I ENCONTRO NACIONAL DE DIREITO DO FUTURO

DIREITO INTERNACIONAL E COMPARADO

D598
Direito Internacional e Comparado [Recurso eletrônico on-line] organização I Encontro Nacional de Direito do Futuro: Escola Superior Dom Helder Câmara – Belo Horizonte;

Coordenadores: Amina Welten Guerra, Simone Alvarez Lima e Daniela Menengoti Gonçalves Ribeiro – Belo Horizonte: Escola Superior Dom Helder Câmara - ESDHC, 2024.

Inclui bibliografia
ISBN: 978-85-5505-955-1
Modo de acesso: www.conpedi.org.br em publicações
Tema: Os desafios do humanismo na era digital.
1. Direito do Futuro. 2. Humanismo. 3. Era digital. I. I Encontro Nacional de Direito do Futuro (1:2024 : Belo Horizonte, MG).

CDU: 34

I ENCONTRO NACIONAL DE DIREITO DO FUTURO

DIREITO INTERNACIONAL E COMPARADO

Apresentação

O Encontro Nacional de Direito do Futuro, realizado nos dias 20 e 21 de junho de 2024 em formato híbrido, constitui-se, já em sua primeira edição, como um dos maiores eventos científicos de Direito do Brasil. O evento gerou números impressionantes: 374 pesquisas aprovadas, que foram produzidas por 502 pesquisadores. Além do Distrito Federal, 19 estados da federação brasileira estiveram representados, quais sejam, Amazonas, Amapá, Bahia, Ceará, Goiás, Maranhão, Minas Gerais, Mato Grosso do Sul, Paraíba, Pernambuco, Paraná, Rio de Janeiro, Rio Grande do Norte, Rondônia, Rio Grande do Sul, Santa Catarina, Sergipe, São Paulo e Tocantins.

A condução dos 29 grupos de trabalho do evento, que geraram uma coletânea de igual número de livros que ora são apresentados à comunidade científica nacional, contou com a valiosa colaboração de 69 professoras e professores universitários de todo o país. Esses livros são compostos pelos trabalhos que passaram pelo rigoroso processo double blind peer review (avaliação cega por pares) dentro da plataforma CONPEDI. A coletânea contém o que há de mais recente e relevante em termos de discussão acadêmica sobre as perspectivas dos principais ramos do Direito.

Tamanho sucesso não seria possível sem o apoio institucional de entidades como o Conselho Nacional de Pesquisa e Pós-graduação em Direito (CONPEDI), a Universidade do Estado do Amazonas (UEA), o Mestrado Profissional em Direito e Inovação da Universidade Católica de Pernambuco (PPGDI/UNICAP), o Programa RECAJ-UFMG – Ensino, Pesquisa e Extensão em Acesso à Justiça e Solução de Conflitos da Faculdade de Direito da Universidade Federal de Minas Gerais, a Comissão de Direito e Inteligência Artificial da Ordem dos Advogados do Brasil – Seção Minas Gerais, o Grupo de Pesquisa em Direito, Políticas Públicas e Tecnologia Digital da Faculdade de Direito de Franca e as entidades estudantis da UFMG: o Centro Acadêmico Afonso Pena (CAAP) e o Centro Acadêmico de Ciências do Estado (CACE).

Os painéis temáticos do congresso contaram com a presença de renomados especialistas do Direito nacional. A abertura foi realizada pelo professor Edgar Gastón Jacobs Flores Filho e pela professora Lorena Muniz de Castro e Lage, que discorreram sobre o tema “Educação jurídica do futuro”. O professor Caio Lara conduziu o debate. No segundo e derradeiro dia, no painel “O Judiciário e a Advocacia do futuro”, participaram o juiz Rodrigo Martins Faria,

os servidores do TJMG Priscila Sousa e Guilherme Chiodi, além da advogada e professora Camila Soares. O debate contou com a mediação da professora Helen Cristina de Almeida Silva. Houve, ainda, no encerramento, a emocionante apresentação da pesquisa intitulada "Construindo um ambiente de saúde acessível: abordagens para respeitar os direitos dos pacientes surdos no futuro", que foi realizada pelo graduando Gabriel Otávio Rocha Benfica em Linguagem Brasileira de Sinais (LIBRAS). Ele foi auxiliado por seus intérpretes Beatriz Diniz e Daniel Nonato.

