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Settling Disputes in the Tourism Industry: The Global Code of Ethics for Tourism and the World Committee on Tourism Ethics

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Introduction*

Globalization has substantially changed many aspects of modern life, including tourism. Tourism may be one of the factors contributing to globalization, since it increasingly allows citizens to become aware of other cultures, thereby symbolically lowering boundaries. But economic globalization has at the same time also affected the tourism industry. Globalization and increasing tourism have not only beneficial effects. In some cases, problems occur as a result of tourism expansion: *e.g.*, rights of indigenous populations are affected, deforestation as result of the development of tourism accommodation may take place, increasing pollution may follow, and traditional cultural values may be endangered.¹ Increasingly, (international) law is also affecting the tourism sector.

An important role in this respect is played by the United Nations World Tourism Organization. This organization is usually abbreviated by the acronym UNWTO in order to avoid confusion with its big economic brother, the World Trade Organization (WTO). The remarkable role of the UNWTO was evinced when it issued the Global Code of Ethics for Tourism in 1999 (the “Code”). This noteworthy document is increasingly becoming known by the international community, especially by stakeholders active in the tourism sector. Moreover, its recognition was further legitimized by the endorsement of the United Nations General Assembly.² Although the Code explicitly holds itself as a voluntary instrument, it is now significantly implemented by countries all over the world, which raises the interesting question of its legal status.

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1. See generally Emaad Muhanna, *Sustainable Tourism Development and Environmental Management for Developing Countries*, 4(2) PROBLEMS & PERSPECTIVES IN MGMT 14, 30 (2006); Bill Bramwell & Bernard Lane, *Critical Research on the Governance of Tourism and Sustainability*, 19(4-5) J. SUSTAIN. TOURISM, 411, 421 (2011); Bill Bramwell, *Governance, the State and Sustainable Tourism: A Political Economy Approach*, 19(4-5) J. SUSTAIN. TOURISM 459, 477 (2011); Andrew Holden, *The Environment-Tourism Nexus: Influence of Market Ethics*, 36(3) ANNALS OF TOURISM RESEARCH 373, 383 (2009).
2. G.A. Res. 56/212, U.N. Doc. A/RES/56/212 (Feb. 28, 2002), available at <http://ethics.unwto.org/sites/all/files/docpdf/unresolutiona-res-56-2122001.pdf>. See also Note by the Secretary-General, *Implementation of the Global Code of Ethics for Tourism*, U.N. Doc. A/65/275, ¶ 3 (Aug. 10, 2010), available at <http://ethics.unwto.org/sites/all/files/docpdf/unga2010statusreportgceta-65-275en.pdf> (Report of the UNWTO submitted via the UN Secretary-General to the UN General Assembly concerning the implementation of the Global Code of Ethics for Tourism) [hereinafter *Implementation of the Global Code of Ethics for Tourism*].

Moreover, the Global Code of Ethics for Tourism merits further discussion also because it introduces a dispute settlement mechanism. Article 10(3) of the Code states: “The same stakeholders should demonstrate their intention to refer any disputes concerning the application or interpretation of the Global Code of Ethics for Tourism for conciliation to an impartial third body known as the World Committee on Tourism Ethics.”³ Hence, the Global Code of Ethics for Tourism creates a World Committee on Tourism Ethics (the “World Committee”), and furthermore, it lays down procedural rules for the settlement of disputes. The stakeholders that can call on the World Committee on Tourism Ethics are broadly formulated. Therefore, potentially both the Global Code of Ethics for Tourism and the World Committee on Tourism Ethics can play an important role in the settlement of disputes, not only between the traditional players in international law (mostly states), but also between a broader array of stakeholders that may be involved in the tourism industry.

We argue that this creation of a global code of ethics for tourism fits into a general tendency to create agreements of a voluntary nature in international law, which could be characterized as soft law. Moreover, the creation of the World Committee on Tourism Ethics also fits into another trend within international law—a move in the direction of a more managerial approach towards dispute settlement in the international arena.⁴ Hence, both the Code and the World Committee are interesting examples of soft law and of a managerial approach in international relations, making them worth further studying. Given the large adherence to the Global Code of Ethics for Tourism, the practical relevance may be significant.

In our analysis of these instruments and institutions, we will proceed as follows. Section I will introduce the UN World Tourism Organization and the Global Code of Ethics for Tourism. In Section II, we will scrutinize the legal status and the legally binding character of the Code in light of the traditional sources of international law. Section III will discuss the dispute settlement mechanism for dealing with conflicts concerning the interpretation and implementation of the Global Code of Ethics for Tourism through the World Committee on Tourism Ethics. Section IV concludes by arguing that both the World Committee and the Code demonstrate the “New Sovereignty” in international law, although a few

3. World Tourism Organization, *Global Code of Ethics for Tourism*, WTO G.A. Res. A/RES/406(XIII), 13th Sess., Sept. 27–Oct. 1, 1999, art. 10(3) (Oct. 1, 1999), available at <http://ethics.unwto.org/sites/all/files/docpdf/unwtoreolutiona-res-406xiii1999.pdf> [hereinafter *Global Code of Ethics for Tourism*].

4. See generally ABRAM CHAYES & ANTONIA HANDLER CHAYES, *THE NEW SOVEREIGNTY: COMPLIANCE WITH INTERNATIONAL REGULATORY AGREEMENTS* (1995).

recent developments are slightly worrisome.

I. The UNWTO and the Global Code of Ethics for Tourism

A. The UNWTO

Before introducing the Global Code of Ethics for Tourism and discussing its legal status, it is important to first present the organization that drafted and issued the Code, the United Nations World Tourism Organization. The UNWTO is a United Nations Specialized Agency in existence from December 23, 2003 until present.⁵

The status of the UNWTO is laid down in the Statutes of the World Tourism Organization (hereinafter “Statutes”).⁶ The Statutes state that the UNWTO is an international organization of intergovernmental character,⁷ which shall have legal personality.⁸ Article 3(1) of the Statutes mentions that the fundamental aim of the UNWTO “shall be the promotion and development of tourism with a view to contributing to economic development, international understanding, peace, prosperity, and universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion,”⁹ and that UNWTO “shall take all appropriate action to attain this objective.”¹⁰

The members of the UNWTO can be distinguished into Full Members, Associate Members, and Affiliate Members.¹¹ As a general rule, full membership shall be open to all sovereign states,¹² while associate membership shall be open to all territories or groups of territories not responsible for their external relations.¹³ The final category, the UNWTO Affiliate Members, consists of international bodies—both intergovernmental and non-governmental¹⁴—concerned with

5. G.A. Res. 58/232, U.N. Doc. A/RES/58/232, art.1 ¶ 1 (Mar. 11, 2004), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N03/508/44/PDF/N0350844.pdf?OpenElement>.

6. United Nations World Tourism Organization, Statutes of the World Tourism Organization, adopted by the Extraordinary General Assembly of IUOTO, Mexico City, Mex., Sept. 17-28, 1970 (June 2009), available at <http://dtxqt4w60xqpw.cloudfront.net/sites/all/files/docpdf/unwto statuteseng.pdf> (hereinafter UNWTO Statutes).

7. *Id.* art. 1. In an amendment adopted by the UNWTO General Assembly at its sixteenth session in Dakar, November-December, 2005 (Resolution 511(XVI)), this article was altered to stress that the UNWTO is a specialized agency of the United Nations. *See id.* at 24. However, to date, this amendment has not been ratified and thus has not entered into force.

8. *Id.* art. 31.

9. *Id.* art. 3(1).

10. *Id.*

11. UNWTO Statutes, *supra* note 6, art. 4.

12. *Id.* art. 5(1).

13. *Id.* art. 6(1).

14. *See generally* Steve Charnovitz, *Non-governmental Organizations and International Law*,

specialized interests in tourism, and of commercial bodies and associations whose activities are related to the aims of the UNWTO or fall within its competence.¹⁵ Currently, the UNWTO has a total of 156 Member States, 6 Associate Members, and over 400 Affiliate Members.¹⁶ Large states that are members of the UNWTO include, *inter alia*, Australia, Brazil, Canada, China, France, Germany, India, Indonesia, Italy, Mexico, the Russian Federation, Saudi Arabia, South Africa, and Spain.¹⁷ There are, however, a few striking missing elements; for example, states that are not on the membership list include Singapore, the United Kingdom, and the United States. Current UNWTO Associate Members include, *inter alia*, Aruba, the Flemish Region, Hong Kong, Macao, Madeira-Portugal, and Puerto Rico.¹⁸ Additionally, the UNWTO has two observers, namely the Holy See and Palestine.¹⁹

These various memberships of the UNWTO reflect the intention to bridge the public and private actors of global tourism. It cannot be denied that the public sectors in tourism play an important role in the performance of several kinds of actions, *e.g.*, policy, planning, development, and regulation.²⁰ However, non-state actors also have a significant role in the world order concerning global tourism. In this respect, we can refer to World Tourism Organization General Assembly Resolution 364 (XII), adopted in Istanbul in 1997, which stressed the willingness to promote a genuine partnership between public and private actors in tourism development.²¹ The current UNWTO Secretary General, Taleb Rifai, stated that “public and private dialogue and partnerships are the building blocks of an enabling environment for tourism, one that allows it to grow sustainably and decisively contribute to global economic and social development.”²²

For the present purposes, it is perhaps useful to indicate that the UNWTO is engaged in many activities related to the promotion of sustainable tourism. Its operations are therefore certainly not limited to the creation of the instrument that

100(2) AM. J. INT. LAW 348, 372 (2006).

15. UNWTO Statutes, *supra* note 6, art. 7(1).

16. *Who We Are*, UNITED NATIONS WORLD TOURISM ORGANIZATION, <http://www2.unwto.org/content/who-we-are-0> (last visited Mar. 14, 2015).

17. *Member States*, UNITED NATIONS WORLD TOURISM ORGANIZATION, <http://www2.unwto.org/members/states> (last visited Mar. 14, 2015).

18. *Associate Members*, UNITED NATIONS WORLD TOURISM ORGANIZATION, <http://www2.unwto.org/members/associates> (last visited Mar. 14, 2015).

19. *Observers*, UNITED NATIONS WORLD TOURISM ORGANIZATION, <http://www2.unwto.org/members/observers> (last visited Mar. 14, 2015).

20. See CHUCK Y. GEE & EDUARDO FAYOS SOLÁ, WORLD TOURISM ORGANIZATION, INTERNATIONAL TOURISM: A GLOBAL PERSPECTIVE ¶ 286 (1997).

21. Global Code of Ethics for Tourism, *supra* note 3, pmb. ¶ 10.

22. Taleb Rifai, *Foreword* to WORLD TOURISM ORGANIZATION, POLICY AND PRACTICE FOR GLOBAL TOURISM (2011), available at http://pub.unwto.org/WebRoot/Store/Shops/Infoshop/4D93/3C61/DDD2/4F6C/8E4C/C0A8/0164/5C4F/110330_policy_practice_global_tourism_excerpt.pdf.

stands central in this contribution, the Global Code of Ethics for Tourism. For example, the UNWTO has published some interesting publications, *e.g.*, a guidebook on indicators of sustainable development for tourism destinations,²³ a compilation of good practices concerning sustainable development of tourism,²⁴ a handbook on natural disasters reduction in tourist areas,²⁵ and recently, Manual on Accessible Tourism for All Public-private Partnerships and Good Practices.²⁶ Additionally, the UNWTO produced many studies aimed at the promotion of sustainable tourism.²⁷ We, however, focus on one specific activity of the UNWTO, the creation of the Global Code of Ethics for Tourism and the corresponding World Committee on Tourism Ethics.

B. The Global Code of Ethics for Tourism

The Global Code of Ethics for Tourism was adopted at a meeting of the General Assembly of the UNWTO in Santiago, Chile, on October 1, 1999.²⁸ At the meeting, the UNWTO General Assembly recommended:

States Members or non-members of WTO, without being obliged to do so, to accept expressly the principles embodied in the Global Code of Ethics for Tourism and to use them as a basis when establishing their national laws and regulations and to inform accordingly the World Committee on Tourism Ethics²⁹

The Global Code of Ethics for Tourism contains the following:³⁰

Article 1 : Tourism's contribution to mutual understanding and respect between peoples and societies.

