

## **Environmental law and tourism - an unbreakable bond**

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### **Abstract:**

Il presente articolo è tratto dal seminario che ho tenuto presso l'Università di Bologna all'interno del corso "International tourism legislation and organisation". L'intervento si è focalizzato sul rapporto che intercorre tra diritto ambientale e legislazione del turismo, da sempre legati indissolubilmente, trattandosi di materie fortemente interconnesse. Sono stati per primi analizzati i principi internazionali sui quali si basano entrambi i diritti, quali ad esempio il principio "polluter pays" ("chi inquina paga"). In secondo luogo, si è esaminata la legislazione riguardante il diritto del turismo da un punto di vista delle fonti internazionali, europee e italiane e, in seguito, lo stesso approccio è stato utilizzato per il diritto ambientale. A seguire, sono stati considerati i maggiori strumenti legislativi con i quali si è assicurato che le esigenze del settore turistico fossero in linea con i principi dettati dal diritto ambientale e, per ultimo, si è trattato delle differenze sostanziali tra turismo sostenibile ed ecoturismo.

This article was extracted from a lecture I delivered within the module "International tourism legislation and organisation" as part of a three-days seminar held by University of Bologna. I focused on the legal relationship between environmental law and tourism law, as these two topics are closely linked to each other. I firstly analysed the international principles on which both the laws are based, such as the "polluter pays" principle. Secondly, I examined the sources of law governing both the environmental sector and the tourism one from an international, European and domestic level. I then considered the tools the Legislator uses to combine tourism with the need to protect the environment and, ultimately, the main differences between sustainable tourism and ecotourism were addressed.

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### **1. Introduction**

This article aims to explore the **link between tourism and environment**. Although these two topics may appear as only connected from an economic standpoint, they are inextricably linked from a legislative and regulatory level as well. Protecting the environment is increasingly important to stimulate tourism (and indeed, sustainable tourism is one of the topics that will be addressed) and, at the same time, regulating tourism is fundamental to protect the environment.

By way of example, **Thailand's most famous beach, Maya Bay, closed in June 2018 until September 2018 as too many tourists damaged it and its surroundings**. In a notice, the National Parks Department said that “all the boats that come in and out really impact the coral reef causing a significant deterioration of the ecosystem” in that specific area.

Moving onto the domestic level, Sardinia was all over the news in August as a couple of French tourists stole nearly 40kg of white sand from the beach of Chia. **Sardinia is actively battling against tourists to stop them from pinching its sand and shells as local scientists warned that this practice constitutes a serious threat for Sardinia's sandy beaches**. Also the WWF launched a campaign against “beach thieves, reminding tourists that taking sand from Sardinia's shoreline is a crime which can be punished even with jail”.

## **2. Definition of Tourism Law and Environmental Law**

The incredibly diverse range of activities involved in the “**tourism phenomenon**” make highly complicated to give an univocal definition of it from a regulatory point of view. The same happens in relation to the concept of “environment” as the environmental law – which is the branch of the law dealing with the responsible management of specific natural resources – has long debated the exact juridical dimension that it could have held.

Of course, as this is an incredibly interdisciplinary field, several macro-areas of law are involved: EU law provides for one of the most extensive environmental policy of any international organisation. It should be noted that, from the adoption of the first **Environmental Programme in 1973**, EU environmental law and policy became the main area of intervention of the European Union. Also, environmental law has a strong interaction with administrative law and constitutional law as the link between them can be found during the life-cycle of every single environmental provision. Indeed, “from the development of policy to the drafting of legislative initiatives and to the implementation and enforcement of environmental laws”, administrative law and constitutional law play a key role. Tourism law and environmental law are so interdisciplinary that are also strongly linked to health regulations, tax law, civil torts (just think about how many claims have been made during this past month due to the Coronavirus emergency).

The administrative and regulatory aspect of environmental and tourism law will be considered in this article as they mainly govern public interests. Indeed, everything falling under the competence of environmental law could be regarded as public goods: landscapes, waters, natural and historical sites etc. In other terms, environmental and tourism regulation are largely a product of the State intervention.

As mentioned above, the difficulty to give a precise definition arises from the fact that **tourism** is embodied in a various set of activities which have the final scope of realising a pleasant journey or trip.

Of course, what cannot be separated from that is the fact that the **environment**, broadly speaking, represents itself an incredibly powerful touristic attraction. Indeed, touristic development itself is powered by the natural attractions our country is so rich of even though, when tourism becomes mass tourism, it may represent a very serious threat for the environment.

