

# Sustainable Tourism: Emerging Global and Regional Regulation

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## I. INTRODUCTION

Tourism has been defined as "the sum of the phenomena and relationships

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arising from the travel and stay of non-residents, in so far as they do not lead to permanent residence and are not connected with any earning activity."<sup>1</sup> Tourist activities have grown into one of the world's largest industries; they are a part of people's lifestyles and a factor in establishing social status. In addition, tourism has become both a means of environmental protection and a significant source of environmental degradation.

Since the 1992 Earth Summit in Rio de Janeiro, an increasing number of inter-governmental initiatives toward the development of environmentally friendly forms of tourism have been adopted. As Phillipe Sands noted in 1995:

[R]ecent developments suggest that tourism may also soon be the subject of a new body of rules aimed at addressing environmental degradation from this source. The adverse environmental effects of tourism and related recreational activities have led to the adoption of national environmental standards, and at the international level restrictions have been imposed.<sup>2</sup>

The purpose of this study is to examine this new body of international rules and its evolving trends. To these ends, this article will examine the work of some international organisations as well as some relevant existing treaties and essential instruments of soft law. Part II will describe the relationship between tourism and the environment, focusing on the various costs and benefits that result from tourism. Part III focuses on the development of the concept of sustainability in the tourism industry and will examine some of the most important instruments of soft law that deal with this topic. Part IV addresses some international conventions relevant to sustainable tourism. Finally, Part V will present some concluding observations.

## II. THE RELATIONSHIP BETWEEN TOURISM AND SUSTAINABLE DEVELOPMENT

### A. ECONOMIC IMPORTANCE OF TOURISM

In recent decades, the tourism industry, which includes activities such as transportation, accommodation, recreation, and catering, has become a sector of great economic importance. Its total turnover volume is around US \$3.4 billion,

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1. This basic concept was broadened so that it now includes other forms of business and vocational travel that do not entail permanent residence or remunerated employment from within the places visited. See A.J. BURKART & S. MEDLIK, *TOURISM: PAST, PRESENT AND FUTURE* 41-42 (1981).

Tourism can also be viewed as: a social phenomenon, not a production activity; the sum of the expenditures of all travellers or visitors for all purposes; an experience or process, not a product. See JOHN P. LEA, *TOURISM AND DEVELOPMENT IN THE THIRD WORLD* 24 (1988).

2. PHILLIPE SANDS, *PRINCIPLES OF INTERNATIONAL ENVIRONMENTAL LAW I: FRAMEWORKS, STANDARDS AND IMPLEMENTATION* 488 nn.256, 257 (1995).

which represents 5.5% of the world's gross national product (GNP).<sup>3</sup> In fact, tourism is one of the largest and steadily growing industries in the world. As one commentator noted:

The receipts from international tourism grew at an average annual rate of 9 per cent for the ten-year period from 1988 to 1997, reaching [US] \$443 billion in 1997. Tourist arrivals world-wide increased by 5 per cent per annum on average during the same period.<sup>4</sup>

The World Tourism Organisation (WTO) forecasts that international tourism will grow at the rate of 4% per annum and by the year 2010, international arrivals will exceed 970 million with receipts in the range of US \$1.5 trillion.<sup>5</sup> According to the WTO, the receipts from international tourism represent over 8% of global exports of goods and almost 35% of the global exports of services in 1997.<sup>6</sup> Tourism ranks as one of the top sources of employment, employing 11.3 million people worldwide in the hotel industry alone.<sup>7</sup>

For all these reasons, tourism is a relevant component of international and national development policies. Consequently, developing nations have a considerable stake in the tourism industry, and in a number of these countries, tourism is one of the main sources of income.<sup>8</sup> Furthermore, other important industries, such as crop agriculture or mineral extraction, have given way to tourism as the major source of foreign exchange earnings for some developing countries.<sup>9</sup>

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3. See BIRGIT STECK, *SUSTAINABLE TOURISM AS A DEVELOPMENT OPTION: PRACTICAL GUIDE FOR LOCAL PLANNERS, DEVELOPERS AND DECISION MAKERS* 5 (1999).

4. *Development of Approaches and Practices for the Sustainable Use of Biological Resources, Including Tourism: Note by the Executive Secretary*, U.N. Development Programme, Subsidiary Body on Scientific, Technical, and Technological Advice, 4th mtg. Agenda Item 4.8, ¶ 8, U.N. Doc. UNEP/CDB/SBSTTA/4/11 (1999) [hereinafter *UNEP, Sustainable Use and Tourism*].

5. See Anthony Ellul, *Integrating Sustainable Principles in the Development of Tourist Projects*, 84 NATUROPA 5 (1997).

6. See *UNEP, Sustainable Use and Tourism*, *supra* note 4, at 8.

7. See *Report of the Secretary-General on Tourism and Sustainable Development, Addendum: Tourism and Economic Development*, U.N. Commission on Sustainable Development, 7th Sess., at 2, U.N. Doc. E/CN.17/1999/5/Add.1 (1999) [hereinafter *UNCSD, Tourism and Economic Development Addendum*].

"The tourism industry employs an estimated 212 million people world-wide (directly and indirectly)." STECK, *supra* note 3, at 5. On the OECD's studies concerning tourism and employment, see Mo, *Sustainable Tourism and Employment*, 84 NATUROPA 28 (1997).

8. The links between tourism and development are so close and the dependence between developing countries and tourism is so strong that the U.N. Commission on Sustainable Development stated that in the field of sustainable tourism the major challenge for the international community is to assist developing states in promoting tourism within the framework of sustainable development without damaging the environment. *Report of the Secretary-General on Tourism and Sustainable Development*, U.N. Commission on Sustainable Development, 7th Sess., at 14, U.N. Doc. E/CN.17/1999/5 (1999). On the relationship between development and tourism in developing countries, see DAVIDSON, *supra* note 1.

9. See *UNCSD, Tourism and Economic Development Addendum*, *supra* note 7, at 13.

### B. ENVIRONMENTAL IMPORTANCE OF TOURISM

The environmental importance of tourism arises in three circumstances.<sup>10</sup> First, tourist activities can have adverse impacts on the environment. Some negative environmental effects include the production of wastes and pollution and the consumption of natural resources, including biological, water, and land resources. Second, there is an obvious link between tourism and the environment; some kinds of tourism depend on a clean and unspoiled environment. Many tourists wish to travel to particularly untouched areas that are ecologically sensitive and natural sites of outstanding value<sup>11</sup>—evidenced by the increase in ecotourism, which currently accounts for a large portion of all tourist activities.<sup>12</sup> Finally, tourism, and especially ecotourism, generates large profits that can be reinvested in conservation projects and invested in the sustainable development of the concerned areas and communities.

### C. POTENTIAL DETRIMENTAL EFFECTS OF TOURISM

Given its scale, it is not surprising that the detrimental environmental impacts of tourism, underestimated in the past, are now receiving much attention. The large number of tourists and the intensity of tourist activities may have direct and indirect adverse effects on the environment, particularly in developing countries.<sup>13</sup> The global consequences of tourism are numerous, deep, and extremely complex.

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10. On tourism and environmental protection, see *Report of the Secretary-General on Tourism and Sustainable Development, Addendum: Tourism and Environmental Protection*, U.N. Commission on Sustainable Development, 7th Sess., U.N. Doc. E/CN.17/1999/5/Add.3 (1999).

11. For instance, exceptional physical or biological formations, areas that constitute the habitat of threatened species of animal and plants, natural areas of outstanding importance, or scenery of extraordinary beauty. See Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, reproduced in SIMON Lyster, INTERNATIONAL WILDLIFE LAW 307, para. 2 (1985), UNESCO Convention for the Protection of the World Cultural and Natural Heritage, Nov. 16, 1972, 27 U.S.T. 37, 1037 U.N.T.S. 151, reprinted in 11 I.L.M. 1358 (1973) (entered into force Dec. 17, 1975), reprinted in Lyster, *supra*, art. 2 [hereinafter World Heritage Convention].

12. Ecotourism or nature tourism is a concept that first emerged in North America around 1985 as an elite form of tourism that brings naturalists the chance to enjoy intact and fragile areas in remote regions of the world. Ecotourism is based on observations of, and experiences in, the natural world. Ecotourism focuses on remote and protected areas mainly in the southern countries with rich biodiversity, unspoiled areas and populations which preserve their traditional ways of life. The most comprehensive definition of ecotourism is "tourism in areas virtually undisturbed by human beings. It must contribute to nature conservation and the well-being of local populations." See Sylvie Blangy, *A Few Concepts and Definitions*, 84 NATUROPA 7 (1997). On the concept of ecotourism, see ECOTOURISM: A SUSTAINABLE OPTION? (Erlet Cater & Gwen Lowman eds., 1994). See also Elizabeth Halpenny & Nicole Otte, *Not Just Nature*, 10 OUR PLANET (1999), available at <http://www.ourplanet.com/imgversn/101/otte.html>. Ecotourism is one of the most important forms of tourism. Other forms include rural tourism or agro-tourism; cultural tourism; scientific tourism; historical or archaeological tourism; ethno-tourism; educational tourism; religious or esoteric tourism; health tourism; and weekend-outings. See Steck, *supra* note 3, at 22.

13. "International tourism results in a form of imported development with many physical and social repercussions in the Third World. The same impacts may derive from other externally inspired changes in these countries but those due to tourism are sufficiently distinctive to have given rise to much environmental and social research." LEA, *supra* note 1, at 51.

Experts have identified roughly two kinds of effects on the environment. First, there are effects that have a direct influence on the environment and have potential repercussions that are numerous and varied.<sup>14</sup> These repercussions are linked to the consumption and overuse of natural resources<sup>15</sup> and lead to an increase in waste<sup>16</sup> and pollution.<sup>17</sup> Development and construction related to tourism<sup>18</sup> may also increase air and noise pollution.<sup>19</sup> Tourism-generated environmental harms are now felt in many developing countries that lack the technological or financial capacity to handle tourists' resource consumption and waste generation.

The second type of impact results from indirect influences—mainly social and

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14. For information on the environmental effects of tourism, see UNEP, *Sustainable Use and Tourism*, *supra* note 4, ¶ 16-25; COUNCIL OF EUROPE, TOURISM & ENVIRONMENT 13-17 (1997). See also UNCSD, *Tourism and Economic Development Addendum*, *supra* note 7, at 10-11; Brian Archer & Chris Cooper, *The Positive and Negative Impacts of Tourism*, in GLOBAL TOURISM: THE NEXT DECADE 73-91 (William F. Theobald ed., 1994).

15. The potential impacts of tourism on biodiversity include "damage caused by tourism activities and equipment . . . increased risk of the spread of pathogens from humans and companion animals to wild species, . . . increased risk of introduction of alien species . . . disturbance of wild species, thereby disrupting normal behaviour and conceivably affecting mortality and reproductive success . . . alterations in habitats and consumption of wildlife by tourists." UNEP, *Sustainable Use and Tourism*, *supra* note 4, at 18. See also UNEP, *Biological Diversity and Sustainable Tourism: Preparation of Global Guidelines: Submission by Germany*, at 6, U.N. Doc. UNEP/CBD/COP/4/Inf. (1998).

16. Tourism industry is a source of at least three kinds of wastes: sewage and waste-water, chemical wastes and pollutants, and solid waste (garbage or rubbish). The disposal of wastes that tourism generates may cause important environmental problems. See UNEP, *Sustainable Use and Tourism*, *supra* note 4, ¶ 24; UNCSD, *Tourism and Economic Development Addendum*, *supra* note 7, at 11, 55.

17. It is possible to identify two kinds of effects on water resources. On the one hand, tourism is a high water-demanding industry whose needs may intensify problems with water supply. On the other hand, tourism industry contributes substantially to the pollution of water. See UNCSD, *Tourism and Economic Development Addendum*, *supra* note 7, at 11, 56.

18. One of the most significant consequences of tourism is the impact on land and resources resulting from the development of tourist resorts. Physical development of tourist facilities and infrastructures impacts the environment, mainly as a result of urbanisation linked to tourist development. First, demands of land to infrastructures, including, *inter alia*, accommodation as well as road networks, lead to pressures on other possible uses of land, for instance, agricultural use or social or recreational uses. Second, preferred sites for tourist resorts "coincide" with beautiful landscape sites that are generally rich in biodiversity. Finally, any provision of tourism facilities entails a certain manipulation or alteration of the environment that may have significant adverse effects. See UNEP, *Sustainable Use and Tourism*, *supra* note 4, at 5; UNCSD, *Tourism and Economic Development Addendum*, *supra* note 7, at 10, 53.

Winter sports and other tourist mountain-based activities are an important percentage of global tourism and they entail a strong pressure on the fragile mountain environments as far as they must be based on a complex network of facilities whose development and functioning affect adversely the environment. See UNEP, *Sustainable Use and Tourism*, *supra* note 4, at 6, ¶20; see also UNEP, *Biological Diversity and Sustainable Tourism*, *supra* note 15, at 6.

Because many tourism destinations are chosen due to the presence of beaches, the impact of tourism on the coastal and marine environment is especially relevant, in particular in small island developing states. Major effects on this environment come from inaccurate planning of tourist resorts and consist, *inter alia*, in coastal or beach erosion and alterations of coral reefs. See *Report of the Secretary-General on Tourism and Sustainable Development*, *supra* note 7, at 11, para. 54.

