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Articles and essays

International Law and Tourism: an introduction

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Abstract

This article aims to reflect on the interfaces between tourism and international law. The law, as a regulator of social conflicts, is present in this process under the aspect of international tourism law, in addition to the directives of the agreements signed by Brazil that establish a provision related to tourism. A theoretical reflection and bibliographical review were used as method, based on some references of the legal doctrine that deal with international law and its relationship with tourism. The results of this study indicate that there is an intrinsic relationship between international law and tourism due to the advances in transportation, the globalization process with internationalization of the economy and culture, and, above all, the expansion of human rights and their protection by international law bodies. The conclusion of this study indicates that there is a lack of theoretical production on this theme, by legal professionals and tourism scholars. In this context, this article can be considered a contribution to the debate in academia.

Keywords: Tourism; International law; Human rights.

Resumo

Direito internacional e turismo: uma introdução

Este artigo tem como objetivo refletir acerca das interfaces entre o turismo e o direito internacional. O direito, como instrumento regulador dos conflitos sociais, mostra-se presente neste processo sob o aspecto do direito internacional do turismo, acrescido das diretivas dos tratados assinados pelo Brasil que firmam disposição relativa ao turismo. Utilizou-se como método a reflexão teórica e a revisão bibliográfica a partir de algumas referências da doutrina jurídica que tratam do direito internacional e de sua relação com o turismo. Os resultados deste trabalho indicam que há intrínseca relação entre o direito internacional e o turismo face ao avanço dos meios de transportes, do processo de globalização com internacionalização da economia e da cultura e, sobretudo, da expansão dos direitos humanos e de sua proteção pelos organismos de direito internacional. A conclusão do estudo indica que há escassez de produção teórica acerca desta temática, em parte pelos profissionais do direito e em parte por estudiosos do turismo. Nesse contexto, o artigo se insere como sucinta contribuição ao debate no meio acadêmico.

Palavras-chave: Turismo; Direito internacional; Direitos humanos.

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Resumen

Derecho Internacional y Turismo: una introducción

Este artículo tiene como objetivo reflexionar acerca de las interfaces entre el turismo y el derecho internacional. El derecho, como instrumento regulador de los conflictos sociales, se muestra presente en este proceso bajo los aspectos del derecho internacional del turismo y de las directivas de los tratados firmados por Brasil que establecen disposiciones relativas al turismo. Se utilizó como método la reflexión teórica y la revisión bibliográfica a partir de algunas referencias de la doctrina jurídica que tratan del derecho internacional y de su relación con el turismo. Los resultados de este trabajo indican que hay intrínseca relación entre el derecho internacional y el turismo frente al avance de los medios de transporte, del proceso de globalización con la internacionalización de la economía y de la cultura y, sobre todo, de la expansión de los derechos humanos y su protección por los organismos de derecho internacional. La conclusión del estudio indica que hay escasez de producción teórica acerca de esta temática, tanto en el área del derecho como en el área del turismo. En ese contexto, el artículo se inserta como sucinta contribución al debate en el medio académico.
Palabras clave: Turismo; Derecho internacional; Derechos humanos.

INTRODUCTION

The recent withdrawal of the United Kingdom from the European Union, in June 2016, will imply aspects of the international tourism law? This question raises interesting and timely reflection about the relationship between international law and tourism. We do not intend, however, in this short study, to analyze this recent geopolitical and historical in international relations that will certainly involve international tourism. Our goal, here, is far more modest: we would say that this study, in fact, gathers introductory notes on the interfaces between tourism, human rights, and international law.

Considering the globalization process – progress in transportation, information technology in knowledge society, economic and cultural interdependence of nations – international tourism tends to grow. On the other hand, the role of the United Nations (UN), with the permanent policy of human rights protection, enables the development of international law (Beni, 2003).

According to the United Nations Educational, Scientific and Cultural Organization (Unesco), in its report on education for the 21st century, continuing education is a premise that indicates the need for permanent training of citizens and professionals. On the other hand, given the speed of knowledge innovation, it is recommended to professionals or experts in a particular field of knowledge to address other areas aiming at interdisciplinarity – dialogue with other specialists – considering that challenges or human problems cannot be solved with the isolated knowledge of a particular area, be it tourism, law, economics, or health. In short, theoretical approach and dialogue between various professionals and specialists of knowledge is necessary (Delors, 2007).

By highlighting these Unesco recommendations, we are pointing out the method chosen to write this article. Theoretical reflection and bibliographical review were used as a method based on some references of the legal doctrine that deal with international law and its relationship with tourism. This article

was designed and prepared by authors who work in Law and Geography, all having tourism as theoretical congruence or object of inter-, multi-, and trans-disciplinary study.

