DRAFT ADDITIONAL OPTIONAL PROTOCOL TO THE CONVENTION ON
THE RIGHTS OF THE CHILD ON THE PROTECTION OF CHILDREN
AGAINST SEX TOURISM

Note by the Secretary-General

In this document, the Secretary-General reports to the Council regarding this matter, which is an initiative put forward by Brazil and which falls under the WTO's activities in the fight against sex tourism, after having consulted the World Committee on Tourism Ethics on the subject.
DRAFT ADDITIONAL OPTIONAL PROTOCOL TO THE CONVENTION ON
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Report of the Secretary-General

At its seventy-third session held in Hyderabad, India, on 8-9 July 2004, the Executive Council was informed of a proposal by Brazil for the adoption of an additional optional protocol to the United Nations Convention on the Rights of the Child, which would be specifically dedicated to the protection of children against sex tourism, and whose text is reproduced in Annex I.

Following the suggestion of the Secretary-General, the Executive Council decided to ask the World Committee on Tourism Ethics for its opinion on this initiative. In response to this consultation, the Committee issued an opinion on 4 October 2004, whose text is attached as Annex II.

The Secretary-General also referred this matter to the Legal Adviser of the Organization, whose report is attached as Annex III.

Basing itself on the elements provided in these documents, the Council is called upon to decide on what actions to take regarding the proposal submitted by Brazil.
ANNEX I

OPTIONAL PROTOCOL
TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE
PROTECTION OF CHILDREN AGAINST SEXUAL EXPLOITATION IN
TOURISM

The States Members of the World Tourism Organization, which are also Parties
to the Convention on the Rights of the Child and the Optional Protocol to the
Convention on the Rights of the Child on the Protection of Children Against
Sexual Exploitation in Tourism,

The States Members of the World Tourism Organization, which are also Parties
to the Convention on the Rights of the Child and the Optional Protocol to the
Convention on the Rights of the Child on the Protection of Children Against
Sexual Exploitation in Tourism,

Considering also that the Convention on the Rights of the Child recognizes the
right of the child to be protected from economic exploitation and from
performing any work that is likely to be hazardous or to interfere with the child's
education, or to be harmful to the child's health or physical, mental, spiritual,
moral or social development,

Gravely concerned at the significant and increasing international sexual
exploitation of children in tourism,

Concerned about the growing availability of offer of children for sexual
exploitation in tourism, through Internet and other evolving technologies, and
recalling the International Conference on Combating Child Pornography on the
Internet, held in Vienna in 1999, in particular its conclusion calling for the
worldwide criminalization of the production, distribution, exportation,
transmission, importation, intentional possession and advertising of child
pornography, and stressing the importance of closer cooperation and
partnership between Governments and the Internet industry,

Convinced that the eradication of sexual exploitation of children in tourism will
be facilitated by adopting a holistic approach, addressing the contributing
factors, including underdevelopment, poverty, economic disparities, inequitable
socio-economic structure, dysfunctional families, lack of education, urban-rural
migration, gender discrimination, irresponsible adult sexual behaviour, harmful
traditional practices, armed conflicts and trafficking in children,

Believing also that efforts to raise public awareness are needed to reduce
consumer demand for sexual exploitation of children in tourism and believing
further in the importance of strengthening global partnership among all actors
and of improving law enforcement at the national level,
Noting the provisions of international legal instruments relevant to the protection of children, including the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, the Hague Convention on the Civil Aspects of International Child Abduction, the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children, and International Labour Organization Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour,

Encouraged by the overwhelming support for the Convention on the Rights of the Child, demonstrating the widespread commitment that exists for the promotion and protection of the rights of the child,

Recognizing the importance of the implementation of the provisions of the Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography and the Declaration and Agenda for Action adopted at the World Congress against Commercial Sexual Exploitation of Children, held in Stockholm from 27 to 31 August 1996, and the other relevant decisions and recommendations of pertinent international bodies,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child,

Have agreed as follows:

**Article 1**

States Parties shall prohibit sexual exploitation of children in tourism as provided for by the present Protocol.

**Article 2**

For the purposes of the present Protocol:

(a) *Sexual exploitation of children in tourism means the use of a child in sexual activities for remuneration or any other form of consideration*

**Article 3**

1. Each State Party shall ensure that sexual exploitation of children in tourism is fully covered under its criminal or penal law, whether such offences are committed domestically or transnationally or on an individual or organized basis:
2. Subject to the provisions of the national law of a State Party, the same shall apply to an attempt to commit any of the said acts and to complicity or participation in any of the said acts.

