main channel	4	1,69
Illegal angling in harbour	30	12,71
Trespass on ships	37	15,68
Trespass in harbour	71	30,08
Illegal possession of marijuana	2	0,85
Swimming in harbour	3	1,27
Contravening restricted area by ski-boats	15	6,36
Possession of illegal bait	27	11,44
Possession of undersized fish	17	7,20
Oil pollution	7	2,97
Miscellaneous offences	9	3,82
TOTAL	236	100,00

Table 8 shows that a total of 236 statutory offences were detected during 1991. Trespassing on ships, namely 37 (15,68%) and in the harbour 71 (30,08%) appeared to be a major concern. Illegal angling in the harbour (30 or 12,71%), possession of illegal bait (27 or 11,44%), possession of undersized fish (17 or 7,20%) and using unlicensed and unseaworthy vessels (14 or 5,93%) also appeared to be the order of the day. Seven (2,96%) cases of oil pollution were also detected.

TABLE 9: COMMON LAW CRIMES ATTENDED TO BY THE DURBAN WATER WING FOR 1991

TYPE OF CRIME	FREQUENCY (N)	PERCENTAGE (%)
VIOLENT CRIMES		
Attempted murder	1	4,35
Assault	2	8,70
Sub-total	3	13,05
PROPERTY CRIMES		
Housebreaking	4	17,39
Theft of motor vehicle	6	26,07
Malicious damage to property	1	4,35
Robbery	1	4,35
Sub-total	12	52,16
OTHER		
Driving under influence	4	17,39
Personification of police	1	4,35
Importing of cycads	1	4,35
Use of AIII craft after hours	2	8,70
Sub-total	8	34,79
TOTAL	23	100,00

TABLE 10: ARREST STATISTICS FOR 1991 BY EAST LONDON WATER WING

CRIME CATEGORY	FREQUENCY (N)	PERCENTAGE (%)
Common law crimes	57	8,20
Statutory offences: Sea Fishery Act	312	44,90
Other	326	46,90
TOTAL	695	100,00

Table 10 shows that, out of a total of 695 cases, 57 (8,20%) were common law crimes handled by this unit, while 312 (44,90%) offences were committed under the Sea Fishery Act. Other statutory offences detected, were 326 (46,90%). These offences most probably included trespassing, oil pollution, etc.

The following functions were also executed :

*	Inspection of small vessels	:	105
*	Owners of small vessels charged	:	31
*	Drownings attended to	:	23
*	Written warnings	:	303
*	Cases re-opened	:	17
	TOTAL	:	579

On 23 April 1991, a fishing vessel, the "Capitan George II" had been confiscated for having illegally used guillnets. All crew on board were charged and convicted. On another occasion, a second fishing vessel, "Petros I", had also been confiscated for a similar offence. Both vessels were later sold in execution to defray any costs incurred.

(e) Water Wing Port Elizabeth

The following proactive patrols were discharged by this unit during 1991 :

*	Boat patrols in harbour and Algoa Bay	:	106
*	Boat patrols along the coast and other areas	:	16
*	Vehicle patrol in harbour and on beaches	:	71
*	Vehicle patrol in Port Elizabeth harbour	:	736
	TOTAL	:	929

Other related functions executed were :

*	Vessels inspected	:	188
*	Skippers inspected	:	29
*	Warnings	:	56
*	Stowaways[4]	:	2
	TOTAL	:	275

According to Table 9, a total of 23 common law offences were handled by the Durban Water Wing. A total of 6 (26,07%) motor vehicles were stolen, while 4 (17,39%) cases of housebreaking were reported. Only 3 (13,05%) violent crimes were attended to. Property crimes accounted for just over half of the total cases handled during 1991.

From the data contained in tables 8 and 9, it appears that responsive action with regard to B-type offences[5] (statutory) by the Water Wing, had a positive influence on A-type crimes[6] (common law) in that the latter showed a significant decrease for 1991 (Workshop, 1992, vol. 3).

(d) East London Water Wing

Prevention (proactive) activities for 1991 included the following :

*	Sea patrols between Transkei and Ciskei	:	154
*	Vehicle patrols	:	288
	TOTAL	:	442

Although a statistical breakdown of crimes attended to appears to be somewhat incomplete, researcher nevertheless managed to secure the following arrest statistics for 1991.

