




JOURNAL OF
GLOBAL STUDIES

ISSN 1518-1219

<http://www.meridiano47.info>

Tatiana Waisberg

Tel Aviv University, Buchman Faculty
of Law, Tel Aviv, Israel.
(tatianawaisberg@gmail.com)

 ORCID ID:
orcid.org/0000-000206243-8206

Copyright:

- This is an open-access article distributed under the terms of a Creative Commons Attribution License, which permits unrestricted use, distribution, and reproduction in any medium, provided that the original author and source are credited.
- Este é um artigo publicado em acesso aberto e distribuído sob os termos da Licença de Atribuição Creative Commons, que permite uso irrestrito, distribuição e reprodução em qualquer meio, desde que o autor e a fonte originais sejam creditados.



The Treaty of Tordesillas and the (re)Invention of International Law in the Age of Discovery

O Tratado de Tordesilhas e a Prática Internacional do Comércio: considerações sobre a (re)invenção do Direito Internacional na Era dos Descobrimentos

DOI: <http://dx.doi.org/10.20889/M47e18003>

Meridiano 47, 18: e18003, 2017

Abstract

This paper aims to investigate some of the main features of sixteenth century international law in order to challenge traditional international law foundations. By exploring concrete cases, and indicating situations in which state and non-state actors resorted to international norms in order to promote trade and celebrate peace treaties, it is inquired whether some pre-Westphalia international trade and warfare practices may be defined as the beginning of “modern” international law.

Resumo

Este artigo objetiva investigar aspectos relacionados ao direito internacional do século dezesseis com o objetivo de desafiar os fundamentos tradicionais da disciplina. O estudo de casos concretos, indicando situações em que Estados e atores não estatais empregaram normas internacionais para promover o comércio e celebrar tratados de paz, sugere que tais práticas estatais anteriores à Paz de Vestfália inauguram o direito internacional moderno.

Keywords: International law; History; Tordesillas Treaty; International trade; Warfare.

Palavras chaves: Direito Internacional; História; Tratado de Tordesilhas; Comércio internacional; Guerra.

Recebido em 12 de Dezembro de 2016

Aprovado em 08 de Abril de 2017

Introduction

Modern international trade may be associated with the change in the European system of production from feudalism to the mercantilist model, enabling the rise of commercial routes in Europe and beyond (Huberman,

2009: 84-153).¹ Its international character is shaped by the discovery of America and the global navigation to India (Keohane and Nye, 2000: 104-119). The sixteenth century global trade connected different cultures, facing global threats such as insurgencies and piracy, as states relied on outsourcing labor workforce and international agreements (Anghie, 2004: 32-110, Simpson, 2004: 25-61). Nevertheless, the official beginning of modern international law is commonly attributed to the signing of the Westphalia Treaty in 1648, almost two centuries later. The main legal justification for this late origin of modern international law is attributed to the establishment of the notion of sovereign European states, as a result of a multilateral agreement, known as the Peace of Westphalia (Cassese, 2005: 22-34, Shaw, 2003: 22).

This notion of sovereignty evolved during the next centuries to be identified with legal recognition of the principle of the equal sovereignty and the right to territorial integrity and non-intervention (Krasner, 1999: 20-25). As a result, Westphalia state sovereignty aims to legitimize consent as an essential feature within legal argument structure. Still, International law systematic failure to grant effective consent to all state actors, rather than reducing the value of consent, suggests the interplay between liberalism and realism imperatives (Koskenniemi, 1989: 16-68). In practice, the presumption that modern states sovereignty may be a by-product of consent and mutual recognition remains a legal fiction, underlying blatant economic, political and military inequalities that reproduces the nineteenth century structure of imperialism (Anghie, 2004: 115-195; Simpson, 2004: 91-165; Koskenniemi, 2004: 98-198; Krisch, 2005: 369-396).

Against this background, this article suggests a new approach to assess the origins and foundations of modern international law in connection with the late *fifteenth* and sixteenth century features, such as the discovery of America, the rise of the transatlantic trade, the Printing Press Revolution, the revival of the West-East commerce through alternative routes and the consolidation of the Ottoman Empire. The official beginning of modern international law, commonly attributed to the signing of the Westphalia Treaty in 1648, as argued, reflects a Eurocentric order that forges consent and cooperation to project a global rule of law among equal sovereigns. Contrary to mainstream Eurocentric assumptions of modern international law foundations, the Age of Discovery highlights the revival of pre-modern international law trade and warfare practices employed by the Portuguese in its occupation process of the East and West territories granted by the Treaty of Tordesillas, in 1494.