3. Each State Party shall make such offences punishable by appropriate penalties that take into account their grave nature.

4. Subject to the provisions of its national law, each State Party shall take measures, where appropriate, to establish the liability of legal persons for offences established in paragraph 1 of the present article. Subject to the legal principles of the State Party, such liability of legal persons may be criminal, civil or administrative.

Article 4

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 3, paragraph 1, when the offences are practiced in its territory or on board a ship or aircraft registered in that State.

2. Each State Party may take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 3, paragraph 1, in the following cases:

(a) When the alleged offender is a national of that State or a person who has his habitual residence in its territory;

(b) When the victim is a national of that State.

3. Each State Party shall also take such measures as may be necessary to establish its jurisdiction over the aforementioned offences when the alleged offender is present in its territory and it does not extradite him or her to another State Party on the ground that the offence has been committed by one of its nationals.

4. The present Protocol does not exclude any criminal jurisdiction exercised in accordance with internal law.

Article 5

1. The offences referred to in article 3, paragraph 1, shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties and shall be included as extraditable offences in every extradition treaty subsequently concluded between them, in accordance with the conditions set forth in such treaties.

2. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it
has no extradition treaty, it may consider the present Protocol to be a legal basis for extradition in respect of such offences. Extradition shall be subject to the conditions provided by the law of the requested State.

3. States Parties that do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 4.

5. If an extradition request is made with respect to an offence described in article 3, paragraph 1, and the requested State Party does not or will not extradite on the basis of the nationality of the offender, that State shall take suitable measures to submit the case to its competent authorities for the purpose of prosecution.

Article 6

1. States Parties shall afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences set forth in article 3, paragraph 1, including assistance in obtaining evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 of the present article in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.

Article 7

States Parties shall, subject to the provisions of their national law:

(a) Take measures to provide for the seizure and confiscation, as appropriate, of:

(i) Goods, such as materials, assets and other instrumentalities used to commit or facilitate offences under the present protocol;

(ii) Proceeds derived from such offences;

(b) Execute requests from another State Party for seizure or confiscation of goods or proceeds referred to in subparagraph (a);
(c) Take measures aimed at closing, on a temporary or definitive basis, premises used to commit such offences.

Article 8

1. States Parties shall adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the present Protocol at all stages of the criminal justice process, in particular by:

(a) Recognizing the vulnerability of child victims and adapting procedures to recognize their special needs, including their special needs as witnesses;

(b) Informing child victims of their rights, their role and the scope, timing and progress of the proceedings and of the disposition of their cases;

(c) Allowing the views, needs and concerns of child victims to be presented and considered in proceedings where their personal interests are affected, in a manner consistent with the procedural rules of national law;

(d) Providing appropriate support services to child victims throughout the legal process;

(e) Protecting, as appropriate, the privacy and identity of child victims and taking measures in accordance with national law to avoid the inappropriate dissemination of information that could lead to the identification of child victims;

(f) Providing, in appropriate cases, for the safety of child victims, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;

(g) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting compensation to child victims.

2. States Parties shall ensure that uncertainty as to the actual age of the victim shall not prevent the initiation of criminal investigations, including investigations aimed at establishing the age of the victim.

3. States Parties shall ensure that, in the treatment by the criminal justice system of children who are victims of the offences described in the present Protocol, the best interest of the child shall be a primary consideration.
4. States Parties shall take measures to ensure appropriate training, in particular legal and psychological training, for the persons who work with victims of the offences prohibited under the present Protocol.

5. States Parties shall, in appropriate cases, adopt measures in order to protect the safety and integrity of those persons and/or organizations involved in the prevention and/or protection and rehabilitation of victims of such offences.

3. Nothing in the present article shall be construed to be prejudicial to or inconsistent with the rights of the accused to a fair and impartial trial.

Article 9

1. States Parties shall adopt or strengthen, implement and disseminate laws, administrative measures, social policies and programmes to prevent the offences referred to in the present Protocol. Particular attention shall be given to protect children who are especially vulnerable to such practices.

2. States Parties shall promote awareness in the public at large, including children, through information by all appropriate means, education and training, about the preventive measures and harmful effects of the offences referred to in the present Protocol. In fulfilling their obligations under this article, States Parties shall encourage the participation of the community and, in particular, children and child victims, in such information and education and training programmes, including at the international level.