A coletânea produzida a partir do evento e que agora é tornada pública tem um inegável valor científico. Seu objetivo é contribuir para a ciência jurídica e promover o aprofundamento da relação entre graduação e pós-graduação, seguindo as diretrizes oficiais da Coordenação de Aperfeiçoamento de Pessoal de Nível Superior (CAPES). Além disso, busca-se formar novos pesquisadores nas mais diversas áreas do Direito, considerando a participação expressiva de estudantes de graduação nas atividades.

A Escola Superior Dom Helder Câmara, promotora desse evento que entra definitivamente no calendário científico nacional, é ligada à Rede Internacional de Educação dos Jesuítas, da Companhia de Jesus – Ordem Religiosa da Igreja Católica, fundada por Santo Inácio de Loyola em 1540. Atualmente, tal rede tem aproximadamente três milhões de estudantes, com 2.700 escolas, 850 colégios e 209 universidades presentes em todos os continentes. Mantida pela Fundação Movimento Direito e Cidadania e criada em 1998, a Dom Helder dá continuidade a uma prática ético-social, por meio de atividades de promoção humana, da defesa dos direitos fundamentais, da construção feliz e esperançosa de uma cultura da paz e da justiça.

A Dom Helder mantém um consolidado Programa de Pós-graduação Stricto Sensu em Direito Ambiental e Sustentabilidade, que é referência no país, com entradas nos níveis de mestrado, doutorado e pós-doutorado. Mantém revistas científicas, como a Veredas do Direito (Qualis A1), focada em Direito Ambiental, e a Dom Helder Revista de Direito, que recentemente recebeu o conceito Qualis A3.

Expressamos nossos agradecimentos a todos os pesquisadores por sua inestimável contribuição e desejamos a todos uma leitura excelente e proveitosa!

Belo Horizonte-MG, 29 de julho de 2024.

Prof. Dr. Paulo Umberto Stumpf – Reitor da ESDHC

Prof. Dr. Franclim Jorge Sobral de Brito – Vice-Reitor e Pró-Reitor de Graduação da ESDHC

Prof. Dr. Caio Augusto Souza Lara – Pró-Reitor de Pesquisa da ESDHC

O TRIBUNAL MARÍTIMO BRASILEIRO FRENTE AO DIREITO INTERNACIONAL: UMA ANÁLISE DO CASO BADEN

THE BRAZILIAN MARITIME COURT IN THE FACE OF INTERNATIONAL LAW: AN ANALYSIS OF THE BADEN CASE

Nara Ferreira Gomes Sales [1]
Maria Luísa Pardini Ribeiro [2]

Resumo

Este trabalho aborda a importância do Tribunal Marítimo Brasileiro nacionalmente e internacionalmente. Ele objetiva investigar as circunstâncias que levaram à criação da Corte após o caso Baden, entender o processo de consolidação e avaliar suas implicações no direito e nas relações internacionais marítimas que contribuíram para o desenvolvimento da política interna brasileira. Através da análise de notícias, documentários e citações, conclui-se que o surgimento do Tribunal Marítimo foi um marco jurídico no país, influenciando a evolução do direito nacional sobre as atividades marítimas e do direito internacional público que rege as relações entre os que operam navios oceânicos.

Palavras-chave: Caso baden, Tribunal marítimo brasileiro, Direito militar brasileiro, Marinha do brasil, Relações internacionais

Abstract/Resumen/Résumé

This work addresses the importance of the Brazilian Maritime Court both nationally and internationally. It aims to investigate the circumstances that led to the creation of the Court after the Baden case, understand the consolidation process, and evaluate its implications in law and international maritime relations that contributed to the development of Brazilian domestic policy. Through analyzing news, documentaries, and quotations, it is concluded that the emergence of the Maritime Court was a legal milestone in Brazil, influencing the evolution of national law on maritime activities and public international law governing the relations between operators of ocean-going ships.