The Treaty of Tordesillas and beyond: sixteenth century international law role in the making of modern international law

Sixteenth century international law underscores a striking contrast to the Treaty of Westphalia context. Portugal and Spain's celebration of the Treaty of Tordesillas in 1494, almost 150 years before

1 The transition from feudalism to modern state enhances the continuity of the principle of territoriality, fixing the rule of law for each feud, duties for servants, and land regulations. Later, the absolutist state forges a broader rule of law, laying the foundations for sovereignty as a right to non-interference in domestic affairs. Following this pattern, the so-called commercial revolution connects the capital development with the trade with the Americas, Africa and Asia, before limited to the Venetian monopoly of east Mediterranean trade. Huberman, Leo. *Man's Worldly Goods - The Story of the Wealth of Nations*. NYU Press. 2009.

the Treaty of Westphalia ruled out religious strife shaking continental Europe during the seventeenth century, offers an alternative starting point to assess modern international foundations. Contrasting to modern international law mainstream assumptions, the sixteenth century international practices unfolds the revival and adaptation of ancient international law mechanisms designed to facilitate the implementation of the alternative West-East trade route. Portugal's lack of resources to implement the Treaty of Tordesillas reveals the interplay between state and non-state actors, non-Europeans alike to enable a complex trade system, regardless of previous mutual sovereignty recognition (Guaracy, 2015: 91-108).²

The discovery of America and the revival of east-west trade, connecting Europe, America, Africa and South Asia, guided the adaptation of ancient and medieval international law to a new reality. Within Europe the Treaty of Tordesillas, signed between Portugal and Spain, in 1494, reveals the absence of agreement, by imposing to all European states a decision to share America with Spain and Portugal, soon to be contested by France (Mariz and Provençal, 2015: 98-118).

At a time, when European States were experiencing the Print Revolution, the Protestant Reform and Holy Wars, Spain and Portugal were conquering lands on the new continent. The era of discoveries also corresponds to the Ottoman Empire rise as a strong Islamic leadership, occupying vast territories in Eastern-Europe, the Middle-East and North Africa (Rogan, 2009: 15-47). The revival of the international trade in this context, nevertheless, meant different goals for Spain and Portugal. Portuguese ambitions, at first situated east of Tordesillas, actually continued to be the same one that launched the ultramarine conquests in the fifteenth century (Bueno, 2009: 44-69).

Portugal's lack of human and financial resources to enforce an alternative route to the Indian market by itself, however, led to the articulation of sophisticated relations between private and state actors. In practice, Portugal could not maintain Brazil and the Indian route without the English security assistance and the Dutch financial system, combining the capacity to bring safely the valuable goods to be distributed in the European market.

By denying the sixteenth century international order its legal legitimacy, Europe's Peace of Westphalia actually ostracized the participation of non-European counterparts, lately introduced to modern international law as equal sovereigns. This order also ignored the potential role of international law as a mediator between different cultural traditions (Boyle and Chinkin, 2007: 19-51), capable to produce dialogue even when the parties were at war. This omission may not be unintentional, but rather bound to produce an artificially uniform international law, excluding Eastern Europe, as well as other systems of law, already known by European jurists.

Unlike the Westphalia international law adherence to mutual sovereignty recognition, there is no recognition of equality, and international trade is the center of gravity, where states and non-state actors' interests may converge. It means that international commercial trade could flourish despite

2 Portuguese occupation of Brazilian territory highlights the contact with indigenous tribes, including alliances to fight the French out of Rio de Janeiro coast, and rewarding land to indigenous tribes aligned to Portuguese offensive against Tamóios tribe in Sao Paulo state. During this period, the Tamóios, as well as other indigenous tribes resorted to insurgency to resist Portuguese settlers. Guaracy, Thales. *A Conquista do Brasil: 1500-1600*. Planeta. 2015, p. 175 -228

the lack sovereignty recognition, employing international law mechanisms to foster the search for economic profit. This denial of the sixteenth century international law role in the making of modern international law may have pervasive effects to this field of study. The legitimacy of international law discourse is especially controversial in human rights issues, pretending a universalism that is contested by non-European states (Steiner, Alston and Goodman, 2008: 3-57). This Universalist approach, in this sense, may be perceived as a reminiscence of the Westphalia misleading conception of sovereignty, enhanced by the notion of state independence and autonomy, as well as by the moral superiority of European states.

