



## SEVENTH INTERNATIONAL TOURISM FORUM FOR PARLIAMENTARIANS AND LOCAL AUTHORITIES

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### Plenary session 5

### Consumer protection

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What I am being called upon to do today is a bit of a "mission impossible"; so vast is the subject—or subjects, I should say—mentioned in the programme, and its aspects are so diverse.

In any case, I believe it is an excellent idea to include this subject on the agenda of this Forum insofar as matters related to the protection of consumers fall under the purview of laws passed by parliaments and implemented by local destinations, regardless of whether such laws are general or specific to the tourism sector.

In order to try to clarify the subject, I think that we can draw a distinction between two types of matters:

1. on the one hand, matters related to the **facilitation** of international tourist travel and stays, that is to say, the set of standards and practices that facilitate border-crossing, make it easier to organize tourism travel and that are aimed at lowering barriers to such travel;
2. and on the other, matters related, strictly speaking, to **consumer protection**, that is to say the standards, laws, regulations and practices that govern relations between tourists and their service providers, whether such service is that of a transporter, a travel agent, a tour operator, a hotelier, or in general, any organizer of an activity offered to tourists.

#### 1. First of all: **Facilitation**

The matter of travel facilitation has been addressed, for many years now, by a wide range of international texts. Among those that come to mind of course are the Global Code of Ethics for Tourism, especially Articles XXXX, and the relevant resolutions of the UNWTO General Assembly, but also a diverse set of texts ranging from international treaties to simple recommendations, whether of worldwide scope or within a regional framework. This is the case of texts originating from the United Nations and its regional commissions,

The International Civil Aviation Organization,

The International Maritime Organization,

The World Health Organization,

OECD,

The Organization of American States,

The Association of Caribbean States,  
The Andean Community,  
The MERCOSUR,  
The League of Arab States,  
The Organization of Islamic Conference,  
The Asia-Pacific Economic Cooperation,  
The Association of Southeast Asian Nation,  
The Council of Europe,  
The European Union,  
The Economic Community of Central African States,  
The Southern African Development Community,  
The West African Economic and Monetary Union,  
The International Road Transport Union

The list is long, and I have surely left some out.

What are these texts about?

Basically, the very wide range of subjects that can be considered to be elements of facilitation can be grouped together; it appears to me, into seven main areas:

- Safety and security
- Passport and visas formalities, travel documents, facilitation of free movement
- Travel advisories or advice to travellers
- Transport facilitation
- Health formalities
- Financial issues, currency formalities, taxes, fees and duties
- Liberalization, trade policy, free movement of services, customs policy

One of the most comprehensive and most recent texts, of universal scope and having the status of an international treaty is constituted by Annex 9 of the Chicago Convention on International Civil Aviation as given in its 12th edition dated July 2005. This very important text deals with a large scope of matters like:

- Entry and departure of aircraft
- Documents required for travel
- Security of travel documents
- Entry visas and exit visas
- Embarkation cards
- Certificates of vaccination
- Entry procedures, departure procedures and inspection of travel documents
- Transit requirements
- Disposition of baggage separated from its owner
- Inadmissible persons and deportees
- Facilities and services in international airports including passenger processing on departure, on arrival and in transit
- Implementation of public health, emergency medical relief and animal quarantine measures
- Passenger amenities
- Access to airports and access to air services

As we can see, this text goes well beyond just air transport, notably with regard to travel documents, visas and vaccination certificates.

Whatever the quality of these texts may be, allow me to make two comments here:

1. First of all, while these international texts on facilitation are quite numerous and apparently comprehensive, each one of us—just like any other tourist—can attest to the fact that in the real world many improvements are still needed and possible in this area. I am thinking especially about visa issuance procedures, border-crossing control procedures, baggage losses and delays, amenities provided to passengers in airports or airport signage. The gap that can be seen between the texts and the reality can be explained, it appears to me, by the fact that the majority of these texts are of a non-binding nature or because they remain at a very high level of generality. For example, in Annex 9 of the Chicago Convention, many provisions that are highly useful and quite beneficial for travellers are only given the legal standing of "recommended practices" as opposed to being mandatory rules. It seems to me that appreciable advances can perhaps be made by dealing with these matters in a more in-depth manner at the regional or sub regional level.
2. A second observation: in a highly sensitive and important subject such as the issuance of visas as well as entry formalities and procedures, it seems to me that there is often confusion between:

on the one hand, the sovereign right of States to grant or deny entry to their territory, or to share this right with other States—and I hasten to make clear that this right is obviously absolute, not least owing to considerations having to do with security and the fight against terrorism;

and, on the other hand, the techniques applied in order to exercise this right. An examination of national, sub regional and regional practices indeed shows that, in quite a majority of cases, the application of electronic technologies for data capture, visa applications, biometric identification, controls upon entry and departure make it possible to considerably simplify border-crossing without in any way undermining the sovereign right of States. I would go even further and say that, today, such technologies make it possible to standardize procedures, or even to jointly manage these procedures while maintaining fully autonomous decision-making for each State or group of States.

