FINDING CONNECTIONS BETWEEN THE ITLOS ADVISORY OPINION ON FLAG STATE RESPONSIBILITY FOR IUU FISHING AND THE ADVANCEMENT OF OCEAN JUSTICE

Victor Alencar Mayer Feitosa Ventura
Tiago V. Zanella

RESUMO

The 2015 Advisory Opinion (AO) of the International Tribunal for the Law of the Sea (ITLOS) on illegal, unreported, and unregulated (IUU) fishing underscored the critical importance of due diligence obligations for flag states and represented a significant step in the upholding of the International Rule of Law and in the struggle towards ocean justice. The AO highlighted that flag states possess a duty to effectively exercise their jurisdiction and control over vessels flying their flag to prevent, deter, and eliminate IUU fishing activities. Furthermore, the AO emphasized the responsibility of flag states to cooperate with other states and international organizations to combat IUU fishing, thus fostering the shift from a historical and sectorial to a modern and integrated approach to fisheries' management, especially among member states to the UN Convention on the Law of the Sea. In this paper, it is claimed that the AO revealed how valuable the work of international organizations such as the International Tribunal for the Law of the Sea (ITLOS) can be for the interpretation and consolidation of new juridical perspectives on ocean governance and may ultimately contribute to the ideal of blue justice.

Palavras-Chave: International Tribunal for the Law of the Sea; IUU fishing; Due diligence; Integrated approach. Ocean justice.

- Pós-Doutorando pela Universidade Federal do Rio Grande (FURG); Doutor em Direito Internacional pela Universidade de Hamburgo (UHH); Assessor Jurídico do Serviço Nacional de Aprendizagem Rural na Paraíba (Senar). Consultor do Centro de Estudos Político-Estratégicos da Marinha do Brasil; Advogado. E-mail: vfventura@gmail.com

- Pós-Doutorando pela Universidade Federal do Rio Grande (FURG); Doutor em Ciências Jurídico-Internacionais e Europeias pela Faculdade de Direito da Universidade de Lisboa (FDL); Diretor do IBDMar (Instituto Brasileiro de Direito do Mar; Consultor jurídico da UNODC (Escritório das Nações Unidas sobre Drogas e Crimes). E-mail: tiagozanella@gmail.com

1 INTRODUCTION

The Law of the Sea (LOS) is a special regime of International Law that gains momentum in the context of growing *functional differentiation*. According to this phenomenon, the emergence or consolidation of legal subsystems is accelerated by the growing complexity of contemporary problems, which, on their turn, demand global and sophisticated answers based on highly scientific and technical standards (TEUBNER; FISCHER-LESCANO, 2004, p. 1007). For this reason, the LOS can be considered an international *special* regime of International Law (*lex specialis*), one molded on the struggle between conflicting interests: those of maritime powers and nations with primordial interest in shipping and sailing the world's oceans, and those of coastal states interested essentially in the security of resources within their adjacent waters (MCDORMAN, 1981). According to that historical account, one can clearly understand the difference between "maritime" and merely "coastal" states, a distinction based on the state's ability and material conditions to sail the seas.

The history of this specific realm of International Law is that of the division of the ocean between states, a partition into multiple jurisdictional spaces, amongst which the exclusive economic zones, continental shelves, and the high seas. Yoshifumi Tanaka (2008, p. 2) labels this a "zonal management approach", one deeply rooted in the history of LOS and resulting from two key antagonistic principles: the principle of *territorial sovereignty* and the principle of *freedom of navigation*. Whilst one embodies the concept of territorial seas, the other honors the high seas and the liberty to navigate.

The conflicting nature of the LOS could be summed up to the ancient and opposing doctrines of "open seas" (*mare liberum*) and "closed seas" (*mare clausum*), based on which the LOS has been "made, changed, challenged and remade" (PIRTLE, 2000, p. 11). Each doctrine gives birth to different principles of the law of the sea. On the one hand, the *mare liberum* thesis in supported by the principle of the freedom of the seas, which had in Hugo Grotius (2004, p. 95) its main defender. On the other, the *mare clausum*, defended by authors such as William Welwod.

Take that historical background a few centuries forward and one is faced with the controversies surrounding the management of *fisheries* in the LOS. On that regard, the current legal framework on illegal, unregulated and unreported fishing (IUU fishing) offers the

foundation for implementing a renewed approach to the LOS: one not entirely dual-zoned, but rather multizonal and integrated. Indeed, not only *hard law* (such as the III United Nations Convention on the Law of the Sea, and the 1995 Straddling Fish Stocks Agreement), but also *soft law* (e.g. the Food and Agriculture Voluntary Guidelines, as well as the UN Resolution 61/105) provide a relatively fertile field upon which a modern and *integrated* approach to fisheries may be built.

However, the social construction of IUU fishing as global problem is not an easy task. Constructing the discourse around the negative impacts of illegally caught fish on people's livelihoods and ecosystems proves exceedingly challenging due to various factors. According to Encoe (*apud* HANNIGAN, 1995, p. 75), an issue becomes an environmental *concern* only when it: a) garners mass media attention, increasingly via social networks; b) involves governmental entities; c) necessitates government intervention; d) is not disregarded by the public as a one-off incident; e) intersects with the personal interests of a substantial portion of citizens. Consequently, emerging environmental challenges demand a multi-faceted legitimacy that's arduous to attain, spanning from social media to political spheres and broader public engagement. Thus, an adverse environmental occurrence tends to be acknowledged as problematic only when significant segments of public opinion can relate to it; only then does it prompt effective public responses.

In that context, constructing IUU fishing as a grave concern was aided by the adoption of the UN Sustainable Development Goals (SDGs), particularly those related to marine conservation, sustainable fisheries management, and combating illegal activities.[2] That is especially true in light of the fact that the SDGs are the closest "measurable indexes" available to the international community to assess a variety of challenges and *risks* to ocean health that could comprise the notion of "ocean justice".[3] That is, only upon overcoming the thus far diagnosed risks to ocean, one could consider countries and the international

[2] It is the case of SDG 14 (Life Below Water), in which target 14.4 specifically aims to "effectively regulate harvesting and end overfishing, illegal, unreported, and unregulated fishing and destructive fishing practices". United Nations, A/RES/70/1, Transforming our world: the 2030 Agenda for Sustainable Development. New York, 2015.

