An analysis of the influence of international environmental law on international relations: Whaling in the Antarctic case

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ABSTRACT

The objective of this study was to analyze the development of International Environmental Law and its influence on international relations and legal order, based on the examination of the case involving Australia's claim against Japan before the International Court of Justice (ICJ), and in which New Zealand intervened, regarding violations committed by Japan to the International Convention for the Regulation of Whaling (International Convention For The Regulation Of Whaling – ICRW), in which the evolution and modification of the interpretation of the ICRW was verified, which initially aimed only to guarantee the whaling trade, later becoming one of the instruments for the protection of whales and the marine environment. In this sense, this article brought an analysis of the general aspects of classical international law, addressing its concept,

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instruments and development, as well as its development and the emergence of international environmental law. In this way, the article addressed the main elements about the Convention and the dispute between Australia and Japan, for violations of the ICRW by Japan through its scientific program called JARPA II. It also discussed the decision of the ICJ and the separate vote of the Brazilian judge Antônio Cançado Trindade, who raised the principles of International Environmental Law as possible grounds for application to the case. From there, a general analysis was carried out regarding the influence of international environmental law on International Treaties and Conventions. The methodology used was the deductive method, with a qualitative approach of bibliographic research. It was concluded that there was the development of Classical International Law to Modern International Law, promoting the genesis of International Environmental Law, and this, in turn, has been having a growing development and strengthening, including the emergence of the notion of suprahuman law. Thus, it was found that there was an increase in its scope due to the serious environmental problems that arose with the modern era. Finally, it was concluded that there is an increasing tendency for convergence and unification of general international law and international relations with the principles and norms of international environmental law.

Keywords: International Environmental Law, Whaling in Antarctica, International Court of Justice.

INTRODUCTION

Whaling has been a practice since ancient times. With the emergence of advanced techniques, there was the development of the whaling industry and an increase in the demand for whale products, initiating serious damage to cetacean populations.

Thus, the need for whaling regulation at the international level arises only with the realization of the consequences of predatory hunting of cetaceans, such as the extinction of several species and the decrease of whale stocks. The first regulations, therefore, sought solely to ensure the survival of the whale trading industry.

In this scenario, the first multilateral conventions emerged, such as the Convention for the Regulation of Whaling of 1931 and the International Agreement of 1937 for the Regulation of the Whaling. However, the highlight is the International Convention for the Regulation of Whaling of 1946, still in force, which had the function of coordinating and codifying the pre-existing regulations.

However, in the course of the formulation of the historical formulation of the regulation of whaling there has been a gradual modification in the meaning of its purposes, shifting the focus from the promotion of the whaling industry to a framework for the protection of whale species themselves.

An internationally prominent conflict involving the 1946 International Convention for the Regulation of Whaling took place between Australia and Japan before the International Court of Justice (ICJ), in which Australia demanded the termination of the second Japanese Whaling Scientific Program under Special Permission, JARPA II.

Japan was accused before the ICJ of using special licenses for scientific purposes, with the sole purpose of covering up the practice of trading whales. It should be noted that this practice had been prohibited by the Whaling Convention since 1986, with the establishment of a zero limit moratorium on commercial whaling.

In its decision, the Court adhered to the technical aspects of the Convention, not applying the principles and foundations of international environmental law to its decision, thus generating effects only on the JARPA II program.

The case, however, ended up evidencing the trend towards a new interpretation of the Convention, more focused on the protection of whales, due to the international repercussion of the case, which reinforced the idea that whale conservation should be the main focus of the Convention. The Brazilian judge Cançado Trindade, a member of the Court, issued, when analyzing the case, a separate opinion, in which he points out that, with the maintenance of the commercial moratorium for a long time, the Convention translates into a living instrument, and with this it began to lean towards the conservation of whaling species.

Thus, it should be noted that, although not recognized by the ICJ, the Convention was influenced by the principles and norms of International Environmental Law in its interpretation, and

currently makes up the set of international legal protection for the protection of the marine ecosystem.

