

EXPLANATORY NOTE

ADOPTION OF

THE UNWTO FRAMEWORK CONVENTION ON TOURISM ETHICS

AND SUBSEQUENT STEPS FOR ITS ENTRY INTO FORCE¹

I. Introduction

The present Note has been prepared by the Office of the Legal Counsel of UNWTO to help member States understand the procedure following the possible adoption of the draft UNWTO Framework Convention on Tourism Ethics by the General Assembly and the process by which member States may become legally bound to the Convention.

II. Adoption of the Convention

The draft text of the Convention on Tourism Ethics will be submitted to the 22nd session of UNWTO General Assembly for discussion, consideration and eventual adoption. The process of finalization and possible adoption of the text of the Framework Convention on Tourism Ethics is described in the “Special Guidelines prepared by UNWTO Secretariat for the adoption of draft UNWTO Conventions” (annexed to the present document), endorsed by the Executive Council at its last session in Madrid, Spain (decision 7(CV)), which will be submitted at the beginning of the 22nd session of the General Assembly for approval.

As duly explained in Section 3 of the above mentioned Guidelines, an Ad Hoc Committee composed of member States will be established by the General Assembly to prepare the final text of the Convention in the five official languages of UNWTO.² Once the Ad Hoc Committee finalizes the text, the Convention will be submitted as a whole in the five official languages to the General Assembly for adoption.

Under international law, the adoption of a Convention is the formal act by which the form and content of a proposed treaty text are established³. The Framework Convention on Tourism Ethics is being negotiated within the framework of the UNWTO. Accordingly, it will be adopted by a resolution of its representative organ⁴, the UNWTO General Assembly. The General Assembly, at its plenary session, will adopt the text of the Convention by consensus, or by two-thirds vote, if a Full member so requires.⁵

Should the text submitted for final adoption by the plenary of the General Assembly, only be available in English, only this version will be considered by the General Assembly for approval. If approved, the

¹ This note has been prepared by the Office of the Legal Counsel of UNWTO with the available information, particularly with regard to the practice of the United Nations, to guide representatives of States in the adoption of the UNWTO Framework Convention on Tourism Ethics and its subsequent steps. It does not claim to be exhaustive and does not represent an official interpretation of the practice of the United Nations.

² Please note that for language versions to be considered as authentic, they need to be adopted at the same time by the same organ.

³ Glossary. UN Treaty Collection.

⁴ Glossary. UN Treaty Collection.

⁵ Special Guidelines prepared by UNWTO Secretariat for the adoption of draft UNWTO Conventions”, Section 3.(5). Based on Article 9.2 of the Vienna Convention on the Law of Treaties of 1969., which provides: “The adoption of the text or a treaty at an international conference takes place by the vote of two thirds of the States present and voting, unless by the same majority they shall decide to apply a different rule”.

English version will be subsequently submitted to a Plenipotentiary Conference, for adoption in the five official languages.

❖ **Who can participate in the adoption of the Convention at the 22nd session of the General Assembly?**

In accordance with Article 7 of the Vienna Convention of the Law of the Treaties of 1986⁶, the following persons are entitled to participate in the adoption of the text of a treaty:

- a) Heads of State, Heads of Government and Ministers for Foreign Affairs;
- b) representatives accredited by States to an international conference, for the purpose of adopting the text of a treaty between States and international organizations;
- c) representatives accredited by States to an international organization or one of its organs, for the purpose of adopting the text of a treaty in that organization or organ;
- d) heads of permanent missions to an international organization, for the purpose of adopting the text of a treaty between the accrediting States and that organization.

Thus, delegations of Member States holding credentials to participate in the deliberations of and to vote in the 22nd session of UNWTO General Assembly, in accordance with its Rules of Procedure, and Heads of the permanent missions to UNWTO are entitled to adopt the text of the Convention on Tourism Ethics by virtue of their functions and without having to produce full powers specifically for this purpose.

A model of credentials for the General Assembly can be found on the information note for the 22nd session of the General Assembly in:

http://cf.cdn.unwto.org/sites/all/files/pdf/a22_00_information_note1_rev_en.pdf

In this regard, please also note that individuals wishing to participate in the Ad Hoc Committee in representation of their country, will be required to present valid credentials, either by being included in the credentials of their country to the General Assembly or by presenting a document signed by the competent authority of their country designating them as their country's representatives in the Ad Hoc Committee.

