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# Notes on Portuguese Publications Dedicated to International Law of the Sea in the 19th and 20th Centuries

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## Abstract

The doctrinal production of the ILS in Portugal took place only from the eighties of the nineteenth century. During the 19th century and in the 20th century until the 1980s, ILS matters were not subject to specialist teaching in the Faculties of Law in Portugal. Professor Barbosa de Magalhães, of the Faculty of Law of the University of Lisbon, particularly during the 1920s, is the only jurist with recognized merits who studied the ILS until the 1980s. Professor Marques Guedes must be considered the “founding father” of academic studies of the ILS taking into account his teaching on the subject from 1980s in the Faculty of Law of the University of Lisbon. The contribution of authors from the Navy, with an emphasis on Eduardo Serra Brandão, constitutes a very significant part of the ILS writings published in Portugal in the second half of the twentieth century.

## Keywords

International Law of the Sea – Nineteenth century – Portugal – Portuguese publications on International Law of the Sea – Twentieth century

## Introduction

### *A Summary of Portuguese Publications Dedicated to the International Law of the Sea for the First Volume of the Portuguese Yearbook of the Law of the Sea*

Between 2004 and 2006, I published five historical-bibliographical studies on Portuguese publications on Public International Law and International Law of the Sea (ILS). These dealt with a period of around two hundred years, in order to cover both the nineteenth and twentieth centuries.<sup>1</sup> The research was particularly arduous, taking into account the dispersion of the studies listed. At the same time, the research was also very fruitful and pleasurable as it made it possible to carry out a bibliographical survey as exhaustive as possible of the existing bibliographical references and, in consequence, to be able present an overview of the existing writings on Public International Law and International Law of the Sea over quite a long period, one which is relevant for an understanding of contemporary times.

The conclusions that resulted from this survey were not particularly flattering, as they demonstrated that the interest of jurists in these matters had been limited over a period of about two hundred years. The parsimony of this academic interest, after two decades of the published studies, is even more evident when a systematic inventory of subsequent evolution is done. This will be a study to be carried out when the first quarter of the twenty-first century has passed. At this point, as a summary, it is important to revisit the evolution of publications dedicated to ILS during the 19th and 20th centuries and produce

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1 'Algumas notas sobre a doutrina de Direito do Mar publicada em Portugal entre 1945 e 2003 e o contributo fundamental do Professor Doutor Armando M. Marques Guedes para a difusão do seu estudo', in *Estudos em homenagem ao Professor Doutor Armando M. Marques Guedes*, 2004, pp. 691–732; 'Contributo para o estudo da doutrina de Direito do Mar publicada em Portugal no século XIX e no século XX até 1945', in *Estudos em homenagem ao Prof. Doutor Joaquim da Silva Cunha*, Coimbra Editora, 2005, pp. 289–328; 'Uma conversa inacabada com o Professor Doutor António Marques dos Santos: a faceta jusinternacionalista do Professor Doutor José Maria Vilhena Barbosa de Magalhães', in *Estudos em memória do Professor Doutor António Marques dos Santos*, volume II, Almedina, 2005, pp. 295–335; 'Contributo para o estudo da doutrina de Direito Internacional Público publicada em Portugal entre a criação da Faculdade de Direito da Universidade de Lisboa (1913) e a segunda edição do *Curso de Direito Internacional Público* do Professor Doutor André Gonçalves Pereira (1970)', in *Homenagem ao Prof. Doutor André Gonçalves Pereira*, Coimbra Editora, 2006, pp. 679–746; e 'A propósito da primeira obra jurídica do Professor Doutor Marcello Caetano (*Um grande jurista português – Fr. Serafim de Freitas*): a doutrina de Direito Internacional Público publicada em Portugal durante a monarquia constitucional', in *Estudos em Homenagem ao Professor Doutor Marcello Caetano. No centenário do seu nascimento*, volume I, Coimbra Editora, 2006, pp. 407–447.

a synthesis that could be useful for scholars in this area of International Law. The occasion chosen is the first volume of the Portuguese Yearbook of the Law of the Sea, as a representative milestone of the evolution of the interest about the ILS in Portugal

*The Relevance of Preparing Studies of a Bibliographical and Historical-Bibliographical Nature*

Before moving forward, it is important to renew the clarification of three issues related to the object of this study: the period chosen; the difficulties in achieving the objective of bibliographical completeness; and the usefulness of a primarily bibliographical study at a time when access to information has been facilitated by the use of the Internet.

Firstly, the period chosen corresponds with the intention of contributing with a synthesis to the knowledge of a period in which doctrinal production in the ILS is very scarce, despite Portugal's continued interest in the sea and its characterization as nation having a maritime vocation. In fact, it was only in the eighties of the nineteenth century that the two reference works on which the international legal studies of ILS in Portugal were based appeared, viz. the textbook by Carlos Testa, *Princípios geraes e regras praticas de Direito Internacional Marítimo*, in 1882, and the monograph of Vicente Almeida d'Eça, *Questões de Direito Internacional. Do exercício da pesca marítima. Dissertação para o concurso á quinta cadeira da Escola Naval*, in 1885.

Secondly, the difficulties in achieving the objective of an exhaustive research of the available publications have their origin in the dispersion of locations in Portugal where studies that fall within the scope of ILS can be found. On the one hand, the dispersion of locations results, first of all, from the non-existence in Portugal, during the period of two centuries under consideration, of a legal journal or yearbook specifically dedicated to Public International Law or the ILS. Equally, with the exception of articles published in the *Boletim da Faculdade de Direito da Universidade de Coimbra*, the majority of articles on legal topics relating to ILS are published in two non-legal scientific journals: in the *Anais do Clube Militar Naval*<sup>2</sup> and in the *Boletim da Sociedade de Geografia de Lisboa*. In addition, some of the studies referenced must have been published in a very small printing, as they can be found only in specific isolated libraries. On the other hand, the dispersion of places where ILS studies can be found

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2 The case of the *Anais do Clube Militar Naval* is particularly relevant as it is a periodic scientific journal that has been printed, without interruption, since 1870. The most recent issue, corresponding to the second semester of 2021, year 151, is available at [https://cmnaval.pt/anais\\_2021\\_2s/](https://cmnaval.pt/anais_2021_2s/).

must also be presented in strictly literal terms, as the studies mentioned in this contribution are distributed in very diverse libraries. At this level, particular reference should be made to the collections of the library of the *Sociedade de Geografia de Lisboa* and the *Biblioteca Central da Marinha*. These include bibliographical references that are not possible to find anywhere else.

Finally, it is important to highlight that, currently, studies of a bibliographic and historical-bibliographic nature continue to be useful, despite the ease that the Internet has generally given with regard to access to international legal information, because such information is limited to being a vehicle for the dissemination of material made available by the respective sources and the Portuguese libraries normally only treat and classify bibliographical species autonomous as monographs or pamphlets.

### Scope of the Research and Matters to be Addressed

Aiming to contribute to a synthesis of ILS writings published in Portugal in the 19th and 20th centuries, the present study is based on a broad concept of relevant bibliographic material. In the studies published almost two decades ago, a very broad concept of doctrine was used, despite the fact that there were practically no authors who could have been qualified as legal doctrinal scholars in this field, with the notable exceptions of Professors José Maria Vilhena Barbosa de Magalhães (1879–1959) and Armando M. Marques Guedes (1919–2012). Accordingly, the titles mentioned included a variety of legal publications on the subject of the ILS, as well as a number of works, of the most varied length, that deal with ILS matters based on a perspective that was not exclusively legal. Furthermore, seeking to be as comprehensive as possible, the opinions dedicated to the ILS matters, issued by entities such as the Comissão Central de Pescarias (Central Fisheries Commission) and the Comissão Permanente de Direito Internacional Marítimo (Permanent Commission on International Maritime Law, or PCIML) were taken into account.

The bibliographic references tried to include, as far as possible, writings and opinions about ILS, despite the fact that its borders with Maritime Law, as it is currently conceived, are not without discussion in certain matters. It should, therefore, be highlighted that the references to this area of International Law as Law of the Sea or ILS are relatively recent. This means that, fundamentally, until 1945 a number of matters currently falling within the scope of the ILS or the Law of the Sea appeared generically designated as being relative to Maritime Law or International Maritime Law.

Portuguese publications dedicated to ILS in the 19th and 20th centuries can be organized by taking into account six characteristic aspects: i) their almost non-existence until the 1880s and their scarcity until the negotiation of the Third United Nations Conference on Law of the Sea; ii) the fundamental contribution of authors who were members of the Navy, with particular regard to Carlos Testa, Vicente Almeida d'Eça, Eduardo Serra Brandão and Manuel Limpo Serra; iii) the non-appreciation of ILS matters in teaching in Law Faculties until the eighties of the twentieth century; iv) the work developed by Professor José Maria Vilhena Barbosa de Magalhães from the twenties to the fifties of the 20th century; v) the fundamental contribution of Professor Armando M. Marques Guedes to the emergence of a ILS doctrine in Portugal; and vi) the unequal treatment of various ILS matters in the eighties and nineties of the twentieth century.

### **The Almost Non-existence of Publications until the Eighties of the Nineteenth Century and Their Scarcity until the Negotiations of the Third United Nations Conference on the Law of the Sea**

#### *Introductory Considerations*

In an initial period of around one hundred and seventy years there was no decisive event in the Portuguese writings of ILS equivalent to the negotiation and entry into force of the United Nations Convention on the Law of the Sea (UNCLOS). In fact, despite the efforts made by the League of Nations, the 1930 Hague Conference failed to achieve any relevant result in the codification of the ILS and the first conventional commitments within the scope of this area of International Law were concluded only at the end of the 1950s.

In these terms, despite reference being made to the 19th century in its entirety, publications specifically dedicated to ILS in Portugal appear only from the 1880s onwards. It is possible to point out two reasons for this situation. On the one hand, there was the creation of a chair in 'Principles of International Maritime Law and Maritime History, national and foreign' in the reform of the Naval Academy which took place in 1864. On the other hand, there was a growing interest of natural sciences in the sea, and this materialized in the study of maritime space and biological species, particularly those capable of economic exploration and exploitation.

The teaching at the Naval Academy will have a decisive importance in the emergence of writings on ILS issues in Portugal, as it created the conditions for a systematic and continuous approach to the matter in question. In fact,

for a period of more than sixty years, the chair was entrusted to two professors only – Carlos Testa and Vicente Almeida d’Eça – who, in addition to being well regarded for their teaching, published relevant scientific contributions to the field.