3. States Parties shall take all feasible measures with the aim of ensuring all appropriate assistance to victims of such offences, including their full social reintegration and their full physical and psychological recovery.

4. States Parties shall ensure that all child victims of the offences described in the present Protocol have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible.

5. States Parties shall take appropriate measures aimed at effectively prohibiting the production and dissemination of material advertising the offences described in the present Protocol.

Article 10

1. States Parties shall take all necessary steps to strengthen international cooperation by multilateral, regional and bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of those responsible for sexual exploitation of children in tourism. States Parties shall also promote international cooperation and coordination between their authorities, national and international non-governmental organizations and international organizations.
2. States Parties shall promote international cooperation to assist child victims in their physical and psychological recovery, social reintegration and repatriation.

3. States Parties shall promote the strengthening of international cooperation in order to address the root causes, such as poverty and underdevelopment, contributing to the vulnerability of children to their sexual exploitation in tourism.

4. States Parties in a position to do so shall provide financial, technical or other assistance through existing multilateral, regional, bilateral or other programmes.

**Article 11**

Nothing in the present Protocol shall affect any provisions that are more conducive to the realization of the rights of the child and that may be contained in:

(a) The law of a State Party;

(b) International law in force for that State.

**Article 12**

1. Each State Party shall, within two years following the entry into force of the present Protocol for that State Party, submit a report to the World Tourism Organization's Taskforce to Eradicate Sexual Exploitation of Children in Tourism, providing comprehensive information on the measures it has taken to implement the provisions of the Protocol.

2. Following the submission of the comprehensive report, each State Party shall include in the reports they submit to the World Tourism Organization's Taskforce to Protect Children from Sexual Exploitation in Tourism and its Executive Committee, in accordance with article 44 of the Convention, any further information with respect to the implementation of the present Protocol. Other States Parties to the Protocol shall submit a report every five years.

3. The World Tourism Organization's Taskforce to Protect Children from Sexual Exploitation in Tourism, through its Executive Committee, may request from States Parties further information relevant to the implementation of the present Protocol.

**Article 13**

1. The present Protocol is open for signature by any State member of the World Tourism Organization that is a party to the Convention or has signed it.
2. The present Protocol is subject to ratification and is open to accession by any State member of the World Tourism Organization that is a party to the Convention or has signed it. Instruments of ratification or accession shall be deposited with the Secretary-General of the World Tourism Organization.

**Article 14**

1. The present Protocol shall enter into force three months after the deposit of the tenth instrument of ratification or accession.

2. For each State ratifying the present Protocol or acceding to it after its entry into force, the Protocol shall enter into force one month after the date of the deposit of its own instrument of ratification or accession.

**Article 15**

1. Any State Party may denounce the present Protocol at any time by written notification to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the Convention and all States that have signed the Convention. The denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any offence that occurs prior to the date on which the denunciation becomes effective. Nor shall such a denunciation prejudice in any way the continued consideration of any matter that is already under consideration by the World Tourism Organization's Taskforce to Protect Children from Sexual Exploitation in Tourism, through its Executive Committee, prior to the date on which the denunciation becomes effective.

**Article 16**

1. Any State Party may propose an amendment and file it with the Secretary-General of the World Tourism Organization. The Secretary-General shall thereupon communicate the proposed amendment to States Parties with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the World Tourism Organization. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly of the World Tourism Organization for approval.
2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly and accepted by a two-thirds majority of States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties that have accepted it, other States Parties still being bound by the provisions of the present Protocol and any earlier amendments they have accepted.

**Article 17**

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the World Tourism Organization and the United Nations.

2. The Secretary-General of the World Tourism Organization shall transmit certified copies of the present Protocol to all States Parties to the Convention and all States that have signed the Convention.
ANNEX II

Proposal by the Brazilian Government for the drafting of an Optional Protocol to the Convention on the Rights of the Child on the protection of children against sexual exploitation in tourism

Agenda item 5 (document WCTE/2/5)

The World Committee on Tourism Ethics,

Having considered with interest the draft Optional Protocol to the Convention on the Rights of the Child on the protection of children against sexual exploitation in tourism, proposed by the Brazilian Government,

1. Stresses that it would be of importance to specifically apply the principles of the Convention to the tourism sector;

2. Notes that several international instruments already contain provisions on closely related questions including articles 2, paragraph 3, of the Global Code of Ethics for Tourism; Article 34 of the 1990 Convention on the Rights of the Child and its 2000 Optional Protocol on the sale of children, child prostitution and child pornography;