Shifting the focus of modern international law foundations from sovereignty and consent to international trade and warfare also strengthen a less state-centered approach. Rather than a by-product of agreement, international law mechanisms highlights its potential to bypass or mediate dissent.

Reframing the Origins of Modern International law: Tordesillas v. Westphalia

Comparing the balance of power that underlines the Treaty of Tordesillas with the Treaty of Westphalia context may also offer a less Eurocentric approach to reassess the inception of modern international law (Kennedy, 1988: 1-49). The Sixteenth century international trade, diplomacy and warfare, in contrast to Westphalia limited scope, display religious, economic and cultural divisions that go beyond Christendom. The Crusades war against Islam rule of the Holy Land in the 11th century promote the gradual revival of ancient trade routes, such as the Silk Road and the Desert Caravans. Nevertheless, with the end of the Italian city-states West-East trade monopoly, as a consequence of the Ottoman conquest of Constantinople in 1453, as well as the expulsion of Muslims from Spain and Portugal, known as the Reconquest, a new balance of power was set in motion (Huberman, 2009: 16-25, Rogan, 2009: 15-47).

The global and regional balance of power that underlines the celebration and implementation of the Treaty of Tordesillas reflects major transformations, including the rise of the cities, the rise of the Ottoman Empire, and less than a century later, the outbreak of the Protestant reform. The partition of Latin America, as part of the development of the mercantilist system differs from the European imperialist practices developed in the nineteenth century as a direct consequence of the Industrial Revolution. As it will be discussed below, the unification of Portugal may be considered an early stage of the Era of Discoveries. The conquest of Ceuta, in 1415, marks a turning point, as the looting of gold and valuable goods in Muslim lands, transformed Portuguese ambitions, injecting new resources for the continuity of the Reconquest beyond Europe.

The Rise of Portugal as a Modern State: the Treaty of Zamora (1143)

The formal recognition of Afonso Henriques' ownership of the kingdom of Portugal and the Kingdom of León by the Pope, resulted in the celebration of the Treaty of Zamora, almost five hundred years before the Westphalia Treaty performed a similar role in regard to mutual sovereign

recognition.³ The official independence of Portugal in 1143, nevertheless, differs from any substantive concept of sovereignty that excludes interference in domestic affairs and territorial integrity, as effective rather than formal features of modern states. Portuguese constant dependence on political alliances, especially with England, as well as its subordination to Papal authority, as it will be explored below, continued to shape Portugal's identity for many centuries. Moreover, the Portuguese experience in warfare, crucial in achieving its unification, establishes a complex relationship with the Islamic and Arab worlds, beginning with the Reconquest in the ninth century, by expelling the Moors in 1139, as a result of victory in the Battle of Ourique (Anderson, 2000: 17-38).

Portugal premature recognition by the Zamora Treaty rather than producing a lasting peace, paved the way for the Portuguese expansion, by extending struggle against the Moors in the Maghreb, and disputing territories eastward with the Castile Kingdom. While the rivalry with the Kingdom of Leon and Castile lasted until the celebration of the Treaty of Alcanizes in 1297,⁴ the war against the Moors endured for centuries and acquired a new meaning in the Age of Discoveries.

Globalizing trade, warfare and religious struggles in the sixteenth century

Portuguese conquests in Africa, starting from Ceuta's occupation in 1415, reached its pinnacle in 1498, when Vasco da Gama's Armada arrived in Calicut, inaugurating an alternative trade route to the India Ocean. Moreover, Portuguese conquests in Africa, during the 15th century continued in the same trend that shaped Portuguese self-determination against the Moors, but this time, outside Europe.

East of Tordesillas: warfare and trade in Africa and Asia (1415 - 1498)

Vasco da Gama's Armada to India inaugurates a new trade route in 1498, expanding the Portuguese conquests to East Africa and West India, circumventing the Muslim and Italian monopoly of the east-west trade. This official discovery, few years after the celebration of the Tordesillas Treaty, unfolds the importance of Portuguese conquests of Arab territories in Africa, starting with the conquest of Ceuta in 1415, the entrance door for Africa trade, and an outpost for the desert caravans.

