

PRIVATE INTERNATIONAL LAW IN LATIN AMERICA:
*FROM HARD TO SOFT LAW**
DERECHO INTERNACIONAL PRIVADO EN AMÉRICA LATINA:
DE HARD A SOFT LAW

Nuria GONZÁLEZ MARTÍN**

RESUMEN: La codificación en el continente americano es exitosa, y ello es debido a dos factores principales: primero, hay una especialización temática en sus Conferencias Interamericanas Especializadas de Derecho Internacional Privado (CIDIP); el segundo factor es el hecho de que dos importantes etapas se han llevado a cabo, la primera etapa en la que la unificación se logró mediante convenciones (CIDIP I-V), y la segunda etapa en donde la unificación se ha llevado a efecto dejando atrás los instrumentos convencionales y se han elegido otras técnicas de regulación, por ejemplo, el uso de Leyes Modelos (CIDIP VI y VII). Este artículo trata sobre la transición del *hard law* a *soft law*.

Palabras claves: codificación, Conferencia Especializada Interamericana de Derecho Internacional Privado (CIDIP), *Hard Law*, *Soft Law*.

ABSTRACT: The codification in the American continent is successful, and this is due to two main factors: first, there is the thematic specialization of the Inter-American Specialized Conference on Private International Law (CIDIP); the second factor is the fact that two important stages have taken place, a first stage where unification was achieved through Conventions (CIDIP I through V), and a second stage where unification has taken place by leaving behind the conventional instruments and other regulation techniques are chosen, for instance, the use of Model Laws (CIDIP VI y VII). This paper is about the transition from hard to soft law.

Descriptors: Codification; Inter-American Specialized Conference on Private International Law (CIDIP); Hard Law; Soft Law.

RÉSUMÉ: Sur le continent américain, la codification a réussi et ceci est dû à deux facteurs principaux. D'une part, il y a une spécialisation thématique dans les Conférences Interaméricaines Spécialisées en Droit International Privé (CIPID); d'autre part, cette réussite est passée par deux étapes importantes: la première, tient au fait que l'unification s'est établie au moyen de conventions (CIDIP I-V) et, la deuxième, elle s'est effectuée en laissant de côté les instruments conventionnels au profit d'autres techniques de régulation, entre autres, l'usage de Lois Modèles (CIDIP VI et VII). Le présent article traite de la transition de la *hard law* à la *soft law*.

* Artículo recibido el 11 de mayo de 2010 y aceptado para su publicación el 3 de septiembre de 2010.

Presentation given on the panel organized by the Private International Law IG, as part of the ASIL 104th annual meeting "International Law in a Time of Change" Washington DC, March 27, 2010

** Law Ph.D. Pablo de Olavide University, Seville, Spain. Senior Researcher at the Law Research Institute, National Autonomous University of Mexico. Sub-Second Vicepresident ASADIP (American Association of Private International Law). Chief Editor *Boletín Mexicano de Derecho Comparado*. Author of 12 books, coordinator of 15 books and several published articles. Winner of UNAM's 2008 Young Scholar Award, in Social Studies.

SUMMARY: I. *Introductory note*. II. *Regulation Making Techniques: from Hard to Soft Law*. III. *Codification of Interamerican Private International Law*. IV. *Conclusions*.

I. INTRODUCTORY NOTE

Private International Law (hereafter PIL) is a complex field of juridical knowledge.

Such complexity becomes apparent given the variety or multitude of private law cases with some international element in them, that are regulated by PIL.

Indeed, border crossing, or crossborder transit, due to personal, labor, or trade reasons, is continuous and every day more frequent, therefore, knowledge on PIL and legal certainty must be fundamental premises to this field of law, along with currency and validity.

In this context, such elements- that is, complexity, variety, knowledge, legal certainty, currency and validity- are joined in PIL by the need for harmonization, unification and / or codification.¹

The American continent has been characterized for a codification ideal that dates from the late 19th century – and beginnings of the 20th,² with a

¹ These three terms, harmonization, unification and codification are not synonyms.