Article 2 : Tourism as a vehicle for individual and collective fulfillment.

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23. WORLD TOURISM ORGANIZATION, INDICATORS OF SUSTAINABLE DEVELOPMENT FOR TOURISM DESTINATIONS: A GUIDEBOOK (2004), *available at* <http://www.e-unwto.org/content/x53g07/fulltext?p=2bf9cdc6ce5e478c9262e74caeb665c9&pi=0#section=890049&page=1>.
 24. WORLD TOURISM ORGANIZATION, SUSTAINABLE DEVELOPMENT OF TOURISM: A COMPILATION OF GOOD PRACTICES (2000).
 25. WORLD TOURISM ORGANIZATION, HANDBOOK ON NATURAL DISASTER REDUCTION IN TOURIST AREAS (1998).
 26. WORLD TOURISM ORGANIZATION, MANUAL ON ACCESSIBLE TOURISM FOR ALL – PUBLIC-PRIVATE PARTNERSHIPS AND GOOD PRACTICES (2015), *available at* <http://dtxq4w60xqpw.cloudfront.net/sites/all/files/docpdf/aamanualturismoaccesibleomt-facseng.pdf>.
 27. For an overview of the publications, see *Sustainable Development of Tourism*, UNITED NATIONS WORLD TOURISM ORGANIZATION, <http://sdt.unwto.org/content/publications-1> (last visited Apr. 7, 2015).
 28. See Global Code of Ethics for Tourism, *supra* note 3.
 29. *Id.* at 19.
 30. *Global Code of Ethics for Tourism*, UNITED NATIONS WORLD TOURISM ORGANIZATION, <http://ethics.unwto.org/en/content/global-code-ethics-tourism> (last visited Apr. 7, 2015).

Article 3 : Tourism, a factor of sustainable development.

Article 4 : Tourism, a user of the cultural heritage of mankind and contributor to its enhancement.

Article 5 : Tourism, a beneficial activity for host countries and communities.

Article 6 : Obligations of stakeholders in tourism development.

Article 7 : Right to tourism.

Article 8 : Liberty of tourist movements.

Article 9 : Rights of the workers and entrepreneurs in the tourism industry.

Article 10: Implementation of the principles of the Global Code of Ethics for Tourism.

The General Assembly of the World Tourism Organization reaffirmed that the Global Code of Ethics for Tourism is aimed at, *inter alia*, establishing “a synthesis of the various documents, codes and declarations of the same kind or with comparable aspirations published over the years.”³¹ The Preamble of the Global Code of Ethics for Tourism reflects the intentions of the entities that were involved as its creators.³² As reflected in the preamble, they firmly believed that tourism represents “a vital force for peace and a factor of friendship and understanding among the peoples of the world.”³³ The Preamble of the Code also stresses the need “to promote a genuine partnership between the public and private stakeholders in tourism development”³⁴ that is in line with the UNWTO policies.³⁵

The Global Code of Ethics for Tourism contains nine principles summarized in the ten articles mentioned above. To some extent, the articles have a rather idealistic tone and are clearly addressed at the wide stakeholder community involved in tourism activities.³⁶ For example, Article 1(2) suggests that “tourism activities should be conducted in harmony with the attributes and traditions of the host regions and countries and in respect for their laws, practices and customs”³⁷

31. Global Code of Ethics for Tourism, *supra* note 3, at 2.

32. *Id.* at pmb. ¶ 1 (indicating the entities in concern, namely, Members of the World Tourism Organization, representatives of the world tourism industry, delegates of States, territories, enterprises, institutions and bodies that are gathered for the General Assembly at Santiago, Chile on this first day of October 1999).

33. *Id.* at pmb. ¶ 3.

34. *Id.* at pmb. ¶ 10.

35. *See supra* Part I.A.

36. *Implementation of the Global Code of Ethics for Tourism, supra* note 2, § 50 (“The nine principles set forth in the Code provide clear guidelines and recommendations that are both policy-driven and action-oriented for all tourism stakeholders, while the tenth is monitored and administered by the World Committee on Tourism Ethics.”).

37. Global Code of Ethics for Tourism, *supra* note 3, art. 1(2).

(thus addressing tourists and operators), but Article 1(4) also provides that “it is the task of the public authorities to provide protection for tourists and visitors and their belongings.”³⁸

Specific attention is paid to sustainable development in Article 3, broadly suggesting that all “stakeholders in tourism development should save the natural environment with a view to achieving sound, continuous and sustainable economic growth geared to satisfying equitably the needs and aspirations of present and future generations.”³⁹

Specific obligations are also placed on tourism professionals to provide tourists with objective and honest information on their places of destination and all the conditions of travel, hospitality, and safety.⁴⁰

Interestingly, Article 7 even refers to a “universal right to tourism,” which “must be regarded as the corollary of the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay, guaranteed by Article 24 of the Universal Declaration of Human Rights and Article 7d of the International Covenant on Economic, Social and Cultural Rights.”⁴¹

These few examples illuminate the nature of the Global Code of Ethics for Tourism; it contains rather vague and broad principles of good conduct addressed not only at traditional stakeholders in international law (states), but also at operators in the tourism industry and even tourists. Still, to some extent, text used in the Code parallels language found in human rights treaties by referring to a right to rest and leisure,⁴² for example. Let us now look more specifically at the legal character of the Global Code of Ethics for Tourism.

II. Legal Nature of the Code of Ethics

A. Status of the Global Code of Ethics for Tourism in International Law

There are a number of codes of ethics recognized in various sectors. It is generally assumed that a code of ethics consists of a set of norms prescribing ethical behavior. There is also a view, which contemplates that a code of ethics actually does not replace the existing legal rules, but is rather to be considered as a compliment to the law itself.⁴³

38. *Id.* art. 1(4).

39. *Id.* art. 3(1).

40. *Id.* art. 6(1).

41. *Id.* art. 7(2).

42. *Id.*

43. See, e.g., United Nations Educational, Scientific and Cultural Organization, *International Code of Ethics for Dealers in Cultural Property*, U.N. Doc. CLT/CH/INS-06/25 rev (1999),

A code of ethics is lexically defined as “a set of principles of conduct within an organization that guide decision making and behavior[;] [t]he purpose of the code is to provide members and other interested persons with guidelines for making ethical choices in the conduct of their work.”⁴⁴ From the definition above a number of key elements of a code of ethics can be distilled: (1) a code should at least contain a set of principles of conduct; (2) it should be exclusively applied within an organization; and (3) the code should be used as guidance.

Before discussing the legal status of the Global Code of Ethics for Tourism in further detail we should first point at the reasons for adopting the Code. As was already briefly introduced in the previous section, when adopting the Code, the UNWTO General Assembly articulated that

[T]he aim of the Global Code of Ethics for Tourism [was] to establish a synthesis of the [then available] documents, codes and declarations of the same kind or with comparable aspirations that were published over the years, to complement them with new considerations reflecting the development of [] societ[y] and thus to serve as a frame of reference for the stakeholders in the tourism world at the dawn of the [21st] century and millennium.⁴⁵

In these objectives, three issues can be distinguished. *First*, the principles laid down in the Global Code of Ethics for Tourism are not newly created. There have been a number of documents that were used as the basis of this international instrument, e.g., the Convention Concerning Customs Facilities for Touring of June 4, 1954 and the related Additional Protocol,⁴⁶ the Manila Declaration on World Tourism of October 10, 1980;⁴⁷ the Resolution of the Sixth General Assembly of the UNWTO (Sofia) adopting the Tourism Bill of Rights and Tourist Code of September 26, 1985;⁴⁸ the Resolution of the Ninth General Assembly of the UNWTO (Buenos Aires) of October 4, 1991 entitled *Creating Tourism*

available at <http://unesdoc.unesco.org/images/0012/001213/121320M.pdf>.

44. See also *Code of Ethics Law & Legal Definition*, USLEGAL.COM, <http://definitions.uslegal.com/code-of-ethics/> (last visited Mar. 23, 2015). See *infra* Part II.A.1 on increasing use of voluntary codes of ethics in international law, and Part II.A.2 on the use of codes of conduct in tourism specifically.
45. Global Code of Ethics for Tourism, *supra* note 3, at 2.
46. Economic Commission for Europe, Convention Concerning Customs Facilities for Touring, June 4, 1954, 8 U.S.T. 1293, 276 U.N.T.S. 191; *available at* <http://www.unece.org/fileadmin/DAM/trans/conventn/Touring-1954e.pdf>; Economic Commission for Europe, Convention Concerning Customs Facilities for Touring, June 6, 1967, 596 U.N.T.S. 542 (amendment to article 2).
47. United Nations World Tourism Organization, Manila Declaration on World Tourism 1-4, Manila, Phil., Sept. 27, 1980, *available at* <http://www.e-unwto.org/content/p43473204h7wpw81/fulltext.pdf>.
48. United Nations World Tourism Organization, Tourism Bill of Rights and Tourist Code, WTO G.A. Res. WTO/034, Sofia, Bulg. Sept. 17-26, 1985, *available at* http://www.aitr.org/wp-content/uploads/2014/04/omt_sofia1985.pdf.

Opportunities for Handicapped People in the Nineties, concerning in particular travel facilitation and the safety and security of tourists;⁴⁹ the Resolution of the Eleventh General Assembly of UNWTO (Cairo) on the Prevention of Organized Sex Tourism of October 22, 1995;⁵⁰ and the Manila Declaration on the Social Impact of Tourism of May 22, 1997.⁵¹

Second, the Global Code of Ethics for Tourism also has a dynamic and progressive character. The Code itself explicitly refers to other documents that were already in existence (listed above),⁵² and moreover, reformulates them by adjusting them to new societal developments.

Third, the Code, by referring to both to state actors as well as to non-state actors, is apparently expected to contain a set of principles that can apply universally to all stakeholders in the tourism world.

The interesting question for the purposes of this article is how the Global Code of Ethics for Tourism can be considered in the light of the known sources of international law. Traditionally, when addressing the sources of international law, one refers to Article 38(1) of the Statute of the International Court of Justice (ICJ), which refers to various sources of international law, including conventions, international custom, principles of law, judicial decisions, and doctrine.⁵³ Article 38(1), perhaps rather obviously, does not explicitly refer to a global code of ethics as being one of the sources of international law. Thus, the question arises: into which of the sources of international law can the Global Code of Ethics for Tourism be classified? Certainly, one can conclude that the Code is not a judicial decision or doctrine. This leaves three other sources of international law, which need to be addressed in more detail.

1. *The Global Code of Ethics for Tourism is not a Treaty*

Ordinary people may think that the Global Code of Ethics for Tourism is a kind of treaty that provides a set of norms regulating the complex issue of global

49. United Nations World Tourism Organization, *Creating Tourism Opportunities for Handicapped People in the Nineties*, WTO G.A. Res. A/RES/284(IX). Buenos Aires, Arg., Sept 30-Oct. 4, 1991.

50. United Nations World Tourism Organization, *UNWTO Statement on the Prevention of Organized Sex Tourism*, WTO G.A. Res. A/RES/338(XI), Cairo, Egypt, Oct. 17-22, 1995, available at <http://ethics.unwto.org/en/content/staements-policy-documents-child-protection>.

51. United Nations World Tourism Organization, Manila Declaration on the Social Impact of Tourism (May 22, 1997), available at <http://www.e-unwto.org/content/h65194u44u881238/fulltext.pdf>. See also Jose-Roberto Perez-Salom, *Sustainable Tourism: Emerging Global and Regional Regulation*, 13 GEO. INT'L ENVTL. L. REV. 801 (2000-2001) (discussing these early initiatives).

52. These documents can be seen in the preamble of the Global Code of Ethics for Tourism. See *supra* note 3, pmbl.

53. Statute of the International Court of Justice art. 38(1), June 26, 1945, 59 Stat. 1055, available at http://legal.un.org/avl/pdf/ha/sicj/icj_statute_e.pdf [hereinafter ICJ Statute].

tourism activities. This misunderstanding is still happening today. A clear example is an article published on the official website of the Lebanon Ministry of Tourism that explicitly mentions that Lebanon has ratified the Global Code of Ethics for Tourism.⁵⁴ It is generally known that under the law of treaties, a ratification is an expression of consent to be bound by a treaty.⁵⁵ It thus leads to questioning whether or not the Global Code of Ethics for Tourism is a treaty.