The activities related to tourism involve a plurality of subjects, both public and private: travellers, consumers, companies operating in the hotel or transportation industries, various professionals etc.

As a preliminary stage to the analysis of the **legal relationship between tourism and environment**, it is critical to – firstly – consider and explain the application of few international principles and – secondly – understand the wording used by the Legislature.

### **3. International Principles**

Environmental law and tourism law have been shaped by a set of international principles aiming to effectively implement and promote a sustainable tourism development. Such principles are the precautionary principle, the “polluter pays” principle and the integration principle.

**Starting from the first one, the precautionary principle is set out in Article 191 of the Treaty on the Functioning of the European Union and it is also expressed in the Rio Declaration (1992) which states that “where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation”.** To put in plainly, this principle requires that, if there is a valid impression that a certain activity may result in harmful consequences for the environment, it is better to control that activity immediately rather than to risk the environmental impairment.

The **“polluter pays” principle** is mentioned in Article 191 of the above mentioned Treaty as well and is one of the predominant concept in environmental law. This consists in the commonly accepted practice that those who produce pollution should bear the costs of managing it to prevent damages to human health or the environment. This principle has strong economic basis as many economists claim that the costs of pollution should be internalised by producers, encouraging them to use cleaner technologies or products. For example, a factory that produces a potentially poisonous substance is usually held responsible and should bear the costs first-hand for its safe disposal.

The last principle considered as essential in environment law is the **integration principle**. This is governed by Article 11 of the Treaty on the Function of the European Union which sets out that “environmental protection requirements must be integrated into the definition and implementation of the Union policies and activities, in particular with a view to promoting sustainable development.” Therefore, the need to protect the environment should be taken into account when considering or developing policies in relation to other sectors (i.e. agriculture, energy, transport etc.).

### **4. Sources of law – Tourism**

The **tourism sector** is regulated by international sources as well as, on the domestic level, by national and regional laws. Pursuant to Article 117 paragraph 1 of the Italian Constitution, the State and the Regions shall comply also with international obligations and EU laws.

On the **international level** it is worth mentioning the UNWTO, United Nations World Tourist Organisation (Organizzazione Mondiale del Turismo, in Italian OMT). This is the leading agency in the field of tourism recognised by the United Nations and it is specialised in coordinating tourism politics and developing a sustainable tourism. 157 Member States have adhered to UNWTO, and Italy acceded in 1978. Critically, the UNWTO promotes tourism as a driver of economic growth, inclusive development and environmental sustainability. The most important non-binding acts that the UNWTO approved are the Manila Declaration on World Tourism (Manila, 1980), the Tourism Bill of Rights and Tourist Code (Sofia, 1985) the Charter for Sustainable Tourism (Lanzarote, 1995) and the Global Code of Ethics for Tourism (Santiago, 1999). Despite the fact that these are non-binding acts, they are of great relevance as they represent important instruments of foreign tourism policy.

UNWTO encourages to implement the Global Code of Ethics for Tourism, which is a comprehensive set of principles for responsible tourism aiming to “help maximise the sector’s benefits while minimising its potentially negative impact on the environment”.

**On the European level, tourism primarily represents a mean to pursue economic growth, but a particular emphasis is placed on sustainable and responsible tourism.** However, European law can only have a supporting and coordination role as each Member State retains jurisdiction over the regulatory aspects of tourism. This means that there cannot be a common policy on tourism for all the Member States and that the European Union can only complete the national policies. This aspect is reflected in Article 195 TFEU (Treaty on the Functioning of the European Union) which states that the European Union is expected to “complete the States action in the tourism sector, particularly promoting the companies’ development and competitiveness”. Pursuant to such provisions, during the past few years steps have been taken towards the promotion of tourism as a vehicle of economic development. For instance, the “VisitEurope” website, which aims at promoting Europe as a travel destination, and the “EDEN” project, which to promote sustainable travel destinations within the European Union, have been created.

**Moving to Italian law, tourism is never expressly mentioned in our Constitution even though it can be found in several provisions. Article 9 of the Italian Constitution says that the Republic shall promote the cultural development, of which tourism could be considered an essential part** . The second paragraph of the same Article safeguards the landscape as well as the historical and artistic heritage of the country – consequently, the main tourist destinations are protected by the aforementioned Article.