Harmonization is a process that tends to eliminate existing differences between juridical systems. *Vid.* Boodman, Martin, “The myth of harmonization of laws”, *The American Journal of Comparative Law*, vol. 39, núm. 4, otoño de 1991, p. 700; Leeboorn, David W., “Claims for Harmonization: A theoretical framework”, *Canadian Business Law Journal*, vol. 27, núm. 1, Jul 1996, p. 67; Lerner, Pablo, “Sobre la armonización, derecho comparado y la relación entre ambos”, *Boletín Mexicano de Derecho Comparado*, México, nueva serie, año XXXVII, núm. 111, septiembre-diciembre de 2004, p. 921.

In *unification* it is taken for granted that there is a heterogeneous legislation that will be replaced by other norms previously agreed upon, that will be written in identical terms. *Vid.* Garro M., Alejandro, “Armonización y unificación del derecho privado en América Latina: esfuerzos, tendencias y realidades”, *Jurídica, Anuario del Departamento de Derecho de la Universidad Iberoamericana*, Universidad Iberoamericana, México, núm. 22, 1993 p. 226; Fix-Zamudio, Héctor, “Armonización del derecho en América Latina y procedimientos para lograrla”, *VII Conferencias de Facultades y Escuelas de Derecho en América Latina*, México, Uduel, 1978, p. 533.

To *codify* is to summarize, but it also implies previous unification and or harmonization.

² In the balance or route to codification in the Americas, it must be visualized that in the North of the continent the Restatements prevail; in the South, the Montevideo treaties (1888-1889 and 1939-1940) and in Central America, the Bustamante Code (1928), and

clear and overwhelming vision for codification of regional PIL, at great length and with a deep level of specialization.

Stemming from the creation of the Organization of American States (OAS), the idea of codification of regional PIL was modernized, this time through the regional codification forum represented by the Inter-American Specialized Conference on Private International Law (hereafter CIDIP's),³ and the international instruments arising from them.⁴

not even in all countries in that geographic sector. Given this situation, when speaking of codification, there appears to be a great incongruence if we try to highlight a codification trend. The validity of these three instruments, is against the unification of the American continent, but we sustain that the road is heading towards compatibility among various instruments; inclusion rather than exclusion, specially in a time of globalization, universal and regional. Mackelt, Tatiana B. de, *Conferencia Especializada de Derecho Internacional Privado (CIDIP-I). Análisis y significado de las convenciones aprobadas en Panamá, 1975*, Caracas, Universidad Central de Venezuela, 1979.

3 The periodicity of the different CIDIP's has not been homogeneous. There is a total of seven CIDIP's :

CIDIP-I (1975 Panamá City, Panama); CIDIP-II (1979 Montevideo, Uruguay); CIDIP-III (1984 La Paz, Bolivia); CIDIP-IV (1989 Montevideo, Uruguay); CIDIP-V (1994 México City, México); CIDIP-VI (2002 Washington D.C., US); CIDIP-VII (1^a session 2009 Washington D. C., US; 2nd session 2010 Brasil). www.oas.org

4 González Martín, Nuria et Rodríguez Jiménez, Sonia, Capítulo Primero: "Derecho internacional privado. Disposiciones Generales", en González Martín, Nuria (coord.) *Lecciones de derecho internacional privado mexicano. Parte general*, México, Porrúa-UNAM, 2007. Conventions arising from CIDIP's possess some sort of "conventional mold" peculiar to this regional forum, thus they have a number of common features:

1. *Inter-American conventions consider entering into force in identical terms* ("This Convention shall enter into force on the thirtieth day following the date of deposit or the second instrument of ratification. For each State ratifying or acceding to the Convention after the deposit of the second instrument of ratification, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession" v. gr. Article 11 Inter-American Convention on Domicile of Natural Persons in Private International Law).

2. *Inter-American conventions consider the exception of public order* ("which prevents the conflict law from being normally applied... restrictive institution". Cit. por Mackelt, Tatiana B. de et al., *Derecho internacional privado. Materiales para el estudio de la carrera de Derecho internacional privado*, Caracas, Universidad Central de Venezuela, 1979, p. 98 v. gr. article 12 Inter-American Convention on Jurisdiction in the International Sphere for the Extraterritorial Validity of Foreign Judgments

3. *Inter-American conventions consider the "Federal Clause"*. ("If a State Party has two or more territorial units in which different Systems of law apply in relation to the matters dealt with in this Convention, it may, at the time of signature, ratification or ac-

The “nearly” seven CIDIP’s⁵ that have taken place to date, have influenced this ideal for harmonization,⁶ and it has materialized through different instruments, such as International conventions (21+1?), additional protocols (2), Uniform Instruments(2) and Model Laws(1+1?).⁷

cession, declare that this Convention shall extend to all its territorial units or only to one or more of them. Such declaration may be modified by subsequent declarations, which shall expressly indicate the territorial unit or units to which the Convention applies. Such subsequent declarations shall be transmitted to the General Secretariat of the Organization of American States, and shall become effective thirty days after the date of their receipt” article 17 Inter-American Convention on the Legal Regime of Powers of Attorney to be Used Abroad).

