

SEVENTH INTER-AMERICAN SPECIALIZED CONFERENCE  
ON PRIVATE INTERNATIONAL LAW

INFORMAL WORKING GROUP TO DRAFT FINAL DOCUMENT(S)  
ON CONSUMER PROTECTION  
[AG/RES. 2527 (XXXIX-O/09)]

REPORT OF THE COORDINATOR OF THE INFORMAL WORKING GROUP<sup>1/</sup>

May 11, 2010

**I. Background:**

In resolution AG/RES. 1923 (XXXIII-O/03), the General Assembly convened the Seventh Inter-American Specialized Conference on Private International Law (CIDIP-VII), and in its resolution AG/RES. 2217 (XXXVI-O/06), it selected consumer protection as one of the agenda items for CIDIP-VII.

Accordingly, Brazil submitted a draft Convention on Legislation Applicable to Some Consumer Contracts, Canada presented a draft Model Law on Consumer Jurisdiction and Applicable Legislation, and the United States presented Legislative Guidelines for an Inter-American Law on Availability of Mechanisms for Consumer Dispute Resolution and Redress for Consumers, and three model laws—the first on Small Claims, the second on Electronic Arbitration of Cross-Border Consumer Claims, and the third on Government Redress, Including Across Borders.

Last year, by resolution AG/RES. 2527 (XXXIX-O/09), the General Assembly instructed the Permanent Council to set up a working group made up of government officials and representatives of interested member states with a view to drafting the final document (or documents) on consumer protection, on the basis of the proposals of the states referred to in the previous paragraph.

Moreover, the Government of Brazil offered to host CIDIP-VII, convened to consider the final draft document(s) on consumer protection.

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1. This report was drafted by the coordinator of the Working Group, who takes responsibility for it.

## **II. Establishment of the Working Group**

In accordance with resolution AG/RES. 2527 (XXXIX-O/09), the General Assembly instructed the Permanent Council to set up a working group made up of government officials and representatives of interested member states with a view to drafting the final document (or documents) on consumer protection.

Through the regular meeting of the Committee on Juridical and Political Affairs on September 3, 2009, the Permanent Council established the working group to act in the capacity of an informal working group, and elected Alonso Martínez Ruiz, First Vice-Chair of the CAJP, to serve as coordinator of this informal group.

To this end, the following states sent experts to participate in the informal working group: Argentina, Brazil, Canada, Costa Rica, Ecuador, El Salvador, Mexico, Panama, Paraguay, United States, and Peru. The complete list of experts and representatives can be found in document CP/CAJP/INF-117/10 rev. 1.

## **III. Work of the Informal Group**

Based on the General Assembly mandates, the informal group held five teleconferences and one face-to-face meeting, and it presented two verbal reports to the Committee on Juridical and Political Affairs and the Permanent Council.

### *A. Proposals Reviewed*

In the course of the teleconferences, the proposing delegations were asked to present their proposals. The following presentations were made as part of the activities of the Informal Working Group:

Revised Brazilian Proposal: The Brazilian government presented the so-called “BUENOS AIRES PROPOSAL,” a joint proposal of the Brazilian, Argentine, and Paraguayan governments, which represents a simplified version of the draft Inter-American Convention on the Law Applicable to International Consumer Contracts and Transactions, contained in document CP/CAJP-2652/08 add. 4 corr. 1.

Canadian Proposal: The Canadian government presented the Draft Model Law on Jurisdiction and Applicable Law on Consumer Contracts, contained in document CAJP-2652/08 add. 2, which was revised in May 2008 and distributed to member states in August of that year.

Revised United States Proposal: Likewise, the U.S. government presented a revised version of its proposal, which consists in Legislative Guidelines for an Inter-American Law on the Availability of Mechanisms for Consumer Dispute Resolution and Redress for Consumers, along with four model laws. The first is for the Electronic Resolution of Cross-Border E-Commerce Consumer Disputes, the second is on the Alternative Settlement of Disputes for Consumer Payment Card Claims, the third is on Small Claims, and the fourth is on Government Redress, Including Across Borders, contained in document CP/CAJP-2652/08 add. 1 rev. 1.