An agreement among parties may be regarded as the fundamental element of a treaty. If we look at the Global Code of Ethics for Tourism, it contains an implicit agreement. This is reflected in the final sentence of the Preamble of the Global Code of Ethics for Tourism, which states that the parties “solemnly adopt[] to these ends the principles of the Global Code of Ethics for Tourism.”⁵⁶

Another characteristic of an international agreement is that it needs to be subject to or governed by international law.⁵⁷ This is questionable in the case of the Global Code of Ethics. Although the Code was established through an international conference, this does not automatically indicate that the document can also be considered a multi-lateral treaty. The Global Code of Ethics for Tourism lacks some features that are usually provided in a treaty. For example, there is no specific regulation concerning the expression of consent to be bound and concerning the entry into force of the Code.⁵⁸

Additional elements could strengthen this conclusion. In the context of an international treaty, it is generally understood that a treaty in principle establishes rights and obligations in the field of international law.⁵⁹ Looking at the Global Code of Ethics for Tourism, one can conclude that its provisions do not expressly determine the legal rights and obligations of the parties concerned.

54. *Pharaon Ratifies the Code of Ethics for Tourism and Launches with Rifai “The Phoenician’s Route,”* LEBANON MINISTRY OF TOURISM (Feb. 27, 2015), <http://www.mot.gov.lb/NewsEvents/Minister%20News/Details/169>.

55. Vienna Convention on the Law of Treaties art. 2 ¶ 1(b), May 23, 1969, U.N. Doc. A/Conf.39/27, 1155 U.N.T.S. 331 (1969), available at <https://treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf> [hereinafter Vienna Convention of 1969]; **Vienna Convention on the Law of Treaties Between States and International Organizations or Between International Organizations art. 2 ¶ 1(b), Mar. 21, 1986**, U.N. Doc. A/CONF.129/15, 25 ILM 543 (1986), available at https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXIII-3&chapter=23&lang=en [hereinafter Vienna Convention of 1986].

56. Global Code of Ethics for Tourism, *supra* note 3, at 5, pmb1.

57. Vienna Convention of 1986, *supra* note 55, art. 2 ¶ 1(a).

58. See Global Code of Ethics for Tourism, *supra* note 3.

59. See, e.g., Hans J. Giessmann, *Asymmetric Non-International Violent Armed Conflict: Challenges to the Protection of Human Rights*, n.8, in 1 THE SAGE HANDBOOK OF HUMAN RIGHTS (Anja Mihr & Mark Gibney eds., 2014). See also *International Law*, UNITED NATIONS, <http://www.un.org/en/globalissues/internationallaw/> (last visited May 18, 2015); Act of the Republic of Indonesia No. 24 of 2000, art. 1(a) concerning Treaty, State Gazette No. 4012 (2000).

With regard to the consent to be bound, the UNWTO General Assembly only gives a recommendation that Member States or non-members of the UNWTO, without being obliged to do so, expressly accept the principles enshrined in the Global Code of Ethics for Tourism and “use them as a basis when establishing their national laws and regulations.”⁶⁰

This shows that there is merely a recommendation to incorporate the principles contained in the Global Code of Ethics for Tourism into national law, but no statement of a formal consent of the signatory parties to be bound by the Code. The phrase “the formal acceptance of the Code” by all UNWTO Member States at the XIII General Assembly in Santiago in 1999⁶¹ should be interpreted as a formal agreement of the participating countries to adopt the text of the Global Code of Ethics for Tourism, and not as a formal approval of the states concerned to be legally bound as commonly understood in an international treaty.

There is therefore no formal consent by either the states or other global tourism stakeholders to be formally bound by the Code. This notion also implies that there is no international legal commitment to carry out the principles laid down in this document. Since a treaty is a method of creating binding legal obligations and there must be an intention to create legal relations,⁶² it seems clear that the Global Code of Ethics for Tourism cannot be qualified as a treaty. Thus, by referring to the nature of the Global Code of Ethics for Tourism as a non-binding instrument, it further strengthens the argument that the document is not an international treaty.

It could be worthwhile to state that although the Code is not a treaty, there have been attempts to strengthen its binding force. This can be seen in the Report of the UNWTO Secretary General in 2011, which mentions that “[in] the longer term, it might be convenient to reflect upon the possibility to adopt the Code under the form of a convention.”⁶³ This statement clearly shows that even the UNWTO itself does not yet consider the Global Code of Ethics for Tourism a treaty.

2. The Provisions Laid Down in the Global Code of Ethics for Tourism Partly Reflect Customary International Law

It cannot be denied that customary international law has been considered an important source of law. The phrase “international custom, as evidence of a

60. Global Code of Ethics for Tourism, *supra* note 3, ¶ 4(a), at 12.

61. *Implementation of the Global Code of Ethics for Tourism*, *supra* note 2, ¶ 14, at 5.

62. Malgosia Fitzmaurice, *The Practical Working of the Law of Treaties*, in MALCOLM D. EVANS, *INTERNATIONAL LAW* 172, 188 (2d ed. 2006).

63. World Tourism Organization, Rep. on the World Committee on Tourism Ethics, ¶ 5, WTO Doc. A/19/14 (II) (2011) available at https://s3-eu-west-1.amazonaws.com/storageapi/sites/all/files/pdf/a19_14_wcte_part_2_e.pdf [hereinafter Rep. on the World Committee on Tourism Ethics].

general practice accepted as law,⁶⁴ as stipulated in Article 38(1) of the Statute of the International Court of Justice (ICJ), was a formal recognition of the existence of customary international law. The ICJ elaborated that international custom is formed through the *actual practice and opinio juris of states*.⁶⁵

In the context of global tourism, there are a number of state practices which can be identified, such as formally promoting tourism, issuing a travel advisory (travel warning), and providing protection and service to citizens who undertake tourism activities abroad through diplomatic and consular channels as well as to foreigners in a country's territory.

The custom applied in the global tourism sector is, however, not solely practiced by states, but also by non-state actors. If we apply a rigid interpretation to determine that a customary international law is formed by state practices, then the Global Code of Ethics for Tourism automatically cannot be viewed as a form of international custom.

But the view that follows from applying a rigid definition needs to be complemented with an understanding that there are elements of state practice in the context of global tourism activity that are also accounted for in the Global Code of Ethics for Tourism. For example, the state practice of providing protection to foreigners who travel in the state's territory is reflected in the Code, which states that "[i]t is the task of the public authorities to provide protection for tourists and visitors and their belongings; they must pay particular attention to the safety of foreign tourists owing to the particular vulnerability they may have."⁶⁶

Statements from countries' leaders generally reflect *opinio juris*.⁶⁷ In 2011, Indonesian President Susilo Bambang Yudhoyono explicitly stated his willingness that the Association of South East Asian Nations (ASEAN) will lead the implementation of the UNWTO's Global Code of Ethics for Tourism.⁶⁸ The ASEAN Tourism Ministers have also adopted a joint declaration endeavor to develop awareness of the Code among ASEAN tourism stakeholders.⁶⁹ A recent example is the statement by the Tourism Minister of Japan, Mr. Akihiro Ohta, who expressed

64. ICJ Statute, *supra* note 53, art. 38(1)(b).

65. See MALCOLM N. SHAW, *INTERNATIONAL LAW* 70 (5th ed. 2006). Regarding this matter, Ian Brownlie argues that there are four elements of customs, namely: (a) duration, (b) uniformity, consistency of practice, (c) generality of the practice, and (d) *opinion juris et necessitates*. See IAN BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 4, 11 (5th ed. 1998).

66. Global Code of Ethics for Tourism, *supra* note 3, art. 1(4).

67. MARTIN DIXON ET AL., *CASES AND MATERIALS ON INTERNATIONAL LAW* 19 (5th ed. 2011).

68. Mimi Hudoyo, *Yudhoyono wants ASEAN to champion tourism ethics*, TTG ASIA (June 13, 2011), http://www.ttgasia.com/article.php?article_id=1682 (last visited Apr. 10, 2015).

69. *Joint Media Statement on the 7th Meeting of ASEAN Tourism Ministers*, PEOPLE'S TELEVISION (Jan. 20, 2014), <http://ptv.ph/13-asean-corner/512-joint-media-statement-on-the-7th-meeting-of-asean-tourism-ministers> (last visited Apr. 10, 2015).

his support in promoting the UNWTO Global Code of Ethics for Tourism in his country.⁷⁰ Moreover, the endorsement of the Global Code of Ethics for Tourism by the UN General Assembly⁷¹ is an indication that UN Member States have legitimized its existence, and thus, reflects *opinio juris*. It is generally understood that resolutions of the United Nations General Assembly are evidence of *opinio juris*.⁷²

It can be concluded that the Global Code of Ethics for Tourism, as a single document, is not international custom. However, some of its provisions actually reflect customary international law.

3. The Global Code of Ethics for Tourism Contains Some General Principles of Law

Although we argued above that the Global Code of Ethics for Tourism is not a treaty, but does reflect customary international law, we will now show that it does contain some general principles of law.

In some legal doctrines, the general principles of law are well recognized both in the context of national law and international law, for example, *pacta sunt servanda*,⁷³ good faith (*bona fides*), *ne bis in idem*,⁷⁴ etc. More specifically, in the context of international law, the Declaration of Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations contains a number of basic principles of international law, including the principle that states “shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations.”⁷⁵ It contains the principle

70. Press Release, *UNWTO commends Japan's tourism commitment*, WORLD TOURISM ORGANIZATION (Oct. 28, 2014), <http://media.unwto.org/press-release/2014-10-28/unwto-commends-japan-s-tourism-commitment> (last visited Apr. 10, 2015).

71. See G.A. Res. 56/212, *supra* note 2.

72. See SHAW, *supra* note 65, at 107, 112; see also JAN KLABBERS, AN INTRODUCTION TO INTERNATIONAL INSTITUTIONAL LAW 206, 208 (2d ed. 2009).

73. *Pacta sunt servanda* reflects the principle that “[e]very treaty in force is binding upon the parties to it and must be performed by them in good faith.” See Vienna Convention of 1969, *supra* note 55, art. 26.

74. *Ne bis in idem* is the principle that prohibits a person from being tried by a court for a crime for which that person has already been convicted or acquitted by another court. See Rome Statute of the International Criminal Court art. 20(2), U.N. Doc. A/CONF. 183/9, 2187 U.N.T.S. 90, 37 I.L.M. 1002 (1998), available at http://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf.

75. Declaration of Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations, G.A. Res. 2625 (XXV), pmbL, U.N. Doc. A/RES/2625 (Oct. 24, 1970), available at <http://www.un-documents.net/a25r2625.htm>.

that states shall settle their international disputes by peaceful means in such a manner that international peace, security and justice are not endangered, as well as the duty not to intervene in matters within the domestic jurisdiction of any state.⁷⁶ The declaration also contains the duty of states to cooperate with one another in accordance with the Charter of the United Nations, the principle of equal rights and self-determination of peoples, the principle of sovereign equality of states and the principle that states shall fulfill in good faith the obligations assumed by them in accordance with the Charter.⁷⁷

The first nine articles laid down in the Global Code of Ethics for Tourism contain the principles that generally have to be respected by stakeholders in the global tourism industry. Interestingly, Article 10 of the Code reflects the general principles of international law. For example, Article 10(2) explicitly calls for the need to respect the principles of international law, as stated below:

The stakeholders in tourism development should recognize the role of international institutions, among which the World Tourism Organization ranks first, and non-governmental organizations with competence in the field of tourism promotion and development, the protection of human rights, the environment or health, with due respect for the general principles of international law.⁷⁸

Furthermore, Article 10(3) of the Global Code of Ethics for Tourism determines conciliation as the dispute resolution model of the application and interpretation of the Code.⁷⁹ It clearly reflects the basic principles of international law, which emphasize that all countries should settle international disputes by peaceful means.