In this regard I will cite an example that I think is not the best.

As you are no doubt aware, with the so-called "Schengen Agreements", the European Union (or at the very least part of the European Union) has attained a high degree of integration of policies on entering and staying in the territory of the Member States, whether in terms of visa issuance or procedures of admission and non-admission. More recently, several European countries have implemented, often on an experimental basis, automated entry and departure control systems. Now then, despite the high level of European integration in this area, the automated control technologies are different in Germany, in France and in the Netherlands, and require different kinds of data capture. I am not sure that this example is... exemplary!

To conclude my remarks on this point, I think that international cooperation is still weak in the field of techniques for the issuance of visas, and entry procedures. Indeed, it is of no use to establish regional or sub regional agreements on policies regarding visas if, in the real world, tourists have to queue for two hours in front of an embassy that could be hundreds of kilometres away from their home, or if they need to fill out visa application forms requiring excessive information or even data that is useless or redundant, if they have to wait a month or even longer to get a response, if they still need to fill out forms by hand aboard airplanes and if they have to stand in line for an hour to go through the police checkpoint at the destination airport. Now, all that is needed to efficiently deal with all this is technical cooperation.

2. I would like to move on now to the second subject, consumer protection.

In order to address this question, I think that we should first of all keep in mind that tourists find themselves in a much more vulnerable situation than consumers who are buying a product from the supermarket around the corner.

Tourists are indeed always in a vulnerable situation; away from their homes, out of their 'comfort zones', without knowing local customs, local risks, local language and local laws.

Tourists must be informed in a fair manner and tourism operators must obey common rules which eliminate individuals or enterprises that seek to take advantage of tourists' vulnerability. It's an essential condition in order for the market to function

This is also an essential condition in order for tourists/consumers to have confidence, as without confidence, they either don't buy or buy very little.

For several decades now, most of the different global partners of the tourism sector, whether public or private, have been aware that the development of tourism at the global scale requires appropriate rules and principles for the protection of host populations, tourists, natural resources, the environment and heritage. The expression of this concern has led, notably, to the creation of the Global Code of Ethics for Tourism (GCET) in 1999.

Since then, the UNWTO has engaged in intensive activity to promote the application of the rules and principles of the GCET. Nevertheless, its implementation has proven to be difficult:

- the GCET still suffers from too little awareness on the part of professionals and the general public, and even on the part of many administrations;
- Few pieces of legislation have been passed with the aim of transposing its principles into national laws;
- Despite encouraging advances in certain specific areas, the effective observance of its principles remains limited;
- Lastly, the tenuous dispute settlement mechanism established by Article 10 of the Code and instituted by the Protocol adopted by the XIV General Assembly is little-used.

There are multiple causes of this situation. Among the principal ones are:

- The UNWTO's small size and modest means relative to the vastness of the tourism sector make it difficult to promote the GCET. It has however to be highlighted that, since the creation of the Permanent Secretariat of the World Committee on Tourism Ethics (WCTE) in Rome in November 2008, this situation has slightly improved;
- The extreme diversity of the types of actors and activities involved in or related to tourism: operators engaged in transport, accommodation, activities aimed at tourists, management of sites, marketing, as well as national, regional and local administrations;
- The current composition and agenda of the WCTE;
- The extraordinarily large number of actors involved in tourism, coupled with the small average size of enterprises and the low level of concentration of the sector; and
- Above all, the non-binding nature of the GCET which makes governments wary of transposing its principles into national law, fearing that this would lead to distortions in competition and hurt the country's tourism and enterprises, as such implementation would not be generalized at the worldwide level.

Furthermore, very recently, the considerable impact that the "ash cloud" had on tourism activity in Europe and North Africa has brought to light the serious drawbacks resulting from the lack of global regulations governing our sector under international law. Indeed, at the height of the crisis, more than one million travellers over the world found themselves stranded far from their homes without the possibility of returning, for periods of up to ten days. Numerous cases have been pointed out where tourists found themselves in situations of complete neglect. The UNWTO thus realized, through the numerous requests and reports it received, that there was an extremely high level of confusion with

regard to the attribution of responsibilities in terms of the obligation to assist tourists in situations of force majeure and regarding rights on compensation for damages they may have suffered, which in certain cases were quite substantial.