The interest in the scientific exploration and exploitation of the sea, in turn, led to an increase in interest about issues related to fishing and the conservation of marine biological species. This is based on the oceanographic expeditions carried out, mainly from the seventies of the nineteenth century, by various States and by personalities such as Prince Albert I of Monaco. One of its paradigmatic examples is the Challenger campaign, conducted by a ship with a British flag, which took place between December 1872 and May 1876,<sup>3</sup> during which many previously unknown species were collected and the ocean floor was explored to a depth of more than 5000 meters. In Portugal, oceanographic research had a practically isolated expression in the person of King D. Carlos,<sup>4</sup> through the scientific expeditions carried out, from 1896 onwards, on successive ‘Amélia’ yachts, which led to the publication of a set of works summarizing the results obtained in the observations carried out until King D. Carlos was murdered in 1908.<sup>5</sup>

The present chronological presentation of Portuguese publications relative to the ILS in the nineteenth and twentieth centuries will be divided into three distinct periods: the nineteenth century until the eighties; the eighties

3 A contemporary reference to the scientific explorations underway in the seventies of the nineteenth century can be found in a note published, without mention of authorship, in the *Annaes do Club Militar Naval*, Tomo terceiro – Anno de 1873, with the title ‘O fundo do mar’, pp. 83–85.

4 About the subject see Luiz SALDANHA, “Explorações submarinas”, in *D. Carlos de Bragança. A paixão do mar*, Parque EXPO 98, S.A., Fundação da Casa de Bragança e Marinha Portuguesa, 1996, pp. 40–81; and Mário RUIVO, *D. Carlos de Bragança, Naturalista e oceanógrafo. Conferência integrada nas Comemorações do 50º aniversário da Fundação da Sociedade Portuguesa de Ciências Naturais e realizada no Paço Ducal de Vila Viçosa em 15 de Dezembro de 1957*, Fundação da Casa de Bragança, pp. 15–25.

5 In the bibliography of the studies of Luiz SALDANHA and of Mário RUIVO mentioned, the following works by King D. Carlos are mentioned, published during the monarch’s lifetime: i) *Yacht Amelia. Campanha oceanographica de 1896*, Imprensa Nacional, Lisboa, 1897 (20 pages); ii) *Resultados das investigações científicas feitas a bordo do yacht «Amelia» e soube a direcção de D. Carlos de Bragança. Pescas marítimas. I. – A pesca do atum no Algarve em 1898*, Imprensa Nacional, Lisboa, 1899 (104 pages); iii) *Bulletin des campagnes scientifiques accomplies sur le yacht «Amelia» par D. Carlos de Bragança*, vol. I, Imprimerie National, Lisboa, 1902 (112 pages); and iv) *Resultados das investigações científicas feitas a bordo do yacht «Amelia» e sob a direcção de D. Carlos de Bragança. Ichthyologia. II. Esqualos obtidos nas costas de Portugal durante as campanhas de 1896 a 1903*, Imprensa Nacional, Lisboa, 1904 (114 pages).

and nineties of the nineteenth century; and the twentieth century until the seventies.

### *The Nineteenth Century until the Eighties*

The period between the beginning and the eighties of the nineteenth century is characterized by the almost non-existence of studies and writings dedicated to the ILS.

In these terms, the first study dedicated to the ILS that can be referenced in the nineteenth century is the 'Memória sobre a decadência das pescarias de Portugal', written by Constantino Botelho de Lacerda Lobo, in 1812, prepared within the scope of the activity of the Royal Academy of Sciences of Lisbon and published in volume IV of the *Memórias económicas da Academia Real das Sciencias de Lisboa para o adiantamento da agricultura, das artes e da industria em Portugal e suas conquistas*.<sup>6</sup>

At this time, some of the first attempts to carry out a systematic treatment of legislation dedicated to the sea and the navy appeared. On the one hand, there were the compilations by J. M. Pereira Dantas, published in 1824, 1826 and 1831, which include a 12th section dedicated to the 'Conselho de Justiça. Incluindo o que diz respeito a deserções, presas e neutralidade'.<sup>7</sup> On the other hand, there was the book by António Lopes da Costa Almeida, *Repertorio remissivo da legislação da marinha e do Ultramar compreendida nos anos de 1317 até 1856*, de 1856, which intended to survey all legislation on the matter over a period of more than five centuries.<sup>8</sup>

In 1853, the first monograph dedicated to International Law with a relevant treatment of ILS matters was published in Portugal. It is the monography work of António da Roza Gama Lobo *Noções Geraes sobre o Direito das Gentes*,<sup>9</sup> which deals with some issues related to the ILS in the Second Part of the book, entitled 'Brief Notions about External Law in the State of Peace'.

6 *Memorias economicas da Academia Real das Sciencias de Lisboa, para o adiantamento da agricultura, das artes, e da industria em Portugal, e suas conquistas*, Tomo IV, Typografia da mesma Academia, 1812, pp. 312–383.

7 J. M. DANTAS PEREIRA, *Noções da legislação naval portuguesa até o anno 1820, dispostas chronologico-systematicamente: e adicionadas com algumas da historia respectiva, e dos nossos escritos maritimos*, Impressão Régia, Lisboa, 1824, pp. 51–54; *Noções da legislação naval portuguesa até o anno 1820, dispostas chronologico-systematicamente: e adicionadas com algumas da historia respectiva, e dos nossos escritos maritimos*, Impressão Imperial e Real, Lisboa, 1826, pp. 51–54 e 17–18; and *Continuação dos additamentos às noções da legislação naval portuguesa*, Impressão Régia, Lisboa, 1831, pp. 41–42.

8 António Lopes da Costa ALMEIDA, *Repertorio remissivo da legislação da marinha e do Ultramar compreendida nos anos de 1317 até 1856*, Imprensa Nacional, Lisboa, 1856.

9 *Noções geraes sobre o direito das gentes*, Typographia da Revista Universal, 1853.

The second study specifically dedicated to ILS that can be found in this period is equally dedicated to fisheries; it is 'Apontamentos sobre as pescarias de Portugal' written by José Silvestre Ribeiro, and published in 1868.<sup>10</sup> The study, despite the relatively unsystematic nature of its plan, assesses the contemporary situation of fishing in Portugal, in particular through an analysis of the applicable legislation.

It was only in 1877, in volume VII, of the *Anais do Clube Militar Naval* that a study specifically dedicated to the matter of the limits of maritime spaces could be found. This is a brief introduction, written by António do Nascimento Pereira Sampaio who belonged to the *Anais* editorial team, to the theme of 'Jurisdição do mar territorial',<sup>11</sup> preceding the translation of an article on the issue that had previously been published in the *Revue Maritime et Coloniale*.<sup>12</sup>

### *The Eighties and Nineties of the Nineteenth Century*

The beginning of an academic exposition of ILS matters in Portugal is the direct result of the creation at the Naval Academy, in 1864, of a chair in International Maritime Law.

In fact, the first systematic treatment of the ILS matters, with the content and name it had on that occasion, was owing to Carlos Testa, when he published in 1882 the first edition of the *Principios geraes e regras praticas de Direito Internacional Maritimo*. The book 303 pages in length was divided into four parts: i) a 'Preliminary Section', with a historical outline, with two chapters; ii) Part I, dedicated to general principles of law; iii) Part II, aimed at dealing with the relations of States in times of peace; and iv) Part III, aimed at dealing with relations in times of war.

The importance of the *Principios geraes e regras praticas de Direito Internacional Maritimo* in the ILS panorama can be understood on two distinct levels. On the one hand, it can be seen as representing a first, in-depth and updated approach to the subject in Portugal. On the other hand, there was a French edition, in 1886, with the title *Le droit public international maritime*,

<sup>10</sup> José Silvestre RIBEIRO, 'Apontamento sobre as pescarias em Portugal', *Resoluções do Conselho de Estado na Secção do Contencioso Administrativo, colligidas e explicadas por José Silvestre Ribeiro*, Tomo XIII, Imprensa Nacional, Lisboa, 1868, pp. 202–294.

<sup>11</sup> António do Nascimento Pereira SAMPAIO, 'Jurisdição do mar territorial', *Anais do Clube Militar Naval*, vol. 7, 1877, pp. 292–296.

<sup>12</sup> *Anais do Clube Militar Naval*, vol. 7, 1877, pp. 296–302.



within the so-called “Bibliothèque internationale et diplomatique”, published by an important French publisher.<sup>13</sup>

The importance of the Naval Academy course is also decisive for the writing, in 1885, of the monograph of Vicente Almeida d’Eça, entitled *Questões de Direito Internacional. Do exercício da pesca marítima. Dissertação para o concurso á quinta cadeira da Escola Naval*, presented as part of his application as Professor to succeed to Carlos Testa, with 120 pages, divided into nine chapters. Almeida d’Eça’s dissertation represents a fundamental milestone in the ILS and International Law published in Portugal.<sup>14</sup> On the one hand, this is by constituting the first monographic, systematized and in-depth treatment of the subject of maritime fisheries from an International Law perspective. On the other hand, it is by presenting an updated study of the matter in question, at a time when there was no tradition of analysing matters of International Law in Portugal and, in addition, access to documents and doctrinal works was naturally hampered by constraints resulting from the slow methods of knowledge diffusion. In this regard, it is particularly significant that the recently concluded and ratified ‘Convention between England, Germany, Belgium, France and Holland to regulate fisheries policing in the North Sea, outside territorial water’ was used and translated. Identically relevant is the use of Frei Serafim de Freitas, and the description of how he came to the knowledge of the Author.

The year 1885 also saw the publication of a volume aimed at disseminating knowledge about International Maritime Law, within the scope of the *Bibliotheca do Povo e das Escolas*. Written by Luiz Sousa de Macedo, the work was divided into four parts: i) Introduction; ii) Chapter I. International Maritime Law – In times of peace; iii) Chapter II. International Maritime Law – In times of war; and iv) Chapter III. International Maritime Law – Neutrality.

In 1888, António Hygino Magalhães Mendonça’s dissertation, *Presas e escravatura*<sup>15</sup> was published, presented in the ‘competition for don of the 8th

13 A critique of the French translation, and the notes and deletions made by the translator (Ad. Boutiron) regarding opinions considered negative for the French, can be found in an article published by Vicente ALMEIDA d’EÇA, on the *Anais do Clube Militar Naval*, of 1886, ‘Le droit public international maritime, par C. Testa, traduction du portugais annotée de documents nouveaux par Ad. Boutiron. – Paris, Pedone-Lauriel, 1885’, pp. 112–116.

14 A contemporary evaluation of the work can be found in the *Anais do Clube Militar Naval*, from 1885, by João Monteiro Pinto da Fonseca VAZ, ‘Bibliographia. Questões de direito internacional. – Do exercício da pesca marítima. – Dissertação para o concurso à quinta cadeira da Escola Naval, por Vicente Maria de Moura Coutinho Almeida Eça, primeiro tenente da armada. Lisboa 1885’, pp. 107–108.

15 António Hygino Magalhães MENDONÇA, *Presas e escravatura*, Typographia da Gazeta de Portugal, 1888.

chair at the Naval Academy'. Despite its title, the work adopted a predominantly internal perspective on the issue, with emphasis on the historical evolution of relevant Portuguese legislation.