*B. Teleconferences*

In accordance with the mandate of resolution AG/RES. 2527, the informal group held the following teleconferences:

- The first teleconference took place on October 2, 2009, and focused on issues of methodology; Brazil also made an initial presentation of the joint Brazilian-Argentine-Paraguayan proposal, contained in document CP/CAJP-2652/08 add. 4 corr. 1.
- The second teleconference was held on December 17, 2009, for the purpose of concluding the presentation of the joint proposal of the Brazilian, Argentine, and Paraguayan governments, and giving delegations an opportunity to make verbal comments on it.
- At the third teleconference, which took place on January 21, 2010, Canada presented its proposal on a draft Model Law on Jurisdiction and Applicable Law on Consumer Contracts, contained in document CP/CAJP-2652/08 add. 2, and delegations had an opportunity to make comments on it.
- At the fourth teleconference on February 25, 2010, the United States presented its revised proposal of Legislative Guidelines and four model laws, contained in document CP/CAJP-2652/08 add. 1 rev.1, and delegations had an opportunity to voice their comments on it.
- The fifth teleconference was held on April 23, 2010, for the purpose of establishing the methodology and guidelines for the face-to-face meeting of the informal working group, which took place on May 6, 2010.

*C. Written comments of delegations*

In order to know the position of the various delegations participating in the working group and to move the negotiation process forward, the group coordinator requested the states to submit comments in writing on the different proposals.

The Brazilian delegation submitted a note in which it referred to its country's position regarding the current status of the joint proposal, and gave its view on the complementary nature of the three proposals.

The Canadian delegation submitted comments in writing on the United States proposal, contained in document CP/CAJP-2852/10 corr. 2, and on the joint proposal of Argentina, Brazil, and Paraguay, in document CP/CAJP-2823/10.

Similarly, the United States delegation submitted document CP/CAJP-2837/10, containing comments on both the joint Argentine-Brazilian-Paraguayan proposal and on Canada's proposal.

*D. Face-to-face meeting*

The informal working group established pursuant to resolution AG/RES. 2527 gathered for a meeting in Washington, D.C. on May 6, 2010. The agreed agenda for that meeting, contained in document CP/CAJP-2859/10 (annex 2), comprised two items:

1. Comments by the Working Group on the proposals presented on the topic of “Consumer Protection” for the Seventh Inter-American Specialized Conference on Private International Law (CIDIP-VII);
2. Consideration of methodological options for completing the final document(s) on the topic “Consumer Protection” for the Seventh Inter-American Specialized Conference on Private International Law (CIDIP-VII).

With regard to the first item on the agenda, the states summarized their proposals. The government of Brazil indicated that it considered that its proposal, after 7 years of discussion, was sufficiently mature to be adopted. This position was supported by the delegations of Argentina, Paraguay, and Uruguay. The delegations of the United States and Canada reiterated the need to work on the basis of the comments received and any others that may be presented, in order to advance the negotiation of the proposals with a view to adopting them.

The United States delegation mentioned that it had presented comments in writing on both proposals, but that it had received comments on its proposal from only one delegation. Finally, it solicited further comments from delegations on its proposal, so that it would have more information on the positions held on its documents.

With regard to the second item on the agenda, the coordinator of the informal group presented an informal note for consideration of methodological options for completing the final document(s) on the issue of consumer protection for CIDIP-VII as contained in document CP/CAJP-2859/10 add. 1 (annex 3). The informal note identified alternatives for consideration of the existing proposals and institutional alternatives for negotiating them.

From the ensuing discussion, the following positions could be identified:

- a. Alternatives for consideration of the current proposals
  - The vast majority of the participating delegations indicated that they could work on the basis of the jurisdiction and applicable law proposals and on the issue of availability of consumer dispute resolution and redress mechanisms (electronic resolution of cross-border e-commerce consumer disputes, alternative dispute resolution for consumer payment card claims, small claims, and government redress, including across borders).
  - Several delegations indicated that they agreed on separating consideration of the issues, but stated that a discussion must first be held to identify the general framework to guide the negotiations.

