

Seventh Inter-American Specialized Conference on Private International Law – CIDIP-VII

Reports and Resolutions:

- CJI/RES.24 (LVIII-O/01) *Specialized Inter-American Conference on International Private Law*
- CJI/doc.74/01 rev.1 *CIDIP-VII and beyond*
(presented by Drs. Carlos Manuel Vázquez and João Grandino Rodas)
- CJI/RES.38 (LX-O/02): Inter-American Specialized Conferences on Private International Law (CIDIPs)
- CJI/RES.50 (LXI-O/02): The applicable law and competency of international jurisdiction with respect to extracontractual civil liability
- CJI/doc.84/02: Harmonization of laws concerning electronic commerce and cross-border insolvency (presented by Dr. Carlos Manuel Vázquez)
- CJI/doc.89/02: Sixth Inter-American Specialized Conference on Private International Law (CIDIP-VI)
(presented by Drs. Carlos Manuel Vázquez and João Grandino Rodas)
- CJI/doc.97/02: Recommendations and possible solutions proposed to the topic related to the law applicable to international jurisdictional competence with respect to extracontractual civil responsibility
(presented by Dr. Ana Elizabeth Villalta Vizcarra)
- CJI/doc.104/02 rev.2: The desirability of pursuing the negotiation of an inter-American instrument on choice of law and competency of international jurisdiction with respect to non-contractual civil liability: a framework ofr analysis and agenda for research
(presented by Dr. Carlos Manuel Vázquez)
- CJI/RES.91 (LXVI-O/05) *Seventh Inter-American Specialized Conference on Private International Law – CIDIP-VII*
- CJI/RES.100 (LXVII-O/05) *Seventh Inter-American Specialized Conference on Private International Law – CIDIP-VII*
- CJI/doc.196/05 rev.1 *Comments on CIDIP-VII agenda* (presented by Drs. Antonio Fidel Pérez, João Grandino Rodas y Ana Elizabeth Villalta Vizcarra)
- CJI/doc.193/05 *The Inter-American Juridical Committee on the codification of private international law and preparation of the Seventh Inter-American Specialized Conference on Private International Law*
(presented by Dr. Ana Elizabeth Villalta Vizcarra)
- CJI/doc.192/05 *Note for the Inter-American Juridical Committee on CIDIP-VII*
(presented by Dr. Antonio Fidel Pérez)

- CJI/doc.74/01 rev.1 *CIDIP-VII and beyond* (presented by Drs. Carlos Manuel Vázquez and João Grandino Rodas)
- CJI/RES.104 (LXVIII-O/96) *Seventh Inter-American Specialized Conference on Private International Law (CIDIP-VII)*
- CJI/doc.209/06 - *Seventh Inter-American Specialized Conference on Private International Law* (presented by Dr. Ana Elizabeth Villalta Vizcarra)
- CJI/RES.115 (LXIX-O/96) *Seventh Inter-American Specialized Conference on Private International Law – (CIDIP-VII)*
- CJI/doc.226/06 - *Seventh Inter-American Specialized Conference on Private International Law* (presented by Dr. Ana Elizabeth Villalta Vizcarra)
- CJI/doc.227/06 - *Seventh Inter-American Specialized Conference on Private International Law (CIDIP-VII): consumer protection* (presented by Dr. Antonio Fidel Pérez)
- CJI/doc.230/06 corr.1 - *Seventh Inter-American Specialized Conference on Private International Law (CIDIP-VII): consumer's protection: questions on applicable law* (presented by Dr. Antonio Fidel Pérez)
- CJI/RES.122 (LXX-O/07) *Seventh Inter-American Specialized Conference on Private International Law (CIDIP-VII)*
- CJI/doc.242/07 *Seventh Inter-American Specialized Conference on Private International Law (CIDIP-VII)* (presented by Dr. Ana Elizabeth Villalta Vizcarra)
- CJI/doc.243/07 *Report on CIDIP-VII with respect to the negotiation of legal instruments concerning consumer protection* (presented by Dr. Antonio Fidel Pérez)

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

During its fifty-eighth regular session held in Ottawa in March 2001, the Inter-American Juridical Committee adopted resolution CJI/RES.24 (LVIII-O/01), *Specialized Inter-American Conference on Private International Law*, in which it decided to set up a working group made up of Dr. João Grandino Rodas and Dr. Carlos Manuel Vázquez, with a view to presenting a report at the next regular session. The report would propose possible options for furthering the development of international private legal cooperation and relations within the inter-American system. These proposals would then be referred in due time to the relevant organs of the OAS. Moreover, in that resolution, the designated rapporteurs were authorized to request information of any persons or institutions deemed relevant to their efforts to draw up that report, with the support of the General Secretariat.

At that session, with regard to the persons and institutions to consult in conjunction with this report, mention was made of professors specializing in the area, many of whom had already had an opportunity to participate in the Course on International Law and had

made specific proposals on issues of international private law during the course. It was also noted that the Joint Meetings with Legal Advisors of Ministries of Foreign Affairs of OAS Member States offered an excellent opportunity to discuss these subjects.

On the paper to be prepared, it was suggested that it should not only meet the needs of the public sector and legal advisors in the Ministries of Foreign Affairs, but that first and foremost it should respond to the requirements of the private sector and commercial governmental sectors. It was also pointed out that the work done by the Inter-American Juridical Committee should reflect the needs of all the countries in the hemisphere, and not just certain regional groups, as has happened previously.

At the thirty-first regular session of the General Assembly (San José, June, 2001), the Assembly asked the Inter-American Juridical Committee to begin consideration of the agenda and themes for furthering the development of international private law in the inter-American system that could be discussed at future CIDIP's, and to submit its proposals at the next Specialized Conference (CIDIP-VI) to be held in Guatemala in November 2001, AG/RES.1772 (XXXI-O/01).