Still in 1888, owing to its length and the relevant data made available, two opinions in the field of fisheries deserve mention. On the one hand, there is the legal opinion of the Comissão de Pescarias na Costa do Algarve (Fisheries Commission on the Algarve Coast), reported by J. B. Ferreira de Almeida, *Pescarias na costa do Algarve: parecer apresentado à sub-comissão encarregada de formular as bases para um novo regulamento de pesca na costa do Algarve em vista dos votos emitidos pela comissão nomeada por Portaria de 29 de Maio*.<sup>16</sup> On the other hand, there is the legal opinion of the Fish Farming and Maritime Fisheries Commission of the Lisbon Geography Society Por outro lado, o parecer da Comissão de piscicultura e pescarias marítimas da Sociedade de Geografia de Lisboa (Fish Farming and Maritime Fisheries Commission of the Lisbon Geography Society),<sup>17</sup> reported by Carlos Augusto Magalhães e Silva and Francisco Augusto de Fonseca Regalla, containing a proposal on *A organização dos serviços das pescas*.<sup>18</sup>

The nineties began with the publication of a work by Carlos Testa, *Conflictos Internacionaes e diferentes phases de ultimatums*,<sup>19</sup> in which Portuguese practice in the matter during the nineteenth century is assessed, namely the question of the seizure of the French ship *Charles et George* in Mozambique in 1857. In the same year, another volume published intended for disseminating

16 COMISSÃO DE PESCARIAS NA COSTA DO ALGARVE, *Pescarias na costa do Algarve: parecer apresentado à sub-comissão encarregada de formular as bases para um novo regulamento de pesca na costa do Algarve em vista dos votos emitidos pela comissão nomeada por Portaria de 29 de Maio*, 1888, Relator J. B. Ferreira de Almeida, Empreza do Jornal do Norte, Lisboa, 1888.

17 The work of the Lisbon Geography Society in this field was also developed by its 'Comissão de Direito Internacional Maritimo e Commercial', whose operating rules were published in 1889 (Sociedade de Geographia de Lisboa, *Regulamento Privativo da Comissão de Direito Internacional Maritimo e Commercial e respectivo processo*, Typographia Portuguesa, Lisboa). From its work *Abalroamentos no mar. Memória justificativa da these apresentada ao Congresso Jurídico de Lisboa, em 1889, pela Comissão de Direito Internacional da Sociedade*, Typographia Portuguesa, Lisboa, 1889, with Vicente ALMEIDA d'EÇA as rapporteur must be mentioned.

18 Carlos Augusto de MAGALHÃES e SILVA and Francisco Augusto da FONSECA REGALLA, *A organização dos serviços das pescas. Parecer da Comissão de piscicultura e pescarias marítimas sobre uma proposta do Presidente da mesma Comissão, Joaquim Vicente Mendes Guerreiro, engenheiro. Relatores Carlos Augusto de Magalhães e Silva e Francisco Augusto da Fonseca Regalla, officiaes da armada*, Sociedade de Geographia de Lisboa, Adolpho, Modesto & C<sup>a</sup> – Impressores, Lisboa, 1888.

19 Carlos TESTA, *Conflictos Internacionaes e diferentes phases de ultimatums*, Typographia Universal, Lisboa, 1890.

International Maritime Law was published: *Apontamentos sobre Direito Internacional Marítimo*, de Henrique O'Connor Martins.<sup>20</sup> The following year, the first edition of Vicente Almeida d'Eça's *Quadros synopticos, chronologicos e bibliograficos das matérias professadas na cadeira de direito internacional marítimo e história marítima da Escola Naval* was published. As the title suggests, it is a compilation of topics on matters subjects of International Maritime Law and Maritime History, originating from teaching at the Naval Academy. At the same year, José Cândido Corrêa, publish *Polícia da exploração das águas*,<sup>21</sup> in accordance with the Naval Legislation and Administration Course taught at the Naval Academy. With regard to monographs, the nineties ended with the publication, in 1899, of the second edition of the *Princípios geraes e regras praticas de Direito Internacional Maritimo*<sup>22</sup> by Carlos Testa.

In the nineties of the nineteenth century, collections of legislation relative to fishing were also published, having their official origin in the Ministry of the Navy and Overseas Territories:<sup>23</sup> i) *Collecções de leis sobre a pesca desde Março de 1552 até Janeiro de 1891*, de 1891;<sup>24</sup> and ii) Joaquim de Sant'Anna Fonseca Junior, *Collecção de leis sobre a pesca desde Junho de 1860 a Maio de 1894*, de 1894, and *Collecção de leis sobre a pesca. Anno de 1895*, of 1896.<sup>25</sup>

### *The Twentieth Century until the Eighties*

After the strength of the eighties and nineties of the nineteenth century, there was a clear regression until the eighties of the twentieth century in terms of the number of works dedicated to the ILS published in Portugal. Furthermore, we are normally confronted with studies of a reduced length, in contrast to the monographs that appeared in the previous period.

20 Henrique O'Connor MARTINS, *Apontamentos sobre Direito Internacional Marítimo*, Imprensa Moderna, Lisboa, 1890.

21 José Cândido CORRÊA, *Polícia da exploração das águas*, Imprensa Nacional, Lisboa, 1891.

22 *Princípios geraes e regras praticas de Direito Internacional Maritimo*, 2ª ed., Typographia Universal, Lisboa, 1899.

23 In this context, it is also worth mentioning 'Capítulo XIII. Collecção de grande numero de leis e providencias, usos e costumes sobre a pesca em Portugal', as part of A. A. BALDAQUE da SILVA, *Estado actual das pescas em Portugal comprehendendo a pesca marítima, fluvial e lacustre em todo o continente do reino, referido ao anno de 1886*, Imprensa Nacional, Lisboa, 1891.

24 MINISTÉRIO DA MARINHA E ULTRAMAR. DIRECÇÃO GERAL DA MARINHA – 1ª REPARTIÇÃO. PESCARIAS, *Collecções de leis sobre a pesca desde Março de 1552 até Janeiro de 1891*, Lisboa, Imprensa Nacional, 1891.

25 Joaquim de Sant'Anna FONSECA JUNIOR, *Collecção de leis sobre a pesca desde Junho de 1860 a Maio de 1894*, Lisboa, Imprensa Nacional, 1894; e *Collecção de leis sobre a pesca. Anno de 1895*, Lisboa, Imprensa Nacional, 1896.

In the 1920s, the contributions of Vicente Almeida d'Eça to the VII Santander International Fishing Congress, José Maria Vilhena Barbosa de Magalhães and Marcelino Carlos to the Neutrality Committee of the International Law Association, and the historical study by Paulo Merêa, 'Os juriconsultos portugueses e a doutrina do «mare clausum»'<sup>26</sup> deserve particular attention. On the occasion, relevant to the study of diplomatic relations between Portugal and Spain and the assessment of fishing practices, *Documentos diplomáticos relativos á organização e reuniões da Comissão Mixta Luso-Espanhola constituída com o fim de estudar e propor os meios necessários para evitar a repetição dos incidentes derivados da pesca*<sup>27</sup> was published, and it transcribes the minutes of the Portuguese-Spanish international commission responsible for assessing the conflict between the two states resulting from an incident related to fisheries.

In the case of Vicente Almeida d'Eça, it was an intervention prepared for the VII International Fisheries Congress, held in Santander in 1921,<sup>28</sup> where the Portuguese representative defended the need to establish a specific limit of a distance of no less than ten nautical miles of the territorial sea for fishing purposes, with the aim of allowing effective management of biological species and their respective fishing.<sup>29</sup>

In the case of José Maria Vilhena Barbosa de Magalhães and Marcelino Carlos, it represents their observations, as members of the PCIML,<sup>30</sup> for the discussion of a draft Convention on the laws of maritime jurisdiction in time

26 'Os juriconsultos portugueses e a doutrina do «mare clausum»', *Revista de História*, Ano XIII, 1924, pp. 5–23.

27 MINISTÉRIO DOS NEGÓCIOS ESTRANGEIROS, *Documentos diplomáticos relativos á organização e reuniões da Comissão Mixta Luso-Espanhola constituída com o fim de estudar e propor os meios necessários para evitar a repetição dos incidentes derivados da pesca*, Imprensa Nacional de Lisboa, 1924.

28 *As águas territoriais e as pescas*, VII Congresso Internacional de Pesca – Santander 1921, Imprensa Nacional, Lisboa, 1921.

29 The originality of this proposal is highlighted by Lawrence JUDA, *International Law and Ocean Use Management. The evolution of ocean governance*, Routledge, London and New York, 1996, when he affirms, p. 52, transcribing a long excerpt of the report, that '[w]hile understanding the need for regulation of fishing activity, given modern fishing technology and procedures, he also comprehended very well the problems posed by the limitations of the existing legal framework'.

30 Regarding the activities of the Permanent Commission on International Maritime Law, between its foundation, in 1924, and 1945, Carlos Renato GONÇALVES PEREIRA, 'Direito Marítimo Internacional (quarenta e cinco anos de actividade da Comissão do Direito Marítimo Internacional)', *Scientia Iuridica*, vol. XXXII, n.ºs 181–183, 1983, pp. 1–13; and E. H. SERRA BRANDÃO, 'Comissão de Direito Marítimo Internacional. 60 anos de actividade', *Anais do Clube Militar Naval*, vol. CXIV, 1984, pp. 379–381.

of peace and on maritime neutrality, prepared by the Neutrality Committee of the International Law Association, to be discussed at the Vienna Conference of 1926. The observations of the Portuguese delegates were published in French and English, based on the report on the problem of territorial waters<sup>31</sup> reported by Vicente Almeida d'Eça.

In the forties, at a time when Portugal had assumed neutrality status,<sup>32</sup> *Normas gerais e regras práticas de Direito Internacional Marítimo*, of Joaquim Quelhas Lima, and João da Silva Teixeira's studies on territorial waters must be mentioned. With regard to *Normas gerais e regras práticas de Direito Internacional Marítimo*,<sup>33</sup> by Quelhas Lima, who was then professor of International Maritime Law at the Naval Academy, the content describes the development of a number of topics with immediate relevance for understanding Portugal's international legal situation. Silva Teixeira's three articles, published in the *Anais do Clube Militar Naval* in 1942 and 1944 examine the matter of the territorial or coastal sea,<sup>34</sup> other territorial waters, which include internal seas and natural straits,<sup>35</sup> the artificial straits or sea channels and ports, gulfs and bays.<sup>36</sup>

In the period prior to the Third United Nations Conference on the Law of the Sea (Third Conference), legal writings dedicated to ILS were practically non-existent. This situation is difficult to explain if one notes that Portugal claimed the exercise of power over the continental shelf in 1956, through Law

31 COMISSÃO PERMANENTE DE DIREITO MARÍTIMO INTERNACIONAL, *Relatório sobre o problema das águas territoriais. Aprovado pela Comissão em sessão de 28 de Julho de 1925*, Offic. da Soc. Nacional de Tipografia, Lisboa, 1926 (also published at the *Boletim da Faculdade de Direito da Universidade de Coimbra*, Ano VII, 1923–25, pp. 381–416), with Vicente Almeida d'Eça as rapporteur.