The article at hand can also be seen as the Constitutional basis of sustainable tourism as it comprehends all those measures aimed at protecting the environment and our historical and artistic resources. Other provisions that should be considered together with Article 9 are Article 16, which grants freedom of movement and residence of Community citizens, and Article 120 paragraph 1, which expressly prohibits Regions from taking actions that are incompatible with the principle of freedom of movement for individuals. Also Articles 117 and 118 of the Italian Constitution have significant implications on the allocation between the State and Regions of the regulatory competences on tourism.

**Following the Constitutional Reform made in 2001 pursuant to Constitutional Law no. 3/2001 (Riforma del Titolo V), all the legislative powers were assigned to the Regions,** except from what was expressly reserved to the State. Indeed, now the State has exclusive jurisdiction only on the areas that are clearly listed in the new Article 117: immigration, foreign policy and international relations, security and public order, citizenship and civil status etc.

## 5. Sources of law – Environment

As mentioned above, also the **environment** is widely regulated at different levels, including the International, European and national level.

**On the European level the key provision is the Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment** (VIA – Valutazione di Impatto Ambientale in Italian and EIA – Environmental Impact Assessment in English). Environmental assessments may be governed by rules of administrative procedure regarding public participation and documentation of decision making. The International Association for Impact Assessment (IAIA) defines an environmental impact assessment as "the process of identifying, predicting, evaluating and mitigating the biophysical, social, and other relevant effects of development proposals prior to major decisions being taken and commitments made".

**This assessment was first introduced in the United States in 1969 as “National Environment Policy Act”, in anticipation of the notion of sustainable development.** Also, this act reinforced the Environmental Protection Agency, which is a federal Agency “responsible for maintaining and enforcing national standards under a variety of environmental laws, in consultation with state and local governments”. Such environmental policy tool has been of significant importance as it consists in evaluating the adverse effects of certain projects both on the environment and on public health so as to prevent them.

Italy has gradually transposed the above Directive with the Law no. 349/1986 which is the same Law that established the Ministry of the Environment.

Another important European treaty is the European Landscape Convention (or Florence Convention), signed in 2000 and ratified by 39 European Countries. It aims to protect, promote and manage the European landscapes by developing a new territorial culture. As per the definition given by the Council of Europe, this Convention introduced an Europe-wide concept focusing on the quality of landscape protection and, through its ground-breaking approach and its broader scope, it complements the Council of Europe’s and UNESCO’s heritage conventions.

With regards to Italian legislation, the primary notion of environment can be found in the **Italian Constitution** at Article 117, which establishes that the State has exclusive legislative powers in safeguarding the environment and the cultural heritage. This happened following the reform of Title V of the Italian Constitution in 2001, when the environment became an area of exclusive competence of the State.

**The need to provide for a solid regulatory framework ensuring environmental protection led to the introduction of the Italian Environmental Code (Legislative Decree 152/2006), which enshrines all the relevant laws in relation to the environment and its protection.** By way of example, the third chapter relates to the water protection and management and soil conservation; the fourth concerns the waste management and rehabilitation of polluted sites and the fifth concerns the protection of the air and the way in which emissions of gases and pollutants can be limited. These areas are regulated to promote the human life through the safeguard and preservation of the environment by using in a responsible way the natural resources.

As anticipated, the main powers and competences on the environment have been allocated to the Italian State and they have been integrated and expanded by the Environmental Code. Even though the State has the main regulatory powers when it comes to safeguard the environment, Constitutional Law no. 3/2001 established that Regions themselves have residual powers in relation to develop and govern their territory. Particularly, Regions have general duties, such as implement international and EU treaties, participate in the decision-making of the legislative acts etc. and specific ones, in relation to the management of pollution, water resources, waste management etc.

By way of example, Sardinia introduced in 2006 a regional law in relation to layovers and docks as well as a regional tax on second-homes for tourist purposes. In recent times, Emilia-Romagna approved a regional law allowing condotels – an innovative mixed facility combining traditional hotel rooms and private accommodations realised from the sale of part of the rooms. The revenue gained by the sale should then be re-invested to regenerate the facilities bringing their standards in line with the international level.

## 6. Legal tools

Having briefly considered the relevant legal background and tried to give a clear definition of tourism law and environmental law, it is essential to consider **the tools the Legislator used** to combine tourism with the need to protect the environment.