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4. Persons hiding aboard ships or aircraft in order to gain free passage.

5. Crimes above code 500 i.t.o. Code List of Crimes

6. Crime under code 500 i.t.o. Code List of Crimes

Crime statistics concerning common law crimes and statutory offences handled by the Port Elizabeth Water Wing for 1991 are reflected in table 11.

TABLE 11: CRIMES ATTENDED TO BY THE PORT ELIZABETH WATER WING DURING 1991

TYPES OF CRIMES/OFFENCES	FREQUENCY (N)	PERCENTAGE (%)
A. COMMON LAW CRIMES		
Housebreaking	12	10,91
Theft (common)	46	41,82
Theft of boats	5	4,55
Theft from boats	29	26,36
Assault	15	13,64
Murder	3	2,72
Sub-total	110	100,00
B. STATUTORY OFFENCES		
Possession of marijuana	4	7,27
Sea Fishery Act	51	92,73
Sub-total	55	100,00
TOTAL	165	100,00

According to Table 11, a total of 110 common law and 55 statutory crimes were attended to by the Port Elizabeth Water Wing. Theft (including theft of boats and from boats), totalled 80 (72,73%) under the category common law crimes. A total of 12 (10,91%) cases of housebreaking were also attended to by this unit. Violent crimes were committed in 18 (16,36%) of the cases.

A total of 51 (92,73%) formal charges were laid under the Sea Fishery Act, while 4 (7,27%) cases of illegal possession of marijuana (dagga) were detected (Workshop, 1992, vol. 4).

(e) Mossel Bay Water Wing

During 1991, a total of 736 proactive patrols (including foot patrol, sea patrol and vehicle patrol) were executed at sea, on beaches and coastal areas.

Following below, is a statistical breakdown of crimes under the common law as well as statutory offences by area attended to by this unit.

TABLE 12: BREAKDOWN OF CRIMES ATTENDED TO BY THE MOSSEL BAY WATER WING DURING 1991 BY AREA

TYPE OF CRIME BY AREA	FREQUENCY (N)	PERCENTAGE (%)
MOSSEL BAY		
Housebreaking	27	29,67
Malicious damage - property	4	4,40
Possession of stolen property	1	1,10
Theft	37	40,66
Robbery	3	3,30
Indecent assault	1	1,10
Rape	1	1,10
Assault (aggravating/common)	11	12,09
Crimen injuria	1	1,10
Illegal trading - dagga	2	2,20
Possession of dagga	3	3,30
Sub-total	91	100,00
GEORGE		
Housebreaking	13	15,12
Malicious damage - property	9	10,47
Theft	15	17,44
Theft out of motor vehicle	19	22,09
Theft of motor vehicle	1	1,16
Arson	3	3,49
Culpable homicide	1	1,16
Assault (aggravating/common)	14	16,28
Attempted rape	1	1,16
Rape	1	1,16
Crimen injuria	2	2,33
Possession of dagga	5	5,81
Illegal trading - dagga	2	2,33
Sub-total	86	100,00

PLETTENBERG BAY		
Housebreaking	23	34,33
Theft	35	52,24
Robbery	1	1,49
Attempted rape	1	1,49
Rape	1	1,49
Possession of dagga	6	8,96
Sub-total	67	100,00
GREAT BRAK RIVER		
Housebreaking	27	64,29
Theft	6	14,29
Theft out of vehicle	2	4,76
Malicious damage - property	4	9,52
Arson	1	2,38
Using vehicle without consent	1	2,38
Assault (common)	1	2,38
Sub-total	42	100,00
KNYSNA		
Housebreaking	27	43,55
Theft	31	50,00
Possession of dagga	3	4,84
Assault (common)	1	1,61
Sub-total	62	100,00
STRUISBAAI		
Housebreaking	3	18,75
Theft	9	56,25
Malicious damage - property	1	6,25
Assault (common)	2	12,50
Crimen injuria	1	6,25
Sub-total	16	100,00
HEIDELBERG		
Housebreaking	8	47,06
Theft	5	29,41
Assault (common)	3	17,65
Incest	1	5,88
Sub-total	17	100,00

STILBAAI		
Housebreaking	11	50,00
Theft	1	4,55
Malicious damage - property	1	4,55
Murder	1	4,55
Assault (aggravating/common)	7	31,82
Reckless/negligent driving	1	4,55
Sub-total	22	100,00
TOTAL	403	100,00

Source: Water Wing Workshop, 1992, vol. 4.