[3] One of the greatest risks to ocean health in current days is, according to Bennett et al (2021, p.2), the phenomenon of "blue growth" and the "environmental degradation and reduction of availability of ecosystem services", which results from the rush for increased exploitation of marine living and non-living resources. IUU fishing is certainly a risk in that regard.

community at large to move up the scale of ocean justice and become socially and environmentally just.[4]

In fact, IUU fishing poses significant threats to the achievement of ocean justice in several ways, particularly as it actively contributes to *resource depletion*, undermining the sustainability of marine ecosystems and their services, which directly and indirectly benefit human life on the planet.[5] This threatens the ability of present and future generations to access and benefit from marine resources equitably, thus impeding efforts towards ocean justice. Aside from that, IUU fishing is synonym to *economic injustice*, as such a practice tends to disproportionately impacts small-scale fishers and coastal communities who rely on marine resources for their livelihoods. By engaging in illegal activities, IUU fishers gain unfair competitive advantages over legal fishers, exacerbating economic inequalities and injustices within the fishing industry.

Thirdly, a major threat IUU fishing poses to ocean or blue justice considerations is the evident *environmental degradation*, as it often involves destructive methods such as bottom trawling and the use of illegal fishing gear, causing significant harm to marine habitats and non-target species. This environmental degradation undermines the integrity of marine ecosystems, compromising their resilience and ability to support diverse life forms, which is contrary to the ideal of ocean justice. Finally, IUU fishing undermines effective *ocean governance* by eroding trust in regulatory mechanisms and weakening enforcement efforts. This undermines the rule of law and hampers the ability of states to cooperate and effectively manage marine resources, hindering progress towards achieving ocean justice on a global scale. Hence, addressing IUU fishing is essential for promoting equitable and sustainable management of the oceans and ensuring that all stakeholders can benefit from and contribute to the protection and utilization of marine resources fairly.

---

[4] While the discussion on the epistemology of "ocean justice", its roots and scope can be a rather exciting on to conduct, it falls beyond the goal of this particular contribution to delve into the topic. We expect to explore and develop it further in upcoming publications.

[5] In the particular case of Brazil, a 2022 Fisheries Audit by the worldwide known Non-Governmental Organization "Oceana" found that 67% of Brazilian fish stocks were overfished. The third edition of the Fisheries Audit Brazil presents the performance of marine fisheries management in the country based on data, regulations, and different governance arrangements in place. Twenty-two indicators were proposed to assess the fisheries panorama in Brazil, distributed across four categories: (1) status of fish stocks; (2) organization of fisheries; (3) transparency in fisheries management; and (4) adequacy of fisheries policy, mainly the National Policy for Sustainable Development of Aquaculture and Fisheries (Law No. 11.959/2009).

Against the backdrop of the fourth threat presented above (ocean governance and Rule of Law), the work of international organizations, such as the International Tribunal for the Law of the Sea (ITLOS), is indispensable for the interpretation and consequent consolidation of new juridical perspectives on ways to advance effective ocean governance schemes and uphold International Law and the *ordre publique* of the oceans. The main goal of current and future efforts ought to be the mitigation of human impact on ecological systems, while taking into account contemporary demands for national development and economic growth.

In that context, the ITLOS was asked to render in 2015 an advisory opinion on flag states' responsibility for IUU fishing activities conducted within the EEZ of third states party to the UN Convention on the Law of the Sea (hereinafter "UNCLOS"). In its opinion, the Tribunal engaged at first in recognizing the existence of "due diligence" obligations falling upon flag states with regard to combatting IUU fishing. Then, however, it refused to expressly admit the possibility of holding a flag state *liable* for wrongful acts of vessels flying their flag, provided that the flag state proved to have adopted diligent measures domestically to halt IUU fishing.

Overall, despite the skepticism with which the bulk of international legal literature welcomed that advisory opinion, the Tribunal's stance instigated positive outcomes, particularly in light of the historical supremacy of a *sectorial* approach to the LOS. Based on the obligations of due diligence, the Tribunal has not only reinforced the interaction between the LOS and other regimes, such as the Law of State Responsibility and Environmental Law, but also nudged from a purely sectorial to an *integrated* approach to tackling marine issues as grave as the IUU fishing.

2 FISHERIES IN THE LOS AND THE HISTORICAL CONFLICT BETWEEN PRINCIPLES: FREEDOM OF THE SEAS V. SOVEREIGN RIGHTS OVER LIVING RESOURCES

Two of the founding fathers of International Law of the Sea, Hugo Grotius and Emmerich de Vattel, have pioneered in dedicating reflections to oceanic matters. Grotius laid the basis of the freedom of the seas principle, whereas de Vattel presented the modern concept of territorial seas, defined as jurisdictional waters, which form the territory of a state (VATTEL, 1863). Given it is not the purpose of this article to scrutinize the entire history of

the LOS, a few words on the Grotian legal reasoning shall suffice to comprehend the ongoing dispute involving living resources in the seas.

In the 17th century, following the Iberian restriction on shipping through the world's oceans, Grotius published his main thesis of the "community of the sea" and the freedom of fishing. Resorting repeatedly to analogies as well as to natural law, Grotius affirmed the basic customary rule of the Law of Nations, according to which "it is lawful for any nation to go to any other and to trade with it" (GROTIUS, 2004, p. 95). Neither the Portuguese, the Spaniards, nor the Dutch owned the oceans, and to defend this postulate, Grotius dives into the depths of Roman legal literature.

While referring to acclaimed works of Ulpian, the Dutch author builds his central argument that the seas are by nature "open to all", and not just to citizens of a single state. For there is an abyssal distinction between conceptions of the sea as a "common good", as opposed to the seas as "public good". Given that the seas were common from the beginning of civilization, it could not be appropriated in its entirety by anyone. Therefore, so Grotius (2004, p. 95), "he who prohibits anyone else from fishing on the sea, whoever he is, commits a wrong."

Grotius examines the nature of the ocean and reaches the conclusion that the oceans, as something that cannot be limited physically and cannot be the property of one person or people (2004, p. 110). Besides, provided that the oceans need no cultivation to bear fruit (fish), whatever exists inside of it is to be considered common, and any restrictions to sailing the seas or fishing should entail a legal damages action.[6] In a similar line of reasoning, De Vattel represented a powerful voice against the ownership of the "open seas". In his words, "no nation has a right to take possession of the open seas or claim the sole use of it, to the exclusion of the others". Such a distinction between free, open seas and territorial waters marked the legal beginning of *dualism* between two distinct zones of the ocean.

Centuries onwards, maritime powers such as Portugal, Spain, The Netherlands, France, England, Canada, Russia, the United States, among others, sailed the seas with absolute freedom, trading with peoples from all parts of the world, to the extent that the very ideological foundation of the LOS was laid on the *mare liberum* theory, which then

[6] After the publication of his main theses, and the reply to Welwod, it could be said that Grotius "won" the debate, because in 1609 King Phillip III of Spain and Portugal came to a temporary peace with the Dutch. The freedom of the seas was formally obtained.