It is important to note that International Law is based on the idea of sovereignty of the Nation State, governed by the general principles of *pacta sunt servanda* and good faith, dealing with border relations and international repercussions. However, since the twentieth century, Contemporary International Law has increasingly included human rights agendas, as well as social and environmental issues, as a typical effect of large-scale globalization and industrialization.

These social changes and excessive consumption have brought drastic damage to the terrestrial ecosystem, such as air and water pollution, warming, extinction of species, degradation and imbalance of fauna and flora, among others. The finiteness of natural resources and the limitations of environmental resilience were also perceived. In addition, international actors have broadened, including not only states, but also international organizations, non-governmental organizations (NGOs, companies), and even the individual and humanity.

In this way, International Environmental Law has been standing out as an intrinsic element in the guarantee of other fundamental and social rights, gaining breadth in the various international relations. In addition, the international protection of the environment has been strengthened with the recognition of ecosystem rights.

From this perspective, this article aims to analyze, from the Case of the Whales in Antarctica, the scope of International Environmental Law, considering the development of the international legal protection of human, social and environmental rights that has been gaining strength in international relations and also reflecting on the interpretation and conduct of pre-existing Treaties.

THE INTERNATIONAL CONVENTION REGULATING WHALING OF 1946

The practice of whaling dates back to antiquity and is verified through records of activity in rock art. In the mid-eleventh and twelfth centuries, commercial whaling began, intended for various purposes such as food, oil extraction for energy production and handicrafts, initiating serious damage to whale populations. In the eighteenth century, there was a gradual growth in the whale trade, and in the twentieth century, there was a significant decline in populations, in addition to the extinction of several subspecies (Silva, 2019, p. 22).

In this context, the International Convention for the Regulation of Whaling (ICRW) was signed in 1946[10] in the city of Washington, with the main purpose of guaranteeing the whaling industry through the conservation of cetacean stocks (Leite, 2022, p. 407).

[10] Em inglês: International Convention for the Regulation of Whaling - ICRW

The Convention is open to any country that formally wants to accede to the legislation. It should be noted that the Brazilian State is one of the signatories of the Convention, promulgated by Decree No. 28,524 of August 18, 1950.

The Convention aimed to codify pre-World War II regulations and establish mechanisms for continuous updates as conditions change over time (ICJ, 2014, p. 247a).

The International Convention for the Regulation of Whaling signed in 1931 was aimed at the exclusive interests of the whaling industry, with a marked nationalist aspect. The normative provision of the 1931 Convention demonstrates "a first and fragile conservatory bias of whaling regulation, it concerns the calculation of the remuneration of those called, by the Convention, of gunners and crews of whaling ships" (Subtil, 2022, p. 179).

The 1937 Agreement applied to floating power stations, shore stations and whaling ships, subject to the jurisdiction of the Contracting Governments, and to the waters in which these floating power plants, shore stations and whaling vessels were engaged in whaling, and remained rooted in a vision of stability and preservation of the international whaling industry (Subtil, 2022, p. 188).

Since the International Convention for the Regulation of Whaling of 1946, however, a paradigm shift in the conduct of the International Agreement on the Regulation of Whaling has begun to be perceived.

In this vein, the 1946 Convention established the creation of the International Whaling Commission with competence to manage the obligations imposed by the Convention on the signatory States and to conduct the policy and technique of whaling within its scope, with a specific role in making recommendations to States Parties that demonstrate that the conservation of whale stocks is an important objective of the Convention (ICJ, 2014, p. 350c).

In principle, the Convention did not establish restrictions or sanctions for commercial whaling. Concerned about the end of marine resources, in 1986, the Convention ratified the moratorium on whaling for commercial purposes, since some species were practically extinct as a result of predatory hunting (Leite, 2022, p. 408).

The moratorium established a zero catch limit for whaling of all species for commercial purposes, and since 1986 it has been in force and has contributed to the recovery of some whale populations, in addition to being an essential instrument for the promotion of non-lethal uses in many countries (ICJ, 2014, p. 378c).

