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Activités concernant la préparation d'un instrument juridique sur la protection du touriste/consommateur – Débat général

1. Le présent document fait suite au précédent rapport établi lors de la quatre-vingt-neuvième session du Conseil exécutif sur la même question¹. Il rappelle l'insuffisance des règles contraignantes en vigueur au niveau mondial pour régir les droits et obligations des touristes/consommateurs et des entreprises dans le domaine du tourisme. De plus, il fait référence à la décision correspondante², demandant au Secrétaire général de constituer un groupe de travail *ad hoc* pour « *définir le champ d'application et le niveau de l'instrument juridique proposé* ». En tant qu'organisation internationale spécialisée dans le domaine du tourisme, l'OMT (particulièrement en coopération avec l'OACI et l'AITA) a été estimée la mieux placée pour élaborer cet instrument.

2. Une session initiale de recherche et réflexion a eu lieu au cours de *l'Atelier sur la protection des touristes/ consommateurs et organisateurs de voyages* (11 mars 2011, ITB, Berlin). Elle a été suivie de la première réunion du **Groupe de travail de l'OMT sur la protection des touristes/consommateurs et organisateurs de voyages** qui s'est tenue au siège de l'OMT à Madrid, Espagne, le 26 avril 2011. Vingt délégués, représentant des administrations nationales du tourisme, des organisations internationales et l'industrie du tourisme ont débattu de la possibilité de rédiger un nouvel instrument juridique international pour assurer la protection tant des consommateurs que des organisateurs de voyages. Les participants ont également examiné son champ d'application potentiel et son niveau et ont échangé des informations sur les cadres de réglementation en vigueur dans ce domaine, y compris sur le Code mondial d'éthique du tourisme (CMET).

3. Le présent rapport porte sur les conclusions auxquelles est arrivée la réunion. Le compte rendu de la réunion ainsi que la liste des participants sont joints en annexe.

4. Pour définir le **champ d'application** de l'instrument, les participants sont convenus de s'attaquer aux questions essentielles suivantes, énumérées par ordre de priorité :

- i. Porter assistance aux consommateurs et assurer leur rapatriement, particulièrement en cas de force majeure ;
- ii. Donner en temps utile des informations exactes aux touristes, y compris concernant la gestion des situations de faillite des organisateurs de voyages ;
- iii. Axer les efforts sur les questions liées à l'hébergement.

¹ CE/89/8: Étude sur la protection des touristes/consommateurs

² CE/DEC/11(LXXXIX)

5. D'autres aspects connexes ont été abordés au cours des débats et seront progressivement pris en considération dans les travaux du groupe.

6. S'agissant de **la forme** que l'instrument juridique devrait prendre, le groupe de travail a examiné quatre options possibles avec une préférence expresse pour les deux dernières :

- i. **Convention internationale contraignante** – avec un champ d'application aussi étroit que possible, le document serait un instrument juridiquement contraignant.
- ii. **Directives non contraignantes** – L'instrument existerait en tant qu'ensemble de directives non contraignantes auxquels les États pourraient souscrire volontairement.
- iii. **Deux instruments distincts** – Une convention juridiquement contraignante serait élaborée et, par ailleurs, un ensemble de directives volontaires ou de pratiques recommandées serait créé en parallèle.
- iv. **Un seul instrument, combinant une partie contraignante et une partie non contraignante** – La première partie comprendrait une convention juridiquement contraignante ou un ensemble de normes et règles ayant un champ d'application étroit et la deuxième partie serait constituée d'une liste de recommandations ou de directives générales sur des aspects spécifiques en vue de faciliter la protection des consommateurs/entreprises dans le domaine du tourisme.

7. Le groupe de travail a également décidé de continuer parallèlement la compilation de **la législation et des pratiques pertinentes en vigueur** conformément à la décision prise par le Conseil exécutif lors de sa quatre-vingt-neuvième session.

8. Le Secrétariat de l'OMT a renouvelé son intention de ne pas empiéter sur les structures juridiques existantes, que ce soit au niveau national ou mondial, et a exprimé son objectif de travailler en collaboration avec d'autres organismes internationaux pour traiter des questions qui sont de leurs compétences. S'agissant du transport aérien, l'OACI a exprimé son désir de coopérer avec l'OMT.

9. Le groupe de travail *ad-hoc* a proposé de tenir une nouvelle réunion avant la dix-neuvième Assemblée générale (octobre 2011, République de Corée).