The looting and the destruction promoted by tens of thousands of Portuguese soldiers, sailors and mercenaries who joined the expedition, turned this rich outpost into a ghost city, as the desert

3 Afonso was proclaimed king of Portugal on 26 July, 1139, immediately following a resounding victory over the Islamic Moors at the Battle of Ourique. Wishing to gain recognition from his fellow monarchs, and from the Pope, he married Maud (or Mafalda) of Savoy, daughter of Count Amadeo III. Then he sent ambassadors to Rome, built many churches in Portugal, and declared himself the pope's servant, bypassing his direct overlord in Leon. Recognition came first not from the pope but from Leon, with the Treaty of Zamora in 1143 and the Kingdom was confirmed. The final part of Portugal to be taken was Faro, during the reign of Afonso III. History Files. European Kingdoms. Iberia. <<http://www.historyfiles.co.uk/KingListsEurope/IberiaPortugal.htm>>.

4 This treaty defined the frontiers of Portugal within the territorial limits the country still keeps today. This document is the oldest world's stable borders treaty still in force. The Portuguese version of this document is kept at the National Archives of Torre do Tombo, in Lisbon. <http://www.dulcerodrigues.info/historia/uk/efemeride_tratado_alcanizes_uk.html>.

caravans excluded Ceuta from this trade route (Bueno, 2006: 41-56). Still, the contact with Ceuta merchants granted Portugal a leading role in deciphering the sea routes to the Indian Ocean, reaching Guinea in 1434, Congo in 1482 and the extreme south in 1487, almost a decade before Vasco da Gama's Armada finally arrived in Calicut. Nevertheless, as not all the conquests turned into profitable investments, the conquests soon revealed their belligerent facet. The constant need for funding and the growing Portuguese ambitions, dictated the conquest of the African continent coast, the continuing search for the Guinea gold Far East, as the wealth of the Indian became a major project.

Decades of warfare and trade relations with non-Europeans outside the Iberian Peninsula, placed the Portuguese marine in advantage, suggesting that Portugal's share in the division of the world established by the Tordesillas Treaty, implied non-official discoveries. The most important, Bartolomeu Dias' successful expedition to the Indian Ocean in 1488, was only possible due to the Portuguese deep connection with the Arab culture and language. To complement the sea voyages of Diaz, the Portuguese monarch King John II also sent Pedro da Covilha, a fluent Arabic speaker disguised as an Arab, to gather vital information about the ports of the East African and Indian coasts, during his three-year journey (Winser, 2011: 1-5).

Bartolomeu Dias' expedition failed to reach India, leaving the task to Vasco da Gama, the first Portuguese successful round-trip of Africa that reached India, again, taking advantage of Portugal's close relationship with Muslims and the Arab language. Once again, as a result of the direct contact with Muslim city states in Kenya, da Gama recruited a knowledgeable and efficient pilot, possibly the great Arab navigator, Ahmed Ibn Majid, to show the explorers the route to India (Winser, 2011: 1-5).

The accomplishment of Vasco da Gama's expedition in geographic terms fell far behind Portugal's expectations, and despite the considerable amount of resources expended, the Portuguese goods, such as wine and olive oil, did not impress the Calicut Samorin, that pledged alliance to the Arabs (Winser, 2011: 1-5).⁵ After leaving India humiliated, the Portuguese prepared a major offensive to the next expedition, Cabral's Armada.

Cabral Armada (1500): implementing the Treaty of Tordesillas

The Tordesillas Treaty partition of the new European discoveries, actually, led Portugal and Spain into opposite directions. The Portuguese project remained the same, namely, to reach the Indian trade route, bypassing the Middle East blockade, while Spain shifted the focus to the west. This dynamic explains Portugal neglecting of Brazil during the first half of the sixteenth century, thus opening space for the Antarctic France project (1555-1567).

Following Vasco da Gama's failure to establish a Portuguese factory in Calicut, Portugal responded with Cabral's Armada, investing public and private capital, to build a sort of mobile army of soldiers, mercenaries and Jesuits. The first task did not demand a long time, the official discovery of Brazil,

5 "When da Gama tried to trade with the ruling Sultan his paltry gifts were scorned. Despite sparing no expense to equip the expedition, the Portuguese had totally underestimated the quality of goods being traded in this part of the world - cotton, ivory, gold and pearls". Winser, Shane. Vasco da Gama. History BBC. Feb., 17, 2011. <http://www.bbc.co.uk/history/british/tudors/vasco_da_gama_01.shtml>.

has only established a formal relation between Portugal and its lands west of Tordesillas, not even sending any Portuguese delegate there, until 1549.⁶ The major goal of Cabral's Armada remained east of Tordesillas, interconnecting trade, warfare and religious struggles, which had already been experienced by the Portuguese during the Reconquest. Soon after the Calicut Zamorin's authorization for the establishment of a factory, or agency-house for the purchase of spices, Cabral seized an Arab ship to offer as a gift. The Muslims retaliated by sacking the Portuguese factory and executing fifty-three members of Cabral's Armada. The Portuguese responded with heavy bombardment, destroying several Arab ships and moved their factory to Cochin (Hunter, 1906: 85).