❖ **What are the obligations for Member States upon adoption of the Convention by the General Assembly?**

The eventual adoption of the text by the General Assembly will not imply in any way an immediate obligation for the member States to comply with the provisions of the Convention.

The adoption of the Convention will only imply that the text has been authenticated, meaning that the text of the Convention is established as authentic and definitive and that member States cannot unilaterally change its provisions.

Accordingly, if a final text is adopted by the General Assembly, it will be up for any member State, if it so wishes and in accordance with its own constitutional provisions and practice, to undertake the subsequent legal steps to express its consent to be bound by the Convention.

III. Signature of the Convention

⁶ Vienna Convention on the Law of the Treaties between States and International Organizations or between International Organizations, 1986.

Once adopted by the General Assembly and authenticated in the five official languages of the Organization, the Secretariat will prepare the texts as adopted by the Assembly. Subsequently, the Framework Convention on Tourism Ethics will be open for signature by States for a period of one year at UNWTO Headquarters, in accordance with Article 18 of the draft Framework Convention. Signature is usually (but not necessarily) the first step for a State to become party to a treaty.

Signature does not establish the consent to be bound by a treaty. It merely indicates the State's political intention to examine the treaty domestically and to take steps to express its consent to be bound by the treaty at a later date.

The UNWTO Framework Convention on Tourism Ethics provides for signature, subject to ratification, acceptance or approval – also called “simple signature”. In such a case, signature does not impose on States binding obligations under the treaty.

The Framework Convention on Tourism Ethics specifies in its article 18 the place and the period of time where signatures are to be affixed, as follows:

- (1) *The present Convention shall be open for signature by all Member States of the UNWTO and all Member States of the United Nations at the twenty-second session of the General Assembly of the UNWTO, and thereafter at the Headquarters of the UNWTO in Madrid until [1 year].*

In case it is not possible for the Secretariat to prepare the text of the Convention for signature in Chengdu due to time constraints, the Secretariat would propose the following wording for current article 18 of the draft Convention:

- (1) *The present Convention shall be open for signature by all Member States of the UNWTO and all Member States of the United Nations at the Headquarters of the UNWTO in Madrid from 16 October 2017 to 15 October 2018.*

Once the time limit of one year has elapsed, it will be no longer possible to sign the Convention. Should this be the case, States do not lose the right to become party to the Convention and may still express their consent to be bound by the Framework Convention at a later stage, using the procedure detailed in section IV(ii) of this report.

❖ **Who can sign the Convention?**

Particular attention shall be drawn to the authorities entitled to sign to the Convention on behalf of the State. Unlike adoption, only Heads of State, Heads of Government or Ministers for Foreign Affairs – also called “qualified authorities”⁷ - may, by virtue of their functions, sign a treaty on behalf of the State without an instrument of full powers. Any person other than these qualified authorities must be in possession of a valid instrument of full powers to sign a treaty on behalf of the State.

"Full powers" means a document emanating from the competent authority of a State designating a person or persons to represent the state for signing a given treaty, expressing the consent of a state to be bound by a treaty, or for accomplishing any other act with respect to that treaty.⁸

⁷ The actual title of these qualified authorities may differ according to States' legislation or constitutions.

⁸ Glossary UN Treaty Collection.

In the present case, full powers will give the authority to a specified representative to sign the Framework Convention on behalf of the State. It should be stressed that Ministries of Tourism, heads of diplomatic missions and representatives accredited by States to UNWTO or representatives with valid credentials to participate in the 22nd session of UNWTO General Assembly may also need a valid instrument of full powers to sign the Convention.

There is no specific form for an instrument of full powers, but it has to include the following content:

1. Signature by the Head of State, Head of Government or Minister for Foreign Affairs or a person acting, ad interim, in one of the above positions;
2. Title of the treaty;
3. Express authorization to sign the treaty or undertake the treaty action concerned;
4. Full name and title of the person duly authorized to sign;
5. Date and place of signature of the instrument of full powers; and
6. Official seal. This is optional and cannot replace the signature of one of the three authorities of State.

A model instrument of full powers will be facilitated to all interested States once the Convention is open for signature.

❖ **What are the obligations of States upon signature?**

A State does not take on any positive legal obligations under the treaty upon signature.

Signature does not create a binding obligation for the signatory State but does indicate its political willingness to continue the treaty-making process and to express its consent to be bound by the treaty at a later date through the deposit of an instrument of ratification, acceptance, approval or accession.