According to Morin (2005), interdisciplinarity admits the limits of disciplines and experts, although sometimes it involves exchanges and cooperation between them and specialists. In this conception, though they understand that their knowledge is very important to analyze a given phenomenon, experts are aware that their skills are limited. Thus, interdisciplinarity would be the meeting of several experts to discuss or solve a complex problem that any discipline alone could not explain, understand, and solve.

In the words of Morin (2005, p. 52):

> Interdisciplinarity controls disciplines as the UN control Nations. Each discipline aims to first have its territorial sovereignty recognized and, thereby, to confirm the frontiers instead of dissolving them, even though some incipient exchanges might occur. (our translation)

Our initial reflection to produce this article took place in the academic environment, in 2015, at a public university, where we are in the process of teaching, learning and researching in the discipline 'International Relations and Tourism' of the undergraduate program in Tourism.

We know that the interfaces between tourism and international relations are many, large, and challenging. However, our theoretical framework was delimited in the interfaces between tourism, human rights, and international law. We also acknowledge that these interfaces are vast. Considering the limitations, characteristics, and purposes of this study, we have restricted ourselves to write some introductory notes on the subject.

By doing an introduction about international relations and tourism, we alert the reader, however, to not expect a linear historical approach or a specific spatial cutout. That is, by searching some interfaces, we did not focused on a local or regional case study that would involve analysis of international tourism law. Thus, the reader will find, on one side, general and international aspects, and, on the other, some national aspects, with notes, *en passant*, about international law and tourism in Rio de Janeiro, in the scope the Rio 2016 Olympic Games.

We know that, on the one hand, the subject is wide open for debate, leading to multiple approaches and, on the other, we accept that this article is limited to introduce notes about the interfaces between international law and tourism. Although being open to inevitable and welcome criticism, we hope that this study will somehow contribute for the debate and reflection on the process of continuing education of professionals and training of new undergraduates in tourism and in law.

METHODOLOGICAL PROCEDURES AND RESULTS

As we mentioned, the method used in this study was the theoretical reflection based on bibliographical review about the legal doctrine that deals with

international law and its interfaces with tourism. The methodological procedure was exploratory and descriptive (Gil, 2010). Therefore, we briefly addressed the state of the art of the thematic object.

The results of this study are shown at the end of in this article that was organized into three complementary topics: "Historical overview of human rights," "Human Rights in the Brazilian State, sovereignty and protection of international law," and "Tourism and international law."

As part of the results, it is understood that there is an intrinsic relationship between international law and tourism. However, this study indicates that there is a lack of academic studies about that theme.

HISTORICAL OVERVIEW OF HUMAN RIGHTS

First, we specify that human rights are those related to freedom and equality, and are stimulated by most part of the countries in the world. Scholars agree that human rights are natural law, i.e., start with the birth of human beings. Fundamental rights are connected to human rights and presented in the Brazilian Federal Constitution, in its title II, "Fundamental rights and guarantees." The supremacy of the Federal Constitution is closely linked to the concept of sovereignty of the Brazilian state. Thus, as a rule, the Brazilian national laws only produce effects for those living in the Brazilian state. Therefore, all living in the Brazilian territory, national or foreign, resident or in transit through the country, individuals or legal entities, will have all the rights and guarantees provided by Federal Laws.

By the principle of universality of fundamental rights, most of these rights are granted to any individual, whether or not Brazilian, resident in Brazil or abroad. In this sense, according to Mello (2004, p. 820) "there are fundamental rights only when there is a constitutional text written and established in the constitutional jurisdiction that guarantees them."

We highlight that, in this study, we understand "human rights" as inherent to the human condition. Such rights, even if not recognized in normative texts, due to moral requirements, may be recognized in treaties and protocols with pretensions of universality, limiting the State action. When we use the expression "fundamental rights," we are referring to a set of human rights recognized and positivized in the sphere of constitutional law of a State. Therefore, it is evident that human rights and fundamental rights do not have the same meaning, but one complements the other, since they have the purpose of protecting the human person.

Despite the contemporaneity of its discussion and debate, we must highlight, as suggested by Dallari (2013), that since Ancient History, legislative documents are concerned with the affirmation of fundamental rights. Under the historical perspective, human rights emerged gradually in history through class struggles against concentration of power, oppression, social inequalities, and disregard for the dignity of the human person, generated by globalization and the intensification of human relations. In the process of construction and development of human rights, the legal doctrine presents as starting point the Magna Carta, enacted in 1215 by John, King of England.

A long history took place before the 20th century until 1919, when the first international organization called the League of Nations or Society of Nations, organ that precedes the UN, was created. This League had its origins in the Treaty of Versailles, with the winners of the First World War. Its objective was to secure peace, international cooperation, and security of nations. The League of Nations, however, failed with the Second World War.