Table 12 shows that housebreaking (139 or 34,49%) and theft (139 or 34,49%) are equally responsible for almost two-thirds of the make-up of the crime pattern in the Mossel Bay Water Wing jurisdiction. As far as violent crimes are concerned, it appears that assault cases (39 or 9,68%) outnumbered all other types of violent crimes.

(f) Simons Town Water Wing

The Water Wing based at Simons Town is responsible for policing the territorial waters from False Bay to Cape Point and Cape Agulhas as well as the adjacent inland waters.

The following patrols were executed during 1991 (Water Wing Workshop, 1992, vol. 4) :

* Sea patrols : 163
* Vehicle patrols : 131
* Foot patrols : 75

TOTAL : 369

The following crime statistics for the period 1 January till 31 December 1991 are reflected in Table 13.

TABLE 13: BREAKDOWN OF CRIMES HANDLED BY THE WATER WING OF SIMONS TOWN DURING 1991

TYPES OF CRIME	FREQUENCY (N)	PERCENTAGE (%)
Housebreaking	6	5,50
Theft	24	22,02
Malicious damage - property	2	1,83
Assault	1	0,93
Liquor and related offences	19	17,43
Sea Fisheries Act	57	52,29
TOTAL	109	100,00

Table 13 shows that, as far as property crimes are concerned, 24 (22,02%) theft cases occurred in the Simons Town jurisdiction, while violations of the regulations under the Sea Fishery Act (57 or 52,29%) were higher than other statutory violations such as offences pertaining to liquor, namely 19 (17,43%)(Water Wing workshop, 1992, vol. 4).

(g) Water Wing Saldanha

The Saldanha Water Wing conducted the following patrols during 1991 :

* Sea patrols : 60
* Vehicle patrols : 80
* Foot patrols : 45

TOTAL : 185

Only crime statistics for the last quarter of 1991 are available.

TABLE 14: BREAKDOWN OF CRIMES ATTENDED TO DURING 1991 - SALDANHA WATER WING

TYPES OF CRIME	FREQUENCY (N)	PERCENTAGE (%)
Housebreaking	28	10,85
Theft	38	14,73
Robbery	9	3,49
Malicious damage to property	20	7,75
Possession - stolen property	27	10,47
Theft of motor vehicle	4	1,55
Assault	37	14,34
Culpable homicide	6	2,33
Possession of dagga	64	24,81
Crimen injuria	25	9,68
TOTAL	258	100,00

Table 14 clearly shows that 126 (48,84%) cases of property crimes occurred within the jurisdiction of this unit. Violent crime, such as assault (37 or 14,34%) and culpable homicide (6 or 2,33%), were also attended to. A total number of 64 (24,81%) cases of illegal possession of marijuana (dagga) were detected. Twenty-five instances of crimen injuria (9,68%) were reported and investigated.

(h) Walfish Bay Water Wing

TABLE 15: BREAKDOWN OF CRIMES ATTENDED TO DURING 1991 BY THE WALFISH BAY WATER WING

TYPES OF CRIMES[1)]	FREQUENCY (N)	PERCENTAGE (%)
Housebreaking	4	7,55
Theft	4	7,55
Possession of stolen property	3	5,66
Fraud	2	3,77
Smuggling[2)]	1	1,89
Malicious damage - property	1	1,89
Assault	1	1,89
Liquor related offences	12	22,64
Drug related offences	2	3,77
Obstructing police official	1	1,89
Trespassing	21	39,61
Inconsiderate driving - vehicle	1	1,89
TOTAL	53	100,00

1) Statistics for April-December 1991 only
2) Nature of goods unknown

Table 15 reveals that about one-third of the crimes recorded by the Walfish Bay Water Wing, were crime *mala in se*, namely 16 or 30,19 percent. Statutory crimes (i.e. crimes *mala prohibita*) totalled 37 or 69,81 percent. Likewise, property crimes (15 or 28,30%) outnumbered violent crimes, as only 1 (1,89%) assault case came to the attention of the police during the nine-month period under review.