19. A significant proportion of polluting substances, including "greenhouse" gases, derives from the fact that tourists need to travel to and from tourist destinations. Furthermore, a high percentage of international tourists travel by air, which is the most environmentally unfriendly means of transportation.

economic—which are generally imposed upon local and indigenous communities.<sup>20</sup> A number of social consequences may result from tourism. The development of the tourism industry in an area can provoke a movement of jobseekers to the area—jobseekers who bring with them corresponding social degradation, including crime and prostitution.<sup>21</sup> Communities heavily dependent on the tourism industry are extremely vulnerable to changes in tourist patterns and preferences. Additionally, demand for goods and services at a local level are increased by tourism demands, and the prices of such goods and services may be higher and less accessible for local customers. Finally, tourism development may impair the rights of local people when they are excluded from areas strictly devoted to tourism.

The cultural effect of tourism on the communities living in the affected areas may be enormous. The behaviour of tourists can influence traditional lifestyles and practices. Furthermore, tourist preferences for some cultural events or traditions may lead to cultural erosion and disruption of these traditional practices and lifestyles.<sup>22</sup>

#### D. POTENTIAL BENEFITS OF TOURISM

Despite its negative impacts, tourism contributes to regional and local sustainable development, as well as to the conservation of the environment, since the tourism industry is a source of high income, generated in part because of the attraction to natural sites. Potential benefits from tourism can be divided into both tangible and intangible benefits.<sup>23</sup> Tourists have an important economic effect on the areas they visit—the most tangible benefits are realised through direct expenditures on goods and services. Additionally, tourists have an indirect economic influence on host communities by both creating job opportunities in the tourism industry and stimulating other job and business opportunities in related sectors.<sup>24</sup> In addition, tourism promotes the development of infrastructures and facilities that equally benefit tourists and local populations.

Tourism can also contribute directly to the preservation of the environment: "Where nature is the foundation of tourist activities there is an incentive to conserve it."<sup>25</sup> The potential of continued tourist income from ecotourism provides an incentive to preserve natural resources. A portion of tourism income

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20. The latter kinds of impacts are more complex and difficult to evaluate and they are extremely important to the conservation of the environment. Furthermore, socio-economic effects can, in the long-term, be as relevant as environmental effects.

21. See *Report of the Secretary-General on Tourism and Sustainable Development*, *supra* note 8, at 7, 30.

22. See *Report of the Secretary-General on Tourism and Sustainable Development, Addendum: Tourism and Social Development*, U.N. Commission on Sustainable Development, 7th Sess., at 3-4, U.N. Doc. E/CN.17/1999/5/Add.2 (1999); Archer & Cooper, *supra* note 14, at 80-84.

23. See UNEP, *Sustainable Use and Tourism*, *supra* note 4, at 30-35.

24. Tourism is a relatively job-intensive industry.

25. See UNEP, *Biological Diversity and Sustainable Tourism*, *supra* note 15, at 6.



could be devoted to the conservation and sustainable use of natural resources by introducing entrance fees to protected areas and fees for activities such as fishing, bird-watching, scuba-diving, or hunting.<sup>26</sup> Hence, tourism can offer many interesting opportunities to conserve the environment.<sup>27</sup>

With respect to intangible benefits, tourism can contribute to public education and awareness. It can also help to generate political benefits and a better understanding between peoples of different cultures. Tourism can help local communities to become more aware of the value and uniqueness of their environment and cultural traditions.<sup>28</sup> With regard to political benefits, good governance is a factor that determines the choice of tourist destinations. When political deterioration occurs in a country, tourists avoid that country as a destination.<sup>29</sup> Thus, where the economy of a country depends on international tourism, this dependence can encourage and reward a system of good governance in that country.

Finally, the exchange of ideas and cultural images that tourism generates may contribute to the promotion of goodwill and a better understanding between people and civilisations of different nations. In fact, tourism is a way to promote knowledge about the environment and different cultures among tourists. Furthermore, the role of tourism as "a vital force for world peace" has been recognised by intergovernmental bodies and world leaders.<sup>30</sup>

### III. THE INTERNATIONAL COMMUNITY AND THE ADOPTION OF A NEW TOURISM DEVELOPMENT MODEL

International concern for the environmental effects of tourism is recent and has progressed in stages. Not long ago, the environmental issues appeared neither on the agendas of the international community nor on the programmes of the tourism industry and operators.<sup>31</sup> During the 1970s, the deleterious environmental, cultural, and social consequences of tourism were the subject of much criticism, and it was evident that alternative forms of tourism should be promoted. As a result, during the 1980s, the tourism industry developed initiatives to promote ecotourism—also known as green tourism or nature

26. See UNEP, *Sustainable Use and Tourism*, *supra* note 4, at 5, 32.

27. "Nature tourism is one of the few non-consumptive economic activities (with the exception of hunting and fishing tourism) that can contribute to the sustained validation of ecosystems." STECK, *supra* note 3, at 10. See also UNCSD, *Tourism and Economic Development Addendum*, *supra* note 7, at 11, ¶58.

28. "Experience has shown that it was the use of the natural environment by tourists that presented the opportunity to conserve endangered species of animals and their habitats." UNEP, *Biological Diversity and Sustainable Tourism*, *supra* note 15, at 6.

29. See UNEP, *Sustainable Use and Tourism*, *supra* note 4, at 6, ¶ 35.

30. On this interesting, but tenuous, international political benefit of tourism, see Targut Var & John Ap, *Tourism and World Peace*, in GLOBAL TOURISM: THE NEXT DECADE 27-39, *supra* note 14.

31. "Environment was simply not considered a problem for tourism." Francesco Frangialli, *Tourism and the Challenge of Sustainability*, 84 NATUROPA 4 (1997).

tourism.<sup>32</sup> At the same time, the international community took the first steps toward the recognition of the need for a new tourist development model.<sup>33</sup>

#### A. THE FIRST INITIATIVES

The World Tourism Organisation (WTO) is a Madrid-based intergovernmental organisation<sup>34</sup> that acts as an international forum for tourism policy and issues, and has been a pioneer institution in opening the way to a sustainable tourist development model. The first references to the WTO's environmental concern can be found in the Manila Declaration on World Tourism, adopted in 1980, and the Acapulco Documents on the Right to Holidays,<sup>35</sup> adopted in 1982. Both are first steps toward assembling tourism and the environment within the WTO.<sup>36</sup>

In 1985, the General Assembly of the WTO adopted the Tourism Bill of Rights and Tourist Code<sup>37</sup> at its sixth session in Sofia, Bulgaria. The Bill and the Code provide a general framework concerning tourism and tourist conduct.<sup>38</sup>

The 1989 World Tourism Conference consolidated the WTO's environmental concerns into The Hague Declaration on Tourism.<sup>39</sup> Principle III of the Hague Declaration notes the intrinsic inter-relationship between tourism and the environment, and it sets out measures to ensure an unspoilt natural, cultural, and human environment as a condition for the development of tourism.

The resolutions of the World Tourism Conferences demonstrated the participants' concern for the environment in the context of tourism, and all involved sectors began discussions on a new approach to tourism. This approach would make tourism economically, socially, and environmentally compatible. Moreover, most intergovernmental organisations with tourism-related

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32. Soft tourism was also a common "label" to certain tourism products during the 1980s. See COUNCIL OF EUROPE, *supra* note 14, at 20. All these terms can be considered synonymous and they refer to ecological as well as social and cultural soundness.

33. Some of the initiatives appeared very early. See, e.g., OECD Council Recommendation: *Environment and Tourism*, OECD C(79) 115, May 8, 1979.

34. The WTO has more than 130 member states and more than 350 affiliate members from the public and private sectors, including national tourism authorities and national and international tourism industry associations. The purpose of the WTO is to promote and develop tourism as a significant means of fostering international peace and understanding, economic development, and international trade.

35. These materials are available at the website for the World Tourism Organisation, at *Statements and Declarations of the WTO Relating to Sustainable Tourism*, <http://www.world-tourism.org/index2.htm> (last visited Jan. 9, 2000) [hereinafter WTO website] (on file with the author).

36. Point 18 of The Manila Declaration stipulates that "[t]he satisfaction of tourism requirements must not be prejudicial to the social and economic interest of the population in tourist areas, to the environment or, above all, to natural resources which are the fundamental attraction of tourism and historical and cultural sites."

37. See *Statements and Declarations of the WTO Relating to Sustainable Tourism*, available at WTO website, *supra* note 35.

38. The Tourism Bill of Rights states the right of everyone to rest and leisure, and the importance of the role of states and tourism professionals in order to promote development of tourism. The Tourist Code is the code of conduct for tourists.

39. See WTO website, *supra* note 35.



competence launched actions and programmes to promote environmentally friendly tourism.

#### B. TOWARDS A SUSTAINABLE APPROACH TO TOURISM

The 1992 United Nations Conference on Environment and Development (UNCED) marked a beginning of an international consensus regarding the need for sustainable development.<sup>40</sup> The Earth Summit was the catalyst for a sustainable approach to tourism. At the Conference, the international community recognised the validity of the sustainable development option and expressed the elements of this new approach in the Rio Declaration<sup>41</sup> and in UNCED's action plan, Agenda 21.<sup>42</sup> As defined by Agenda 21, sustainable development means development that meets current needs without compromising the ability of future generations to meet their needs as well.<sup>43</sup> Sustainable development has become one of the world's priorities, requiring radical changes and innovations in patterns of consumption and production.<sup>44</sup> Agenda 21 is a blueprint for sustainable development—covering a broad range of topics and addressing many of the issues raised by this new principle. Although Agenda 21 does not have any chapter specifically devoted to tourism, many of the recommendations included in Chapter 30, Business and Industry, are relevant to tourism activities. These

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40. By resolution 44/228 of December 22, 1989, the General Assembly decided to convene the UNCED or Earth Summit, which was held in Rio de Janeiro from June 3-14, 1992. There is a large amount of literature on UNCED. See Alexandre Kiss & Stéphane Doumbé-Bille, *La Conférence des Nations Unies sur l'environnement et le développement in XXXVIII ANNUAIRE FRANÇAIS DE DROIT INTERNATIONAL* 823-44 (1992); WIGI CAMPIGLIO ET AL., *THE ENVIRONMENT AFTER RIO* (1994).

41. See *Declaration of the United Nations Conference on Environment and Development*, at Annex 1, U.N. Doc. A/CONF.151/26 (vol. I) (1992).

42. *Report of the United Nations Conference on Environment and Development, Agenda 21*, U.N. Doc. A/CONF.151/26 (vol. II) (1992), reprinted in STANLEY P. JOHNSON, *THE EARTH SUMMIT: THE UNITED NATIONS CONFERENCE ON ENVIRONMENT AND DEVELOPMENT* (1993). Documents adopted by the Conference were subsequently endorsed by the General Assembly in its resolution 47/190 of Dec. 22, 1992.

43. The concept of sustainable development was first adopted by the U.N. World Commission on Environment and Development (WCED). The Report of the WCED, "Our Common Future," also known as the Brundtland Report after the name of its Chairwoman, is a historic milestone in international environmental law because it represented the first attempt to reconcile economic development and environmental conservation through the concept of sustainable development. See *Report of the World Commission on Environment and Development: Our Common Future*, at 43, U.N. Doc. A/42/427 (1987).

44. UNCED was historic for several reasons. First, because of the Conference's treatment of environmental, economic, and social concerns as interrelated components of sustainable development. Second, the newly proclaimed partnership between the North and South. Developed states agreed that they had responsibilities to finance and transfer technology for sustainable development. Developing states accepted the need to adopt efforts to ensure sustainability in development. Finally, one of the most important features of UNCED was its openness to the participation of non-governmental actors. Prior to UNCED, non-governmental actors found it difficult to access U.N. organs and to attend U.N. meetings. In Agenda 21, UNCED identified specific roles and responsibilities of nine social groups: non-governmental organisations, children and youth, workers and trade unions, local authorities, women, scientific and technological communities, business and industry, indigenous people and farmers. Since UNCED, these groups of the "international civil society" have gained greater access to the U.N. system.

general recommendations refer to the promotion of cleaner production<sup>45</sup> and allude to the promotion of sustainable tourist entrepreneurship.<sup>46</sup> However, Agenda 21 does make several references to tourism in connection with specific topics such as human settlements, deforestation, and education.<sup>47</sup>

After this preliminary period in which the foundations of a new development model were set out in international declarations and other instruments, the WTO took the lead and started to mobilise efforts and actions. Since the Earth Summit, the WTO has created a new generation of declarations especially devoted to the sustainable tourism issue. The World Conference on Sustainable Tourism, jointly organised by the WTO and UNESCO, took place in Lanzarote in April 1995, and adopted the Charter for Sustainable Tourism, which declared that:

By "sustainable tourist development" is meant any form of development, provision of amenities or tourist activity that emphasises respect for and long-term preservation of natural, cultural and social resources and makes a positive and equitable contribution to the economic development and fulfilment of people living, working or staying in these areas.<sup>48</sup>

The Charter lists eighteen points that are fundamental for sustainable tourism, and it establishes that the concept of sustainable development is the framework within which tourism development must be conducted, taking due account of natural, cultural, and human environment values. It recommends special technical cooperation and financial assistance in the context of protection of environmentally and culturally sensitive areas.<sup>49</sup>

At a regional level, the WTO's Malé Declaration on Sustainable Tourism

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45. In particular, through partnerships to implement sustainable development; economic instruments and normative measures to promote cleaner production; internalisation of environmental costs; technological and know-how co-operation between enterprises, encompassing identification, assessment, research and development, management marketing and application of cleaner production; and finally, incorporating cleaner production policies in operations and investments, taking into account its influence on suppliers and consumers.