THE CASE OF AUSTRALIA V. JAPAN, AND NEW ZEALAND AS AN INTERVENER, AT THE INTERNATIONAL COURT OF JUSTICE.

In 2010, Australia filed a lawsuit against Japan at the International Court of Justice for large-scale whaling activities carried out in the second phase of the Japanese Antarctic Whaling Research

Program, JARPA II. In 2012, New Zealand filed a request for intervention in the case, based on Article 63 of the Statute of the Court, which was accepted in 2013 by the Court, unanimously (ICJ, 2014, p. 247a).

In short, Australia claimed that Japan was violating its obligations under the Convention, in addition to other international obligations for the preservation of marine mammals, by using scientific licenses for the JARPA II program to carry out essentially commercial activities (ICJ, 2014, p. 247a).

Soon after the moratorium ratified in 1986, Japan created a Program to carry out scientific research, called JARPA, which was followed by JARPA II, both with the permission of a special license to capture and kill whales for scientific purposes, whose quantity and other restrictions were defined by the granting Governments (ICJ, 2014, p. 247a).

The objective of JARPA was to monitor the Antarctic ecosystem and develop parameters that would support a new management of whaling resources. In this vein, "the capture of whales followed by death was used, although there are non-lethal study techniques. As soon as the pertinent studies were concluded, the meat was sold in the country's markets and restaurants" (Leite, 2022, p. 409).

The case, therefore, raised questions about the reality of the scientific nature of the JARPA II program. In addition, Australia and New Zealand defended the existence and feasibility of non-lethal study techniques for hunting for scientific purposes. (ICJ, 2014, p. 247a).

On March 31, 2014, the Court decided the case, issuing a Judgment that was divided into 3 parts, namely: I. the jurisdiction of the Court, II. The alleged violations of international obligations under the Convention (International Convention on the Regulation of Whaling), and III. The remedies. The main decision was that Japan should revoke any authorization, permit, or license granted under JARPA II, and would be prevented from granting future permission to that same program (Leite, 2022, p. 410).

Thus, although considered a *leading case* (precedent) due to its international importance, the decision limited its effects only to JARPA II and did not involve principled aspects of International Environmental Law, being strictly restricted to technical aspects of the program and the parties' convention (Leite, 2022, 410).

However, the separate opinion of Brazilian Judge Antônio Augusto Cançado Trindade, although he followed the majority of the Court in the merits of the claim, brings a broader approach to the case, raising essential points that were not developed by the Court.

THE SEPARATE VOTE OF JUDGE CANÇADO TRINDADE

A member of the International Court of Justice, Brazilian Judge Antônio Augusto Cançado Trindade issued a separate opinion, in which he addressed the following points: (a) the object and

purpose of the International Convention on the Regulation of Whaling (the teleological approach); (b) collective guarantee and collective regulation; (c) the limited scope of Article VIII (1) of the ICRW; (d) the evolution of conservation law: interactions between systems; (e) the ICRW as a "living instrument": the evolution of *the opinio juris communis*; (f) intergenerational equity; (g) conservation of living species (marine mammals); (h) the principle of prevention and the principle of precaution; (i) remaining uncertainties surrounding scientific research (ICJ, 2014, p. 348-349c).

As stated in the Brazilian judge's opinion, the 1946 Convention was indeed a pioneer, by acknowledging, in its preamble, "the interest of the nations of the world in safeguarding for future generations the great natural resources represented by whale stocks" (ICJ, 2014, p. 362c).

In the analysis, Cançado Trindade highlighted some relevant facts, such as the Convention's own supervisory body, the nature of a multilateral treaty comprising member states that do not practice whaling, and the adoption of a moratorium on commercial whaling within the scope of the Convention, which reveal the conception that the object and purpose of the Convention is not restricted to the development of the whaling trade. (ICJ, 2014, p. 349c).