5.8 SUMMARY

This chapter outlines the issue surrounding functional (operational) harbour policing - especially as it originated in England along with the evolution of modern policing, introduced by Sir Robert Peel in 1829, as well as crimes attended to by the Water Wing of the South African Police Service. Statistical analyses of data show that property crime, especially theft and housebreaking outnumbered personal or violent crimes attended to or investigated by the different units of the Water Wing. On the proactive side, harbour policing also plays an important role in the execution of the law. Through visible role-fulfilment (by means of foot, vehicle and boat patrolling), members of the Water Wing succeeded in rendering an invaluable service to its clientele, the public and by doing so, has given expression to the preservational and protective aspects of social control.

CHAPTER SIX

CONCLUSIONS AND RECOMMENDATIONS

6.1 INTRODUCTION

From what has been discussed so far, it appears that harbour policing has a long and colourful history. However, it should be noted that the Water Wing of the South African Police Service (SAPS) in its present form, came into being during 1986 as an independent specialized unit (SAP Yearbook, 1992:187).

Having discussed the role and functions of harbour policing in South Africa, the question that arises, centres around the make-up of their future role and functions. William Tafoya (1986:cf.) predicts an acceptance of community involvement by law enforcement agencies that will inevitably cause a shift from a legalistic orientation to a community-service style of policing - most probably as a result of political change. Political processes contribute towards moulding police operational policies as well as the services provided by police officers (Gaines, *et al.* 1994:417, 11).

The police constantly find themselves in close interaction with the public. The police, and more specifically members of the Water Wing, have to deal with holiday-makers during holidays and over weekends who flock to beaches and holiday resorts. Included are divers, fishermen, etc. The Richards Bay Water Wing, for instance, reported the following statistics pertaining to visitors to various North Coast resorts for 1991 :

Sodwana : 70 000 divers per annum
50 000 fishermen

Cape Vidal : 4 500 divers per annum
10 000 fishermen

St. Lucia : 5 000 divers and
60 000 fishermen (Workshop, 1992 vol. 3).

As pointed out in chapter 4, the police (also members of the Water Wing) control crime in two basic ways, namely reactively and proactively. These types of policing represent ideal types: the former calls for the application of repressive measures, such as arrest, detention, interrogation, etc., while the latter is based on preventing crime, either by means of visible role-fulfilment through patrol or the employment of other deterrent measures (Travis, 1995:123).

Berkley (1960:169) opines that, through patrol, the great variety of formal and informal contacts can be transformed into a pattern of positive relationships. The mere sight of a patrolman makes citizens feel safe and secure, thereby promoting harmonious and peaceful co-existence, as order maintenance is at the core of the police task. The police are therefore, in a favourable position to control crime by enforcement of the laws (such as the Sea Fishery Act, Merchant Shipping Act, etc.) and by preventing crime (Travis, 1995:123:124).

Community policing suggests a model or style of policing where the police can organize a reactive form of crime prevention. While being still reactive (in a democratic way according to certain restrictions placed upon policing), crime control (especially in harbours and adjacent areas) becomes proactive through community organizations. Co-operation with community leaders and organizations has become imperative (Travis, 1995:159).

The preceding chapters suggest that harbour policing has become an indispensable component of the police role in society - especially to control crime and to render a service to the community.

6.2 CONCLUSIONS

This investigation, which appears to be very basic and fundamental in concept and design, reveals the historical development of harbour policing over almost a century. Through its Water Wing, the Sough African Police Service[1] succeeds in combating crime in South African harbours, at sea and areas adjacent to the sea. Following are some findings emanating from this research project :

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1. Formerly known as the South African Police.

6.2.1 Inter-organizational relationships

It has been observed that harbour policing, as a social phenomenon, primarily aims at reactive and proactive actions within its designated area of jurisdiction. Given the degree of harbour vulnerability, the Water Wing through its various units located in harbours stretching from the Indian to the Atlantic oceans, appears to be dependent upon certain other organizations or institutions for their effective functioning. The South African Transport Services (PORTNET), the National Sea Rescue Institute (NSRI), the Department of Nature Conservation, the South African Narcotics Bureau (SANAB), etc. are *inter alia* important "stakeholders" in securing peace and order in South African harbours and adjacent areas. An inter-organizational relationship between these role-players require mutual understanding and close co-operation in order to facilitate the common goal of order maintenance.