However, the consolidation of international human rights law occurred in the mid-20th century, as a post-World War II phenomenon. In this sense, its development can be attributed to the monstrous human rights violations by Hitler and the belief that part of these violations could be prevented if an effective system of international human rights protection existed at the time (Piovesan, 2010, p. 121).

Hence, after the Second World War, in response to the atrocities, destruction, violations of human rights and the denial of human dignity as source of value of every relationship, in June 26, 1945 was approved by the international community the Charter of The United Nations, which created the United Nations, designed to provide the legal basis for the permanent joint action of States in defense of the world peace (Dallari, 2013, p. 211).

United Nations intentions are expressed in Art. 1 of the Charter:

> 1) To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace; 2) To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace; 3) To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and 4) To be a centre for harmonizing the actions of nations in the attainment of these common ends.

The creation of the United Nations introduces the internationalization and promotion of human rights, when the Member States started to recognize that essential rights of the human person are no longer exclusively concerned with domestic jurisdiction, but, on the contrary, are a global concern.

Responding to this, the Commission on Human Rights was created in 1946, and developed the Universal Declaration of Human Rights, approved in 1948, in which there was a evolution of international relations concerning the prejudice of race, color, gender, language, political opinion, nationality, and social background (UNHCR, 2017).

The Human Rights Commission was not very successful in achieving its objectives regarding the protection of human rights, especially after the September 11 attacks on the United States. The Commission was soon replaced by the Human Rights Council, adopted by Resolution 60/251 of 2006, in the General Assembly of the United Nations.

> rnmental agency, part of the United Nations system and has 47 Member States responsible for strengthening, promoting, and protecting human rights in the world. It was created by the United Nations General Assembly on March 15, 2006 with the main objective of considering the situations of human rights violations and to make recommendations concerning these issues. (Simuna, 2015)

For better understanding, human rights were divided into generations. Some scholars consider three generations; others, four. These dimensions of human rights were separated regarding the motto of the French Revolution (1789), *liberté*, égalité, *fraternité*, with freedom corresponding to the first generation, equality to the second, and fraternity to the third, occurring, only years later, the fourth and the fifth generation of human rights (Bobbio apud Lima, 2003).

The *first generation* is marked by civil and political human rights. Therefore, the first-generation rights are linked to the autonomy, that is, to man's freedom in deciding his own destiny, life, and consciousness, not allowing the State to impose prohibitions in the individuality of each person, both in the physical as in the moral scope. Examples include the right to life, freedom, property, freedom of expression, political and religious participation, inviolability of domicile, freedom of assembly, among others.

The *second generation* is seen from the perspective of economic, social, and cultural rights. From the perception that the citizen alone is not able to guarantee a dignified life, the State is called to have duties in relation to men. In the bias of the fundamental rights of the second generation, the proposal presented considers a real balance in the relationship between State and citizen, making the State entity that holds the greatest power (economic, political, and legal) a subject not only with rights, but also with duties, allowing the citizen to live with dignity, not only by his own means, but also by those provided by the State. Thus, we can point out as fundamental rights of second generation: social assistance, health, education, work, leisure, etc.

Finally, the *third-generation rights* consolidates the principle of fraternity, cooperation among peoples, environmental concern, progress, peace. The *fourth-generation rights* are still seen under various perspectives: some say that such rights exist, others claim that we are still in the *third generation*.

HUMAN RIGHTS IN THE BRAZILIAN STATE, SOVEREIGNTY AND THE PROTECTION OF INTERNATIONAL LAW

The institutionalization of human rights by the Brazilian Law was given by the Federal Constitution of 1988, which demarcates, under law, the process of democratization of the Brazilian State to break with the authoritarian military regime, introduced in 1964. As a result of the process of democratization, the Magna Carta represents undeniable progress in the legislative consolidation of guarantees and fundamental rights and in the protection of vulnerable sectors of the Brazilian society. From it, human rights gained extraordinary relevance, being the Constitution of 1988 the most comprehensive and detailed document on human rights adopted in Brazil (Piovesan, 2010).

This constitutional norm symbolizes the reinsertion of Brazil in the international scenario, since this is the first Brazilian Constitution to enshrine a universe of principles to guide the country abroad, setting values to guide the international agenda, ensuring a more secure and sustainable future.

In turn, international organizations are also associations of subjects of international law, that is, composed of States. These organizations, resulting from the growth of international relations and necessary cooperation between nations, have as objectives: obtaining or maintaining peace, resolution of armed conflicts, economic and social development, etc.