46. This is done mainly through encouraging the establishment and operation of sustainable managed enterprises through regulatory measures, economic incentives, and other measures; establishing venture capital funds for sustainable development projects and programs; supporting training in the environmental aspects of enterprise management; and ensuring responsible and ethical management of products and processes from the point of view of health, safety, and environmental aspects.

47. These specific recommendations on tourism include recommendations on Human Settlements (chapter 7), Decision Making (chapter 8), Deforestation (chapter 11), Sustainable Mountain Development (chapter 13), Agriculture (chapter 14), Oceans and Seas (chapter 17), and Education (chapter 36). These references are undeniably useful and they show that tourism is a cross-sectorial issue which needs an inter-disciplinary approach and that tourist activities should be integrated into every measure aimed at addressing the mentioned sectors. However, the significance of these recommendations is limited because there is not a further elaboration on implementation.

48. Charter for Sustainable Tourism, available at WTO website, *supra* note 35. The Conference also adopted the Sustainable Tourism Plan of Action which establishes concrete lines of action and specific recommendations.

49. For more details on this aspect, see WTO, *Guidelines: Development of National Parks and Protected Areas for Tourism*, U.N. Doc. WTO/UNEP-IE/PAC Technical Report Series 13 (1992).

Development was adopted on February 16, 1997, on the Maldivas<sup>50</sup> by the tourism and environment ministers of the Asia-Pacific area. The Declaration establishes the essential requirements for sustainable development in the context of tourism, including the promotion of ethics in tourism; the reduction of unsustainable patterns of consumption of resources and the reduction of wastes; the conservation of natural, social, and cultural diversity; the integration of tourism planning; the promotion of the local economy and the participation of the local population; the groups of tourists affected and the general public; the development of responsible tourism marketing; assessment of the impacts of tourism on natural and cultural heritage; and the special role of the private sector.<sup>51</sup>

The philosophy underlying the regional Malé Declaration also inspired the Manila Declaration on the Social Impact of Tourism, which was adopted by the WTO Leaders' Meeting on Social Impacts of Tourism on May 22, 1997. The Manila Declaration identified ten principles of sustainable tourism, including, *inter alia*, the greater involvement of communities in the planning, implementation, monitoring, and evaluation processes of tourism policies, programmes and projects; the improvement of people's standard of living through tourism; the preservation of the legacy, heritage, and integrity of tourist destinations worldwide; the development of appropriate marketing tools for the destination countries; the sensitisation of visitors to the culture and behavioural expectations of host communities, and the recognition of the role of human resources development in tourism.<sup>52</sup>

In addition to the WTO's action, companies, public administrations, universities, non-governmental organizations (NGOs), governments, and other intergovernmental bodies all started to become seriously involved in working towards sustainable tourism. As a result, a more holistic and comprehensive approach towards tourism and the environment was adopted. This recent approach takes into account the inter-relationship between tourist development and conservation—economic, social, and cultural, as well as environmental links. This approach favours a long-term perspective, in contrast to previous approaches that have emphasised economic, short-term benefits. The new approach consists of sensitising the entire tourism industry and convincing the industry to integrate environmental concerns into its services by adopting environmentally friendly practices. The key concept of this new approach is the notion of sustainable tourism, an offshoot of the

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50. See UNEP, *Biological Diversity and Sustainable Tourism*, *supra* note 15, at 7.

51. Malé Declaration on Tourism and Sustainable Development, adopted at the Asia-Pacific Ministers' Conference on Tourism and Environment, in Malé Maldives, February 16, 1997, available at Eco-Tour, [http://www.eco-tour.org/info/w\\_10194\\_de.html](http://www.eco-tour.org/info/w_10194_de.html) (last visited Apr. 22, 2001).

52. Manila Declaration on the Social Impact of Tourism, available at Eco-Tour [http://www.eco-tour.org/info/w\\_10196\\_de.html](http://www.eco-tour.org/info/w_10196_de.html) (last visited Apr. 22, 2001).

concept of sustainable development. Sustainable tourism has been defined by the WTO as follows:

Sustainable tourism development meets the needs of present tourists and host regions while protecting and enhancing opportunities 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 systems.<sup>53</sup>

According to the above definition, sustainable tourism development is premised upon three conditions: the resources of the environment must be protected; local communities must benefit both economically and in quality of life; and visitors must receive a quality experience. The concept of sustainable tourism is a very broad notion that refers to tourism that is long-lasting, integrated at the same time as diversified, participatory, and environmentally, economically, socially, and culturally compatible.<sup>54</sup>

Nowadays, tour operators and public authorities are convinced that a change in attitudes and patterns of consumption is unavoidable—otherwise, the economic basis of tourism would be undermined. The mass tourism model is clearly unsustainable because it: (1) does not take into account the importance of the conservation of natural habitats or the rational use of natural resources, (2) does not highlight the cultural and social features of an area as a selling point to tourists, and (3) generally ignores the qualitative aspects of tourism while emphasising quantitative growth. In contrast, a sustainable tourism model ensures that tourism development is compatible with respect for, and the conservation of, natural spaces and cultural and social values, something that favours the reduction of conflicts between the tourism industry, the visitors, the residents, and the environment.

### C. FIXING THE PRINCIPLE OF SUSTAINABLE TOURISM

Once the international community endorsed the notion of sustainable tourism, international organisations began to clarify the concept by elaborating and adopting new and innovative international guidelines and work programmes.

53. STECK, *supra* note 3, at 2.

54. The Council of Europe has defined "sustainable tourism" as "any form of tourist development or activity which: respects the environment; ensures long-term conservation of natural and cultural resources; is socially and economically acceptable and equitable." See *Comm. of Ministers Recommendation No R(95) 10 On a Sustainable Tourist Development Policy in Protected Areas*, 543rd Mtg. of Ministers' Deputies (1995). Another author has described the concept of sustainable tourism as:

[R]elevant to the tourist industry as a whole since it covers rural and urban areas as well as natural landscapes, incorporates the idea of cultural and architectural heritage and urges changes in behaviour at home and not just in the countries visited. It is a broader concept than that of ecotourism.

Blangy, *supra* note 12, at 7.

International organisations bring together states and observers from social and economic groups, such as industry, business, and NGO representatives, facilitating a general consensus about strategies and measures. International organisations also provide the expertise and knowledge to negotiate and elaborate on these instruments. Various U.N. agencies and events, including the Earth Summit II, the U.N. Environment Programme, the Commission on Sustainable Development, and the World Tourism Organisation have helped define the concept of sustainable tourism.

At the same time, the international tourism industry and international NGOs<sup>55</sup> mobilised themselves and carried out intense and varied activity in favour of sustainable tourism, adopting codes of conduct and good practices, and developing useful efforts to make sustainable tourism a reality.<sup>56</sup> At times, the international tourism industry went beyond the actions undertaken by intergovernmental organisations. These associations adopted instruments more rigorous and comprehensive than the international agreements and guidelines such that travel and tourism was the first industrial sector to launch an industry-specific action plan based on Agenda 21.<sup>57</sup> The next section of this article discusses the various

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55. NGOs began to deal with issues concerning sustainable tourism early on and have already significantly contributed to modifying consumers' preferences and behaviours. NGOs are able to influence decisions while making sensitive issues public and emphasising existing problems.

56. Some of the most innovative attempts to regulate a global general framework for environmentally friendly tourism come from the international tourism industry associations. However, the concern of the private sector in ensuring an environmentally friendly tourism has not been translated into effective measures. Moreover, "the private sector has largely imposed its dynamics on the development of tourism while government intervention is usually limited to setting up an infrastructure and promoting marketing efforts. In the process, ecological, social and cultural aspects are frequently disregarded." See STECK, *supra* note 3, at 8.

Furthermore the efforts to self-regulate the environmental impacts of tourism development have been hardly successful. The reasons of that failure can be found in several factors. First, the local environment is considered as a *res communis* by operators, and any investment in improving or maintaining the local environmental conditions can be viewed as a waste of money as far as it also benefits other operators. This aspect in particular is one of the factors that reinforces the need for public regulation of sustainable tourism: "[I]n the absence of clearly defined property rights, an institutional approach is desirable because it is necessary to negotiate, monitor and enforce agreements." M. THEA SINCLAIR & MIKE STABLER, *THE ECONOMICS OF TOURISM* 177 (1997).

Second, the search for novel and exotic destinations are two factors that often characterise the tourism industry. Therefore, operators do not have much incentive to protect an area that may no longer be a desirable travel location after a short period of time. Finally, the international tourism market is an extremely competitive business and a low-profit industry. As a result, internalisation of environmental costs is generally not envisaged. See UNEP, *Sustainable Use and Tourism*, *supra* note 4, ¶ 11-13. Consequently, the role of the international tourism industry associations in regulating sustainable tourism, although useful and relevant, is seriously limited.

For a discussion of the legal significance of private environmental codes of conduct, see J.B. Racine, *La valeur juridique des codes de conduite privés dans le domaine de l'environnement*, 4 REVUE JURIDIQUE DE L'ENVIRONNEMENT 409-24 (1996).

57. *The Agenda 21 for the Travel & Tourism Industry: Towards Environmentally Sustainable Development* was adopted in 1996 as one of the most relevant international initiatives to promote sustainable tourism. At that time three organisations—the World Tourism Organisation, the World Travel & Tourism Council, and the Earth Council, representing governmental level, private enterprise, and civil society—joined together to launch this

actions taken by, and instruments created by, international institutions to address the concept of sustainable tourism.

### 1. Earth Summit II and the Programme for the Further Implementation of Agenda 21

In June 1997, the nineteenth special session of the U.N. General Assembly was held in New York for the purpose of an overall review and appraisal of the implementation of Agenda 21. The session brought together representatives from governments, intergovernmental organisations, non-governmental organisations, and the media.<sup>58</sup> The session resulted in the adoption of a resolution with an annex containing the Programme for the Further Implementation of Agenda 21.<sup>59</sup> Sustainable tourism was one of the emerging issues considered by the Assembly, and the special session was an important step forward because the Programme expressly refers to this novel topic in paragraphs 67-70. The Programme notes the increasing reliance of many developing countries on tourism as a major employer and contributor to the economy and highlights the need to pay special attention to the relationship between environmental conservation, protection, and sustainable tourism. In this regard, the Programme states that:

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action plan, which translates UNCED's Agenda 21 into a programme of action for travel and tourism. This sectoral sustainable development programme based on the results of the Earth Summit is of particular significance to travel and tourism companies, governments, national tourism administrations, and representative trade organisations, as well as the travelling public. See *Tourism and Sustainable Development: The Global Importance of Tourism*, U.N. Commission on Sustainable Development, 7th Sess., at 1 (1999) (Background paper No. 1 prepared by the World Travel and Tourism Organisation and International Hotel and Restaurant Association).

58. By resolution 44/228 of December 22, 1989, the General Assembly decided to convene a special session, not later than 1997. See *UN Conference on Environment and Development*, United Nations General Assembly, 44th sess., 85th plenary meeting, U.N. Doc. A/RES/44/228 (1989). The Assembly agreed that the special session should be at the highest possible level of participation. See *Special session for the purpose of an overall review and appraisal of the implementation of Agenda 21*, United Nations General Assembly, 50th sess., 96th plenary meeting, U.N. Doc. A/RES/50/113 (1995) and *Special session for the purpose of an overall review and appraisal of the implementation of Agenda 21*, United Nations General Assembly, 51st sess., 86th plenary meeting, U.N. Doc. A/RES/51/181 (1996).

59. The Programme includes: (a) "Statement of commitment" to Agenda 21, to the goals of sustainable development (requiring the integration of economic, environmental and social components) and to global partnership aimed at achieving environment and development goals through a more efficient and equitable world economy meeting equitably the needs of present and future generations; (b) "Assessment of progress made since UNCED" in all main areas of Agenda 21 and other outcomes and commitments made at the Conference; (c) "Implementation in areas requiring urgent action," covering a broad range of decisions and recommendations aimed at fostering progress in various sectoral and cross-sectoral areas of Agenda 21 and, in particular, in its means of implementation. The special session also identified actions needed in a number of relatively new areas for international cooperation, such as sustainable transportation and sustainable tourism; (d) Recommendations concerning international institutional arrangements for achieving sustainable development; and (e) Recommendations on the methods of work of the Commission on Sustainable Development and the programme of work for the Commission for the period 1998-2002. See *Progress Achieved Towards Meeting Objectives of the Earth Summit*, 19th Sess., Annex, at 34-35, U.N. Doc A/RES/S-19/2 (1997), reprinted in 36 I.L.M. 1639-66 (1997), *praesertim* 1657-58.



[T]he efforts of developing countries to broaden the traditional concept of tourism to include cultural and ecotourism merit special consideration as well as the assistance of the international community, including the international financial institutions.<sup>60</sup>

The Programme recognises that "[t]ourism, like other sectors, uses resources, generates wastes and creates environmental, cultural and social costs and benefits in the process,"<sup>61</sup> and recommends that the Commission on Sustainable Development creates an action-oriented international programme on sustainable tourism in co-operation with the World Tourism Organisation and other relevant bodies.