Annex

Minutes of the First meeting of the UNWTO Working Group on the protection of tourists/consumers and travel organizers 26 April 2011, Madrid, Spain

1. The first meeting of the *UNWTO Working Group on the Protection of Tourists/Consumers and Travel Organizers* was held at UNWTO headquarters in Madrid, Spain, on 26 April 2011. Twenty delegates representing national tourism administrations, international organizations, and the tourism industry discussed the possibilities of drafting a new international legal instrument to assure the protection of both consumers and travel organizers. Participants also examined its potential scope and level of application, and exchanged information on existing regulatory frameworks in place in this field.

OPENING REMARKS

2. **Mr. Frederic Pierret**, UNWTO Executive Director for Programme and Coordination, instigated proceedings by welcoming the assembled representatives. He informed the gathering that the designated delegate of the Russian Federation, Mr. Evgeny Pisarevsky, was not present due to the recent death of the country's Tourism Minister. He then gave the floor to the Secretary-General.

3. UNWTO Secretary-General, **Dr. Taleb Rifai**, welcomed the participants to the Working Group's first meeting. He extended his condolences to Mr. Dmitry Sokolov, who was present on this occasion as the representative of Russia. Dr. Rifai began his address by speaking of the general importance of tourism, highlighting its immense effect on the global economy and on society at large. He pointed to the 935 million recorded international arrivals for 2010 to indicate the magnitude of the sector. In light of such figures, he noted that the impact of tourism, as well the legal and moral obligations of tourism stakeholders, were immense.

4. Dr. Rifai proceeded to remark on the impetus for the Working Group's formation: the ramifications of recent travel disruptions had made tourism stakeholders acutely aware of the **insufficiency of existing binding rules at the global level governing the rights and obligations of tourists/consumers and tourism enterprises**. He drew attention to the guiding principle on stakeholders' responsibilities, UNWTO's Global Code of Ethics for Tourism (GCET), adopted in 1999 by the General Assembly of the World Tourism Organization, and two years later by the UN General Assembly. Respect for consumer rights, and for the facilitation of travel, are enshrined in Articles 6 and 8 of the Code. As a voluntary, non-binding instrument with no legal implications, governments were at liberty to decide whether to incorporate its provisions into national legislation. He stressed, however, that the moral weight of the Code gave it great significance.

5. The human community had been taken aback, Dr. Rifai remarked, by the disruptions to tourism and travel precipitated by the 2010 volcanic eruption in Iceland. Although it prompted the closure of only some European airports, and only for a period of four days, this state of affairs paralyzed the entire globe. Aside from the substantial economic consequences, there was tremendous confusion as to the attribution of responsibilities to assist consumers in such a crisis. Although the EU possesses important guidelines on the subject, the ash cloud crisis made it clear that the European Directive on Package Travel was not sufficient in and of itself, so long as there was no international consensus on appropriate actions in such cases. Travellers do not merely travel within Europe, he commented, but outwards from the region, connecting through it, and within other regions. Nor was the Icelandic volcano the only emergency situation to recently disrupt the tourism sector, as severe weather conditions in Europe and North America in late 2010, and the turmoil in North Africa and the Middle East in early 2011, clearly indicate. As such, he emphasized the need for international, rather than regional, guidelines on

tourist/consumer protection. As an international organization with expertise in the field of tourism, UNWTO – especially cooperating with agencies like ICAO and IATA – was ideally placed to develop such guiding principles.

6. The Secretary-General reminded participants that the Organization's Executive Council had, in October 2010 at its 89th session in Kish, Iran, approved the proposal of the UNWTO Secretariat to carry out a preliminary study on consumer protection [Decision CE/DEC/11(LXXXIX)] to help draft a **new international legal instrument** to assure the protection of tourists/consumers and travel organizers. As an initial step, the Council requested the establishment of a **working group** able "*to define the scope and level of the proposed legal instrument*". Dr. Rifai mentioned that an initial brainstorming session had taken place during the *Workshop on the Protection of Tourists/ Consumers and Travel Organizers* on 11 March 2011, at the ITB Berlin Tourism Fair. As at this gathering, he clarified that such an instrument would not infringe on national sovereignty; as a document that embodies international consensus, it would merely recommend a course of action for states around the world. He reiterated that it would be morally, rather than legally, binding, and UNWTO would never impose the document on its Member States.

