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Study on tourist/consumer protection

Drafting of a new international legal instrument in the tourism sector

1. For several decades now, most of the different global partners of the tourism sector, whether public or private, have been aware that the development of tourism at the global scale requires appropriate rules and principles for the protection of host populations, tourists, natural resources, the environment and heritage. The expression of this concern has led, notably, to the creation of the Global Code of Ethics for Tourism (GCET) in 1999.
2. Since then, the UNWTO has engaged in intensive activity to promote the application of the rules and principles of the GCET. Nevertheless, its implementation has proven to be difficult:
 - the GCET still suffers from too little awareness on the part of professionals and the general public, and even on the part of many administrations;
 - few pieces of legislation have been passed with the aim of transposing its principles into national laws;
 - despite encouraging advances in certain specific areas, the effective observance of its principles remains limited;
 - lastly, the tenuous dispute settlement mechanism established by Article 10 of the Code and instituted by the Protocol adopted by the XIV General Assembly (A/RES/438(XIV) Seoul/Osaka) is little-used.
3. There are multiple causes of this situation. Among the principal ones are:
 - the UNWTO's small size and modest means relative to the vastness of the tourism sector make it difficult to promote the GCET. It has however to be highlighted that, since the creation of the Permanent Secretariat of the World Committee on Tourism Ethics (WCTE) in Rome in November 2008, this situation has slightly improved;
 - the extreme diversity of the types of actors and activities involved in or related to tourism: operators engaged in transport, accommodation, activities aimed at tourists, management of sites, marketing, as well as national, regional and local administrations;
 - the current composition and agenda of the WCTE;
 - the extraordinarily large number of actors involved in tourism, coupled with the small average size of enterprises and the low level of concentration of the sector; and
 - above all, the non-binding nature of the GCET which makes governments wary of transposing its principles into national law, fearing that this would lead to distortions in

competition and hurt the country's tourism and enterprises, as such implementation would not be generalized at the worldwide level.

4. Furthermore, very recently, the considerable impact that the "ash cloud" had on tourism activity in Europe and North Africa has brought to light the serious drawbacks resulting from the lack of global regulations governing our sector under international law. Indeed, at the height of the crisis, more than one million travellers over the world found themselves stranded far from their homes without the possibility of returning, for periods of up to ten days. Numerous cases have been pointed out where tourists found themselves in situations of complete neglect. The UNWTO thus realized, through the numerous requests and reports it received, that there was an extremely high level of confusion with regard to the attribution of responsibilities in terms of the obligation to assist tourists in situations of force majeure and regarding rights on compensation for damages they may have suffered, which in certain cases were quite substantial.
5. The issue of the rights and obligations of both tourists/consumers and operators, as well as that of the guarantees that they could legitimately demand arose more than thirty years ago in the European countries, during a time when, in a context of rapid growth of international tourism, the European region represented nearly 70% of the generating market and had to address the consequences of certain dysfunctions in the tourism industry (deficient or misleading information to consumers, serious consequences due to the insolvency of travel organizers, etc.). Annex I provides a list of treaties and conventions that, directly or indirectly, deal with one or more aspects of the rights and obligations of consumers and of operators in the field of tourism, whether at the regional or international level. As can be observed, this body of texts leaves important areas in the field of tourism without any regulation. This is what led the European Union, in its directive on package travel, package holidays and package tours of 13 June 1990 (90/314/CEE) to establish certain rules concerning:
 - the information provided to tourists-customers
 - responsibility for the performance of the contract and for assisting the consumer
 - modifications of contracts
 - insolvency of travel agencies or tour operators.

All this notwithstanding, Europe has undertaken a process of revision and enlargement of the scope of this directive in light of technological developments (the growing role of the Internet) and changes in behaviour (emergence of dynamic packaging and its variants).

6. Over the past thirty years, the world tourism landscape has changed profoundly.
 - The number, market share, and geographical diversity of destinations have increased substantially and this trend will become more and more accentuated (stronger position of Asia and emergence of Africa and Latin America).
 - The number and geographical diversity of tourists have grown spectacularly. The effect of this trend, which will become stronger, will be to multiply the risks of incidents in the formalization and performance of contracts between operators and tourists, as well as the risk of insolvencies of operators.
7. The absence of international regulations or clear guidelines governing the rights and obligations of tourists/consumers and of travel organizers—at a time when the number of tourists is rising, destinations are becoming increasingly diverse, and generating countries are becoming more and more numerous—will give rise to greater uncertainty in the tourism industry. This uncertainty, in and of itself, is liable to constitute a barrier to the development of international tourism, particularly for new destinations or in terms of tourist flows from new generating countries.