To substantiate this assertion, Trindade considered that the Convention has mechanisms to ensure its own evolution in the face of changing conditions and new challenges, since the International Whaling Commission has a peculiar function of making recommendations to the States Parties, in the form of resolutions, which they must consider in good faith. The Commission's practice, focused on non-lethal methods of whale research, reveals, in fact, a constant concern with the conservation of whale stocks (ICJ, 2014, p. 350c).

Cançado also highlights, in his separate vote, the existence of the Annex of Regulations that is part of the Convention and has legal force, through which "changes have been made regularly to the schedule, in order to deal with international environmental developments" (ICJ, 2014, p. 350-351c). The aim is to combat unilateral actions, such as control for the conservation of whales.

The judge notes that the configuration of the Convention is beginning to be concerned with establishing a balance between the use of whaling resources and the conservation of species, with a view to curbing the overexploitation of whales (ICJ, 2014, p. 350c).

It is appropriate to highlight the argument raised in the separate vote, about the evolution of conservation law based on interactions between systems, with the growth of international instruments relevant to conservation. Thus, "none of them is approached in isolation from the others; it is not surprising that the coexistence of international treaties of this kind has required a systemic perspective, which has been pursued in recent years" (ICJ, 2014, p. 357c).

Cançado (ICJ, 2014, p. 357c) cites as examples:

> [A] 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES Convention), the 1979 Convention on Migratory Species of Wild Animals, the 1980 Convention on the Conservation of Antarctic Marine Living Resources, the 1982 United

Nations Convention on the Law of the Sea, the 1992 United Nations Convention on Biological Diversity (CBD Convention).

Thus, "the systemic view seems to be flourishing in recent years" (ICJ, 2014, p. 357c), which could be observed at the meeting of the Conference of States Parties to the Convention on Biological Diversity held in 2000, which addressed the relationship between climate change and the conservation and sustainability of biological diversity in the various interconnected fields, including, but not limited to, marine and coastal biodiversity. (ICJ, 2014, p. 357c).

In view of all this, it can be seen that, although the Treaties are linked to their context of conception, they also have the capacity to adapt to changes, so that their interpretation and application over time demonstrate that they are living instruments, that is, they need to evolve so as not to become unusable. In the words of Trindade (ICJ, 2014, p. 381c): "the ICRW of 1946 is no exception to this and, endowed with its own supervisory mechanism, has proven to be a living instrument".

In the various fields of international law, treaties and conventions, especially those aimed at protection, have demanded the pursuit of their own hermeneutics, as living instruments. This is true not only in the current realm of conservation and sustainable use of marine living resources, but also in other areas of international law.

Therefore, Cançado points out that the case of whaling in Antarctica "has brought to light the evolution of the law on the conservation and sustainable use of living marine resources" (ICJ, 2014, p. 381c). And in a way, it has contributed to the progressive formation of an *opinio juris communis* in contemporary international law.

In this sense, "the voluntarism of the State gives way to *jus necessarium, notably in the current era of international courts, in the midst of growing efforts to ensure the long-awaited primacy of jus necessarium over jus voluntarium*" (ICJ, 2014, p. 382c).

Cançado Trindade's vote elucidated the impact of International Environmental Law on the evolution of International Treaties, with special emphasis on the principles of the common heritage of humanity, intergenerational equity, in addition to the principles of cooperation, prevention and precaution.

Thus, Trindade reinforces that "intergenerational equity is present today in a wide range of instruments of international environmental law and, indeed, of contemporary public international law" (ICJ, 2014, p. 366c).

Therefore, the strong role of International Environmental Law in contemporary international relations is revealed, including in the interpretation of International Treaties and Conventions already entered into under the norms and principles of classical International Law.

ASPECTS OF INTERNATIONAL LAW: CONCEPT AND FOUNDATIONS OF TREATIES

International Law is a legal system that has been formed and developed throughout history, formed by a set of principles and norms that regulate the complex relationships experienced in the international environment between the subjects of international law (More, 2011).

