

January 18, 2007

**Permanent Council of the Organization of American States
Committee on Juridical and Political Affairs**

The President of the Committee, Ambassador Osmar V. Chohfi, opened the session. The questions to be discussed were approved without objections.

The first issue to be discussed was the objectives of the CIDIP-VII.

Mr. Chohfi started with a welcome to Dr. Claudia Lima Marques, Mr. Harold Burman, Mr. Hugh Stevenson and Mr. Dominique D’Allaire and thanked them for accepting to be at the meeting and expose the evolution of their proposals.

He gave the word to **Dr. Claudia Lima Marques** who started thanking the commission for choosing the protection of consumers as one of the topics of the CIDIP-VII, which will give the OAS a protagonist status on this subject.

She also thanked the BRASILCON for their support in the Porto Alegre meeting.

She continued with some considerations on the development of the Brazilian proposal and made a general summary of the Porto Alegre meeting. In her opinion this meeting was important especially for the effective and open discussions.

Dr. Claudia Lima Marques explained that the meeting of experts of the Seventh Inter-American Specialized Conference on Private International Law (CIDIP-VII) on the topic of Consumer Protection was held in the city of Porto Alegre, Brazil, in the Federal University of Rio Grande do Sul, from December 2-4, 2006. Experts of 11 countries members of the OAS participated on the meeting and also representatives of Germany, and Italy. A representative from the Hague Conference and the President of Consumers International also attended the meetings, and a message from the International Association of Consumer Law was received.

This important participation, a total of 50 experts and delegates, was a first sign of the success of the meeting. The second, in the opinion of Dr. Lima Marques, would be the discussion by the OAS of a topic that was discussed for 10 years in the Hague Conference without success, was excluded from the discussions of the UNCITRAL Model Law on Electronic Commerce, and in which only the European Union is an example of achievement.

This topic of the CIDIP-VII must also be seen as a complement of the CIDIP-V on the law applicable to international contracts which didn’t include the consumer protection issue. There is also an important point: in the CIDIP-VII both model laws and convention are being discussed. That complementariness between these two forms is also new.

She continued with more details on the meeting. The 3 proposals, from Brazil, the United States of America and Canada were discussed.

For the Brazilian proposal, Dr. Lima Marques said that all seven articles of the Brazilian proposal were discussed. The project as a whole was well received. Delegates applauded the goals of the proposal and general agreement was reached on various issues.

Specific observations were also been made on the proposal and it was agreed that a working group organized by the OAS should perfect the drafting. The discussions already started in an informal way.

Finally, Dr. Claudia Lima Marques summarize the important points of the Brazilian proposal:

1. A limited private autonomy that makes possible and valid a choice of law in consumer contracts with the guaranty of the protection of the most favorable law for the consumer.
2. The proposal includes the protection of the active and passive consumers. The article 1 and 2 not only protects the regular consumer (passive) but also allows the protection of the consumers of time-sharing and travel and tourism contracts (active).

Specific concerns were expressed about the protection of the moral person, the imperative rules and the drafting of the articles.

She also explains that a correction of the Spanish version was made and the correction of the English version is being made. For that Dr. Lima Marques hopes to have the help of the experts from the Unites States of America.

The next day, the proposal of the United States of America was discussed. The project as a whole was well received and it was agreed that the Brazilian proposal and the US proposal were complementary and not mutually exclusive. The section on government dispute resolution and redress was considered a positive development even though some expressed the view that the details of the provisions need to be known.

Participants then discussed the Canadian proposal for a model law on jurisdiction and applicable law. The subject was considered very important. The articles 1 to 5 of the first part of the proposal were discussed in this Porto Alegre meeting.

The proposal received several questions and concerns were expressed, especially regarding the interrelation of the model law with the proposals from Brazil and from the United States of America. Suggestions were also made that the proposal should take the form of a convention and not a model law.

Dr. Lima Marques considered that the meeting in Porto Alegre was extremely important on the evolution of the work of the experts.

She also expressed that the next step should be to finish the drafting of the Brazilian proposal with the working group. This group should work until March to finalize the corrections on the language and bring it to a close in April or May. The work of the experts on the Brazilian proposal will surely be finished in the first semester of 2007.

The president then gave the word to **Mr. Harold Burman** who started thanking the Secretary for the support on the CIDIP-VII. He also welcomed the developments on the Porto Alegre meeting, which was, on his opinion, a very important one. He said that the discussion was technical and effective, that there was also serious approach of the 3 proposals and important agreements.

Mr. Burman pointed out the most important goals of the meeting:

- Concern to keep the balance of interests, to promote commerce and availability of goods to consumer.
- The proposal of establishing drafting groups that will have to take in account the concerns of the delegates. Other consumer organizations should be invited to join the discussion that should take place in the next 3 weeks.

On the issue of the form of these discussions he showed his agreement but mentioned concerns about costs. Regarding the date for conclusion of the expert work, Mr. Burman expressed that it should not be decided now. He also mentioned that wording used in the proposals may need careful examination on all 3 proposals. And that time frame to conclusion of the US working will take time.

The President thanked Mr. Burman and invited **Mr. Hugh Stevenson**, the representative of the Federal Trade Commission, to proceed.

Mr. Hugh Stevenson reminds that the Federal Trade Commission is the national U.S. agency on protection of consumer matters.