It should be noted that, through various symposia in the form of Workshops presented at Benoni, it became apparent that inter-organizational conflict exists - especially with regard to fulfilling certain functions between these role-players. However, researcher has decided no to discuss these conflict-producing situations in detail. Nevertheless, researcher will attempt to deal with some of it in the recommendations (see par. 6.3).

6.2.2 Education and training

Apart from enforcing common law crimes, members of the Water Wing are also responsible for the enforcement of statutory laws (see chapter 1) such as the Sea Fishery Act, Act 12 of 1988; the Merchant Shipping Act, Act 57 of 1951; Regulations pertaining the ships or small vessels used solely for sport and recreation in terms of section 356(1) of the Merchant Shipping Act, Regulations under the Marine Traffic Act, Act 2 of 1981, etc. It appears from chapter 5 that a general lack of knowledge regarding the functioning of these and other statutory legislation exists among criminal justice practitioners - especially members of the South African Police Service not normally attached to harbour policing functions.

6.2.3 South African Narcotics Bureau (SANAB)

From a policing point of view the role of the South African Narcotics Bureau, as it relates to harbour policing, appears to be of utmost importance. This specialized unit can render an invaluable form of supportive service to members of the Water Wing - especially as far as cases of illegal smuggling of drugs, fire-arms, protected wildlife, etc. are concerned.

6.2.4 National Sea Rescue Institute (NSRI)

Chapter 5 highlighted (although limited in scope) the importance of this agency. Rescues at sea, being the primary objective of the NSRI, should be fully recognized, as it also renders an invaluable service as far as saving of human life is concerned.

6.3 RECOMMENDATIONS

The following recommendations, forthcoming from personal observations by the researcher, are suggestive rather than prescriptive. This dissertation appears to be very basic and fundamental in concept and design. Literature on harbour policing seems to be scanty and almost non-existent. It is also evident that the Water Wing, as a specialized unit, received very little attention and recognition - both institutionally and academically.

6.3.1 Research

It has been pointed out (chapter 1) that this research project seems to be the first of its kind in South Africa. It does, therefore, not claim completeness (due to scanty literature). It is recommended that further scientific research be undertaken into the role and function of harbour policing with special emphasis on the operational activities of inland units of the Water Wing. Progress without research is incomprehensible. Aspects for further research should include :

* the proper role of the South African Navy with regard to harbour policing;
* the role and functions of the South African Transport Services (PORTNET). Attention should also be devoted to this organization's role in the policing of matters pertaining to South African harbours; and
* the role of surrogate institutions and/or units such as the National Sea Rescue Institute (NSRI), the South African Narcotics Bureau (SANAB), National Parks Board, etc.

6.3.2 In-service training

Legislation pertaining to the sea and coastal harbours appears to be in abundance. Lack of knowledge regarding the provisions of statutory legislation such as the Sea Fishery Act, the Merchant Shipping Act, etc. among criminal justice practitioners appears to be an area of great concern. Member of the South African Police Service who are not normally attached to harbour policing, public prosecutors and judicial officers such as magistrates should from time to time be updated on legal issues pertaining to harbour policing.

It is, therefore, strongly recommended that legal officers of the South African Police Service stationed at District and Regional Commissioner's offices in areas where units of the Water Wing operate, be utilized to assist in lecturing all legal aspects pertaining to harbour policing at station level. It is imperative that all the members of the Force receive in-service training in this regard. The notion that harbour policing is confirmed to units of the Water Wing only, should be immediately abolished. Legal officers could play a vital role in compiling a notebook for all members of the Force regarding the provisions of legislation pertaining to the sea and harbours.

It is also recommended that country-wide seminars be conducted where units of the Water Wing are operating in order to disseminate information about harbour policing. Law professionals such as Professor D.J. Devine of the University of Cape Town could be profitably used to steer a committee on the practical and legal implications for harbour policing in South Africa.