32 Regarding the densification of the international legal status of neutrality of Portugal in the maritime space, a booklet published by the Ministry of the Navy can be consulted, with the reference that it was a 'publication reserved for use by maritime authorities', *Condições de admissão de navios mercantes, pertencentes a Estados beligerantes, nos nossos portos ou águas territoriais e disposições a adoptar pelas autoridades marítimas para a manutenção e respeito da situação de neutralidade assumida por Portugal*, Imprensa da Armada, Lisboa, 1939.

33 Joaquim QUELHAS LIMA, *Normas gerais e regras práticas de Direito Internacional Marítimo*, 1ª parte, Tip. da «União Gráfica», Lisboa, 1940.

34 'Mar territorial ou litoral', *Anais do Clube Militar Naval*, vol. 72, 1942, pp. 399–413.

35 'Outras águas territoriais', *Anais do Clube Militar Naval*, vol. 72, 1942, pp. 527–541.

36 'Outras águas territoriais', *Anais do Clube Militar Naval*, vol. 74, 1944, pp. 45–68.

No. 2080, of 21 March,<sup>37</sup> while also ratifying the four Geneva Conventions on the Law of the Sea of 1958.<sup>38</sup>

The following are an exception to this situation, namely: i) the studies by Victor Augusto Pereira Nunes, member of the PCIML, published between 1959 and 1961, in the *Revista de Direito Marítimo*; ii) the articles by João da Silva Teixeira, appearing in 1961 in the *Anais do Clube Militar Naval*; iii) the article by José Fernandes Nunes Barata, in the *Revista de Direito Administrativo*, in 1966; iv) the booklet by Joaquim Esteves Cardoso, then Vice-President of the International Fisheries Commission for the NE Atlantic, from 1970; and v) the booklet by José Farinha da Conceição, from 1971.

In the first case, of Victor Augusto Pereira Nunes, it is a group of articles concentrated on a period of time, with special mention being given to number 4 (August 1959) and number 5 (March 1960),<sup>39</sup> insofar as it is the only contemporary analysis of the Geneva Conventions on the Law of the Sea which had been signed on 28 October 1958 by Portugal. The article published in number 7, in April 1961, in turn, provides a brief legal analysis of a contemporary question: 'O caso do «Santa Maria» perante o direito internacional'. In the second case, these are two small studies by João da Silva Teixeira of fewer than ten pages on the international legal regime of piracy<sup>40</sup> and privateering,<sup>41</sup> published in 1961, in the 'Legal Topics' section of the *Anais do Clube Militar Naval*. In the third case, the article by José Fernandes Nunes Barata in 1966 is a commentary on the draft law concerning the territorial sea and the contiguous zone,<sup>42</sup> which had been prepared with the collaboration of Fernando Olavo and Eduardo Henrique Serra Brandão, as members of the PCIML.<sup>43</sup> In the fourth case, the booklet by Joaquim Esteves Cardoso<sup>44</sup> in 1970,

37 Law n° 2080, of 21 March, entitled 'Enacts the bases of the legal regime for the soil and subsoil of continental shelf', whose Base I, provided that '[t]he seabed and the corresponding subsoil on submarine shelves contiguous to the Portuguese sea coast, continental or of islands, which are called continental shelves, belong, even outside the limits of the territorial sea, to the public domain of the State'.

38 Official translations into Portuguese published in *Diário do Governo*, I Series, n° 177, of 3 August 1962.

39 'Direito internacional e direito interno de cada país. O problema das águas territoriais e do alto mar', *Revista de Direito Marítimo*, Ano I, n° 4, 1959, pp. 51–69, and Ano 2, n° 5, 1960, pp. 51–66.

40 'Da pirataria', *Anais do Clube Militar Naval*, vol. XCI, 1961, pp. 321–328.

41 'Do corso', *Anais do Clube Militar Naval*, vol. XCI, 1961, pp. 523–530.

42 'Sobre a proposta de lei relativa ao mar territorial e zona contígua', *Revista de Direito Administrativo*, 1966, pp. 1–21.

43 The text of the draft bill n° 1/IX (Territorial sea and contiguous zone), with the respective reasoning, can be found at Eduardo SERRA BRANDÃO, *Águas jurisdicionais portuguesas*, pp. 23–30.

44 *A Convenção Internacional de Pescarias do Sueste do Atlântico*, Lisboa, 1970.

presents a report of the Portuguese position in the negotiations carried out at the Plenipotentiary Conference on the Conservation of Living Resources of the Southeast Atlantic, organized by FAO in Rome from 14 to 23 October 1969. Finally, in the fifth case, the booklet by José Farinha da Conceição in 1971, entitled *Direito de soberania sobre o mar*, is a study about the exploitation of non-living natural resources in the submerged space adjacent to the terrestrial territory of States, with a summary reference to the positions currently under discussion on the international legal status of the maritime space in question, namely in the United Nations and the United States of America.

The plethora of almost non-existence writings on ILS matters continued until the end of the seventies of the twentieth century, in the period that corresponded to the discussion of most of the matters that were included in UNCLOS. In 1976, the Sociedade de Geografia de Lisboa held a series of conferences on the exploration of the maritime space.<sup>45</sup> It was at this time that the first assessment of the Exclusive Economic Zone appeared, in an article published in the scientific military journal *Nação e Defesa*, in 1977, written by Leonel Cardoso (Rear Admiral),<sup>46</sup> at a time when Portugal had already established the corresponding new maritime space through Law n° 33/77 of 28 May. It was also in 1979 that the first ILS study prepared by a faculty member of a Portuguese Law School was published: *Perspectivas de um novo direito do mar*, by Albino de Azevedo Soares (then a lecturer in the Faculty of Law, University of Coimbra).

The increase in studies from the eighties onwards was due, first and foremost, to the structural transformations that the Third Conference introduced into the ILS, and it is important to highlight the importance of the existence of an official Portuguese translation of UNCLOS. Published in 1985 by the Portuguese Ministry of Foreign Affairs, it was the result of joint work, during and after the conclusion of the Third Conference, of the delegations of the then existing seven Portuguese-speaking States: Angola, Brazil, Cape Verde, Guinea-Bissau, Mozambique, Portugal and São Tomé and Príncipe. It included all 320 articles, nine annexes and the Final Act of the Third Conference, with the respective annexes (VI annexes) and appendix. In these terms, considering that the official publication took place only in 1997,<sup>47</sup> the existence of the text

45 In which participated José Barahona FERNANDES, 'Perspectivas da investigação e exploração do mar'; João T. PACHECO, 'Resultados da exploração geológica dos fundos marinhos e suas perspectivas futuras'; and Eduardo SERRA BRANDÃO, 'O direito do fundo do mar'.

46 'Novo conceito no Direito do Mar: a Zona Económica Exclusiva', *Nação e Defesa*, 1977, pp. 19–27.

47 Diário da República, Série I, n° 238, de 14 de outubro de 1997, pp. 5486 (95) a 5486 (183).

in question had the potential to allow interested researchers, whatever their specialty, to work on the basis of a single and common text without the danger of divergences, including linguistic ones, that could have been caused by the use of the authentic texts or of private or sectoral translations.

It is this almost total lack of doctrinal assessment of ILS issues, despite the transformations that had occurred with the Geneva Conventions on the Law of the Sea of 1958 and the transformations that were taking place with the Third Conference, that justifies the reference which must be made to the opinions that were formulated during this period by the PCIML, those by the Comissão de Direito Marítimo Internacional (Commission on International Maritime Law) and also those by the Câmara Corporativa (Corporate Chamber). Their importance should be stressed, on the one hand, by making it possible to clarify Portugal's position in relation to the issues under consideration, and, on the other hand, given that the members of the entities in reference and the rapporteurs of the legal opinions quoted correspond, in most situations, to personalities who are also simultaneously renowned jurists or military personnel of the Portuguese Navy.

With regard to the PCIML and the Commission on International Maritime Law in the period between the 1950s and the end of the 1970s, the following opinions deserve special mention: i) 'Projecto de convenção para abolição da escravatura', of 14 June 1956;<sup>48</sup> ii) 'Delimitação de espaços marítimos adjacentes ao Território Metropolitano e Ultramarino Português', of 14 February 1958;<sup>49</sup> iii) 'A pesca no Alto-Mar; projecto de Convenção de Direito Marítimo elaborado pela «International Law Commission»', of 14 February 1958;<sup>50</sup> iv) 'Ratificação pelo Estado Português do protocolo de assinatura facultativa sobre a resolução obrigatória dos diferendos', of 3 October 1958;<sup>51</sup> v) 'Fiscalização do Mar Territorial e instruções para os navios que a efectuam', of 3 October 1958;<sup>52</sup> vi) 'Notas às convenções adoptadas pela Conferência das Nações Unidas sobre Direito Marítimo', of 17 November 1958;<sup>53</sup> vii) 'Largura do mar territorial e zona contígua da República Islâmica da Mauritânia e do Reino de Marrocos', of 5 November 1963;<sup>54</sup> viii) 'Conferência Europeia das Pescas – Convenção de Londres, de 1964', of 3 April 1964;<sup>55</sup> ix) 'Conversações

48 *Direito Marítimo Internacional. Pareceres*, Lisboa, 1964, pp. 15–24.

49 *Ibid*, at pp. 106–150.

50 *Ibid*, at pp. 278–304.

51 *Ibid*, at pp. 157–162.

52 *Ibid*, at pp. 175–194.

53 *Ibid*, at pp. 151–156.

54 *Direito Marítimo Internacional. Pareceres*, vol. II, Lisboa, 1978, pp. 31–40.

55 *Ibid*, at pp. 53–74.



preliminares com o Canadá, referentes ao alargamento das águas reservadas à pesca', of 11 May 1964;<sup>56</sup> x) 'Diploma sobre o mar territorial e zona contígua', of 9 November 1964;<sup>57</sup> xi) 'Medidas tomadas pela URSS quanto aos limites das suas águas territoriais. Reservas à Convenção sobre o Mar Territorial e a Zona Contígua, de 1958', of 9 May 1966;<sup>58</sup> xii) 'Aumento da largura do mar territorial da Argentina para 200 milhas', of 26 June 1967;<sup>59</sup> xiii) 'Aplicação da linha de fecho da baía de Setúbal à frota espanhola', of 11 March 1968;<sup>60</sup> xiii) 'Limites das águas territoriais nos estreitos internacionais', of 10 January 1972;<sup>61</sup> xiv) 'Alargamento das águas territoriais portuguesas', of 8 October 1973;<sup>62</sup> xv) 'Actividade de navios de investigação científica na zona económica exclusiva', of 24 October 1977;<sup>63</sup> xvi) 'Fronteira marítima entre a Guiné-Bissau e o Senegal', of 10 April 1978;<sup>64</sup> and xvii) 'Convenção de Barcelona (1976) sobre a Protecção do mar Mediterrâneo Contra a Poluição', of 8 November 1979.<sup>65</sup>

With regard to the Corporate Chamber, in the period between the forties and the end of its activity after 1974, the following legal opinions regarding ILS matters should be cited: i) the legal opinion on 'Plataforma continental' of 4 April 1955, reported by Joaquim Moreira da Silva Cunha;<sup>66</sup> ii) the legal opinion 'Mar territorial e zona contígua' of 1 February 1966, reported by Armando M. Marques Guedes;<sup>67</sup> and iii) the legal opinion 'Concessões para prospecção, avaliação e aproveitamento de recursos naturais nas plataformas continentais' of 31 July 1969, also reported by Armando M. Marques Guedes.<sup>68</sup>

Publications dedicated to the ILS reached their turning point at the beginning of the eighties, namely through the reflection of the military on the creation of the concept of an Exclusive Economic Zone. Representative of this, the following examples can be cited: i) the article by Fernando de Almeida and Vasconcelos 'Natureza e limites da jurisdição nacional sobre o mar no quadro do novo regime oceânico'<sup>69</sup> corresponding to the inaugural lecture given at the Naval Academy at the opening of the 1980–1981 academic year; ii) the works

56 *Ibid*, at pp. 75–80.