As exemplified at the beginning of this article by the cases of Sardinia and Thailand, the landscape and natural resources that, due to their innate beauty, are used to attract tourists are often subject to irreparable ecological and environmental damages due to the over-exploitation. Tourism can have an adverse effect on the environment in many ways. For example, the increasing quantities of waste generated by the massive presence of tourists in the same area and the wide variety of forms of pollution associated with tourists moving from one place to the other (i.e. noise pollution, air pollution, water pollution etc.).

There are several legal tools that can be used to ensure the environmental sustainability of tourism, as already mentioned above: the first and most famous one is the **VIA – Valutazione di Impatto Ambientale** in Italian/EIA – **Environmental Impact Assessment** in English. This assessment can be undertaken for private projects (motorways, airports, industries etc.) on the basis of Directive 2011/92/EU or for public projects on the basis of Directive 2001/42/EC (known as Strategic Environmental Assessment – SEA Directive). Both Directives have a common purpose, which is to undertake an evaluation of plans and projects likely to have a significant impact on the environment to ensure the highest level of protection possible.

The European Commission website summarises the EIA procedure as follows: “the developer may request the competent authority to say what should be provided by the developer (scoping stage); the developer must provide information on the environmental impact (EIA report); the environmental authorities and affected Member States must be informed and consulted and then the competent authority decides, taken into consideration the results of consultations.”

Other tools are used to prevent the congestion at tourist attractions, such as the **road pricing** and to **charge tourists a fee**. Venice will soon start charging people to come to the city for day trips and New Zealand has already introduced a tourist tax.

As a matter of fact, tourist tax is the most common solution to the problem of overcrowding, to such an extent that is adopted by most of the European countries. The Balearic Islands, **for example**, charge the tourists with the “Ecotasa”, which is a sustainable tourist tax with an environmental purpose as it goes towards the protection of resources on the islands; Amsterdam charges an accommodation tax, which is calculated based on the room price and on the nights spent in that hotel etc.

**Also in Italy, the tourist tax has been introduced pursuant to Law no. 42/2009 (Legge sul Federalismo Fiscale) as a tax binding together tourism and environment because it expressly establishes that the tax revenue should be used to fund measures and improvements in areas such as maintenance, and renovation of cultural and natural heritage sites.**

The same objective is pursued by the road pricing, which are direct charges applied for the use of roads, including road tolls, congestion charges and specific charges designed to discourage the use of certain classes of vehicle or more polluting vehicles.

One of the most famous cases is the congestion charge, which was introduced in London in 2003. This is a fee charged to vehicles entering in Central London from Mondays to Fridays, which resulted in a significant lowering of the levels of atmospheric pollution. The city in Italy that distinguished itself from the others is Milan, which introduced the “Ecopass” in 2008. This system was then replaced by the “Area C” in 2012, which is based on the same designated traffic restricted zone of the Ecopass. The resources gained from this charge should then be intended for funding a “sustainable mobility” and energy upgrading.

## **7. Sustainable Tourism and Ecotourism**

The implementation of the above mentioned tools contributed to create a new awareness on how tourism growth affects the environment. Especially in the last few years, indeed, tourism became increasingly aggressive towards the environment, causing what is called “mass tourism”. The fact that more and more people have started to move and visit locations worldwide, made new hotels and buildings built up, more means of transport moving etc.

This trend resulted in the attempt to minimise the impact that tourism has on the environment, resulting in what is called **sustainable tourism**. The United Nations World Tourism Organisation defines sustainable tourism that kind of tourism that meets the needs of present tourists and host regions while protecting and enhancing opportunity for the future. The objective of sustainable tourism is to retain the economic and social advantages of tourism development while reducing or mitigating any undesirable impacts on the natural, historic, cultural or social environment.

Even though one may think that the phenomenon of sustainable tourism has arisen in the last few years, it is dated back at least at the late 1900.

Indeed, from an international standpoint, the Conference on the Human Environment held in Stockholm in 1972 could be seen as the first one dedicated to environmental issues as it focused on the protection and improvement of the human environment. In 1983 the UN General Assembly created the World Commission on Environment and Development (WCED) in order to propose long-term environmental strategies for achieving a sustainable development. Ten years later (in 1997) the Convention on Climate Change was held in Kyoto, whose objective is to reduce the onset of global warming by reducing greenhouse gas concentrations in the atmosphere as set in Article 2.

