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PROPOSITION DE L'ORGANE NATIONAL DU GOUVERNEMENT DU BRÉSIL

PROJET DE CONVENTION SUR LA COOPÉRATION POUR LA PROTECTION DES TOURISTES ET VISITEURS ÉTRANGERS ET MÉMOIRE EXPLICATIF RELATIF À LA PROTECTION DES TOURISTES

(DISPONIBLE EN ANGLAIS UNIQUEMENT)

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PROPOSAL BY THE NATIONAL ORGAN OF THE GOVERNMENT OF BRAZIL

DRAFT CONVENTION ON CO-OPERATION IN RESPECT OF THE PROTECTION OF TOURISTS AND VISITORS ABROAD AND EXPLANATORY MEMORANDUM ON THE TOPIC OF TOURIST PROTECTION

Document préliminaire No 11 d'avril 2013
à l'attention du Conseil d'avril 2013
sur les affaires générales et la politique de la Conférence

Preliminary Document No 11 of April 2013
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on General Affairs and Policy of the Conference

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PROPOSAL – December 2012

DRAFT CONVENTION ON CO-OPERATION IN RESPECT OF THE PROTECTION OF TOURISTS AND VISITORS ABROAD

The States signatory to the present Convention,
NOTING the development of global tourism and its economic and social role, with benefits for all States involved, and considering that such foreign tourists and visitors as consumers contribute to strengthening the tourism sectors and the economic development in all States,
RECOGNIZING that foreign tourists should not be discriminated and have access to justice and to administrative assistance in both the country of origin and destination to maintain their private rights,
CONSCIOUS that this foreign tourist may need special information and help in foreign languages about legal issues and about consumer law in the country visited, and determined to ensure that these foreign tourists will be able to benefit of the already in-placed consumer protection system in all States and regions, avoiding costly and inefficient cross-border litigations in consumer issues,
DESIRING to facilitate international access to justice and cooperation also in small claims courts and administrative complains in consumer issues, and also to address the joint efforts by national consumer agencies and enforcement authorities that could be needed.
RECOGNIZING the need to establish a global network of consumer agencies and enforcement authorities prepared to provide assistance to foreign tourists, and convinced of the positive impact of Central Authorities in organize and provide assistance and information in Contracting States, taking into account the UN Guidelines for Consumer Protection from 1985 (1999) and the Global Code of Ethics for Tourism (UN General Assembly Resolution 56/ 212, of 21 December 2001),

HAVE AGREED upon the following provisions -

CHAPTER I – OBJECTIVE AND SCOPE OF APPLICATION

Article 1 – Objective

1. This Convention lay down the conditions under which the Central Authority and the competent authorities in the Contracting States should cooperate with other and facilitate the access to justice and to administrative help for foreign tourists.

2.This Convention establishes a network of authorities responsible for monitoring and enforcing the application of legislation concerning consumer and tourist protection, aiming to ensure compliance with the legislation of the visited State ("the receiving State") and to facilitate the solution of the breach or infringement of the legislation in the receiving State and the access to Justice of foreign tourists also for small claims in this State, so as the use of the documents produce at the administrative complains made in other Contracting States.

3. This Convention also lays down the conditions under which the competent authorities in the Contracting States designated as responsible for the enforcement of the laws that protect consumers' interests shall also cooperate with each other in order to ensure compliance with those laws, with international tourist protection standards and special regional and international legal instruments in order to enhance the protection of consumers' and tourists' economic and safety interests.

4. The Convention does not affect any law of a the receiving State which requires that the consumer present a complaint in an special form within that State or which prohibits certain types of claims, the access to certain types of procedures, different to the small claims procedures, or the rules of legal representation of a person before a judge or court of law.

Article 2 – Definitions

For the purposes of this Convention:

1. "Tourist and visitor abroad" means any person habitually resident in a Contracting State traveling to a destination, arriving or taking a trip to a foreign country or is at the moment in a country other than the country of his or her habitual residence, for leisure, business, conferences, religious or educational purposes or for any personal purpose, other than to be employed by a resident entity in the country visited, who benefits from the characterization as consumer under the law of the receiving State or under the law of the Contracting State of his or her habitual residence (" the State of origin"), also when a national of these countries, including the same-day visitor or excursionist, the overnight-visitor and all non-permanent foreign students, without regard to the length of the stay in the receiving State. "Tourist" means also a tourist defined as such by the World Tourism Organization (UNWTO), as such staying temporarily outside of his or her country of habitual residence.

2. "Central Authority" means an official, a public authority or a liaison office in each Contracting State designated as responsible for the coordination the application of this Convention.

3. "Competent Authority" means the competent administrative or judicial authority that makes a request for assistance of the tourist or of another authority for mutual assistance or receives a request of the tourist.

4. "Seller or supplier" of products or services means any natural or legal person who, in respect of the laws that protect consumer`s or tourist´s interests, is acting for purposes relating to his trade, business, craft or profession.

5. "Consumer complain" means a statement, supported by reasonable evidence, that a seller or supplier has commit, or is likely to commit, an infringement of the laws that protect consumer´s interests.

Article 3 – Application in the Event of Emergencies

1. This Convention shall also apply to urgent measure of protection of all international tourists and visitors in the receiving State, without regard of their nationality, domicile or habitual residence in cases of travel accidents, climatic or nuclear or any catastrophic accidents, without prejudice to special laws, Agreement or Convention establishing preferential treatment for certain categories of travelers, tourists or consumers.