The principle of good faith (*bona fides*) was also mentioned in the adoption of the Global Code of Ethics for Tourism. During that adoption of the Code in Santiago in 1999 the UNWTO General Assembly expressly stressed the need for applying the principle of good faith in implementing the code by the stakeholders.⁸⁰

It is clear that the Global Code of Ethics for Tourism mostly includes general principles to be applied by tourism stakeholders. However, some contents of the Code indicate that it partially contains both general principles of law and basic principles of international law.

76. *Id.*

77. *Id.*

78. Global Code of Ethics for Tourism, *supra* note 3, art. 10(2).

79. *Id.* art. 10(3).

80. *Id.* art. 10(2) (explicitly calling upon the stakeholders in tourism development to “model their conduct on the principles embodied in this Global Code of Ethics for Tourism and to implement them in good faith in accordance with the provisions set out below”).

B. The Global Code of Ethics for Tourism as Soft Law?

In the theoretical discourse about the legally binding character of international law, a distinction is recognized between hard law and soft law.⁸¹ The following description will provide an overview to support the argument that the Global Code of Ethics for Tourism can be qualified as soft law.

Alan Boyle states that “[f]rom a law-making perspective the term ‘soft law’ is simply a convenient description for a variety of non-legally binding instruments used in contemporary international relations by states and international organizations.”⁸² He illustrates a number of international instruments which could be qualified as soft law, such as declarations created through inter-state conferences,⁸³ a number of instruments of the General Assembly of the United Nations,⁸⁴ the Code of Conduct for Responsible Fisheries,⁸⁵ and guidance and recommendations issued by various international organizations.⁸⁶ Boyle also argues that unlike soft law, hard law is always binding, such as in the case of international agreements that have been effectively applied.⁸⁷

Dinah Shelton’s concept is important to discuss as well. She explains that “[s]oft law . . . usually refers to any international instrument other than a treaty containing principles, norms, standards, or other statements of expected behavior.”⁸⁸ She focuses on the reasons why states and non-state actors have the intention to adopt non-binding normative instruments.⁸⁹ The first reason is that non-state actors can sign on, participate, and be targets of norms, which are more

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81. See DINAH SHELTON, COMMITMENT AND COMPLIANCE: THE ROLE OF NON-BINDING NORMS IN THE INTERNATIONAL LEGAL SYSTEM (2000) (discussing the distinction between international hard law and soft law); see also Kenneth W. Abbott & Duncan Snidal, *Hard and Soft Law in International Governance*, 54 INT’L ORG., 421, 456 (2000); Gregory C. Shaffer & Mark A. Pollack, *Hard vs. Soft Law: Alternatives, Complements, and Antagonists in International Governance*, 94 MINN. L. REV. 706 (2009-2010).
82. See Alan Boyle, *Soft Law in International Law-Making*, in MALCOLM D. EVANS, INTERNATIONAL LAW 122, 122 (2d ed. 2006).
83. See, e.g., U.N. Conference on Environment and Development, Rio de Janeiro, Braz., June 3-14 1992, *Rio Declaration on Environment and Development*, U.N. Doc. A/CONF.151/26/Rev.1 (Vol. I), Annex I (Aug. 12, 1992), available at <http://www.unep.org/Documents.Multilingual/Default.asp?documentid=78&articleid=1163> (reaffirming the Declaration of the United Nations Conference on the Human Environment, adopted at Stockholm on 16 June 1972).
84. See, e.g., Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 12, 1948), available at <http://www.un.org/en/documents/udhr/index.shtml>.
85. Food and Agriculture Organization of the United Nations, *Code of Conduct for Responsible Fisheries*, FAO Doc. 95/20/Rev/1; UN Sales No. E98.V.11 (1998), available at <http://www.fao.org/docrep/005/v9878e/v9878e00.HTM>.
86. Boyle, *supra* note 82, at 142-43.
87. *Id.* at 143. See generally ANTONIO CASSESE, INTERNATIONAL LAW (2d ed. 2005).
88. Dinah Shelton, *International Law and ‘Relative Normativity,’* in MALCOLM D. EVANS, INTERNATIONAL LAW 141, 180 (2d ed. 2006).
89. *Id.* at 183.

difficult to realize through an international treaty.⁹⁰ Another reason is that non-binding instruments are faster to adopt, easier to change, and more useful for technical matters that may need rapid or repeated revision.⁹¹ Yet another reason is that an instrument of soft law can be used to avoid domestic political battles because those instruments do not require ratification.⁹² Based on this understanding of soft law, the Global Code of Ethics for Tourism seems to qualify as an example of soft law. The following considerations reinforce this opinion.

- a. In terms of procedure, the Global Code of Ethics for Tourism was adopted by the UNWTO General Assembly and by the UN General Assembly. It is not an international treaty established by the common procedure applicable in the creation of international treaties as stipulated in the Vienna Convention of 1969 and the Vienna Convention of 1986. The Code contains several vague obligations, which therefore leads to uncertainty, particularly with respect to the authority to conclude a treaty, the expression of consent to be bound, etc. Additionally, precise provisions on ratification, possible invalidity, possibilities to make amendments and modifications, termination and suspension, as well as any other procedural issues which one normally finds in treaties, are all lacking in the Global Code of Ethics for Tourism.
- b. In terms of substance, the Global Code of Ethics for Tourism can be seen as a Code of Conduct providing guidelines and recommendations to global tourism stakeholders within the framework of the UNWTO, which contains a set of principles and standards of ideal behavior in tourism.
- c. In terms of its legally binding nature, the Code does not have a legally binding force under international law, as would befit an international treaty or international custom.

C. The Global Code of Ethics for Tourism: Is it a Legally Binding Instrument?

So far we have established that it is difficult to fit the Global Code of Ethics for Tourism into the traditional sources of international law; it cannot be qualified as a treaty, international custom, or a general principle of international law. Still, since the Code has been widely recognized and accepted, the question arises as to its precise binding force.

There have been some skeptical views concerning the binding force of the Global Code of Ethics for Tourism. Brunei Darussalam's Director of Tourism, Sheikh

90. *Id.*

91. *Id.*

92. Dinah Shelton, *Soft Law*, in DAVID ARMSTRONG, *ROUTLEDGE HANDBOOK OF INTERNATIONAL LAW* 68, 69 (2009).

Jamaluddin Sheikh Mohamed, questioned whether the UNWTO would have the authority to enforce the Code across the board.⁹³ Another perspective from Floressa Wisata Bali's President Director, Paul Edmundu, expressed uncertainty as to who should be tasked to deal with unethical practices by foreign investors who violate the Code's guidelines.⁹⁴

As an introduction to answering the question of the legally binding character of the Code, we should refer to the Report of the World Tourism Organization on the implementation of the Global Code of Ethics for Tourism in the UN General Assembly, which states that "the Code of Ethics is a voluntary instrument and is thus non-binding by nature."⁹⁵ Actually, UNWTO offered a more explicit explanation in a 2005 report as follows:

The Code of Ethics is not a legally binding instrument and therefore its acceptance is voluntary. The voluntary nature of this instrument is a feature on which the WTO places particular emphasis. The application of the Code may, nevertheless, be advanced by the incorporation of its contents and provisions into appropriate legislation of its professional codes that the General Assemblies of both WTO and the United Nations (the latter in resolution 56/212) have invited Governments and other stakeholders in the tourism sector to consider. Such provisions, based on the Code and adopted at national or industry levels, would be binding according to the terms of reference of each adopting constituency. Yet they would not change the voluntary nature of the Code itself, which will remain a reference and guiding document.⁹⁶

This UNWTO report was submitted via the UN Secretary General to the UN General Assembly and once more illuminates the nature of the Global Code of Ethics for Tourism. Even though the Code is not a formal legally binding document, implementation of its provisions is certainly encouraged. It is of course possible that the principles laid down in the Global Code of Ethics for Tourism will be incorporated into the domestic laws of a particular state or into contractual provisions between tourism stakeholders. However, the binding character in that case is not based on the Code itself, but rather on implementing national law or contractual provisions that would incorporate principles embodied in the Code.

93. Mimi Hudoyo, *Championing ethics in tourism an uphill battle*, TTG ASIA (June 16, 2011), http://www.ttgasia.com/article.php?article_id=1709 (last visited May 8, 2015).

94. *Id.*

95. *Implementation of the Global Code of Ethics for Tourism*, *supra* note 2, at 2.

96. Note by the Secretary-General, U.N. Doc. A/60/167, ¶ 6, at 4 (July 27, 2005) (transmitting a report by the UNWTO in response to Assembly resolution 56/212 of December 21, 2001 and decision 58/573 of September 13, 2004 to the UN General Assembly), available at <http://ethics.unwto.org/sites/all/files/docpdf/unga2005statusreporta-60-167en.pdf> [hereinafter UNWTO Report].

D. Implementation of the Global Code of Ethics for Tourism

The next inquiry in resolving the question of whether the Global Code of Ethics for Tourism qualifies as soft law is whether there is a legal obligation for all stakeholders to implement the provisions of the Code. When an instrument of law is formulated in order to change legal rules in the future, it implies the intention of the lawmaker that the provisions contained in the legal instruments can be implemented. One of the important issues in the creation of any legal instrument is to identify the entities that have the legal obligation to implement the law.

As far as the question of how international law works within the legal order of a state is concerned, different approaches exist. One approach, referred to as the “voluntarist” view, teaches that international law only becomes binding upon a state as a result of the state’s willingness (intention) to be bound. The other view, referred to as the “objectivist” approach, holds that international law is binding objectively, and therefore not in connection to the state’s willingness to be bound.⁹⁷

The voluntarist approach has led to the so-called dualism theory, which sees international law and national law as two separate legal systems, entailing that international law only becomes binding in a state if national transposition measures have taken place.⁹⁸ In a monistic system, to the contrary, international law automatically becomes part of internal law.⁹⁹ This has important consequences for the question whether individuals within a state can—provided international law has precise and clear (so-called self-executing) obligations upon the state—directly call on the provisions contained in a treaty. In a monistic system, this would be the case even if the state has failed to take measures in national law to implement the treaty obligations. In a dualistic system, this would not be possible because the state would first have to enact national transposition legislation, which the citizen can subsequently invoke.

As mentioned above, in implementing the Global Code of Ethics for Tourism, the UNWTO General Assembly recommends that its members expressly accept the principles laid down in the Code, without being obliged to do so, and use these principles as a basis when establishing their domestic laws and regulations.¹⁰⁰ Members of the UNWTO are merely “invited” to actively implement the recommendations expressed by the UNWTO during previous sessions in the fields

97. Dinah Shelton, *Normative Hierarchy in International Law*, 100 AM. J. INT’L. L. 291, 323 (2006).

98. See, e.g., MANFRED LACHS, *THE TEACHER IN INTERNATIONAL LAW: TEACHINGS AND TEACHING* 83 (2nd rev. ed. 1987). See also C.J.S Azoro, *The Place of Customary International Law in the Nigerian Legal System - A Jurisprudential Perspective*, 1(3) INT’L J. RES. 74, 80 (Apr. 2014).

99. See EDWIN EGEDE & PETER SUTCH, *THE POLITICS OF INTERNATIONAL LAW AND INTERNATIONAL JUSTICE* 24 (2013).

100. Global Code of Ethics for Tourism, *supra* note 3, at 12, ¶ 4(a).

covered by the Code. The annex to the Global Code of Ethics for Tourism contains a Draft Protocol of Implementation, which creates a World Committee on Tourism Ethics.¹⁰¹ This is the body responsible for interpreting, applying, and evaluating the provisions of the Code.¹⁰² Its functions will be further discussed below.

The reports of the UNWTO to the UN Secretary General provide further information on the implementation of the Global Code of Ethics for Tourism. Interestingly, the differing approaches to international law—dualistic and monistic—can also be recognized when examining how stakeholders, particularly state actors, have implemented the Code. In this regard, it is useful to refer to the survey on the implementation of the Code, conducted by the UNWTO secretariat among its member states, associate members, as well as permanent and special observers.¹⁰³ The results of the survey can be described as follows:

[1.] [Forty-nine] responding States have indicated that they had incorporated the principles of the Code into their legislative texts, while 48 countries had used the same principles as a basis for establishing national laws and regulations or for designing policies and master plans for assuring the sustainable and responsible development of tourism.