Although Agenda 21 did not include tourism as one of its main objectives in 1992,<sup>62</sup> the Programme for the Further Implementation of Agenda 21 included the issue among a list of new areas ripe for international co-operation. However, while Agenda 21 and the Programme are the new "bibles" for sustainable development, it is worth noting that they are just political documents; they do not set out a system of targets and timetables, and there is not an effective mechanism of control.

## 2. United Nations Environment Programme (UNEP)

Within the U.N. system, the role of UNEP in clarifying the principle of sustainable tourism has been fruitful. UNEP has been active in promoting sustainable tourism in addition to promoting cleaner and safer production and sustainable consumption patterns. The main areas of UNEP's concern regarding tourism and the environment include: voluntary regulatory initiatives, like environmental codes of conduct and guidelines;<sup>63</sup> best practices, which are being used or are to be adopted by authorities and the tourism industry, especially environmentally-sound technologies and environmental management practices in the hotel and tourism industry;<sup>64</sup> and management of tourism in sensitive areas, such as protected areas and the coastal zones.<sup>65</sup>

Following the mandate of the UNEP Governing Council, a body of draft principles on sustainable tourism was created. The UNEP Draft Principles for Implementation of Sustainable Tourism<sup>66</sup> address the implementation of

60. See *Programme for the Further Implementation of Agenda 21*, U.N. GAOR, Annex, para. 67, U.N. Doc. A/RES/S-19/2 (1997), reprinted in 36 I.L.M. 1657 (1997).

61. See *id.* para. 68.

62. Perhaps this is because the effects of tourism can be addressed by several other sectors or areas of action and expertise, such as pollution control or waste management.

63. See UNEP, ENVIRONMENTAL CODES OF CONDUCT FOR TOURISM, TECHNICAL REPORT No. 29, (1995).

64. See, e.g., UNITED NATIONS ENVIRONMENT PROGRAMME, ENVIRONMENTAL GOOD PRACTICE IN HOTELS: CASE STUDIES FROM THE INTERNATIONAL HOTEL & RESTAURANT ASSOCIATION ENVIRONMENTAL AWARD, UNEP IE/IHRA, (1997).

65. In 1982 the Programme published the environmental guidelines for coastal tourism. See UNEP, *Environmental Guidelines for Coastal Tourism: UNEP EMG No. 6* (1982).

66. See United Nations Environment Programme, [http://www.unep.org/tourism/gov\\_council.htm](http://www.unep.org/tourism/gov_council.htm) (last visited July 22, 2000).

sustainable tourism and consolidate previously available guidelines into a consistent body of basic principles in an effort to guide the involved stakeholders in developing and implementing sustainable tourism. In particular, the Draft Principles aim to provide general guidance for more detailed guidelines that should be prepared within the framework of the relevant conventions and initiatives, which deal with tourism issues. The Draft Principles also assist governments, intergovernmental organisations, international tourism associations, and other organisations in bringing into practice the concept of sustainable tourism. The Draft Principles include the integration of tourism into an overall policy for sustainable development,<sup>67</sup> development of sustainable tourism,<sup>68</sup> management of tourism,<sup>69</sup> and conditions for success.<sup>70</sup>

In February 1999, the UNEP Governing Council addressed the issue of sustainable tourism and endorsed the Draft Principles on Sustainable Tourism.<sup>71</sup> In its Decision on Sustainable Tourism, the UNEP Governing Council recognised the importance of tourism as a lever for development, especially in developing countries. It requested the Executive Director of the Programme to further develop guiding principles and to continue the preparation of voluntary initiatives and codes of conduct for the tourism sector. The Council also invited the Commission on Sustainable Development to call on governments to integrate consideration of sustainable tourism in their national sustainable development strategies and into relevant multilateral environmental conventions.<sup>72</sup>

### 3. Commission on Sustainable Development (CSD)

The CSD, created by Agenda 21, ensures the transparency and visibility of sustainable development issues within the U.N. system. Further, the CSD helps to

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67. This consists of the adoption of national tourism strategies integrated with national and regional sustainable development plans; ensuring interagency co-ordination and co-operation; the adoption of integrated policies and management covering all tourism-related activities; reconciling conflicting resources uses.

68. This consists of ensuring that tourism planning is undertaken as part of overall development plans for any area; undertaking environmental impact assessment for all tourism development programmes; implementing planning measures ensuring effective carrying capacity programmes; adopting an effective legislative framework and setting clear ambient environment quality standards; and ensuring regional co-ordination and co-operation between states.

69. This consists of promoting initiatives by the tourism industry in order to develop sustainable tourism; monitoring and reviewing tourism activities; minimising resource use and the generation of pollution and wastes by using and promoting environmentally-sound technologies for tourism and associated infrastructure; ensuring compliance with plans and standards by providing incentives and monitoring compliance.

70. This consists of involvement of stakeholders, information exchange, and capacity building.

71. The Draft Principles were submitted by the Executive Secretary to the 20th session of the UNEP Governing Council, which took place in Nairobi, Kenya, from February 1-5, 1999.

72. See *Contribution of the UNEP to the Commission On Sustainable Tourism at its Seventh Session*, United Nations Environment Programme, Governing Council, 20th sess., UNEP/GC/20/19 (1999), para. C. Sustainable Tourism.

reinforce the United Nations' co-ordination of environmental and development activities. The mission of the CSD<sup>73</sup> is to review progress and coordinate the implementation of recommendations and commitments contained in the final documents of UNCED; to elaborate policy guidance and options for future activities to follow up UNCED and achieve sustainable development; and to promote dialogue for sustainable development with governments, the international community, and the major non-governmental groups identified in Agenda 21<sup>74</sup> with a major role in the path towards sustainable development.<sup>75</sup>

Following the mandates of the Programme for the Further Implementation of Agenda 21 and the UNEP Governing Council, the CSD agenda, in its seventh session (CSD-7), concentrated on tourism. The four half-day discussions on tourism, which constituted the CSD's Tourism Segment,<sup>76</sup> aimed to generate a dialogue between government and social representatives and to identify policy strategies that may increase the positive impacts of tourism on sustainable development goals.<sup>77</sup> The Tourism Segment at CSD-7 represented the first time the CSD specifically focused on the issue of tourism and sustainable development.<sup>78</sup> The segment was an innovative and participatory dialogue with representatives from NGOs, businesses, trade unions, and local governments. The CSD-7

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73. See *Institutional Arrangements to Follow up the United Nations Conference on Environment and Development*, United Nations General Assembly, 47th sess., 93rd plenary meeting, U.N. Doc. A/RES/47/191 (1992); Chris Mensah, *The United Nations Commission on Sustainable Development*, in *GREENING INTERNATIONAL INSTITUTIONS* 28-29 (Jacob Werksman ed., 1996)

74. These groups include women, youth, indigenous peoples, non-governmental organisations, local authorities, workers and trade unions, business and industry, the scientific community, and farmers. On the participation of major groups, see *id.* at 33-34.

75. The CSD is composed of fifty-three members, each elected for three years. The Commission meets for two to three weeks a year and reports its work and conclusions to the Economic and Social Council (ECOSOC) and to the Second Committee of the U.N. General Assembly. See U.N. Doc. A/RES/47/191 (1992); see also Philippe Orliange, *La Commission du développement durable*, in *XXXIX ANNUAIRE FRANÇAIS DE DROIT INTERNATIONAL* 820-32 (1993). The CSD is an intergovernmental organ and its members are chosen by the ECOSOC from amongst the member states of the United Nations. Africa is represented by 13 individuals, Asia by 11, Latin America and the Caribbean by 10, Eastern Europe by 6, and 13 individuals are representatives of Western Europe and other regions. Other states, United Nations organizations, and accredited intergovernmental and non-governmental organisations can attend sessions of the CSD as observers. In 1992, the 47th session of the U.N. General Assembly set out the terms of reference for the composition of the Commission, as well as for the guidelines for the participation of NGOs, the organisation of work, the CSD's relationship with other U.N. bodies, and the CSD Secretariat.

76. The Tourism Segment was held April 18-21, 1999, in New York.

77. Although the relevance and influence of the CSD-7, and especially of the Tourism Segment, are undeniable, recommendations from the CSD are bland and general. Further, they also show the lowest common denominator outcome as far as governmental delegates often concentrate on avoiding new obligations rather than strengthening their partnership for sustainable development.

78. However, at CSD-5, delegates already called for a number of actions, including international assistance to promote cultural and eco-tourism. They recommended strengthening national policies and capacity in physical planning, impact assessments, and the use of economic and regulatory instruments. Delegates also called on the CSD to develop an action-oriented international work program on the issue. Countries in the Alliance of Small Island States (AOSIS) and the German delegation particularly supported further CSD consideration of this issue.

resulted in the adoption of an international work programme on sustainable tourism development, and the Commission decided to begin implementation with all relevant means and resources, especially for developing countries.<sup>79</sup>

#### 4. World Tourism Organization and the Global Code of Ethics for Tourism

The WTO Summit, held in Santiago, Chile, on October 1, 1999, approved the Global Code of Ethics for Tourism that consolidated and reinforced previous recommendations and declarations on sustainable tourism. The Code aimed to preserve the world's natural resources and cultural heritage from disruptive tourist activities and to ensure a fair and equitable sharing of benefits that arise out of tourism with the residents of tourism destinations. Article 3 of the Code refers specifically to sustainable development and includes some of the most innovative legal principles and environmental methods in this field.

The Code is unique and advanced for a field instrument because it includes a mechanism for enforcement of its provisions. Usually, international codes of conduct consist of a body of recommendations, but do not include mechanisms for enforcement because their provisions are not legally binding and not enforceable. The Global Code of Ethics for Tourism is the first international code that contains a mechanism of this type. The World Committee on Tourism Ethics will be the institutional structure implementing this novel mechanism, based on private and intergovernmental conciliation.<sup>80</sup> The Committee shall be composed of a body of twelve independent members, elected regardless of their nationality, consisting of persons with expertise in the field of tourism. In the event of a dispute between states and other entities involved in tourist development such as industry associations or private sector companies, the parties concerned may jointly decide to submit the dispute to conciliation through the World Committee on Ethics. The Committee will elucidate the facts, hear the parties, and render a non-binding recommendation for the dispute.

#### D. SUSTAINABILITY AND TOURISM AT THE REGIONAL LEVEL

Some European intergovernmental organizations have adopted innovative legal actions for sustainable tourism. In particular, in Europe the large number of international institutions involved in the promotion of sustainable tourism creates a risk of overlapping actions. Thus, there is a need for co-ordination between the Council of Europe, the European Community, and the Mediterranean Commission on Sustainable Development. This section discusses some of the actions of these institutions.

79. See *Report on the Seventh Session of the Commission on Sustainable Development, Economic and Social Council Official Record*, at 39-42, U.N. Doc. E/CN.17/1999/20 (1999).

80. See WTO website, *supra* note 35.

### 1. The Council of Europe

In addition to the activities on sustainable tourism of the Parliamentary Assembly of the Council of Europe<sup>81</sup> and the cooperative intergovernmental technical assistance to countries of Central and Eastern Europe, the Committee of Ministers of the Council has adopted three recommendations for sustainable tourism, consisting of a general recommendation and two specific recommendations.<sup>82</sup>

First, the framework for the development of sustainable tourism is outlined in Recommendation No. R (94) 7.<sup>83</sup> This recommendation sets out general principles, including the preventive principle, the integration principle, and the precautionary principle, as well as the obligation to carry out, where necessary, an environmental impact assessment according to certain criteria. The recommendation also includes guidelines for the implementation of the general principles at three levels: national, local, and regional.

Second, the Council has adopted several specific recommendations, regulating sustainable tourism in sensitive areas, namely, Recommendation No. R (95) 10 (Protected Areas Recommendation) and Recommendation No. R (97) 9 (Coastal Areas Recommendation).<sup>84</sup> The Protected Areas Recommendation sets out principles and guidelines which apply primarily to protected areas, but they may also be apply to areas with a wealth of cultural, biological, and landscape features, which are worthy of protection.

The Coastal Areas Recommendation includes general principles and guidelines for the implementation of these principles. The recommendation reiterates the principles of prevention, precaution, and remedial action, as well as repair of damage to the environment. Measures to be adopted in order to implement the general principles include controlling coastal development, controlling activities likely to harm the natural environment, monitoring and combating pollution, diversifying tourist services, using economic and tax instruments and incentives, and information distribution, training, research, and co-operation.

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81. See, e.g., Council of Europe, Parliamentary Assembly, *Recommendation 1133 on European Tourism Policies*, Sept. 29, 1990 (42nd sess., 2nd part, 12th Sitting).

82. The recommendations include measures at the national, international, regional, and local levels. These instruments have been adopted pursuant to Article 15b of the Statute of the Council of Europe.

83. COUNCIL OF EUROPE, COMMITTEE OF MINISTERS, RECOMMENDATION NO. R (94) 7 OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON A GENERAL POLICY FOR SUSTAINABLE AND ENVIRONMENTAL-FRIENDLY TOURISM DEVELOPMENT, adopted Sept. 5, 1994, at the 516th meeting of the Ministers' Deputies.