7. The **purpose** of the Working Group's first meeting, Dr. Rifai stated, was for the assembled representatives to begin defining the scope and form of a document that clearly defines the rights and obligations of tourists/consumers and their travel providers, and that can provide a **minimum level of guarantees** for both parties at the global level. Although it would not be a rapid process, he trusted that it was an achievable and a necessary one. UNWTO would convey the outcomes of the meeting to its Executive Council, and, as Secretary-General, Dr. Rifai said he would carry them on to the forthcoming session of the Organization's General Assembly in October 2011. In his concluding remarks, the Secretary-General thanked the assembled representatives for their presence and thanked the UNWTO personnel involved in the event for their efforts.

DISCUSSIONS OF THE WORKING GROUP

8. **Mr. Frederic Pierret** spoke briefly on the purpose of the meeting and regretted that no Kenyan representative had been able to attend. He then asked each participant to introduce themselves and, if possible, to speak of their country's/organization's stance on consumer protection.

9. **Dr. Kristie Barrow**, Third Secretary at the Australian Embassy in Spain, drew attention to new laws enacted in Australia regarding consumer protection in tourism, as well as to the Consumer Commission, and the Travel Compensation Fund – an industry funded insurance scheme supported by the government, which all licensed travel agents must sign up to.

10. **Mr. Ricardo Moesch** introduced himself as the Director of the Structuring, Coordination & Tourism Planning Department at the Brazilian Ministry of Tourism. He mentioned a 2008 law adopting a Consumer Code, while highlighting the difficulties of implementing federal laws regulating consumer protection given the relative autonomy of the many regions of the country. He noted that defending consumer rights was important to Brazil, especially in light of the tourism sector's great importance.

11. **Mr. Shen Hai En**, Lecturer at Beijing International Studies University and Member of the Drafting Team of China's Tourism Law, informed the gathering that China had completed its first legal document explicitly concerning tourism, an undertaking in which he had the honour of participating. His colleague, **Mr. Tang Zhi**, Officer at the Policy Regulations Department at China's National Tourism Administration (CNTA), commented that the Working Group's initiative was a valuable one since travel and tourism are not confined to a single jurisdiction, but rather, are global phenomena.

12. **Mr. Hermes Navarro**, representing the Costa Rican Ministry of Tourism, remarked that his government had long felt close to the issue of consumer protection, and mentioned that a new tourism law was shortly due to be approved by the Parliament. To emphasize the need for action, he recalled a comment made by Ms. Anita Mendiratta, Managing Director of Cachet Consulting, at the ITB Berlin Workshop on the Consumer Protection in March 2011, which denounced the lack of information, compassion and assistance which tourists face as unacceptable. Mr. Navarro agreed that guiding principles must be drawn up, but in his opinion the scope of the proposed instrument should be limited to problems not already addressed by local authorities.

13. **Mr. Jesús Gómez Hidalgo**, Head of Area Studies and Projects at the Spanish Institute of Tourism's (TURESPAÑA) Deputy General Directorate of Tourism Cooperation and Competitiveness, commented that the relevant provisions of the EU Directive on Package Travel were included in Spain's laws for the protection of consumers.

14. **Mr. Dmitry Sokolov**, First Secretary (Political Affairs) of the Russian Embassy in Madrid, represented Russia in place of Mr. Evgeny Pisarevsky, who was unable to attend the meeting.

15. **Ms. Nathalie Bert**, Deputy Head of Competitiveness and Tourism Activity Development at the French Ministry of Economy, Finances and Industry, asserted that her work has been concerned with legislative questions since 2007, and spoke briefly of France's implementation of the European Directive on Package Travel.

16. **Ms. Dorottya Gyenizse**, Legal Expert and Senior Expert at the Tourism Department at Hungary's Ministry for National Economy, was of the opinion that UNWTO, and the Working Group it had constituted, were in a unique position to address consumer protection issues as they were composed of representatives drawn from many parts of the tourism sector.