57 *Ibid*, at pp. 95–108.

58 *Ibid*, at pp. 113–120.

59 *Ibid*, at pp. 159–164.

60 *Ibid*, at pp. 173–278.

61 *Ibid*, at pp. 373–380.

62 *Ibid*, at pp. 391–396.

63 *Ibid*, at pp. 461–468.

64 *Direito Marítimo Internacional. Pareceres*, vol. III, Lisboa, 1994, pp. 23–32.

65 *Ibid*, at pp. 73–81.

66 Available at SERRA BRANDÃO, *Águas jurisdicionais portuguesas*, 1971, pp. 81–104.

67 *Ibid*, at pp. 31–60.

68 *Ibid*, at pp. 135–161.

69 *Anais do Clube Militar Naval*, 1980, pp. 771–788.

of the seminar on ‘the ZEE and national defence’, published in the academic military journal *Nação e Defesa*, in 1981;<sup>70</sup> and iii) the eight articles published at the *Anais do Clube Militar Naval* in the period October-December 1982: Carlos Caldeira Saraiva, ‘O plano nacional das pescas e a Z.E.E.’ (pp. 867–872); António Fuzeta da Ponte, ‘A fiscalização das águas de interesse nacional’ (pp. 849–858); Manuel Limpo Serra, ‘A Zona Económica Exclusiva. Sua legitimidade e contornos jurídicos’ (pp. 845–848); António Quesada Andrade, ‘A ZEE versus C3’ (pp. 859–866); Adelino Rodrigues da Costa, ‘ZEE: para uma metodologia global de abordagem’ (pp. 827–843); Rui Sá Leal e José Castro Centeno, ‘Para quê uma Z.E.E. sem peixe?’ (pp. 881–968); Eduardo Serra Brandão, ‘A Zona Económica Exclusiva. Porquê 200 milhas?’ (pp. 873–880); and Carlos da Silva Sousa, ‘Poluição do mar’ (pp. 969–1015).

At the beginning of the eighties, one saw the emergence of scientific writings related to the obtaining of academic degrees, the first example of which is the monograph, published in 1983, by Maria Eduarda Gonçalves, *A política comum de pesca da Comunidade Económica Europeia. Um exemplo de dinâmica comunitária no contexto internacional*, with prefaces by René-Jean Dupuy, in May 1980 and Mário Ruivo in February 1980. In 1988, the first academic papers prepared within the scope of the seminars on Public International Law (Law of the Sea), under the responsibility of Professor Armando M. Marques Guedes, from the master’s degree in Law at the Faculty of Law of the University of Lisbon, were published: i) Frederico de Lacerda da Costa-Pinto, *Direito internacional e poluição marítima*; ii) Frederico Isasca, *Estados interiores e direito do mar*; and iii) Paulo Otero, *A Autoridade Internacional dos Fundos Marinhos*.

### **The Fundamental Contribution of Author Members of the Navy, with Particular Emphasis on Carlos Testa, Vicente Almeida d’Eça, Eduardo Serra Brandão and Manuel Limpo Serra**

In the period under analysis, studies published in Portugal dedicated to ILS are mostly the result of the work of authors who were members of the Navy, with particular emphasis on those who lectured at the Naval Academy. In this group are the names of Carlos Testa and Vicente Almeida d’Eça, both professors at the Naval Academy between 1864 and 1929, and, from the sixties of the twentieth century, Eduardo Serra Brandão and Manuel Limpo Serra stand out.

<sup>70</sup> *Nação e Defesa*, 1981, pp. 61–88.

The contribution of author members of the Navy had a particularly significant initial expression in the eighties and nineties of the nineteenth century with particular emphasis on Carlos Testa and Vicente Almeida d'Eça.

Carlos Testa (1823–1891), professor at the Naval Academy between 1864 and 1885, can be considered to be a founder of ILS studies in Portugal, with his book *Princípios geraes e regras praticas de Direito Internacional Marítimo*, of 1882. The importance of this work, the high point of his teaching, is manifest in the way it manages to explain, in a clear, accessible and, simultaneously, in-depth and erudite way, an international legal system based primarily on customary rules. It should be noted that, despite the relatively few writings dedicated specifically to the ILS, its bibliography is very large, with numerous titles dedicated to maritime history, international politics and participation in debates on controversial issues. An appreciation of his life and work, with the emphasis on his career as a naval officer, a lecturer and an internationalist, was made, in particularly expressive terms, by Almeida d'Eça on several occasions.<sup>71</sup>

Vicente Almeida d'Eça (1852–1929), professor at the Naval Academy between 1885 and 1929, as well as the founder of the ILS in Portugal with his work *Do exercício da pesca marítima* of 1885, should also be referred to as a committed promoter of the ILS. In this field, the didactic writings that he published throughout his teaching career deserve particular attention, with emphasis on the 'Quadros synopticos', published for the first time in 1891<sup>72</sup> and updated in 1914<sup>73</sup> and in 1927.<sup>74</sup> In the same way, his concern for disseminating knowledge regarding the bibliography available in Portugal on the various ILS themes cannot be overlooked.<sup>75</sup> Qwing to his basic training, the activity he developed in public entities, such as the Comissão Central de Pescarias (Central Fisheries Commission) and the PCIML, his representation of Portugal in international

71 On this issue, there are abundant elements provided by ALMEIDA d'EÇA, particular at 'Carlos Testa. Oficial da marinha e professor', *Anuário da Escola Naval e da Escola Auxiliar de Marinha. Ano lectivo de 1914–1915*, pp. 9–43; and at 'Direito Internacional Marítimo – História Marítima', *Anuário da Escola Naval e da Escola Auxiliar de Marinha. Ano lectivo de 1912–1913*, pp. 361–363.

72 *Quadros synopticos, chronologicos e bibliograficos das matérias professadas na cadeira de direito internacional marítimo e história marítima da Escola Naval*, Imprensa Nacional, Lisboa, 1891.

73 *Quadros sinópticos de direito internacional marítimo*, 2ª edição, Imprensa Nacional, Lisboa, 1914.

74 *Quadros sinópticos de Direito Internacional Marítimo*, Imprensa da Armada, Lisboa, 1927.

75 In this context, are relevant the articles 'Pescas Portuguezas', published at *Anais do Clube Militar Naval*, de 1891, pp. 555–561, and of 1892, pp. 277–282, the bibliographies included at *Quadros synopticos ...*, 1ª edição, pp. 103–113, and at *Quadros sinópticos ...*, 2ª edição, pp. 53–58, in this case referred to as 'obras de Direito Internacional existentes na Biblioteca de Marinha (ordem cronológica das edições)'.

conferences<sup>76</sup> and being a member of the Sociedade de Geografia de Lisboa (Lisbon Geography Society) and the Academia de Ciências de Lisboa (Lisbon Academy of Sciences), its bibliography is very extensive and diverse, and is not limited to subjects within the scope of ILS.<sup>77</sup>

The importance of author members of the Navy with regard to scientific work dedicated to the ILS became very relevant again from the 1960s onwards as a result of the writings published by Eduardo Henrique Serra Brandão and Manuel Limpo Serra.

In this context, the work of Eduardo Henrique Serra Brandão (born in 1922) stands out as being particularly significant,<sup>78</sup> as it covers a period of more than four decades, since the report of the Portuguese participation in the II International Conference on Sea Pollution in 1962,<sup>79</sup> and the printing of *Direito Internacional Marítimo* in 1963, until the compilation of studies *Um novo direito do mar*, volume II, in 2000. His writings include: i) the assessment of the Portuguese law on the territorial sea and contiguous zone, in 1966;<sup>80</sup> ii) the introduction to the collection of legislation *Águas jurisdicionais portuguesas*, in 1971;<sup>81</sup> iii) the study 'O direito do fundo do mar', of 1976, corresponding to the lecture given within the series 'A exploração do espaço marítimo' organized by the Lisbon Geographical Society (Sociedade de Geografia de Lisboa); iv) the compilation of studies *Um novo direito do mar*, volume I, of 1984, where, among others, were published 'Novos conceitos de agressão em Direito Internacional' of 1970, and 'A nova ordem dos oceanos', of 1980; v) the articles 'A Zona Económica Exclusiva. Porquê 200 milhas?' and 'A Comissão de Direito Marítimo Internacional. 60 anos de actividade', published at the

76 Examples of this participation are the articles 'A exposição e o congresso de pesca de Anvers', *Boletim da Sociedade de Geographia de Lisboa*, 1907, nº 9, pp. 297–310; and 'Relatório da missão a Anvers', *Anaes de Marinha*, nº 2, 1907, pp. 1–18.

77 Data for a bibliography of Vicente Almeida d'Eça can be found at INOCÊNCIO FRANCISCO da SILVA e BRITO ARANHA, *Dicionario Bibliographico Portuguez*, vol. xx, Imprensa Nacional, Lisboa, 1911, pp. 8–12; and at João Vaz AZEVEDO e SILVA, 'Alocução proferida pelo primeiro tenente João Vaz de Azevedo e Silva, na sessão de homenagem, na Escola Naval, à memória do extinto Vice-Almirante Vicente de Moura Coutinho Almeida de Eça', *Anais do Clube Militar Naval*, vol. LXI, 1930, pp. 190–192.

78 About Eduardo Serra Brandão, see João Abel da FONSECA, 'Elogio público do Comandante Henrique Serra Brandão', *Academia de Marinha. Memórias 2012*, Lisboa, 2015, pp. 103–109.

79 'A II Conferência Internacional sobre Poluição do Mar, 1962', *Anais do Clube Militar Naval*, vol. XCIV, 1962, pp. 525–535.

80 'O novo diploma sobre mar territorial e zona contígua', *Anais do Clube Militar Naval*, vol. XCVI, 1966, pp. 251–262.

81 *Águas jurisdicionais portuguesas*, pp. 11–22.

*Anais do Clube Militar Naval*, respectively, in 1982 and 1984; vi) the booklet *A nova ordem dos oceanos*, published by the Academia de Marinha in 1985; vii) the article 'Portugal e a Zona Económica Exclusiva', published by the *Boletim da Sociedade de Geografia de Lisboa* in 1985; and viii) the articles included in the collection of studies *Um novo direito do mar*, volume II, of 2000, viz. 'A equidade na delimitação dos espaços marítimos', of 1989, 'A apropriação dos oceanos', of 1996, and 'O Tribunal Internacional do Direito do Mar'.