With specific or generalized objectives, international organizations can be divided into intergovernmental (global and regional) and non-governmental organizations. Examples of global organizations include the United Nations (UN), whose generalized objective is taken from the Charter of the United Nations, with the signing of 50 countries (Pinto, 2017), and the United Nations Educational, Scientific and Cultural Organization (UNESCO), with the specific objective aimed at cooperation and reaffirming the Universal Declaration of Human Rights, with two covenants of 1966, on civil and political rights and on economic, social, and cultural rights (Unesco, 2001). As a regional organization, we can mention the Organization of American States (OAS), of generalized objective, and, in the case of non-governmental organizations, Greenpeace, founded in 1972 with a specific objective.

Although the States have their national sovereignty protected by international law, it is worth to highlight that global and regional intergovernmental organizations, as well as the non-governmental organizations, are also actors on the stage of international relations and, sometimes, interfere or influence, to some extent, in the policies of the Member States (Pecequilo, 2004; Sarfati, 2005).

The idea or concept of sovereignty has its origins in the Treaty of Westphalia, in 1648. State sovereignty is addressed as the original source of all the power exercised by the State, a power considered incontrovertible and undeniable. In this perspective, the ruler can do whatever he wants within his territory, in such a way that no other ruler or political force will have the right to intervene (Sarfati, 2005).

However, nowadays, especially after the invasion of the US forces in the Yugoslav War (1994), we need to question such definition considering the new international order in postmodernism, which requires from the State a global thinking to achieve an international community in its broader sense, aiming at the satisfaction and the congruence of divergent interests through cooperation between States, facing the necessity of interdependence for economic, political, and social reasons (Huntington, 1997).

On the other hand, we need to consider the geopolitical dimension of tourism, considering that the economic and political interests of Companies and Governments interfere in the dynamics of tourism (Hoerner, 2001). Furthermore, in the theories of international relations, these tourist disputes can also be understood as political aspects in an "anarchic society," that is, in a world society in which there is a certain anarchy or absence of Government, but with relative International governance (Bull, 2002).

We highlight that tourism can also be considered as "soft power," i.e., soft power in international relations, as tourist attraction power encouraged from

international mega events as the World Cup and the Olympic Games. According to Joseph Nye,

> there is also an indirect way to exercise power. A country may obtain the outcomes it wants in world politics because other countries want to follow it, admiring its values, emulating its example, aspiring to its level of prosperity and openness. In this sense, it is just as important to set the agenda in world politics and attract others as it is to force them to change through the threat or use military or economic weapons. This aspect of power – getting others to want what you want – I call soft power. (Nye, 2002, p. 36, bold added)

Scholars of international tourism have contributed to the understanding of the interfaces between tourism and international relations. According to Pieri and Panosso Netto (2015, p. 63):

> By analyzing international tourism in this current political and economic context, we can see that not only the sensation of multipolar order in the world, but also the improvement in the living conditions of large portion of the world's population, especially of the new emerging powers, contributes in the conditions that this huge population layer has to take advantage of tourism.

In this context, the States have conferred a greater concern with the commitments made abroad, i.e., with its international relations, than with its absolute and unattainable sovereign power, so that sovereignty is limited due to the necessity of interdependence among Nations, that is, with the covenants, treaties, and commitments made abroad in response to international issues, such as globalization, economic and industrial development, mutual respect between peoples, the pursuit of peace, the humanitarian progress, among others (Pecequilo, 2004).

Therefore, the State which violate human rights may be held accountable before the international community through regional courts, such as the Inter-American Court of Human Rights, or international committees, such as the Human Rights Committee, created by the International Covenant on Civil and Political Rights. By this logic, the subject who has his dignity violated and not get the effective tutelage may seek (directly or indirectly) sections and international committees to ensure his own protection. Furthermore, the political leader who lead the country to practices of crimes against humanity can be tried and convicted by the International Criminal Court (Flumian, 2012, p. 1134).

At the same time, international organizations are supporting the tourism for its contribution to world peace, the benefits of connection between different peoples and cultures and the economic benefits that may arise.

In this context, the World Tourism Organization (UNWTO), former International Union of Official Travel Organizations (IUOTO), begin its activities in 1925 as an international non-governmental organization that contained private and governmental tourism associations (Almeida, 2001). In 2003, it became a specialized agency of the United Nations. Its mission is to promote sustainable, responsible, and universally accessible tourism as promoter of inclusive development.

Tourism has become one of the main actors in international trade and represents an important source of income for many developing countries. As agency of the UN devoted to tourism, the WTO insists that developing countries can benefit from tourism, helping in the placement of destinies in national and international markets in a sustainable way (Beni, 2003).

In the Brazilian State, the Federal Constitution contributes to tourism in its Article 180, establishing that "the Union, the States, the Federal District and the municipalities will promote and encourage tourism as a factor of social and economic development." In this perspective, the Ministry of Tourism (MTur) is the Brazilian federal agency responsible for the planning and execution of public policies of tourism in national territory, as well as have its tasks in the process of insertion of the international tourism in partnership with the Ministry of Foreign Affairs. Both are responsible, for example, for the promotion of international mega events like the World Cup in 2014 and the Rio 2016 Olympics, in partnership with the State and municipal governments of Rio de Janeiro.