Keywords/Palabras-claves/Mots-clés: Baden case, Brazilian maritime tribunal, Brazilian military law, Brazilian navy, International relations

[1] Law undergraduate at University Federal de Minas Gerais

[2] Law undergraduate at University Federal de Minas Gerais

1. FIRST CONSIDERATIONS

The Decree Opening of the Ports to Friendly Nations of 1808 was a significant historical milestone for Brazil, leading to strong repercussions for its development even in the early 20th century by economically strengthening its foreign relations, which boosted the territory's development as a nation. However, this scenario of commercial prosperity through maritime routes created the need for competent entities to mediate the application of International Law in Brazil without affecting diplomatic relations. Then, to analyze this complex situation, this paper focuses on the Baden Case, the Brazilian Maritime Court, and their impacts.

Thus, the project aims to investigate the historical circumstances related to the Baden Case, which led to the creation of the mentioned Court, and to understand how the consolidation of this institution occurred, evaluating its implications in law. Given this, it is relevant to understand the importance of the developments of the conflict that occurred in Rio de Janeiro in 1930, which brought changes and adaptations to Maritime Law from the moment of its creation. To this end, works by different Brazilian jurists about the Court will be used as support for a dogmatic foundation that is intended to be thorough and in-depth.

It is worth noting that the study of this topic is important as it presents the cited case as a Brazilian legal landmark and demonstrates how it influenced the evolution of domestic law concerning maritime activities. In this sense, the creation of the Court had positive impacts on Brazilian international relations by building a more harmonious relationship with Brazil's trading partners, who share similar interests through agreements and treaties. Thus, this action benefited the country's diplomacy, trade, transportation, and economic development.

Regarding the research methodology, this expanded summary utilized the socio-legal methodological approach based on the classification by Gustin, Dias, and Nicácio (2020). Concerning the generic type of research, the historical-legal type was chosen. In turn, the reasoning developed in the research was predominantly dialectical. Regarding the research genre, theoretical-bibliographic research was adopted.

2. THE BADEN CASE AND THE HISTORICAL CREATION OF THE BRAZILIAN MARITIME COURT

There is no way to comprehend the establishment of the Maritime Court in Brazil without first providing a historical context for the reasons behind its consolidation as an

institution of Brazilian law. During the 1930 Revolution, a military-led coup d'état deposed President Washington Luís and prevented the inauguration of the then-elected president, Júlio Prestes. This led to a scenario of instability, exacerbated by an incident that took place on the same day in Rio de Janeiro, which garnered international repercussions at the time. This event, known as the Baden Case, sparked both diplomatic and internal crises, prompting Brazilian authorities to establish a technical body to assess the causes and circumstances of accidents involving vessels. As noted by the scholar Matusalém Gonçalves Pimenta on the subject:

> The creation of the Brazilian Maritime Court occurred as a result of an embarrassing incident for Brazilian authorities during a diplomatic incident in the year 1930. On October 24th of that year, the German steamer Baden left the port of Rio de Janeiro. As the ship crossed the harbor, with the Pão de Açúcar Mountain to its right and the Santa Cruz Fortress to its left, it was signaled by the latter to stop. The commander of the Baden, either ignoring or not understanding the order, continued the journey. The Vigia Fort, now known as the Duque de Caxias Fortress, located at the Ponta do Leme, upon being alerted by Brazilian authorities, opened fire on the German steamer, resulting in 21 fatalities and numerous injuries. (Pimenta 2013, p. 1).

This accident strained diplomatic relations between Brazil and Germany, prompting immediate pressure from Germany on Brazilian authorities for thorough investigations to ascertain those responsible for the maritime tragedy. To national embarrassment, Brazil's only assistance to the investigations was the initiation of an administrative inquiry, as there was no specialized tribunal available to adjudicate the incident and hold those involved accountable. In this context, the incident was examined by the German Maritime Tribunal in January 1931, which, after hearing the testimony of the Baden's commander, attributed responsibility for the incident to the Santa Cruz Fortress, citing imprudence and negligence.