The lessons on International Maritime Law, published in 1963, in his capacity as Professor at the Naval Academy and the Higher Naval War Institute and member of the PCIML, taking into account their recipients, predominantly deal with matters relating to the international legal regime of warfare in maritime spaces. In these terms, the work is divided into the following six parts: I – International relations; II – Maritime spaces; III – The Ships; IV – War at sea; V – The right of prize; and VI – Maritime neutrality.

Equally significant are the contributions of Manuel Primo Brito Limpo Serra (1926–2018) between the seventies and eighties with the articles: i) 'A crise do Direito Internacional Marítimo (Lição inaugural do ano lectivo 1971/72 na Escola Naval', *Anais do Clube Militar Naval*, 1971 (pp. 769–780); ii) 'A crise do Direito Internacional Marítimo', *Scientia Iuridica*, 1973 (pp. 106–115); iii) 'A evolução actual do direito internacional marítimo e as suas implicações militares', *Nação e Defesa*, 1978 (pp. 47–60); iv) 'A Zona Económica Exclusiva: história e aspectos jurídicos', *Boletim da Sociedade de Geografia de Lisboa*, 1981 (pp. 219–226); and v) 'A Zona Económica Exclusiva. Sua legitimidade e contornos jurídicos', *Anais do Clube Militar Naval*, 1982 (pp. 845–848).

In the nineties contributions from Duarte Lynce de Faria<sup>82</sup> and Nuno Sérgio Marques Antunes<sup>83</sup> should be mentioned, despite their having ceased to belong to the Navy during a later period.

82 'A Convenção das Nações Unidas sobre o Direito do Mar. As principais disposições da Convenção', *Anais do Clube Militar Naval*, 1995, pp. 391–445; and 'O direito de perseguição («hot pursuit»)', *Anais do Clube Militar Naval*, 1996, pp. 423–440, in collaboration with Diogo XAVIER da CUNHA.

83 'Aspectos jurídicos da guerra: brevíssimas notas sobre o Manual de São Remo', *Anais do Clube Militar Naval*, 1998, pp. 787–805; 'O novo regime jus-internacional do mar: a consagração *ex vi pacti* de um *mare Nostrum*', *Anais do Clube Militar Naval*, 1998, pp. 287–309; and 'Porque não existe direito de passagem inofensiva para dentro das linhas de fecho nas embocaduras do Tejo e do Sado', *Anais do Clube Militar Naval*, 1999, pp. 695–702.

## The Non-appreciation of International Law of the Sea Subjects in the Teaching of Law Faculties until the Eighties of the Twentieth Century

Until the eighties of the twentieth century, ILS matters were not the subject of specific teaching in the Law Faculties in Portugal, whether at the University of Coimbra or the University of Lisbon. The non-inclusion of ILS matters in the *curriculae* in Portuguese Law Faculties is perfectly in line with the minor importance which the teaching of International Law was given throughout the nineteenth century and a significant part of the twentieth century.

In the Faculty of Law of the University of Coimbra, the only one in operation until the creation in 1913 of the Faculty of Law of the University of Lisbon, the first manual dedicated to International Law, then known as ‘universal public law and of law of the peoples’,<sup>84</sup> was authored by Vicente Ferrer Neto Paiva in 1839.<sup>85</sup> In the second edition of *Elementos de Direito das Gentes*,<sup>86</sup> of 1843, the entirety of International Law is presented in fewer than ninety pages. In the sixth edition of the book, then the second volume of *Philosophia de Direito*,<sup>87</sup> more than forty years later, in 1883, the picture is not very different. The matter is covered in around one hundred and twenty pages, but the systematization initially adopted was kept practically untouched. The situation was, however, substantially changed with the publication of *Direito Internacional. Lições feitas na Universidade de Coimbra, ao curso do 5º anno jurídico de 1903–1904*, by Álvaro Villela, in 1904. In this case, we already have a volume of around nine hundred pages, with an in-depth treatment of International Law issues.

84 ‘Universal public and people’s law’, in accordance with the 1836 reform, which created the Faculty of Law, was taught in the second year of the law degree, as the third subject, forming a ‘biennial course’ with the second subject (‘Science of legislation and natural law’), from the first year of the law degree. About this matter and its inclusion in the plan of studies, see Paulo MERÊA, ‘Como nasceu a Faculdade de Direito’, *Boletim da Faculdade de Direito da Universidade de Coimbra, Suplemento xv. Homenagem ao Doutor José Alberto dos Reis*, vol. 1, 1961, pp. 154–163.

85 The first edition, to which I did not have access, appears referred to in Paulo MÊREA, ‘Esboço de uma história da Faculdade de Direito’, *Revista da Faculdade de Direito da Universidade de Coimbra*, 1952, p. 137, and in *Diccionario Bibliographico Portuguez*, of INOCÊNCIO FRANCISCO da SILVA, vol. VII, p. 425, which refers to the work as ‘*Elementos de Direito das gentes*. Coimbra, na Imp. da Univ. 1839. 12º gr. de 96 pag.’

86 *Elementos de Direito das Gentes*, 2ª edição, Imprensa da Universidade, Coimbra, 1843.

87 *Philosophia de Direito*. Tomo Segundo, *Direito das Gentes*, 6ª edição, Imprensa da Universidade, Coimbra, 1883.

In these terms, references to the ILS in general works of International Law published in Portugal during the 19th century<sup>88</sup> vary depending on their origin.<sup>89</sup> References to the ILS or International Maritime Law matters, whether in times of peace or in times of war, are practically non-existent in Vicente Ferrer. In *Elementos de Direitos das Gentes*, of 1843, appear in § 22 (outer limit of the line of respect) and in §§ 82 to 89 (privateers and pirates). In *Philosophia de Direito*, of 1883, are referred to in §§ 13 to 15 (territory), in §§ 67 to 73 (privateers and pirates), and in §§ 77 to 84 (neutrality). In contrast to this the analysis of matters of the ILS has a substantial dimension in Gama Lobo, fundamentally with regard to International Law applicable in times of war. In *Noções geraes sobre o Direito das Gentes*, of 1853, they appear regarding the ownership of the seas,<sup>90</sup> about commerce and maritime navigation,<sup>91</sup> about international jurisdiction in respect of ships,<sup>92</sup> on maritime ceremonial,<sup>93</sup> on the right to the enemy's property on the high seas,<sup>94</sup> on the maritime blockade,<sup>95</sup> about privateers and pirates,<sup>96</sup> on the neutrals' goods,<sup>97</sup> on war smuggling<sup>98</sup> and the right of visit over neutral ships.<sup>99</sup> References in *Princípios de Direito Internacional*, of 1865, correspond to perfectly autonomous parts of the text. The approach that Moreira de Almeida takes in *Elementos de Direito Internacional Publico*, published in 1892, is identically relevant.

In the Faculty of Law of the University of Lisbon, the aforementioned situation of little attention to the teaching of International Law is similar. In these terms, references to ILS subjects in the lectures that were given in the period between the creation of the Faculty and the eighties of the twentieth

88 In the *Précis de droit public interne et externe*, by Silvestre PINHEIRO FERREIRA, published in Paris in 1830, reference to the ILS appears in the second part (Du droit public externe, ou droit des gens), regarding the freedom of the seas (pp. 186–187) and the rights and duties of nations in time of war (pp. 199–218).

89 In the non-academic book, without mention of the author, *Direito Publico Internacional*, from 1884, published as n° 87 of the Bibliotheca do Povo e das Escolas, ILS matters are referred to in relation to the territory of the State (pp. 24–25), the privateers and pirates (p. 40), the rights and duties of neutrals (pp. 51–55), restrictions on neutral trade (pp. 57–60) and the right of visit and maritime prizes (pp. 60–62).

90 *Noções geraes* (n 9), pp. 174–185.

91 *Ibid* (n 9), at pp. 189–198.

92 *Ibid* (n 9), at pp. 205–216.

93 *Ibid* (n 9), at pp. 216–220.

94 *Ibid* (n 9), at pp. 273–278.

95 *Ibid* (n 9), at pp. 280–282.

96 *Ibid* (n 9), at pp. 285–288.

97 *Ibid* (n 9), at pp. 308–310.

98 *Ibid* (n 9), at pp. 310–312.

99 *Ibid* (n 9), at pp. 312–314.

century is very synthetic. By way of example, in Lobo d'Avila Lima, in the lessons published in 1924, the issue of the principle of the freedom of the seas and the creation of the International Prize Court is analysed in point 7 of the Introduction, dedicated to the 'Historical evolution of International Law'.<sup>100</sup>

In the context of civil university teaching, Armando Marques Guedes, from the Higher Institute of Economic and Financial Sciences of the Technical University of Lisbon, devotes some attention to ILS matters in volume II of *Direito Internacional Público* of 1936.<sup>101</sup>

### The Work Developed by Professor José Maria Vilhena Barbosa de Magalhães from the Twenties to the Fifties of the 20th Century

Professor José Maria Vilhena Barbosa de Magalhães (1879–1959) is a multifaceted jurist, who has work published in various areas of private law, with an emphasis on commercial law and civil procedural law. In 1928 he delivered a course at the Hague Academy of International Law on the doctrine of domicile in private international law.<sup>102</sup>

His activity regarding the ILS ranged from the twenties to the fifties, particularly as a result of his participation in international conferences and in international entities dedicated to research in the field of International Law such as the International Law Association and the Institut de Droit International.

The first study published by Professor Barbosa de Magalhães in the field of the ILS is 'Da condição jurídica dos navios de Estado', which appeared in several issues of the *Gazeta da Relação* de Lisboa, between 1924 and 1928.<sup>103</sup> At the origin of it there must have been the book *Rapport sur le statut juridique des navires d'État affectés à des opérations de commerce*, presented to the *Comité d'Experts pour la Codification Progressive du Droit International*, and published in Genoa in 1925. The study, divided into fourteen points, examines the issue of state ships using the doctrine that emerged on the matter at the beginning of the 1920s as well as relevant case law on the subject.

100 A. Batalha REIS, Vasco Luiz de CASTRO, Alberto GRAÇA e D. PINTO COELHO, *Direito Internacional Público. Seguindo as prelações do Exmo Sr. Dr. Lobo d'Avila Lima*, Lisboa, 1924, pp. 56–59 e 113–115.

101 Armando MARQUES GUEDES, *Direito Internacional Público*, Tomo II, Lisboa, 1936.

102 'La doctrine du domicile en droit international privé', RCADI, vol. 23, 1928, pp. 1–144.

103 Following a common practice at the time, its printing was divided between number 6 (16 July 1924), number 7 (1 August 1924) and number 24 (16 April 1925) of the year 38, and number 3 (1 June 1925), number 6 (16 July 1925) and number 19 (1 February 1926) of the 39, and number 19 of the year 41 (1 February 1928).