The issue of the rights and obligations of both tourists/consumers and operators, as well as that of the guarantees that they could legitimately demand arose more than thirty years ago in the European countries, during a time when, in a context of rapid growth of international tourism, the European region represented nearly 70% of the generating market and had to address the consequences of certain dysfunctions in the tourism industry (deficient or misleading information to consumers, serious consequences due to the insolvency or bankruptcy of travel organizers, etc.).

The European Union, in its directive on package travel, package holidays and package tours of 13 June 1990 established certain rules concerning:

- The information provided to tourists-customers
- Responsibility for the performance of the contract and for assisting the consumer
- Modifications of contracts
- Insolvency of travel agencies or tour operators.

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

Over the past thirty years, the world tourism landscape has changed profoundly.

- The number, market share, and geographical diversity of destinations have increased substantially and this trend will become more and more accentuated (stronger position of Asia and emergence of Africa and Latin America).
- The number and geographical diversity of tourists have grown spectacularly. The effect of this trend, which will become stronger, will be to multiply the risks of incidents in the formalization and performance of contracts between operators and tourists, as well as the risk of insolvencies of operators.

The absence of international regulations or clear guidelines governing the rights and obligations of tourists/consumers and of travel organizers—at a time when the number of tourists is rising, destinations are becoming increasingly diverse, and generating countries are becoming more and more numerous—will give rise to greater uncertainty in the tourism industry. This uncertainty, in and of itself, is liable to constitute a barrier to the development of international tourism, particularly for new destinations or in terms of tourist flows from new generating countries.

In this context, UNWTO appears to be well positioned for the task of drafting an instrument of international law that can provide a minimum level of guarantees for tourists/consumers as well as for travel organizers at a world level.

In order for this initiative to have the greatest chance of success, it is necessary for the scope of this new instrument of international law to be rigorously and clearly defined. To avoid possible overlaps or conflicts of interest, the idea is to ensure that the instrument takes fully into consideration:

- Matters that are under the jurisdiction or are dealt with by other international organizations
- An overly large or too heterogeneous scope of application
- Matters already covered by one or more international conventions, or
- Matters that, having already been dealt with by the UNWTO, have led to differences in opinion among the members that are too great to overcome if we hope to forge a consensus on a normative text.

Furthermore, the new instrument should concentrate on matters that are directly linked with the rights and obligations of tourists/consumers and travel organizers. In order to facilitate its drafting, adoption

and implementation, the instrument should preferably be modelled upon regulations that have already proven themselves in a regional context.

Following the Executive Council hold in Iguazu last spring, the Minister of Tourism of Costa Rica, through his representative Mr. Hermes Navarro, transmitted to the UNWTO Secretariat a preliminary draft of a text aimed at regulating relations between passengers and airlines, particularly in cases of denied boarding. I would like, on behalf of UNWTO SG, to seize this opportunity to thank the Costa Rican government for this excellent work. This matter is certainly one element to be considered by UNWTO's global policy regarding tourist protection. However, as it falls within the competence of the International Civil Aviation Organization (ICAO), our last Executive Council, hold in Kish, Iran, two weeks ago, decided to propose to ICAO that specific work be carried out in a concomitant manner under the joint supervision of both organizations.

The same Executive Council meeting examined the scope of the new instrument which could include the following subjects:

## **1. Package Travel**

### **1.1. Definition (including "traditional" package travel and "dynamic packages")**

### **1.2. Information provided to consumers**

1.2.1: Required information for concluding a contract

1.2.2: Required information prior to travel

1.2.3: Information in the event of last-minute booking

1.2.4: Types of information materials

### **1.3. The contract and its handling**

1.3.1: Minimum provisions of the contract

1.3.2: Conditions of transfer of the contract

1.3.3: Conditions of price modifications

1.3.4: Conditions of revision of other provisions of the contract

1.3.5: Conditions of withdrawal from the contract

1.3.6: Conditions of modifications in the performance of the contract

1.3.7: Handling of complaints

### **1.4. Responsibility of the travel organizer and/or vendor-retailer**

1.4.1: Liability in the event of partial or total non-performance of the contract

1.4.2: Assistance to consumers in difficulty, notably in the event of force majeure

### **1.5. Security in the event of insolvency**

1.5.1: Responsibility of the travel organizer and/or vendor-retailer

1.5.2: of the transport company (1)

1.5.3: of the operator providing accommodation (1)

1.5.4: any other operator whose service is included in the package (1)<sup>1</sup>

## **2. Accommodation**

### **2.1. Definition**

### **2.2. Information provided to consumers**

### **2.3. Handling of contracts**

### **2.4. Liability of accommodation providers, including that relative to the property of their guests**

Following the unanimous decision of our Executive Council, we are now preparing the works, agenda and scope of the working group dedicated to draft the said treaty.

Every support from every member of parliament will be obviously welcome.

I thank you for your attention

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