The Portuguese ambition to take possessions east of Tordesillas revealed to be a hard task with a heavy burden. In fact, Portugal partially succeeded, as the alternative route granted access to the Indian trade, despite a limited one, was constantly shaken by guerrilla war and religious struggles, a reminder of the rivalry between Christendom and Muslim worldviews. Moreover, the lack of east-west safe trade routes since the end of the *Mare Nostrum*, also added to boost the conflict with the Hindis, as the Portuguese presumed to be Christians, contributing to aggravate the culture clash and its negative impacts (Mathew, 1986: 132-148). Portugal's failure to build a stable trade route to profit from the Indian trade shifted its focus from east to west of Tordesillas.

Outsourcing warfare and Religious Ideology: mercenaries and missionaries South and East of Tordesillas

Beyond the Maghreb region, the rise of the Ottoman Empire with the conquest of Constantinople in 1453 following a path of rapid expansion during the sixteenth century, will also challenge Portugal's ambitions to control the monopoly of the Indian trade, setting a new balance of power among European states. The era of discoveries, in this sense, initiates an era of radical change polarized by religious struggles not restricted to the protestant reform, including the war against Muslims in North Africa, the Middle East and in Southeast Asia (Rogan, 2009: 14-47). Furthermore, during the sixteenth century, religious struggles within Christendom and against Islam acquired a new meaning. Portugal and Spain contested hegemony during the sixteenth may be considered an attempt to counter protestant reform inside - and beyond Europe (Lestringant, 2004: 53-63).

Furthermore, Portugal lack of resources to fulfill the aim of taking possession of the territories granted by the Tordesillas Treaty, unfolds a permanent a reliance on private armies and mercenaries, such as Cabral and Vasco da Gama. Thus, Cabral's Armada which may be compared to a private enterprise, included an army of 1500 troops, very diverse in terms of cultures, tasks and ideology (Hunter, 1906: 85).⁷

6 Tomé de Souza, the first general-governor of Portugal in Brazil arrives in Bahia, on March 1549, along with settlers and Jesuits – lead by Manuel da Nobrega, establishing the city of Salvador.

7 "King Emmanuel lost no time in trying to convert his claims to the "Conquest of India" into a reality. In 1500 he dispatched a fleet of thirteen ships strongly armed with artillery, manned by the boldest sailors, and steered by the most skilful pilots of the time. It also carried an abundant provision for proselytism in eight Franciscan friars, eight chaplains, and a chaplain-major." Sir W. W. Hunter: From the first European settlements to the founding of the English East India Company. Volume 6. A. V. Williams Jackson, editor: History of India. London: The Grolier Society. 1906. p. 85.

West of Tordesillas: outsourcing religion and warfare in the new world

The official discovery of Brazil, as registered by Pero Vaz de Caminha's letter to the king of Portugal, initiates Portuguese colonization of its west possessions as granted by Tordesillas Treaty. The moment Cabral's armada reached the new land has been often depicted in a romantic way, highlighting the peaceful meeting with the Tupi Amerindians and the Easter celebration. Frei Henrique de Coimbra, the highest religious authority leading the Armada, blessed the natives and prayed for Portugal, in a famous mass that included a wooden cross, the symbol that marks not only the victory of another Christendom conquest in the name of the Jesuits, but also a very extreme experience for the Tupi way of life (Bueno, 2006: 89-90). The use of an iron axe to make the wooden cross, rather than religion, turned out to be the first trickery used to attract the Tupi's attention, and the main source for establishing a trade channel in the new world (Bueno, 2009: 91-92).

Contrasting to Spain's experience in the Caribbean and in Mexico, where the looting of the Azteca gold turned into a profitable enterprise, the Portuguese conquest of Brazil may be considered peripheral, as Portugal did not, at first, find any valuable resource, besides red wood, Pau Brazil. Furthermore, the territories granted to Portugal by the Tordesillas Treaty also included Africa and India, the diamonds of the Portuguese Crown, since Vasco da Gama's first Armada, in 1498.