TOURISM AND INTERNATIONAL LAW

The enactment of the Global Code of Ethics for Tourism (GCET), in 1999, prepared by the UNWTO, is a reference to the sustainable and responsible development of tourism in global scope. However, we highlight that several international documents preceded the Code, such as the Manila Declaration on World Tourism (1980), the Tourism Bill of Rights, the Tourist Code (1985), and the Resolution 364 of the General Assembly of 1997.

Tourism activity had its climax in the 20th century and has been developed until today, being increasingly valued not only as economic activity, but mainly as a social and cultural activity in the scenario of international relations (Barreto, Burgos, & Frenkel, 2003).

A matter of great importance on tourism interface with international law that deserves the attention and concern of the tourism professionals refers to the so-called "sex tourism" and the sexual exploitation of children, that is, the flow of national and international tourists that travel to pursuit sexual pleasure with "sex workers" (female and male prostitution), often with the sexual exploitation of children and adolescents.

However, the International Community, through various documents (Convention on the Rights of the Child of 1990; Resolution of the Eleventh General Assembly of the UNWTO on the prevention of organized sex tourism of 1995; Stockholm Declaration against the sexual exploitation of children for commercial purposes of 1996, among others), fight against sexual exploitation of children and adolescents.

In that sense, the Global Code of Ethics for Tourism, in its Article 2, discourages and combats sex tourism:

> The exploitation of human beings in any form, particularly sexual, especially when applied to children, conflicts with the fundamental aims of tourism and is the negation of tourism; as such, in accordance with international law, it should

> be energetically combatted with the cooperation of all the States concerned and penalized without concession by the national legislation of both the countries visited and the countries of the perpetrators of these acts, even when they are carried out abroad; (World Tourism Organization, 2016)

Sex tourism must be analyzed in its dialectic, considering historical, colonial, migratory, political, and social aspects. However, according to the researcher Arim Soares do Bem:

> Although sex tourism is widespread as a practice increasingly visible in contemporary societies, it cannot be considered as just one more segment of tourism activity (by presupposing the existence of a set up market), but one of its pernicious deformations. Its existence reflects, in fact, the pre-existence of deeper problems which are anchored in the heart of the societies that receive and send tourists. (Soares do Bem, 2005, p. 19)

On the other hand, the UNWTO insists to revalue the tourist's image to strengthen the modern economy and, although domestic tourism do not lose its strength, there is an intense onslaught in the internationalization of tourism. There is also a major concern with the social aspect of tourism. In this sense, the population visited must receive tourists without prejudice, and the tourist must respect local values.

The Chart 1 demonstrates the financial weight of international tourism.

Chart 1 – Arrivals and incomes of international tourism of 13 countries which also benefit from a strong domestic tourism

Parameters/ Countries	Arrivals (2003)		Incomes (2000)		Arrivals from 1990 to 2003
	Million	%	Million dollars	%	%
France	75	11	29.900	6,3	+ 43
Spain	49,5	7	31.000	6,5	+ 45
United States	40,4	6	85.200	17,8	+ 2,5
Italy	40	6	27.400	5,7	+ 49
China	40	6	24.000	5	+ 135
United Kingdom	24,8	4	19.500	4	+ 38
Austria	19,1	3	11.400	2,4	+ 0,5
Germany	18,3	3	17.800	3,7	+ 7,5
Canada	17,5	2,5	10.200	2,1	+ 15,5
Switzerland	10	1,5	7.300	1,5	– 25
Netherlands	9,3	1,5	7.000	1,4	+ 6
Belgium	6,7	1	7.000	1,4	+ 58
Australia	4,3	0,5	8.400	1,8	+ 95,5
Total	355	53	276.100	57,9	+ 34

Source – UNWTO (2016)

The International Monetary Fund (IMF) is the main global institution of finance and trade, contributing to the international tourism to the point of trying to settle the political differences, which are a determining factor in the choice of the tourist destination along with the financial health of the country, which is closely linked to the purchasing power of the tourist and associated with the favoring of consumption among the lower classes, facing transparency policies and with State participation (Pieri & Nadia Panosso Netto, 2015).

International tourism is linked to the consumption of tourist products abroad, i.e., when individuals from one State consume "tourism" in another State (Almeida, 2001). Hence the need of agreement and peace between States, the guarantee of freedom to the citizens and also the acceptance of States suppliers of tourism products.

In this perspective, from the point of view of private international law, with the evolution of technology, tourism involves the process from the consumer to the purchase of the tourist product at a distance without really knowing it. Consumers are, therefore, in vulnerable or inferiority situation, and may be misleading, facing, for example, the bankruptcy of the service provider company from which he/she purchased. The need for an effective protection of the tourist is obligatory in the current circumstances of accelerated tourist development, handling large sums of money and increasing number of tourists.