[2.] . . . [T]he Code of Ethics has been given effect by a number of countries through their respective institutional bodies (for example, in Honduras by the National Congress) or governmental bodies (for example, in Spain by the Council of Ministers), and in other countries by tourism ministries/national administrations or related bodies. A few countries and territories, including Argentina, Costa Rica, the United Republic of Tanzania, Uruguay and the Flemish Community of Belgium have adopted parliamentary/ministerial resolutions in line with the Code's principles.

[3.] The majority of countries have also included relevant provisions of the Code in contractual instruments, specific codes of conduct or professional rules. Several countries have embarked on the preparation of national or sectoral codes of ethics for tourism.¹⁰⁴

101. *Id.* at 14-15.

102. *Id.*

103. *Implementation of the Global Code of Ethics for Tourism*, *supra* note 2, at 4. The report explains that “since the adoption of the Global Code of Ethics for Tourism in 1999 the secretariat of the UNWTO has conducted 3 surveys among its members (in 2000, 2004 and 2008/2009) in order to monitor the implementation of the Code.” *Id.* Some 114 UNWTO member states and 70% of the territories have responded to at least one of the surveys. *Id.*

104. *Id.* at 4-5. For an interesting comparison of various voluntary policy instruments for sustainable tourism, see Silvia Ayuso, *Comparing Voluntary Policy Instruments for Sustainable Tourism: the Experience of the Spanish Hotel Sector*, 15(2) *J. SUSTAIN. TOURISM* 144, 159 (2007).

The existence of the Global Code of Ethics for Tourism is also recognized by a number of regional organizations and referred to in documents they draft. For example, the 2002 ASEAN Tourism Agreement confirms compliance with the Code and is specifically committed to taking bold steps to prevent tourism activities that could potentially exploit human beings, especially women and children, as mentioned in the Global Code of Ethics for Tourism.¹⁰⁵ We can also point at the enthusiasm of tourism businesses in respecting the Code. For example, several tourism enterprises have signed the Private Sector Commitment to the Global Code of Ethics for Tourism.¹⁰⁶ Therefore, it becomes important that public and private stakeholders in tourism development are encouraged to cooperate in the implementation of these principles and monitor their effective application.¹⁰⁷ In this regard, we can take note that the UN General Assembly “encourages the [UNWTO], through its World Committee on Tourism Ethics and the permanent secretariat of the Committee, to monitor the implementation of the ethical principles related to tourism by both the public and the private sectors.”¹⁰⁸

E. Legally Binding Force: Summary

The adoption of the Global Code of Ethics for Tourism by the UNWTO is an interesting example of the development of modern international law. Often, actors in international law—more particularly states, but also non-state actors—consider the formal process of formulating rules and determining their binding force via international agreements too burdensome. Agreeing on legally binding international treaties may be politically difficult, and the drafting process often seems rather inefficient. This explains why actors on the international scene increasingly prefer to use non-binding instruments that nonetheless—perhaps because of their non-binding character—are actually implemented and followed by the actors. Soft law thus becomes increasingly popular in the international arena.

International law scholars have recognized this phenomenon. Jan Klabbers, for example, compared a number of resolutions of the UN General Assembly with documents issued by the Organization for Economic Cooperation and Development (OECD) and found that the habit has arisen within the OECD of adopting only

105. *See Abuse: Case Studies of Child Sexual Abuse in Cambodia*, CHILD WISE (Mar. 20, 2014, 11:07 AM), <http://www.childwisecambodia.org/abuses/view/7>.

106. *Private Sector Commitment to the UNWTO Global Code of Ethics for Tourism*, WORLD TOURISM ORGANIZATION, <http://ethics.unwto.org/content/private-sector-commitment-global-code-ethics-for-tourism> (last visited Apr. 10, 2015).

107. Ali Donyadide, *Ethics in Tourism*, 17(3) EUR. J. SOC. SCI. 426, 432 (2010), available at <http://ejournal.narotama.ac.id/files/Ethics%20in%20tourism.pdf>.

108. G.A. Res. 65/148, ¶ 3, U.N. Doc. A/RES/65/148 (Jan. 21, 2011), available at http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/65/148.

documents that are formally non-binding.¹⁰⁹ He explains that even though adherence thereto is not legally required, in practice, those non-binding instruments are the most successful international legal instruments in terms of compliance.¹¹⁰ Evincing this success, Klabbers points out that many OECD member countries give effect to these non-binding instruments in their national legislations, and further, many domestic courts also apply the provisions.¹¹¹

This development within the OECD can serve as an example of how the UNWTO can further develop non-binding international documents. The above-mentioned surveys conducted by the UNWTO¹¹² are an important indicator of how the members of the UNWTO show their commitment to the implementation of the provisions of the Global Code of Ethics for Tourism.

III. Dispute Settlement Mechanisms

Yvette Reisinger, a tourism researcher, argues that “[e]thics is very important for international tourism.”¹¹³ Legal scholars may agree with this statement. But we could assume that they will pay more attention to the following question: Can these ethics, more particularly a code, be used to settle a (legal) dispute resulting from international tourism activities? In subpart A of this section, we will present a managerial approach towards dispute resolution; then in subpart B, we will demonstrate how conciliation takes place via the World Committee on Tourism Ethics; and in subpart C, we will analyze the Dispute Settlement Procedure. We will also provide an evaluation of the dispute settlement mechanism in subpart D, and discuss its practical application in subpart E.

A. Managerial Approach towards Dispute Resolution

Dispute settlement mechanisms in international law have undergone important changes following from a changing paradigm concerning the role of states in international law. The traditional view was that states are sovereign actors in the international arena, meaning that they are free to act as they find necessary, unrestricted by any external authority or rules. Based on this principle, one tended to believe that governments therefore accepted only those international treaties that were in their interest. If a state was in breach of its treaty obligations, it was usually considered intentional. Enforcement measures were thus often limited and were regarded as severe actions. This traditional view

109. See KLABBERS, *supra* note 72, at 193.

110. *Id.*

111. *Id.* at 194.

112. See *supra* Part II.D.

113. YVETTE REISINGER, INTERNATIONAL TOURISM: CULTURES AND BEHAVIOUR 245 (2009).

changed dramatically toward the end of the 1990s.¹¹⁴ States should no longer be seen as completely sovereign entities, but as entities willing to accept limits on their original sovereign rights for the benefit of the environment, future generations, or the international community as a whole.¹¹⁵ This “new sovereignty” approach has also had consequences for dispute settlement. There has been a clear shift from the traditional approach, including dispute settlement proceedings and sanctions in treaties, to a managerial approach, which attempts to utilize a more comprehensive system of different methods for solving compliance problems.¹¹⁶ So-called non-compliance procedures rather than punishing non-compliance are aimed at finding ways to facilitate compliance by the state that is in breach of its obligations. These procedures provide a political framework for “amicable responses” to non-compliance that cannot be considered “wrongful.”

One can observe two trends within the recent development of dispute settlement mechanisms. First, there is a trend of increasing emphasis on the management of international regulatory regimes, guiding states towards compliance with norms formulated both within and outside of international organizations, rather than on blameworthiness and responsibility.¹¹⁷ The second trend is the increasing tendency to resolve disputes internally with the organization’s own substantive rules and leaving behind the general doctrines of international law, particularly the Law of Treaties and Laws of Responsibility.¹¹⁸ This new approach to non-compliance, fitting into a managerial approach to international treaties, can also be found in the dispute settlement mechanisms contained in the Global Code of Ethics for Tourism.

B. Conciliation via the World Committee on Tourism Ethics

As previously explained, the World Committee on Tourism Ethics was mentioned at the creation of the Global Code of Ethics for Tourism in Santiago in 1999, and was also authorized to establish its own Rules of Procedure.¹¹⁹ The

114. Harold K. Jacobson & Edith Brown-Weiss, *Strengthening Compliance with International Environmental Accords: Preliminary Observations From a Collaborative Project*, in GLOBAL GOVERNANCE 119, 148 (1995); see also Ronald B. Mitchell, *Compliance Theory: an Overview*, in IMPROVING COMPLIANCE WITH INTERNATIONAL LAW 3, 28 (James Cameron et al. eds., 1996).

115. This idea is best formulated by Chayes and Handler Chayes. See generally CHAYES & HANDLER CHAYES, *supra* note 4.

116. See ORAN R. YOUNG, *THE EFFECTIVENESS OF INTERNATIONAL ENVIRONMENTAL REGIMES* (1999).

117. KLABBERS, *supra* note 72, at 247.

118. *Id.*

119. Global Code of Ethics for Tourism, *supra* note 19, ¶ 3 (see the annex protocol of implementation).

World Committee on Tourism Ethics (the “Committee”) was finally established in 2003 by the UNWTO and convened for the first time in 2004.¹²⁰ At that time, the Committee was tasked with performing the following functions: “(a) the promotion and dissemination of the Global Code of Ethics for Tourism; (b) the evaluation and monitoring of the Code of Ethics’ implementation; and (c) conciliation for the settlement of differences concerning the application or interpretation of the Code.”¹²¹ The Committee consists of a chairman, eleven permanent members, and eleven independent and impartial alternate members.¹²² In 2008, the Permanent Secretariat of the World Committee on Tourism Ethics was inaugurated in Rome, Italy.¹²³ The Permanent Secretariat provides “technical and expert support to [the Committee], in particular, promoting and disseminating [the Code].”¹²⁴

The task of the Committee to settle a dispute by conciliation is an important one. It is stipulated in the Global Code of Ethics for Tourism, which states that “[t]he same stakeholders demonstrate their intention to refer any disputes concerning the application or interpretation of the Global Code of Ethics for Tourism for Conciliation to an impartial third body known as the World Committee on Tourism Ethics.”¹²⁵

Conciliation is a method of dispute settlement that has long been recognized in international law and combines the characteristics of inquiry and mediation.¹²⁶ According to Martin Dixon, conciliation can be regarded either as a “non-judicial” or a “semi-judicial” procedure for settlement of disputes.¹²⁷ This method is also explicitly mentioned in Article 33(1) of the Charter of the United Nations as one of the peaceful means of dispute settlement.¹²⁸ J.G. Merrills argues that all conciliation commissions have the same function, namely to investigate the dispute and to suggest possible ways of dispute resolution.¹²⁹ When discussing the significance of conciliation, Merrills states that conciliation, which has regularly been included in the provisions concerning dispute settlement, presently remains

120. Rep. on the World Committee on Tourism Ethics, *supra* note 63, ¶ 1.

121. *Id.* ¶ 7.

122. *Implementation of the Global Code of Ethics for Tourism*, *supra* note 2, ¶ 5.

123. *Id.* at 2 (“Following an agreement reached between the Government of Italy and WTO, the permanent secretariat of the World Committee on Tourism Ethics was established in Rome in November 2008.”).

124. *World Committee on Tourism Ethics*, WORLD TOURISM ORGANIZATION, <http://ethics.unwto.org/en/content/world-committee-tourism-ethics> (last visited Apr. 10, 2015).

125. Global Code of Ethics for Tourism, *supra* note 3, art. 10(3).

126. See JOHN COLLIER & VAUGHAN LOWE, *THE SETTLEMENT OF DISPUTES IN INTERNATIONAL LAW: INSTITUTIONS AND PROCEDURES* 29, 31 (2000). See also SHAW, *supra* note 65, at 925, 928.