The Jesuit Project to Save the Tupi Soul

As the Portuguese were engaged in trade and warfare in India, the Jesuit missionaries, Anchieta and Nobrega, received a sort of blank authorization to profess the Catholic faith in the new continent. Nobrega arrived in Brazil in 1549 with Tome de Souza's Armada, which included new settlers, convicted criminals and Jesuit missionaries. Anchieta joined the Portuguese Colony in 1553, when Duarte da Costa replaced Tome de Souza as general-governor of Portugal in Brazil. Together, Anchieta and Nobrega started the process of catechization of the Tupi Amerindians, a project aimed at accomplishing the "Era of the Holy Spirit". In order to fulfill this ambitious task, Anchieta learned the Tupi language and culture, publishing a dictionary of transliterated Tupi into the Latin alphabet. Nobrega and Anchieta have described in detail the many obstacles that they came across, including the contamination of Tupi Amerindians by European venereal diseases (Guaracy, 2015: 109-121).

The Jesuits lead in the colonization process, however, did not last long, as Portugal, threatened by the Antarctic France project, established an alliance with the Tupinambás and Tamóios' tribes against the Portuguese settlers (Mariz and Provençal, 2015: 92-115). During the second half of the sixteenth century, Portugal attempts to take possession of east of Tordesillas generated a growing debt, thus shifting the focus to the west. As a result, Portugal replaced Duarte da Costa by Men de Sa, in 1557, delegating to the third general-governor of Brazil, the task of expelling the French and reestablishing Portuguese hegemony. The goal was to annihilate the Antarctic France, a total war against French settlers, led by Villegagnon in cooperation with the Tamóios Confederation, an alliance of Tupi tribes against the Portuguese colonizers. The resulting standoff reserved a leading

role for Nobrega and Achieta, as peace mediators, establishing a channel of negotiation with the Tupinambás and Tamóios, resulting in the celebration of the first peace treaty in the new continent (Guaracy, 2015: 175-202).

The Iperoig Peace Treaty (1563)

By resorting to the law of the treaties, the Tordesillas Treaty granted Portugal's autonomy from Spain. Beyond Europe, Portuguese conquests in America, Africa and Asia reproduced a similar approach to solve inherent conflicts. A less known treaty, signed by the Portuguese colonizers with the Tupinambás and Tamóios Indigenous tribes in 1563, known as the Iperoig Peace Agreement, reveals the reliance on Eurocentric international law to foster a common rule of law to dictate international relations with non-Europeans.

The Iperoig Treaty followed the same logic of other “peace treaties”, a sort of terms of surrender, by occupying Tupinambás and Tamóios tribes territory, while rewarding Tupiniquim leadership with titles and land ownership. The employment of the law of the treaties to legitimize Portuguese partnership with the Tupi indigenous tribes, in this sense, highlights the minor role of consent, as well as the adherence to legal instruments (Guaracy, 2015: 91-110).

The “Iperoig peace”, in practice, offered the Portuguese colonizers a period of time to launch a total war against Tamóios and Tupinambás tribes. A year later, in January 1567, Portugal's army, led by Men de Sá, breaks the peace agreement, burns Tamóios and Tupinambás' villages, exterminating entire tribes and their leadership (Guaracy, 2015: 218-225).

The use of the law of the treaties by Portugal in the celebration of Iperoig Peace treaty highlights the complex international law framework employed by the Portuguese delegates and missionaries to mediate conflicts with non-Europeans. Moreover, this practice continued to be enforced during the occupation of the Amazon in the seventeenth century (Cordeiro, 1999: 22-38).⁸ The Portuguese alliances with the Tupi Amerindians who left the coast to the countryside, initiated since Pedro Teixeira's Expedition in 1639, in combination with the establishment of Jesuit settlements, including blood alliances and treaties with the Tupi Ameridians (Cordeiro, 1999: 35), later turned into a major claim articulated by Portugal against Spain. The Jesuit missionary activity in the Amazon area intensified since Pedro Teixeira Expedition (Cortês, 2016b: 59-85). The physical occupation of the Brazilian northern interior, eventually granted Portugal the modification of the Tordesilla Treaty guidelines. The Treaty of Madrid disregards the discovery title, in favor of the *utis possidetis* claim, attributing higher value to the Portuguese effective occupation of the Amazon area (Cortês, 2016a: 27-58).