Another important point concerns the sale of tourist products in international sites. Here arises the question about which will be the jurisdiction if a problem occurs with the trip. For countries that have treaties or agreements with Brazil, the problems will be solved in the Brazilian jurisdiction. As for non-signatory countries, which have not signed treaties with Brazil, they will have their disputes resolved out of the country, such as Germany. A good example is the purchase of an international cruise on an Italian site: as Italy and Brazil are signatories of the the same treaty, the case will be judged in Brazilian jurisdiction.

Tourism also contributes to the law in its aspect of enlargement to an international citizenship. In this case, it will govern the law of the country in question to perform the naturalization. In accordance with Article 12, I, the Constitution of the Federative Republic of Brazil, under *jus solis* criterion (territorial origin), has as a rule that all born in national territory will be Brazilian-born. Therefore, if the parents come to Brazil to tourism and the child is born in the Brazilian territory, the child, even of foreign parents, will be Brazilian-born. The same situation is applied to the children of foreign parents born abroad, following the *jus sanguinis* criterion (right of blood).

According to the Article 12, I, of the Constitution, are native Brazilians, i.e., individuals who acquire the original Brazilian nationality:

1) "those born in the Federative Republic of Brazil, even though of foreign parents, provided that they are not in the service of their country." By this criterion, Brazil adopts the *jus soli* rule, i.e., are native Brazilians individuals born in Brazilian territory. The term "territory" covers both the territory itself as warship and military aircraft, merchant ships, aircraft, Brazilian air space and territorial waters. However, the Constitution presents an exception to the *jus soli* rule: those born in the Brazilian territory, children of foreign parents, since anyone of them is in the service of her/his

country – which includes consular and diplomatic career, service for agency of direct or indirect public administration of the foreign-State –, will not have the original Brazilian nationality. It is worth noting that this exception does not apply to the foreigner who is in Brazil at the service of an international agency or entity that is not officially representing her/his country. Thus, it is adopted, in this case, the territoriality rule, and the child of this foreigner is considered Brazilian-born.

2) "those born abroad, of a Brazilian father or mother, provided that anyone of them is in the service of the Federative Republic of Brazil." In this hypothesis of acquisition of the original Brazilian nationality, Brazil does not adopts the *jus soli* rule, but consanguinity added to the functional character. The reasoning is simple: if foreigners who are in the service of their country have a child in Brazil and the child is not considered Brazilian, the reciprocal must be the same, i.e., the child of a Brazilian father or mother who is in a foreign country at a service of Brazil must be considered a Brazilian born. In this case, the individual is Brazilian without being born in Brazil (application of *jus sanguinis* with the functional criterion).

3) "those born abroad, of a Brazilian father or mother, provided they are registered in competent Brazilian office or that will reside in the Federative Republic of Brazil and opt, at anytime, after the age of majority, by the Brazilian nationality" (writing given by CA 54/07). Thus, the new writing reproduces in part the constitutional text that existed until the edition of the Constitutional Amendment of Review 3, of 1994, which forbade the children of a Brazilian father or mother who were not representing Brazil and who were born abroad to be registered in the competent office (Embassy or Consulate). Currently, however, the Constitution admits the register in competent Brazilian office. Alternatively to this possibility, the constitutional norm also admits the acquisition of national origin to the Brazilian individual that will return to reside in the country and choose, at anytime, after the age of majority, the Brazilian nationality. Interesting question is the situation of those born abroad, children of a Brazilian father or mother, who were born between the edition of Amendment of Review 3 and the Constitutional Amendment 54, i.e., between June 7, 1994 and September 20, 2007. To resolve this situation, the same Constitutional Amendment 54/07 created the Article 95 of the Transitional Constitutional Provisions Act: in these cases, such persons may be registered in legal or registry office of diplomatic or consular office, if they come to reside in the Federative Republic of Brazil.

Another aspect regards the travel of persons under 18 years old. According to the Art. 83 of the Child and Adolescent Statute (ECA), children up to 12 years old cannot travel outside of the judicial district unaccompanied of parents or guardians without judicial permission. On international travels, the legal authorization is expendable when children and adolescents (between 12 and 18 years old) present document attesting the affiliation or kinship with the responsible, birth certificate or valid travel documents. And, in case of travel in

the company of only one of the parents, the departure will only be authorized by a notarized document from the other.

Brazilians who still have not completed 18 years old can leave the country accompanied by foreigners, resident or domiciled abroad, provided with notarized judicial authorization (Art. 85 of ECA). The exception is for foreigners who are parents of the minor.