8. In this context, UNWTO appears to be well positioned for the task of drafting an instrument of international law that can provide a minimum level of guarantees for tourists/consumers as well as for travel organizers at a world level.
9. In order for this initiative to have the greatest chance of success, it is necessary for the scope of this new instrument of international law to be rigorously and clearly defined. To avoid possible overlaps or conflicts of interest, the idea is to ensure that the instrument takes fully into consideration:
 - matters that are under the jurisdiction or are dealt with by other international organizations
 - an overly large or too heterogeneous scope of application
 - matters already covered by one or more international conventions, or
 - matters that, having already been dealt with by the UNWTO, have led to differences in opinion among the members that are too great to overcome if we hope to forge a consensus on a normative text.
10. Furthermore, the new instrument should concentrate on matters that are **directly linked** with the rights and obligations of tourists/consumers and travel organizers. In order to facilitate its drafting, adoption and implementation, the instrument should preferably be modelled upon regulations that have already proven themselves in a regional context.
11. Following the Executive Council in Iguazu, the Minister of Tourism of Costa Rica, through his representative Mr. Hermes Navarro, transmitted to the Secretariat a preliminary draft of a text aimed at regulating relations between passengers and airlines, particularly in cases of denied boarding. The Secretariat would like to seize this opportunity to thank the Costa Rican delegation for this excellent work. This matter is certainly one element to be considered by UNWTO's global policy regarding tourist protection. However, as it falls within the competence of the International Civil Aviation Organization (ICAO), it could be proposed to ICAO that specific work be carried out in a concomitant manner under the joint supervision of both organizations.
12. Consequently, the scope of the new instrument could include the subjects mentioned in Annex II of this document.
13. Concerning the procedure of development, it is proposed that it be carried out by a **working group**, the composition of which is still to be decided. The Secretariat would like to suggest that, besides the various qualified representatives proposed by the Member States, the working group would include additional experts in international law, trip organization, tourism accommodation, air transport, etc.

Annex I

Existing international instruments, treaties and conventions, including regional instruments, which may have an influence on the protection of tourist as consumer

A. International organizations of universal scope

ORGANIZATION	INSTRUMENTS	AVAILABILITY
International Maritime Organization (IMO)/	• Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 (Athens, 13 December 1974)	http://www.imo.org/Conventions/mainframe.asp?topic_id=256&doc_id=663
UNIDROIT - International Institute for the Unification of Private Law	• International Convention on Travel Contracts (CCV) (Brussels, April 23, 1970)	http://www.unidroit.org/english/conventions/c-trav.htm

B. International organizations of regional scope

ORGANIZATION	INSTRUMENTS	AVAILABILITY
Council of Europe	• Convention on the Liability of Hotel-keepers concerning the Property of their Guests. Paris 1962.	http://conventions.coe.int/treaty/en/Treaties/Html/041.htm
	• Arrangement for the application of the European Agreement of 17 October 1980 concerning the provision of medical care to persons during temporary residence, Strasbourg, 26.V.1988	http://conventions.coe.int/Treaty/en/Treaties/Html/129.htm
European Union	• Council Regulation (EEC) N° 56/83 of 16 December 1982 concerning the implementation of the Agreement on the international carriage of passengers by road by means of occasional coach and bus services (ASOR)	http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31983R0056:EN:HTML
	• Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours	http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31990L0314:EN:HTML
	• Council Regulation (EEC) No 684/92 of 16 March 1992 on common rules for the international carriage of passengers by coach and bus	http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31992R0684:EN:HTML
	• Council Directive 98/18/EC of 17 March 1998 on safety rules and standards for passenger ships	http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX

ORGANIZATION	INSTRUMENTS	AVAILABILITY
	<ul style="list-style-type: none"> • Council Directive 98/41/EC of 18 June 1998 on the registration of persons sailing on board passenger ships operating to or from ports of the Member States of the Community 	:31998L0018:EN:HTML http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31998L0041:EN:HTML
	<ul style="list-style-type: none"> • Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 	http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:046:0001:0007:EN:PDF
United Nations Economic Commission for Europe (UNECE)	<ul style="list-style-type: none"> • Convention on the contract for the international carriage of passengers and luggage by road (CVR) done at Geneva on 1 March 1973 	http://www.unece.org/trans/conventn/CVR_e.pdf
	<ul style="list-style-type: none"> • Convention on the Contract for the International Carriage of Passengers and Luggage by Inland Waterway (CVN). Adoption: 6 February 1976 	http://www.unece.org/trans/conventn/CVN_e.pdf

Annex II

Proposed scope of the new international law instrument

1. Package Travel

- 1.1. Definition (including "traditional" package travel and "dynamic packages")
- 1.2. Information provided to consumers
 - 1.2.1: Required information for concluding a contract
 - 1.2.2: Required information prior to travel
 - 1.2.3: Information in the event of last-minute booking
 - 1.2.4: Types of information materials
- 1.3. The contract and its handling
 - 1.3.1: Minimum provisions of the contract
 - 1.3.2: Conditions of transfer of the contract
 - 1.3.3: Conditions of price modifications
 - 1.3.4: Conditions of revision of other provisions of the contract
 - 1.3.5: Conditions of withdrawal from the contract
 - 1.3.6: Conditions of modifications in the performance of the contract
 - 1.3.7: Handling of complaints
- 1.4. Responsibility of the travel organizer and/or vendor-retailer
 - 1.4.1: Liability in the event of partial or total non-performance of the contract
 - 1.4.2: Assistance to consumers in difficulty, notably in the event of force majeure
- 1.5. Security in the event of insolvency
 - 1.5.1: of the travel organizer and or the vendor-retailer
 - 1.5.2: of the transport company ¹
 - 1.5.3: of the operator providing accommodation ⁽¹⁾
 - 1.5.4: any other operator whose service is included in the package ⁽¹⁾

2. Accommodation

- 2.1. Definition
- 2.2. Information provided to consumers
- 2.3. Handling of contracts
- 2.4. Liability of accommodation providers, including that relative to the property of their guests

¹ The working group should be able to include, if need be, the event of the insolvency of these operators including cases in which the service was purchased individually, that is to say, separately from a package.