84. *On a Sustainable Tourist Development Policy in Protected Areas*, COUNCIL OF EUROPE, COMMITTEE OF MINISTERS, RECOMMENDATION NO. R (95) 10 OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON A GENERAL POLICY FOR SUSTAINABLE AND ENVIRONMENTAL-FRIENDLY TOURISM DEVELOPMENT adopted Sept. 11, 1995, at the 543rd meeting of the Ministers' Deputies [hereinafter Protected Areas Recommendation]; *On a Policy for the Development of Sustainable Environment-Friendly Tourism in Coastal Areas* COUNCIL OF EUROPE, COMMITTEE OF MINISTERS, RECOMMENDATION NO. R (97) 9 OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON A GENERAL POLICY FOR SUSTAINABLE AND ENVIRONMENTAL-FRIENDLY TOURISM DEVELOPMENT, adopted June 2, 1997, at the 594th meeting of the Ministers' Deputies [hereinafter Coastal Areas Recommendation].

The body of rules adopted by the Council is extremely creative. However, the Council is best able to contribute to sustainable tourism by funding certain projects and initiatives—demonstrating that its involvement in promoting sustainable tourism is serious and consistent.<sup>85</sup>

## 2. The European Community

The European treaties do not contain provisions on sustainable tourism and the EC institutions have not adopted a body of legal instruments (regulations or directives) promoting sustainable tourism. According to the doctrine of subsidiarity, EC institutions operate under the assumption that decisions should be made as close to citizens as possible. Therefore, the national authorities, mainly regional and local entities, and the tourism industry should be responsible for promoting sustainable tourism.

However, EC institutions have also recognized that EC action should include measures in this sphere as a way to attain other environmental goals delineated in the common policies of EC action.<sup>86</sup> As a result, some EC financial programmes and funding are relevant to players in the tourism sector; for example, the EC has launched some programmes that specifically intend to promote sustainability in the travel and tourism industry.<sup>87</sup> The EC also supports many financial programmes and schemes for private and public environmental projects that can considerably benefit the tourist sector.<sup>88</sup> In practice, therefore, the EC is financing the transition towards sustainable tourism development by following recent trends in international environmental law.

Although EC programmes and actions promoting sustainable tourism have

85. For a discussion of activities and projects of the Council, see Helene Bouguessa, *Co-operation and Assistance: The Council of Europe's Programmes*, 84 NATUROPA 10 (1997); Francoise Bauer & Jean-Pierre Ribaut, *Intergovernmental Activities on Tourism and Environment at the Council of Europe*, 84 NATUROPA 30 (1997); COUNCIL OF EUROPE, *supra* note 14, at 31-32.

86. See, e.g., The Fifth EC Action Programme on the Environment, *Towards Sustainability*, COM (92) 23 Final, vol. II, Brussels, Mar. 27, 1992 [hereinafter Action Programme]. The Programme includes tourism among the five-selected target sectors for action. See Action Programme, ch. 4, *supra*.

87. "Philoxenia" is a multi-annual programme to assist European tourism that has been operative until 2000; ECoNETT tourism is an environment database that provides access to over 250 documents giving examples of good practice, organisations, and summaries of books and reports. It is accessible via the Internet and other distribution mechanisms. See World Travel & Tourism Council, at <http://www.wttc.org> (last visited Apr. 22, 2001). For information on the Econett, see *Tourism and Sustainable Development: The Global Importance of Tourism*, *supra* note 50, at 4.

On the European Union and tourism, see <http://europa.eu.int/comm/enterprise/services/tourism/tourismeu.htm> (last visited Apr. 22, 2001). The list of tourism-related European legislation is available on <http://europa.eu.int/comm/enterprise/services/tourism/policy-areas/legislation.htm> (last visited Apr. 22, 2001). For more information on the European Union, environment and tourism, see <http://europa.eu.int/comm/enterprise/services/tourism/policy-areas/environment.htm> (last visited Apr. 22, 2001).

88. See, e.g., THERMIE programme and LIFE programme. See COUNCIL OF EUROPE, *supra* note 14, at 29. See Vanden Abeele, *Practical European Union Support: Protecting the Assets upon Which Tourism Thrives*, 84 NATUROPA 22 (1997).



been successful, a normative body of regulations and directives relating to sustainable tourism would best contribute to sustainable development. Unfortunately, the member states missed an excellent chance to incorporate a common policy on tourism into the Treaty of Nice. The environmental competence of the Community would nevertheless support the adoption of EC directives or regulations on sustainable tourism. At the same time, measures to promote sustainable tourism should be integrated into the framework of the Euro-Mediterranean dialogue between the EC and the other Mediterranean riparian states.

### 3. The Mediterranean Commission on Sustainable Development (MCSD)

The Mediterranean basin became the first region where criteria for sustainability have been applied to tourist activities.<sup>89</sup> Within the political framework of UNEP Regional Seas Programme, the MCSD<sup>90</sup> made sustainable tourism a priority. Its aim is to prepare recommendations and invite riparian states, the European Commission, and the Contracting Parties to the Barcelona Convention<sup>91</sup> to harmonize tourism and sustainable development in the Mediterranean. To this end, the MCSD established a working group composed of representatives from twelve countries,<sup>92</sup> the European Community, and five NGOs. The group on tourism and sustainable development met several times in 1997 and in 1998, and finally, its synthesis report was presented in Monaco in October 1998. The group concluded with proposals for action and recommendations and proposed a dialogue and a working method within the framework of the Euro-Mediterranean partnership.<sup>93</sup> These recommendations were endorsed by the fifth session of the MCSD in June 1999.<sup>94</sup>

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89. The Mediterranean basin is a popular tourist destination, with 135 million visitors in 1990. On the peculiarities of Mediterranean tourism, see Lucien Chabason, *Crowded Shores*, OUR PLANET, Feb., 1999 at 1, available at <http://www.ourplanet.com/imgversn/101/chabason.html> (last visited Apr. 22, 2001); see also *Report of the Workshop on Tourism and Sustainable Development in the Mediterranean, Antalya, Turkey, Sept. 17-19, 1998*, UNEP, MAP Technical Reports Series No. 126, U.N. Doc. UNEP/MCSD/Blue Plan (1999) [hereinafter *Mediterranean Plan*].

90. The MCSD is composed of representatives of coastal states, local authorities, environmental NGOs, and socio-economic actors. The Commission was established in December 1996 within the framework of the UNEP Mediterranean Action Plan. The mandate of the MCSD is to identify and evaluate the major economic, environmental, and social issues; draw proposals and ensure their follow-up; facilitate the exchanges of information and the regional co-operation for a sustainable development in the Mediterranean. See *Mediterranean Plan*, *supra* note 89.

91. See Barcelona Convention for the Protection of the Mediterranean Sea Against Pollution, Feb. 16, 1976, 1102 U.N.T.S. 27.

92. These countries are Spain, France, Monaco, Malta, Slovenia, Croatia, Greece, Cyprus, Turkey, Lebanon, and Libya.

93. See Tourism and Sustainable Development in the Mediterranean, *Summary Report to the Mediterranean Commission on Sustainable Development from the Group leading the Activity: Main Conclusions and Proposals*, in *Mediterranean Plan*, *supra* note 89, at 10.

94. Other initiatives encouraging sustainable tourism in the Mediterranean are the series of Euro-Mediterranean ministerial conferences on tourism and sustainable development held since 1993 that resulted in the adoption of

#### IV. INTERNATIONAL CONVENTIONS AND THE IMPLEMENTATION OF SUSTAINABLE TOURISM

Recommendations, plans of action, and guidelines that have been promoted or adopted by intergovernmental organisations express a global consensus and can be useful and relevant for the realisation of sustainable tourism. Developing global guidelines that are not legally binding have a number of advantages.<sup>95</sup> Nevertheless, the role of international guidelines is seriously limited as far as they are only advisory instruments and are unenforceable. Hence, the international community must deal with sustainable tourism issues within the framework of existing international conventions because the limitations of recommendations and guidelines, and because there is a tendency to think that legally binding regulations are necessary.

As mentioned above, tourism activities can have serious effects on the environment, worsening existing environmental problems, as well as affecting, directly or indirectly, a variety of areas of environmental concern. Consequently, tourism can fall under the scope of many environmental conventions including international conventions dealing with water resources, pollution, waste management, or nature protection. In fact, sustainable tourism has become the objective of some conventions, including the Antarctic Treaty System, the Biodiversity Convention, and, at a subregional level, the Convention for the Protection of the Alps.<sup>96</sup> This section will discuss the work of Parties to these conventions as it relates to sustainable tourism.

##### A. ANTARCTIC TREATY SYSTEM

Tourism activities have been the object of important and controversial debates within the Antarctic Treaty System (ATS). The ATS consists of the "Antarctic Treaty and measures in effect under that Treaty, its associated separate international instruments in force and the measures in effect under those instruments."<sup>97</sup>

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the 1993 Charter on Mediterranean Tourism. The Charter underscores the need to preserve the nature and the culture of the Mediterranean countries. See MINISTERIO DE ECONOMÍA Y HACIENDA/MINISTERIO DE MEDIO AMBIENTE, SPAIN: A SUSTAINABLE TOURISM 19-20 (1999).

95. "[G]uidelines are flexible instruments that can react to a variety of different situations; [they] leave scope for all stakeholders to take responsibility for their own actions; [they] are an appropriate instrument for forming consensus at a global level; they can appropriately deal with the complex problem of 'tourism and [environment]' and the various interests associated with it; guidelines can help develop legally binding regulations at some later point in time. . . ." UNEP, *Biological Diversity and Sustainable Tourism: Preparation of Global Guidelines*, *supra* note 15, at 9-10.

96. The Alps Convention is the only treaty that has provided a general framework in which the Contracting Parties have elaborated and adopted an international binding instrument specifically regulating sustainable tourism: the Alps Convention Tourism Protocol.

97. See The Protocol on Environmental Protection to the Antarctic Treaty, Oct. 4, 1991, art. 1(3), S. TREATY Doc. No. 102-22, 30 I.L.M. 1461 [hereinafter "the Environmental Protocol"].

The ATS includes an umbrella convention, the 1959 Antarctic Treaty (AT);<sup>98</sup> the 1972 Convention for the Conservation of Antarctic Seals;<sup>99</sup> the 1980 Convention for the Conservation of Antarctic Marine Living Resources;<sup>100</sup> and the 1991 Protocol on Environmental Protection to the Antarctic Treaty.<sup>101</sup> The 1988 Convention on the Regulation of Antarctic Mineral Resource Activities<sup>102</sup> is not a part of the System, is not yet in force, and is highly unlikely to ever enter into force. Due to the peculiarities of the continent, Antarctic tourism is a different form of tourism than tourism activities in other areas of the world. The special features of Antarctic tourism<sup>103</sup> emerge because there are no recipient states; the Antarctic's rough climate means that tourism is restricted to certain areas and to a short period of the year; it is a luxurious form of tourism that has a predominantly sea-borne nature; and finally, Antarctic tourism is an inherently hazardous human activity.

The AT does not include any provision for tourism. The only relevant text can be found in Article X: "Each of the Contracting Parties undertakes to exert appropriate efforts . . . to the end that no one engages in any activity in Antarctica contrary to the principles and purposes of the present Treaty." Among these principles and purposes, the principle of "peaceful use" of Antarctica is fundamental. Obviously, tourism is a "peaceful use" in so far as tourist activities do not imply the use of force. However, tourist activities may interfere with other peaceful uses, such as freedom of scientific research.<sup>104</sup> The Contracting Parties should therefore "exert appropriate efforts" and regulate Antarctic tourism.

Following the general mandate of Article X, the Antarctic Treaty Consultative Meetings (ATCMs) have regularly addressed the issue of tourism since the 1966 ATCM. The ATCMs adopted several recommendations on the impacts of tourism and private expeditions in Antarctica.<sup>105</sup> However, from 1982 until 1991, the

98. See The Antarctic Treaty, Dec. 12, 1959, 402 U.N.T.S. 71.

99. See Lyster, *supra* note 11, at 355-66.

100. *Id.* at 442-61.

101. The Environmental Protocol was adopted at the final session of the XI Antarctic Treaty Special Consultative Meeting, held in Madrid on October 3-4, 1991. See 30 I.L.M. 1460 (1991).

102. See Convention on the Regulation of Antarctic Mineral Resource Activities, 27 I.L.M. 868 (1988).

103. See Davor Vidas, *Antarctic Tourism: A Challenge to the Legitimacy of the Antarctic Treaty System*, 36 GERMAN Y.B. INT'L L. 195-203 (1993).

104. Other peaceful uses of Antarctica could be geographical and historical exploration, fishing, whale watching, climatic observations, biological monitoring and other types of scientific research. Mineral exploration and exploitation are peaceful uses of Antarctica but they are not allowed by the Environmental Protocol.