It is also recommended that members of the Water Wing be subjected to continuous refresher courses to ensure a constant level of competence and efficiency.

6.3.3 Closer co-operation

It has been pointed out that various "stakeholders" exist regarding policing the sea and harbours in South Africa, such as the SA Navy, SANAB, NSRI, etc. The principle that policing never occurs in a vacuum, should also hold for harbour policing. Mutual co-operation between the Water Wing and other "stakeholders" should be prioritized. It is recommended that representive committees be established which will include all the various "stakeholders" to promote closer co-operation as far as harbour policing is concerned. Sir Robert Peel's policing principle, namely that the police are the public and the public are the police should not only be confined to those agencies responsible for maintaining social order on the sea and in the harbours, but extended to also incorporate members of the community.

6.3.3.1 Community policing

Roberg and Kuykendall (1990:463) opine that community policing "is both a philosophy and a method of policing; it is based on building a relationship of mutual trust with all segments of the community, listening carefully to community concerns, and responding to problems based on systematic analysis."

Community policing as far as harbours and adjacent coastal areas are concerned, should be given due consideration. Recent incidences at the Wild Coast in the erstwhile Transkei territory where precious sea life was

plundered, should be indicative of the importance of community consultation with regard to the policing of the coast. Matters pertaining to harbour policing should also be prioritized on the agendas of community forums in coastal areas. Van Heerden, (1985:131) clearly states that the maintenance of the social order is not the sole task of the police. Consensus policing should be capable of creating sound relationships between the police and the public in fostering a partnership.

6.3.4 **Crime statistics**

"Official statistics are those that are provided by criminal justice agencies as official records of their activities" (Travis, 1995:91). Official statistics comprise of police, courts and correctional statistics. The South African Police Service is responsible for reporting crime statistics to the Department of Central Statistical Service in Pretoria, which, in turn, is responsible for the compilation of the Annual Crime Report (ACR).

Van der Walt (1964:119) avers that "Statistics also provide a clear picture of the distribution of crime over different places and regions ... By applying to comparative method it is therefore possible to bring the most of the important facts to light ... [T]hey not only indicate the extent of crime in a particular country or community, but also give a survey of and insight into the movement of crime over a period of years."

It is therefore, as a matter of urgency, recommended that all the different units of the Water Wing be instructed to record all types of crime and misdemeanours that occur within their respective jurisdictions. To this end, it is further recommended that all common law crimes as well as statutory offences be reported separately on a monthly basis to enable Headquarters to compile a comprehensive crime report about crimes committed on sea, harbours and adjacent coastal areas. Other related activities such as patrols, rescues, cases of drowning, etc. should also be properly and separately recorded for future reference and research purposes.

6.3.5 Security issues in harbours

Security in and around South African harbours is of utmost importance to ensure the safety and freedom of everybody on such premises.

Bristow (1992:1) is of the opinion that present-day "tightening budgets, cutting back on services, training and costs, coupled with labour related problems ... " are all factors that should be given due consideration where security is at stake. The privatization of the South African Transport Services necessitate proper security measures at both airports and harbours. A careful decisions regarding the implementation of "in-house" or "contract" security seems unavoidable. Consideration with regard to the type and level of service required is crucial.

It is important to note that security implementation is not a cheap venture. Cost of labour is continually escalating and coupled with Trade Union influences where security staff are not producing the necessary standard of work, may have a detrimental effect on the service rendered. For this reason, it is recommended that harbour authorities should give due consideration to the implementation of "in-house" or "contract" security staff in order to ensure safe and secure harbour premises.

6.4 SUMMARY

Policing - also harbour policing - is a social service function aimed at maintaining the social order in the interest of peaceful co-existence of people.

This investigation -

* is not a complete version of harbour policing in South Africa; and
* limited in scope due to scanty literature.

However, it is an unobtrusive endeavour to highlight the historical development of harbour policing in South Africa with special emphasis on the functional operation of the various units of the Water Wing of the South African Police Service. It is hoped that future research will con-

centrate on more salient problems related to this social phenomenon. The knowledge contained in this research report should be an indication of the importance of this specialized police function, dedicated towards securing the safety of the most vulnerable part of this country.

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