In the traditional conception, only independent countries were recognized as subjects of international law, called Sovereign States. However, with the transformation of the League of Nations into the United Nations (UN) at the end of World War II, there was an increase in the importance of international organizations and, in the same vein, the gradual recognition of certain entities as holders of international legal personality, including human beings (More, 2020).

According to Novo (2018), the existence of international law dates back to antiquity, but it was recognized by most jurists only after the Peace of Westphalia (1648), when the notions of national state and sovereignty emerged. To substantiate this assertion, Novo explains that there would be no other power over the state above itself.

After the French Revolution, the concept of nationality began to be strengthened in the contemporary era. Thus, Modern International Law developed in the nineteenth century, with "the creation of the first international bodies to regulate transnational affairs, the proclamation of the Monroe Doctrine and the first of the Geneva Conventions, among other initiatives" (Novo, 2018).

In the twentieth century, important milestones began, such as the creation of the League of Nations, which then gave way to the United Nations Organization, highlighting the codification of norms such as the Vienna Convention on the Law of Treaties and the Convention on the Law of the Sea. 2018).

In this sense, Contemporary International Law is increasingly including human agendas and social and environmental issues in the various international adjustments, as a typical effect of globalization.

According to the Vienna Convention on the Law of Treaties of 1969, a treaty is an international agreement concluded in writing between States and/or international organizations and governed by international law, whether it is contained in a single instrument or in two or more related instruments, whatever their specific name. They can be bilateral and multilateral, general and special, universal, regional and local. In addition, the Vienna Convention provides for the duty to comply with the Treaties, under the Principles of *pacta sunt servanda* and good faith.

Also noteworthy is the Charter of the United Nations, of which the annexed Statute of the International Court of Justice (ICJ) is an integral part, signed in San Francisco on June 26, 1945, on the occasion of the Conference of the International Organization of the United Nations. The Charter was promulgated by the Brazilian State through Decree No. 19,841 of October 22, 1945.

DEVELOPMENT AND KEY ASPECTS OF INTERNATIONAL ENVIRONMENTAL LAW

In general terms, International Environmental Law has been consolidated since the first International Conference on the Environment held in Stockholm, Sweden, in 1972, and, consequently, with the development of international documents on the subject (Guerra, 2007).

Martins (2013) argues that international organizations, which previously played a restricted role, began to play an active role in the global governance process, presenting their normative and technical contributions, as is the case of the International Maritime Organization.

In this way, the Treaties of International Environmental Law became negotiations under the auspices of International Organizations, with a more generic and fractional approach, aiming at consensus and approval of the text and leaving open the issues of dissent or scientific updates for future transactions through protocols, amendments, adjustments, annexes and lists.

In this field, the environmental issue has ceased to be a matter of local nature, but has become an international interest, being considered "in the political programs of the States, as well as in the context of international society, giving rise to the proliferation of various international treaties and conventions on the subject" (Guerra, 2007).

With globalization, the industrial revolution, scientific and technological progress, the excessive and accelerated increase of industrial activities, in addition to population growth and consequent dysfunctional urbanization, in recent decades it has been faced with a picture of environmental crisis that includes the depletion of many natural resources, extinction of species and degradation of flora, in addition to the serious problems of global warming and contamination and scarcity of adequate water (Reato, 2022, p. 20-21).

Such environmental damage has gone beyond border barriers. In this sense, there is a need for an increasingly active and differentiated environmental protection at the international level, especially in view of the planetary limits of ecosystem resilience.

International Environmental Law stems from a process of expansion of modern International Law, "which deals not only with borders, as in classical international law, but also with common problems, a process typical of a period of legal globalization" (Guerra, 2007).

In this regard, it is important to mention the recognition of the international protection of human rights in a collective dimension, such as the recognition of traditional communities as subjects of international law (Silva, 2014).