"facilitated the emergence of the forces that led to the Industrial Revolution" (VIDAS; SCHEI, 2011, p. 6). Indeed, the freedom of the seas is a concept with a fascinating evolution, outcome of customary law and milestone for the free flow of commerce and communication between nations.

On the other side of the equation, coastal states that for centuries watched the harvest of their natural resources by merchant fleets of developed countries were gradually claiming exclusivity to those marine resources offshore. Consequently, after World War I, traditional maritime powers witnessed a staunch opposition to *mare liberum* norms in the international arena, as developing states advanced increasing jurisdictional claims to secure ocean resources, mainly fisheries, which responded for a significant part of their economic activity. In this juncture, the imminence of conflicts led coastal and maritime states to meet in The Hague in 1930 with the arduous task to codify the existing customary LOS. The Conference was organized by the League of Nations, but failed to produce a final document, given the already visible divergences between states.

A few years later, the continued failure to delimit the extent of territorial waters and fisheries jurisdiction stirred a move by the President of the US, which further promoted the division of the oceans. The Truman Proclamations of 1945, one on fisheries and another on the continental shelf, secured "property rights" over resources on the seabed and water column of the United States' continental shelf, and came as a model to be followed. Back then, several Latin American states took the same course of action and declared jurisdiction over their contiguous seas, triggering what McDorman names "the great expansion of coastal state jurisdiction" (MCDORMAN, 1982, p. 2).

Coastal states then defended their national interests by controlling ocean resources, mainly fisheries, and prompted a series of "enclosures" of the adjacent waters to their coasts. This new phenomenon produced the unexpected problem of excessive jurisdictional claims by Latin American states due to the lack of harmonious international practice on this matter. Countries such as Brazil, known for its "territorial ambitions", Argentina[7] and Chile[8] announced far-reaching declarations and proclaimed sovereignty over the continental shelf of whatever depth and additionally of a maritime areas extending 200 nautical miles from the

[7] See Argentinian Declaration of 1946. Available at: http://legal.un.org/ilc/documentation/english/ a_cn4_30.pdf. Visited on: 26.03.2023.
[8] See Chilean Declaration of 1947. Available at: http://legal.un.org/ilc/documentation/english/ a_cn4_30.pdf. Visited on: 26.03.2023.

shore (VARGAS, 1982, 58). The unilateral delimitation of continental shelves by Latin American states became the rule, as Mexico, Nicaragua, Guatemala, Honduras, El Salvador and Ecuador imitated the action (ODA, 2003, p. 19).

The rapid and unsystematic expansion of jurisdictional waters threatened the *ordre public* of the oceans and was, therefore, the *raison d'être* of the 1958 Geneva Conference on the Continental Shelf. The UN-hosted Conference adopted four conventions,[9] including the Convention on the Continental Shelf, and was responsible for bringing about new contributions to the LOS regime, as it fostered a "progressive development" of International Law. For the first time, the basic features of the freedom of the seas principle was conversed into a treaty, and the so-called zonal management approach was finally codified (TANAKA, 2008, p. 3). However, there was still work to be done, given that the specific Convention on the Continental Shelf failed to specify the width of that zone, as well as the extent of state control over fisheries (MCDORMAN, 1981, P. 3).

Less than a decade after the diplomatic Conference of 1958, disputes regarding sovereignty over natural resources on the offshore of coastal states, as well as on the high seas were still common. At that moment, the US had "landed" on the deepest underwater hole in the world, the Challengers Deep, in the Mariana Trench,[10] located on the Pacific Ocean, and started worries about the possible exploitation of the seabed in ultra-deep waters. As McDorman (2005, p. 378) rightly pointed out, "the development of international ocean law owes as much to technological advancement as to scientific discovery," and as such, the continental shelf regime itself, for instance, would not exist but for the introduction of ocean drilling and deep-water technologies. Such rapid technological developments inspired the idea of a fresh and more ambitious Convention on the Law of the Sea, capable of holistically addressing up-to-date issues of ocean governance worldwide.

---

[9] The four Conventions adopted were: the Convention on the Territorial Sea and the Contiguous Zone; the Convention on the High Seas; the Convention on Fishing and Conservation of the Living Resources of the High Seas, and the Convention on the Continental Shelf, all of them having entered into forced between 1962 and 1966. In addition, an Optional Protocol of Signature Concerning the Compulsory Settlement of Disputes was adopted, which entered into force on 30 September 1962. Available at: http://legal.un.org/diplomaticconferences/lawofthesea-1958/lawofthesea-1958.html. Visited on: 26.03.2023.

[10] In 1960, the Swiss scientist Jacques Piccard designed a submersible vehicle with financial support of the U.S. Navy, and dove into the depths of the Challenger Deep, the deepest hole known in the world's oceans, in 1960. In that occasion, the submersible *Trieste* descended 11.000 meters until the very bottom of the sea. The descent was expected to mark deep ocean explorations.

At that moment, a new political phenomenon produced further legal consequences on the balancing between the principle of the freedom of the seas and the principle of sovereignty over natural marine resources: the *decolonization wave*. As it shook the world, developing coastal states expanded their territorial seas and fisheries zones, therefore tightening legislative controls over their continental shelves, and consolidating a trend of jurisdictionalism over the oceans (MCDORMAN, 1981, p. 4). Based on geographical considerations, "the naturally favored minority of states has had the strongest interest in an extension of seaward limits of the continental shelf, whereas the majority of naturally unfavored states has had an interest in restricting encroachments on the international area of the deep ocean floor" (JOHNSTON, 1988, p. 85). In this juncture, opposition between those principles was stronger than ever, and inspired the beginning of diplomatic conversations towards a new binding instrument.

The III United National Convention on the Law of the Sea (UNCLOS) was signed in 1982, in Montego Bay, Jamaica, and embodied over a decade of arduous negotiations in one of the most impressive exercises of international diplomacy in Public International Law. The cornerstone of UNCLOS is arguably Arvid Pardo's speech to the United Nations General Assembly in 1967, when Malta's ambassador to the UN urged states to declare the seabed beyond national jurisdiction as *common heritage of humankind* (CHH),[11] thus seeking to halt the then ongoing creeping jurisdictionalism of the oceans (GALINDO, 2006).[12]

Despite the challenging and long negotiations,[13] UNCLOS has succeeded in designing a global architecture for ocean governance worldwide (FREESTONE, 2011, p. 100). Even more importantly, "most of the significant concepts of the treaty have been absorbed by states into their national laws and practices", as the Convention begins to yield quasi-universal principles, some of them grounded on customary International Law of the Sea, that is, in centuries of state practice (MCDORMAN, 1995, p. 5).