At the judgment, it was argued that the Brazilian fortresses failed to utilize international signaling, thereby preventing the commander of the Baden from properly interpreting the order to return to port, which could have potentially altered the causal course of the accident. Additionally, the Tribunal also held the garrison at Forte do Leme accountable for not attempting radio contact before firing shots that struck the ship. As for the German commander, only subsidiary responsibility for the incident was attributed to him for failing to stop the ship upon receiving signaling, the significance of which he allegedly ignored. Jurist Matusalém Pimenta also addresses this matter:

> The matter was solely addressed in Brazil through an administrative inquiry. Conversely, the German Maritime Tribunal adjudicated the case with the requisite expertise, deeming the conduct of the ship's commander negligent, and condemned

> the Brazilian fortresses for imprudence and negligence. This was due to their opening fire on the merchant ship, thereby violating the right of innocent passage in times of peace, without the necessary precautionary measures warranted by the situation. (Pimenta 2013, p. 5).

In light of the condemnation by a German tribunal of Brazilian fortresses for an accident that occurred in its national territorial waters, Brazilian jurists and politicians recognized the need for the country to overcome its position of inferiority vis-à-vis foreign bodies. After all, in the international order, Brazil governs itself by its Sovereignty as a state that is not subordinate to others. Therefore, the year following the verdict of the case saw the enactment of Decree n° 20.829 on December 21, 1931, which established the Directorate of Merchant Marine and Administrative Maritime Tribunals in Brazil (Pimenta, 2013, p. 5).

In this context, it is worth noting that, inspired by the German maritime jurisdiction – which has regional Maritime Tribunals and a Supreme Maritime Tribunal – the initial idea was to establish several administrative maritime tribunals throughout the country. However, the idea of dividing the national territory into maritime jurisdictions was abandoned with the issuance of Decree n° 24.585 on July 5, 1934 – considered as the effective date of the creation of the Maritime Tribunal – which only approved the Regulation of the Administrative Maritime Tribunal of the Federal Capital: Rio de Janeiro at that time (Pimenta, 2013, p. 6).

However, maritime accidents were intensified in the 1940s, with the occurrence of numerous Axis submarine bombings on national Merchant Marine vessels (Pimenta, 2013, p. 7 and 8), given the global wartime scenario at the time. International criminal disputes in maritime territory were thus occurring constantly. With this expansion of activities in the Maritime Tribunal and the increasing importance thereof, it quickly became evident that its regulation needed to be updated to address existing jurisdictional gaps.

In this regard, it was only in 1954, with the enactment of Law n. 2.180, the Organic Law of the Maritime Tribunal (OLMT), still in force today, that the Maritime Tribunal received a balanced regulation. Among its innovations, it changed the denomination from Administrative Maritime Tribunal to simply Maritime Tribunal and established its existence as the sole tribunal throughout the national territory, completely abandoning the previous idea of multiple maritime tribunals divided by distinct maritime jurisdictions. Additionally, it determined that the Maritime Tribunal is an autonomous body with jurisdiction over the entire national territory, competent to assess and adjudicate navigation-related matters (Ferrari, 2017, p. 44), as stipulated by Article 1 of the OLMT:

> The Maritime Tribunal, with jurisdiction over the entire national territory, is an autonomous body, an auxiliary of the Judiciary, linked to the Ministry of the Navy regarding the provision of military personnel and budgetary resources for personnel and materials necessary for its operation. Its responsibilities include adjudicating accidents and incidents of maritime, river, and lake navigation, as well as issues related to such activities, as specified in this Law.

Thus, the Maritime Tribunal was finally established in Rio de Janeiro, with competence and jurisdiction to adjudicate incidents and events of navigation throughout the national territory. It is worth highlighting, in this context, that the term "jurisdiction," according to the words of Professor Elpídio Donizetti (2016, p. 82):

> Jurisdiction, therefore, is the power, function, and activity exercised and carried out, respectively, by state bodies provided for by law, with the purpose of safeguarding individual or collective rights.

