



**Sustainable
tourism
in international
environmental law
& policies**

The complex relationship between tourism and environment

Tourism as a source of environmental degradation

Clean environment as a pull factor for tourism

Tourism as a means of environmental protection

Tourism and environment in international law & policies: an overview

The role of the UN World Tourism Organization

- The Global Code of Ethics for Tourism

The regulation of tourism in international environmental agreements

- The Guidelines on Biodiversity and Tourism Development under the Convention on Biological Diversity

Environmental vs. investment protection in the tourism sector

- The *Aven v. Costa Rica* case

The UN World Tourism Organization

- International organization established in 1975 with the fundamental aim of "the promotion and development of tourism" (UN WTO Statute, Art. 3)
 - Since 2003 is a specialized agency of the United Nations
- Membership
 - Full Members (160 States)
 - Associate and Affiliate Members (non-self-governing territories, international organizations, NGOs, companies)
- The Organization is not endowed with the power to adopt binding acts
 - Its resolutions, declarations and charters have soft law character
 - It may prepare the text of treaties to be opened to the ratification by Member States



Tourism and environment in the practice of the UN WTO

- The Manila Declaration on World Tourism (1980)

"The satisfaction of tourism requirements must not be prejudicial to the social and economic interests of the population in tourist areas, to the environment or, above all, to natural resources, which are the fundamental attraction of tourism"

- The Hague Declaration on Tourism (1989)

Principle III(2): In view of th[e] intrinsic inter relationship between tourism and environment, effective measures should be taken to: [...] (b) Promote the integrated planning of tourism development on the basis of the concept of “sustainable development” [...]

- The Lanzarote Charter for Sustainable Tourism (1995) and Agenda 21 for the Travel and Tourism Industry (1997)

Sustainable tourism development meets the needs of present tourists and host regions while protecting and enhancing opportunity for the future. It is envisaged as leading to management of all resources in such a way that economic, social, and aesthetic needs can be fulfilled while maintaining cultural integrity, essential ecological processes, biological diversity, and life support system

The Code of Ethical Tourism (1999)

Soft law instrument distilling non-binding ethical principles addressing all relevant stakeholders in the tourism sector

- Art. 1: Tourism's contribution to mutual understanding and respect between peoples and societies
- Art. 2: Tourism as a vehicle for individual and collective fulfilment
- Art. 3: Tourism, a factor of sustainable development
- Art. 4: Tourism, a user of the cultural heritage of mankind and contributor to its enhancement
- Art. 5: Tourism, a beneficial activity for host countries and communities
- Art. 6: Obligations of stakeholders in tourism development
- Art. 7: Right to tourism
- Art. 8: Liberty of tourist movements
- Art. 9: Rights of the workers and entrepreneurs in the tourism industry

Tourism and sustainable development (Art. 3)

1. All the stakeholders in tourism development should safeguard 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;
2. All forms of tourism development that are conducive to saving rare and precious resources, in particular water and energy, as well as avoiding so far as possible waste production, should be given priority and encouraged by national, regional and local public authorities;
3. The staggering in time and space of tourist and visitor flows, particularly those resulting from paid leave and school holidays, and a more even distribution of holidays should be sought so as to reduce the pressure of tourism activity on the environment and enhance its beneficial impact on the tourism industry and the local economy;
4. Tourism infrastructure should be designed and tourism activities programmed in such a way as to protect the natural heritage composed of ecosystems and biodiversity and to preserve endangered species of wildlife; the stakeholders in tourism development, and especially professionals, should agree to the imposition of limitations or constraints on their activities when these are exercised in particularly sensitive areas: desert, polar or high mountain regions, coastal areas, tropical forests or wetlands, propitious to the creation of nature reserves or protected areas;
5. Nature tourism and ecotourism are recognized as being particularly conducive to enriching and enhancing the standing of tourism, provided they respect the natural heritage and local populations and are in keeping with the carrying capacity of the sites

The World Committee on Tourism Ethics (Art. 10)

Implementation of the principles of the Global Code of Ethics for Tourism

3. [Stakeholders in tourism] 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.

- 1999-2010: scant resort to the conciliation function of the World Committee
- The 2011 Reform
 - Abolishment of conciliation mechanisms
 - Purely advisory function

The 2019 Framework Convention on Tourism Ethics



World Committee on
 Tourism Ethics

For Responsible Tourism

- It largely reproduces the Code of Tourism Ethics
- It will translate the ethical principles contained therein into legally binding commitments
- An Optional Protocol reintroduces the conciliation function of the World Committee on Tourism Ethics
- Not yet entered into force