2. The Convention does not affect any law of a State visited ("the receiving State") or international Agreement which requires in case of the event or the treat of terrorist attacks or acts of war special measures of this State and the international community.

Article 4 – Central Authorities

1. Each contracting State should indicate a Central Authority to centralize and organize the cooperation efforts.

2. The Central Authority in the receiving State will provide advice, information and assistance to tourists, using the established channels of mediation and of enforcement of consumer rights and the small claims tribunals available in the country as partners and also distance procedure and enforcement agreements, if they are available at this time in the receiving State.

3. The Central Authority in the State of the habitual residence of the tourist can be connected to provide assistance and legal counseling to the tourist and to the other Central Authorities, and will provide to the tourist a copy of its data, when the tourist return to country, using all established channels of mutual assistance, received of evidence, distance procedure and facilitated enforcement, available at this time in the country to help this tourist.

4. The Central Authority of both countries may share these data and evidences only with the tourists involved, prohibited any use or sharing outside the evaluation system created by this Convention and this of the World Tourism Organization.

5. The participation of the tourism and travel industry and of private systems of conciliation, mediation and arbitration is responsibility of each Contracting State, and the rules of this Convention does not affect any law that regulates or prohibits private binding arbitration in consumer matters.

Article 5 – Competent Authorities

1. Each Contracting State should designated the Central Authority and the competent authorities as responsible for the enforcement of the laws that protect consumers' interests shall cooperate with each other, without prejudice to any bilateral or multilateral agreement.

2. The competent authorities in the Contracting States designated as responsible for the enforcement of the laws that protect consumers' interests shall cooperate with each other, under the supervision of the Central Authority, without prejudice to any bilateral or multilateral agreement.

CHAPTER II - MUTUAL ASSISTANCE AND LEGAL AID

Article 6 – Obligations of the Receiving State

1. The Contracting State visited or the State where the tourist is located at the moment of the infringement of consumer rights, problem or accident ("the receiving State") shall consider the tourist as a consumer, without any kind of discrimination and provide, under its law, the tourist or visitor with any help available in its administrative and judicial system

2. To assure mutual assistance, accessibility and recognition of all complains and claims in the contracting States, the receiving State shall co-operate in regard on protection of tourists abroad, without any discrimination specially on the domicile, residence or nationality, as followed:

I – taking all measures possible to inform and counsel the tourists, directly or indirectly, about their rights and possibilities to take legal measures during the stay at this country, using the forms suggested at the annex;

II – indicating the competent authorities in the region to advise and address complaints to, under the laws of this country;

III – putting the tourist in contact with the enforcement authorities to consumer protection, small claims tribunals or free legal services and network that can assist in the situation;

IV – register the case, keeping all data for 5 years and cooperate with the Central authority and competent authorities designated as responsible for the enforcement of the laws that protect consumers' interests of the other Contracting States.

V – maintain and develop the formulary suggest at the Annex I on its own languages and inform all Central Authorities of the main changes of the law that can have impact on the protection of tourist or consumers.

Article 7 – Obligations of the State of Origin

The consumer protection authorities or judicial authorities of the Contracting State of the domicile or habitual residence of the tourist ("the State of origin") will provide to all receiving States, in due time:

I - mutual information about the legal rights of consumers and tourists;

II – the identification of the channels, services and possibilities to have information and assistance in another language;

III – the identification of a Central Authority, responsible to maintain an accessible site or telephonic contact channels, to help tourists in distress, specially indicating the address of all competent administrative authorities, small claims tribunals or registered alternative dispute resolution possibilities in the country or region;

VI – joint efforts to prepare written material and capacitation to the enforcement authorities or Central Authorities of other countries about the legal regime in the country.

V – maintain and develop the formulary suggest at the Annex I on its own languages and inform all Central Authorities of the main changes of the law that can have impact on the protection of tourist or consumers.

Article 8 – Exchange of information on request and Information Sharing

1. The Central Authorities of both States shall take all necessary steps to help and to obtain any relevant information, without delay, about the solution of the problem registered as been under this Convention and may share this database with each other and the other competent Authorities in order to perform a periodical evaluation of the Convention mechanism every two (2) years.

2. Cooperation may be refused in a Contracting State only if manifestly contrary to its public policy, taking into account humanitarian law and international standards of protection of consumers, visitors and tourists.

Art. 9 – Legal Aid

1. Without prejudice of the Hague Convention of international Access to Justice, concluded 25 October 1980, and to other Treaties more favorable to co-operation and access to justice, nationals of any Contracting State and persons habitually resident in any Contracting State shall be entitled to legal aid for court proceedings in civil and commercial matters in each Contracting State on the same conditions as if they themselves were nationals of and habitually resident in that State.

2. Persons to whom paragraph 1 does not apply, but who formerly had their habitual residence in a Contracting State in which court proceedings are to be or have been commenced, shall nevertheless be entitled to legal aid as provided by paragraph 1 if the cause of action arose out of their former habitual residence in that State.

3.In States where legal aid is provided in administrative, social or fiscal matters, the provisions of this Article shall apply to cases brought before the courts or tribunals competent in such matters.

COMPLAINT FORM FOR TOURISTS AND VISITING CONSUMERS

(Document de reclamation du touriste e consommateur visitante – Formulario de reclamación – Formulário para reclamações dos turistas, visianntes e consumidores)

Case Nr./Cas n./Caso n.:……../20… Date:…../…. /…..