**From these few examples it is quite clear that the environmental protection has always been an international issue so much that, for the first time in 2012, the UN expressly mentioned the importance to promote sustainable tourism developing and implementing policies on air and water pollution, desertification, land degradation etc. (The 2030 Agenda for Sustainable Development). Of course, what changed over the years that needs the laws to adjust is the amount of tourists travelling across the Globe: as per the UNWTO Tourism Highlights 2017 international tourist arrivals have increased from 25 million globally in 1950, to 278 million in 1980, 527 million in 1995, and 1.32 billion in 2017. They are expected to reach 1.8 billion by 2030.**

This global trend makes evident that the concept of sustainable tourism is tightly linked to a concept of sustainable mobility so that, to achieve a competitive and sustainable tourism, all the elements that could impact the environment should be taken into account – transportation first as the 72% of tourism's CO2 emissions come from it. To face also this challenge, the European Commission, for example, co-funds sustainable tourism products such as recommended cycling routes designed to meet the needs of sportive tourists or tourists attracted by an health lifestyle.

Slightly different from the concept of sustainable tourism is **ecotourism**. This consists in visiting relatively undisturbed natural areas, intended as a low-impact and often small scale alternative to standard commercial mass tourism. As established by The International Ecotourism Society, it aims to a responsible way of traveling to natural areas trying to preserve the environment of that particular natural location as it is and to make a positive impact also on the economy.

**During the World Ecotourism Summit held in Quebec in 2002, the Quebec Declaration on Ecotourism was approved.** This consists in a new tool for the international development of this type of tourism since it embraces specific principles such as contributing actively to the conservation of natural heritage, including local communities in its planning and development etc. The purpose was to bring together all the Governments, international agencies, academics, tourism agencies and individuals with an interest in ecotourism to enable them identifying principles and strategies for the future development.

**One great example of ecotourism in Italy is based in the already famous tourist destination of Cinque Terre in Liguria.** Project Cinque Terre holds a “sustainable initiative” wherein tourists go to the beautiful location to learn about the impact of tourism on small towns and practice activities such as helping locals build stone walls for the towns to help preservation their homes. Jordan represents another great model of successfully integrating conservation and socio-economic development. Ecotourism in Jordan generated \$2.1 million in 2010, and their Royal Society for the Conservation of Nature has received several global awards for its success in alleviating poverty and creating employment for local communities, in combination with integrating nature conservation. The main difference between sustainable tourism and ecotourism lays in the fact that the latter consists in a variety of travel practices, whose focus is on a responsible way of traveling to natural areas. Also, sustainable tourism is tourism development with a balance between environmental, economic and socio-cultural aspects, while ecotourism consists is a responsible way to travel to natural areas that conserves the environment, sustains the well-being of the local people, and involves interpretation and education.

In consideration of the above, ecotourism aims to build an environmental and cultural awareness by sensitizing tourists on the issues that the places they are visiting are facing or can face if mass tourism affects them. Also, it promotes financial benefits for local communities either with accommodation fees or donations, organised tours and activities.

## **8. Conclusions**

What makes environmental law so important is that, in order to take care properly of our environment, it is crucial to have some good regulation in place. Of course, as the World we are living in is constantly changing and evolving, it is clear that also the laws should adapt to these continue changes. As we have seen during this seminar, from the 1960 to date, the environmental sector as well as the tourism sector have been subject to an evolution in terms of provisions, EU Directives, International Treaties etc. such as the Kyoto Protocol, which followed from the United Nations Framework Convention on Climate Change or the Paris Agreement from an European point of view.

This happened to provide **new regulations to new issues arising: climate change, a rise of air and water pollution, deforestation, land and soil degradation, waste management** etc. Many of these issues involve national and others administrative boundaries, and all the natural resources affected are examples of a global commons. Also, tourism has contributed greatly to the spread of some issues. As we already mentioned during this seminar and jut to give an example, the amount of tourists travelling across the Globe have made and will make many issues more serious than they were years ago.

**Tourism contributes to more than 5 percent of global greenhouse gas emissions, it uses more and more land to meet the needs of tourists causing natural habitat loss, land erosion and pressure on endangered species.** For these reasons, another change that has been made during the past few years consisted in the way of traveling, prioritising a sustainable tourism which has, as main objective, to pay more attention on protecting our natural resources and safeguarding the health of the people.

It remains to be seen if these measures that raised the environmental standards and implemented climate policies and strategies will have an actual impact and what further steps will be taken in the next years or decades.

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