4. *Inter-American conventions establish reserve clauses and interpretative declarations* (article 17, Inter- American Convention on the legal regime of powers to be used abroad or Article 2 of the Inter-American convention on law conflict in child adoption).

5 “Nearly” seven CIDIP’s since the latest CIDIP-VII has not concluded yet. There has been a first CIDIP-VII A, that took place in Washington, on October 7-9, 2009, in which it was approved the Model Registry Regulations under the Model Inter-American Law on Secured Transactions. A second session is still pending, CIDIP-VII B, in Brazil , summer, 2010, where it will be discussed the topic of consumers. (proposals: convention, Model Law, guideline).

6 For the sake of providing current data, concretely, since 2003 the Organization of American States has concentrated most of its efforts on the harmonization of international consumer law, for instance for CIDIP-VII B Brazil has presented a Draft Convention on the Law Applicable to International Consumer contracts and Transactions; Canada has proposed a Model Law on Jurisdiction and Choice of Law to Consumer Contracts, and the United States have submitted a Draft of Legislative Guidelines on Availability of consumer Dispute Resolution and Redress for Consumers with three anexes that provide: a) a Model Law on Small Claims; b) Model Rules for Cross-border Arbitration; and c) a Model Law on Government Redress. Also on CIDIP-VII A which took place in Washington in October 7-9 2009, Model Registry Regulations was approved, under the Model Inter-American Law on Secured Transactions.

7 The overall balance in this 35 years, since the inception of CIDIP’s is encouraging, because all instruments are still valid, only the Model Law on security interest (CIDIP-VI, 2002), was adopted with some modifications by Peru. The subject of the only failed convention —carriage of goods by road, in the CIDIP-IV, 1989— has been reprised with a different approach, that of a uniform document, in 2002. Although the last conventions were approved in 1994 (CIDIP-V), ratifications continue.

On CIDIP-VII A which took place in Washington in October 7-9 2009, Model Registry Regulations was approved, under the Model Inter-American Law on Secured Transactions.

CIDIP-VII B, is still pending, which will address the issue of consumer law, shall take place in Brazil, the dates remain undefined. It cannot be determined yet, whether a Convention, Model Law or Guideline will be elaborated regarding this issue.

II. REGULATION MAKING TECHNIQUES: FROM *HARD* TO *SOFT LAW*

It is worth noting that all along “nearly” seven CIDIP’s, within this regional codification forum, basically, two very different, yet compatible, regulation techniques have coexisted, from hard to soft law.

Thus, I emphasize the need for promotion, consolidation and compatibility among different instruments; between a more traditional technique such as the International Convention (*hard law*) and a technique with a more modern approach such as the Model Law (*soft law*).⁸ That is, the traditional approach considers the harmonious construction of a set of rules through International Conventions, and the modern approach considers the harmonization of substantive law through a Model Law.

The birth of an International Convention or a Model Law will be determined based on the specific subject being regulated, and mostly by the tendency or interests of the state “promoting” the instrument, towards one technique or the other.

The “compulsory” nature of an International Convention does not necessarily imply that it will be rapidly adopted by a State. A convenient and flexible Model Law, may exercise greater influence, and will be more willingly adopted by a State whose interests are better served by it.