He thanked the Federal University of Rio Grande do Sul, Dr. Claudia Lima Marques and Mr. Ricardo Morishita Wada, director of the Department of Consumer Protection of the Ministry of Justice of Brazil for their support on the Porto Alegre Meeting. He also mentioned that the materials given at the occasion were very useful.

On the subject of the U.S. proposal, Mr. Stevenson said the project deals with the problems consumers have with redress and it is made of general principles, which gives flexibility to the countries.

The goals of the proposal deals with 3 areas: Individual actions, Collective actions and Government actions.

Mr. Stevenson reminded that the form, a model law and not a convention, and the language of the proposal were discussed in the Porto Alegre Meeting.

The next important step now would be to continue to discuss the proposal in work groups.

Mr. Stevenson said he appreciated the general support to the project.

Mr. Stevenson's speech was followed by the words of the representative of Canada, **Mr. Dominique D'Allaire**. He started thanking the president for the opportunity to present the Canadian proposal and also the Brazilian government for the Porto Alegre Meeting. This meeting was in his opinion very important to the evolution of the project.

Regarding the Canadian proposal, Mr. D'Allaire said there is already a good body of protective law in the countries. The problem to the consumers is not the applicable law but the jurisdiction. That is the reason why they concentrated their proposal in this issue. Once this is resolved, the issue of applicable law is less important.

The Canadian representative started then to make a summary of the proposal.

He reminded that the meeting in Porto Alegre was the first occasion to discuss the mechanism of the Canadian proposal. He said that there were in general good comments from the delegations, and that the proposal was well received.

Mr. D'Allaire said that the best approach now would be to go on with the proposal presented in the Porto Alegre meeting and incorporate comments made at this occasion. Then, this new document should circulate again. That should take place in the next weeks.

He also said that they are working on commentaries on each article, as it was suggested by some delegations in the Porto Alegre Meeting.

In relation to the other proposals, he said that they will circulate them in Canada, and that he expects to get feedback. This process will take some time, because all the provinces and stakeholders must analyze the documents. He said he doesn't know when he will be able to report on that.

The Presidents thanks the Canadian representative and gives the word to the Director of the Department of International Legal Affairs, **Mr. Jean Michel Arrighi**.

First of all, Mr. Arrighi shows his gratitude to the Federal University of Rio Grande do Sul, the Brazilian Ministry of Justice, the Brazilian Ministry of Foreign Affairs, the authorities of the state of Rio Grande do Sul and to Dr. Claudia Lima Marques.

In a second time, Mr. Arrighi proceeded to explain the main common points between the proposals.

1. The subject of the consumer protection is important and actual. Before, the subject was an exclusivity of the consumer organizations, and it was enough to

the small consumers. But now, with the internet, massive tourism and time-sharing contracts, even the small consumer accedes to international contracts. The problem is that national laws are not enough to protect the consumer and the international conventions as the CIDIP-V have not been made to these small consumers and their special needs. This is not a subject that appears on the news but is something everybody is exposed to.

2. Another important point is the active participation of all the member states. Before, all the discussions were Latin American discussions. Now is the first time we have proposals from north to south.
3. There is also a contradiction that has been solved. In all the others CIDIPs there were always problems to decide between a model law and a convention form. In the subject of consumer protection, we have at the same time model laws and conventions in a complementary way.
4. The open discussion of the experts was also an important point. That allowed a clear identification of the main problems, the agreements and disagreements on this subject.
5. The virtual forum was also very important to de exchange of documents and the development of the discussion.

Concerning the future, Mr. Arrighi reminds that Dr. Lima Marques intends to develop and conclude the Brazilian proposal in the first semester of 2007, even if the Americans and Canadians seem to need more time. He also says the language versions must be carefully analyzed.

Mr. Arrighi says the experts discussions are valuable only academically if there is no support of the delegations. Then, he asks the states that didn't participate to the discussions to contact their competent authorities so they can be aware of it. It is important to assure massive participation of the member states.

The date and location to the CIDIP-VII must be also discussed as soon as the work of the experts is done.

The other topic of this CIDIP, the secured transactions, demands other experts. For this topic, the natural experts would be the directors of registration departments in the member states. Consequently the best would be to separate the two topics and to adopt these instruments in two different conferences.

To summarize, the experts should prepare all the documents and the governments participate actively.

Then, the President said a few words on the consumer protection subject.

First of all, Mr. Chohfi thanks the Federal University of Rio Grande do Sul for the support on the meeting. Then, he reminded some of the issues discussed. He also says the protection of the consumer is a very important subject and that once more the OAS could play a pioneer role and develop a convention on a subject others failed.

Mr. Chohfi then reminded that the Committee on Juridical and Political Affairs receives with satisfaction all the developments on the preparatory work and will give priority to this topic of the CIDIP-VII.

Finally, he says the technical support of the Secretariat will be maintained.

He also says that the modern forums are important, especially regarding the economy of resources. But meeting like the one held in Porto Alegre are also necessary.

Finally, Mr. Chohfi says the process must not be precipitated but hopes the CIDIP-VII will take place in 2007.

After that, the delegation of Colombia said some words. The hope that the subject will continue to be discussed and will rapidly be concluded was expressed. The active participation of many countries and the fact that it is an American and not Latin American discussion was welcome.