Secondly, the publication of Professor Barbosa de Magalhães' comments on Professor Walther Schücking's report on territorial waters, within the scope of the second session of the *Comité d'Experts pour la Codification Progressive du Droit International* should be taken into consideration. There is a translation of these observations to English, made by the *American Journal of International Law*, in 1926, with the title 'II. Observations by M. Barbosa de Magalhaes', which appear with the date of the 10 January 1926.<sup>104</sup> The most extensive and original part of the comments observations is that relating to the issue of the extent of the territorial sea. On the one hand, this is so insofar as it supports the existence of a single territorial sea zone with adequate width to allow the protection of marine species by the coastal State in particular for fishing purposes. On the other hand, this is important given that it considers the possibility of allowing situations of occupation of the high seas to pursue specific and expressly listed activities of a strictly peaceful nature. Finally, it is so by intending to advance a legal rule for the issue of the lateral delimitation of territorial seas. In the 'Observations by M. Barbosa de Magalhaes', an astute analysis of the problem of archipelagos can also be found, regarding article 5 of the draft document dedicated to islands, in terms that are close to their subsequent regulation within the scope of UNCLOS. In fact, based on the idea of unity of the islands that constitute an archipelago, he argues that a specific rule on the matter should be included in the draft project with the following wording: '[i]n the case of archipelagos the component islands are considered as forming a whole, and the width of the territorial sea shall be measured from the islands most distant from the centre of the archipelago'.

Thirdly, concerning the writings related to the ILS, reference should be made to a joint publication by Professor Barbosa de Magalhães with Frigate Captain Marcelino Carlos as members of the PCIML.<sup>105</sup> This was the Portuguese contribution<sup>106</sup> for the discussion of a draft convention on the laws of maritime jurisdiction in time of peace and on maritime neutrality, drawn

104 'Observations by M. Barbosa de Magalhaes', *Documents from the League of Nations. Committee of Experts for the Progressive Codification of International Law. Supplement to the American Journal of International Law. Oficial Documents. Special numbers*, July and October, vol. 20, 1926, pp. 120–134.

105 Regarding the activity of the Permanent Commission on International Maritime Law in the field of reformulating commercial legislation relating to maritime law and its composition in the early 1930s, the brief note of Professor Barbosa de Magalhães, 'Direito marítimo', published at the *Gazeta da Relação de Lisboa*, ano 45, nº 16, de 16 December 1931, pp. 241–243.

106 At its base was the report on the issue of territorial waters, reported by Vicente ALMEIDA D'EÇA, which had been approved by the Permanent Commission on

up by the Neutrality Committee of the International Law Association, to be discussed at the Vienna Conference in 1926 as previously mentioned. Two versions can be found. A French version, from 1926, was printed in Lisbon with the title of *Observations au projet de convention du Comité de la Neutralité de l'«International Law Association» sur les lois de juridiction maritime en temps de paix et sur la neutralité maritime, par les représentants de la Commission Permanente de Droit Maritime International (Portugal) a la Conférence de Vienne – 1926 Prof. Dr. Barbosa de Magalhães et Capitaine de Frégate Marcelino Carlos*. There was also an English version, from the following year, with the title *Observations by the delegates of the C.P.D.M.I. (Portugal) Professor Dr. Barbosa de Magalhães and Commander Marcelino Carlos concerning the draft conventions entitled respectively “Laws of maritime jurisdiction in time of peace” and “Maritime neutrality” submitted by the Neutrality Committee of the International Law Association for the discussion at the Vienna Conference 1926*. It is, almost in its entirety, a criticism of the position taken by the project of the International Law Association of fixing the width of the territorial sea at three nautical miles, with the attempt to demonstrate that this external limit did not correspond to the International Law in force in the matter, despite being referenced as being subscribed to by the main maritime powers.<sup>107</sup> Furthermore, it also briefly addresses, in line with the thinking previously expressed by Professor Barbosa de Magalhães, the issues of fixing the territorial waters of islands, archipelagos and bays, and the lateral delimitation of territorial waters.

The remaining titles published by Professor Barbosa de Magalhães related to the ILS correspond to collaborations developed within the scope of the work of the Institut de Droit International in the late 1930s and 1950s. On the one hand, a small note must be mentioned, with the title of ‘Fundamento jurídico da exploração das riquezas do mar’, published in the *Gazeta da Relação de Lisboa*, year 51, n° 23, of 1 April 1938. This was a framework text for the publication of a resolution of the *Institut de Droit International*, approved in 1937, on the international institutional framework for the exploration and conservation of marine resources with an emphasis on living resources and a reference to the history of the proposals to create an international entity in this area. On the other hand, in the *Annuaire de l’Institut de Droit International*, from 1954, one

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International Maritime Law, on 28 July 1925. This report can be found in two different editions: i) autonomously as COMISSÃO PERMANENTE DE DIREITO MARÍTIMO INTERNACIONAL, *Relatório sobre o problema das águas territoriais. Aprovado pela Comissão em sessão de 28 de Julho de 1925*, Offic. da Soc. Nacional de Tipografia, Lisboa, 1926; e ii) and with express reference to Vicente ALMEIDA D’EÇA, at the *Boletim da Faculdade de Direito da Universidade de Coimbra*, ano VII, 1923–25, pp. 381–416.

107 In that regard, *Observations au projet ...*, p. 8.

can find observations by Professor Barbosa de Magalhães on the preliminary report and questionnaire of 9 December 1949, on the subject of territorial waters and internal waters. In these observations, dated 10 February 1950, the defence of a clear autonomy between territorial waters and internal waters must be highlighted, according to which 'l'Etat fixe la ligne de base d'après laquelle on mesurera l'étendue des eaux territoriales, en définissant aussi de cette façon leur limite extérieure'.<sup>108</sup> Finally, in the *Annuaire de l'Institut de Droit International* from 1956, comments by Professor Barbosa de Magalhães on a circular dated 20 October 1954, can, identically, be found on the subject of territorial waters and internal waters. In these comments, dated 23 November 1954, it is important to highlight his intention to ensure of clarity and precision in the proposed rules, particularly taking into account the results of the previous work on the subject, such as those of the 1930 Hague Conference in which he had participated.

### **The Fundamental Contribution of Professor Armando M. Marques Guedes to the Emergence of an ILS Doctrine in Portugal**

The fundamental contribution of Professor Armando M. Marques Guedes to the emergence of an ILS doctrine in Portugal has one of its decisive milestones in the publication in 1989 of the first edition of *Direito do Mar*.

*Direito do Mar* of 1989 is, in effect, the first systematic, updated and Portuguese exposition of a very significant group of matters integrated into the legal discipline that, since then, has come to be known as ILS.

Firstly, it constitutes the first systematic treatment of the ILS published in Portugal, insofar as the lessons on *Direito Marítimo Internacional* from 1963 by Serra Brandão, fundamentally deals with the Law of War in the sea. The book is divided into two parts. In the first part, an historical approach to the matter is presented from the Roman period until the Third Conference. In the second part, the various maritime spaces existing after UNCLOS are successively assessed. The treatment of the international legal regime of each of the maritime spaces is specific to that space, with the objective of stating the evolution that occurred, considering the international legal regimes enshrined in the Geneva Conventions and the new international legal regimes provided

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<sup>108</sup> Première partie: travaux préparatoires. Les eaux territoriales et les eaux intérieures. Observations des membres de la dixième Commission au sujet du rapport préliminaire et du Questionnaire du 9 décembre 1949. «Observations de M. Barbosa de Magalhães», *Annuaire de l'Institut de Droit International*, vol. I, 1954, p. 182.

for in the Montego Bay Convention. At the end of the book, a summary bibliography of a general character is included.

Secondly, *Direito do Mar* represents the first updated approach to the ILS in Portugal, according to what was decided at the Third Conference and was included in UNCLOS. In these terms, not only a summary assessment of its contents is included in the first part of the book,<sup>109</sup> but each of the chapters dedicated to maritime spaces contains an independent treatment of their new international legal regime.

Thirdly, the Law of the Sea integrates the first complete treatment of the existing Portuguese legislation on maritime areas. On the one hand, in historical terms, this is in relation to the period of the ILS historical beginnings, and also to the period between the 19th century and the Third Conference.<sup>110</sup> On the other hand, it is by systematically assessing the Portuguese legislation in force in each of the maritime areas of interest to Portugal.

The second edition of *Direito do Mar* was published in 1998 after the entry into force on 16 November 1994 of UNCLOS, and its ratification, on 3 November 1997, by Portugal. The systematization of the book used in the first edition was maintained, with three fundamental changes.

Firstly, consideration was given to the conclusion of the Agreement Relating to the Application of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, signed in New York on 29 July 1994.<sup>111</sup> In these terms, the matter was subject to a framework assessment in the Introduction (point 19),<sup>112</sup> and a larger treatment in the chapter dedicated to the Area (point 102. The Agreement on the Application of Part XI).<sup>113</sup>

Secondly, the aforementioned domestic law was updated: i) with regard to references to the current Portuguese constitutional text, as the first edition had been published before the 1989 constitutional revision;<sup>114</sup> ii) with regard to the assessment of the conformity of Portuguese domestic law with the international legal regime to which Portugal was obliged as a result of the

<sup>109</sup> *Direito do Mar*, 1ª ed., pp. 55–59.

<sup>110</sup> In this matter, the study on the question contained in the opinion on ‘Territorial sea and contiguous zone’, which had been reported by Professor Marques Guedes, on 1 February 1966, within the activities of the Corporate Chamber, is resumed.

<sup>111</sup> *Diário da República*, n.º 238, de 14 de outubro de 1997, pp. 5486 (183) to 5486 (192).

<sup>112</sup> *Direito do Mar*, 2nd ed., pp. 76–84.

<sup>113</sup> *Ibid*, at pp. 238–239.

<sup>114</sup> In terms of example, *Direito do Mar*, 2nd, pp. 129–195, with regard to the 1989 constitutional revision, and pp. 178–196, concerning the 1997 constitutional revision.

ratification of UNCLOS;<sup>115</sup> and iii) in references to domestic Portuguese legislation in force on specific matters.<sup>116</sup>

Thirdly, the treatment given to the matter of islands was substantially expanded,<sup>117</sup> both in terms of the international legal regime contained in the Geneva Conventions (1958) and the Montego Bay Convention (1982) and also of the Portuguese domestic law (to assess the issue of the Savage Islands, or *Ilhas Selvagens*).

Furthermore, the final bibliography was expanded, including and recognizing the increase of ILS studies published since the first edition.