3. Draws the attention of the Executive Council on the ILO Convention N° 182 relating to the “Prohibition and immediate action for the elimination of the worst forms of child labour” which should also be taken into consideration in any reflection on the protection of children against abuses at the occasion of tourist activities;

4. Also draws the attention of the Executive Council to the difficulties which might result from the establishment of a monitoring mechanism within the WTO while the Convention on the Rights of the Child and its Protocol are monitored by the Committee on the Rights of the Child; and

5. Decides at this stage to request the Secretary-General to hold further consultations with the Brazilian Government on the substance of their proposal and to consult with other interested bodies.
ANNEX III

DRAFT ADDITIONAL OPTIONAL PROTOCOL TO THE CONVENTION ON
THE RIGHTS OF THE CHILD ON THE PROTECTION OF CHILDREN
AGAINST SEX TOURISM

Note by the Legal Adviser

1. The Secretary-General consulted me regarding possible legal problems
that may arise from Brazil's proposal for the elaboration of an additional Optional
Protocol to the Convention on the Rights of the Child on the protection of children
against sex tourism. This note was drawn up in response to this consultation.

2. It would be useful to briefly discuss the legal context in which Brazil's
proposal should be analysed before studying the legal problems that its
implementation could give rise to, and before putting forward various indications
for resolving them.

I. The legal context

3. As pointed out by the World Committee on Tourism Ethics in the opinion
it issued on 4 October 2004 at the request of the Executive Council, which
consulted it through resolution 19 (LXXIII) of 9 July 2004, there exist "several
international instruments already containing provisions on closely related
matters", principally:

- the international Convention on the Rights of the Child, adopted
  on 20 November 1989 by the United Nations General Assembly,
  which entered into force on 2 September 1990 and has been
  ratified by 192 States as of 31 December 2003¹, and its
- Optional Protocol on the sale of children, child prostitution and
  child pornography, signed in New York on 25 May 2000, which
  entered into force on 18 January 2002, and has 69 States
  parties².

¹ See Multilateral Treaties Deposited with the Secretary-General –as of 31 December 2003,
² Ibid., chap. IV.11.c), p. 337.
4. Article 34 of the Convention stipulates that:

"States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

(a) The inducement or coercion of a child to engage in any unlawful sexual activity;

(b) The exploitive use of children in prostitution or other unlawful sexual practices;

(c) The exploitive use of children in pornographic performances and materials."

5. Other provisions of the Convention, which are recalled in the first paragraph of the Protocol, are equally pertinent, notably Articles 11 (measures against the illicit transfer and non-return of children abroad), 21 (adoption), 32 (protection of the child from economic exploitation), 33 (illicit use of narcotic drugs), 35 (abduction, sale or traffic of children).

6. For its part, the Protocol of 25 May 2000 elaborates on and completes these provisions, in particular by calling on States to take measures to prosecute and punish offences (Articles 4 and 7), facilitate the extradition of offenders (Art. 5), and strengthen international cooperation for these purposes (Art. 10).

7. A Committee on the Rights of the Child was established by Article 43 of the Convention "for the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the (...) Convention" This Committee examines the periodic reports submitted to it by the Parties3 or, when appropriate, by various competent specialized agencies or organs in the field covered by the Convention (Articles 44 and 45).

8. Article 12 of the Protocol extends the obligation of the States to submit reports to the Committee on the Rights of the Child:

"1. Each State Party shall, within two years following the entry into force of the present Protocol for that State Party, submit a report to the Committee on the Rights of the Child providing comprehensive information on the measures it has taken to implement the provisions of the Protocol.

2. Following the submission of the comprehensive report, each State Party shall include in the reports they submit to the Committee on the Rights of the Child, in accordance with article 44 of the Convention, any

3 A report must be submitted within two years of the entry into force of the Convention for the State concerned, and thereafter every five years (Art. 44.1).
further information with respect to the implementation of the present Protocol. Other States Parties to the Protocol shall submit a report every five years.

3. The Committee on the Rights of the Child may request from States Parties further information relevant to the implementation of the present Protocol."

9. Other instruments, also mentioned by the World Committee on Tourism Ethics in its opinion of 4 October, are equally pertinent. This is the case, in particular, of Convention No. 182 of the International Labour Organization (ILO) of 17 June 1999 concerning the prohibition and immediate action for the elimination of the worst forms of child labour, including "the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances" (Art. 3(b)). On the same day, the International Labour Conference adopted Recommendation No. 190 for the same purposes, drafted in the same spirit, which requires the States members of the ILO to regularly provide the Organization with information on the implementation of its provisions.