Alongside other binding instruments, UNCLOS advanced topics that have helped consolidate the regime of the LOS. That notwithstanding, there is still much to be done on

[11] Common space areas are regarded as regions owned by no one, though hypothetically managed by everyone. On the gender-related issue, it should be noted that, although some reports prefer the gender-neutral equivalent "common heritage of humankind", the expression is widely quoted as "of mankind", and so will it be used on this dissertation.
[12] One of the main purposes of the CHH principle is to protect areas beyond national jurisdiction or, when necessary, to allow exploitation in a way that enhanced the common benefit of humankind.
[13] The UNCLOS III is the treaty with the longest negotiation record in the history of the United Nations.

enforcing these instruments, as challenges ahead of the ocean governance amount to: marine (oil) pollution, invasive alien species, habitat destruction, and, for the purpose of this contribution, poorly managed fisheries, among others. Indeed, almost 30 years after the entry into force of the Convention, coastal states call for new protocols and agreements to address unfinished agendas, such the legal framework applicable to the high seas (FREESTONE, 2011, p. 100). As Vladimir Golitsyn, former ITLOS judge, would put it, the international society needs to promote a shift from an approach that emphasizes "entitlement to", to one that highlights "responsibility for" the oceans, so as to grant application both in areas within and outside national jurisdiction, without disregard to the jurisdictional dimension (GOLITSYN, 2011, p. 61). In the light of this "exploitation-oriented" approach, which is perceptible in UNCLOS, a question which remains is to whether and how international lawyers and institutions applying the UNCLOS could tackle one of the ongoing main challenges to a healthy ocean governance: the practice of IUU fishing.

3 FROM A ZONAL TO AN INTEGRATED APPROACH TO FISHERIES' MANAGEMENT: AN INCH CLOSER TO REASONABLE STANDARDS OF OCEAN JUSTICE?

Grotius' assumptions underpinning the *mare liberum* theory are now fundamentally outdated. Unlike the panorama that the Dutch author had at hand, ocean resources are currently known to be finite, with overfishing posing a threat to entire species; states nowadays possess technological means to establish maritime boundaries with amazing precision; and regardless of how immense oceans are, maritime conflicts are most likely inevitable, due to a plethora of security, economic and environmental considerations in the international arena. Confirming this rationale, Malcolm Shaw (2008, p. 554) considers that "the predominance of the concept of the freedom of the high seas has been modified by the realization of resources present in the sea and the seabed beyond the territorial sea."

The traditional approach, based on the opposition between *sovereign rights* (UNCLOS Art. 56 (1) (a)) and the freedom of the seas, has proven insufficient to tackle current challenges, mainly those related to the sustainable exploitation of the oceans' living resources. Three main problems undermine effectiveness in the global struggle against IUU fishing: the

separation between law and nature; the sectorial approach to LOS; the persistent mutual exclusion by states of the principles of freedom of the seas and territorial sovereignty.

Firstly, on the separation between law and nature, i.e. when maritime spaces are spatially divided, it seems undeniable that the distance criterion ignores the ecological interactions between marine species and physical media and circumstances. Hence, the need to develop a broader approach to the governance of large marine ecosystems arises. In the words of Tanaka, "as the ocean is a dynamic natural system, it is logical that International Law of the Sea must take the dynamics of nature into account" (TANAKA, 2008, p. 6), what has not been the case in the past decades, as explained below.

The second issue refers to the *sectorial* approach to different fields of LOS, such as shipping, fishing and environmental protection, thus ignoring interrelationships between marine issues. In legal literature, the need to focus on the interactions between marine issues from a holistic perspective is often emphasized, regardless of how demanding such a shift might be (TANAKA, 2008, p. 7).

Thirdly, a traditional, short-sighted approach to the two principles of sovereignty over marine resources and freedom to roam the seas pose challenges to the enforcement of sound sustainable practices in fisheries management and, consequently, need a revision. For instance, when it comes to the protection of marine living resources, the "freedom of the seas" loses its validity. Instead of the *laissez-faire* freedom system, states ought to focus on the "duty to have due regard to the rights of other States and the need of conservation for the benefit of all."[14] Similarly, instead of the absolute principle of sovereignty, a legal framework capable of resolving problems of marine pollution and conservation of living resources within maritime zones of states should be stimulated.[15]

For those reasons, the quest for a more "integrated management approach" could not only add coherence to the LOS, but also contribute to tackling IUU fishing. Such an approach is to be found in international instruments, such as the Agenda 21, adopted after the 1992 Rio Conference, and the UN General Assembly Resolution 60/30 on "Oceans and the Law of the Sea", agreed upon in 2009. While the former advanced the integrated approach to the

[14] ICJ, Fisheries Jurisdiction Case, United Kingdom v. Ireland, 1974.
[15] To these three problems, one may add a fourth and crucial one: the lack of *political will* to enforce fisheries' norms and legislation (SCOVAZZI; VEZZANI, 2023, p. 92), which nonetheless escapes the purpose and main theses of this paper.

planning and management of land resources (principle 10.1),[16] the latter included socio-economic aspects to the reporting and assessment of the status of marine environments (par. 89), in an attempt to grasp a broader picture of the ongoing marine conservation efforts.[17] The problem lies on the fact that those international instruments use this approach in a rather loose manner, given the conceptual blurriness of "integrated". There is not a definition, but a purpose, which is to outreach the traditional approach, and face challenges more effectively – IUU fishing amongst which.

Challenges to a sustainable marine governance are manifold and call for urgent migration from sectorial responses to integrated policies,[18] which would imply some steps to achieve a sound marine environmental status. Policies that take into account the multidimensional status of environmental protection and, accordingly, consider economic, technological and political factors. As Tanaka (2008, p. 241) formulates it, "since conservation measures inevitably affect national development, there is a need to reconcile these measures with the economic, technological and political circumstances of every state."[19] On an international adjudicative level, the advisory opinion on flag state responsibility for IUU fishing rendered by the ITLOS might represent a step towards a renewed, *ecosystem-oriented approach* to oceanic problems.

