

Explanatory Introduction to the Experts Meeting carried out by the OAS – Porto Alegre, Brazil December 2-4, 2006.

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, from December 2-4, 2006. The meeting was inaugurated with the words of Germano Rigotto, Governor of the State of R o Grande do Sul, S ergio Jos  Porto Dean of the Law School of the Universidad Federal de R o Grande do Sul, Jean Michel Arrighi, Director of the OAS Department of International Legal Affairs, Ambassador Caludio Lyra, Chief of Representation of the Ministry of Foreign Affairs of Brazil, Ricardo Morishita Wada, Director of the Department of Consumer Protection of the Ministry of Justice of Brazil, Leonardo Bessa, President of the Brazilian Institute for the Consumer Protection and Policy and Marilena Lazzarini, President of *Consumers International*.

The initial session was held in the morning of December 2, with a welcome by Brazil, as organizer of the meeting. The Brazilian representative, Dr. Ricardo Morishita Wada was elected Chairman of the Meeting. Dr. John Wilson then proceeded to explain the CIDIP process and the methodology adopted for this meeting.

Discussion of the Brazilian proposal followed the approval of the new agenda. The delegations proceeded to read the proposal for an Inter-American Convention for the Protection of Consumers for CIDIP-VII and discussed Articles 1 through 7. The project as a whole was well received. Delegates applauded the goals of the Brazilian proposal: to provide legal protections for consumers in their relationships with suppliers, to provide economic benefits to consumers by increasing availability and choice and decreasing product costs, and to provide consumer confidence in the marketplace. This premise was taken into consideration when analyzing the text and general agreement was reached on various issues — notwithstanding some specific concerns with certain aspects related to the drafting of the articles.

At this stage, a system of bracketing the text was not adopted; rather, participants sought to reach consensus on the ideas and strengths of the project, and made specific observations on the provisions. It was agreed that the drafting should be perfected by the working group organized by the OAS, following an agenda to be adopted so as to enable final ratification of the document by as many countries as possible. The view was expressed that the rules in the proposal were generally positive, but their interplay needed to be further considered keeping in mind that the objective of a private international law convention is to determine the applicable law. By way of summary, drafting issues that should be addressed through a proposed working group include the following:

1. The definition of consumer contracts, and the coverage of bystander consumers, in Art. 1.
2. The use of the “law most favorable to the consumer” in Art. 2.1.
3. The use, scope, and definition of mandatory rules and the application of *ordre public* in Art. 3.
4. The loophole provisions in Art. 4.
5. Drafting issues in Arts. 5-7.

On the second day, participants discussed the proposal of the United States of America. The U.S. delegation then made some general comments regarding their proposal, followed by comments by various delegations who support the objectives of the U.S. proposal. No special focus was placed at this stage of the discussions on the drafting of the text. Delegations agreed that the U.S. proposal and the Brazilian proposal were complementary and not mutually exclusive. An article-by-article discussion ensued, including general comments on each of them by the U.S. delegation. The delegations expressed their support of the project, as a whole, and noted that it addresses many important subject areas including individual, collective and government redress actions. They also noted the proposal’s interaction with various subject areas, including contracts, illegal activities, criminal law, domestic procedural law and international procedural law. Many of the issues will be discussed and some language improvements will be suggested and the streamlining of some of the points so as to maintain a positive intention to

promote the protection of consumers through these mechanisms to have access to justice in light of the diversity of procedural laws and the cultures in the OAS countries. Consideration should be given to referring to existing definitions under national law to ensure consistency. The section on government dispute resolution and redress was considered a positive development. However, prior to agreeing to support its inclusion in the Model Law, some expressed the view that the details of the provisions need to be known. There could be public policy considerations that would need to be carefully weighed and considered.

Specific reference was made by one delegation to the issue of credit cards. There was general consensus on the scope and overall approach, including coverage of both domestic and international consumer disputes and the need to provide mechanisms for adequate redress. As a whole, the project was well received, subject to improvements to the language to be suggested through a proposed working group. By way of summary, drafting issues that should be addressed through a proposed working group include the following:

1. Transforming the text from general “soft law” principles to a more concrete text appropriate for a model law, accompanied by commentary and practical examples.
2. Reworking the language to be more compatible with the approach of member states using a civil code.
3. The definitions related to consumer transactions in light of the definitions in the Brazilian and Canadian proposals.
4. On remedies for consumers acting individually, the additional issues of a possible role for central authorities in international actions; the role of credit card companies in dispute resolution; the use of alternative dispute resolution in international transactions, including the possibilities of agreed on arbitration; and whether to provide several alternative draft model provisions on this subject, reflecting the different possible dispute resolution mechanisms that are possible.

5. On remedies for consumers acting collectively, reworking the language in light of existing class action remedies in other countries and existing model laws; analyzing the section on procedures to insure an appropriate balance between access to justice and discouraging abusive practices; and the application and implementation of opt-in and opt-out notices.
6. Drafting governmental dispute resolution provisions to ensure appropriate narrowness of coverage.

Participants then discussed the Canadian proposal for a model law on jurisdiction and applicable law. It is a complement to the initial text that was submitted by Canada previously. Delegates welcomed the presentation, and the subject was considered very important.

The questions and concerns received on the proposal included the following:

- It was suggested that further work be undertaken on the definitions contained in the proposal. Some delegates indicated that it would be desirable to include definitions in the text of the document.
- The point was made that the drafting could be improved. Among other things, some were of the view that it would be preferable to redraft article 3 and in particular, include a reference in article 3 to article 6 which requires a court to refuse to enforce a forum selection clause in certain circumstances.
- Concerns were also raised regarding the inclusion of forum non conveniens in the draft proposal. Other views were expressed that it was necessary that forum non conveniens be included in the proposal.
- Concerns were expressed regarding the general viability of the rule in article 4 in terms of its application to e-commerce, as well as the onus the provision places on the seller to take reasonable steps to avoid concluding contracts

with consumers residing in another state. Concerns were raised that this would be too onerous on small and medium-sized businesses and that party autonomy should be recognised.

- Comments were also made that the proposal should take the form of a convention and not a model law. The opposite view was also expressed.
- Views were expressed regarding the interrelation of the model law with the proposals from Brazil and from the United States of America.
- Concerns were expressed about the application of the proposal to internal consumer contracts and the assumption that national rules of jurisdiction should be modified according to a Model Law.

The meeting closed its activities with final words from Manoel André da Rocha Vice-Director of the Law School of la UFRGS, Ricardo Morishita Wada, President of the Meeting and Jean Michel Arrighi, Director of the OAS Department of International Legal Affairs.