Humanity also comes to be recognized as a subject of rights, in the sense of corresponding to the set of all members of the human race, both in the spatial plane of the Earth and in the temporal plane (past, present and future generations). In the individual sense, therefore, each human being carries the whole of humanity in him, and in the abstract sense humanity expresses itself in the feeling of goodness, benevolence of the one who is human. The common interest of humanity,

therefore, includes the common concerns of life in society, generating the duties of doing no harm, sharing of benefits, and duties of cooperation.

Thus, the notion of common concern of humanity emerges, which was expressly provided for for the first time in the Convention on Biological Diversity of 1992, when it stated in its preamble that the conservation of biological diversity is a common concern of humanity.

This transformation is strengthened by Latin constitutionalism, which introduces the notion of non-human or suprahuman rights. Suprahuman right refers to extending protection rights to fauna and flora, that is, to the ecosystem as a subject of rights, decentralizing the environment only as a resource destined to human interests (Reato, 2022, p. 34-35).

In the heart of South America, a cry was heard for Mother Earth, Pacha Mama: if we do not change the system, the climate will continue to change, making the planet uninhabitable. Pacha Mama is Mother Earth for the Andean peoples of Peru, Bolivia, Argentina and Chile. It can also be understood as nature (Ferreira, 2013, p.421).

In view of all the above, Ferreira's assertion (2013, p. 421) that "humanity must be placed in the arms of Pacha Mama, to integrate with her, to promote the rights of nature, is justified. Social movements and indigenous peoples are central actors in the struggle for the freedom of nature."

Ecuador's Political Charter was a pioneer in attributing to nature the status of a subject of law. In Bolivia, in 2012, the Law of the Rights *of Madre Tierra was proclaimed*, which led to an expansion of the defense of the rights of the *Pachamama* (nature), notably the rights of the rivers (Reato, 2022, p.36). This Law presents nature as a subject of rights, by stating in its article 1 that mother earth is a living being, being a single community, indivisible and self-regulated, of interrelated beings that sustains, contains and reproduces all the beings that compose it.

In New Zealand, "the Indigenous system of water governance now enjoys full legal recognition, with rivers defined as living entities" (Di Carli, 2022, p. 134). In India, the Supreme Court has recognized the legal personality of its largest rivers, the Ganges and the Yamuna and its glaciers (Di Carli, 2022).

Mexico has a declaration of the rights of rivers, approved by society. And at the United Nations, there is a program called Harmony with *Nature*, with dialogues between experts and activities around the world in defense of the rights of *Madre Tierra.* (Di Carli, 2022).

Thus, it can be observed that International Environmental Law (IAD) is a "new arrangement of international environmental regulations that goes beyond the legal regime, advocating for utilitarian structures and referrals that incorporate other sciences, new actors and instruments of confrontation" (Silva, D., 2014).

Continuing on this critical journey, International Environmental Law emerged from the second half of the twentieth century as the set of international legal norms through treaties and

agreements between Nation States and gave way to International Environmental Law that is gradually advancing, clothed in active structures, such as the Framework Conventions regulated by the COP's that favor a dynamic and interdisciplinary global environmental governance. promoting "the relationship of States and International Organizations with new international entities, mainly through networks" (Silva, D., 2014).

ANALYSIS OF THE INFLUENCE OF INTERNATIONAL ENVIRONMENTAL LAW ON INTERNATIONAL LAW

As is obvious, from globalization and social changes, Classical International Law gives way to Modern International Law, which begins to include issues of collective interest in its agendas. This also leads to the inclusion of environmental issues in the various more modern treaties (Guerra, 2007).

Guerra (2007, p. 49) clarifies that this trend requires from "public international law a process of continuous expansion, solutions to the global problems they present, as well as conceptual enrichment to face the realities of the new times".

Guerra (2007, p. 50) argues that:

> Although the domains of human protection and environmental protection have been treated separately so far, it is necessary to seek a closer relationship between them, since they correspond to the main challenges of our time, ultimately affecting the course and destiny of the human race.

Therefore, human rights issues have demanded a direct relationship with the protection of the environment, thus imposing a systematized contemporary treatment.