Another fundamental right is the right to leisure, constitutionally guaranteed by Article 6. Along with individual rights, the Constitution imposes on public authorities welfare activities and full development of human capacity, especially for the poorest people, which do not have the power to conquer them with the effort of their work. It is worth remembering that while tourism can be apart from the leisure, has on its practice various modalities that can involve it (Silva, 2005).

As defined by Badaró (2006), tourism is a social phenomenon which consists in the voluntary displacement of people by reason of recreation, rest, free time, leaving the place of residence to another looking for leisure.

The practice of leisure must be accompanied by attitudes which refer to sustainable tourism. Both leisure as the healthy environment are fundamental rights, according to the Federal Constitution (Silva, 2002). Worldwide, sustainable tourism is also indicated in Article 3 of the Global Code of Ethics for Tourism:

> All the stakeholders in tourism development should safeguard the natural environment with a view to achieving sound, continuous and sustainable economic growth geared to satisfying equitably the needs and aspirations of present and future generations;

Considering the aspects of the law and the Global Code of Ethics for Tourism, the SOS Tourist project was implemented in the city of Rio de Janeiro, created by the State Secretary of Tourism to solve problems involving national or foreign tourists within the State of Rio de Janeiro. This project was carried out from the World Tourism Organization (UNWTO) and consolidated with the guidelines of the National Consumer Defense System (Procon), Tourist Police Station (Deat), State Secretary for Public Security and National Civil Aviation Agency of Brazil (Anac).

On the other hand, the State Secretary of Tourism supports the free service "Rio Amigo," where any foreigner can call one number and be directed to a call in her/his own language. There are seven languages available: French, English, Spanish, Italian, German, Russian, and Korean. These efforts aim to make the stay in Rio de Janeiro safer, increasing the chances that the foreign and national tourist repeat the travel.

Among the usual problems faced by tourists, are the difficulties with the international flight, which involves a final destination or stop in a country other than that of origin of flight. The protection of international flights submit ourselves to the Warsaw Convention and, in national flights, the Brazilian Aeronautical Code (CBA). According to the Art. 287 of the CBA, international air transport is governed by international conventions. For the convention be accepted in Brazil, follows the Art. 49 of the Constitution, with restricted competence to the National Congress to resolve about the treaties. In turn, the celebration of the treaties is up

to the President (Art. 84 of the Constitution) and later to the National Congress, which may or may not endorse the decision.

Regarding the tourist's luggage, the Warsaw Convention was promulgated by Decree no. 20,703/31, with changes of the Hague Protocol by Decree no. 56,463/65. On international flights, there is a limit of approximately $20.00 per kilogram of checked baggage lost (in the lodging) or misplaced (loss in transportation), and $400.00 per passenger with reference to hand luggage, with a term of 30 days to claim and 30 days for payment. The right to free luggage transport is limited to 30 kg in first class flights and 20 kg in second class flights, and may be charged, above this limit, 1% of basic fare per kilo, with rounding of fractions up. In case of damage (with intention to cause damage or knowledge of the risks assumed), it will be possible compensation for material or moral damage, in case of discomfort and/or embarrassment.

The Schengen agreement is a treaty made between European countries, with the policy of open borders and the free movement of persons between the signatory countries. For tourists from countries that are not part of Europe or which are not integrated into the Schengen Agreement, the valid document is always the passport. The Brazilian citizens do not require a visa to enter the European countries that are part of the treaty if they are on a leisure trip that lasts a maximum of 90 days.

The visa exemption does not preclude some demands to the Brazilian tourist to enter these countries, such as: round trip tickets with maximum stay of 90 days, hosting voucher, passport with validity more than 6 months, international health care plan with minimum coverage of €30,000.00 and financial voucher to keep during the stay (cash or credit card).

It is worth mentioning that the Treaty on European Union, signed in 1992, also called the Maastricht Treaty, created the European Union, which entered into force in 1993, generating an institutional reform in the competence of the European communities. The Treaty established the European citizenship and the prevalence of the euro, and the European economic community came to be called the European Community, integrating the countries politically (Martín & Nogueras, 2010).

The Treaty was a mark for European integration. In the internal scope, the Union met popular dissatisfaction because of its elitist political guidance, concentrated on chiefs of states and away from citizens. The Treaty, however, included as community pillar the so-called area of freedom, security, and justice, known as the Schengen Agreement, adopting the community, or supranational, method in decisions relating to the system of free movement of people without barriers, which was previously of intergovernmental character (Martín & Nogueras, 2010).