127. MARTIN DIXON, *TEXTBOOK ON INTERNATIONAL LAW* 280 (6th ed. 2007).

128. U.N. Charter art. 33, para. 1.

129. J.G. MERRILLS, *INTERNATIONAL DISPUTE SETTLEMENT* 72 (4th ed. 2005).

one of the preferred ways of dispute resolution used by countries.¹³⁰

The conciliation method provided in the Global Code of Ethics for Tourism contains a number of procedures. In October 2004, the Committee adopted the Procedures for Consultation and Conciliation for the Settlement of Disputes Concerning the Application of the Global Code of Ethics for Tourism (“Consultation and Conciliation Procedure”).¹³¹ The Consultation and Conciliation Procedure provides for two main possibilities: procedures for dispute settlement between the parties and an application procedure for an advisory opinion.¹³² This mechanism is somewhat similar to the practice of the International Court of Justice, which has authority to solve disputes between states as well as to deliver advisory opinions.¹³³

C. The Dispute Settlement Procedure

The procedure for settlement of disputes between the parties through the Committee can be described as follows:

1. Registration of Dispute Settlement;
2. Written Answer concerning the Acceptance of Dispute Settlement and Consultation through the Secretary General of UNWTO;
3. Assessment of the Committee to the Report of the Secretary General and the Establishment of Panels;
4. Consultation between the Parties and the Panel or Committee; and
5. Recommendations of the Dispute Settlement and its Implementation.

We will now address these various phases in the dispute settlement procedure in further detail.

1. Registration of the Dispute Settlement

The provisions governing the registration process are as follows:

In the event of a dispute concerning the interpretation or application of the Global Code of Ethics for Tourism, two or more

130. *Id.* at 90.

131. World Tourism Organization, *Procedures for Consultation and Conciliation for the Settlement of Disputes concerning the Application of the Global Code of Ethics for Tourism*, UNWTO Doc. WCTE/DEC/4(II) (Oct. 2004), available at <http://dtxtq4w60xqpw.cloudfront.net/sites/all/files/docpdf/wctebrochureofprocedures.pdf> (endorsed by UNWTO General Assembly Resolution A/RES/506(XVI) of December 2005) [hereinafter *Procedures for Consultation and Conciliation*].

132. See *infra* Part III.C and Part III.D (it will be further elaborated below).

133. ICJ Statute, *supra* note 53, ch. II & IV.

stakeholders in tourism development may jointly submit the matter of such a dispute (hereinafter “the matter”) to the World Committee on Tourism Ethics (“the Committee”) as the body of the World Tourism Organization competent to settle such questions.¹³⁴

The term ‘stakeholders’ above is given explanation in the Consultation and Conciliation Procedure, as follows:

For the purpose of the Code, the term “stakeholders in tourism development” includes: national governments; local governments with specific competence in tourism matters; tourism establishments and tourism enterprises, including their associations; institutions engaged in financing tourism projects; tourism employees, tourism professionals and tourism consultants; trade unions of tourism employees; travellers, including business travellers, and visitors to tourism destinations, sites and attractions; local populations and host communities at tourism destinations through their representatives; other juridical and natural persons having stakes in tourism development including non-governmental organizations specializing in tourism and directly involved in tourism projects and the supply of tourism services.¹³⁵

This provision outlines the administrative procedure that is required, namely registration of the dispute to the Committee. The term “jointly” denotes that the registration shall not be done unilaterally, but instead must be conducted by the parties (two or more),¹³⁶ who agree to bring the dispute before the Committee. This is also confirmed in the Guidelines for the Consideration of Disputes,¹³⁷ which states that if the registration was done unilaterally, the Committee will not accept it.¹³⁸ Exceptions are only given if the party who filed the registration has no involvement or interest in the case.¹³⁹

Besides outlining the administrative procedure for registration, paragraph 1 of the Consultation and Conciliation Procedure also establishes two important features. First, the World Committee on Tourism Ethics, as an agency of the UNWTO, is vested with the competence to resolve disputes concerning the

134. Procedures for Consultation and Conciliation, *supra* note 131, ¶ 1, at 2 (footnote omitted).

135. *See id.* at 4 n.1.

136. World Tourism Organization, *Guidelines for the Consideration of Disputes*, ¶ 2 (Dec. 2005), available at <http://dtxq4w60xqpw.cloudfront.net/sites/all/files/docpdf/wcteguidelinesfortheconsiderationofdisputes.pdf> (adopted by the World Committee on Tourism Ethics in May 2005 [WCTE/DEC/3(III)] and endorsed by UNWTO General Assembly Resolution A/RES/506(XVI) of December 2005) [hereinafter Guidelines for the Consideration of Disputes].

137. *Id.*

138. *Id.* ¶ 3.

139. *Id.*

interpretation or implementation of the Global Code of Ethics for Tourism.¹⁴⁰ Second, this provision defines that parties may bring a dispute for resolution before the Committee.

Especially concerning the second point, there are various stakeholders in tourism development that can bring the dispute to be resolved before the Committee, including, *inter alia*, governments (national and local), tourism enterprises, tourism professionals, and local populations.¹⁴¹ This shows that a large number of entities can present a dispute for settlement to the Committee within the framework of the Global Code of Ethics for Tourism. Above, when discussing the sources of international law, it was mentioned that formally only particular subjects in international law have the capacity to conclude international treaties. In contrast, the Code and the Procedures for Consultation and Conciliation follow a broader approach by also including non-state actors. The fact that non-state actors are also given rights to bring a dispute concerning the Global Code of Ethics for Tourism illustrates how the state as the main subject of international law is encouraged to work together with non-state actors in global tourism activities.

2. *Written Answer Concerning the Acceptance of Dispute Settlement and Consultation through the Secretary General of UNWTO*

The Procedures for Consultation and Conciliation describe the procedure after registration as follows:

The Chairman of the Committee shall acknowledge receipt of the matter in a written communication to the parties and request the Secretary General to conduct consultations with the parties in order to prepare a report to the Committee, which shall be submitted within a period of thirty days, containing all the relevant facts, a summary of the positions taken by the parties and the Secretary General's suggestions concerning the recommendations that the Committee may wish to approve for the resolution of the various issues involved. If in the process of such consultations, the Secretary General and the parties have reached understandings as to the measures to be taken in order to settle the matter, the contents of such understandings shall be set out in the report of the Secretary General for the consideration of the Committee. Upon a request by the Secretary General, the

140. Procedures for Consultation and Conciliation, *supra* note 131, ¶ 1, at 2.

141. *See id.* at 4 n.1.

Committee may extend the period for the submission of the report.¹⁴²

According to this paragraph, the Committee shall declare its acceptance of the issue to the parties after it receives the registration of the dispute settlement by the parties. Furthermore, the Committee will request the Secretary General to undertake consultations with the parties in order to prepare the Committee's report. The report shall contain the relevant facts, a summary of the positions taken by the parties, and the suggestions given by the Secretary General to the Committee in providing advice for the settlement of the dispute. This procedure also provides that if the Secretary General and the disputing parties reach an agreement on measures that can be taken in order to resolve the dispute, the substance of the agreement should be included in the report given to the Committee.

Regarding the time frame for this process, in principle, the Secretary General is only given a period of 30 days to prepare and to submit its report to the Committee. However, at the request of the Secretary General, the Committee may grant a time extension for submitting the report.¹⁴³

This procedure can be analyzed as granting flexible authority to the Secretary General of the UNWTO to conduct a variety of constructive approaches directly with the parties in order to resolve the dispute. The authority of the Secretary General in this context should not be understood as a reduction of the role of the Committee. It may be seen as a linkage function between an administrative organ, the Committee, and an impartial body, represented by the Secretary General of the UNWTO.

3. Assessment of the Committee of the Report of the Secretary General and the Establishment of Panels

If the Secretary General transmits the report, the Committee must immediately follow it up:

The Committee shall examine the report of the Secretary General at a session following its submission and shall consider and approve recommendations to the parties regarding the settlement of the matter. To that end, the Committee may decide to set up a panel of three members who shall prepare draft recommendations for the approval of the Committee. As a general rule, the panel shall prepare the draft recommendations within the same session of the Committee at which the report of the Secretary General has been submitted, but if the nature of the matter, and other relevant

142. *Id.* ¶ 2, at 2.

143. *See id.*

circumstances and reasons, justify a lengthier discussion of the issues involved, the Committee may authorize the panel to submit the draft recommendations at a subsequent session.¹⁴⁴

This provision clearly states that after receiving the report, the Committee shall consider and approve the recommendations for dispute settlement to the parties. In this regard, the Committee may decide to establish a three-member panel (the “Panel”), which will prepare a draft recommendation to submit for approval to the Committee.

4. Consultations between the Parties with the Panel or Committee

The conciliation model organized by the Committee interestingly allows for a consultation process. Uniquely, this consultation can be held by the Committee or the Panel at the request of either party to the dispute. In this process, the Committee and the Panel may agree to adopt a number of issues into consideration for problem resolution by consensus. The procedure can be found in the following provision:

A panel set up by the Committee, in preparing draft recommendations, may decide to hold consultations with the parties. Such consultations may also be held by the Committee or the panel at the request of any of the parties at any time during the consideration of the matter. The Committee and a panel set up by the Committee may agree by consensus to adopt specific modalities for the consideration of a matter. Subject to the provisions in paragraph 5 below, the proceedings of the Committee and of a panel set up for the consideration of a matter shall be conducted in strict confidence.¹⁴⁵

Importantly, the whole process organized by the Committee and the Panel in considering the issue in dispute must be fully implemented in strict confidence. The protection of the reputation of tourism stakeholders seems to be the reason why this “closed procedure” was initiated.

5. Recommendations of the Dispute Settlement and Its Implementation

When the Committee has successfully delivered recommendations for the settlement of disputes, the recommendations should include the period of implementation of these recommendations by the parties. The Secretary General

144. *Id.* ¶ 3, at 2-3.

145. *Id.* ¶ 4, at 3.

must report to the Committee on the implementation of the recommendations. This procedure is regulated in paragraph 5 of the Consultation and Conciliation Procedure, which reads as follows:

In approving its recommendations to the parties the Committee shall decide upon the period within which the recommendations should be implemented by the parties. The Secretary General shall report thereon to the Committee. Such a report shall be considered by the Committee, which shall issue a press release on the substance of the settlement if its recommendations have been implemented. If one or more of its recommendations have not been implemented, the Committee shall decide on the action to be taken in the light thereof, including the holding of renewed consultations with the parties and the issuance of a press release containing the conclusions reached by the Committee.¹⁴⁶

This provision determines what the Committee should do if the recommendations have been implemented, and what it should do if they have not been implemented. As mentioned above, the assessment of whether or not the recommendations are implemented is based on the report of the Secretary General.¹⁴⁷

If the parties implement the recommendations, the Committee must give information to the media about the substance of the dispute resolution. But if it turns out that the recommendations are not implemented, then the Committee must decide what action needs to be taken. Included in these potential actions is repeating the consultation with the parties as well as giving a press statement regarding the conclusions reached by the Committee.

It can be observed that there is a difference between the procedure to deliberate recommendations and the implementation of the recommendations issued by the Committee. The procedure to deliberate recommendations is carried out in full confidentiality by the internal Panel and Committee. In contrast, the implementation of the recommendations, whether implemented by the parties or not, will be announced publicly.

D. Evaluation

The dispute settlement procedure for contentious cases (conflicts between particular parties) may seem relatively complicated, especially when compared to the application of the procedure for an advisory opinion. Indeed, the Committee is also authorized to consider questions raised by each stakeholder or UNWTO

146. Procedures for Consultation and Conciliation, *supra* note 131, ¶ 5, at 3.

147. *Id.*

member country on certain aspects of the implementation of the Global Code of Ethics for Tourism. In cases where it is considered appropriate, the Committee can provide a clarification or an advisory opinion. The relevant provision reads as follows: “The Committee may also consider questions submitted by individual stakeholders or Member States concerning specific aspects of the implementation of the Global Code of Ethics for Tourism. If it deems it appropriate, the Committee may issue clarifications or advisory opinions for future guidance.”¹⁴⁸

Besides the clarifications issued by the Committee on an issue raised by any stakeholder or member country of the UNWTO, the Committee is also competent to provide a clarification regarding the ethical principles contained in the Global Code of Ethics for Tourism on its own initiative.¹⁴⁹ The Committee can therefore be considered a full-authority organ for resolving disputes between parties and for providing clarifications and opinions with respect to the implementation and interpretation of the Code. However, all activities undertaken by the Committee remain controlled by the UNWTO, as the Committee must report to the UNWTO General Assembly regarding all issues concerning the implementation and interpretation of the Code that have been submitted to the Committee.¹⁵⁰

Additionally, no dispute settlement procedure can escape operational costs. The Consultation and Conciliation Procedure specifies that the costs spent during the consultation process, including costs incurred by the Committee and the Secretariat in the completion of the matter, are charged to the parties.¹⁵¹ However, there are exceptions to the imposition of fees to the parties, particularly if there are circumstances that “are considered exceptional by the Committee.”¹⁵²

The last provision of the Consultation and Conciliation Procedure provides for the possibility of reviewing these procedures by the Committee three years after they have been approved by the UNWTO General Assembly.¹⁵³ This review provision is put in place in order to accommodate the practical experiences gained by the Committee during the application of the procedures.¹⁵⁴

It is clear that the World Committee on Tourism Ethics is not a legal body with authority to issue a legally binding recommendation. However, one should note that during its meetings, the Committee takes legal considerations into account. For example, the UNWTO Legal Adviser shall participate, when necessary, and in

148. *Id.* ¶ 6, at 3.