4 THE 2015 ITLOS ADVISORY OPINION: *AVANT GUARDISME* IN THE LAW OF THE SEA?

With respect to high seas fisheries, the UNCLOS is grounded on the principle of exclusive jurisdiction of the flag state, although the current panorama shows that the principle alone is inadequate for ensuring compliance with and enforcement of rules. Bearing these

[16] United Nations. Agenda 21, World Conference on Environment and Development, Rio de Janeiro, 1992.
[17] The UN Resolution 60/30 was suggested by the Intergovernmental Oceanographic Commission of the UNESCO. Available at: http://ioc-unesco.org/index.php?option=com_oe&task=viewDocumentRecord&docID=4289. Visited on 29.04.2023.
[18] In the case of the European Union, a major step was taken with the adoption of the European Directive on Marine Strategy Framework (2008), according to which 11 qualitative descriptors outline what the document defines as "good environmental status". The main and ambitious goal of the Directive is to provide diverse and dynamic oceans and seas, which are clean, healthy and productive (overall aim of promoting sustainable use of the seas and conserving marine ecosystems). See CHURCHILL, Robin. The European Union and the challenges of marine governance: from sectoral response to integrated policy? *In*: VIDAS, Davor and SCHEI, Peter Johan. **The world ocean in globalization**: climate change, sustainable fisheries, biodiversity, shipping, regional issues. Leide: Nijhoff, 2011.
[19] See TANAKA, Yoshifumi. **The dual approach** […], 2008, p. 241.

considerations in mind, and looking forward to improved manners to hold flag states responsible, the Sub-Regional Fisheries Commission (SRFC) [20] submitted a request for advisory opinion to the Tribunal in March 2013.[21] Interesting enough, it was the first time that the full Tribunal rendered an advisory opinion, instead of just a special chamber, and in April 2015, the ITLOS published the definitive Advisory Opinion.[22]

In its petition, the SRFC focused on assessing both the responsibility and liability of flag states upon IUU fishing activities conducted within the EEZ of third party states.[23] The original questions were:

1. What are the obligations of the flag State in cases where illegal, unreported and unregulated (IUU) fishing activities are conducted within the Exclusive Economic Zone of third party States?
2. To what extent shall the flag State be held liable for IUU fishing activities conducted by vessels sailing under its flag?
3. Where a fishing license is issued to a vessel within the framework of an international agreement with the flag State or with an international agency, shall the State or international agency be held liable for the violation of the fisheries legislation of the coastal State by the vessel in question?
4. What are the rights and obligations of the coastal State in ensuring the sustainable management of shared stocks and stocks of common interest, especially the small pelagic species and tuna?

[20] The organization responsible for the request to the ITLOS is an intergovernmental organization created in 1985 by a Convention that united Cabo Verde, Gambia, Guinea, Guinea-Bissau, Mauritania, Senegal, and Sierra Leone in the struggle against the depletion of living resources off their coasts. Already on the preamble, the Sub-Regional Commission stresses the relevance of coastal states to cooperate among each other and harmonize domestic policies on fisheries, so as to reach a balance between conservation and exploitation of those resources. As it could not have been different, the economic and political element of national development was present, as well as the care for the nutritional needs of local populations. In the original document, written in French, contracting states highlight ”la nécessité, pour les pays riverains, de coopérer et d'oeuvrer en vue de l'harmonisation de leurs politiques en matière de préservation, de conservation et d'exploitation des ressources halieutiques de la sous-région, ainsi que le besoin de coopérer au développement de leurs industries nationales de pêche.” See Convention of Sub Regional Fisheries Commission, Praia, Cabo Verde, 1985. Available at: http://www.spcsrp.org/medias/csrp/documents/CSRP-1993-ConvPraya.PDF. Visited on 25.04.2023.

[21] Such a procedure is established in article 138 of the Rules of the Tribunal, which grants ITLOS jurisdiction over contentious and advisory cases.

[22] See ITLOS. Advisory Opinion on the Request submitted to the Tribunal by the Sub-Regional Fisheries Commission. Case 21, Hamburg, 2015.

[23] Flag States such as Panama and Togo are often cited as “safe havens” for irregular vessels that engage in IUU fishing activities. The practice of granting “flags of convenience” to troubled ships is also widespread, despite the detrimental effects they bear to the management of fisheries worldwide. The Environmental Justice Foundation provides detailed information on “flags of convenience” and states engaged in this practice. See ENVIRONMENTAL JUSTICE FOUNDATION. **Pirates and profiteers**: how pirate fishing fleets are robbing people and oceans. London, 2005.

The Sub-Regional Commission illustrates long-ranged sight and good intentions in the struggle against IUU fishing within maritime zones of its member states. Amongst the objectives of the SRFC, emphasis is added to the coordination of policies in terms of the adoption of international best practices, the development of sub-regional cooperation with regard to tracing, controls and surveillance, and the improvement of members' research capacities in fisheries sciences on the sub-regional level. Besides local efforts to repress illegal fishing, it should be praised that the Commission, which is legally entitled to stand before courtrooms, has also engaged in juridical battles in order to achieve the main goal of sustainable fishing activities.

Following the request for the advisory opinion, the Tribunal received two rounds of written statements by a plethora of international actors, including Member States to the UNCLOS, States Parties to the 1995 Straddling Fish Stocks Agreement,[24] Intergovernmental Organizations,[25] as well as Non-Governmental Organizations.[26] At this moment, several states raised preliminary questions alleging the lack of jurisdiction of the Tribunal to render advisory opinions. Countries such as the United States, China, Australia, Spain, the United Kingdom, Ireland, among others, have supported this claim.

On the preliminary questions, the judges decided unanimously that the Tribunal holds conventional jurisdiction to entertain requests for advisory opinions. According to the decision, the UNCLOS does not encapsulate the contentious function of the Tribunal, whose Statute (Annex VI) allows for it. The ITLOS has jurisdiction to decide on “all matters”, which encompasses more than just disputes. If it were not so, the legal wording should expressly display “disputes”. That is the result of a combined interpretation of articles 21 and 138 of the Statute of the ITLOS. [27] Besides, the Tribunal considered that the questions asked were legal in nature, for they were made in terms of law and demanded complex juridical interpretation in order to render an opinion. Moreover, consistent with paragraph 77 of the opinion, “the Tribunal is mindful of the fact that by answering the questions it will assist the SRFC in the

[24] The United States presented a statement as member of this treaty, given that they have not ratified the UNCLOS III so far.
[25] Important intergovernmental organizations to pronounce on this case were: the Forum Fisheries Agency, the International Union for Conservation of Nature and Natural Resources, the Caribbean Regional Fisheries Mechanism, the United Nations, the Food and Agriculture Organization of the United Nations, and the Central American Fisheries and Aquaculture Organization.
[26] The World Wildlife Fund (WWF) acted as *amicus curiae* by submitting a brief.
[27] Article 21 of the Statute reads, “The jurisdiction of the Tribunal comprises all disputes and all applications submitted to it in accordance with this Convention and all matters specifically provided for in any other agreement, which confers jurisdiction on the Tribunal.”

performance of its activities and contribute to the implementation of the Convention." For this reason, amongst others, the ITLOS deemed it appropriate to render the advisory opinion.