- One delegation recalled that there had been agreement on discussing all of the existing proposals together, and stated its preference to continue working in that way.
- b. Institutional alternatives for negotiation of the proposals
- The vast majority of the participating delegations expressed their preference for setting a definitive date for CIDIP-VII, so as to have a definite schedule or timetable for decision-making. One delegation believed it was premature to set a date, and preferred just to renew the mandate to continue substantive discussion of the proposals.
  - One delegation proposed specific dates for the Diplomatic Conference of CIDIP-VII, i.e., November 24-27, 2010, in Brasilia, Brazil. These dates were supported by various delegations. One delegation indicated that the date was too close.
  - All of the delegations agreed that prior to holding CIDIP-VII, a formal working group with full secretarial services should be set up to pursue substantive discussions on the proposals. The working group should be given enough time to complete its work and to hold regular, face-to-face meetings.
  - The vast majority of the delegations considered it possible to separate the discussions into two distinct tracks: one on orthodox subjects of private international law (i.e., jurisdiction and applicable law); and, the other on more contemporary issues (monetary redress and electronic dispute resolution). This could be done by establishing parallel working groups, or with one working group to discuss alternately the two sets of issues. Several delegations pointed to the need for this process to be preceded by a meeting to discuss the general framework to guide the negotiations.
  - Several delegations liked the idea of convening, if necessary, different Conferences—one to discuss the subject of jurisdiction and applicable law, and another on availability of consumer dispute resolution and redress mechanisms. One delegation voiced its preference for maintaining an integral approach and convening only one Conference.

#### **IV. Conclusions**

1. Despite the technical difficulties involved in complying with the schedule stipulated in the General Assembly resolution, the working group has made important progress in its consideration of the issue of consumer protection, with a view to having a final document, or documents, adopted on the subject by the Seventh Inter-American Specialized Conference on Private International Law (CIDIP-VII).

2. Delegations to the Working Group reiterated the importance they attach to consumer protection and their intention to advance their work as expeditiously as possible, so that CIDIP-VII may adopt documents on the subject.

3. The Working Group served as a framework for presentation of up-to-date proposals on an Inter-American Convention on the Law Applicable to International Consumer Contracts and Transactions, the proposed Model Law on Jurisdiction and Applicable Law on consumer Contracts, and Legislative Guidelines for an Inter-American Law on Availability of Consumer Dispute Resolution and Redress Mechanisms, with its accompanying four model laws: the first on the Electronic Resolution of Cross-Border E-Commerce Consumer Disputes, the second on the Alternative Settlement of Disputes for Consumer Payment Card Claims, the third on Small Claims, and the fourth on Government Redress, Including Across Borders.

4. It also received comments on the content of the proposals, which will be useful in the discussions leading to their eventual adoption by a CIDIP-VII.

5. Finally, the group discussed methodological options for completing the final document(s) on the subject of consumer protection for the Seventh Inter-American Specialized Conference on Private International Law (CIDIP-VII). Delegations indicated that they place high priority on promptly convening CIDIP-VII on the subject of consumer protection, and that a formal group of experts needs to be set up, with full secretarial services, prior to that event. There was a growing convergence regarding the possibility of discussing the orthodox issues of private international law (jurisdiction and applicable law) separately from the more contemporary substantive issues (monetary redress and electronic dispute resolution).

**ANNEX 1: LISTA DE REPRESENTANTES Y EXPERTOS**

CONSEJO PERMANENTE DE LA  
ORGANIZACIÓN DE LOS ESTADOS AMERICANOS  
COMISIÓN DE ASUNTOS JURÍDICOS Y POLÍTICOS

OEA/Ser.G  
CP/CAJP/INF-117/10 rev. 1  
3 mayo 2010  
TEXTUAL

LISTA DE REPRESENTANTES Y EXPERTOS

GRUPO DE TRABAJO INFORMAL PARA ELABORAR EL/LOS PROYECTO(S) DE  
DOCUMENTO(S) FINAL(ES) SOBRE PROTECCIÓN AL CONSUMIDOR  
[AG/RES. 2527 (XXXIX-O/09)]





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**ANNEX 2: AGENDA – MEETING OF THE WORKING GROUP**

PERMANENT COUNCIL OF THE  
ORGANIZATION OF AMERICAN STATES  
COMMITTEE ON JURIDICAL AND POLITICAL AFFAIRS

OEA/Ser.G  
CP/CAJP-2859/10  
3 May 2010  
Original: English

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AGENDA  
MEETING OF THE WORKING GROUP TO DRAFT FINAL DOCUMENT(S) ON  
CONSUMER PROTECTION  
SEVENTH INTER-AMERICAN SPECIALIZED CONFERENCE ON PRIVATE  
INTERNATIONAL LAW (CIDIP-VII)  
[AG/RES. 2527 (XXXIX-O/09)]

Date: May 6, 2010  
Room: Gabriela Mistral  
Location: 1889 F. St. Washington, D.C.