149. Guidelines for the Consideration of Disputes, *supra* note 136, ¶ 4.

150. Procedures for Consultation and Conciliation, *supra* note 131, ¶ 7, at 4.

151. *Id.* ¶ 8.

152. *Id.*

153. *Id.* ¶ 9, at 4.

154. *Id.*

an advisory capacity, in the Committee meetings.¹⁵⁵

E. Practice

One has to admit that the procedure we just sketched out seems quite detailed and refined. This stands in a rather sharp contrast with the achievements of the World Committee on Tourism Ethics to date. Some information on the activities of the Committee can be obtained via reports on the activities of the World Committee of Tourism Ethics and via reports on the functioning of the UNWTO submitted by the UN Secretary General to the UN General Assembly. These reports generally lead to the conclusion that the record of the Committee so far has not been very impressive.

In the meeting of the World Committee on Tourism Ethics in Tunis, Tunisia on May 16-17, 2005, under the chairmanship of Mr. Diego Cordovez, the Committee examined the first four disputes received from individual applications.¹⁵⁶

In light of these cases, the Committee decided that clear guidelines for the consideration of disputes should be formulated and agreed on the following procedure:

1. The mandate of the Committee is to promote the acceptance and implementation of the Code by the different stakeholders in tourism development.
2. The Committee can act as a conciliatory body in cases of disputes between stakeholders on condition that the parties involved would jointly and voluntarily submit the dispute to the Committee.
3. Individual cases will only be considered by the Committee if submitted by a non-directly-involved party.
4. The Committee can provide, on its own initiative, a clarification regarding ethical principles included in the Code.¹⁵⁷

The Committee then scrutinized the cases submitted and decided that “[t]hree

155. World Tourism Organization, *Global Code of Ethics for Tourism: approval of the protocol of implementation*, Annex, *World Committee on Tourism Ethics, Body Responsible for Interpreting, Applying and Evaluating the Provisions of the Global Code of Ethics for Tourism*, WTO G.A. Res. A/RES/438(XIV), ¶ (b), at 4, UNWTO. Doc. A/14/RES Corr.2 (Jan. 2002), available at <http://ethics.unwto.org/sites/all/files/docpdf/unwtoresolutiona-res-438xivcorr22001.pdf>.

156. *Third meeting of the World Committee on Tourism Ethics: Committee monitors the implementation of the Code of Ethics*, WORLD TOURISM ORGANIZATION (May 26, 2005), <http://ethics.unwto.org/en/news/2005-05-26/third-meeting-world-committee-tourism-ethics> (last visited Sept. 25, 2012) [hereinafter *Third meeting of the World Committee on Tourism Ethics*].

157. *Id.*

of them do not qualify in terms of the above criteria.”¹⁵⁸ “In the fourth case, the Committee [was] expected to make its recommendation after consulting all the parties concerned, approximately by the end of 2005.”¹⁵⁹ Unfortunately, there is no further information provided on the UNWTO website about the recommendations that have been given. Further, the UNWTO published a resolution adopted by the 16th session of its General Assembly held in Dakar, Senegal, in November 2005, on the activities of the World Committee on Tourism Ethics,¹⁶⁰ but the resolution contains very little information on what the Committee has actually done.¹⁶¹ The 2005 report of the UNWTO to the UN General Assembly states that “[t]he members of the Committee are independent and impartial personalities from the public and private tourism sector”¹⁶² and that the Committee held three sessions between February 2004 and May 2005, adopting its rules of procedure and dealing with “[t]he first cases of dispute submitted to it for consultation,”¹⁶³ but further information on the outcome of those cases is not provided.

Mr. Cordovez expressed an optimistic expectation about the tasks that will be carried out by the Committee after the successful result of its work in Tunis. He affirmed: “This is the first time, after the arduous work aimed to define the procedures and make the Committee fully operational, that we are touching the essence of ethics in a practical manner. This is a decisive stage in Committee activities and Tunis will be remembered for that.”¹⁶⁴

A year later, in 2006, the Committee held a meeting in Bangalore, India. In the course of its deliberations, it finalized two applications submitted under the Procedures for Consultation and Conciliation; it also considered two discussion papers, “on the ethical questions related to overbooking” and on “press trips paid for by a host destination,” respectively.¹⁶⁵

158. *Id.*

159. *Id.*

160. See World Tourism Organization, *Activities of the World Committee on Tourism Ethics*, WTO G.A. A/RES/506(XVI), 16th Sess., Nov. 28–Dec. 2, 2005, UNWTO Doc. A/16/20 & A/60/20 Add.1 (Dec. 2005), available at <http://ethics.unwto.org/sites/all/files/docpdf/dakar2005a-res-506xvi.pdf>.

161. *Id.* ¶¶ 1 & 6 (declining to mention anything as far as the contents of the work by the Committee is concerned). See *id.* ¶ 1 (“Notes with satisfaction the important progress achieved by the committee under the effective guidance of its elected chairman Mr Diego Cordovez and commands the committee for the issues identified as requiring priority attention in its programme of work.”); see also *id.* ¶ 6 (“Acknowledges with satisfaction the efforts and work undertaken by the chairman and the members of the committee in developing a broadly acceptable mechanism for the settlement of disputes.”).

162. UNWTO Report, *supra* note 96, at 2.

163. *Id.* at 5-6.

164. *Third meeting of the World Committee on Tourism Ethics*, *supra* note 156.

165. *Fourth meeting of the World Committee on Tourism Ethics*, WORLD TOURISM ORGANIZATION (June 6, 2006), <http://ethics.unwto.org/en/news/2006-06-08/fourth-meeting-world-committee->

Besides work on contentious cases, the Committee has issued clarifications. As mentioned above, according to the Consultation and Conciliation Procedure the Committee may issue clarifications for future guidance.¹⁶⁶ The UNWTO Secretary General's Note concerning the Activities of The World Committee on Tourism Ethics on the Eighteenth session of the UNWTO General Assembly in Astana, Kazakhstan, October 5-8, 2009, mentions that:

The Committee is currently working on a "Corpus of clarifications",-[sic] through which it will issue its views on a series of timely topics of ethical or moral nature which are of general interest to the tourism community. These clarifications will be made widely known to the tourism stakeholders for future guidance.¹⁶⁷

Some information on the activities of the World Committee in addition to the consultation and conciliation procedures is provided in its 2010 report to the UN General Assembly.¹⁶⁸ The report mentions that "[o]ver the past six years, the Committee has discussed a wide array of ethical issues posing challenges to the tourism sector and has taken a position on each of them."¹⁶⁹ The topics that have been examined by the Committee include: "solidarity in tourism in case of natural disasters; HIV-related travel restrictions; accessible tourism for people with disabilities; protection of children against all forms of exploitation in tourism; and economic empowerment of women through tourism."¹⁷⁰ The report also states that "it is worth mentioning that, together with the conciliation mechanism, the Committee has introduced the possibility for individual stakeholders to consult it on specific ethical issues directly related to tourism."¹⁷¹ Again, it is not known to what extent individual stakeholders have actually made use of this possibility.

The report also refers to the clarifications concerning concrete topics that the World Committee has issued on its own initiative.¹⁷² The UNWTO Guidelines on Press Trips refer to, *inter alia*, honesty, fairness, independence, and accountability

tourism-ethics (last visited Sept. 25, 2012).

166. Procedures for Consultation and Conciliation, *supra* note 131, ¶ 6, at 3.

167. World Tourism Organization, *Activities of the World Committee on Tourism Ethics*, at 5, UNWTO Doc. A/18/19 (Oct. 5-8, 2009), available at <http://ethics.unwto.org/sites/all/files/docpdf/18-19-activitiesofcommitteethics2009kazakhstan-add2-2008surveycodeimplementation.pdf>.

168. *Implementation of the Global Code of Ethics for Tourism*, *supra* note 2.

169. *Id.* ¶ 7, at 4.

170. *Id.* ¶ 8, at 4.

171. *Id.*

172. *Id.* ¶ 9, at 4 ("Furthermore, on its own initiative, the World Committee on Tourism Ethics has issued a number of clarifications, *i.e.* advice and views concerning concrete topics of an ethical or moral nature that are of general interest to the tourism community. The most significant clarifications issued thus far concern press trips, overbooking and the distribution of service charges in the hospitality sector.").

in professional journalism related to the tourism industry.¹⁷³ The clarification therefore provides a variety of guidelines on how tourism operators and journalists should act when engaging in so-called “press trips.” The Committee calls on stakeholders in the media to be transparent regarding the nature of the trip and the benefits involved without sacrificing objectivity and to give an independent evaluation of the destination and the issues involved.

The Committee has also issued Guidelines on Overbooking by Air Carriers.¹⁷⁴ The Committee recognizes that the International Civil Aviation Organization (ICAO) as well as the European Union and United States have issued regulations dealing with overbooking by air carriers¹⁷⁵ and proposes a few general guidelines in case of overbooking, such as relying on “a system of priorities for denying boarding of loading passengers”¹⁷⁶ and relying on “a system of volunteers in the first instance for denying boarding, on a basis of negotiated compensation.”¹⁷⁷

Involuntary denial of boarding should, according to the guidelines, only occur “in extreme cases, with liquidated damages specified at the level sufficiently high as to discourage its need and right of legal redress identified as an alternative.”¹⁷⁸

F. The Reform of Committee Functions: The Abolishment of Conciliation Mechanisms

As we just indicated, the record of this World Committee on Tourism Ethics, as far as conciliation and dispute settlement are concerned, is thus far not very impressive. In fact, the Committee only dealt with one case in dispute resolution, and moreover, the outcome of the case is unknown. The Committee has taken position on a number of challenging issues in the tourism sector, but the results of those positions are not publicly available. The only visible result of the activities of the Committee is therefore the clarifications on press trips and overbooking by air carriers we just mentioned.¹⁷⁹

In anticipation of the 19th session of the General Assembly of the UNWTO, held in South Korea in October 2011, the UNWTO Secretary General, August 2011, prepared a Report on the World Committee on Tourism Ethics, which provides a

173. World Tourism Organization, *Guidelines on Press Trips*, at 1-3, available at <http://dtxtq4w60xqpw.cloudfront.net/sites/all/files/docpdf/guidelinespresstrips.pdf>.

174. World Tourism Organization, *Guidelines on Overbooking by Air Carriers*, available at <http://dtxtq4w60xqpw.cloudfront.net/sites/all/files/docpdf/guidelinesonoverbookingbyaircarriers.pdf>.

175. *Id.* ¶ 4.

176. *Id.* ¶ 5(a).

177. *Id.* ¶ 5(b).

178. *Id.* ¶ 5(c).