On July 13, 2001, the Department of International Law sent document DDI/doc.07/01, *Replies to the Questionnaire on CIDIP-VI*, to Dr. João Grandino Rodas and Dr. Carlos Manuel Vázquez, the rapporteurs on the topic.

The fifty-ninth regular session of the Inter-American Juridical Committee, held in Rio de Janeiro in August 2001, was attended by Dr. José Luis Siqueiros, a former member and Chairman of the Juridical Committee. He gave a presentation on the subject of the CIDIP's in the Committee.

The Inter-American Juridical Committee also considered document CJI/doc.74/01 rev. 1, *CIDIP-VII and Beyond*, presented by Dr. Carlos Manuel Vázquez and Dr. João Grandino Rodas. In introducing the document, Dr. Vázquez indicated that it had been drafted on the basis of the questionnaire referred to earlier. He said that most of the concerns expressed had to do with the following issues: the fact that so few States had signed and ratified the different inter-American agreements on international private law, although some of those surveyed did not measure the importance of the agreements by that criterion; the possible duplication of effort with other international initiatives, such as UNIDROIT, although some respondents were of the view that regional agreements more easily provided common elements for possible adoption; the approach by CIDIP to efforts to standardize laws by creating model laws; the need for more resources and the possibility of establishing an *ad hoc* secretariat for the CIDIP's in the OAS; and, the relationship between CIDIP and the economic integration process. Dr. Vázquez indicated that the document in question reflected an urgent need to open up the process to nongovernmental groups or entities specializing in the area, and the need to refrain from establishing a specific process of any kind, so that greater flexibility could be exercised in response to the needs felt at any given time. He pointed out that most of the specialists surveyed had said that it was important not to establish a dichotomy between regional and global issues, and he reported that they tended to lean towards producing model laws, although they did recognize the merits of international agreements. Some of the persons surveyed reported that national legislation is determined by domestic needs more than by external pressures or suggested guidelines, and that as a result model laws were very seldom adopted in full, and that it was very difficult to issue model laws that could be inserted in systems as divergent as civil law and common law systems.

Finally, Dr. Vázquez reported that all the specialists had stressed the importance of economic and trade matters for future CIDIP's, while some had stated that all aspects of relations among individuals in the broadest sense of the concept should be given consideration.

The rapporteur also suggested that an in-depth study should be devoted to the main theme of CIDIP-VII. He said that the document presented contained a list of possible subjects to be discussed, such as E-commerce.

Some IAJC members suggested that the Committee work on criteria for selecting themes for future CIDIP's. Among others, they referred to regional harmonization in certain areas as part of the progressive development of law, without discarding any theme because it was being analyzed at an international level. Preference should also be given to selection of those topics that most urgently need to be codified, such as issues related to the integration process, trade in goods and services, customs controls, transportation, and the like.

It was also pointed out that there was no contradiction inherent in discussing a topic on a regional level that was also being considered in international spheres. At the same time, it was said that CIDIP topics often might not be immediately relevant to the political process, and that this is why the necessary steps to further develop them are not taken. It was noted that it is only in response to the political process that CIDIP results can be implemented.

One member of the Inter-American Juridical Committee proposed that CIDIP's serve more as a follow-up mechanism in the following four areas: monitoring of treaties and analysis of the existing pool; achieving regional consensus on the global process and analysis of that process; conflict of laws in the judicial sector of States and an evaluation of the application of rules of conflict; and, teaching private international law.

Finally, the Inter-American Juridical Committee took note of the document presented by the rapporteurs and asked them to pursue it further.

At the Inter-American Juridical Committee's LX regular session (Rio de Janeiro, February-March 2002), Dr. Carlos Manuel Vázquez, rapporteur for the topic, presented documents CJI/doc.89/02, *Sixth Inter-American Specialized Conference on Private International Law (CIDIP-VI)*, co-authored with Dr. João Grandino Rodas, and CJI/doc.84/02, *Harmonization of laws concerning electronic commerce and cross-border insolvency*. The Sixth Inter-American Specialized Conference on Private International Law (CIDIP-VI) was held in Washington, D.C., February 4 to 8, 2002, prior to the LX regular session of the CJI.

At that session, Dr. Carlos Manuel Vázquez made reference to document CJI/doc.74/01 rev.1, *CIDIP-VII and beyond*, which was the report that both he and Dr. João Grandino Rodas presented at CIDIP-VI. He summarized the proceedings of CIDIP-VI, and introduced the other Committee members to the content of the CIDIP-VI resolutions, especially the one in which it resolved to pursue the CIDIP process as a suitable forum for the development and codification of private international law in the hemisphere. In that resolution, CIDIP-VI asked that the General Secretariat, by way of the Secretariat for Legal Affairs, organize a meeting of experts to examine CIDIP's future and the future issues that CIDIP-VII might consider.

The rapporteur pointed out that three of the topics that the Inter-American Juridical Committee had suggested were included on the list of topics on which deliberations will continue until their eventual inclusion on the agenda of the CIDIP-VII, namely, transborder movements and migratory flows of persons, cross-border business insolvency, and electronic commerce. The other topics, he pointed out, concern development of an inter-American computer-based registry system; transport; investment securities; international legal rights for the transferability of tangible and intangible goods in international trade, and international protection of adult persons whose personal faculties are impaired.

In connection with the three topics that CIDIP-VI addressed, the rapporteur reported that the Model Inter-American Law on Secured Transactions and the negotiable and non-negotiable inter-American uniform bill of lading for the international carriage of goods by road were adopted.

Dr. Vázquez also mentioned the resolution that the Conference had adopted applauding the work of the Inter-American Juridical Committee.

In light of what transpired during CIDIP-VI, Dr. João Grandino Rodas observed that more common law countries should participate in the process, especially the Caribbean countries.