10. These instruments complete and specifically apply to children the obligations established in the major "classical" conventions prohibiting slavery, trafficking in persons and exploitation in prostitution, in particular:

- the Slavery Convention of 25 September 1926 and the Protocol of 23 October 1953 amending it;
- the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 7 September 1956;
- ILO Convention No. 29 on Forced Labour of 28 June 1930 and Convention No. 105 on the Abolition of Forced Labour; and

11. We can also cite the work of the World Congresses against Commercial Sexual Exploitation of Children, the first of which was held in Stockholm in 1996 and the second in Yokohama in 2001, in whose work the WTO has been associated. It is interesting to note that while the declarations and action plans adopted on these occasions are not legally binding for the participants, such participants include not only representatives of governments, but also representatives of international organizations both intergovernmental—such as the WTO—and non-governmental, as well as representatives of the private sector.
II. Legal problems related to the adoption of a draft Optional Protocol to the Convention on the Rights of the Child on the protection of children against sex tourism

12. Brazil's proposal for the WTO to adopt an Optional Protocol to the Convention on the Rights of the Child on the protection of children against sex tourism therefore does not occur in a "legal no man's land". It comes in a normative context that is already highly developed, which means that delicate legal problems arise with regard to the WTO's authority to act upon it, on the one hand, and on the other hand, regarding the monitoring of the implementation of a Protocol adopted in such circumstances.

(a) The elaboration and adoption of the draft Protocol

13. The WTO is undoubtedly competent to address the issue of the protection of children against sex tourism. Article 3, paragraph 1 of its Statutes stipulates:

"The fundamental aim of the Organization shall be the promotion and development of tourism with a view to contributing to economic development, international understanding, peace, prosperity, and universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion. The Organization shall take all appropriate action to attain this objective."

14. Moreover, the WTO makes a very strong contribution to the fight against the sexual exploitation of children in tourism, which it has condemned in instruments such as the Manila Declaration on World Tourism of 10 October 1980, or the Resolution of the 11th WTO General Assembly (Cairo) on the prevention of organized sex tourism of 22 October 1995. Also, Article 2, paragraph 3 of the Global Code of Ethics states:

"The exploitation of human beings in any form, particularly sexual, especially when applied to children, conflicts with the fundamental aims of tourism and is the negation of tourism; as such, in accordance with international law, it should be energetically combated with the cooperation of all the States concerned and penalized without concession by the national legislation of both the countries visited and the countries of the perpetrators of these acts, even when they are carried out abroad."

15. Nevertheless, Brazil's proposal for the adoption of a draft Protocol to the Convention on the Rights of the Child that is specifically dedicated to the protection of children against sex tourism cannot be considered in isolation from the existing instruments enumerated in the first part of this note. For its part, the preliminary draft—which is very complete—submitted by Brazil at the
last session of the Executive Council (Hyderabad, 8-9 July 2004) varies little—and rightly so—from the Optional Protocol on the sale of children, child prostitution and child pornography of 25 May 2000, whose text it reproduces almost unchanged inserting, where applicable, a reference to "the sexual exploitation of children" to replace the expressions "sale of children", "child prostitution", and "child pornography", and adapting the corresponding provisions in consequence.

16. Under such circumstances it seems that, as the World Committee on Tourism Ethics underlined in its opinion of 4 October 2004, an in-depth reflection should be undertaken before adding a new legal instrument to those that already exist in very closely related areas. In the Legal Adviser's opinion, such reflection is all the more necessary given that, on the one hand, the Optional Protocol to the Convention on the Rights of the Child covers the sexual exploitation of children in tourism even if it is not explicitly mentioned, and on the other hand, other possibilities are open to the Organization for the exercise of its indisputable competences in this domain.

17. Indeed, without having to adopt a binding legal instrument open to ratification by the States, possible alternatives include:

- the formal adoption by the General Assembly of a Declaration calling on States that have not yet ratified the Protocol of 2000 to do so, and to ensure the protection of children against sex tourism;
- requesting the States to prepare reports on measures they are undertaking to fight this scourge and to submit such reports, on a regular basis if possible, to the World Committee on Tourism Ethics, whose competence for this purpose is established by Article 3, paragraph 2, mentioned above (par. 14), of the Global Code of Ethics for Tourism; and/or
- holding a joint session among the WTO Taskforce to Protect Children from Sexual Exploitation in Tourism, the World Committee on Tourism Ethics, and the Committee on the Rights of the Child in order to define the measures needed in order to more effectively combat the sexual exploitation of children in tourism.