Other initiatives led (or contributed) by the UN WTO

- The Sustainable Tourism programme of the 10-Year Framework of Programmes on Sustainable Consumption and Production (10YFP)
 - 10YFP: global framework for action to enhance international cooperation and accelerate the shift towards sustainable consumption and production (SCP) patterns, launched in 2012 at the Rio+20 Conference
 - 6 Programme areas (sustainable food system; consumer information; sustainable lifestyles and education; sustainable public procurement; sustainable buildings and construction; and **sustainable tourism, including ecotourism**)
 - Interplay with SDG 12 (responsible production and consumption)
- The Tourism for SDGs platform
 - Online platform where stakeholders in tourism may share their commitments and contributions to the implementation of SDGs



The regulation of (eco-)tourism in international environmental agreements

- Tourism is seldom regulated in an explicit and comprehensive manner by environmental treaties
 - But see the Protocol on Tourism to the Alpine Convention (1998)
- COPs have addressed the issue by adopting (non-binding) guidelines
 - Antarctic Treaty
 - Manual of Regulations and Guidelines Relevant to Tourism and Non-Governmental Activities in the Antarctic Treaty area (Decision 6 (2021))
 - Ramsar Convention
 - Resolution XI.7 on Tourism, recreation and wetlands (2012)
 - Convention on Biological Diversity (CBD)
 - Guidelines on Biodiversity and Tourism Development (2004)

The Convention on Biological Diversity (CBD) and eco-tourism

- The Convention in a nutshell
 - Objectives (Art. 1): "the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources, including [...] by appropriate transfer of relevant technologies [...] and by appropriate funding"
 - Normative preference for *in situ* conservation (Arts. 8 and 9)
 - Obligation incumbent on developed countries to provide developing ones with resources needed to fulfil their obligations under the Convention (Art. 20)
- Eco-tourism and the CBD
 - "[T]ourism that relies on the existence and maintenance of biological diversity and habitats" (CBD Decision V/25 (2000). Biological diversity and tourism).
 - Eco-tourism as a market(ing)-based mechanism: the development of eco-tourism projects in protected areas may attract financial support insofar as it is aimed at achieving the Convention's goals, while striving to ensure self-sufficiency once financial support ends (Peralta 2017)



The CBD Guidelines on Biodiversity and Tourism Development

- They are addressed to all stakeholders with a view to securing the application of the Convention provisions in the development and management of tourism policies, strategies, projects and activities
- Three key principles
 - *In-situ* conservation
 - Sustainable use of biodiversity
 - Involvement of indigenous and local communities



In-situ conservation

- Definition
 - conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings (Art. 2(8))
- Ecotourism developers have a direct economic interest in conservation
 - ... and the same goes for local communities if they benefit from biodiversity
- Part of tourism revenues should therefore be devoted to financing conservation of protected areas, education, research programmes, or local community development (Guidelines, para. 28)

Sustainable use

- Definition
 - the use of components of biological diversity in a way and at a rate that does not lead to the long-term decline of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations (Art. 2(16))
- Minimization on negative effects on biodiversity by carrying out environmental impact assessment (Guidelines, para. 34)

Involvement of indigenous and local communities

- Benefit sharing
 - The main goals of the Guidelines cover "fair and equitable sharing of benefits of tourism activities, with emphasis on the specific needs of the indigenous and local communities concerned" (Guidelines, para. 22(c))
 - Risks of conflicts between ecotourism and traditional activities (e.g. hunting)
- Multi-stakeholder participation
 - Decision-making should include meaningful consultation with indigenous and local communities affected by projects in order to ensure, inter alia, respect for the customs and traditional knowledge, innovations and practices of indigenous and local communities, and adequate funding and technical support for effective participation (Guidelines, para. 56)

Environmental vs investment protection in the tourism sector

- Legally binding norms on tourism are not common in international environmental law and even more rare is the possibility for an international court to rule on such issues
- Yet, the relationship between environment and tourism may come into play in judicial proceedings relating to a different, and far more institutionalized, field of international law: international investment law
- The need to fulfil protective obligations under international environmental law may be invoked by States to justify measures taken to halt the realization of unsustainable tourism projects by foreign investors

Aven v. Costa Rica (ICSID, 2018)

- Dispute concerning investments comprising several parcels of land and a concession site in Esterillos Oeste on Costa Rica's Pacific to develop a touristic project, the "Las Olas Project".
- The investor invoked the investment provisions of the DR-CAFTA agreement, by complaining of a series of judicial and administrative actions taken by Costa Rica's authorities, which ended up with the shutting down of the project and which were justified with the need to avoid environmental harm.
- Costa Rica replied that those measures were necessitated by the duty to protect the wetlands and biodiversity as compelled by the Ramsar Convention and the CBD. In this respect, it relied on Art. 10.11 DR-CAFTA, whereby Parties shall not be prevented “from adopting, maintaining, or enforcing any measure otherwise consistent with this Chapter that it considers appropriate to ensure that investment activity in its territory is undertaken in a manner sensitive to environmental concerns.”
- The Arbitral Tribunal ruled in favour of Costa Rica