17. **Mr. R. H. Khwaja**, Secretary of Tourism at the Indian Ministry of Tourism, stated that while no comprehensive central legislation on the subject exists in India, there are a number of institutions which individuals can approach for assistance. The Directorate General for Civil Aviation, for instance, recently enacted rules by which travellers subjected to harassment are entitled to compensation. He mentioned the Indian Code of Conduct for Safe and Honourable Tourism, in place since January 1st, 2011, which must be signed by tourism enterprises in order to be part of the Tourism Ministry's classification scheme. Although a voluntary instrument, it entails significant force since Indian tourism enterprises depend on the government for licences, and most are therefore weary of non-compliance with set standards. Nonetheless, he acknowledged that adherence to this Code was perhaps not as robust as it should be. Mr. Khwaja also pointed to the National Disaster Management Authority, and the legal frameworks in place to protect consumers. These include strong insurance laws and the Law of Torts (common law) with good case law on consumer protection. He noted that as India possesses a great deal of legislation, confusion over the attribution of responsibilities sometimes occurs. Finally, Mr. Khwaja expressed India's willingness to support UNWTO's initiative and to share experiences in this field.

18. **Ms. Danielle Fabrizi** of Italy, Officer at the EU and International Relations Department of Development and Competitiveness of Tourism, regretted that Ms. Caterina Cittadino, Head of the Department, was unable to attend. In addition to complying with the European Package Travel Directive, she noted that Italy has a national independent authority which deals with consumer protection, and expressed the country's support for the Executive Council's decisions taken at Kish. Ms. Fabrizi further suggested a **building block approach** as the best way to help consumers immediately, whereby a databank of legislation and best practices would be compiled to provide practical information to tourists. In order to do so, she recommended that UNWTO disseminate a questionnaire among its Member States.

19. **Mr. Kasmi Essaid** of Morocco's National Tourism Office in Spain represented his government as the assigned delegate, Mr. Mohamed Alami Hassani, was unable to attend. He commented on the system of classification for tour agencies and guides in Morocco and highlighted the confusion regarding liability and duties to provide assistance to tourists during the ash cloud crisis in 2010.
20. **Mr. Juan Antonio Rodriguez**, Acting Leader of ISS – Distribution in Europe for IATA (International Air Transport Association), commented that the Working Group and a future instrument were of great importance to IATA given their weight in the industry as an organization with over 90,000 members worldwide. Recent situations of force majeure had an enormous financial impact on airlines. Stressing the need to take note of financial implications, he also emphasized the importance of bearing the rights of consumers and businesses equally in mind when formulating a legal instrument.
21. **Mr. Norberto Tonini**, Honorary President of OITS (formerly BITS), said that as a representative of an organization dedicated to social tourism, he knew that concrete protection was owed to tourists. He recalled that UNWTO'S World Committee on Tourism Ethics (WCTE), of which he is a member, had discussed the difficulty of implementing the Global Code of Ethics for Tourism and prompting its inclusion in national legislation. He also mentioned the Committee's first hand experience of the chaos created by the ash cloud on the occasion of their last meeting in Luxor, Egypt, in April 2010.
22. **Mr. Juan Ignacio Pardo**, Senior Vice-President Legal and Compliance of the Sol Melia Group, observed that the prominent hotel company had encountered numerous challenges related to differences in legislation in different countries, and within countries (as in the case of the 17 autonomous communities of Spain), and thus supported the idea of a convention as a useful tool. He stated that their presence as a representative of the tourism industry could help the Working Group ensure that the instrument will be practically applicable on a daily basis.
23. **Mr. Arie Jakob**, Legal Officer of ICAO (International Civil Aviation Organization), mentioned the long history of cooperation between his organization and UNWTO. ICAO, he said, has extensive experience in the law making process in terms of instruments dealing with liability, especially mentioning the Chicago Convention and its Annex 9. He also emphasized that there should not be a duplication of efforts towards creating a future legal instrument.
24. **Mr. Michel de Blust**, Secretary-General of ECTAA (European Travel Agents' and Tour Operators Association), drew attention to the importance of the package travel industry by pointing out that ECTAA represents some 80,000 enterprises with a turnover of 310 billion Euros every year, representing 70-80% of business in the EU. He commented that they are confronted with an arsenal of legislation at the European, national and regional levels. In the former case, tour operators have dealt with the Package Travel Directive for two decades, which makes them liable for a great deal, even in cases of force majeure. Referring to Mr. Navarro's comments, and in agreement with those of Mr. Essaid of Morocco regarding the chaos precipitated by the volcanic eruption in Iceland, Mr. de Blust stressed that a future instrument must focus on issues of **assistance** to and **repatriation** of tourists, especially in extraordinary circumstances.
25. **Mr. Jean-Marc Siano**, President du Directoire, Groupe Nouvelles Frontières, emphasized the need of providing information to consumers and businesses, and said that it was imperative that every part of the tourism chain ensure that customers are taken care of. He also highlighted the need of a common basis on which stakeholders could act.
26. The Secretary-General thanked the participants, commenting that the round had been extremely useful as an instigator for further discussion. **Dr. Rifai** acknowledged that while the general consensus supported the formulation of a legal instrument, a number of concerns needed to be taken into account. First, the liability of the tourism sector at large, and not only of airlines, was the issue at