General Assembly resolution AG/RES. 2527 (XXXIX-O/09), “Seventh Inter-American Specialized Conference on Private International Law (CIDIP-VII),” requires the establishment of a Working Group made up of government officials and representatives of interested member States with a view to completing the draft final document (or documents) on consumer protection and requires the General Secretariat to assist in organizing a meeting of the Working Group for such purposes.

*2:00 p.m. -3:30 p.m.*

1. Comments by the Working Group on the proposals presented on the topic “Consumer Protection” of the Seventh Inter-Americana Specialized Conference on Private International Law (CIDIP-VII):
  - a) Joint Proposal of the Delegations of Brazil, Argentina and Paraguay: Simplified Version of the Final Brazilian Proposal, “Buenos Aires Proposal”
  - b) Proposal of the Delegation of Canada: Model Law on Jurisdiction and Applicable Law for Consumer Contracts
  - c) Proposal of the Delegation of the United States: Legislative Guidelines for an Inter-American Law on Availability of Consumer Dispute Resolution and Redress for Consumers; Model Law for Electronic Resolution of Cross-Border E-Commerce Consumer Disputes; Model Law on Alternate Dispute Resolution for Consumer Payment Card Claims; Model Law on Small Claims; and Model Law on Government Redress for Consumers Including Cross Borders

*3:30 p.m. -5:00 p.m.*

2. Consideration of methodological options for completing the final document(s) on the topic “Consumer Protection” of the Seventh Inter-Americana Specialized Conference on Private International Law (CIDIP-VII)

*5:00 p.m. -5:30 p.m.*

3. Closing remarks



**ANNEX 3: INFORMAL NOTE FROM THE COORDINATOR**

PERMANENT COUNCIL OF THE  
ORGANIZATION OF AMERICAN STATES

COMMITTEE ON JURIDICAL AND POLITICAL AFFAIRS

OEA/Ser.G  
CP/CAJP-2859/10 add. 1  
3 May 2010  
Original: English

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INFORMAL NOTE PREPARED BY THE COORDINATOR ON ITEM 2 OF THE AGENDA:  
CONSIDERATION OF METHODOLOGICAL OPTIONS FOR COMPLETING THE FINAL  
DOCUMENT(S) ON THE TOPIC "CONSUMER PROTECTION" OF THE SEVENTH INTER-  
AMERICANA SPECIALIZED CONFERENCE ON PRIVATE INTERNATIONAL LAW  
(CIDIP-VII)

- a) Alternatives on how to approach the existing proposals:
- i. Joint negotiation
  - ii. In the framework of CIDIP VII, establishment of parallel negotiations:
    - Jurisdiction and applicable law on consumer contracts/transactions
    - Availability of Consumer Dispute Resolution and Redress for Consumers; Electronic Resolution of Cross-Border E-Commerce Consumer Disputes; Alternate Dispute Resolution for Consumer Payment Card Claims; Small Claims; and Government Redress for Consumers Including Cross Borders.
    - In the framework of CIDIP VII work on jurisdiction and applicable law on consumer contracts/transactions, with the understanding that CIDIP VIII would deal with the topics of Availability of Consumer Dispute Resolution and Redress for Consumers; Electronic Resolution of Cross-Border E-Commerce Consumer Disputes; Alternate Dispute Resolution for Consumer Payment Card Claims; Small Claims; and Government Redress for Consumers Including Cross Borders, on the other.
  - iii. Other
- b) Institutional alternatives for the negotiation of the proposals:
- i. Informal coordination
  - ii. Informal group of experts
  - iii. Formal group of experts
  - iv. Working Group within the CAJP
  - v. Convene the CIDIP VII on Consumer Protection
  - vi. Other