I -CONSUMER DATA- IDENTIFICATION DU CONSOMMATEUR – IDENTIFICACIÓN DEL CONSUMIDOR – IDENTIFICAÇÃO E DADOS SOBRE O CONSUMIDOR -

Name and Surname– Nom complet – Nombre y Appelidos– Nome completo:
……

Type and number of document/Document d´identificacion/Numero y tipo del documento/Tipo e numero do documento Country of issue/Pays du document/Pays/Pais de origem
……..:…….. ……

Country of habitual residence/ Pays de residence/ Pais de residencia/ Pais de residência:
……

Adress at the home State /Adresse d´origine /Dirección/Endereço principal completo:
……

City-Cité-Ciudad-Cidade:……Country-Pays-Pais:……

Phones – Numéros de telephone –Teléfonos – Telefones:(__)____-_____
(__)____-_____ E-mails:……

Alternative Adress at the visited State – Adresse provisoire au pays de visite – Dirección provisória - Endereço provisório no pais visitado:
……
……Travel date- Date du départ – data de la partida – Data da viagem:…/…. /…..

Phone-Telephone(__)____-_____ E-mails:……

Nationality/Nacionalité/Nacionalidad/Nacionalidade:……

Optional information Infomations optionelles/informaciones opcionales/informações opcionais

Profession/Profession/Ocupación/cargo:……

Professional Adress/Adresse proféssionel/Dirección profesional/Endereço professional:
……

Phone-Telephone(__)____-_____ E-mails:……

Bank and account number for refund/Infomationsbancaire pour reimbursement/Conta corriente para el reembolso/ Instituição bancária e número de conta para reembolso:
…… ……
……SWIFT……

II - CONSUMER CENTER OR AGENCY/Departement de Protection du consommateur responsable/ Agencia o centro de protección del consumidor envolucrada/ Procon responsável:
……

Contact person/Responsable/Contato:……

Phone-Telephone(__)____-_____ E-mail:……

III - SUPPLIER DATA/Professionel reclamé/dados del proveedor/dados do fornecedor

Trade name/nom fantasie/nombre/nome comercial de fantasia:
.....
Legal name/ nom legal/nombre social/razão social:
.....
Registration number/numero de registre/registro legal/CNPJ: .....
Market sector/Secteur d´activité/Sector de actuación/ Ramo de atividade: .....
Adress/Adresse /Dirección/Endereço:.....
.....
Phones – Numéros de telephone –Teléfonos – Telefones:(__)____-_____
(__)____-_____ Website:.....E-mails:.....
Contacted person/Responsable/Responsável :.....

IV – COMPLAINT/RÉCLAMATION /RECLAMACIÓN/RECLAMAÇÃO
Date of incident (episode)/ Date du probléme/Data del incidente/Data do problema: .....
/ Reason for complaint /Cause de la réclamation/Motivación/ Motivo da Reclamação:

Documents-Documentos :

Measures taken to settle de conflict/Intervention de l´Agence/ Medidas/ Medidas tomadas para resolver o conflito: .....
.....
Means of evidence/Documents et preuves/Provas y documentos/Meios de prova e documentos:
.....
Petition/Demande/Pedido/Petição: .....
.....

Signature/ Assinatura:_____

The hearing will take place on.....at.... L´audience aurá lieu le.....à l´heure.....
La audiencia terá lugar el.....à las.....A audiencia terá lugar dia.....às.....

Legal aid.... available - ....not available Contact person: .....
Assistance juridique....existante-....pas existante Responsable: .....
Asistencia juridica....existente-....no existente Persona responsable :.....
Assistência jurídica....existente-...não existente Responsável:.....

JUSTIFICATION

Protection of foreign tourists is a new subject of Private International Law and could be done by the current in placed consumer protection system, if a new universal network system is create – The European Union since 2007 has established an *EU-wide network of national consumer enforcement* authorities with investigation and enforcement powers, under the Regulation (EC) No 2006/2004 on Consumer Protection Cooperation, with very good results to avoid cross-borders (small) litigations. The network of European Consumer Centers (ECC-Net) offers free consumer help and advice, not only by writing (travel advice and buyers' guide for European consumers shopping for goods and services in other EU countries, Norway or Iceland), but help to avoid problems and if is necessary, has a free expert to help in settling complaints against an EU-based foreign trader).[1] These Centers are co-sponsored by the European Commission and national governments and informed in all airports or tourism offices. This system and the Regulation (EC) No 2006/2004 on Consumer Protection Cooperation have proved to be very useful at the Olympic Games 2012 and it is a gateway to the European Small Claims Procedure, facilitating access to justice for consumers in Europe.[2] But this system is accessible only for consumers with residence in Europe or tourists that have Europe as destination. A more global system of cooperation could be envisaged. ASADIP has support the creation of a global cooperation network of enforcement.

Cooperation is needed to assure not only information and mutual assistance to tourists, individuals traveling outside their culture, law and language, but also to assure the access to justice in the country visited, avoiding discrimination of foreign tourists, and facilitating the enforcement of the laws protection and recognition of decisions- The protection of foreign tourists can be achieved by creating a global network assuring international cooperation and mutual assistance to allow the solution of the majority of the cases and consumers problems in the country of destination of the tourist, avoiding *ex post facto* cross-borders litigations in consumer matters, very inefficient to protect consumers rights of the individuals and very costly for the tourism industry. MERCOSUR has created two instruments (an administrative cooperation agreement in 2005 - "*Acuerdo interinstitucional de entendimiento entre los organismos de defensa del consumidor de los Estados Parte del Mercosur para la defensa del Consumidor visitante*",[3] and a joint experts committee on the protection of visitors and consumers in 2012) that are now combined , allowing for more than 80% of the problems to be solved with the simple intervention of the national enforcement authorities by phone, and

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[1] Available in: http://ec.europa.eu/consumers/ecc/index_en.htm .