hand. Second, both consumers and businesses needed to be considered, since enterprise protection is essential to sustaining the industry. Third, he pointed out that although the centre of gravity is Europe, the instrument must be global in scope. Fourth, regarding the suggestion of Ms. Fabrizi of Italy, Dr. Rifai supported the proposal of compiling a database on existing legislation and practices, but he cautioned that this should not become a substitute for an instrument that can stipulate clear guiding principles for the sector. The Secretary-General finally suggested that the group focus on the two more pressing issues of assistance and repatriation, leaving more complicated issues of liability to be dealt with at a later stage. Dr. Rifai also recommended that no further participants be added to the Working Group at present, in order to facilitate speedy results.

27. **Mr. Pierret** thanked the Secretary-General and elaborated on the history of UNWTO's concern for consumer protection in the wake of the Icelandic volcanic eruption, highlighting the study presented to the Executive Council in October 2010 and its corresponding Decisions. He then spoke of the scope of different international instruments, non-binding in the case of the GCET, and binding in the case of the Vienna Convention. He claimed that it was not UNWTO's intention to infringe on existing legal structures, either at the global or national level. The Organization would formulate general guiding principles which strike a balance between what is desirable and what is achievable. Hailing the Working Group's undertaking an ambitious one, Mr. Pierret estimated that it would take at least until the following summer to prepare a comprehensive draft document.

28. Mr. Pierret gave the floor to **Ms. Marina Diotallevi**, Programme Manager of UNWTO's Ethics and Social Dimensions of Tourism Programme to explain the extent of the mandate received by UNWTO and the Secretary-General through Executive Council Decision CE/DEC/11(LXXXIX) taken at Kish, Iran, in October 2010. Ms. Diotallevi highlighted three key elements, namely the Council's request for the Secretary-General to compile relevant national and regional provisions dealing with consumer/tourist protection; advance a study on the feasibility of guidelines/an instrument to protect consumers and tourism enterprises; and constitute a Working Group to define the scope of said instrument.

29. **Mr. Patrice Tedjini**, UNWTO's Programme Manager of Information Resources and Archives, drew attention to the Study on Tourist/Consumer Protection presented to the Executive Council in October 2010 and stressed that the list of international instruments that concern the protection of tourists as consumers provided in Annex II was not exhaustive. Taking note of a comment made by Mr. Arie Jakob of ICAO, he regretted that the Annex did not mention the ICAO's *Convention for the Unification of Certain Rules for International Carriage by Air* (Montreal, 1999), for instance. Mr. Tedjini gave a brief presentation on existing national and regional regulations, specifically elaborating on the Council of Europe's *Convention on the Liability of Hotelkeepers Concerning the Property of their Guests* (Paris, 1962), the only instrument of international scope currently dealing with this theme. He spoke of UNWTO's online tourism legislation database (LEXTOUR), which is used as a basis for the compilation of a list of existing national legislation on consumer protection in tourism.

30. The Hungarian representative, **Ms. Gyenizse**, commented on the importance of considering all tourist service providers in the future instrument, and not restricting this to tour operators or hotels.

31. **Mr. Navarro** of Costa Rica concurred with the remarks made by Mr. de Blust and the Secretary-General as to the importance of assistance for tourists in situations of force majeure. The most pressing issues for the group to address, he contended, were the minimum acceptable rules of procedure in the case of catastrophes, the minimum level of information that must be provided to travellers, and the basic level of cooperation necessary between governments and the embassies of foreign states, etc. Such regulations, he claimed, were the kind which the world currently lacks. He cautioned that the group should **not** deal with the matters of contracts and insolvency, a far more complicated, time-consuming and problematic area, asserting that it would be unproductive to delve into such an area which was

already covered by ample legislation in most states. Mr. Navarro also agreed with Mr. Fabrizi regarding the desirability of a database containing information on existing international instruments.