105. See Recommendation IV-27 *Effects of tourism*, adopted by the Fourth Consultative Meeting, Santiago, Nov. 3-18, 1966; Recommendation VI-7 *Effects of tourists and non-government expeditions to the Antarctic Treaty area*, adopted by the Sixth Consultative Meeting, Tokyo, Oct. 19-31, 1970; Recommendation VII-4 *Effects of tourists and expeditions*, adopted by the Seventh Consultative Meeting, Wellington, Oct. 30-Nov. 10, 1972; Recommendation VIII-9 *Effects of tourists and non-governmental expeditions in the Treaty Area*, adopted by the Eighth Consultative Meeting, Oslo, June 9-20, 1975; Recommendation X-8, *Effects of tourists and non-government expeditions in the Antarctic Treaty Area*, adopted by the Tenth Consultative Meeting, Washington, Sept. 17-Oct. 5, 1979.

delegates did not adopt any recommendations or measures concerning the issue of Antarctic tourism.<sup>106</sup> Tourism emerged in practice as the most controversial issue for the ATS in the 1990s. The issue appeared at the eleventh Antarctic Treaty Special Consultative Meeting (ATSCM),<sup>107</sup> where it was decided that an adequate regulation for tourism was necessary. In October 1991, the Bonn ATCM established a sub-working group in charge of studying proposals for a possible annex on tourism to the Environmental Protocol.<sup>108</sup> Some Parties supported the adoption of such an annex, despite the fact that it could be argued that the Environmental Protocol already covers any human activity in Antarctica, including tourism. The meeting ultimately adopted Recommendation XVI-13, which seemed to open the door to a future annex on tourism and non-governmental activities in Antarctica to the Environmental Protocol.

In November 1992, the Informal Antarctic Treaty Meeting on Tourism was held in Venice. Polarisation among Antarctic Treaty Consultative Parties (ATCPs) caused the meeting to end without any specific conclusions. Neither were any real outcomes reached at the seventeenth ATCM, also held in Venice in November 1992. The final report of the meeting includes only seven paragraphs on tourism—none very substantive.<sup>109</sup> Since 1992, no real progress has been made and no agreement has been reached on the need for an additional annex. ATCMs have nevertheless continued to address tourism issues.<sup>110</sup>

106. Inaction occurred despite the fact that the number of tourists increased by more than 650%. See Vidas, *supra* note 103, at 193 & n.26. For information on the development of Antarctic tourism, see J.P. Reich, *The Development of Antarctic Tourism*, 126 POLAR RECORD 203-14 (1980); B. Stonehouse, *Ecotourism in Antarctica*, in ECOTOURISM: A SUSTAINABLE OPTION? 195 (Erlet Cater & Gwen Lowman eds., 1994).

107. See Working papers submitted by Chile, *Governmental and non-governmental activities concerning the protection of the Antarctic Environment (draft annex to the Protocol)*, Doc. XI ATSCM/2/WP.20, Apr. 23, 1991, and France, *Tourist activities in Antarctica and the protection of the Environment*, Doc. XI ATSCM/2/WP.3, Apr. 22, 1991.

108. There are five annexes to the Environmental Protocol, namely, Annex I: Environmental Impact Assessment; Annex II: Conservation of Flora and Fauna; Annex III: Waste; Annex IV: Marine Pollution; Annex V: Area Protection. On the annexes, see Catherine Redgwell, *Environmental Protection in Antarctica: The 1991 Protocol*, 43 INT'L & COMP. L.Q. 616-33 (1994).

109. See *Final Report of the XVII ATCM*, Venice 1992, paras. 108-114.

110. The XVIII ATCM, held in Kyoto, Japan, on April 11-22, 1994, adopted Recommendation XVIII-1 (1994) on guidance for visitors to the Antarctic, which is intended to ensure that all visitors are aware of and able to comply with the applicable provisions of the Antarctic Treaty and the Environmental Protocol.

At the XIX ATCM, which took place in Seoul, South Korea, on May 8-19, 1995, the ATCPs adopted Recommendation XIX-3 (1995) on Reporting of Tourism and non-Governmental Activities. The resolution intends to standardise reporting of information from tourist and non-government operators on their visits to Antarctica.

The XXI ATCM, held in Christchurch, New Zealand, in May 19-30, 1997 reiterated and detailed this duty to report while adopting Recommendation XXI-3 (1997) on Standard Form for Advance Notification and Post-Visit Reporting on Tourism and Non-Governmental Activities in Antarctica.

Finally, the XXIII ATCM, which took place in Lima, Peru, from May 24-June 4, 1999, adopted the Decision XXIII-2 (1999) on Guidelines for Antarctic Shipping and Related Activities. Although the decision does not address directly Antarctic tourism, guidelines provided are relevant to tourist and non-governmental visits to Antarctica. The XXIII ATCM also welcomed one of the most recent developments in Antarctic tourism, namely,

To date, the current applicable rules on Antarctic tourism, is "unsystematic, incomplete and of an unclear legal nature."<sup>111</sup> First, the regulation of Antarctic tourism has "never been approached systematically" by the parties<sup>112</sup> and "a disperse regulation, scattered in a number of recommendations . . . was not the most appropriate solution the ATS could have offered to regulate Antarctic tourism."<sup>113</sup> In addition, the wording of the recommendations addressing tourism is often vague and inadequate.

Second, the adoption of recommendations by the ATCM does not seem the most appropriate way to deal with Antarctic tourism, given the debate about the legal nature and enforceability of these recommendations. The discussion of this point extends beyond the scope of this article, but it is noteworthy that the legal nature of ATS's recommendations is not a settled issue, and some authors and states are of the opinion that recommendations adopted by the ATCM are not legally binding. Consequently, ATCMs should avoid recommendations and opt for another legally binding instrument to regulate Antarctic tourism.

Third, the Environmental Protocol neither prohibits nor allows tourism in Antarctica. The Protocol mentions tourism in some of its provisions and annexes,<sup>114</sup> but does not deal with tourism activities in Antarctica as a separate issue from other human activities. Antarctic tourism, however, has some peculiarities that require a distinctive legal regime.<sup>115</sup> The fact that the Protocol does not incorporate a particular body of provisions, accounting for the peculiar features of Antarctic tourism, results in the existence of serious gaps in the Protocol's coverage of tourist activities. Consequently, some tourism issues go beyond the limited scope of the Protocol—issues relating to liability, insurance, jurisdiction, third party activities, and enforcement. On the other hand, the duty of prior environmental impact assessment is envisaged by the Environmental Protocol, but relevant provisions offer just a partial solution for Antarctic tourism projects.

In brief, the regulation of tourism within the ATS is chaotic and "scattered and inadequate for application; crucial issues, such as liability and jurisdiction, are not regulated at all; and the Environmental Protocol . . . is certainly not sufficient

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the adoption of the WTO Declaration on Antarctic tourism, information paper XXIII RCTA/IP 39, May 1999. The Declaration was adopted on December 1, 1998, by the WTO Executive Council at its 59th meeting held at Ushuaia, Argentina. It recognises the peculiarities of the Antarctic ecosystem and declares that states are responsible for ensuring that Antarctic tourist activities of their nationals are carried out in a manner that does not damage the Antarctic ecosystem and related ecosystems. The Council requests states to preserve the Antarctica, to ensure sustainability, and to promote an ecologically friendly tourism.

111. Vidas, *supra* note 103, at 220.

112. P.J. Beck, *Regulating One of the Last Tourism Frontiers: Antarctica*, 10 APPLIED GEOGRAPHY 352 (1990).

113. Vidas, *supra* note 103, at 211.

114. See The Environmental Protocol, *supra* note 97, art. 1, ¶1; art. 3, ¶4; art. 8, ¶2; art. 15, ¶1, pt. (a).

115. These peculiar features of the Antarctic tourism have been elaborated in the second paragraph of this section.

in terms of an Antarctic tourism regime."<sup>116</sup> As a result, the main source of regulation of Antarctic tourism is the self-regulation of the Antarctic tourism industry,<sup>117</sup> whose allegiance to sustainable tourism is doubtful, and whose guidelines and codes are non-binding and non-enforceable. Consequently, the ATCPs should re-open the process to negotiate and adopt a tourism annex to the Environmental Protocol, ensuring that every aspect of tourist activities in Antarctica is addressed.<sup>118</sup>

#### B. BIODIVERSITY CONVENTION

The Convention on Biological Diversity, adopted in May 1992, and opened for signature in June 1992, at UNCED,<sup>119</sup> entered into force on December 29, 1994. The objectives of the Convention are the conservation of biological diversity, the sustainable use of biological resources, and the fair and equitable sharing of the benefits arising out of the utilisation of genetic resources.<sup>120</sup> According to Article 2 of the Convention, "sustainable use" is defined to mean 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 both present and future generations.<sup>121</sup> This definition of sustainable use is consistent with the concept of sustainable development as

116. Vidas, *supra* note 103, at 223.

117. The International Association of Antarctica Tour Operators adopted a body of self-regulatory rules concerning shipborne operations; activities of aircraft and land-based private-sector travel to and within the Antarctica; and the IAATO Antarctica visitor guidelines. See Bernard Stonehouse, *IAATO: An Association of Antarctic Tour Operators*, 28 POLAR RECORDS 322, 323 (1992).

118. Finally, it is worth noting that Antarctic tourism is regularly addressed by the United Nations General Assembly in the debates on the item entitled "Question of Antarctica." The position of some ATS-sceptic states and the Reports of the Secretary-General have been very critical of Antarctic tourism. Moreover, in 1991, the General Assembly adopted a resolution urging all members of the international community to ensure that all activities in Antarctica are carried out exclusively for the purpose of peaceful scientific investigation, see U.N. Doc. A/RES/46/41 pmbL, paras. 10, 16 (1991), and whose wording tends clearly towards a prohibition of Antarctic tourism. However, recent resolutions seem to confirm that the General Assembly has abandoned this view. See Question of Antarctica, U.N. GAOR, 90th plenary mtg., ¶ 9, U.N. Doc. A/49/80 (1994) (urging countries whose nationals undertake activities in Antarctica to ensure that all such activities are carried out in a manner consistent with the principles of the Environmental Protocol).

119. The Convention was adopted in May 1992 and opened for signature at Rio de Janeiro by all states and any regional economic integration organisation on June 5-14 1992, and at the U.N. Headquarters in New York from June 15, 1992, to June 4, 1993. See Convention on Biological Diversity, U.N. Conference on Environment and Development, June 5, 1992, art. 33, U.N. Doc. UNEP/Bio.Div/N7-INC.S4, reprinted in 31 I.L.M. 818 (entered into force Dec. 29, 1993) [hereinafter Biodiversity Convention]. On the Biodiversity Convention, see INTERNATIONAL LAW AND THE CONSERVATION OF BIOLOGICAL DIVERSITY (Michael Bowman & Catherine Redgwell eds., 1996); Maria Clara Maffei, *Evolving Trends in the International Protection of Species*, in 36 GERMAN YEARBOOK OF INTERNATIONAL LAW 131-86 (1993). See also Francoise Burhenne-Guilmin & Susan Casey-Lefkowitz, *The Convention on Biological Diversity: A Hard Won Global Achievement*, 3 Y.B. INT'L ENVTL. L. 43-59 (1992).

120. See Biodiversity Convention, *supra* note 119, art. 1.

121. This definition would apply to tourism.



elaborated in the Rio Principles and Agenda 21, whereby "sustainable development" meets the needs and aspirations of current generations without compromising the ability to meet the needs of future generations.<sup>122</sup>

Within the framework of the Biodiversity Convention, the Ministerial Roundtable on Biological Diversity, held during the Fourth Meeting of the Conference of the Parties to the Convention,<sup>123</sup> already addressed the issue of tourism and acknowledged its role in poverty alleviation and the conservation of biological diversity. More recently, using Article 10<sup>124</sup> and Article 6<sup>125</sup> of the Biodiversity Convention, the Subsidiary Body on Scientific, Technical Advice of the Convention considered the issue of sustainable use of biological resources, including tourism at its fourth meeting, held in Montreal in June 1999.<sup>126</sup> This body initiated a process of exchange of experiences, knowledge, and best practices on sustainable tourism and biodiversity. Furthermore, the Fifth Meeting of the Conference of the Parties, held in Nairobi in May 2000, considered in-depth the theme of tourism as closely linked to sustainable use of biological resources and subsequently adopted Decision V/25.<sup>127</sup> In this Decision, the Parties recognised the increasing importance of tourism for social and economic development. They

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122. See UNEP, *Sustainable Use and Tourism*, *supra* note 4, ¶ 7.

123. This meeting took place in Bratislava, Slovakia, in May 1998.

124. Article 10, Sustainable use of components of biological diversity, reads:

Each contracting Party shall, as far as possible and as appropriate:

- a) Integrate consideration of the conservation and sustainable use of biological resources into national decision-making;
- b) Adopt measures relating to the use of biological resources to avoid or minimise adverse effects on biological diversity;
- c) Protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements;
- d) Support local populations to develop and implement remedial action in degraded areas where biological diversity has been reduced; and
- e) Encourage co-operation between its governmental authorities and its private sector in developing methods for sustainable use of biological resources.

Biodiversity Convention, *supra* note 119, art. 10.

125. Article 6, General measures for conservation and sustainable use, reads:

Each Contracting Party shall, in accordance with its particular conditions and capabilities:

- a) Develop national strategies, plans or programmes for the conservation and sustainable use of biological diversity or adapt for this purpose existing strategies, plans or programmes which shall reflect, *inter alia*, the measures set out in this Convention relevant to the Contracting Party concerned; and
- b) Integrate, as far as possible and as appropriate, the conservation and sustainable use of biological diversity into the relevant sectoral or cross-sectoral plans, programmes and policies.

Biodiversity Convention, *supra* note 119, art. 6.

126. See *Report of the Fourth Meeting of the Conference of the Parties to the Convention on Biological Diversity*, United Nations Environment Programme, U.N. Doc. UNEP/CBD/COP/4/27, Annex, Decision IV/15, p. 131, para. 14, (1998).