[2] The European Small Claim Procedure is available "to resolve cross-border disputes in cases involving amounts of €2,000 or less. However, a new report from the European Consumer Centers Network (ECC-Net) shows that this user-friendly procedure, available since 1 January 2009, is often under used. The European Small Claims Procedure is available to litigants as an alternative to the procedures existing under the laws of the Member States. A judgment given in the European Small Claims Procedure is recognized and enforceable in another Member State without the need for a declaration of enforceability and without any possibility of opposing its recognition." Available in: https://e-justice.europa.eu/content_small_claims-42-en.do .

[3] Available in www.mj.gov.br . See also: http://blog.justica.gov.br/inicio/tag/acordo-institucional-para-protecao-do-consumidor-visitante/

assuring more information to foreign tourists in his or her language and formulary to make the complains and to the tourism industry about the rights of consumers and also encouraging the consumer movement and the national agencies to act on behalf of foreign and national tourists.

Using the Hague Conference expertise in building global networks organized by Central Authorities, enhance the accessibility to foreign tourists to the legal assistance and also standard formularies in various languages to help the complains- The Central Authorities are a very good tools to organize networks and to assure mutual assistance, urgent measures and legal information , also to develop formulary in various languages and also to beware and register the complains and the data about it, for purposes of evidence in future complains at the State of origin of the tourist, so it is a instrument that is needed to protect foreign tourists. The new bilateral agreements between China[4] and over 100 countries (146 to be more exact)[5] all include a clause to facilitate the access of the Chinese tourists to national enforcement agencies of consumer protection and also linguistic help.[6] It is to note that today 45% of the tourism has as destination developing countries and with the ecommerce and global alliances of the transportation industry only 36% of the foreign tourists have a contract with a travel agency in her or his State of origin, so for example in Brazil 64% of foreign tourists conclude tourists contracts directly with provider, businessmen and professionals in the country of destination, so it will enhance the confidence of tourists, if a network facilitate the access to legal assistance and the use of the already in placed system of consumer protection in the country of destination, also when he is defined as a consumer only by the law of his or her State of origin.

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[4] See DAN, Wei. A Protecção do Turista através do Direito do Consumidor: Efeitos da Globalização e o Estudo Empírico da China, in *Revista de Direito do Consumidor* 83 (2012) 40, quoting, ZHANG, Buhong, LAI, Bao, (2009), "An Overview of the Internationalization Process of Chinese Outbound Tourism", *International Economics and Trade Research,* Vol. 25, No. 6, pp.16-20.

[5] Para os detalhes, ver http://www.cnta.gov.cn.

[6] The standard provision is to find at the China-Brasil : "MEMORANDO DE ENTENDIMENTO ENTRE O MINISTÉRIO DO TURISMO DA REPÚBLICA FEDERATIVA DO BRASIL E A ADMINISTRAÇÃO NACIONAL DE TURISMO DA REPÚBLICA POPULAR DA CHINA NA FACILITAÇÃO DE VIAGENS DE GRUPOS DE TURISTAS CHINESES AO BRASIL ...ARTIGO II 1.Os legítimos direitos e interesses dos cidadãos Chineses em viagem ao Brasil em grupos turísticos devem ser protegidos por leis Chinesas e Brasileiras relevantes. Em caso de violação, as agências em questão serão sujeitas a tais leis. 2.A Parte Brasileira e suas instituições turísticas ou provedores de serviços turísticos do Brasil devem montar "linhas de atendimento telefônico" para consulta e assistência em caso de emergência para os turistas Chineses. Entretanto, a Parte Brasileira deve demandar aos provedores de serviços turísticos do Brasil a disponibilização de informações relevantes para as agências de viagem designadas pela China, particularmente sobre possibilidades de viagens internas no Brasil, serviços importantes e respectivos preços e demais informações que ajudem a proteger os direitos legítimos dos turistas." And at the Memorandum EU-China (Memorandum of Understanding between the European Community and the National Tourism Administration of the People's Republic of China, on visa and related issues concerning tourist groups from the People's Republic of China -ADS), L 83/14, 20.3.2004, Joint Declaration on Implementation Arrangements: "2. *Protection of Chinese tourist rights* The legitimate rights and interests of the Chinese citizens travelling to the territory of the Community in tourist groups shall be protected by the pertinent legislations of the Community, Member States and China. In case of violation, those regulations shall be applied to the relevant agencies. The Community encourages the Member States and their tourism service providers to set up hotlines for consultation and emergency assistance to Chinese tourists." At the USA-China Agreement the application of relevant laws are assured: "2. Protection of Chinese tourists' rights and interests Relevant laws and regulations in China and the United States apply to Chinese citizens and their legitimate rights and interests while traveling from China to and within the territory of the United States under this MOU."

EXPLANATORY MEMORANDUM ON THE TOPIC

TOURIST PROTECTION

According to the **World Tourism Organization**, tourism is a positive activity for countries, for mutual understanding and intercultural respect, contributing to world peace.[75] Tourist is the visitor who staus longer than 24 hours,[76] and who participates in this movement of persons to places different from their place of origin.[77]

Considering that the **activity of providing tourism services is responsible for a significant share of the production of wealth globally**, the topic is socially and economically important. Its considerable growth is noteworthy, especially in developing countries that import and

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See 'Global Code of Ethics for Tourism', UNWTO: "Art. 1. Tourism's contribution to mutual understanding and respect bet ween peoples and societies 1. The understanding and promotion of the ethical values common to humanity, with an attitude of tolerance and respect for the diversity of religious, philosophical and moral beliefs, are both the foundation and the consequence of responsible tourism; stakeholders in tourism development and tourists themselves should observe the social and cultural traditions and practices of all peoples, including those of minorities and indigenous peoples and to recognize their worth;..."