However, such conceptualization generates doctrinal divergences regarding its effective application. Some jurists argue that this term does not precisely correspond to the jurisdiction exercised by the Maritime Tribunal since it does not belong to the Judiciary but to the Executive branch, serving as its auxiliary body and not performing the judicial function in the strict sense, as defined in Article 92 of the Constitution of the Republic (Xavier and Fernandes, 2014, p. 11). Therefore, the prevailing doctrine argues that decisions of the Maritime Tribunal have the legal nature of administrative *res judicata* and, according to Article 18 of Law 2.180/54, they can be reviewed subsequently:

> The decisions of the Maritime Tribunal regarding technical matters related to accidents and incidents of navigation have probative value and are presumed to be correct, but they are subject to review by the Judiciary.

However, contrary to this understanding, another part of Brazilian doctrine considers that the Maritime Tribunal is only linked to the Ministry of Defense regarding personnel and material issues. Therefore, it is not obligated to adhere to the desires of this Ministry, establishing itself as an autonomous body with freedom to adjudicate in pursuit of navigation safety and the safeguarding of human life at sea. This is argued by Professor Marcelo David Gonçalves, current judge of the Maritime Court and specialist in Public International Law: "The Maritime Tribunal, an autonomous body of the Union's Direct Administration and auxiliary to the Judiciary, is linked to the Ministry of Defense only in budgetary matters and in the provision of personnel and material, possessing a *sui generis* nature" (2013, p. XXIII).

Regardless of such disagreements among scholars, the fact remains that since its creation in the 20th century, the importance of the Maritime Tribunal has grown due to the increase in the number and traffic of vessels and the volume of business involving maritime transportation. Thus, the phenomenon of globalization alters in peculiar and complex ways the operations and competencies of this institution. In light of this, it is opportune to understand the functioning of this administrative body, its jurisdiction, and its current mode of operation.

3. CURRENT COMPETENCE OF THE COURT AND ITS IMPORTANCE IN INTERNATIONAL LAW

With the shift in the Brazilian geopolitical landscape, the jurisdiction of the Maritime Court had to evolve over time to keep pace with changes in the global perspective and the international commitments undertaken by Brazil, which has adhered to various maritime conventions and regulations. As a result, the Court modified its organizational structure, becoming composed of seven judges with qualifications prescribed by law, such as Maritime Law and Public International Law. Moreover, these commitments are reaffirmed by an extensive jurisprudence, which includes treaties and agreements with other countries that solidify its diplomacy.

As an example, it is worth highlighting the SOLAS (Safety Of Life At Sea) Convention, which Brazil adhered to in 1974. This convention addresses a wide range of issues, such as ship stability, safety equipment, and emergency procedures that the country must comply with to ensure human safety at sea. Additionally, the MARPOL Convention (International Convention for the Prevention of Pollution from Ships, adopted in 1983, aims to prevent and minimize marine pollution by establishing standards and regulations for the safe disposal of waste and harmful substances from ships.

These conventions are periodically updated to ensure their effectiveness in the marine environment and are fundamental for the regulation of maritime transport at a global level, as well as for ensuring safety, environmental protection, and the sustainability of the sector. The provisions of these conventions are binding and supervised by international organizations such as the International Maritime Organization (IMO). Thus, adherence to these policies strengthens Brazil's reputation as a responsible member of the maritime community and can enhance relations with other countries that have common interests, especially when the Brazilian Court makes decisions consistent with the principles of International Maritime Law.

In this scenario of the complexification of international relations through the construction of a more interconnected world by globalization, it is possible to make some doctrinal projections regarding the Maritime Law of the Future. From a jurisprudential analysis, it is observed that maritime relations will play an increasingly crucial role in Brazilian trade, transportation, and economic development, which are constantly evolving. The Brazilian Maritime Court, by continuing to improve its competencies maintaining high standards of law enforcement, will continue to play a fundamental role in promoting safety in Brazilian waters, benefiting the country and the international maritime community as a whole.

4. FINAL CONSIDERATIONS

According to what has been presented, the influence that international relations exert on Brazilian International Law is evident, especially regarding the creation of institutions with jurisdiction to resolve conflicts occurring in territorial waters. In this scenario, particular emphasis was placed on the context of the creation of the Brazilian Maritime Court, an autonomous body with specific attributions, such as judging accidents and incidents of navigation. Therefore, it was observed that for this institution to have been established and expanded its competencies, it was necessary for disputes like the Baden Case to establish the understanding that Brazilian sovereignty must also be safeguarded through protection guaranteed by Internal Law.