European Warfare West of Tordesillas: the Antarctic France Experiment

The Iperoig Peace treaty consolidates the Portuguese supremacy over Tupi Amerindians' alliance to the French settlers. The occupation of Rio de Janeiro's coast opened a new battlefield, one to be

⁸ The treaty of 1692 celebrated between Dom Pedro II, King of Portugal and Algarves and Canindé, King of Jandu highlights the use of treaties as one of the mechanisms employed by the Portuguese to occupy the Amazon area. Cordeiro, Enio. *Política Indigenista Brasileira e Promoção Internacional*. Brasília: FUNAG, 1999. p. 35.

fought against Europeans. The France Antarctic Experiment, despite the approval of the French king, demanded private sponsorship, paving the way for skilled mercenaries, such as Villegagnon, a distinguished member of the Malta Order. The French human resources, similar to the Portuguese, combined skilled mercenaries, convicted criminals and religious missionaries. The participation of French adventurers in expeditions to South America during the first half of the sixteenth century, guided the French project, under Andre Thevet's supervision. The selection of Guanabara Bay to construct the Henriville and Coligny fortresses along with Tupi's established settlements takes in to account information made available by French navigators (Mariz and Provençal, 2015: 84-91). The choice of Rio de Janeiro's area attributes a strategic value to this outpost, as the Portuguese were concentrated in settlements in Bahia, Pernambuco, in the Northeast, and São Vicente, later named São Paulo, in the south (Abreu, 1998: 31-46).

The Antarctic France ideology contrasts with the Portuguese full adherence to Catholic Jesuits in performing the catechization of the Tupi Amerindians. The French project, on the other hand, reproduces the struggle between Catholics and Protestants, adapted to Villegagnon's half-reform approach, aimed at conciliating Christendom (Mariz and Provençal, 2015: 123-147). The presence of Jean Léry, a protestant missionary, as part of the French expedition, added to the Portuguese urgency to annihilate the Antarctic France, understood as a threat to the expansion of the Catholic doctrine.

The failure of the Antarctic France Experiment, as a result of Portuguese military offensive led by Men de Sá, however, did produce far-reaching implications to French philosophy thought, associated with the Enlightenment age. The description of the Tupi Amerindian way of life by André Thevet (Thevet, 1557: 1-431) and Jean Léry (Léry, 1980: 1-303) transformed the European imaginary of primitive societies. These descriptions (turned into) became best sellers, made available by European publishers in France and Germany (Staden, 2008: 1-192). Along with the immigration of several Tupi Amerindians to France during the sixteenth century, this extreme civilization clash reverberated in Rousseau's critique of modern society (Guaracy, 2015: 125-138). The noble savage ideal actually reflects European theorization of Tupi Amerindians, as a sort of living archeology manual that mirrors their homeland ancestors (Lestringant, 2004: 72).

Conclusions

The Age of Discovery from a Portuguese perspective discloses the use of the law of the treaties beyond European regional order. The Tordesillas Treaty, a by-product of this same European adherence to formal legal procedures, did not result in any peace arrangement, rather, it forged the first European state attempt to reproduce the regional legal tradition in a global order. Yet, Portugal did not act as a superpower, neither as an equal sovereign, contrasting also with the Westphalia balance of power. The sixteenth century international practices, as discussed above, rather suggest that trade and warfare may be the essence of modern international law.

Furthermore, the Portuguese reliance on foreign states and private sponsorship, rather than an obstacle to consent, operated as an advantage, combining national and external resources. The

Westphalia sovereignty concept, at odds with the sixteenth century adaptation of ancient and medieval international trade and warfare practices, unifies Catholics and Protestants alike, excluding other religions and cultural traditions, later classified as non-civilized.

Sovereignty adherence to consent as a source of legitimacy, emulates European supremacy to reinforce an artificial construction of modern international law foundations. At odds with this approach, the Portuguese efforts to control the east, south and west territories granted by the Treaty of Tordesillas during the sixteenth century, highlights the role of international law mechanisms, understood as pragmatic, dynamic and essentially controversial.

The Sixteenth century trade and warfare international practice offer a new perspective to reassess some essential features of contemporary international law. Portuguese practices in Africa and Asia trade and warfare, starting with the conquest of Ceuta in 1415, carried out by private armies and mercenaries, as well as war and peace treaties with non-European, may be actually considered a revival of ancient international law, displaying similarities with a less state-centered international order, gathering common ground with contemporary international law increasing fragmentation and decentralization.

