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Item 13 of the provisional agenda

**PROTECTION OF HOTELS AND TOURISM ATTRACTIONS DURING TIMES OF
ARMED CONFLICT**

Note by the Secretary-General

The Secretary-General submits to the Executive Council the preliminary study carried out on this subject, in accordance with the decision taken at the last session of the Council.

In view of the present contribution of the Legal Adviser, the Secretary-General proposes that the Executive Council request the Legal Adviser to officially consult the Secretary-General of the United Nations and the International Committee of the Red Cross as to the interest of these two institutions in the possible intervention of WTO in this area. If favourable responses are received from both the United Nations and the ICRC, the Secretary-General will ask the Legal Adviser to prepare a draft additional Protocol, which would be submitted to the Executive Council at its next session.

**PROTECTION OF HOTELS AND TOURISM ATTRACTIONS DURING TIMES OF
ARMED CONFLICT**

Supplementary note by the Legal Adviser

1. Following a proposal by Colombia, the Executive Council, through decision 22 (LXXIII) of 8 July 2004, entrusted "the Secretary-General with carrying out, with the assistance of the Legal Adviser, a preliminary study" on the matter of the protection of hotels and tourism attractions. When it adopted this decision, the Council had already taken cognizance of a preliminary note by the Legal Adviser, which is again annexed to the present note, which completes it with regard to certain points.
2. As the Council has not yet taken a position with regard to the different possibilities of action open to the Organization, it is difficult for me to know the direction in which it wishes me to clarify my preliminary note from the legal perspective.
3. I believe that it is still basically valid. In particular, I consider that:
 - Colombia's proposal corresponds to a need and would fill a gap in the law applicable to armed conflicts (whether national or international);
 - the WTO has the calling to address this matter;
 - there would be interest in acting in cooperation with the United Nations, and if necessary, with the ICRC, especially if the intention is to prepare an Additional Protocol to the Hague Convention of 14 May 1954 for the Protection of Cultural Property, which is an ambitious objective, but one that I believe is not out of reach.
4. The fact remains that everything depends on which avenue of action the Executive Council chooses, and as long as a decision in this respect is not taken, any deeper supplementary study carried out "blindly" will hardly be of use. I nevertheless would like to make two clarifications regarding my preliminary note of last year relative to, on the one hand, the modalities of cooperation with the United Nations, and on the other hand, the pertinent texts adopted by the WTO General Assembly in this area, and lastly, the pertinent provisions of the above-mentioned Convention of 1954.
5. Regarding the first point, I had indicated that the draft agreement transforming the WTO into a specialized agency of the United Nations did not contain any express provisions enabling the Organization to bring to the attention of the Security Council specific problems pertaining to areas of common interest. However, Article 2, paragraph 2 of the final agreement that came into force on 23 December 2003 stipulates:

“In exercise of its central coordinating role in the field of tourism undertaken in accordance with its Statutes and with a view to contributing to economic and social development, in particular, opportunities for poverty eradication and employment creation in the least developed countries, the World Tourism Organization recognizes the need for effective coordination and cooperation with the United Nations, its organs and the agencies within the United Nations system.”

There is no reason to interpret this provision, which refers to all the organs of the United Nations, as excluding the Security Council. All the same, the practical difficulty I pointed out in paragraph 8 of my preliminary note remains.

6. Moreover, (as pointed out by the Director-General of Tourism of Colombia in his letter to the Secretary-General dated 27 November 2002, also attached to this note), the Organization has already adopted a number of texts relative to the safety and security of tourists, which are pertinent to the objectives of the matter under consideration. Such texts include:

- Resolution 177 (VI) of 26 September 1985 relative to the security and legal protection of tourists;
- Resolution 284 (IX) of 4 October 1991 whereby the General Assembly approved the document relative to “Recommended Measures for Tourism Security” “submitted by the Tourism Security Committee through the Executive Council.” ;
- Resolution 317 (X) of 8 October 1993 on the security and protection of tourists whereby the Assembly ,

Recalling its resolution on the security and protection of tourists (A/RES/177(VI)) adopted in 1985,

Noting that violence and criminal acts against travellers, tourists and tourism facilities are a global problem,

1. *Condemns* all violence, threat of violence and all criminal acts against travellers, tourists and tourism facilities;