179. *See infra* Part III.E.

rather dark picture of the functions of the Committee.¹⁸⁰ The report states:

[N]early eight years after its formation, it has become increasingly clear that the body continues to be far from achieving its expected goals: the Code of Ethics appears to be still little known among tourism industry practitioners, tourists and the general public; the incorporation of its principles into international legislation, regulations or professional codes of conduct remains limited; and the conciliation procedures for the settlement of disputes established by the Committee have not proven to be a success.¹⁸¹

One can certainly understand the comment of the UNWTO Secretary General that the conciliation procedures for the settlement of disputes have not proven to be a success, given the relatively limited number of cases submitted to the Committee. It would, however, be more interesting to examine the precise causes of the little use that has been made of the World Committee. The statement that the incorporation of the principles of the Global Code of Ethics for Tourism would remain limited is more surprising, given the assessment made one year earlier by the UNWTO on the implementation of the Global Code of Ethics for Tourism, which was in fact quite positive.¹⁸²

One is left with the impression that there is strong skepticism on the part of the UNWTO Secretary General concerning the functioning of the World Committee on Tourism Ethics when reading the following proposal:

The views gathered over these last months have largely seemed to converged with those of the Secretary General, in that the Committee would require a decisive overhaul of its composition, functions and operational procedures if it is to enhance its effectiveness, affirm its independence and increase the knowledge and implementation of the Code of Ethics worldwide.¹⁸³

The Secretary General's concern also appears from the proposal concerning the funding of the Committee, which is motivated as follows: "In order to ensure the independence of the Committee and its members, specific funds should be set aside from the Organization's overall programme budget and allotted to the effective running of the Committee."¹⁸⁴

These two statements, taken together, clearly show the UNWTO Secretary General's lack of confidence in the independent functioning of the World Committee on Tourism Ethics, which may be due to the fact that the Committee has representatives of the tourism industry among its members.

180. Rep. on the World Committee on Tourism Ethics, *supra* note 63.

181. *Id.* ¶ 3, at 1.

182. See *Implementation of the Global Code of Ethics for Tourism*, *supra* note 2.

183. Rep. on the World Committee on Tourism Ethics, *supra* note 63, ¶ 5, at 1.

184. *Id.* ¶ 18, at 3.

This criticism led the UNWTO Secretary General to propose an amendment to the Protocol of Implementation entitled “World Committee on Tourism Ethics – Body Responsible for interpreting, applying and evaluating the provisions of the Global Code of Ethics for Tourism” (the “Reform Proposal”).¹⁸⁵ Surprisingly, it eliminates the function of the Committee in the context of conciliation for the settlement of differences concerning the application or interpretation of the Code. The Reform Proposal suggests that the three main functions of the Committee, *i.e.*, (a) the promotion and dissemination of the Global Code of Ethics for Tourism, (b) the evaluation and monitoring of the Code of Ethics’ implementation, and (c) conciliation for the settlement of differences concerning the application or interpretation of the Code of Ethics,¹⁸⁶ should be changed.

The main issue that must be highlighted is that there is no longer any mentioning of “conciliation” in the Reform Proposal. The UNWTO Secretary General recommends that “[t]he original conciliatory function of the Committee in terms of the settlement of disputes (as stipulated in Article 10 of the Code of Ethics) will be adapted to offer a more flexible and accessible mechanism of consultation/clarification to stakeholders, including civil society.”¹⁸⁷

The disputes that have been taken up by the World Committee on Tourism Ethics indeed caused some doubt about the effectiveness of its functioning. However, it is less clear whether this is due to the rather detailed and formalistic procedure, or whether there is indeed a lack of independence in the current Committee, as suggested in the proposal. As such, this may be an argument in favor of changing the membership of the Committee (*e.g.*, providing more independence from stakeholders in the tourism industry) rather than to completely remove the task of the Committee in conciliation and dispute resolution, since an alternative body that could fulfill this task would be equally lacking.

At the 19th session of the General Assembly of the UNWTO in South Korea, held in October 2011, the contents provided in the UNWTO Secretary General’s Reform Proposal were adopted by the General Assembly via Resolution A/RES/607(XIX) (the “Amended Protocol”).¹⁸⁸ It is necessary to note that with regard to the tasks assigned to the Committee, this Amended Protocol adopted the wordings as

185. *Id.* ¶ 24, at 4.

186. *Id.* ¶ 6, at 2.

187. *Id.* ¶ 13, at 2.

188. World Tourism Organization, *Protocol of Implementation of the Global Code of Ethics For Tourism, World Committee on Tourism Ethics - Body responsible for interpreting, applying and evaluating the provisions of the Global Code of Ethics for Tourism*, WTO G.A. Res. A/RES/607(XIX), Part I (rev.) (Oct. 2011), available at <http://dtxq4w60xqpw.cloudfront.net/sites/all/files/docpdf/protocolofimplementationwcteres6072011en.pdf> [hereinafter World Committee on Tourism Ethics Amended Protocol].

recommended in the Reform Proposal,¹⁸⁹ defining the new functions of the Committee as follows:

- i. monitoring, evaluating and reporting on the implementation of the Global Code of Ethics for Tourism;
- ii. research and issuance of reports, recommendations and observations on ethical matters related to tourism; and
- iii. the proposal and approval of texts of conventions and other legal instruments on specific issues related to the Code of Ethics provisions.¹⁹⁰

Most importantly, this protocol no longer mentions conciliation, meaning that the conciliation mechanism has been finally abolished. Some may see in this abolition of conciliation a confirmation of the doubts already expressed regarding the “complicated conciliation” during the initial establishment of the Global Code of ethics for Tourism.¹⁹¹

In light of the models of dispute settlement, the Amended Protocol, which reduces the role of the Committee to only a limited authority on consultation/clarification, can be deemed as a step back. The advanced procedures and mechanisms developed as a result of considerable efforts over many years now seem unusable. In this respect, it should be recalled that there were great expectations regarding the functioning of the World Committee on Tourism Ethics as a quasi-judicial body that would provide an informal forum for dispute settlement between various stakeholders in the tourism industry. Francesco Frangialli, the former Secretary General of the UNWTO, imagined:

It would indeed be a remarkable achievement if a conflict between a big multinational enterprise and a host community or NGO relative to the social or environmental repercussions of the creation of a new tourism resort in a developing country, for example, could be settled on good terms based on a set of principles that are freely accepted by everyone concerned.¹⁹²

Alain Pellet, a former chairman of the United Nations International Law Commission and the former legal adviser to the UNWTO, similarly expressed great hopes regarding conciliation:

189. Rep. on the World Committee on Tourism Ethics, *supra* note 63, ¶ 24(b), at 4.

190. World Committee on Tourism Ethics Amended Protocol, *supra* note 188, ¶ b, at 1.

191. See, e.g., Ghislain Dubois, *A Critical Overview of Voluntary Initiatives for a Sustainable Development of the Tourism Sector* 34 (Annals of Tourism Research, Jan. 2002) (presented at Travel & Tourism Research Association Conference, Fort Myers, Fla., June 2001), available at <http://www.tec-conseil.com/files/library/documents/ethics.pdf>.

192. See Francesco Frangialli, *Tourism: The Enhancement of Respect*, 38(2) UN CHRONICLE 51 (2001).

It must be acknowledged that instances of friction or dispute among the actors in tourism development are redoubtably numerous and their regulation particularly delicate on account of their often transnational nature. In these conditions, a supple, swift and inexpensive conciliation—even arbitration—mechanism can prove itself to be extremely useful.¹⁹³

Additionally, one should note that abolishing the conciliation function of the Committee actually raises a new legal issue, as Article 10(3) of the Global Code of Ethics for Tourism explicitly mentions the conciliation mechanism¹⁹⁴ and has not been revised. This is a potential source of confusion for those who read the Code, as they would be led to believe that the conciliation mechanism is still applicable. Furthermore, the official website of the World Committee on Tourism Ethics still contains materials on dispute settlement, including the Procedures for Consultation and Conciliation and the Guidelines for the Consideration of Disputes.¹⁹⁵

Reflecting the current situation, it is definitely the task of the Committee to ensure that it can still play a significant role in global tourism, even though it no longer possesses conciliation authority. The Committee should be empowered by The Madeira Message (on the Global Code of Ethics for Tourism) of 2007, when the members of the World Committee on Tourism Ethics “came to a unanimous conclusion that the application of the Global Code of Ethics for Tourism is of fundamental importance for the development and success of the tourism industry, and that it can make a valuable contribution to the sustainable growth of societies.”¹⁹⁶

IV. Concluding Remarks

In an era of globalization, increasing attention is given to the role of tourism, not only in promoting globalization, but also in potentially endangering sustainable development. The desire to let large parts of the world’s population enjoy the richness of cultural exchanges resulting from tourism can only be fulfilled in a sustainable manner if, *inter alia*, rights of indigenous populations are sufficiently taken into account. This idea, reflected in the notion of sustainable tourism, was one of the reasons for the United Nations World Tourism Organization to create a Global Code of Ethics for Tourism. The creation of such a “soft law” instrument

193. *See id.*

194. *See* Global Code of Ethics for Tourism, *supra* note 3, art. 10(3).

195. *World Committee on Tourism Ethics, supra* note 124.

196. World Tourism Organization, *The Madeira Message (on the Global Code of Ethics for Tourism)* (2007), available at <http://dtxq4w60xqpw.cloudfront.net/sites/all/files/docpdf/madeira-message-2014.pdf> (last visited Mar. 15, 2015).

undoubtedly fits into a more general tendency to incorporate norms concerning ethical behavior into codes of ethics (*e.g.*, with respect to corporate social responsibility). Both the UNWTO, and the Global Code of Ethics for Tourism it created, are interesting institutions from a traditional international law perspective. The UNWTO is a specialized UN agency, though its members are not only the traditional players in international law, but also a multitude of other stakeholders in the tourism world. It is therefore difficult to classify the Global Code of Ethics for Tourism as a traditional source of international law. We argued that the Code cannot be classified as a treaty, international custom, or general principle of international law. Thus, the best label for the Global Code of Ethics for Tourism is probably a soft law instrument. An obvious consequence of this categorization is that, as the Code itself and the UNWTO often stress, it does not have a formally legally binding character. However, that does not mean that the Code does not have any legal importance at all. A 2010 survey on the implementation of the Global Code of Ethics for Tourism showed a wide adherence to the Code, as many states have incorporated its principles in domestic legislative texts. Moreover, these principles have also translated into ethical codes for tourism at a national level.

The creation of such a non-binding Global Code of Ethics, as we have argued, fits into a more general tendency in international relations (especially at the level of the OECD) to invoke soft law rather than legally binding (hard law) instruments, such as conventions. The soft law character of the Code may undoubtedly have the advantage of easier adoption as well as of amendment or implementation in a more flexible manner.

An important feature of the Global Code of Ethics for Tourism is the creation of the World Committee on Tourism Ethics. The Committee was given the task of assisting the implementation of the Code and of providing a forum for flexible conciliation and dispute resolution. In that sense, the creation of the Global Code of Ethics for Tourism and the World Committee on Tourism Ethics are, as we argued, tokens of the “new sovereignty” in international relations, which calls for a more managerial approach towards compliance with international instruments. In principle, the World Committee on Tourism Ethics can fulfill this managerial function by reacting to necessary changes or new developments in a flexible way, providing clarifications or guidelines in its interpretation of the Global Code of Ethics for Tourism.

Obviously, tourism activities can give rise to many potential conflicts, not only between commercial stakeholders, but also between various public authorities and other stakeholders. The World Committee on Tourism Ethics was also created to provide the appropriate forum to resolve conflicts via a conciliation and dispute

resolution procedure. However, the Committee does not seem to have fulfilled its ambitions as far as dispute resolution is concerned. Only a few stakeholders have found their way to the World Committee on Tourism Ethics; only one case was accepted for dispute resolution, and the outcome is unknown. Additionally, transparency also seems to be limited.

A review of the work of the World Committee on Tourism Ethics in this respect has led to a rather substantial reform proposed by the UNWTO Secretary General. In fact, the proposed reform amounts to removing the task of conciliation from the Committee's competence. Given the comments made by the UNWTO Secretary General on the apparent lack of independence of the Committee, there may be arguments in favor of changing the composition of the World Committee on Tourism Ethics. However, the current proposal to simply abolish the dispute resolution function of the Committee seems a bridge too far.

The story of global tourism dispute settlement before the World Committee on Tourism Ethics has dramatically changed after the UNWTO General Assembly took into consideration the UNWTO Secretary General's Reform Proposal and approved its contents, specifically concerning the issue of eliminating the conciliation mechanism. It becomes clear that the new functions of the World Committee on Tourism Ethics have, unfortunately, removed the authority of the Committee in settling global tourism disputes. Consequently, there will no longer be an independent professional body under the UNWTO system that one can turn to for dispute resolution between tourism industry stakeholders.