As for the material content of the opinion, in general lines, the Tribunal considered that the flag state has a duty "to ensure" that vessels flying its flag abide by the law of coastal states where fishing activities are taking place. The "responsibility to ensure" is enshrined in the provisions of article 58 (3) (rights and duties of other states in the EEZ), article 62 (4) (utilization of the living resources), and article 192 (general obligation to protect and preserve the marine environment) of the UNCLOS. The combined interpretation of those instruments leads to the conclusion that flag states have to take the necessary measures to ensure that vessels flying its flag are not engaged in IUU fishing activities.

The "responsibility to ensure" does not lead, however, to automatic liability of flag states for wrongdoing of ships flying their flags. When tackling this question, the Tribunal explicitly referred to the obligations of due diligence from paragraph 125 to 140, and made a clear distinction between obligations of due diligence and obligations of result.[28] A positive development is, however, the reinforcement of the principle of due diligence and of "obligations of conduct" in the LOS.[29] According to the reasoning of the ITLOS, the obligation of due diligence

> "[…] is not an obligation of the flag State to achieve compliance by fishing vessels flying its flag in each case with the requirement not to engage in IUU fishing in the exclusive economic zones of the SRFC Member States. The flag State is under the "due diligence obligation" to take all necessary measures to ensure compliance and to prevent IUU fishing by fishing vessels flying its flag" (paragraph 129).

The opinion based on the obligations of due diligence reinforces previous international case law, with the Pulp Mills on the River Uruguay being a case in point. Comprising a dispute between Argentina and Uruguay, the contention related to the construction and operation of pollutant pulp mills on the banks of the River Uruguay, i.e. on the borders of both

[28] Among the obligations of due diligence established by the UNCLOS III and relating to the fighting of IUU fishing, the following deserve special attention: the obligation to inform, to cooperate (art. 64 (1) UNCLOS III), to ensure the adoption of conservation and management measures (article 61, UNCLOS III), and to undertake mutual consultations (article 300, UNCLOS III) with third states on whose coast IUU fishing activities are being conducted.

[29] KOIVUROVA, Timo; SINGH, Krittika. **Due diligence**. Max Planck Encyclopedia of Public International Law, 2022, available online at: https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1034.

countries. In the best interest of this paper, it is notable that the Court outlined, although superficially, the content of due diligence obligations. The final ruling considers that such obligations "entail not only the adoption of appropriate rules and measures, but also a certain level of vigilance in their enforcement and the exercise of administrative control applicable to public and private operators, such as the monitoring of activities undertaken by such operators, to safeguard the rights of the other party".[30]

Within ITLOS case law, efforts to consolidate the due diligence principle date back to 2011, when the Seabed Disputes Chamber addressed a Request of the International Seabed Authority regarding "responsibilities and obligations of states sponsoring persons and entities with respect to activities in the Area".[31] The content of the due diligence obligation, although still vague, was scrutinized between paragraphs 110 and 120 of that opinion.

In paragraph 110 of the opinion, ITLOS considered that the obligation of due diligence is not an obligation of result, but an obligation of means. In fact, "[t]he sponsoring State's obligation "to ensure" is not an obligation to achieve, in each and every case, the result that the sponsored contractor complies with the aforementioned obligations. Rather, it is an obligation to deploy adequate means, to exercise best possible efforts, to do the utmost, to obtain this result. To employ terminology dear to International Law, this obligation may be characterized as an obligation "of conduct" and not "of result", as well as an obligation of due diligence. The relevance of this previous case law should not be underestimated, given that in the Advisory Opinion on flag states responsibility for IUU fishing, the Tribunal refers several times to those two decisions in order to base its legal reasoning.

The opinion was welcomed with relative skepticism, especially by coastal states authorities, who awaited more precise considerations on flag state responsibilities, and by a parcel of the international legal literature who considers the focus of the opinion to be erroneously laid on vessels, instead of on nationals, people, who actually conduct and engage in illegal fishing.

---

[30] See Pulp Mills on the River Uruguay case, (Argentina v. Uruguay), Judgment, ICJ, para. 197.

[31] The ISBA is an organization created by the UNCLOS III alongside the International Tribunal for the Law of the Sea. For detailed information on this treaty body, see: CHIRCOP, A. E. Operationalizing Article 82 of the United Nations Convention on the Law of the Sea: A New Role for the International Seabed Authority? Ocean Yearbook 18, 2004. Institutional information on the ISBA available at: https://www.isa.org.jm/. Visited on 28.04.2015.

In fact, as accurately emphasized by Pieter van Welzen (2023, p. 226), the ITLOS Advisory Opinion primarily addressed the requirement for vessels to adhere to the fisheries regulations of coastal States. However, vessels themselves are generally not the intended recipients of these regulations. Instead, they typically target individuals who oversee the vessel's operations and activities, such as the master, crew members, owner, and operator. These individuals often hail from countries other than the flag State concerned. Consequently, when enforcing its regulations against foreign owners, operators, and crew members, a flag State must rely on cooperation from other States, which may not always be forthcoming. It remains uncertain whether ITLOS took this aspect into account when determining the flag State's responsibility for IUU fishing activities carried out by vessels flying its flag or its nationals. Notably, the ITLOS Advisory Opinion does not address the obligations of states whose nationals are owners or operators of fishing vessels.

Also, it might also not have been the dream opinion expected by the international legal scholarship, due to the fact that the Tribunal refused to stipulate any concrete measures that flag states were obliged to undertake in fulfilling the due diligence principle.[32] In fact, if the flag state can prove that "all necessary measures" to prevent IUU fishing were duly taken, it was not to be held liable for damages produced.[33] In this juncture, to prove that administrative measures preceded the registration of fishing vessel could theoretically shield flag states against compensation claims. Besides such an elusiveness, the advisory opinion was also explicit in confining its effects to the EEZ of the member States to the SRFC, leaving the responsibilities of flag states for IUU fishing on the high seas for a coming opinion.[34]

Dissatisfactions and constructive criticisms aside, the advisory opinion ought to be praised for the positive developments it entails. Firstly, it consists of an international

[32] On their separate opinions, Judges Wolfrum and Lucky have highlighted some discontent themselves. On the one hand, Judge Wolfrum considers that the advisory opinion could and should have been more detailed on its considerations, besides addressing the issue of reparation of damages, as established by the Draft Articles of the ILC on State Responsibility for Wrongful Acts (Declaration of Judge Wolfrum, paragraph 1). On the other hand, Judge Lucky highlighted the creative role of international judges in welcoming new approaches and considering technological advancements (Declaration of Judge Lucky, paragraph 12).