8 As we may see further, international conventions (*hard law*) offer both criticize-able and outstanding aspects. Among the disadvantages offered by international treaties or conventions one may single out its stiffness and complicated applicability and such disadvantages tend to be attenuated by other international instruments called *soft law* or *droit assourdi*. This international instruments are perceived as guidelines for international law, and it is the States’ responsibility its development and implementation, through domestic law. In such category are included model laws, recommendations, resolutions, codes of conduct, principles, etc. Equally we may express that there are two main characteristics in such soft law legislations: 1. The lack of a direct enforcement power; and b) their undeniable influence in the future legislative development and their reference in judicial action. Fernández Rozas, J. C. et Sánchez Lorenzo, S., *Derecho internacional privado*, Madrid, Civitas, 1999. All that does not imply that they are completely devoid of any legal effect, since on many occasions they reflect the of development of everyday laws or are the base for future treaties, and due to their nature they even generate behavior expectations based on good faith principles, hence their usefulness and observance. Del Toro Huerta, M. I., “El fenómeno del *soft law* y las nuevas perspectivas del derecho internacional”, *Anuario Mexicano de Derecho Internacional*, VI, 2006, <http://www.juridicas.unam.mx/publicaciones/periodicas/amdi>.

This is a good starting point to sustain how important it is for the region, to have a process of this nature; a feasible and necessary codification process, even with the collaboration of instruments of a different nature and a different depth.

Nevertheless, I wish to highlight that it is necessary for OAS member states, to become even more involved in the CIDIP's process to strengthen them, as the ideal way for codification and for the progressive development of Interamerican PIL, in which two, in principle, diverse, juridical families converge, which are the Common Law and the Civil Law families.⁹

I coincide with Fernández Arroyo when he states that the traditional assertion that unification of law is only feasible within the framework of one juridical family, a justification usually employed to elaborate the classifications, is null in the face of reality; I sustain that for a number of reasons among which there is of course globalization and the interaction of political and economical blocks, the need arises for interaction and understanding among different juridical families, for instance Common Law and Civil Law, where one could even talk about a "narrowing" between law teaching systems and closeness of the law sources. Consider for example the importance of the Restatement, as an informal source, in the dynamics of the US, with a strong position like some sort of legislated law; the importance of Case Law in the Mexican juridical system or any other within Civil Law. The narrowing between these two juridical families is evident.¹⁰

9 Fernández Arroyo, Diego P., *Derecho internacional privado interamericano: evolución y perspectivas*, México, Porrúa-Universidad Anáhuac del Sur, 2003, p. 22, "la afirmación tradicional según la cual la unificación del derecho sólo es factible en el marco de una misma familia jurídica, una de las justificaciones habitualmente empleada para elaborar las clasificaciones, cae ante la fuerza de la realidad".

¹⁰ González Martín, Nuria, "La enseñanza y las fuentes del derecho en el *Common Law* y *Civil Law*. ¿Acercamiento entre familias jurídicas?", en González Martín, Nuria y Rodríguez Benot, Andrés (coords.), *Cooperación jurídica internacional en materia de formación, educación e investigación*, México, Porrúa, 2010.

1. *Pros and Cons of Model Laws*

Resuming the issue of compatibility and/or suitability among different regulation techniques, I personally single out, first of all, the characteristics of Model Laws in general.

- 1) It is a non binding instrument, but a “model” of the law the States may adopt in their internal legislation; adapt their internal legislation to the precepts contained in the Model Law or simply consider it for later reforms to their own law where it can provide greater clarity and transparency;¹¹
- 2) In general it implements the existing conventional normativity – giving continuity to the previous effort made in different fields by various International organizations and
- 3) It is a guide, general or specific concepts that can be used for dialogue.

It can be said that we are witnessing the intercommunication between the internal and international sources and indispensable condition to guarantee the thorough regulation of a subject, avoiding different solutions for identical cases.

Thus, we may see the advantages of Model Laws which are:

- 1) Made by Experts, with a high technical quality.
- 2) They are incorporated and become effective in the law of different States as part of their internal normativity.
- 3) Does not require ratification by the interested States
- 4) They do not require a number of ratifications for it to enter into force.
- 5) These instruments have the goal or purpose of being taken into consideration when legislating or modifying a particular subject.
- 6) They are generated as *soft law*, for their eventual acceptance and incorporation by those States who wish so.

¹¹ Mazuelos Bellido, Ángeles, “Soft Law: ¿mucho ruido y pocas nueces?”, http://www.reei.org/reei8/MazuelosBellido_reei8_pdf, In such publication, it is expressed that “apparently the most accepted meaning of common law is the one concerned with non compulsory instruments. However, it is clear that there is no unanimity about the expression, and the judgment perspectives are different”, p. 38.

- 7) Finally as the main advantage, they do not become obsolete or remain anchored to a determined context, the legislative power of each state that decided to embrace it may introduce as many modifications as they see fit – does not require consensus for its modification and does not imply International responsibility.