Dr. Ana Villalta said that CIDIP needed to be promoted more within the Organization, precisely in view of what little had been done to publicize these topics. She suggested that a lack of understanding about the way model laws function could be one reason why more countries from Central America and the Caribbean did not take part in the process that had just concluded.

Dr. Brynmor T. Pollard was interested in the new process whereby model laws were produced within CIDIP. He also noted that the shift away from inter-American conventions in favor of model laws was perhaps because governments found model laws to be more advantageous. Dr. Vázquez observed that there might be other reasons for the shift, such as the certainty so essential in areas like international trade. He noted that at CIDIP the sense was that the modality adopted should be dictated by the needs of the issue at hand.

Dr. Kenneth O. Rattray observed that the important thing now was to decide on CIDIP's future, both as regards procedure and substance. He noted that one problem encountered was a certain indifference on the part of some countries to the process in general. Dr. Rattray added that the traditional approach might not be the most prudent one at the present time. He suggested that one or two topics might be selected for a kind of pilot experiment. One might be the issue of electronic commerce. A number of approaches could be tested. This, he said, would obviate one of the basic problems with the entire process, namely that too many issues were on the agenda at any given time.

During this regular session, the Inter-American Juridical Committee decided to designate Dr. Ana Villalta as co-rapporteur for the topic, and adopted resolution CJI/RES.38 (LX-O/02), *Inter-American Specialized Conferences on Private International Law (CIDIPs)*. In that resolution, the Inter-American Juridical Committee was pleased to receive CIDIP-VI/RES.2/02, which praised the work done by the Inter-American Juridical Committee on the subject matter; and took note of and expressed its appreciation for the report presented by the Inter-American Juridical Committee's observers at the Sixth Inter-American Specialized Conference on Private International Law (CIDIP-VI), Dr. João Grandino Rodas and Carlos Manuel Vázquez (CJI/doc.74/01 rev.1, *CIDIP VII and*

beyond). In that same resolution, the Committee underscored its readiness to cooperate in the studies on the “Applicable law and competency of international jurisdiction with respect to extracontractual civil liability,” in the preparations for the Seventh Inter-American Specialized Conference on Private International Law, as provided in resolutions CIDIP-VI/RES.1/02, *Request for the General Assembly to convoke the Seventh Inter-American Specialized Conference on Private International Law (CIDIP-VII)*, and CIDIP-VI/RES.2/02, *Recognition of the work of the Inter-American Juridical Committee*, and in whatever other way the General Assembly should dispose.

On May 2, 2002, the Chair of the Permanent Council sent a letter to the Chairman of the Inter-American Juridical Committee informing him that at its meeting of May 1, 2002, the Council had adopted a resolution titled *Assignment to the Inter-American Juridical Committee of the CIDIP topic regarding the applicable law and competency of international jurisdiction with respect to extracontractual civil liability*. The resolution in question, which was CP/RES.815 (1318/02), was appended to the note.

Later, at its thirty-second regular session (Barbados, June 2002), through resolutions AG/RES.1844 and 1846 (XXXII-O/02), the General Assembly requested the Inter-American Juridical Committee to continue to assist with the preparatory work for the next CIDIP. It instructed the Committee, working with the General Secretariat, to support the consultations among governmental and nongovernmental experts and to prepare the reports, recommendations and other materials necessary for the consultations to conclude.

During the LXI regular session of the Inter-American Juridical Committee (Rio de Janeiro, August 2002), Dr. Ana Elizabeth Villalta Vizcarra, rapporteur for the topic, introduced the document CJI/doc.97/02, *Recommendations and possible solutions proposed to the topic relating to the law applicable to international jurisdictional competence with respect to extracontractual civil responsibility*. She observed that the topic was quite complex because of the many points of connection that it involved. She then described the content of her report, stating that it began with a description of the mandate entrusted to the Inter-American Juridical Committee. Her report described the theoretical aspects of the issue, drawing a distinction between contractual and extracontractual civil liability. She observed that extracontractual civil liability was in the realm of international private law because the injured parties were private persons. The rapporteur mentioned the traditional solutions and the current solutions, in other words, the determination of the applicable law and the competent jurisdiction. These, she said, could be examined separately, although experts made the point that the two were intimately related. Dr. Villalta outlined the principles of law most often used in connection with the applicable law, which are *lex fori* (the applicable law being the law of the court hearing the matter, although this criterion was not often used); the principle of *lex domicilii* (which was problematic when a tort committed in one State had effects or damages in another state; the nexus that might eventually prove to be the more important one could be ignored as a result). For these traditional criteria, with very rigid nexus points, Dr. Villalta outlined three methods, applied for the most part in U.S. law: the principle of proximity; the unilateralist attempt to determine the scope of material rules as a function of state interests, and the teleological attempt to achieve desirable outcomes in the resolution of problems caused by external factors. In general, she stated, the tendency was to opt for the “center of gravity” criterion, which was to favor the law of the place that had the most substantive nexus to the cause of action. She cited various examples from a number of international legal instruments, where solutions of this type had been adopted, with the result that less emphasis was placed on the

more traditional nexus criteria. Dr. Villalta observed that the classic criteria need to be made more flexible, so as to include multiple alternatives, to give the judge more criteria to use to decide a case, criteria not anticipated at the time the law was passed.

As for the competency of international jurisdiction, she indicated that criteria could be established to enable the victim to choose the most advantageous course of action, choosing the jurisdiction that best suits his/her purposes.

Finally, she recommended that a convention be adopted on the subject of extracontractual civil liability in general, leaving the most specific issue of cross-border business insolvency for later. The new convention should take into account the criteria of the Hague Conventions and U.S. law, which give the court more scope in establishing the nexuses. She also noted that any such convention should regulate everything related to damages and establish modern criteria of indemnification.

