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**DIREITO INTERNACIONAL DO MAR, SISTEMA E REGIME JURÍDICO DE
PROTEÇÃO ÀS BALEIAS: A proibição de utilização de métodos letais em
pesquisas científicas com baleias em alto-mar**

PORTO ALEGRE
2016



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Tese de Doutorado apresentada como requisito à obtenção do título de Doutor em Direito pelo Programa de Pós-Graduação em Direito da Universidade Federal do Rio Grande do Sul – UFRGS.

Orientadora: Professora Doutora Martha Lucia Olivar Jimenez

PORTO ALEGRE

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Aos meus avós, Léa Helena Bragaglia de Camargo, Eloê Barbosa de Camargo, Otacílio Subtil, in memoriam, e Miguelina Maria de Lourdes Subtil, por serem, a todo segundo, a minha fonte de força e de inspiração em vencer.

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Ao mestre Vicente Marotta Rangel, por ter me ensinado a aprender ao ouvir a sua profundidade oceânica

A maior riqueza do homem é a sua incompletude.
Nesse ponto sou abastado.
Palavras que me aceitam como sou – eu não aceito.
Não aguento ser apenas um sujeito que abre
portas, que puxa válvulas, que olha o relógio,
que compra pão as 6 horas da tarde, que vai lá fora,
que aponta lápis, que vê a uva etc.etc.
Perdoai.
Mas eu preciso ser Outros.
Eu penso renovar o homem usando borboletas.

Manoel de Barros, em *Retrato do Artista quando Coisa*

LISTA DE SIGLAS E ABREVIATURAS

AGNU	Assembleia Geral das Nações Unidas
APFIC	Asia-Pacific Fisheries Commission Central
ARGP	Arranjos Regionais de Gestão de Pesca
BIS	Banco de Compensações Internacionais
BSRC	Comitê Regional da IOC para o Mar Negro
CACFish	Asian and Caucasus Regional Fisheries and Aquaculture Commission
CCAMLR	Commission for the Conservation of Antarctic Marine Living Resources
CCSBT	Commission for the Conservation of Southern Bluefin Tuna
CDI	Comissão de Direito Internacional
CE	Comunidade Europeia
CECAF	Fishery Committee for the Eastern Central Atlantic
CEE	Comunidade Económica Europeia
CGPM	Comissão Geral de Pesca para o Mediterrâneo
CIFAA	Committee on Inland Fisheries and Aquaculture of Africa
COPESCAALC	Commission for Inland Fisheries and Aquaculture of Latin America and the Caribbean
CLCS	Comissão de Limites da Plataforma Continental
CMDD	Comissão Mediterrânea de Desenvolvimento Sustentável
COFI	Comitê de Pesca
COMHAFAT	Ministerial Conference on Fisheries Cooperation among African States Bordering the Atlantic
CPPS	Permanent Commission for the South Pacific
CPPS	Permanent Commission for the South Pacific
DOALOS	Divisão das Nações Unidas para Assuntos do Oceano e Direito do Mar
DSU	Understanding on Rules and Procedures Governing the Settlement of Disputes
ECOSOC	Conselho Económico e Social das Nações Unidas
EEZ	Zona Económica Exclusiva

EIFAAC	European Inland Fisheries and Aquaculture Advisory Commission
ESC	Entendimento Sobre Regras e Procedimentos que regem a Solução de Controvérsias
FAO	Organização das Nações Unidas para a Alimentação e a Agricultura
GATT	Acordo Geral de Tarifas e Comércio
GESAMP	Grupo Misto de Peritos Encarregados de Estudar os Aspectos Científicos da Proteção do Meio Ambiente Marinho
GFCM	General Fisheries Commission for the Mediterranean
ICCAT	International Commission for the Conservation of Atlantic Tunas
ICES	Conselho Internacional para Exploração do Mar
ICJ	Corte Internacional de Justiça
ICRC	Comitê Internacional da Cruz Vermelha
ICRW	International Convention for the Regulation of Whaling
IMO	Organização Marítima Internacional
INDEMER	Annuaire du Droit de la Mer
INN	Pesca ilegal, não declarada e não regulamentada
IOC	Comissão Oceanográfica Intergovernamental
IOCAFRICA	Subcomissão da IOC para a África e os Estados Insulares Adjacentes
IOCARIBE	Subcomissão da IOC para o Mar do Caribe
IOCEA	Comitê Regional da IOC para o Atlântico Centro-Oeste
IOCINDIO	Comitê Regional da IOC para o Oceano Índico Central
IOCWIO	Comitê Regional da IOC para o Oceano Índico Ocidental
IOTC	Indian Ocean Tuna Commission
ISA	Autoridade Internacional dos Fundos Marinhos
ITLOS	Tribunal Internacional de Direito do Mar
IUCN	União Internacional para a Conservação da Natureza
IWC	Comissão Baleeira Internacional
JARPA-II	Programa Japonês de Pesca Científica com Baleias
LOS	Law of the Sea Convention
LVFO	Lake Victoria Fisheries Organization