127. See *Report of the Fifth Meeting of the Conference of the Parties to the Convention on Biological Diversity*, United Nations Environment Programme, U.N. Doc. UNEP/CBD/COP/5/23, Annex, Decision V/25, at 185 (2000).

also recognised that tourism is closely linked to the preservation of a healthy environment and the need to develop sustainable tourism by implementing a flexible mix of instruments. The Decision urges the tourism industry to work in partnership with all stakeholders and to commit to work within principles and guidelines for sustainable tourism development; it encourages parties and governments to complement voluntary efforts by establishing enabling policies and legal frameworks for the effective implementation of sustainable tourism.

The Biodiversity Convention is one of the best-tailored treaties to develop a global instrument on sustainable tourism. First, it is a framework convention that explicitly provides for the adoption of protocols.<sup>128</sup> Second, it is a global convention with numerous Parties.<sup>129</sup> Third, the objectives of conservation and sustainable use of biological diversity are very broad and may allow for adequate regulation in the direction of sustainable tourism. Consequently, the creation of a working group in charge of elaborating a draft protocol rather than a mere body of guidelines on sustainable tourism should be one of the priorities of the parties to the Biodiversity Convention.<sup>130</sup>

### C. ALPS CONVENTION TOURISM PROTOCOL

The Convention for the Protection of the Alps ("the Alps Convention") of November 7, 1991,<sup>131</sup> was signed in Salzburg, Austria, and entered into force on March 6, 1995. The Alps Convention is the first treaty that deals with a complete terrestrial ecological unit<sup>132</sup> because it provides a global framework for the protection and sustainable development of the Alpine region.<sup>133</sup> The Alps

128. See Biodiversity Convention, *supra* note 119, art. 28.

129. The Biodiversity Convention has 180 contracting parties, including the European Community.

130. Other initiatives on biodiversity and tourism include the International Conference of Environment Ministers on Biodiversity and Tourism, which took place in Berlin from March 6-8, 1997, at the International Tourism Exchange (ITE) on the initiative of the German Government. Attended by nineteen countries and six organisations, it elaborated and adopted the Berlin Declaration on Biological Diversity and Sustainable Tourism. The Berlin Declaration includes general and specific recommendations. The former underline compliance with the Convention on Biological Diversity; the promotion of tourist activities that directly or indirectly support the conservation of biological diversity; the protection of the integrity of ecosystems and habitats; the need to avoid additional tourism in areas that are already under stress; the need for planning and environmental impact assessment; the need to develop and use environmentally friendly technologies in the sphere of tourism; and the common responsibility of authorities, international organisations, the private sector, and environmental organisations. The specific recommendations expressed by the Berlin Declaration are based on the need to control and reduce environmental stresses from infrastructure development; the need to involve local communities in the planning and implementation of tourist activities and in the sharing of profits; the need to restrict tourist activities in ecologically and culturally sensitive areas and avoid all forms of mass tourism in these areas; and, finally, the need to manage tourism in protected areas in such a way that the objectives of the protected areas are not jeopardised.

131. See the French official text in *La Convention Alpine*, Dec. 7, 1995, *Journal Officiel*, No.95, at 1270, reprinted in 31 I.L.M. 767 (1992) (English text) [hereinafter Alps Convention].

132. See CYRILLE DE KLEMM & CLARE SHINE, BIOLOGICAL DIVERSITY CONSERVATION AND THE LAW: LEGAL MECHANISMS FOR CONSERVING SPECIES AND ECOSYSTEMS 10, 33, 144 (1993).

133. See Churchill, *The Contribution of Existing Agreements for the Conservation of Terrestrial Species and*

Convention is the response of Alpine states to threats to the Alpine ecosystem from human actions, particularly sporting and tourist activities.<sup>134</sup> The parties are obliged to maintain a comprehensive policy of protection and preservation of the Alps. This general objective justifies the adoption of measures addressing a whole range of environmental problems, namely: population and culture, physical planning, air, water, and soil protection, maintenance of landscape, the management of mountain agriculture and forests, tourism and recreation, energy, and wastes. The treaty is a framework convention with general obligations that must be developed and detailed through protocols.<sup>135</sup> The Alpine Conference and the Standing Committee constitute the institutional structure of the Convention.

Following the mandate of Article 2 of the Alps Convention,<sup>136</sup> the Alps Convention Tourism Protocol (the "Tourism Protocol") was opened for signature by all signatories to the Alps Convention and the European Community<sup>137</sup> on October 16, 1998, in Bled, Slovenia. The Tourism Protocol recognises the increasing importance of tourism and the need to regulate alpine tourism at an international level. Article 1 sets out the basic objective of the protocol, which is:

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*Habitats to the Maintenance of Biodiversity, in INTERNATIONAL LAW AND THE CONSERVATION OF BIOLOGICAL DIVERSITY 84, supra note 119.*

134. On tourist activities in the Alps, see Prince H.R.H. Sadruddin, *Tourism and a European Strategy for the Alpine Tourism, in ECOTOURISM: A SUSTAINABLE OPTION?* 137-58, *supra* note 12.

135. There are eight protocols for the implementation of the Alps Convention, none of which have entered into force yet. The Protocol on nature protection and landscape conservation (Chambery, Dec. 20, 1994); Protocol on mountain agriculture (Chambery, Dec. 20, 1994); Protocol on town and country planning and sustainable development (Chambery, Dec. 20, 1994); Protocol on mountain forests (Brdo, Feb. 27, 1996); Protocol on tourism (Bled, Oct. 16, 1998) [hereinafter Tourism Protocol]; Protocol on energy (Bled, Oct. 16, 1998); Protocol on soil protection (Bled, Oct. 16, 1998); Protocol on transportation (Lucerne, Oct. 31, 2000). All protocols are available at the CIPRA website, *supra* note 136.

136. Article 2: Obligations générales:

1. Les Parties contractantes, dans le respect des principes de précaution, du pollueur-payeur et de coopération, assurent une politique globale de préservation et de protection des Alpes en prenant en considération de façon équitable les intérêts de tous les états alpins, de leurs régions alpines ainsi que de la Communauté économique européenne tout en utilisant avec discernement les ressources et en les exploitant de façon durable. La coopération transfrontalière en faveur de l'espace alpin est intensifiée et élargie sur le plan géographique et thématique.
2. Pour atteindre l'objectif visé au paragraphe 1, les Parties contractantes prennent des mesures appropriées, notamment dans les domaines suivants . . . i) tourisme et loisirs—en vue d'assurer l'harmonisation des activités touristiques et de loisir avec les exigences écologiques et sociales, tout en limitant les activités touristiques et de loisir qui sont préjudiciables à l'environnement, notamment par la délimitation de zones déclarées non aménageables . . .
3. Les Parties contractantes conviennent des protocoles fixant les mesures d'application de la présente Convention.

Alps Convention, *supra* note 131, art. 2.

137. See Tourism Protocol, *supra* note 135, art. 28.1. The Protocol was signed by Switzerland, Germany, Liechtenstein, Monaco, and Slovenia on Oct. 16, 1998. See the French text of the Tourism Protocol, at [http://francais.cipra.org/texte\\_f/Convention/uebersicht\\_protokolle.htm](http://francais.cipra.org/texte_f/Convention/uebersicht_protokolle.htm) (last visited Apr. 22, 2001) [hereinafter CIPRA website].

[T]o contribute, within the existing institutional structure, to the sustainable development of the alpine area through an environmentally friendly tourism by means of specific measures and recommendations taking into account the interests of the local population and tourists.<sup>138</sup>

In order to attain this objective, the Tourism Protocol includes both general provisions and specific measures. The general provisions deal with the duty of international cooperation,<sup>139</sup> the principle of integration,<sup>140</sup> and the principle of participation.<sup>141</sup>

Most of the specific measures address environmental problems in the Alpine area.<sup>142</sup> However, several measures are not necessarily specific to the Alpine region, and could be useful and valid examples to promote sustainable tourism in other areas of the world. The primary obligation of this type is laid down in Article 5, which states that "[t]he Contracting Parties undertake to ensure a sustainable tourism development through an environmentally friendly tourism."<sup>143</sup> The Tourism Protocol sets out some of the criteria related to tourist projects, which assist in attaining environmentally-friendly tourism, *inter alia*, socio-economic effects on local populations; impacts on soil, water, air, and landscapes; taking due account of ecological data, natural resources, ecosystem adaptability, and effects on public finances.<sup>144</sup> Additionally, the balance between the interests of the tourism industry and the conservation of the environment is

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138. "[C]ontribuer, dans le cadre institutionnel existant, à un développement durable de l'espace alpin par un tourisme respectueux de l'environnement grâce à des mesures spécifiques et à des recommandations qui tiennent compte des intérêts de la population locale et des touristes." Tourism Protocol, *supra* note 135, art. 1 (French text available at CIPRA website, *supra* note 137).

139. Article 2 deals with international co-operation between states and between other territorial bodies. Regulating this aspect, the Tourism Protocol is a very innovative treaty because it stipulates that the Contracting Parties have the duty to remove obstacles to international co-operation between local and regional authorities of the Alpine area. See Tourism Protocol, *supra* note 135, art. 2.1. The principle of subsidiarity, which is the pillar of this participatory approach, is implicitly recognised by the Tourism Protocol in many provisions. See *id.* arts. 2.1, 4.1, 5.1.

140. The Tourism Protocol emphasises the principle of integration. According to Article 3, the Contracting Parties undertake to take in account the objectives of this protocol in their other policies. This provision is a sectoral application of the worldwide well-accepted principle of integration of environmental concerns into other governmental policies.

141. Article 4 regulates some aspects of the principle of participation, in particular, participation of territorial bodies of the Contracting Parties in making-decision process related to sustainable tourist development. It is worth noting that this provision recognises the right of territorial organisations to participate in preparing and implementing policies related to the objectives of this Protocol.

142. See *id.* art. 11 (management of accommodation); art. 12 (ski lifts); art. 13 (traffic and transportation); art. 14 (management of artificial snowing and other skiing facilities); art. 15 (sporting activities) (this provision refers explicitly to the possibility of prohibiting or restricting harmful sporting activities); art. 17 (development of local and regional institutions); art. 18 (reduction of seasonal tourist fluctuation); art. 19 (incentive measures which encourage the implementation of the Tourism Protocol); art. 20 (regulating co-operation between tourism, agriculture, silviculture, and craftsmanship).

143. "[L]es Parties contractantes s'engagent à veiller à un développement touristique durable avec un tourisme respectueux de l'environnement." *Id.* art. 5 (French text available at CIPRA website, *supra* note 137).

144. See Tourism Protocol, *supra* note 135, art. 5.

preserved in Article 7, which states that the parties are required to adopt a policy seeking a qualitative tourist development program, factoring in environmental concerns. Article 9 is one of the most important provisions of the Protocol. This provision states that tourist development must be adapted to the local environment and where necessary, an environmental impact assessment must be conducted. Unfortunately, the Tourism Protocol does not provide any guideline relating to the procedure of, and the elements to be included in, an environmental impact assessment. Chapter III of the Protocol is also unsatisfactory because it adopts a simple and minimalist approach in addressing research, information, and capacity-building issues.<sup>145</sup>

The relationship between the Tourism Protocol and the Convention is governed by Article 2 of the Convention, and other relevant provisions.<sup>146</sup> Chapter IV includes some of the most interesting provisions of the Tourism Protocol. According to Article 21, the Parties are allowed to adopt additional measures that complement existing measures envisaged by the Tourism Protocol in order to promote sustainable tourism.<sup>147</sup> Article 26 requires the Contracting Parties to regularly examine and evaluate the effectiveness of the provisions of the protocol and, where necessary, to amend the instrument. The role of territorial bodies and NGOs in this process is emphasised. Article 25 is the most innovative and promising procedural provision of the Protocol insofar as it regulates an embryonic non-compliance mechanism.<sup>148</sup> This provision includes the basic elements

145. Article 22 stipulates that the Contracting Parties encourage and harmonise the research and systematic observation of links between tourism and environment. The Parties undertake to exchange information and integrate such an information into a common public system of observation and data. *See id.* art. 22. Article 23 refers briefly to training and public information and education concerning tourism and environment. *See id.* art. 23.

146. *See Alps Convention, supra* note 129, art. 2; Tourism Protocol, *supra* note 135, art. 27. The main features of this régime are common lines to every framework convention: a state, or the European Community, may not become a party to the protocol unless it is a Contracting Party to the Alps Convention, and, obviously, decisions under this protocol may be taken at the Alpine Conference only by the Parties to the Tourism Protocol.

147. This residual power clause, conferred to the Contracting Parties to the Protocol acting as the Alpine Conference, is a common provision in multilateral environmental agreements. *See, e.g.,* Montreal Protocol On Substances that Deplete the Ozone Layer, Sept. 16, 1987, art. 11.4(j), 26 I.L.M. 1541 (entered into force in the United States on Apr. 21, 1988); United Nations Convention on Environment and Development: Framework Convention on Climate Change, May 9, 1992, art. 7.2(m), 31 I.L.M. 849; Biodiversity Convention, *supra* note 119, art. 23.4(i); Desertification Convention, art. 22.2(j). This generally expressed authority may be used by the Contracting Parties to adapt the protocol to new challenges without amending the instrument. *See Jacob Werksman, The Conference of Parties to Environmental Treaties, in GREENING INTERNATIONAL INSTITUTIONS* 63 (Jacob Werksman ed., 1996).