[33] Paragraph 146 of the Advisory Opinion reads: "the liability of the flag State does not arise from a failure of vessels flying its flag to comply with the laws and regulations of the SRFC Member States concerning IUU fishing activities in their exclusive economic zones, as the violation of such laws and regulations by vessels is not per se attributable to the flag State." See: Advisory Opinion on the Request submitted to the Tribunal by the Sub-Regional Fisheries Commission. ITLOS, Case 21, 2015.

[34] Paragraph 154 reads: "the Tribunal considers that, in light of its conclusion that its jurisdiction in this case is limited to the exclusive economic zones of the SRFC Member States […]." See: Advisory Opinion on the Request submitted to the Tribunal by the Sub-Regional Fisheries Commission. ITLOS, Case 21, 2015.

manifestation located in the important intersection between special regimes of international law, such as environmental law and law of the sea, whose mutual permeability and integration deserves to be further stimulated. In the opinion, the Tribunal approached the LOS with lenses of two different regimes of international law: principles of state responsibility and of international environmental law.[35] Despite the vagueness of considerations, to invoke the principle of due diligence in the law of the sea, a principle still in the making, with strong environmental foundations, is to foster the shift from a purely traditional approach towards an integrated approach to the solution of ocean issues.

Secondly, although the Tribunal avoided specifically addressing the *environmental* facet of due diligence obligations, it is likely that future proceedings will ground claims on the objective breach of due diligence obligations. Intergovernmental organizations dedicated to fisheries governance have from now on a concrete foundation to base future claims of compensation for IUU fishing. The opinion, therefore, fosters states to adopt binding requirements, for instance, for the registration of fishing vessels. This measure would enable authorities to fight illegal fishing in a more efficient manner. Besides, those binding standards would support claims of flag state responsibility for illegal fishing, what could de-stimulate the emission of those flags of convenience and consequently represent a blow to IUU activities.

The key background problem, though, one may argue, is the fact that failure of the international community to effectively fight IUU fishing is not caused by the lack of legal norms, provisions nor clarity in the interpretation of such norms. Rather, it is caused by a political motivation that reflects in feeble enforcement measures (SCOVAZZI; VEZZANI, 2023, p. 92). Yet, key results compiled by FAO on the topic of IUU fishing conclude that "countries have made progress in combating illegal, unreported and unregulated fishing, but a more concerted effort is needed to fully address the issue". In fact, according to FAO,

> by the end of 2022, the Agreement on Port State Measures, the first binding international agreement to specifically target IUU fishing and which entered into force in 2016, comprised 74 Parties, including the European Union (which counts as one Party on behalf of its 27 Member States). […] In addition, during the 2018–2022 period, globally, the **degree of implementation of these instruments has risen from 3 to 4 (out of a maximum score of 5), indicating good overall progress**, with close to 75 percent of states scoring highly in their degree of

[35] On the interaction between special regimes of international law, see VENTURA, 2014.

> implementation of relevant international instruments in 2022 compared to 70 percent in 2018. (emphasis added).[36]

Hence, even though the principle of due diligence has no legally binding definition up to now (KULESZA, 2016, p. 262), the content and extension of the principle should be outlined on a systematic fashion, in order to prospectively delimit the substance of those "obligations of means" that influence the effectiveness of the struggle against IUU fishing. It is also possible that the advisory opinion be interpreted in an extensive way, so as to comprise maritime zones other than just the EEZ of member states to the SRFC, therefore, including the much exposed high seas.

The Advisory Opinion herein analyzed builds on a history of progressive decisions rendered by the ITLOS that gradually enhance the international legal framework relating to responsibility rules within the Law of the Sea. Also, the Advisory Opinion provided legal clarity on the obligations of states to combat IUU fishing under the UNCLOS, in a move that can lead to translucent *enforcement* powers and obligations. Upholding these obligations contributes to ocean justice by ensuring that legal frameworks are in place to protect marine resources and the rights of coastal states and communities dependent on those resources. Last but not least, the Tribunal's opinion recommended flag states and port states measures such as enhancing cooperation and enforcement mechanisms, fostering a more equitable and just global ocean governance regime.

5 CONCLUDING REMARKS

In short, the International Law of the Sea is not only faced with the dichotomy between freedom of navigation and territorial sovereignty, which embodies a traditional approach to maritime issues, but with a fundamental trichotomy. The latter dichotomy has been lately coexisting with another rather recent one: the trichotomy between those principles and principles of marine environmental protection, thus rendering it a de facto trichotomy. By the time UNCLOS was signed, the wave of *prise de conscience environmentale* had marine

[36] SDG Indicators Data Portal. Indicator 14.6.1 - Progress by countries in the degree of implementation of international instruments aiming to combat illegal, unreported and unregulated fishing. Available at:

https://www.fao.org/sustainable-development-goals-data-portal/data/indicators/1461-illegal-unreported-unregulated-fishing/tracking-progress-on-food-and-agriculture-related-sdg-indicators-2022/en Visited on: 26.03.2023

environmental concerns inchoately permeate the international agenda, and Parts V and XII of the Convention, alongside its Preamble, undeniably reflect those concerns (VENTURA, 2020, p. 15).

On the one hand, the purest version of *mare liberum* can no longer exist, for it was formulated for another era, a considerably diverse historic moment. If applied vigorously, as the (absolute) freedom of fishing, for instance, this principle would limit the effective enforcement of regulations on issues that deeply affect the ocean, such as IUU fishing. On the other hand, the sovereignty perception of the exclusive and unrestricted access to oceans' resources cannot represent a barrier to the application of a rational, integrated approach to the management of fisheries, with due regard to the rights of third states even within national jurisdictional zones, such as the EEZ and the continental shelf.

Overall, the ITLOS Advisory Opinion has had a catalytic effect on shaping state practices worldwide, fostering a more concerted and cooperative approach towards combating IUU fishing and promoting sustainable fisheries management. On the one hand, it can be argued that countries have strengthened domestic legislation and regulations to align with the obligations outlined in the advisory opinion, which includes implementing measures for vessel monitoring, licensing, and enforcement to prevent IUU fishing activities. On the other, States may interpret the opinion as a recommendation for the adoption of enhanced enforcement measures, such as extraterritorial port state measures (2009 Port States Measures Agreement),[37] and closer international cooperation, so as to tackle the critical and never-ending issue of IUU fishing.

REFERENCES

BENNET, Nathan James; et al. **Blue growth and blue justice**: Ten risks and solutions for the ocean economy. Marine Policy, 125, 2021, pp. 1-12.