In this sense, it has been affirmed how this case can be considered paradigmatic in Brazilian Law as a catalyst for the evolution of its institutional apparatus. From it, it is possible to ascertain that diplomatic conflicts influenced, and will continue to influence, the development of Internal Law as an Order in constant evolution, interconnected with the vicissitudes of the globalized world. This highlights the importance of the existence of a comprehensive internal legal apparatus in all its instances, so that Brazil is not subject to the legal orders of other states for conflict resolution within its territory.

It is concluded that empirical speculations about Brazilian Maritime Law in the future can be made based on the jurisdiction and trends in understanding of the Brazilian Maritime Court. After all, it must be recognized that the expansion and transformation of its competencies will accompany the international relations among countries in the contemporary Multipolar Order, which presents progressively more complex demands. Thus, it can be inferred that International Law will continue to impact Internal Law in its various dimensions.

5. BIBLIOGRAPHIC REFERENCES

ARLOTA, Alexandre Sales Cabral; CARDOSO, Camila Mendes Vianna. **A Natureza Jurídica das plataformas marítimas**. Kincaid, 2012. Available in: https://www.kincaid.com.br/a-natureza-juridica-das-plataformas-maritimas. Access in: May 9, 2024.

BRASIL. **Decreto nº 20.829, de 21 de Dezembro de 1931**. Cria a Diretoria da Marinha Mercante e dá outras providências. Available in: https://www2.camara.leg.br/legin/fed/decret/1930-1939/decreto-20829-21-dezembro-1931-519452-publicacaooriginal-1-pe.html. Access in: May 9, 2024.

BRASIL. **Decreto nº 24.585 de 05 de julho de 1934**. Available in: https://www.planalto.gov.br/ccivil_03/decreto/1930-1949/Ret/retdec24585.htm. Access in: May 7, 2024.

BRASIL. **Lei Nº 2.180, de 5 de fevereiro de 1954**. Dispõe sobre o Tribunal Marítimo. Available in: www.planalto.gov.br/ccivil_03/leis/L2180.htm. Access in: May 6, 2024.

DONIZETTI, Elpídio. **Curso Didático de Direito Processual Civil**. 20. ed. São Paulo: Atlas, 2017.

FERNANDES, Isabella Reis de Brito; MARQUES, Lucas Leite. **O caso Baden e a criação do Tribunal Marítimo brasileiro**. Migalhas, 2023. Available in: https://www.migalhas.com.br/coluna/migalhas-maritimas/380230/o-caso-baden-e-a-criacao-do-tribunal-maritimo-brasileiro. Access in: May 6, 2024.

FERRARI, Sérgio. **Tribunal Marítimo**: Natureza e funções. Rio de Janeiro: Lumen Juris, 2017.

GONÇALVES, Marcelo David. Prefácio. In: **Processo Marítimo**: formalidades e tramitação. 2. ed. rev. e ampl. Barueri: Manole, 2013.

GUSTIN, Miracy Barbosa de Sousa; DIAS, Maria Tereza Fonseca; NICÁCIO, Camila Silva. **(Re)pensando a pesquisa jurídica**: teoria e prática. 5a. ed. São Paulo: Almedina, 2020.

Marinha do Brasil. **Sobre o Tribunal Marítimo**. Available in: https://www.marinha.mil.br/tm/?q=sobre. Access in: May 6, 2024.

PIMENTA, Matusalém Gonçalves. **Processo Marítimo**: formalidades e tramitação. 2. ed. Barueri: Manole, 2013.

XAVIER, Jéssica Hellen da Silva; FERNANDES, Brenda Camilli Alves. A Responsabilidade Civil do Prático: Dos diplomas legais à prática do Porto de Natal. **EmpíricaBR - Revista Brasileira de Gestão, Negócio e Tecnologia da Informação**, [S.l.], v. 1, n. 1, p. 2-24, dez. 2014. ISSN 2447-178X. Available in: www2.ifrn.edu.br/ojs/index.php/EmpiricaBR/article/view/2909. Access in: May 8, 2024.