Dr. Carlos Manuel Vázquez, rapporteur for the topic, said that his conclusions on the subject were somewhat different from those of Dr. Villalta. He observed that his principal difference of opinion was that in his view it was too soon to determine whether a convention on the subject was needed and, if so, whether one could recommend that only some of the discussion points be included. He also said that a model law might be a second alternative. Dr. Vázquez noted that whereas the Permanent Council's resolution was not very specific as to how much time the Juridical Committee could take to discuss this issue, 2004 was the date mentioned at CIDIP-VI.

Then Dr. Vázquez summarized the points covered in his document, titled *The desirability of pursuing the negotiation of an inter-American instrument on choice of law and competency of international jurisdiction with respect to non-contractual civil liability: a framework for analysis and agenda for research*, CJI/doc.104/02 rev.2.

One of the central points he raised in his document was the expense created by the lack of uniformity among the jurisdictions and the methods for choosing the applicable law. He therefore suggested that the hemisphere would be well served to have a uniform approach where these matters were concerned. Dr. Vázquez also mentioned that a key problem was the appropriation of resources within the OAS budget, as the process of arriving at an agreement on such a convention would not be a zero-cost undertaking. The rapporteur pointed out that the Inter-American Juridical Committee first had to answer some basic questions: how serious was the problem, given the many approaches taken to its solution; the resources appropriated to do the task; the chances that the problem might be resolved in other venues, and finally, whether a satisfactory solution could even be found at the inter-American level.

The rapporteur pointed out that one possible way to solve these problems was to examine certain aspects relative to the types of situations that might be classified as questions of extracontractual liability, choice of applicable law and competent jurisdiction. If after examining these issues the conclusion was that some type of instrument needed to be adopted, then –the rapporteur said- the next consideration was what type of choice-of-law and jurisdiction rules were needed. In other words, should the method be one that fosters some degree of predictability or should it be something more flexible? Dr. Vázquez also said that the Inter-American Juridical Committee should look into the question of what would be the best vehicle for these rules, a convention or a model law. This, he said, would depend on which of these vehicles offered some type of advantage.

One of the issues that the rapporteur addressed was the degree of difference separating the various choice-of-law approaches used in the hemisphere in matters involving extracontractual liability. Dr. Vázquez noted that given the many approaches, a study was needed to compile that information. In the case of some countries, the study would also have to examine the laws of a State's provinces or federated units. The research would also have to examine the extent to which a State's choice-of-law varied with the various types of extracontractual civil liability. He observed that a research project of this kind would require extensive resources and that the General Secretariat's assistance would be essential. He also noted that the Permanent Council's resolution seemed to be requesting the Juridical Committee to identify which subsets could best be addressed through an instrument.

Dr. João Grandino Rodas, too, referred to the language of the Permanent Council's mandate and said that the reason for it was a problem that arose during CIDIP-VI on this very subject. He recalled that what was requested was a basic paper capturing a variety of views and as broad as possible, which the States could then use to map their plans. He said that the rapporteurs' papers complemented each other because each had considered the problem from his/her own perspective (common law and civil law). He also expressed the view that the work was, for the most part, moving forward and that the two rapporteurs should combine their two perspectives in order to present a unified document to the members of the Juridical Committee for final consideration.

Dr. Felipe Paolillo recommended that a decision was needed on whether some of the problems mentioned by Dr. Vázquez should or should not be examined, inasmuch as they were basic issues and given the urgency with which the Permanent Council had requested the report from the Inter-American Juridical Committee. In his view, the question whether or not there was the likelihood of an instrument being adopted was not an issue that the Committee had to consider, as that was a political decision that the General Assembly would decide. Dr. Paolillo felt that the Inter-American Juridical Committee should confine itself to the legal aspects of the topic. That alone, he said, was very demanding. He suggested that the Committee should try to narrow the field of study suggested by Dr. Carlos Manuel Vázquez. Lastly, he said that he shared Dr. Vázquez's view that a convention on the subject, as general as the one being proposed, did not seem viable.

Dr. Jonathan T. Fried said that what the Permanent Council wanted from the Inter-American Juridical Committee was a neutral second opinion, because no agreement could be reached during CIDIP-VI. He suggested that the Committee should try to identify what the most relevant issues were, to get a better idea of the nature of the problem and to provide a firmer basis for discussion. This, he said, should be done before attempting to combine the two documents.

Dr. Brynmor T. Pollard wondered whether a regional agreement might be more feasible than a universal one in the area of private international law, and specifically as regards this topic. Dr. Kenneth O. Rattray, for his part, wondered whether the States were really interested in looking at this topic. His view was that generally speaking, the topic was far too broad for the Juridical Committee to be able to complete a rapid response that was of some value. He suggested that the Committee might begin by adopting a somewhat narrower approach to the subject.

Based on these comments, the Inter-American Juridical Committee adopted resolution CJI/RES.50 (LXI-O/02), *Applicable law and competency of international jurisdiction with respect to extracontractual civil liability*. In that resolution, it expressed its

thanks for the studies that the two rapporteurs had presented and requested them to complete, by the appointed date, a draft report for the Juridical Committee to consider at its LXII regular session, taking into account the considerations identified in that resolution.

At its 62nd regular session (Rio de Janeiro, March 2003), the Inter-American Juridical Committee did not address this subject.

At its thirty-third regular session (Santiago, Chile, June 2003), the General Assembly requested the Inter-American Juridical Committee, in resolution AG/RES.1916 (XXXIII-O/03), to continue to assist with the preparatory work for the Seventh Inter-American Specialized Conference on Private International Law (CIDIP-VII) and to continue to support consultations with governmental and nongovernmental experts. In resolution AG/RES.1923 (XXXIII-O/03), it also requested the Committee to continue to submit its comments and observations on the draft agenda for CIDIP-VII.