2. *Calls upon* States to take all appropriate measures against those who perpetrate such criminal acts and to safeguard travellers, tourists and tourism facilities against any form of violence or criminal activity; and

3. *Requests* the Secretary-General to develop practical measures that countries might employ to deal with violence and criminal acts against travellers, tourists and tourism facilities.

and

- Article 1, paragraph 4, of the Global Code of Ethics for Tourism, which states:

"It is the task of the public authorities to provide protection for tourists and visitors and their belongings; they must pay particular attention to the safety of foreign tourists owing to the particular vulnerability they may have; they should facilitate the introduction of specific means of information, prevention, security, insurance and assistance consistent with their needs; any attacks, assaults, kidnappings or threats against tourists or workers in the tourism industry, as well as the wilful destruction of tourism facilities or of elements of cultural or natural heritage should be severely condemned and punished in accordance with their respective national laws; "

7. As for the 1954 Convention on the Protection of Cultural Property in the Event of Armed Conflict, I believe it useful to draw attention to the following points in particular:

1. The scope of application of the Convention and its two Protocols, of 1954 and 1999 respectively, is limited exclusively to the protection of *cultural property* as defined in Article 1 of the Convention:

"For the purposes of the present Convention, the term "cultural property" shall cover, irrespective of origin or ownership:

- a) movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archaeological interest; as well as scientific collections and important collections of books or archives or of reproductions of the property defined above;
- b) buildings whose main and effective purpose is to preserve or exhibit the movable cultural property defined in sub-paragraph (a) such as museums, large libraries and depositories of archives, and refuges intended to shelter, in the event of armed conflict, the movable cultural property defined in subparagraph (a);
- c) centres containing a large amount of cultural property as defined in subparagraphs (a) and (b), to be known as "centres containing monuments".

2. Although cultural property, in principle, attracts certain tourism interest, it would be difficult to consider hotels and tourism attractions as cultural property as defined in Article 1 (a), (b) or (c) of the 1954 Convention, as they do not enjoy the protection established by the Convention of 1954, which is complemented by the protocols of 1954 and 1999.

3. We can nevertheless consider that such a regime is suitable for the protection of hotels and tourism attractions: the establishment of a system of preventive measures in times of peace on the one hand, and the affirmation of the obligation to respect their immunity in the event of conflict, on the other hand, seem to constitute orientations that should be taken into consideration. The Convention of 1954 and the Protocol of 1999 could therefore be considered as sources of inspiration for the drafting of a conventional instrument for the protection of hotels and tourism attractions in the event of armed conflict¹.

4. The establishment of a fund for the protection of hotels and tourism attractions could also be considered, following the model of the Fund for the Protection of Cultural Property in the Event of Armed Conflict, provided for in Article 29 of the Protocol of 1999.

8. In any case, I would like to reiterate that it is difficult for me to more specific at this time, pending the Executive Council's choice of the objective it wishes to pursue. For my part, I remain convinced that an in-depth reflection on the adoption of a new conventional instrument for the protection of hotels and tourism attractions during times of armed conflict is an ambitious but useful objective.

Done in Garches on 28 October 2004,



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¹ In this case, it would be advisable to consider a possible gradation of protective measures (general, specific or enhanced) following the example of those established by the Convention of 1954 and the Protocol of 1999 for cultural property.

A N N E X

PROTECTION OF HOTELS AND TOURISM ATTRACTIONS DURING TIMES OF ARMED CONFLICT

Preliminary note by the Legal Adviser

1. The Secretary-General has solicited my opinion regarding a proposal by Colombia aimed at "taking steps before the United Nations, on the part of WTO, for hotels and tourist attractions to be considered protected from actions of armed conflict and war, as sites where civil populations not involved in the conflict are concentrated, as established by the protocol additional to the Geneva Conventions of 1949 relative to non-international armed conflicts (Protocol II)".

2. In my opinion, the proposal of Colombia addresses a real need and is fully in line with the function of WTO:

- it is in keeping with the mission of the Organization, whose "fundamental aim (...) shall be the promotion and development of tourism with a view to contributing to (...) peace", and
- it would make it possible to fill a gap that exists in the pertinent texts on the law of armed conflicts.