Nonetheless, signature creates an obligation for a signatory State to refrain in good faith from acts that would defeat the object and the purpose of the treaty, until such State makes its intention clear not to become party to the treaty⁹.

IV. Ratification, acceptance, approval or accession of the Convention

In order to become a party to a treaty, a State must express its consent to be bound by the treaty through the deposit of an instrument of ratification, acceptance, approval or accession.

Accordingly, the UNWTO Framework Convention on Tourism Ethics provides in its article 19 that:

(1) The present Convention is subject to ratification, acceptance, approval or accession by States. Instruments of ratification, acceptance, approval and accession shall be deposited with the Secretary-General of the UNWTO.

The deposit of an instrument of ratification, acceptance, approval or accession with the Secretary-General of UNWTO binds the State concerned internationally.

While having the same legal effect (expressing the consent to be bound by a treaty), in practice, these instruments differ in their procedure.

IV. (i) Ratification, acceptance or approval¹⁰

⁹ Article 18 of the Vienna Convention on the Law of the Treaties, 1969

Ratification, acceptance or approval are preceded by signature. Most multilateral treaties, including the UNWTO Framework Convention on Tourism Ethics, expressly provide for signature subject to ratification, acceptance and approval.

Unlike signature, there is no time limit within which a State is requested to ratify, accept or approve a treaty which has been signed.

Ratification, acceptance or approval normally follows the signature of the treaty, although the two acts can take place together.

❖ **Who can deposit an instrument of ratification, acceptance or approval?**

Only Heads of State, Heads of Government or Ministers for Foreign Affairs – the so-called “qualified authorities” - may sign an instrument of ratification, acceptance or approval on behalf of the State without an instrument of full powers. All other individuals must be in possession of a valid instrument of full powers issued for that purpose by the above-mentioned authorities.

There is no mandated form for the instrument of ratification, acceptance or approval, but it must include the following elements:

1. Title, date and place of conclusion of the treaty concerned;
2. Full name and title of the person signing the instrument, i.e., the Head of State, Head of Government or Minister for Foreign Affairs or any other person acting in such a position for the time being or with full powers;
3. An unambiguous expression of the intent of the Government, on behalf of the State, to consider itself bound by the treaty and to undertake faithfully to observe and implement its provisions;
4. Date and place where the instrument was issued; and
5. Signature of the Head of State, Head of Government or Minister for Foreign Affairs (the official seal only is not adequate) or any other person acting in such a position for the time being or with full powers.

A model instrument of ratification, acceptance or approval will be facilitated to all interested States once the Convention is open to signature and ratification.

❖ **What are the obligations for States upon ratification, acceptance or approval?:**

Ratification, acceptance or approval of a treaty expresses States' consent to be bound by that treaty at the international level. It indicates to the international community a State's definitive commitment to undertake the rights and obligations under the treaty.

Please note that ratification, acceptance and approval of a treaty have the same legal effects. Each State uses a different terminology depending on its national legislation. For the purpose of this note, please note that ratification, acceptance and approval are used interchangeably to denote a States' consent to be bound by that treaty.

¹⁰ Article 14 of the Vienna Convention on the Law of the Treaties, 1969

Once a State has expressed its consent to be bound through the deposit of an instrument of ratification, its international responsibility is engaged. This does not necessarily imply the submission of the State to the treaty's obligations because the treaty only acquires binding force when it enters into force (see below in section V of this document).

As mentioned above, ratification preceded by signature allows States time to seek the required approval for the treaty at the national level and to enact the necessary legislation to give effect to that treaty.

In this respect, it should be pointed out that **ratification at the international level**, which expresses State's consent to be bound by treaty internationally, differs from **ratification at national level**, which a State may be required to undertake in accordance with its constitutional provisions prior to undertaking the legal obligations at the international level. Ratification at national level refers to the act of the competent body, usually the national parliament, which approves the treaty and authorizes the competent body to perform international ratification. Thus, the effective date of ratification is the date of the deposit of the instrument of ratification with the depositary and not the date of the national decision to ratify the Convention.

Please note that at the time of ratification of the Convention, States can also, if they wish to do so, ratify the Optional Protocol. Please note that the Optional Protocol is an independent legal instrument, whose ratification is not mandatory. It supplements the Convention with a procedure to resolve disputes arising out of the application and interpretation of the Convention in a peaceful manner before resorting to litigation.

