Seventy-third session
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Item 11 of the provisional agenda

PROTECTION OF HOTELS AND TOURISM ATTRACTIONS DURING TIMES OF ARMED CONFLICT

Note by the Secretary-General

This report is transmitted to the Council at the proposal of Colombia, following the decision taken at the fortieth meeting of the Commission for the Americas (Asunción, Paraguay, 2003).
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1. In this document, the Council is informed about a proposal issued by Colombia, which was taken up and supported by the Commission for the Americas at its fortieth meeting held in Asunción, Paraguay, in May 2003.

2. This suggestion has received a very favourable opinion from the Legal Adviser of the Organization, who considers that it addresses a gap that should be filled in the international law of our sector. The document in question is attached as an annex.

3. The proposal is submitted to the Council for any action it may wish to take regarding it.
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Annex

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 organization 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,

[Signature]

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