MEDPOL	Programa de Avaliação e de Controle da Poluição Marinha e Costeira na Região Mediterrânea
MoU	Memorandos de Entendimento
NACA	Network of Aquaculture Centers in Asia-Pacific
NEAFC	North-East Atlantic Fisheries Commission
OLDEPESCA	Latin American Organization for Fisheries Development
OMC	Organização Mundial do Comércio
OMM	Organização Meteorológica Mundial
ONU	Organização das Nações Unidas
ORGP	Organizações Regionais de Gestão de Pesca
ORP	Organismos Regionais de Pesca
PAM	Plano de Ação para o Mediterrâneo
PCA	Corte Permanente de Arbitragem
PCIJ	Corte Permanente de Justiça Internacional
PERSGA	Regional Organization for the Conservation of the Environment of the Red Sea and Gulf of Aden
PNUD	Programa das Nações Unidas para o Desenvolvimento
RECOFI	Regional Commission for Fisheries
ROPME	Regional Organization for the Protection of Marine Environment
SC	Scientific Committee
SDN	Liga das Nações
SEAFO	South East Atlantic Fisheries Organization
SIOFA	South Indian Ocean Fisheries Agreement
SPLOS	Reunião dos Estados Partes da UNCLOS
SPREP	Secretariat of the Pacific Regional Environment Programme
SPRFMO	South Pacific Regional Fisheries Management Organization
SRFC	Sub-Regional Fisheries Commission
SWIOFC	Southwest Indian Ocean Fisheries Commission
TIDM	Tribunal Internacional de Direito do Mar
UE	União Europeia
UN	United Nations
UNCLOS	Convenção das Nações Unidas sobre o Direito do Mar
UNEP	Programa das Nações Unidas para o Meio Ambiente

UNESCO	Organização das Nações Unidas para a Educação, a Ciência e a Cultura
UNSC	Conselho de Segurança das Nações Unidas
WCPFC	Western and Central Pacific Fisheries Commission
WECAFC	Western Central Atlantic Fishery Commission
WESTPAC	Subcomissão da IOC para o Pacífico Ocidental
WHO	Organização Mundial da Saúde
WTO	World Trade Organization

RESUMO

A presente tese pretende analisar uma possível proibição de utilização de métodos letais em pesquisas científicas com baleias em alto-mar, no sistema de Direito Internacional do Mar, inserida em um contexto marcado por uma binariedade ou dualidade normativa entre Estados pró e contra a pesca internacional da baleia. A fim de responder esse problema de pesquisa estabelecido, a tese desenvolve, em um primeiro momento, a noção inovadora do Direito Internacional do Mar como sistema. Para tanto, partiu-se da noção do Direito Internacional como um sistema social de validação normativa, onde as noções de técnica positiva de resolução de controvérsias internacionais, função, processo, comunicação social e tempo, tornam-se a sua gramática comum. Em tal perspectiva sistêmica e social do Direito Internacional, são demonstradas as comunicações normativas e institucionais para caracterizar o Direito Internacional do Mar como um sistema funcional de regulação global dos oceanos. Tal compreensão, desenvolvida na primeira Parte da tese, levará a um segundo momento de análise em torno da proteção jurídica das baleias no sistema de Direito Internacional do Mar. Baseada na observação do regime tradicional de proteção jurídica das baleias, enquanto fenômeno de produção de sentido normativo, a tese desenvolve as principais controvérsias estabelecidas antes e após a Segunda Guerra Mundial – entre estabilidade e transformação –, bem como o regime jurídico da Convenção Internacional para a Regulamentação da Pesca da Baleia de 1946. Em uma leitura da proteção jurídica das baleias vinculada ao sistema de Direito Internacional do Mar, serão reveladas as (in)suficiências normativas do Artigo VIII, parágrafo 1º, da Convenção de 1946 e as suas relações com o julgamento do *Whaling in the Antarctic* pela Corte Internacional de Justiça (ICJ), em 2014. Por fim, a partir de uma metodologia sistêmico-pragmática de análise, será desenvolvida a tese da proibição de utilização de métodos letais em pesquisas científicas com baleias em alto-mar, vinculada ao sistema de Direito Internacional do Mar e, mais especificamente, com base na Convenção das Nações Unidas sobre o Direito do Mar (UNCLOS).