For Aoki (2004, p. 3), the Principles of International Environmental Law have been gaining prominence, especially because environmental issues have become expressively present in daily life, being a reality that affects the very existence of humanity.

Unquestionably, there is an increasing reach of the Principles of International Environmental Law in the international scenario, driven by emerging environmental issues and scarcity of resources that reflect in the change of ways of consumption, of life, including in the management of companies and people's behavior, "all based on a convergent point of interests, which is summarized in the term sustainability, which is divided into three pillars: economy, environment and society" (Reis, 2019, p. 22)

Reis (2019, p. 23) also reinforces that "changes in the international context have caused, and continue to cause, changes in the way organizations in all sectors should act and behave in the face of environmental dynamics in the world". Finally, he points out that the conflict between environmental issues and the purposes of companies "has been generating changes in the international scenario, and

gives rise to international treaties, standards, agreements, recommendations and codes that balance the relationship between corporations and the future of the environment" (Reis, 2019, p.23).

The Convention on the Regulation of Whaling, as we have seen, began to highlight the contours of a new interpretation focused on the environmental law of marine ecosystems, becoming part of the set of the main regulatory frameworks for cooperation and protection of whales, together with the United Nations Convention on the Law of the Sea and the Convention on Biological Diversity.

With regard to the Brazilian State, Federal Law 7.643 of November 18, 1987 was sanctioned, in order to adapt the national legislation to the Convention, prohibiting the hunting or any form of intentional molestation of all species of cetaceans in the waters under Brazilian jurisdiction.

In this sense, under the aspect of the uniqueness of the ecosystem and interdisciplinary interaction, it is relevant to mention that scientific studies have pointed out that whaling involves major impacts on the ecosystem, generating environmental crises such as global warming, water pollution with waste such as plastics, nets and hunting accessories, as well as sound noise, chemical debris, among others (Leite, 2022, 421).

The importance of mammals for the balance of the ecosystem has already been demonstrated "being biologically considered keystone species" (Leite, 2022, p. 421), and from the 90s onwards "the International Whaling Commission began to pay greater attention to the correlation between cetaceans and climate change" (Leite, 2022, p. 421).

It is also noteworthy that in studies carried out it was identified "that whales have a broad capacity to store carbon and protect the marine ecosystem from destabilizing stresses" (Leite, 2022, p. 421). According to the International Monetary Fund (IMF), in 2019, whales could store 1.7 billion tons of CO2 per year (Leite, 2022, p. 421).

There are no doubts about the importance of whales for the balance of the ecosystem in which they are inserted, since, without them, "countless ecological cycles of the ocean would collapse" (Leite, 2022, p. 422).

It should be noted that international regulations recognize the environment as a common right, which requires "mutual cooperation of States, with binding rules, through the principled applications that guide the idea of environmental preservation" (Leite, 2022, p. 424).

Studies focusing on medical ecology demonstrate the uniqueness of the environment and its reflection in a direct link between the environment and human health. "What is currently observed in the health-disease process is the practical separation between the environment and human health" (Lima, 2014).

Thus, Lima understands that it is necessary to admit that the human being is an integral part of the environment and that "approaches and attitudes are therefore necessary for the promotion of health, quality of life and prevention of diseases associated with the environment." (Lima, 2014)

In addition, the concept of natural ecosystem services helps to describe the global processes that contribute to and are essential to the health and well-being of human beings (Souza, 2022). For example, "green areas contribute to urban drainage, acoustic and thermal comfort (noise reduction and climate regulation), air purification, and moderation of extreme weather events, making cities more resilient" (Souza, 2022, p.80).

This multidisciplinary knowledge has been raising the awareness of global subjects for decision-making both in the formulation of new agreements and in the interpretation and application of existing conventions.

It can be seen that the evolution of International Environmental Law has been, therefore, a relevant factor in the transformation of relations between international society, as it is a multidisciplinary system, which involves several areas of knowledge and human relations.