References

- Abreu, Capistrano de. **Capítulos de História Colonial**. Brasília: Senado Federal, 1998.
- Anderson, James M. **The History of Portugal**. London: Greenwood Press, 2000.
- Anghie, Antony. **Imperialism, Sovereignty and the Making of International Law**. Cambridge University Press. 2005.
- Boyle, Alan, Chinkin, Christine. **The making of international law**. Oxford University Press, 2007.
- Bueno, Eduardo. **Brasil: terra a vista. A Aventura ilustrada do descobrimento**. Porto Alegre: LPM, 2009.
- _____. **A Viagem do Descobrimento: um outro olhar sobre a expedição de Cabral**. Rio de Janeiro: Objetiva. 2006.
- Casasse, Antonio. **International Law**. 2 ed. Oxford: OUP, 2005.
- Cordeiro, Enio. **Política Indigenista Brasileira e Promoção Internacional**. Brasília: FUNAG, 1999.
- Cortesão, Jaime. “O Significado da Expedição de Pedro Teixeira à Luz de Novos Documentos”. **Pedro Teixeira, a Amazônia e o Tratado de Madri**. Edited by Lima, Sergio Eduardo Moreira and Coutinho, Maria do Carmo Strozzi. Brasília: FUNAG, 2016.
- _____. “Descobrimento e Ocupação do Vale Amazônico”. **Pedro Teixeira, a Amazônia e o Tratado de Madri**. Edited by Lima, Sergio Eduardo Moreira and Coutinho, Maria do Carmo Strozzi. Brasília: FUNAG, 2016.
- Guaracy, Thales. **A Conquista do Brasil: 1500-1600**. Rio de Janeiro: Planeta do Brasil, 2015.
- Hunter, Sir W. W. “From the first European settlements to the founding of the English East India Company”. **History of India**, edited by A. V. Williams Jackson, 1-400, Volume 6. London: The Grolier Society. 1906.

- Kennedy, David. "A New Stream of International Law Scholarship", **Wisconsin International Law**, 7, n. 1 (1988), 1-49.
- Keohane, Robert O., Nye Jr Joseph S. "Globalization: What's new? What's not? (And so what?)". **Foreign Policy**, n. 118.Spring, (2000): 104-119.
- Koskenniemi, M. **From Apology to Utopia: The structure of International Legal Argument**. Helsinki: Finnish Lawyers Publishing Company, 1989.
- Koskenniemi, Martti. **The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960**. Cambridge University Press. 2004.
- Krasner, Stephen. **Sovereignty: Organized Hypocrisy**. Princeton: University Press, 1999.
- Krisch, Nico. "International Law in Times of Hegemony: Unequal Power and the Shaping of the International Legal Order.". **European Journal of International Law**. Vol. 16, Iss. 3, (2005): 369-396.
- Léry, Jean de. **Viagem à Terra do Brasil**. Belo Horizonte: Itatiaia, 1980.
- Lestringant, Frank. **Le Huguenot et le Sauvage. L'Amérique et la controverse coloniale, en France, au temps des guerres de religion (1555 - 1589)**. 3 ed. Genève: Droz, 2004.
- Mariz, Vasco and Provençal, Lucien. **Os Franceses na Guanabara: Villegagnon e a França Antártica**. 3 ed. Rio de Janeiro: Nova Fronteira, 2015.
- Mathew, K. S. **Portuguese and the Sultanate of Gujarat**. New Delhi: Mittal Publications. 1986
- Rogan, Eugene. **The Arabs: a history**. 2 edition. Penguin Books, 2009.
- Shaw, Malcolm N. **Direito Internacional**. São Paulo: Martins Fontes, 2003.
- Simpson, Gerry. **Great Powers and Outlaw States. Unequal Sovereigns in the International Legal Order**. Cambridge University Press. 2004.
- Staden, Hans. **Duas Viagens ao Brasil**. LP&M Editores. 2008.
- Steiner, Henry J.; Alston, Philip; Goodman, Ryan. **International Human Rights in Context. Law, Politics, Morals**. Third Edition. Oxford: OUP, 2008.
- Thevet, André. **Les singularitez de la France antarctique**. Paris, 1557.
- Winser, Shane. "Vasco da Gama." **History BBC**. Disponível em <http://www.bbc.co.uk/history/british/tudors/vasco_da_gama_01.shtml> Acessado em 17 de Fevereiro de 2011.