The contribution of Professor Marques Guedes should also be appreciated from the perspective of the future evolution of the ILS which he deals with in the article 'Law of the Sea', published in 2001, in the 2nd Supplement to the *Dicionário Jurídico da Administração Pública*. On the one hand, this is with regard to the object of the legal area in general terms, namely in contrast to Maritime Law, by arguing that the ILS in '[a]ddition to regulating activities of a public nature, (...) deals with conditions of a private nature developed in maritime spaces, or that relate to such space'.<sup>118</sup> On the other hand, it is by highlighting that "[t]he norms and rules referred to, both those of the Montego Bay Convention and those of Portuguese domestic law that complement or develop them, are intended for times of peace".<sup>119</sup>

It is important to note that, in the eighties and nineties of the twentieth century, as a result of the teaching of Professor Armando M. Marques Guedes, there began to be agreement between the ILS writings by authors of the Navy and authors with a legal training. In many cases they constitute a single piece of research, without any subsequent continuity, particularly taking into account the scientific writings of the author in question. In some cases, however, they go beyond a mere isolated piece of writing and could be envisaged as the continuation of the path started by Professor Armando M. Marques Guedes.

The second group includes: i) Maria Eduarda Gonçalves, as author of the doctoral thesis (State Doctorate), discussed and approved in Nice, in 1979, and published in Portugal in 1983, with the title *A política comum de pesca*

115 As an example, *Direito do Mar*, 2nd ed., p. 134, when defending the unconstitutionality of the provisions of Decree-Law nº 495/85, of 29 November, regarding the application of the archipelagic waters international legal regime to the inter-island waters of the Autonomous Regions of the Azores and Madeira.

116 As an example, *Direito do Mar*, 2nd ed., pp. 148–149, the reference to the international legal regime of underwater cultural heritage.

117 In the first edition, the presentation of materials about islands occupied pp. 159–162, while in the second edition was extended to pp. 203–214.

118 'Direito do Mar', p. 234.

119 *Ibid.*, at p. 236.

*da Comunidade Económica Europeia. Um exemplo de dinâmica comunitária no contexto internacional*, despite her publications in the area having been predominantly carried out abroad; iii) Manuel de Almeida Ribeiro, author of the doctoral thesis *A Zona Económica Exclusiva*, de 1992,<sup>120</sup> who also published ‘Portugal e a Convenção de Montego Bay’ in 1995,<sup>121</sup> and ‘Revisitando a Convenção de Montego Bay’ in 1999;<sup>122</sup> and iii) Rosa Martins Rocha, author of the master’s thesis in international relations *O mar territorial: largura e natureza jurídica*, discussed and approved at the Universidade Portucalense Infante D. Henrique (Oporto), in that 1994, who also wrote ‘Portugal and the territorial sea’,<sup>123</sup> and ‘O costume e a Convenção do Direito do Mar de 1982’<sup>124</sup> in 1999.

During the last years of the nineties, teaching of the ILS at the Faculty of Law of the University of Lisbon was continued by José Luís Moreira da Silva, with the publication: i) of the booklet *Dois textos de direito do mar (inclui debate parlamentar de aprovação da Convenção de Montego Bay)*, including ‘Portugal e a Convenção de Montego Bay’, and ‘Do direito da pesca no direito do mar’, in 1999; ii) of the article ‘A Segunda Revisão da Convenção de Montego Bay ou o fim do *Mare Liberum*’;<sup>125</sup> and iii) of *Direito do Mar. Direito Internacional e Direito do Mar (Sumários desenvolvidos) Parte II*, de 2003, corresponded to the lectures on the second part of the course on International Law and Law of the Sea, in the Faculty of Law of the University Lisbon, in the academic year of 1999/2000.

### The Unequal Treatment of Different ILS Matters in the Eighties and Nineties of the Twentieth Century

The increase in the number of studies related to the ILS which were published in the eighties and nineties of the twentieth century did not mean, however, that one could at that time defend the existence of an ILS doctrine in Portugal.

120 This is the first doctoral thesis in social sciences in the area of political sciences on the subject of ILS discussed and approved at a Portuguese University (Instituto Superior de Ciências Sociais e Políticas [Higher Institute of Social and Political Sciences] of the Universidade Técnica de Lisboa [Technical University of Lisbon]).

121 *Estudos em Homenagem ao Professor Adriano Moreira*, vol. I, 1995, pp. 285–328.

122 *Estudos em Homenagem a Joaquim M. da Silva Cunha*, 1999, pp. 573–603.

123 *Revista jurídica da Universidade Portucalense Infante D. Henrique*, nº 2, Mar., 1999, pp. 147–156.

124 *Estudos em Homenagem a Joaquim M. da Silva Cunha*, Fundação Universidade Portucalense Infante D. Henrique, 1999, pp. 657–665.

125 *Revista Jurídica*, nº 24, 2001, pp. 53–70.

In fact, the existence of a doctrine of the ILS, in the proper sense of the concept, would have implied that the treatment of their respective matters would be legally sound and in-depth and could not be limited to the mere enunciation of problems or to general assessments. Furthermore, it would have imposed a comprehensive approach to the various themes that constitute the object of this legal area of studies, not being sufficient to reduce it to a limited group of questions or matters.

Accordingly, it is important to highlight that a significant part of the studies that were published at this time, without taking into account the opinions prepared within the activities of the Comissão de Direito Marítimo Internacional (Commission on International Maritime Law), suffer from one of the two problems in question. On the one hand, this is because they were based on introductory approaches to this legal area of studies whose contents and international legal regimes were in a process of transformation. On the other hand, it is that they were prepared, in many cases, in non-academic contexts or for audiences made up of non-jurists. Furthermore, even when originating from authors with legal training, they constitute, in many cases, isolated approaches in a legal area integrated within the scope of International Law and in need of a specific International Law approach. In effect, although the ILS has its own object of study, an adequate understanding of its issues implies a minimum training in International Law that allows a proper approach to dealing with basic issues, such as the production of effects of treaties, the margin of effective autonomy of action of States and of the ships flying their flags or the way in which peaceful means of settling conflicts operate, particularly under Part XV of UNCLOS.

It is important to highlight that the majority of studies published in the two last decades of the twentieth century, regardless of their length or the quality of the legal reasoning, deal with topics related to the international legal regime of maritime spaces. This is evident in studies of an academic nature, in particular those that originated in master's papers written for the Law of the Sea seminars of Professor Armando M. Marques Guedes. However, even in this area of research, there are very few studies related to the delimitation maritime spaces,<sup>126</sup> which was one of the subjects in which a more doctrinal production has originated outside Portugal, particularly owing to the delimitation of continental shelves in accordance with the rules contained

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<sup>126</sup> A relevant exception in this field is the master's thesis of Duarte LYNCE de FARIA, *A jurisdição e a delimitação dos espaços marítimos em Portugal: do Rio Minho às Ilhas Selvagens, na golada do Guadiana e no Mar de Timor*, of June 1997, discussed and approved at the Faculty of Law of the University of Lisbon, in June 1998, and published in 2002.

in article 76 UNCLOS. In contrast, are the almost non-existent studies and writings dedicated to: i) the assessment of international case law relating to ILS; ii) the international legal framework for navigation; iii) matters relating to fishing and the conservation of living marine natural resources, particularly taking into account the developments that took place in the second half of the 1990s; iv) scientific research; v) activities of a military nature that take place in maritime spaces; vi) the protection of the marine environment and the questions relative to pollution; vii) monitoring activities carried out in maritime spaces; and viii) the assessment of the application of the ILS in Portugal, both in terms of the multilateral conventional regimes that were ratified, namely the Geneva Conventions of 1958 and UNCLOS, and also in relation to the bilateral agreements that had been concluded by Portugal.

### Conclusions

Summarizing the publications dedicated to the ILS during the nineteenth and twentieth centuries, within the scope of the first volume of the Portuguese Yearbook of the Law of the Sea, allows us to reinforce the following conclusions:

- i) the doctrinal production of the ILS in Portugal took place only from the eighties of the nineteenth century as a result of the creation of a chair on 'Principles of International Maritime Law and Maritime History, national and foreign' at the Naval Academy in 1864, from which Carlos Testa and Vicente Almeida d'Eça, professors at the Naval Academy between 1864 and 1929, must be considered to be the founders of the ILS studies in Portugal;
- ii) *Princípios geraes e regras praticas de Direito Internacional Maritimo*, by Carlos Testa, of 1882, which is the first Portuguese book to deal with all the ILS matters, with the content and name it had at that occasion, systematically;
- iii) *Questões de Direito Internacional. Do exercício da pesca marítima. Dissertação para o concurso á quinta cadeira da Escola Naval*, by Vicente Almeida d'Eça, published in 1885, is the first Portuguese monograph on a specific ILS matter;
- iv) during the 19th century and in the 20th century until the 1980s, ILS matters were not subject to specialist teaching in the Faculties of Law in Portugal, whether at the University of Coimbra or at the University of Lisbon;



- v) publications relative to the ILS are almost non-existent in Portugal between the forties of the 20th century and the beginning of the Third Conference in 1973, for the reason that it is not possible to identify them specifically, taking into account the Portuguese ratification of the Geneva Conventions on the Law of the Sea of 1958, and the previous claim, in 1956, of the exercise of powers over the continental shelf, through Law No. 2080, of 21 March;
- vi) Professor José Maria Vilhena Barbosa de Magalhães, of the Faculty of Law of the University of Lisbon, particularly during the 1920s, is the only jurist with recognized merits who studied the ILS until the 1980s;
- vii) the use of the legal opinions of the Comissão Permanente de Direito Internacional Marítimo (Permanent Commission on International Maritime Law) and the Comissão de Direito Internacional Marítimo (Commission on International Maritime Law), on the one hand, and the of the Câmara Corporativa (Corporate Chamber), on the other hand, makes it possible to fill, in part, the gap in Portuguese studies on the ILS in the period that between the 1940s and the signing of the UNCLOS, taking into consideration the personalities that were members of these entities;
- viii) the existence of an official translation of UNCLOS, prepared by the Portuguese Ministry of Foreign Affairs, in 1985, common to the Portuguese-speaking States, allowed the existence of a solid work base for researchers in the different areas of sea studies, with an emphasis on lawyers, having made it possible to overcome problems that could result from the existence of several private or doctrinal translations of the text;
- ix) Professor Armando M. Marques Guedes must be considered to be the “founding father” of academic studies of the ILS in the Portuguese Faculties of Law, both at undergraduate and postgraduate level, taking into account his teaching on the subject from the beginning of the eighties of the twentieth century in the Faculty of Law of the University of Lisbon;
- x) the number of studies on the ILS increased significantly from 1988 onwards, when a group of studies prepared within the scope of the master’s seminars on Law of the Sea, under the responsibility of Professor Armando M. Marques Guedes, began to be published in the Faculty of Law of the University of Lisbon, and in the Faculty of Human Sciences of the Portuguese Catholic University;
- xi) the contribution of authors from the Navy, with an emphasis on Eduardo Henrique Serra Brandão, and with studies published for more than four

decades, constitutes a very significant part of the ILS writings published in Portugal in the second half of the twentieth century, in particular owing to the continued inclusion of articles on legal topics linked to ILS in the *Anais do Clube Militar Naval*;

- xii) the treatment of the various matters integrated within the scope of the ILS, as it is defined contemporaneously, is not identical to issues related to the international legal framework of maritime spaces which are clearly prevalent, but it did create the conditions for the development of a doctrine of the ILS from the beginning of the new millennium.