The growing cross-border issues have demanded the observance of norms of International Environmental Law in the various types of public and private International Law relations, in an apparent convergence of these to the international environmental legal protection.

CONCLUSION

What can be concluded, from all the above, is that the damage to the species and quantities of whales, at first, caused the fear of losses in the whale industry, which moved international actors to regulate whale hunting with a totally commercial vision, culminating in the creation of the International Convention for the Regulation of Whaling of 1946.

The Convention was ratified under the auspices of the rules of classical public international law, governed in particular by good faith and the principle of *pacta sunt servanda*, with the main objective, initially, of ensuring the survival of the whaling industry.

However, the Case of Whaling in Antarctica, between Australia and Japan and with New Zealand as an intervening party, in the sphere of the International Court of Justice, of great international repercussion, revealed that the Convention adopted a configuration that allowed its evolution and adaptation over time, especially related to the activities of the International Whaling Commission and the adoption of a zero moratorium on commercial whaling in force to the present day and supported by the vast majority of its Members.

This aspect was demonstrated in the separate opinion of Brazilian Judge Cançado Trindade, a member of the Court, who stated in detail that the Convention is a living instrument, which has recently changed its objectives. Thus, nowadays, the Whaling Convention would no longer aim to

guarantee the whaling industry, but, in a diametrically opposite sense, would be focused on the interests of the marine ecosystem, becoming an instrument for the protection of International Environmental Law.

In other words, the Convention has undergone a growing and radical change in its conduct and interpretation, with the concept of systemic interpretation of International Environmental Law, that is, an interpretation that is carried out in conjunction with the other instruments that regulate the relations of States with regard to maritime life, and these, predominantly, aim to ensure the protection and conservation of the oceanic aquatic environment.

In this regard, the vote of the Brazilian judge of the Court, Antônio Augusto Cançado Trindade, deserves special mention, who reaffirmed the need for the mutability of international treaties in the face of paradigmatic changes in society and the importance of strengthening the pillar of the environment.

It should be noted that, although it may be considered a precedent due to its importance in the international scenario, the Court limited itself, in its collegiate decision, to examining the technical terms of the JARPA II program, having as a parameter the International Convention for the Regulation of Whaling and its schedule, without going into the principled aspects of International Environmental Law, that is, without any mention of the common heritage of humanity, intergenerational equity and the principle of prevention and precaution.

In due course, Judge Cançado Trindade, during his vote, did not limit himself to following the understanding of the majority of the judges of the Court, but also discussed how the aforementioned principles would be applied in the analysis of the specific case.

From this case, an analysis of the configurations of international law was made, and it was observed that the industrial revolution, globalization and large-scale consumption give rise to broader social and human issues, directing Contemporary International Law to increasingly encompass human, social and environmental issues.

Thus, International Environmental Law begins to deal with the international protection of human rights in a collective dimension, the recognition of traditional communities as subjects of international law, among other international actors, the notion of common concern of humanity, Latin constitutionalism that brings the notion of non-human or supra-human rights, which are those proper to nature.

A new order of international environmental protection is emerging, characterized by dynamism and interdisciplinarity to face serious environmental crises, whose structures enable a more active and dynamic international governance.

Thus, it can be seen that environmental legal protection currently radiates to the various international agreements, of different themes. It was found that International Environmental Law has

directly influenced the new adjustments and interpretation of existing treaties, such as the International Convention for the Regulation of Whaling of 1946.

Knowledge such as the uniqueness of the ecosystem, the global awareness of the disastrous consequences of man's actions on the environment, and the perception of the reflection of the punctual changes of the various ecosystems on the global flow of the climate and on the quality of the environment, has led to the standards of living, consumption and behavior in general, and notably has led to public and private international agreements.

Thus, considering the intrinsic interconnection of the various issues with the environment, international regulations in the public, health, and business areas, among others, are absorbing norms of International Environmental Law, such as intergenerational equity, the principle of prevention, and the principle of precaution, to regulate their activities aimed at conserving the environment.

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