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"2.9. A visitor is a traveler taking a trip to a main destination outside his/her usual environment, for less than a year, for any main purpose (business, leisure or other personal purpose) other than to be employed by a resident entity in the country or place visited. These trips taken by visitors qualify as tourism trips. Tourism refers to the activity of visitors... 2.13. A visitor (domestic, inbound or outbound) is classified as a tourist (or overnight visitor), if his/her trip includes an overnight stay, or as a same-day visitor (or excursionist) otherwise." http://unstats.un.org/unsd/statcom/doc08/BG-TourismStats.pdf

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"Tourism is a social, cultural and economic phenomenon related to the movement of people to places outside their usual place of residence pleasure being the usual motivation. The activities carried out by a visitor may or may not involve a market transaction, and may be different from or similar to those normally carried out in his/her regular routine of life. If they are similar, their frequency or intensity is different when traveling. These activities represent the actions and behaviours of people in preparation for and during a trip in their capacity as consumers." http://unstats.un.org/unsd/statcom/doc08/BG-TourismStats.pdf

export these services. According to the World Tourism Organization, from 1975 to 2000, tourism has grown 4.6% each year and, in 2009, tourism ranks **fourth** among exports, behind only fuels, chemicals and motorvehicles.[78] Despite the global financial crisis, the flow of tourists has grown continuously, but it has experienced a fragmentation.[79] According to the World Tourism Organization, the influx of tourists into **developing countries** has grown from 31% in 1990 to 45% in 2008.[80] This new phase is marked also by an **increase in the complexity** of their activities, either in relation to the expansion of the chain of providers, or even the increasing sophistication of the nature of the services provided.[81]

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http://www.dadosefatos.turismo.gov.br/export/sites/default/dadosefatos/estatisticas_indicadores/downloads_estatisticas/Estatxstica_e_Indicadores_de_turismo_no_Mundo_-_2009_1__3_.pdf

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See *Travel and Tourism Competitiveness Index*, **TTCI. 2009**: the 10 top-ranked in tourism competitivity in the Americas are: Canada 5.32 (5th in the world), USA 5.28 (8th in the world), Barbados 4.77 (30th), Costa RIca 4.42 (42nd),Brazil 4.35 (45th), Mexico 4.29 (51st), Puerto Rico 4.27 (53rd), Panama 4.23 (55th), Chile 4.18 (57th), Jamaica 4.13 (60th). In 2009, Brazil occupied the 45th position, in a total of 139 countries, but dropped to 52nd two years later, in a total of 133 countries, in 2011, behind United States, Canada, Babados, Mexico, Costa Rica and Puerto Rico.

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http://www.dadosefatos.turismo.gov.br/export/sites/default/dadosefatos/estatisticas_indicadores/downloads_estatisticas/Estatxstica_e_Indicadores_de_turismo_no_Mundo_-_2009_1__3_.pdf

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See, highlighting the importance of regulating contracts with tourist agencies, HIPPEL, Eike von. *Verbraucherschutz*, Tübingen: Mohr, 1986, p. 255 e seg.

The protection of tourists is **addressed today primarily through soft law instruments**, among which are the "Manila Declaration on World Tourism of 10 October 1980" and "Manila Declaration on Social Impact of Tourism of 22 May 1997" of the **World Tourism Organization**,[82] and the Global Ethics Code for Tourism of the World Tourism Organization (1999),[83] endorsed by the **United Nations Organization** ("Global Code of Ethics for Tourism", UN Resolution adopted by the General Assembly 21 December 2001, A/ RES/ 56/ 212),[84] **and by conventions about specific contracts,** such as the **UNIDROIT Convention on tourist travel contracts**[85] of 1970 ("*International Convention on Travel Contracts – CCV*', April 23, 1970),[86] ratified by few countries[87] (and denounced by Belgium in 1994

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http://www.univeur.org/CMS/UserFiles/65.%20Manila.PDF

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http://ethics.unwto.org/en/content/global-code-ethics-tourism

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See also guidelines on sustainable tourism, http://hqweb.unep.org .

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http://www.unidroit.info/program.cfm?menu=convention&file=convention&lang=en&msid=46

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GARCIA RUBIO, María Paz; *La responsabilidad contractual de las agencias de viaje*, Ed. Montecorvo: Madrid, 1999, p. 29:"*En 1966 el Instituto [UNIDROIT] emprendió la tarea de elaborar reglas uniformes para las relaciones jurídicas entre las agencias de viaje y sus cleintes, que concluyeron con la redacción de un Convenio internacional relativo al contrato de viaje (CCV), finalmente firmado en Brusela el 23 de abril de 1970...[de] escaso éxito...*"

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http://www.unidroit.org/english/implement/i-70.pdf , more specifically: Italy, China, San Marino, Togo, Cameroon, Benin. Entry into force: 26 February 1976.

and Argentina in 2010), which has influenced a number of domestic laws,[88] and several conventions about **transportation contracts**,[89] of great success and use, but it is not addressed by any norm globally. The **OECD** has a Tourism Committee (*OECD Tourism Committee*), that gathers statistics and studies about tourism policies in developed countries.[90]