32. **Mr. Siano** of Groupe Nouvelles Frontières raised the issue of financing, emphasizing the need for the Group to consider the issue of the resources necessary to repatriate and compensate travellers, and to question where these funds should come from. He pointed to the confusion over financing for compensation during the ash cloud crisis in order to illustrate his point. **Mr. Pierret** expressed his agreement as to the importance of this issue.

33. The Secretary-General of AMFORT-WAPTT (World Association for Professional Training in Tourism), **Mr. Joan Passolas**, recalled a speech given in 1977/78 by the President of Mexico on the rights of passengers, and expressed his wish that the Working Group find the document and use its excellent rhetoric as a basis when elaborating on the rights of tourists as consumers.

34. **Mr. Moesch** highlighted Brazil's efforts to make tourism aware of their rights, especially through the distribution of information material. He spoke of the obligations of governments to assist tourists, and of the challenges surrounding financing issues in cases of force majeure.

35. **Mr. Tonini** of OITS expressed his agreement with Mr. Navarro on the need to deliver concrete responses for tourists/consumers as quickly as possible. He noted that since a convention would require years to formulate, the immediate compilation of good practices and examples of existing regulations would be a useful tool to aid travellers. He too saw the issue of financing as an significant one, recalling its importance in his field of expertise, social tourism.

36. The Indian representative, **Mr. Khwaja**, pointed out that his colleague, Mr. Khothari, had suggested looking at best practices during the ITB Workshop on consumer protection in Berlin in March 2011. Mr. Khwaja observed that the existence of rules was not sufficient if they were not subsequently implemented, expressing his concern that a convention would serve little purpose if few countries or organizations signed it. He suggested the dissemination of best practices as a potential alternative to a legally binding document, or at least as a desirable first step.

37. In terms of **form** the future legal instrument on the protection of tourists/consumers and travel organizers should take, **Mr. Pierret** outlined four potential options:

1. **Binding international convention** – With as narrow as possible a scope, the document would be a legally binding instrument.
2. **Non-binding guidelines** – The instrument would exist as a set of non-binding guidelines to which States may voluntarily subscribe.
3. **Two separate instruments** – A legally binding convention would be formulated, and a separate set of voluntary guidelines or recommended practices would be created in parallel.
4. **A single instrument, combining a binding and a non-binding part** – The first part would comprise a legally binding base convention, or set of norms and standards, with a narrow focus; and the second a list of general recommendations or guidelines on specific aspects to facilitate consumer/enterprise protection in tourism.

38. Mr Pierret then elaborated on the proposed **scope** of the document, as suggested in Annex II to the Study on Tourist/Consumer Protection presented to the Executive Council in 2010, focusing on Package Travel and Accommodation contracts. Among the issues raised were the extent of information to be provided to consumers, the content and handling of contracts, the conditions of transference, modification and withdrawal from contracts, and the liability of service providers.

39. **Mr. Navarro** emphasized the need to protect both tourists and companies, and the parallel need to push for higher standards among the latter. He pointed out that increasingly people were not purchasing their holidays from travel agencies, but rather online, and held that it was important for tour operators to exist as the guarantees they provide are essential to protecting tourists. He also addressed the matter of financing by noting that not all states possess the necessary resources to insure visiting tourists, and suggested that guidelines on this subject would be beneficial.

40. **Mr. Jens Thommesen**, Legal Officer for Consumer Issues at the Consumer and Marketing Law Department of the European Commission's (EC) Directorate General Justice, gave a presentation on the European Package Travel Directive (90/314/ECC) of 1990. He outlined its basic structure and provisions, noting that although it was not binding in and of itself, EU Member States were bound to transpose its provisions into their national legislation. He emphasized that it was built on a "minimum harmonization model", which stipulates that no state may provide a lower level of protection than that afforded by the Directive. Although this created a fragmented situation, with the level of consumer protection varying throughout the region, he was of the opinion that the Directive remained an effective one. He then elaborated on the three types of rules in the Directive (on information, liability and insolvency protection) and spoke of the difficulties in ascertaining liability during extraordinary situations, as when the Icelandic ash cloud affected millions of travellers.