18. When taking up this agenda item, the Executive Council could perhaps also discuss how to reinforce the fight against sex tourism in general, in keeping with the spirit of the provisions of Article 2, paragraph 3 of the Global Code of Ethics for Tourism.

4 The main modification consists of limiting the scope of the Protocol to sexual exploitation as defined in Article 2 of the draft, which is more general than the corresponding definition given in Article 2 of the Protocol.
5 It does not seem useful at this stage, pending a decision by the Executive Council on what action to take with regard to the draft, to examine these adaptations in detail.
6 It is recalled that the World Tourism Organization is to report to the United Nations General Assembly on the implementation of the Global Code of Ethics for Tourism and on the measures taken by the countries to this end.
(b) Monitoring the implementation of the Protocol

19. If, despite the reservations expressed by the World Committee on Tourism Ethics and by the Legal Adviser, the Executive Council decides to recommend the adoption of a specific protocol on the protection of children against sex tourism, the question of how its implementation will be monitored arises.

20. According to Article 12 of the preliminary draft submitted by Brazil:

"1. Each State Party shall, within two years following the entry into force of the present Protocol for that State Party, submit a report to the World Tourism Organization's Taskforce to Eradicate Sexual Exploitation of Children in Tourism, providing comprehensive information on the measures it has taken to implement the provisions of the Protocol.

2. Following the submission of the comprehensive report, each State Party shall include in the reports they submit to the World Tourism Organization's Taskforce to Protect Children from Sexual Exploitation in Tourism and its Executive Committee, in accordance with article 44 of the Convention, any further information with respect to the implementation of the present Protocol. Other States Parties to the Protocol shall submit a report every five years.

3. The World Tourism Organization's Taskforce to Protect Children from Sexual Exploitation in Tourism, through its Executive Committee, may request from States Parties further information relevant to the implementation of the present Protocol."

21. It would appear then that, in keeping with the spirit of the Brazilian Government's proposal, the monitoring of the Protocol's implementation would be the responsibility of the WTO Taskforce to Protect Children from Sexual Exploitation in Tourism, which was created in 1997 but which does not have an official nature and should be institutionalized. Aside from the financial and administrative difficulties that may result from the functioning of such organs (whose composition should undoubtedly be reviewed), this would pose a basic problem, as already pointed out by the World Committee on Tourism Ethics in its opinion of 4 October 2004, which draws the Executive Council's attention to "the difficulty of establishing a monitoring mechanism within the WTO" when the responsibility for monitoring of the implementation of the Convention on the Rights of the Child and its Protocol is already entrusted to the Committee on the Rights of the Child.

22. As was already indicated above (par. 12), the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography of 2000 (which has already been ratified by quite a large number of States) makes it an obligation of the States Parties to submit to the Committee on the Rights of the Child periodic reports on the measures taken to make effective the provisions of the Protocol. Now, as I have underlined above (par. 16), the Protocol of 2000 includes the obligation of the Parties to combat
sex tourism in which the victims are children, even though it does not specify this expressly. Aside from the fact that the States would probably not look too favourably on having to submit two reports on the same subject (at least in part) to two different bodies, this duplication would pose difficult problems with regard to coordination between the two bodies and coherence between their respective jurisprudence.

23. In conclusion, therefore, it is my opinion that:

- the consideration of Brazil's proposal undoubtedly falls under the competence of the WTO, which can and ought to take all the necessary measures to promote respect for human rights in tourism; the adoption of a Protocol on the protection of children against sexual exploitation in tourism could constitute one such measure;

- nevertheless, such a Protocol would largely duplicate the provisions of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography of 25 May 2000; and

- the monitoring of its application by a body created within the WTO is fraught with practical and legal difficulties, the principal one being that it would be very difficult to combine such monitoring with that carried out by the Committee on the Rights of the Child on the implementation of the Protocol of 2000;

- in any case, any initiative in this area by the WTO will have to be undertaken in cooperation with the United Nations, in accordance with the provisions of the Agreement that converted the Organization into a United Nations specialized agency, in particular, Articles 2 and 4, paragraphs 2, 8 and 9.

Done in Garches on 15 October 2004,

Alain PELLET
Legal Adviser of WTO
Professor at the University of Paris X-Nanterre;
Member and former chairman of the
United Nations International Law Commission