It appears to us that two factors stemming from societal changes, that impact tourist protection today, could engender the need for a "**renewal of international instruments on tourism**" ("***renovación de los textos internacionales sobre turismo***"):[91]

a) **The growth of mass tourism and the increase of the participation of developing countries: a quantitative and destination change of globalized tourism**. There is more time for leisure nowadays, for consumption and tourism as a means of self-realization,[92] just as there are means of financing in order to make tourism accessible to nearly all classes of the population, resulting in decentralized mass tourism, turning today to developing countries, less prepared for the influx of visitors. If in 1950 tourism destinations were concentrate in

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See TALE, Camilo, *Contrato de viaje*, Hammurabi, 2005, p. 17, on the Argentinean Law (Ley 18.829 y Decr. 2182/72) and the Spanish Law of 1963. On the inclusion in the German BGB of the Reisevertrag, see GARCIA RUBIO, María Paz; *La responsabilidad contractual de las agencias de viaje*, Ed. Montecorvo: Madrid, 1999,p. 38. E MINERVINI, Gustavo, Le contrat touristique, *XIe. Congrès International de Droit Comparé* – Teheràn- 1974, Bruylant: Bruselas, 1977, p. 443 e seg.

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AGUIRRE RAMÍREZ, Fernando y FRESNEDO, Cecilia. *Curso de Derecho del Transporte – Transporte Aereo*, FCU: Montevideo, 1999, p. 11 e seg.

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http://www.oecd.org/document/63/0,3746,en_2649_34389_1932863_1_1_1_1,00.html The website states that:"...the OECD Tourism Committee is in a unique position to serve as an international forum for co-ordinating policies and actions. The OECD is the only global forum for discussions of tourism policies among industrialised countries."

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Borrowed from TUDELA, José, "Madurez y insuficiencia del derecho del turismo español: su presente y sus incertidumbres", in *Derecho del Turismo*, FACAL, Julio (Org.), Ed. FCU, Montevideo, 2006, p. 251.

92

BAUMAN, Zygmunt, *Consuming Life*, Polity Press, Cambridge, 2007, p. 52 e seg.

industrialized countries in Europe and North America, now 45% of tourism in the world has developing countries as a destination. Concerns over sustainable tourism, climate change,[93] security and quality of tourism services, as well as access to justice and enforceability of judgmentes in tourists' countries of residence have since occupied center stage. In 1999, in Chile, the World Tourism Organization approved the Global Code of Ethics for Tourism, approved two years later, in 2011, also by the United Nations General Assembly, containing clauses on the right to tourism, non-discrimination, sustainable tourism and accessibility.

b) **Changes in the tourist's profile, the increasing complexity of tourist contracts and the use of new technologies: the insufficiency of tourist protection solely as a consumer.** According to scholars in the area, there is no consensus on the definition of tourist between the World Tourism Organization and the World Trade Organization;[94] instead, there are over 40 codes and guidelines, and economic integration processes like the European Union and MERCOSUR have become increasingly concerned with the protection of tourists-consumers, particularly with regard to some contracts and their position as a consumer, particularly in

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See OECD and United Nations Environment Programme (UNEP) study titled "*Climate Change and Tourism Policy in OECD Countries*".

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PEZZUTTI, Miguel, Algunas consideraciones sobre el régimen administrativo de la actividad turística en el Uruguay, in *Derecho del Turismo*, FACAL, Julio (Org.), Ed. FCU, Montevideo, 2006, p. 16-17.

European Directives on travel contracts combined with tourist packages[95] and time-sharing,[96] but not always with respect to conflicts of laws.[97] It is important to highlight the early efforts of UNIDROIT about travel contracts, such as the 1970 Convention, ratified by five ocuntries, but denounced by Belgium (1994) and Argentina (2010) because of their difficulties with new developments in the field and the idea of objective liability.[98] The **World Trade**

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See GARCIA RUBIO, María Paz; *La responsabilidad contractual de las agencias de viaje*, Ed. Montecorvo: Madrid, 1999, p. 12 e seg.

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See LETE ACHIRICA, Javier. *El contrato de multipropiedad y la protección de los consumidores*, CEDECS: Barcelona, 1997, p. 46 and following. On the new Directive on the topic of 2008 and the Framework Directive of 2011, see PAISANT, Gilles; Direito comunitário europeu do consumo: estado, problemas atuais e desenvolvimento, in *Revista de Direito do consumidor*, vol. 76, out.-dez. 2010, p. 303 and GEST, Juliette. La négociation de la Directive relative aux droits des consommateurs, in MAZEAUD, Denis, SCHULZE, Reine; WICKER, Guillaume. *L'amorce d'un droit europeen du contrat – La proposition de directive relative aux droits des consommateurs*. Paris: Société de Législation Comparée, 2010, p. 13 e seg.