3. In this respect, I should point out, however, that Additional Protocol II of the Geneva Conventions of 12 August 1949, relating to the protection of victims of non-international armed conflicts, of 10 June 1977, does not contain any express provision aimed at the protection of places where foreign civil populations are concentrated, and neither does Protocol I relating to the protection of victims of international armed conflicts, signed on the same day as the Geneva Conventions of 1949 themselves. This is precisely the reason why the proposal of Colombia is, in my opinion, of very special interest.

4. It should be noted that according to Article 13 of Protocol II:

"1. The civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations. To give effect to this protection, the following rules shall be observed in all circumstances.

"2. The civilian population as such, as well as individual civilians, shall not be the object of attack."

Comparable (and more detailed) provisions are included in Protocol I (see, in particular, Articles 51, 52, 57 and 58) and in the Conventions of 1949 themselves (see Convention IV relative to the protection of civil persons in time of war, which also contains precise provisions relative to "aliens in the territory of a party to conflict" – Articles 35 to 46).

5. Furthermore, the provisions of the Hague Convention of 14 May 1954 for the Protection of Cultural Property in the Event of Armed Conflict are specified and completed in Article 53 of Protocol I of 1977 and in Article 16 of Protocol II.

6. But the truth is that no instrument exists aimed at expressly protecting hotels and tourism attractions as such in time of armed conflict, whether internal or international, when they do possess the characteristic of being places "where civil populations not involved in the conflict are concentrated", as rightly pointed out by Colombia.

7. Colombia proposes that WTO take steps before the United Nations in order to fill this gap. This is one of several possible avenues, and can be carried out in two different ways:

- the steps can be taken on a case-to-case basis when an armed conflict, whether internal or international, poses a serious and specific threat to places where tourists are concentrated,
- or they could be undertaken with the aim of urging the United Nations General Assembly to adopt a general resolution regarding the matter, or even to initiate the process of the drafting of an international convention relative to it.

8. Taking into account the date on which Colombia formulated its proposal, it should not be discounted that it was aimed at the first option of this alternative. It is indeed possible, in the event of the hypothesis under consideration, for WTO to point out to the Security Council the risks deriving from a conflict for a population or for specific touristic sites. But I understand that there are two limitations to this possibility:

- the first is of a legal nature: the latest version of the draft agreement by virtue of which WTO would be converted into a specialized agency does not contain any specific provision in this respect (in contrast to the previous case -- Article 7 of the old agreement); however, this objection is not a nullifying one, since there is nothing that impedes WTO from taking an initiative of this type, considering, above all, the reinforcement of the links between the two organizations currently in progress;
- the second impediment, of a practical nature, is more difficult to overcome: considering the way in which the Organization functions, it would undoubtedly be difficult, in most cases, to react in due time; by definition, the emergence of an armed conflict demands urgent reactions; but, unlike the United Nations, WTO does not have any permanent organ with the competence required to take such steps on its own authority, unless the General Assembly entrusts a responsibility of this type to the Secretary-General, although it is not clear whether this forms part of his remit.

9. The second scenario mentioned above (par. 7) is probably more realistic, and there are no legal or practical considerations that would impede the Executive Council or the General Assembly from submitting the question to the United Nations General Assembly. Moreover, such an approach would be perfectly in keeping with the spirit of the draft agreement for the conversion of WTO into a specialized agency, in particular, paragraph 2 of Article 4.

10. I understand, however, that WTO could go further, or at least combine the above approach with a more ambitious one, consisting in itself adopting a resolution urging states engaged in armed conflict (whether international or not) to respect hotels and tourism attractions, and tourists themselves. The final aim could even be the negotiation of an international convention in this respect (which would require very close cooperation with other international bodies, in particular, the United Nations and the International Committee of the Red Cross (ICRC)).

11. If this approach is adopted, the process could be as follows:

- adoption of the principle of the action to be undertaken by the Executive Council;
- constitution of a Working Group, which would be in charge of making proposals to the Council;
- examination of the report by the Council and its transmission to the General Assembly;
- adoption of a resolution by the General Assembly;

or, as the case may be,

- creation by the General Assembly of an open working group that would be in charge of negotiating a convention on the matter in cooperation with the United Nations and the ICRC.

12. It goes without saying that this can only be a long-term effort, which would require the active involvement of all the Members for it to be "put into orbit".

Fait à Garches le 3 mai 2003,



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