At its 63rd regular session (Rio de Janeiro, August 2003), the Inter-American Juridical Committee elected Dr. João Grandino Rodas to serve as joint rapporteur for this topic. It was decided that the issue would remain on the agenda, while the Committee was to continue presenting its comments and remarks regarding the proposed agenda for CIDIP-VII.

At the 64th regular session (Rio de Janeiro, March 2004), the Inter-American Juridical Committee did not discuss this topic.

The General Assembly, at its XXXIV regular session (Quito, June 2004), by resolutions AG/RES. 2042 and 2033 (XXXIV-O/04), requested the Inter-American Juridical Committee to contribute with the preparatory work of the CIDIP-VII, once the Permanent Council approves the agenda for the aforementioned conference.

At the 65th regular session of the Inter-American Juridical Committee (Rio de Janeiro, August 2004), Dr. Ana Elizabeth Villalta gave an account of the progress of the topic in the Committee. She explained that as part of the preparations for the CIDIP-VI, the Juridical Committee had already presented a document on the successive stages and future of the CIDIP, which figures in the relevant *Annual report* of the Committee. The rapporteur explained that, in that document, the Committee suggested a series of topics to be discussed in the CIDIP framework. She said that the General Assembly, in various resolutions, had requested the States to propose topics for the CIDIP-VII. Some of the topics proposed were multimodal transport, standardizing university degrees, liability for products, extra-contractual liability for environmental pollution, electronic commerce, transnational movements, consumer protection, child protection, disabled adult protection, transnational insolvency, and transactions in valuables and investments. The rapporteur mentioned that the Juridical Committee should comment on the topics of the CIDIP and stress the importance of private international law in the Americas.

Dr. João Grandino Rodas, rapporteur of the topic, continued with the report on the matter. He said that the Committee should stress the strengths of coding the private international law, and must point out the weakness of the process in general. He said that due to the existence today of subregional economic blocs, private law is being converted into a subregional law, unlike public international law. However, to date, he said, there has been no process encompassing the revision of the codes and regulations that govern private relations. He proposed to undertake this revision process within the Juridical Committee, from 1928 to the CIDIP-V, insofar as the systematics of the CIDIP-VI was of a different nature, since it no longer addressed the conflicts of law but rather

the material law (the results of the aforementioned CIDIP were model laws). He proposed dividing the conventions adopted within the CIDIP in thematic areas and based on them, also analyze the subregional rules existing on such matters.

With regard to the weaknesses to which the rapporteur referred, he mentioned that to date there has not been a revision of the existing treaties. Moreover, he said that it was necessary to hear the opinions of the top jurists of current private international law. He also stressed the need to consider, after the revision process has begun, the possibility of including the common law and Caribbean countries, which have long been on the edge of the private international law principally in Latin America.

In light of all this, Dr. Grandino Rodas proposed analyzing the feasibility of reviewing the standard law of the Americas. The first thing to be done would be to investigate everything that has been discussed in the Juridical Committee since 1948 on the subject of reviewing the Bustamante Code, to consider the problems, weaknesses and strengths, and then analyze the possibility of continuing with the study. He also considered that the use of a convention could not be measured in relation to the number of ratifications received, since it could be adopted by States that have not ratified it, or that had used it as a model for other regulations that are being put into practice. Dr. Luis Herrera, along the same lines of thought, said that a convention may not have many ratifications but may be very important for the countries who have ratified it, or that has been ratified only by the countries that find it very useful. He also said that it was important to prepare a CIDIP when it is necessary to address some specific topic, and not force its preparation.

Dr. Jean-Paul Hubert said that the initiative of the rapporteurs should be given close attention. He also emphasized the need, when proposing topics for the next CIDIP, to bear in mind their feasibility so that afterwards the resulting conventions are not without effectiveness.

Dr. Luis Marchand proposed having a list of conventions adopted in the CIDIP by area and with the number of ratifications received. It would be necessary to include in this list the conventions adopted on a worldwide basis and see whether American States had ratified them. With this document, the areas most useful to the member States could be determined. In particular, Dr. Luis Herrera said that it would be important to see the quantity of ratifications received by almost 200 conventions on private international law adopted in the Council of Europe.

Dr. Grandino Rodas lastly intervened to point out two aspects: the question on the convenience of continuing or not with the CIDIP in the future has no relationship with the existence of the conventions that have been adopted, and those that might deserve a revision process.

Dr. Mauricio Herdocia agreed to mention the list that had been proposed on this occasion by the Committee when he presents the Juridical Committee *Annual report* to the Permanent Council: electronic commerce, migration and free circulation of persons, arbitration and settlement of disputes, consumer's protection, protection to minors, and transnational insolvency.

Lastly, the Inter-American Juridical Committee decided to include in its agenda the topic on re-examining the inter-American conventions on private international law, in addition to the topic on the CIDIP-VII. He also requested the rapporteurs Drs. Ana Elizabeth Villalta and João Grandino Rodas to present some progress report on such a re-examination at the next regular session. On December 6, 2004, the Secretariat sent

to the two rapporteurs a bibliography and a list of the reports done by the Inter-American Juridical Committee from 1948 until now on the reform of the Bustamante Code to serve as a basis for their respective reports.

At its 66th regular session of the Inter-American Juridical Committee (Managua, February 28 – March 11, 2005), the Director of the Department of Legal Affairs and Services reported that the Committee on Political and Juridical Affairs was discussing a draft resolution to approve the following agenda for the upcoming CIDIP-VII: Consumer protection: applicable law, jurisdiction and monetary restitution (conventions and model laws), and secured transactions: electronic registries for the implementation of the Model Inter-American Law on Secured Transactions.

In addition, at this session, the Juridical Committee adopted resolution CJI/RES.91 (LXVI-O/05), by which it resolved to forward once more to the Permanent Council of the OAS resolution CJI/RES.59 (LXIII-O/03), “The Applicable Law and Competency of International Jurisdiction with Respect to Extracontractual Civil Liability,” along with the request that the Permanent Council bear in mind the conclusions arrived at by the Committee as well as consider the advisability of including the topics therein when it prepared the agenda of the upcoming Inter-American Specialized Conference on Private International Law, CIDIP-VII.