CHURCHILL, Robin. The European Union and the challenges of marine governance: from sectoral response to integrated policy? *In*: VIDAS, Davor and SCHEI, Peter Johan. **The world ocean in globalization**: climate change, sustainable fisheries, biodiversity, shipping, regional issues. Leide: Nijhoff, 2011.

[37] Food and Agriculture Organization (FAO). Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, 2009.

FREESTONE, David. Problems of high seas governance. *In*: VIDAS, Davor and SCHEI, Peter Johan. **The world ocean in globalization**: climate change, sustainable fisheries, biodiversity, shipping, regional issues. Leiden: Nijhoff, 2011.

GALINDO, George Rodrigo Bandeira. **Quem diz humanidade pretende enganar?**: internacionalistas os usos da noção de patrimônio comum da humanidade aplicada aos fundos marinhos (1967-1994). PhD Dissertation. University of Brasília, Brasília, 2006.

GOLITSYN, Vladimir. Major challenges of globalization for seas and oceans: legal aspects. *In*: VIDAS, Davor and SCHEI, Peter Johan. **The world ocean in globalization**: climate change, sustainable fisheries, biodiversity, shipping, regional issues. Leiden: Nijhoff, 2011.

GROTIUS, Hugo. **The Free Sea**, trans. Richard Hakluyt, with William Welwod's Critique and Grotius's Reply, ed. David Armitage. Indianapolis: Liberty Fund, 2004, p. 95. Available at: http://oll.libertyfund.org/titles/859#Grotius_0450_251. Visited on 26.03.2024.

HANNIGAN, A. John. **Sociologia Ambiental**. A formação de uma perspectiva social. Editora Instituto Piaget, 1995.

JOHNSTON, Douglas M. **The theory and history of ocean boundary making**. Montreal: McGill-Queens University Press, 1988.

KOIVUROVA, Timo; SINGH, Krittika. **Due diligence**. Max Planck Encyclopedia of Public International Law, 2022, available on online at: https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1034 .

KULESZA, Joanna. **The principle of due diligence in international law**. In: Due diligence in international law. Brill: Nijhoff, 2016, pp. 262-275.

MCDORMAN, Ted L. **The marine environment and the Caracas Convention on the Law of the Sea:** a study of the Third United Nations Conference on the Law of the Sea and other related marine environmental activities. Halifax: Dalhouise University Press, 1981.

MCDORMAN, Ted L. The entry into force of the Law of the Sea Convention and South-East Asia: an introductory comment. *In*: MATICS, K. I. and MCDORMAN, T. (Eds.). **Selected papers in commemoration of the entry into force of the U.N. Convention on the Law of the Sea**. Bangkok: SEAPOL, 1995.

MCDORMAN, Ted L. *et alii*. **International Ocean Law**: materials and commentaries. Durham: Carolina Academic Press, 2005.

ODA, Shigeru. **Fifty years of the Law of the Sea**: with a special section on the International Court of Justice. The Hague: Kluwer Law International, 2003

PIRTLE, Charles E. Military uses of ocean space and the law of the sea in the new millennium. *In*: **Ocean Development and International Law**, 31, 7, 2000, pp. 11-32.

SCOVAZZI, Tulio and VEZZANI, Simone. **Legal opinion on compliance and corrective measures in the GFCM system**. 30 september 2023.

SHAW, Malcolm. **International Law**, 6th edition, Cambridge: CUP, 2008.

TANAKA, Yoshifumi. **A Dual Approach to Ocean Governance**: the cases of zonal and integrated management in International Law of the Sea. Paris: The Ashgate International Law Series, 2008.

TEUBNER, Gunther; FISCHER-LESCANO, Andreas. Regime Collisions: the vain search for legal unity in the fragmentation of global law. **Michigan Journal of International Law**, vol. 25, n. 4, 2004, pp. 999-1046.

VARGAS, Jorge A. Latin America and its contributions to the Law of the Sea. *In*: LAURSEN, Finn (Ed.). **Towards a New International Marine Order.** Leiden: Nijhoff, 1982.

VATTEL, Emmerich de. **The Law of Nations**; or Principles of the Law of Nature Applied to the Conduct and Affairs of Nations and Sovereigns. Philadelphia: Law Book Sellers, 1863.

VENTURA, Victor Alencar Mayer Feitosa. **Environmental jurisdiction in the Law of the Sea**: the Brazilian Blue Amazon. Springer: Cham, 2020.

VENTURA, Victor Alencar Mayer Feitosa. **Ecologização do Direito Internacional Humanitário**: proteção ambiental em tempos de guerra. João Pessoa: Editora UFPB, 2014.

VIDAS, Davor and SCHEI, Peter Johan (Eds.). **The world ocean in globalization**: climate change, sustainable fisheries, biodiversity, shipping regional issues. Leiden: Nijhoff, 2011.

WELZEN, Pieter van. Mending the net – State responsibility for nationals involved in IUU fishing? In: **The environmental Rule of Law for oceans: designing legal solutions**. Cambridge: CUP, 2023, p. 226.

ENCONTRAR LIGAÇÕES ENTRE O PARECER CONSULTIVO DO ITLOS SOBRE A RESPONSABILIDADE DO ESTADO DE BANDEIRA PELA PESCA IUU E O AVANÇO DA JUSTIÇA OCEÂNICA

Resumo: A Opinião Consultiva emitida pelo Tribunal Internacional do Direito do Mar (TIDM) sobre pesca ilegal, não declarada e não regulamentada (INN), em 2015, ressaltou a importância das obrigações de diligência devida para os estados de bandeira e representou um passo significativo na defesa do Estado de Direito Internacional e na luta pela justiça oceânica. A opinião consultiva destacou que os estados de bandeira têm o dever de exercer efetivamente sua jurisdição e controle sobre embarcações que navegam sob sua bandeira para prevenir, dissuadir e eliminar atividades de pesca INN. Além disso, enfatizou a responsabilidade dos estados de bandeira em cooperar com outros estados e organizações internacionais para combater a pesca INN, promovendo assim a transição de uma abordagem histórica e setorial para uma abordagem moderna e integrada para a gestão da pesca, especialmente entre os estados membros da Convenção das Nações Unidas sobre o Direito do Mar. Neste artigo, argumenta-se que a opinião consultiva revelou o valioso trabalho desempenhado por organizações internacionais como o Tribunal Internacional do Direito do Mar (TIDM) para a interpretação e consolidação de novas perspectivas jurídicas sobre a governança dos oceanos, revelando potencial para contribuir, em última instância, para o ideal da justiça azul ou oceânica.

Palavras-chave: Tribunal Internacional do Direito do Mar. Pesca INN. Devida diligência. Abordagem integrada. Justiça oceânica.