For more information on the internal procedures for the ratification of the Convention and for the deposit of an instrument of ratification, acceptance, or approval, States should consult their internal legal services, as the applicable legislation and practice may vary from a country to another. **IV. (ii) Accession¹¹**

Per contra, accession is not preceded by signature and requires only one step, namely the deposit of an instrument of accession. It has the same legal effect as ratification, acceptance and approval.

It is generally used by States wishing to express their consent to be bound when, for various reasons, they are unable to sign the treaty within the time limit allowed for signature (one year in this case from the moment of adoption) or when domestic conditions prevent them from signing the Treaty.

Unlike signature, there is no time limit for accession.

The Framework Convention on Tourism Ethics permits accession without explicitly specifying when the action may be undertaken. In this respect, the text of the Convention shall be interpreted in the sense that accession is permitted from the day after the closure for signature, that is, one year after the date of adoption of the Convention.

❖ **Who can deposit an instrument of accession?**

For the deposit of an instrument of accession the same rules of ratification, acceptance and approval apply, as duly described above.

❖ **What are the obligations of States upon accession:?**

¹¹ Article 15 of the Vienna Convention on the Law of Treaties, 1969

Accession has the same legal effect as ratification, acceptance and approval: that is expressing the consent to be bound by the treaty at the international level, therefore, the same obligations as described above for ratification, acceptance and approval apply.

Once a State has expressed its consent to be bound through the deposit of an instrument of accession, its international responsibility is engaged. This means that, upon entry into force of the treaty for a State, that State becomes legally bound under the treaty.

V. Entry into force of the Convention

As a last step for a multilateral treaty to become binding under international law, it is necessary that the conditions for its entry into force are fulfilled. In accordance with article 24 of the Vienna Convention on the Law of Treaties, the provisions of the treaty usually determine the date on which the treaty enters into force.

The UNWTO Framework Convention on Tourism Ethics provides, in its article 21(1), that entry into force will occur 30 days after the deposit of the 10th instrument of ratification, acceptance, approval or accession with the Secretary-General of UNWTO, as follows:

(1) The present Convention shall enter into force on the thirtieth day following the date of deposit of the tenth instrument of ratification, acceptance, approval or accession.

In addition, article 23 of the Convention provides that *“the Convention shall remain into force indefinitely”*. It should be noted that once a treaty has entered into force, the treaty does not terminate by reason only of the fact that the number of parties falls below the number necessary for its entry into force.¹²

With regards to the Optional Protocol, the number of ratifications necessary for its entry into force has been established in 2 (see article 13 of the Optional Protocol).

❖ **What are the obligations for States having ratified the Convention upon its entry into force?:**

Entry into force – also called “definitive entry into force”- is the moment in which the treaty becomes legally binding under international law for the parties having expressed their consent to be legally bound to it.

Entry into force with regard to a State is the moment in which the treaty becomes legally binding for the State concerned. Once in force, the State has to comply with the provisions of the treaty. This leads us to distinguish between two possible scenarios.

- On the one hand, the Framework Convention will become automatically effective and legally binding upon its entry into force, that is on the thirtieth day following the date of deposit of the tenth instrument of ratification, acceptance, approval or accession, for those States which have already expressed their consent to be bound by it;
- On the other hand, once in force, the Framework Convention will not be applicable to States which, although entitled to become parties, have not yet expressed their consent to be bound through the deposit of an instrument of ratification, acceptance, approval or accession. In such a case, States have the possibility of expressing consent to be bound subsequently to the entry into force of the treaty, as explained below.

¹² Article 55 of the Vienna Convention on the Law of Treaties, 1969.

When a State gives its consent to be bound after the Framework Convention has entered into force, the treaty will enter into force for that State thirty days after the deposit of the instrument of ratification, acceptance, approval or accession.

In this respect, article 21(2) of the Framework Convention on Tourism Ethics provides the following:

(2) For each State Party ratifying, accepting, approving or acceding to the Convention after the deposit of the tenth instrument of ratification acceptance, approval or accession, the Convention shall enter into force on the thirtieth day following deposit by such State Party of its instrument of ratification, acceptance, approval or accession.

ANNEX I – CONCLUSION OF THE DRAFT UNWTO FRAMEWORK CONVENTION ON TOURISM ETHICS