On May 13, 2005, the General Secretariat conveyed a verbal note to the Permanent Missions at the OAS, to which the resolution of the Inter-American Juridical Committee was attached, and in which it informs that all the documentation referred to in same can be found on the OAS website.

At its 35th regular session (Fort Lauderdale, June 2005), the General Assembly adopted resolution AG/RES.2065 (XXXV-O/05), “*Seventh Inter-American Specialized Conference on Private International Law*,” with the following agenda for CIDIP-VII:

- a. Consumer protection: applicable law, jurisdiction and monetary restitution (conventions and model laws);
- b. Secured transactions: electronic registries for the implementation of the Model Inter-American Law on Secured Transactions.

In said resolution the Permanent Council is instructed to establish a methodology for the preparation of the Inter-American instruments to be considered by CIDIP-VII; to set a date and place; and that, when it considers future topics for upcoming CIDIPs, it include, among others, the topic of an inter-American convention on international jurisdiction. It also requests the Inter-American Juridical Committee to present its comments and observations on the topics for the final agenda of CIDIP-VII. In addition, by AG/RES.2069 (XXXV-O/05) “*Observations and Recommendations on the Annual Report of the Inter-American Juridical Committee*,” the General Assembly requests the Committee to collaborate in preparations for the next CIDIP-VII.

During its 67th regular session (Rio de Janeiro, August, 2005), the Inter-American Juridical Committee examined document CJI/doc.192/05, *Note for the Inter-American Juridical Committee on the CIDIP-VII*, presented by Dr. Antonio Fidel Pérez.

Dr. Pérez indicated that the General Assembly has requested the Inter-American Juridical Committee for its opinion on the agenda of the next CIDIP-VII, that is, consumer protection and secured transactions. He also suggested that the Juridical Committee could make a statement on the feasibility and implementation of any norms to be adopted in different types of legal instruments. In this sense the rapporteur develops his written report on the methods to harmonize private law (treaties, model laws, conventions or framework directives, and economic integration agreements),

analyzing the advantages and disadvantages of such proposed methods. He pointed out that the Juridical Committee should now look at the future of the CIDIPs rather than their past.

Next, the Director of the Department of International Legal Affairs, Dr. Jean-Michel Arrighi, presented the latest developments of the topic within the OAS, after which the Juridical Committee decided to dwell on the treatment of the topic of consumer protection, about which there already exists a draft convention. The Juridical Committee could offer its comments with regard to this draft convention, said the Chairman.

Dr. Eduardo Vio Grossi then stated that of the two themes on the agenda of the CIDIP-VII, consumer protection and secured transactions, the former could be better handled by the Juridical Committee as far as the general considerations that had been requested were concerned. He expressed the idea that this was a fine opportunity for the Juridical Committee to return to the process of the CIDIPs through its comments on this matter. He further expressed the notion that it would be important to stress in the rapporteurs' report that the use of model laws was indispensable for harmonizing and preventing any conflict of laws, and suggested an analysis of the role played by autonomy of will on this theme, which was not used in the past. Many conflicts of laws are now settled because the parties sign a contract of competent jurisdiction and applicable law, leaving aside the applicability of the norms on conflict of laws, he claimed.

The Chairman suggested that the rapporteurs of the topic should meet in a working group to analyze the draft convention on consumer protection and then present a report. He also considered that it was important for the rapporteurs to attend the Meetings of Experts in preparation for the next CIDIP-VII.

In view of these guidelines, during this regular session the Inter-American Juridical Committee examined document CJI/doc.196/05, *Comments on the CIDIP-VII agenda*, presented by Drs. Antonio Fidel Pérez, João Grandino Rodas and Ana Elizabeth Villalta Vizcarra.

Dr. Antonio Pérez, on presenting the document, indicated that it was of no use to start now to analyze the contents of the projects presented concerning the themes of the CIDIP-VII agenda, but rather comment on the harmonization process in general. He also stressed the importance of the process of receiving comments from civil society over the Internet and any other means made available by the Department of International Legal Affairs.

Dr. João Grandino Rodas emphasized the relation of this theme with that of re-examining the Inter-American conventions on international private law. Dr. Grandino Rodas supported the idea of not yet starting to analyze the content of the proposals offered on the themes of the CIDIP-VII agenda, since these proposals are not yet completely mature projects within the Organization. The Juridical Committee would play a more useful role if it analyzed the general guidelines that these projects or others to be presented should follow in order to arrive at a positive result. He also expressed the willingness of the rapporteurs to participate in the Meetings of Experts on the theme of consumer protection and to prepare new documents during the recess of the Inter-American Juridical Committee.

The Inter-American Juridical Committee finally adopted resolution CJI/RES.100 (LXVII-O/05), *Seventh Inter-American Specialized Conference on International Private Law*, through which it requested the rapporteurs of the theme to participate in a

coordinated manner in the consultation mechanisms that come to be established for the purpose of developing the themes proposed for the CIDIP-VII, and principally at the meeting of experts convoked for that purpose. It was also requested that the rapporteurs keep the Inter-American Juridical Committee informed of progress in the discussion of the themes, as well as a report on the matter to be presented during the 68th regular session of the Juridical Committee or before that date if the themes are appropriately developed.

At the 68th regular session of the Inter-American Juridical Committee (Washington, D.C., March 2006), Dr. Ana Elizabeth Villalta Vizcarra, the rapporteuse for this topic, presented report CJI/doc.209/06, "Seventh Specialized Conference on International Private Law (CIDIP-VII)" with a summary of the background to the subject and with particular emphasis on the conclusions reached at the 67th regular session of the Inter-American Juridical Committee. She also recalled the General Assembly mandates contained in resolutions AG/RES. 2069 (XXXV-O/05) and AG/RES. 2065 (XXXV-O/05), in which the Juridical Committee was asked to comment on the final agenda items of CIDIP-VII and to assist with the preparatory studies on those subjects.