41. **Mr. Thommesen** further explained why the Directive was currently being revised (since 2001), pointing to the significant evolution of the travel market over the past 20 years as the major impetus for revision especially given the rapid evolution of the internet. He explained the terms "dynamic packages", whereby customers put various aspects of their holidays together themselves and purchase them from the same website, and "click-through packages", where these parts are bought from different service providers. The objectives of revision process were twofold: to improve the functioning of the internal market in Europe, and to achieve a high level of protection for the greatest possible number of consumers. He outlined the policy options considered during the revision process, both non-legislative and legislative (a minimum, medium, maximum and/or maximum plus approach). He informed the gathering that a proposal would likely be put forth by late 2011, based on the framework of taking dynamic packages and some click-through packages into account. He concluded by observing that greater harmonization would be fostered to prevent states from widely varying their application of the Directive's provisions.

42. **Mr. Pierret** thanked **Mr. Thommesen**, and acknowledged the general sentiment that assistance and repatriation seemed to participants to be the most pressing issues to address.

43. The French representative, **Ms. Bert**, observed that while she understood that many participants were wary of an overly ambitious or far-reaching instrument, she cautioned that its scope must not be too limited. She was in favour of a binding instrument, setting out minimum rules and supplementing these with additional non-binding recommendations.

44. **Ms. Gyenizse** of Hungary agreed with **Ms. Bert** as to the advisability of working on Option 3 or 4. She also supported the proposal of the Italian representative, **Ms. Fabrizi**, on the dissemination of a questionnaire to Member States to gather information about existing legal frameworks. **Ms. Gyenizse** further suggested that questions of assistance be the starting point for the Working Group. She was not convinced that package travel should be the focus of the Group's endeavours, and suggested a survey be conducted to uncover in which areas stakeholders encounter problems.

45. **Mr. Navarro** reiterated that, in his view, the Group would do well to concentrate on repatriation and assistance to travellers. He was in favour of an instrument including articles that are binding, thereby providing minimum norms and levels of guarantees, followed by articles which act more like optional recommendations which countries may choose to implement according to their resources. **Mr.**

Navarro also suggested that each state should nominate a central authority, like a National Committee for Crisis Management, to deal with emergencies, so that confusion is not caused by many agencies simultaneously seeking to resolve these situations.

46. **Mr. Dirk Glaesser**, Programme Manager of UNWTO's Risk and Crisis Management Programme, spoke of the Organization's Study on the integration of travel and tourism into national emergency situations and procedures. He also held that a convention would be best to address general concerns, while a collection of existing best practices could most effectively tackle specific issues.

47. **Dr. Barrow**, representing Australia, expressed her country's willingness to support UNWTO in creating a system of guidance, but stated that they would not generally be in favour of a legally binding convention. She echoed the earlier comments of Mr. Khwaja, that it would be a pity if the convention was too binding and thus did not receive wide support. While she agreed that national committees for emergencies and contact points were useful tools, she cautioned that the Group should not delve too far into the decisions that states make in emergency situations. She gave the example of the Australian Ministry of Foreign Affairs' policy of promoting travel insurance among travellers as an example of a best practice in the field of consumer protection. Dr. Barrow said that a fruitful avenue of debate had been opened up by the meeting and agreed with the statements of Ms. Gyenizse, that concentrating on package travel would give the instrument too limited a focus.

48. Replying to Dr. Barrow's concern, **Mr. Pierret** said that UNWTO would not wish to meddle in the internal affairs of states; its guidelines would merely help states identify practical and efficient means of addressing emergency situations.

49. **Mr. Passolas** of AMFORT felt that the word "scope" was too imprecise, and that the Group should use a more precise term. He disagreed with Mr. Thommesen of the European Commission as to the effectiveness of the Package Travel Directive, contending that clients and organizations do not feel themselves to be protected, and that they are often completely defenceless. He pointed out that although millions of travellers are routinely stranded across the world, the response has not been adequate, and recalled his own experience in late 2010 when no compensation was afforded to many passengers in the aftermath of the air traffic controller strike in Madrid. Asserting that the travel industry had never witnessed as many problems as in the past three years, he concurred with Mr. Navarro that every airport should have an office specifically to provide assistance to passengers. Mr. Passolas was also of the opinion that it was archaic to dwell on the issue of package travel, since ever more tourists do not purchase their travel services through travel agents.