97

MICKLITZ, Hans-W., STUYCK, Jules, TERRYN, EVELYNE, *Consumer Law*, Hart: London, 2010, p. 563, that on the Rome I Regulation and its article 6 says that: *"This declaration is by no means clear and needs interpretation. Problematic is the case of the so-called 'active consumer' who travels abroad and should at least be protected by the mandatory provisions of the law of the country of his temporary stay; this seems to be excluded by Article 6, according to Garcimatin a 'loophole of the text' which would allow unlimited free choice under Article 3(1)."*

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Organization, in the Uruguay Round, included tourist services in the GATS as one of the four "means and forms of service provision" expressly as "consumption abroad",[99] imposing the principles of "non-discrimination and flexibilizing the principle of national treatment and access to markets".[100] Spanish scholars highlight that there was a cultural change in tourism in the 21st century,[101] including activities that were not considered consumption before (and are still not considered that in some countries), such as tourism for conferences, professional or religious training, as well as long-term student travel beyond one year.[102] Domestic research shows that, with the development of new technologies on distance contracts, many tourists no longer use travel agencies[103] but use instead other public and private intermediaries, or hire the services directly.[104] Hence, the protection of the consumer only in that role and upon return to their country of origin no longer seems sufficient, wider protection being necessary, only in the role of tourist, without discrimination between national and foreign tourists,

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LABANDERA, Pablo, Marco jurídico multilateral del turismo y su regulación nacional, in FACAL, Julio (Coord.), *Derecho del Turismo*, Montevideo, FCU, 2006, p. 41-42.

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LABANDERA, Pablo, Marco jurídico multilateral del turismo y su regulación nacional, in FACAL, Julio (Coord.), *Derecho del Turismo*, Montevideo, FCU, 2006, p. 43 y nota 17.

101

TUDELA, José, "Madurez y insuficiencia del derecho del turismo español: su presente y sus incertidumbres", in *Derecho del Turismo*, FACAL, Julio (Org.), Ed. FCU, Montevideo, 2006, p. 256 e seg.

102

In Argentina student tourism is considered to be consumption and is expressly regulated, see DEL BUSTO, Eugenio, Marco Regulatorio del turismo estudiantil en la República Argentina, in *Derecho del Turismo*, FACAL, Julio (Org.), Ed. FCU, Montevideo, 2006, p. 282 e seg.

103

ATHENIENSE, Luciana Rodrigues. *A responsabilidade jurídica das agências de viagens*. Belo Horizonte: Del Rey, 2002, p. 17 e seg.

104

A research from the Brazilian government in preparation for the 2014 World Cup says that "most tourists visiting Brazil in 2010 did not use travel agencies (65,4%)." http://www.turismo.gov.br/export/sites/default/turismo/o_ministerio/publicacoes/downloads_publicacoes/Documento_Referencial_Turismo_no_Brasil_2011-2014.pdf

without prejudice to the protection guaranteed to consumer of access to courts in their country of origin, but developing methods of rapid and facilitated protection to tourists as visitors and greater cooperation among national consumer protection bodies in this respect.

The number of case scenarios is large[105] outside the European Union,[106] that has harmonized legislation on the matter.[107] These problems appear already in the **country of destination of tourists**, but they are not addressed in light of the **inexistence of fast and efficient channels** for these visitors. On the other hand, there is **great demand for litigation in the tourists' countries of residence.**[108] These are fairly inneficient and expensive transborder litigation cases, or litigation with the trip organizers (even if, with electronic means, hiring these services is increasingly done directly), litigation that could be avoided

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See the research on the Province of Mendoza, Argentina, showing an increase of 80% in problems with international destinations (Brazil), BENITEZ, Diego, Informe del Derecho del turismo en Argentina, in FACAL, Julio (Coord.), *Derecho del Turismo*, Montevideo, FCU, 2006, p. 233.

106

See on Directive 90/314/CEE of the Council, of 13 July 1990, MIRANDA, Miguel. *O contrato de viagem organizada*, Coimbra: Almedina, 2000, p. 22 and following. And the leading case, CJCE, 26.2.1992, Mme. Hacker c. Euro-Relais, Recuiel Dalloz, nr. 37, 29.12.1992, p. 454. And LOPEZ, Vicente G. El Libro Verde de 2007 desde una perspectiva regional, in BOURGOIGNIE, Thierry (Org.). *L'intégration économique et la protection du consommateur – Regional economic protection and consumer protection*. Cowansville (Québec): Yvon Blais, 2009, p. 160-161

107

See POILLOT, Élise, *Droit Européen de la consommation et uniformisation du droit des contrats*, Paris: LGDJ, 2006, p. 87 e seg.

108

See UFRGS research on the Brazilian case law (and information system of consumer litigation in Brazil, SINDEC, www.mj.org.br), Argentinean, Uruguayan and North American, attached to the research on the Province of Mendoza, Argentina, showing an increase of 80% in the problems with international destinations (Brazil), BENITEZ, Diego, Informe del Derecho del turismo en Argentina, in FACAL, Julio (Coord.), *Derecho del Turismo*, Montevideo, FCU, 2006, p. 232-233:"*Tipo de quejas de los turistas: 1. Transporte aéreo 40% (retraso en vuelos) 2. Alojamiento 17% (alojamiento de alquiler) 3. Agencia de Viajes 13% (incumplimiento de servicios) 4. Trsporte automotor 11% (demora) 5. Precios diferenciados a turistas extramjeros 8% (hotelería y entradas en parques nacionales) 6. Alquiler de autor 3 (calidad de los vehículos) 7. Gastronomía 2% (sobrefacturación) 8. Otros 6%.*"

with better information,[109] more administrative cooperation in the prevention and creation of conciliatory and urgent measures, as attested by leading cases found in Brazil, Argentina and the United States.