148. Article 25 states that:

1. Les Parties contractantes font régulièrement rapport au Comité permanent sur les mesures prises en vertu du présent protocole. Les rapports traitent également la question de l'efficacité des mesures prises. La Conférence alpine détermine la périodicité des rapports.
2. Le Comité permanent examine ces rapports afin de vérifier que les Parties contractantes ont rempli leurs obligations qui découlent du présent protocole. Il peut aussi demander des informations complémentaires aux Parties contractantes concernées ou recourir à d'autres sources d'informations.

that would allow the institutional structure to develop a non-compliance procedure,<sup>149</sup> namely, the role of the Permanent Committee and its capacity to require further information from other non-governmental sources, as well as the power of the Alpine Conference to adopt recommendations on non-compliance.<sup>150</sup>

The limitations of the Alps Convention have been pointed out by some authors,<sup>151</sup> emphasizing that the Alps Convention includes few new obligations for the parties and confirms principles already well consecrated in international law, at least in multilateral environmental European agreements.<sup>152</sup> The Tourism Protocol is nevertheless an extremely significant step toward attaining sustainable tourism in the Alpine area; its adoption itself is a remarkable development in international environmental law. The protocol shows that it is possible to elaborate an international convention on sustainable tourism, even though tourism is a very complex activity that involves many economic sectors, social groups, private individuals, and opposing interests. Nevertheless, there are serious limitations to the role, which the Tourism Protocol can apply as a reference to future regional, subregional, or global treaties dealing with sustainable tourism; and there are also limitations to its effectiveness in the Alpine region itself.

First, the Protocol is a subregional treaty signed by only a small number of states located in the Alpine area—all sharing a common culture. Hence, the adoption of the Protocol was relatively easy. In contrast, the negotiation, interpretation, and implementation of a multilateral or global convention, involving many diverse states and civilisations, would be much more complex, limiting the usefulness of the experience of the Tourism Protocol. Second, the provisions of the Protocol are designed to regulate alpine tourism—a mountain-based tourism that relies on winter sports. The Protocol therefore may only be of help for those states with mountain ecosystems, tourism of which is based on winter sports and related activities, such as skiing, para-gliding, or rafting. Third, all the parties to the Protocol are developed states; the Protocol did not necessitate that parties incorporate techniques and mechanisms to assist and cooperate with

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3. Le Comité permanent établit un rapport sur le respect, par les Parties contractantes, des obligations qui découlent du présent protocole, à l'attention de la Conférence alpine.

4. La Conférence alpine prend connaissance de ce rapport. Si elle constate un manquement aux obligations, elle peut adopter des recommandations.

Tourism Protocol, *supra* note 135, art. 25 (French text available at CIPRA Website, *supra* note 137).

149. On non-compliance procedures, see Catherine Redgwell, *Non-Compliance Procedures and the Climate Change Convention*, in GLOBAL CLIMATE GOVERNANCE: INTER-LINKAGES BETWEEN THE KYOTO PROTOCOL AND OTHER MULTILATERAL REGIMES 13-26 (Bradnee Chambers ed., 1998).

150. In addition to the measures mentioned above, article 24 obliges the Contracting Parties to take any measure to ensure the implementation of the protocol. See Tourism Protocol, *supra* note 135, art. 24.

151. See Francois Servoin, *La Convention Alpine*, 3 REVUE JURIDIQUE DE L'ENVIRONNEMENT 341-53, *praesertim* 348-51 (1997).

152. *Id.* at 341-53.



developing countries, such as providing financial assistance or technological and scientific cooperation. Consequently, the Protocol is not a useful reference for negotiating international conventions between developed and developing states. It is unlikely that developing countries would adhere to a convention on sustainable tourism lacking provisions concerning financial and scientific cooperation.

Unfortunately, provisions of the Protocol are disappointing in promoting sustainable alpine tourism. Some of the basic principles of international environmental law are not included,<sup>153</sup> and some of the most modern environmental techniques have not been incorporated. Other techniques, such as the environmental impact assessment, although included, lack specific guidelines. In addition, the wording of the protocol's provisions is not constrictive enough, and obligations are expressed in an ambiguous way. The use of verbs like "undertake," "encourage," "ensure," or "promote," and the use of verbs in the conditional form lead to vague and confusing interpretations of the Protocol's obligations. Fortunately, these lacunas can be overcome because most of the Protocol's signatories are members of the European Community or are Parties to some of the most progressive multilateral or European environmental agreements. The provisions of those agreements and European directives and regulations may contribute to "fill in" some of the weak provisions of the Protocol, provided that tourism and tourism-related issues fall under their scope.

Finally, the Tourism Protocol has been signed by five of the Alpine states and has not yet entered into force. The first action to be undertaken by the Parties to the Alps Convention therefore should be to sign and ratify the Tourism Protocol. It is too early to assume a pessimistic or optimistic point of view. Certainly, the Protocol is not a perfect convention, but at least it is the first step leading to the development of an effective and complete alpine régime for the sustainable development of tourism.

#### D. OTHER CONVENTIONS

As mentioned above, sustainable tourism can fall under the scope of many environmental agreements. Tourism is a complex industry that can be approached from many different sectors of expertise and jurisdictions. International treaties on water resources, wastes, and pollution, as well as conventions for the conservation of nature, such as the World Heritage UNESCO Convention,<sup>154</sup> the Whaling Convention,<sup>155</sup> or the Ramsar

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153. There is no mention of the precautionary principle or the preventive principle. In terms of the principle of participation, although the protocol emphasises positively the role of territorial organisations, its provisions cut down the role of social groups and NGOs in implementing the protocol.

154. World Heritage Convention, *supra* note 11.

155. International Whaling Convention for the Regulation of Whaling, Dec. 2, 1946, 62 Stat. 1716, 161 U.N.T.S. 72. For instance, the International Whaling Commission (IWC) encourages whale watching tourism as

Convention<sup>156</sup> may be convenient frameworks to ensure sustainable tourism. Unfortunately, this is a subject too large for the scope of this article.

## V. CONCLUDING OBSERVATIONS

Tourism, with an increasing economic significance, ranks as one of the most dynamic and most significant global industries, and represents a sector of the global economy in which developing states have a remarkable stake. Consequently, tourism can make an essential contribution to the welfare of nations and has the potential to assist in the attainment of sustainable development by generating economic benefits for local and indigenous communities and national economies, and by reinforcing the acceptance of environment protection. The sustainability approach is especially worthwhile in tourism, as this industry relies mostly on an unspoiled and healthy natural environment. Such a healthy environment is a basic pre-requisite for tourist development, and many tourism-related activities depend on unspoiled nature. When tourism is properly planned and managed, it is an ideal vehicle for achieving economic growth while promoting sustainable development. Hence, there is a need to promote a harmonious balance between conservation of the environment and the development of tourism—to plan preventive strategies and to manage tourism activities in a way that can assist in the attainment of sustainable development. All sectors involved must recognise that if tourism is to flourish, it must develop in a sustainable way, and this can only happen through a mix of private initiatives, clean policies and strategies, incentives, and public regulations.

International recommendations and declarations have been useful in contributing to the foundations of a new sustainable tourist development model. Guidelines and action plans have been beneficial because they have formed a global consensus on adequate principles and measures. Intergovernmental organisations, international tourism industry associations, and NGOs can continue to develop, promote, and adopt those recommendations, guidelines, codes of conduct, and good practice, but at present the dimensions of tourist activities require global legally binding regulations that comprehensively face the issue on

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a sustainable use of cetacean resources. In 1993, the Contracting Governments presented to the IWC some reports on the potential and value of whale watching tourist activities. These reports were consolidated and submitted to a working group in 1994. The Scientific Committee of the IWC proposed a number of principles and objectives for managing whale watching tourism and in 1996, the IWC adopted a Resolution in which the Commission assumes a monitoring and advising role on the topic of whale watching tourism. If carried out according to the guidelines issued by the IWC, whale watching tourism is a facet of sustainable tourism and can substantially contribute to the conservation of cetacean resources and the social and economic development of some coastal communities. See International Whaling Commission, *Whalewatching*, available at <http://ourworldcompuserver.com/homepages/iwcoffice/Catches.htm#Whalewatching> (last visited Apr. 22, 2001).

156. Convention on Wetlands of International Importance Especially As Waterfowl Habitat, Feb. 2, 1971, T.I.A.S. No. 11084, 996 U.N.T.S. 245, available in 1975 WL 22577 (entered into force in the United States on Dec. 18, 1986) [hereinafter Ramsar Convention]; see Lyster, *supra* note 11, at 313, 345, 367.

a "top-down" basis.<sup>157</sup> The international community has already inaugurated these means and has incorporated the implementation of sustainable tourism among the objectives of several current conventions. However, there are some obstacles that prevent the attainment of this new goal. From a technical and legal point of view, those conventions were not planned to promote sustainability in tourism. This circumstance results in some lacunas in the scope that these treaties can provide to tourist activities. At the same time, states are aware of the need to regulate tourism activities, but they attempt to preserve their tourism-related economic interests by avoiding a legally binding regulation on sustainable tourism that would restrict tourism development.

At this moment, the United Nations should take the lead and seek a consensus between states by creating an intergovernmental committee to negotiate a global convention on sustainable tourism. A global convention should benefit from the experience that intergovernmental bodies, the tourism industry, and NGOs have had in regulating tourist activities, and should incorporate well-accepted principles and mechanisms in international environmental law, particularly the precautionary principle, the environmental impact assessment principle, and the "polluter pays" principle.

Additionally, a global convention on sustainable tourism should consider two basic circumstances. First, if developing states are to implement sustainable tourism policies, they likely will require the assistance of developed countries and intergovernmental organisations. Moreover, any global initiative aimed at regulating sustainable tourism should further recognise the unique status of small island developing states in this context.<sup>158</sup>

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157. "[T]he largely fragmented structure of tourism, whereby decisions and investment emanate from numerous independent firms, militates against co-ordinated policies and practices. The issue is thus a complex one which only the public sector has the potential for resolving comprehensively on a 'top-down' basis." SINCLAIR & STABLER, *supra* note 50, at 168-69.

158. On October 25-28, 1998, the WTO convened in Lanzarote, Spain, for the International Conference to discuss "Sustainable Tourism in Small Island Developing States and Other Islands." More than 100 delegates from 40 island states in all regions of the world, along with other representatives from intergovernmental organisations, discussed problems, exchanged experiences and knowledge, and proposed actions. The WTO International Conference dealt with the challenges of sustainable tourism in small islands and adopted some recommendations including: the integration of tourism in the overall plan for sustainable development; involvement of stakeholders and local communities; adoption of alternative technologies; promotion of codes of conduct and ecolabels tailor-made for small islands; and establishment of environmental standards and regulations. The WTO International Conference also examined progress made in implementing the Barbados Action Plan of the U.N. Conference on Sustainable Development in Small Islands Developing States. See WTO, *Final Report of the International Conference on Sustainable Tourism in Small Island Developing States (SID) and Other Islands, Statements and Declarations of the WTO Relating to Sustainable Tourism*, available at WTO website, *supra* note 35.

The Conference on the Sustainable Development of Small Island Developing States was held in Barbados in April 1994. The Conference formulated an Action Plan whose Chapter VIII, entitled *Tourism Resources*, recognised that tourism has contributed much to the development of SIDS, and points out that if it is not properly planned and managed, it could significantly degrade the environment. The Action Plan calls for international support to encourage sustainable development in SIDS. See *Report of the Global Conference on*

Second, a regional approach is necessary to properly plan and manage the sustainable development of tourism. The Mediterranean basin, the Caribbean Sea, or the Alpine region are examples of the need to combine a global and regional approach. On the one hand, the international convention on sustainable tourism must be global because tourism is largely a worldwide phenomenon, tour operators are active all over the world, and tourists are travelling throughout the globe at ever increasing rates.<sup>159</sup> On the other hand, this global convention must integrate a regional approach because peculiarities of tourism in some regions of the planet may require a distinctive régime that should be developed in annexes or protocols to a global convention. The way in which this regional approach would take shape, through an umbrella convention or framework convention, will be determined by legal, scientific, and political considerations.

In conclusion, the international community is promoting a number of legal and political actions to ensure that tourism develops in a sustainable manner at global and regional level. However, these initiatives are just the first steps. Certainly, they are not enough in themselves to ensure sustainability in the field of tourism, but they mark the successful beginning of a new international cooperative process to make tourism environmentally and socially compatible so that present and future generations can continue to enjoy the natural beauty of our planet.

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*the Sustainable Development of Small Island Developing States*, ch. I, Res. 1, Annex II, U.N. Doc. A/CONF.167/9 (1994). Chapter VIII is also available at [www.insula.org/tourism/barbados.htm](http://www.insula.org/tourism/barbados.htm).

The Barbados Action Plan was strongly considered by the 20th special session of the General Assembly held on June 1999.

On sustainable tourism in small island developing states, see H.E. Carlston Boucher, *No Island Is An Island*, OUR PLANET, Feb. 1999, at 1, available at <http://www.ourplanet.com/imgversn/101/boucher.html> (last visited Apr. 22, 2001).

159. See UNEP, *Biological Diversity and Sustainable Tourism: Preparation of Global Guideline*, *supra* note 15, at 10.