As for the Southern Common Market (MERCOSUR), it was established by the Treaty of Asuncion in March 1991 between Argentina, Brazil, Paraguay and Uruguay, aimed at creating a common market between these countries. Later, in 1994, with the signing of the Protocol of Ouro Preto, the Treaty of Asunción was made legal and internationally recognized as an international organization according to the European Union. Where occurred free movement of goods, persons, services, and capital, its members do not have interdependence, prevailing national interests, except in international matters in which the

members decide to make communal decisions. In 2014, it was also signed the "Charter of Brasília," that recognizes the protection of the tourist consumer as an important tool of citizenship, peace, and legal security among Nations. The National Secretary of the Consumer, of the Ministry of Justice, aims to ensure to the international tourist consumer the right to be heard and attended, even outside of her/his country, in the the perspective of the advancement for citizenship and incentive for the market involved.

The law contributes as an regulator instrument of social conflicts, being present both under the aspect of international tourism as in the point of expansion and development of tourism by the integration of the countries with their treaties. And the tourism industry fulfils an important role on the international scene, because it produces excellent economic results, in addition to strengthening world peace and security, since it is necessary to have good international relations to provide a comfortable tourism (Barreto *et al.*, 2003).

FINAL CONSIDERATIONS

This article aimed to bring an introductory reflection on the interfaces between international law and tourism. We addressed a historical overview of the human rights, aspects of the Brazilian State regarding the institutionalization of these rights in the context of its sovereignty and the protection of international law.

The first regulation of tourism activity occurred in France, where leisure was seen as a fundamental right. From there, the relations between international law and tourism were consolidating, capable to reactivate the reciprocal relations between the countries involved.

Tourism, compared with other activities, can threaten public order, and the law, for its turn, strives to solve any kinds of disorder. We could mention different examples of threats to public order when it comes to tourism, such as the pollution, that endangers the health and the environment (flora and fauna), and the negative impacts of theme parks that can jeopardize an entire environment as well as shatter the tranquility. Tourism is an activity that consumes rare and fragile spaces, such as mountains, coastal areas and other nature reserves. Law must to care of these spaces, imposing legal limits to tourism as consumer activity and establishing guarantees of environmental law.

Law ensures the importance of tourism and maintains the guarantee of security, tranquility, and public health, given that, in many ways, the tourist activity affects the collective, that is, the society requires a regulatory instrument for itself.

The desire to promote tourism in the social body is also a growing source of legal standards. The Government Intervention with the standardization of paid vacation, in 1936, was a necessary condition for the dissemination of tourism, as reported in France. The examples were followed by Italy and Germany, with the release of the program "L'ère des loisirs," which studied means of including leisure in labor activities, seeking greater productivity and joy in the workplace.

International treaties were virtually the only form of progress, still slow, of international tourism. These agreements only prospered because of the

constant aid of organizations that made the whole negotiation between the States. The UNWTO carried out a key role in the negotiations and in the effective development of international tourism. We highlight that States are not obliged to accept foreigners in their territory, however, once they accept them, they will face duties of international law.

The conditions of stay of a foreigner in Brazil are governed by the Brazilian Foreigners Statute (Law no. 6,815/1980, with changes brought by Law no. 6,964/1981, and regulated by Decree no. 86,715/1981), being allowed the foreigner to enter the country through entry visa, registered in passport.

In the case of Brazil, it is worth to highlight the strengthening of relations between law and tourism in the Government of President Luiz Inácio Lula da Silva, with the signature of the Law 11,771/08, known as General Tourism Law (LGT). This law gathered several standards, before scattered, for the tourism sector. It governs and regulates the tourism service through registry, classification, and surveillance. The objective of such a policy was adding more and more to tourism, both in national and international scope, through dissemination of destinies and largest organization, prioritizing the conservation of the environment and cultural and historical heritage, and the guarantee of the dignity and the well-being of the human person in the practice of tourist activities.

With the advent of globalization, tourism has expanded, giving space to the development of international tourism, which, supported in international organizations, notably the UN, UNWTO, and Unesco, considers and seeks to promote tourism activities "as one of the elements essential for the consolidation of peace between peoples, since the flow of tourists does grow feelings of friendship, respect, and cooperation between countries and between populations of the same nation" (UN, 2015).

The recent withdraw of the United Kingdom from the European Union, in June 2016, will possibly imply in aspects of the international tourism law This geopolitical-historical fact may, perhaps, causes a reduction in the number of tourists to English scripts, hypothesis that could be investigated in the future for tourism scholars.

This study indicates that there is a lack of theoretical production on this theme by legal professionals and tourism scholars. In this context, the article can be considered a contribution to the debate in academia.

Finally, we acknowledge the non-conclusion of this reflection, but we understand that there has been the appreciation of teaching and research in tourism in academia, something which has attracted professionals from different areas of knowledge: lawyers, company administrators, economists, sociologists, anthropologists, geographers, and others. We hope this article can contribute, in some measure, for debate and reflection. However, we are open to suggestions and criticism, since they are legitimized as part of the process of scientific production in tourism, as in any area or sub-area of knowledge.

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