The current models of tourist protection in private international law are essentially four: 1. Establishment of **substantial special uniform rules** for contracts of interest to the sector, such as the UNIDROIT Convention on Travel Contracts of 1970 or the conventions on air transport; 2. The **creation of special conflict rules** to **protect the consumers**, applicable - sometimes - to tourists, such as the Regulation (EC) n. 593/2008 on the law applicable to contractual obligations (Rome I) of the European Union, but that most of the laws of the region nothing mention about special protection of tourists; 3. Establishment of **channels of administrative cooperation of fast conciliation**, such as the MERCOSUR Agreement on consumer visitors of 2005, indication of administrative or judicial bodies to perform fast conciliations as in the case of Brazil and the Special Small Claims Courts, available 24 hours at airports, and 4. **Guarantee of privileged access to the forum** of his domicile, even when the consumer is a tourist and the plaintiff of the claim, for cross-border disputes upon their return from the trip, which does not always ensure success in the claim, as the research of American, Brazilian, Uruguayan and Argentinian leading cases has demonstrated, by the difficulties of enforcement and liability of the supply chain, the small amount of the claim and existence of "*forum non conveniens*" in some legislations. Having examined the models in detail, the initial suggestion is to *prioritize the new methods of cooperation, whether legal (with the central authorities), or administrative*, and the methods of alternative dispute resolution such as conciliation and judicial methods adapted to the urgency (and speed of stay of the tourist in that country) in order to facilitate access to justice and the methods of alternative dispute resolution, such as the example of the MERCOSUR and the emergency conciliations at the airports in Brazil.

It is to be noted that **the MERCOSUR has a successful experience with administrative agreements of cooperation for the protection of visitors** (Inter-Institutional Letter of Understanding among the agencies of consumer protection of MERCOSUR member states for the protection of **consumer visitors** of 2005)[110] and the Technical Chambers of discussion and assessment between the tourism sectors and these bodies, and that **the European Union drew some guidelines with regard to conflict of laws protecting the tourist, as a consumer, in its Regulation** (EC) n. 593/2008 on the law applicable to contractual obligations **(Rome I) and** Regulation n. 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters **(Brussels I)** , that can serve as a model, including with respect to the necessity or not of special rules of

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See LETE ACHIRICA, Javier. *El contrato de multipropiedad y la protección de los consumidores*, CEDECS: Barcelona, 1997, p. 37 and HIGHTON, Elena I. Luis ALVAREZ JULIA, Luis, LAMBOIS, Susana, *Nuevas formas de dominio- clubes de campo, cementerios, Tiempo compartido o Multipropriedad*, Ad hoc, BA, 1987, p. 277.

110

See www.mj.org.br and previous problems, in FELLOUS, Bezla Esther, *Proteção do consumidor no Mercosul e na União Européia*, São Paulo : Ed. Rt, 2004, p. 155 and following.

conflict of laws and taking into account that in most of the legislations of conflict of laws of the countries of ASADIP the tourist is not protected in a special way, either as consumers or as a visitor, it seems important to further study the issue and share experiences, especially the experience of the administrative cooperation of MERCOSUR, the experience of the European Union and the conciliations at the airports in Brazil, among others, to verify the convenience of more general and universal measures on the topic.

Whereas in the preparatory meeting in Rio de Janeiro in 2012, the research on the current state of protection of tourists in the region was presented by the Group "MERCOSUR and Consumer Law", UFRGS, under the coordination of Professor Dr Claudia Lima Marques, and that the Brazilian members of ASADIP, with support from the Brazilian Society of International Law, **concluded that the tourist, whether domestic or foreign-but especially the latter-, is in a situation of special vulnerability, deserving special protection**, and other measures to prevent injury, especially information and quick access to assistance channels, as well as the facilitation of solutions to their problems and disputes.

It was concluded that, **in the current context, the tourist emerges in a particularly vulnerable way before these complexities, both in national and international contexts, as a natural evolution of the concept of subject of rights and foreigner**. Accordingly, there remain clear risks to those involved in this chain, given the potential for proliferation of conflicts that result in a reduction of social and economic efficiency. In a scenario of strong investment and sustainable development it would be essential to establish international standards domestically and globally to reduce risks, provide guarantees for the new subject, the tourist and also the investment, making the normative activity a global dialogue between various interests to ensure the development with confidence and legal certainty for all stakeholders. The debate on the issue of protection of tourists could allow a new dialogue among the interested states and developing states, the sector involved and the World Tourism Organization, as well as processes of economic integration, MERCOSUR and the European Union, with the common goal of protection of tourists.

Whereas **one of the objectives of ASADIP** (Asociación Americana de Derecho Internacional Privado) is to "*cooperate with ... universal institutions ... in charge of the elaboration and development of Private International Law*", such as the Hague Conference and "*exchange experiences in all matters relative to Private International Law.*"[111] Given that its **objective** is not only to "*disseminate the work of international bodies in the are of Private International Law*" but also "*to promote studies and research towards the development*" of private international law and that in 2011 and 2012, ASADIP groups conducted exhaustive research on the issue of protecting the tourist-consumer, **noting that there is a legislative gap** in this area and the suitability of treating the subject in Private International Law. ASADIP members gathered in Rio de Janeiro concluded that the protection of tourists has its own characteristics and **is an important part of protecting weaker parties in these days of globalization, growing mass tourism, decentralization of tourist destinations increasingly located in developing countries and subject to disasters and accidents, thereby considering it positive to begin more detailed studies on the feasibility and necessity of the Hague Conference work towards the development of a global instrument for protection of tourists**, which could prioritize administrative cooperation and use of existing

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conventions such as the one on access to justice to allow the protection of tourists.

Whereas there was **strong support for the issue of protecting tourists** in the ASADIP meeting in Costa Rica in November 2012, especially from the representatives of some states, which was repeated at the meeting in Rio de Janeiro, culminating in the drafting of the Rio de Janeiro Charter **proposing the theme for the Hague Conference and urging states' performance in this regard**.