The rapporteuse responsible for this area described the two topics approved for the CIDIP-VII agenda, namely: Consumer Protection and Electronic Registries Implementation of the Model Inter-American Law on Secured Transactions.

Dr. Villalta also mentioned that it was important to remember that the CIDIPs are not isolated events but a process that starts with their convocation and culminates in the adoption of inter-American instruments in areas selected by the OAS member States. At the same time, she congratulated the Office of International Law on its performance in connection with the preparations for CIDIP-VII, and with development of the methodology and design of the virtual forum for the meetings of experts prior to the Conference.

On the subject of consumer protection, the rapporteurs mentioned that there are three proposals: one by Brazil regarding an Applicable Law Convention, one by the United States regarding a Model Law on Monetary Restitution, and one by Canada regarding a Convention on Jurisdiction. With respect to the Brazilian proposal, Dr. Villalta mentioned that the draft Convention attempts to overcome the lack of sufficient protection for consumers under current private international law in the Americas and she reminded the Committee that the idea was to determine what law best serves consumer interests. As for Canada's proposal on jurisdiction, Dr. Villalta mentioned that aimed to establish rules governing electronic commerce and ways to protect consumers engaging in transborder transactions via the Internet, by determining the competent court and applicable law. Finally, as regards the United States proposal, the rapporteurs explained that the aim of the Model Law on Monetary Restitution is to find novel and practical ways of redressing economic damage to consumers.

On the second topic of CIDIP-VII, Dr. Villalta said the idea was to establish a new registry system for implementation of the Model Inter-American Law on Secured Transactions. The three components in this proposal are: the creation of standard registration forms; the drafting of guidelines for secured transaction registries; and the drafting of guidelines for electronic interconnection between registries in different jurisdictions.

Dr. Antonio Pérez, co-rapporteur for this topic, added that the United States proposal is still only at the principles stage. However, he emphasized that a draft model law is currently being prepared, which will be forwarded officially as a working document

to serve as a basis for negotiations on the subject. Dr. Pérez also mentioned that the success of CIDIP will to a large extent depend on the working process and methodology.

Regarding that aspect, Dr. John Wilson, Legal Officer at the Office of International Law, gave a brief description of the methodology to be followed in the preparatory work for the Conference, which consists, first, of appointing the government experts and independent experts who will put the finishing touches to the conventions and draft laws drawn up in this process. Second, Dr. Wilson mentioned the virtual forum designed by the Office of International Law to facilitate preparatory work on the various documents submitted with regard to both subject matters. Dr. Wilson also referred to the various ways in which the Inter-American Juridical Committee could take part as experts in the preparatory work for the Conference.

The Chairman of the Juridical Committee summarized the four conclusions on which a consensus existed regarding the participation of the Juridical Committee in the discussion forum for CIDIP-VII:

First, the Chairman stated that it was important for all members to have ample access to the forum and all its documents.

Second, he determined that a Juridical Committee web page should be included in the Forum's Internet website to accommodate the Committee's reports on the subject.

Third, it was decided that the rapporteurs for private international law would participate in the discussion forum to represent the Juridical Committee.

Fourth, it was decided that the final contribution, that is to say, the collective institutional participation of the Juridical Committee would continue up to the point when the proposed conventions and model laws are defined. At that point, the Juridical Committee would pronounce on those final texts, as it has done with respect to other similar instruments.

During this regular session, the Inter-American Juridical Committee adopted resolution CJI/RES.104 (LXVIII-O/06), "Seventh Inter-American Specialized Conference on Private International Law," which approved document CJI/doc.209/06 presented by the co-rapporteur; requests the rapporteurs for this area to take part, in a coordinated manner and as representatives of the Inter-American Juridical Committee, in any consultation mechanisms that may be established with a view to discussing topics put forward for CIDIP-VII; requests the rapporteurs to keep the Juridical Committee informed of progress made in the discussion of the topics; and requests that they present a new report to the Committee with observations and comments on the CIDIP-VII agenda at the next regular session. Both documents appear at the end of the present sub-chapter.

At its thirty-sixth regular session (Santo Domingo, June 2006), the OAS General Assembly adopted resolution AG/RES.2218 (XXXVI-O/06) in which it asked the Inter-American Juridical Committee to cooperate in the preparations for CIDIP-VII and encouraged the rapporteurs for this topic to participate in the consultation mechanisms to be established for work on the topics proposed for that Conference.

During the 69th regular session of the Inter-American Juridical Committee (Rio de Janeiro, August 2006), Dr. Antonio Pérez said that perhaps it was not the best time for the Juridical Committee to be offering specific comments, since there were three proposals from member States dealing with the topic of consumer protection, of which only one had been discussed at length. The second proposal had only been discussed briefly, and the third had not yet been presented.

On this same topic, Dr. Villalta reported that the virtual forum on CIDIP-VII had so far been conducted successfully and said that the Juridical Committee could play an active role on the topic. She said that the Juridical Committee, as such, could already give specific recommendations on the proposals that the experts had already discussed, particularly as regards the proposed Convention on the Law Applicable to Consumer Contracts submitted by the Delegation of Brazil.

Again, Dr. Pérez pointed out that giving an opinion on a single document would mean considering only a part of the discussion, and that a comprehensive view was necessary in order for the Committee to report successfully on the process. In this regard, Dr. Pérez presented several recommendations about the CIDIP-VII process, including the need to tighten the focus of the preparatory work and the need to explore the commonalities of private international law with other branches of law; he recommended a more conceptual analysis be conducted prior to an article-by-article study of the working documents submitted by the member States. He also recommended the creation of a chapter within the general comments virtual forum, covering more than the specific clauses of the proposals.