50. The issue of training and education, Mr. Passolas contended, was the main problem of the travel industry today. According to him, the level of training afforded to airline personnel, especially in call centres, was the lowest in the sector. Similarly, he held that the humiliation that passengers were subjected to in the interests of security was also due to a low level of training among airport security staff. In his view, insolvency, while an important topic, does not have the kind of large-scale global repercussions to warrant the Working Group's immediate attention. Mr. Passolas emphasized the need for the Group to focus on issuing an all-encompassing and effective document aimed at making them less vulnerable to travel disruptions.

51. **Mr. Pierret** noted that security at airports was increasingly being contracted out to private companies, creating a highly problematic situation for tourists. Although disruptions in air transport were extremely significant, however, he felt that this issue was more under the competence of ICAO than UNWTO. He suggested that the matter be debated both in Montreal and Madrid.

52. The representative of **China** agreed that both consumers and tourism enterprises should be protected under the proposed international regulatory instrument, pointing out that one should not be

unduly given precedence above the other. He was of the opinion that the document should distinguish clearly between traditional and dynamic packages. In terms of last minute bookings, he noted that instances of such bookings were rare in China and that their 'last-minute' nature would not affect the kind of information which service providers are required to provide to travellers. This information, he stressed, should always be provided in writing to ensure that enterprises observe their obligations. He highlighted the key issues alluded to in the proposed outline of the instrument's scope (Document CE/89/8, Annex II). Notably, he suggested that rules on the revision or modification of contracts be individualized based on the stage of the contract, and that the differences in insurance systems of Member States be considered when drafting the document.

53. **Mr. Moesch** of Brazil emphasized the need to focus on providing a minimum level of guarantees for tourists and travel organizers. He suggested dividing the Group into smaller sub-groups in order to consider specific problems. Mr. Moesch pointed to the desirability of states integrating the issue of consumer protection in their respective National Tourism Plans and expressed his agreement with Mr. Passolas of AMFORT as to the need for better training and education in the tourism sector.

54. Both **Mr. Pierret** and **Mr. Tonini** expressed concern over the complexity of the term "package travel". **Mr. Tonini** cautioned that the Working Group should not broaden its coverage to too many issues, and reiterated the need for an immediate response to the problems facing tourists. He recommended working in phases, whereby the Group would first deal with responses to emergency situations. He also mentioned the vulnerability of travellers, particularly young persons, who purchase low-cost holidays online.

55. Taking note of the Working Group's suggestions concerning the scope of the instrument, **Mr. Pierret** recommended that the body work on the following three priorities: (1) Assistance and repatriation of consumers in situations of force majeure; (2) Information owed to consumers and cases of bankruptcies; and (3) Issues of accommodation. He further added that the subject of civil aviation would only be considered with the agreement of, and in cooperation with, ICAO.

56. **Mr. Passolas** of AMFORT suggested that the Group indicate their preferences as to the form of the instrument, recalling the four options presented by Mr. Pierret [see Point 42]. **Mr. Thommesen** intimated that the European Commission would tend to favour all options, including **Option 1** (a binding international convention), while **Dr. Barrow** noted that Australia would likely favour **Option 2** (non-binding guidelines). The representatives of **Costa Rica, India, Italy** and **IATA** expressed their preference for **Option 3** (two separate instruments comprising a binding convention and a parallel set of recommended practices), while those of **AMFORT, Spain, Morocco, Brazil** and **China**³ favoured **Option 4** (a single instrument, combining a binding and a non-binding part). The representatives of **France, Hungary, OITS** and **Sol Melia** expressed their inclination towards either Option 3 or 4.

57. **Mr. Jakob** of ICAO clarified that the Chicago Convention was a binding treaty, with technical legislation referred to in Annexes, taking the form of binding standards or commitments, and a separate part outlining recommended non-binding practices. He highlighted "opt-in" and "opt-out" clauses which allow for a greater degree of flexibility within such legislation. Mr. Jakob further expressed ICAO's willingness to cooperate with UNWTO, especially on the subject of air transport.

58. In closing, **Mr. Pierret** raised the matter of the time and place of the Working Group's next meeting. Those assembled agreed that the Group should meet in **Madrid** in **September 2011**, prior to the 90th session of the UNWTO General Assembly. He thanked the representatives for their contributions, hailing the meeting a highly productive session.

³ The representatives of China conveyed their country's preference for Option 4 in writing some days after the meeting.

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