Palavras-chave: Direito Internacional do Mar. Baleias. Pesquisas Científicas. Alto-mar. UNCLOS.

ABSTRACT

This thesis analyses the possibility of prohibition against the use of lethal methods in scientific whaling on the high seas under the current International Law of the Sea system, which is marked by a normative binarity or duality between states both for and against international whaling. In order to answer the research question proposed, this thesis develops, at first, the innovative notion of the International Law of the Sea as a system. For such purpose, this thesis initiates with the notion of International Law as a social system for normative validity, whereby the elements of positive technique for international settlement of disputes, function, process, social communication and time become its common syntax. In such a systemic and social perspective of International Law, this thesis demonstrates the normative and the institutional conveyance for characterizing International Law of the Sea as a functional system for the global regulation of the oceans. Such understanding, developed within the first part of this thesis, will lead to the analysis of the legal protection of whales within the International Law of the Sea system. Based on the observation of the traditional regime of legal protection of whales as a normative phenomenon, this thesis examines the main controversies that were established both before and after the Second World War – amid stability and transformation – as well as the legal regime of the 1946 International Convention for the Regulation of Whaling. Within the scope of the legal protection of whales attached to the normative system of the International Law of the Sea, this thesis reveals the normative (in)sufficiency of the paragraph 1 of Article VIII of the 1946 Convention and its relationship to the 2014 *Whaling in the Antarctic* judgment of the International Court of Justice (ICJ). Lastly, within a systemic-pragmatic methodology of analysis, this thesis develops the prohibition theory of the use of lethal methods in scientific whaling on the high seas as established through the International Law of the Sea system and, more specifically, on the basis of the United Nation Convention on the Law of the Sea (UNCLOS).

Key-words: International Law of the Sea. Whales. Scientific Research. High Seas. UNCLOS.

SUMÁRIO

INTRODUÇÃO.....	12
PARTE I. O DIREITO INTERNACIONAL DO MAR COMO SISTEMA.....	18
TÍTULO I. O DIREITO INTERNACIONAL COMO SISTEMA SOCIAL DE VALIDAÇÃO NORMATIVA.....	19
Capítulo 1. O Direito Internacional como técnica positiva ou normativa de resolução das problemáticas internacionais.....	28
Capítulo 2. O Direito Internacional como função do processo de comunicação social em um tempo determinado.....	49
TÍTULO II. AS COMUNICAÇÕES NORMATIVAS E INSTITUCIONAIS NO SISTEMA DE DIREITO INTERNACIONAL DO MAR.....	86
Capítulo 1. As comunicações institucionais no Direito Internacional do Mar.....	96
Capítulo 2. As comunicações normativas no Direito Internacional do Mar.....	123
PARTE II. A PROTEÇÃO JURÍDICA DAS BALEIAS NO SISTEMA DE DIREITO INTERNACIONAL DO MAR.....	143
TÍTULO I. O REGIME TRADICIONAL DE PROTEÇÃO JURÍDICA DAS BALEIAS.....	144
Capítulo 1. A evolução do regime jurídico internacional de proteção às baleias antes da Segunda Guerra Mundial entre estabilidade e transformação.....	145
Capítulo 2. O regime jurídico da Convenção Internacional para a Regulamentação da Pesca da Baleia de 1946.....	180
TÍTULO II. POR UMA LEITURA DA PESQUISA CIENTÍFICA COM BALEIAS VINCULADA AO SISTEMA DE DIREITO INTERNACIONAL DO MAR.....	212
Capítulo 1. A (in)suficiência normativa do Artigo VIII, parágrafo 1º, da Convenção Internacional para a Regulamentação da Pesca da Baleia de 1946 e o julgamento do <i>Whaling in the Antarctic</i> pela Corte Internacional de Justiça (ICJ).....	214

Capítulo 2. A proibição de utilização de métodos letais em pesquisas científicas com baleias em alto-mar na Convenção das Nações Unidas sobre Direito do Mar (UNCLOS).....	239
CONSIDERAÇÕES FINAIS.....	257
REFERÊNCIAS.....	258

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