The Chairman of the Inter-American Juridical Committee concluded that there were sufficient elements to draw up a Juridical Committee resolution regarding CIDIP-VII following the guidelines and conclusions addressed by this regular session.

Consequently, the Inter-American Juridical Committee adopted resolution CJI/RES.115 (LXIX-O/06), "Seventh Specialized Inter-American Conference on Private International Law (CIDIP-VII)," in which it reiterated its support for the CIDIP process as the best possible forum for codifying and harmonizing private international law in the hemisphere and, specifically, the need to draft, under the aegis of CIDIP-VII, inter-American instruments governing consumer protection and electronic registries for secured transactions. It also reiterated its support for the rapporteurs' participation in the preparations for CIDIP-VII and asked them to continue to participate, representing the Inter-American Juridical Committee, in the mechanisms that existed for the drafting of inter-American instruments on consumer protection and electronic registries for secured transactions, emphasizing the reports of the Juridical Committee on those two topics. It finally resolved to draw up new texts, comments, and questions for the CIDIP-VII Internet discussion forum, in order to encourage dialogue toward the production of instruments for implementation in all the Organization's member States.

At the 70th regular session of the Inter-American Juridical Committee (San Salvador, February-March 2007), the Director of the Department of International Legal Affairs of the OAS presented a report on the Porto Alegre meeting, at which Dr. Ana Elizabeth Villalta Vizcarra was also present in representation of the government of El Salvador. He indicated that two documents were examined at length in said meeting, namely the Brazilian proposal and the United States' proposal for a model law. Due to time constraints, the Canadian proposal could not be discussed at length. Upon continuation, the Committee on Juridical and Political Affairs held a meeting during which these three proposals were elaborated upon by their respective coordinators: Professor Cláudia Lima Marques of Brazil, the delegates of the State Department and Federal Trade Commission of the USA, and the representative of Canada.

The Director of the Department of International Legal Affairs mentioned it had been agreed that each of the three coordinators would draft a text to be submitted to the experts attending the Porto Alegre meeting, and that shortly thereafter a final report would be submitted to the Committee on Juridical and Political Affairs. He indicated, however, that it had been agreed that the CIDIP would focus exclusively on consumer protection. He pointed out that at this point the Porto Alegre document still needed to be finalized so that all parties involved, including the Inter-American Juridical Committee, could make comments. The Chairman of the Juridical Committee moved that note be taken of the progress made and that no further steps be taken until the conclusions of the Group of Experts are received.

Dr. Ana Elizabeth Villalta Vizcarra presented document CJI/doc. 242/07, "Seventh Inter-American Specialized Conference on International Private Law (CIDIP-VII)". She referred to the Porto Alegre meeting which she attended as a governmental expert. She stated that the Brazilian proposal was discussed in detail and that a consensus was reached to set aside the question of checks and to adopt the law most favorable to consumers as applicable law. The US proposal was received with expressions of satisfaction, although fine-tuning of language was needed. All agreed that the proposals put forward by Brazil and the USA were not mutually exclusive but rather complementary, the former being a convention and the latter a model law. She also mentioned that the delegation of Canada presented a proposal, but that it hadn't been made clear if it took into account the law most favorable to consumers and the *non conveniens* forum. She concluded her remarks by stressing that the Inter-American Juridical Committee now has before it three proposals for consideration and will have to make its views known, as the General Assembly has given it a mandate to do so and the matter is of vital importance. The substantive work done by the experts must be supported.

Dr. Antonio Fidel Pérez introduced document CJI/doc.243/07, "Report on CIDIP-VII with respect to the negotiation of legal instruments concerning consumer protection", by summarizing the background, the three proposals that have come forward, and the reports submitted by the co-rapporteurs. He said that, in his opinion, the proposals require further work to assure compatibility and thus effective consumer protection once implemented. He concluded that, since new drafts of the proposals are in the works, the Juridical Committee should await the final results of Porto Alegre to further collaborate in the process.

The Inter-American Juridical Committee approved resolution CJI/RES.122 (LXX-O/07), "Seventh Inter-American Specialized Conference on International Private Law (CIDIP-VII)", by which it expressed satisfaction with the progress made in negotiations on the drafting of instruments to facilitate the implementation of consumer protection measures and safeguards, especially during the first meeting of the group of experts; reaffirmed its desire to help meet the goals set by the Member States for the successful celebration of a CIDIP-VII on the subject of consumer protection, and renewed the mandate given to the co-rapporteurs to represent the Juridical Committee in preparations of CIDIP-VII and report back to it.

During the CJI's 71st regular session (Rio de Janeiro, August 2007), Dr. Jean-Paul Hubert observed that it seemed to him that the rapporteurs had already completed their work, as each had presented separate reports at the Committee's previous sessions. If the topic was to remain on the Committee's agenda, he suggested that it might be divided into subtopics.

Dr. Mauricio Herdocia Sacasa regretted that the Committee had not been present for the negotiations of the CIDIP-VII, as it might have been able to help resolve issues on which no consensus was reached in the negotiations.

Dr. Eduardo Vio Grossi observed that the approach the Committee adopted to address this issue was the source of the problem, i.e., not to issue official opinions or even express its view as to what the applicable law was. He stated that on the whole, those Committee members who were experts in public international law did not venture into the realm of private international law, with the result that relatively few Committee members were working on issues in private international law. The rapporteurs' reports were approved, he noted. But no document was produced that had the support of the Committee's full membership. In his view, the Juridical Committee should have been acting as legal advisor on this subject and should have addressed the question of whether the three proposals on the table were compatible.

Given the comments made, discussion of the topic was postponed until the Inter-American Juridical Committee's next regular session.