In contrast with the pros, we may see disadvantages of Model Laws in general, fundamentally.

Model Laws are not easy to implement, and most importantly they are not easy to enforce. If a binding International convention, which is part of the internal law system of a country, may have enforcement problems, to try to achieve binding through Model Laws, that are merely declarative, may raise doubts regarding enforcement and efficacy. Nonetheless a good implementation and assimilation may give rise to an effective application of the norm. A Model Law that in a flexible and rapid manner “brings down to Earth” daily practice, may detonate substantial change in the effectivity of a number of subjects related to PIL, such as International infant protection, consumer protection, etc¹².

In conclusion we have that the advantages of Model Laws that makes them the harmonization axis of PIL norms in the Americas, with significant benefits regarding their adoption and implementation by the internal legislation of each State.

2. *Pros and Cons of Conventions*

The advantages of Model Laws are directly opposed to the characteristics of conventions in general:

- 1) Rigid technique *Hard Law*;
- 2) Slowdown of the adoption process and, as a consequence, a lack of ratification, in general terms of the interamerican instruments. Nonetheless, in spite of the lack of ratification, the content of its norms has been remarkably influential and for all practical purposes it has served as a Model Law in a number of cases;

¹² Regarding this really biased subject, we may turn again to Mazuelos Bellido, Ángeles, “Soft Law: ¿mucho ruido y pocas nueces?”, http://www.reei.org/reei8/MazuelosBellido_reei8.pdf.

- 3) Use or abuse of the right of reserve by each State and
- 4) The rapid obsolescence that effects such International instruments in subjects as dynamic as the ones treated in PIL.

As well as the advantage of the Interamerican Conventions, the relevance of an Interamerican convention emanating from CIDIP's must not lie only on the number of ratifications (which is really scarce) but in the fact that Interamerican conventions provoke the modernization of national PIL systems in other ways.

On the other hand, the disadvantages of International Conventions, Universal and Regional,¹³ such as lack of preparatory works; agendas too broad for short sessions; the weight of political factors; prevalence of the States particular interests, etc.¹⁴

¹³ Fernández Arroyo, Diego, P., "What's new in Latin American Private International Law?", *Yearbook of Private International Law*, vol. 7, 2005, pp. 87 and 88 express, nonetheless, "reprisals of the CIDIP in national legislation are obvious. Traces of inter-American solutions can be found in almost all statutes or drafts on PIL elaborated in Latin American during the last decades" —like the Argentinean of a Private International Law Code 2003; the Uruguay of a Private International Law Act of 2004; the Mexican Draft of a Private International Law Act, for example— "This 'indirect' reception of inter-American Solutions is even more important than the 'direct' one, in countries that do not yet recognize the hierarchical superiority of International rules. In addition, by means of 'indirect' reception, the rules of inter-American conventions become generally applicable, i.e. they apply not only to cases connected to member States. It is important to emphasize that the effect of modernization must also be understood in a strict sense, regarding the concrete content of several of these inter-American solutions". Vid, also, Herbert, R, Fresnedo de Aguirre, C., "Flexibilización teleológica del derecho internacional privado latinoamericano", in Klein-Heisterkamp j/ Lorenzo G. (eds.) *Avances del derecho internacional privado en América Latina. Liber Amicorum Jürgen Samtleben*, Montevideo, 2002, pp. 55-76.

The relevance of an Interamerican convention emanating from CIDIP's must not lie only on the number of ratifications (which is really scarce) but in the fact that Interamerican conventions provoke the modernization of national PIL systems in other ways.

¹⁴ As well we must Express that International conventions originated at both in the regional codification forum, CIDIP, as well as those from the universal codification forum, the Hague conference for PIL, share the same advantages and disadvantages.

Advantages: 1. Unification of PIL, 2. High technical quality since they are elaborated by experts in the subject.

Disadvantages: 1. They are anchored in a determined social, political and economical context. 2. The complexity presented to achieve compatibility (Interamerican convention of conflict law for child adoption and the 1993 Hague convention on child protection and

Definitely among the advantages of Model Laws and disadvantages of International conventions, we project a special interest in shifting the *iter* of international regulation techniques towards Model Laws.

Let us not forget that, as expressed above, even with, or in spite of the lack of ratification of International conventions arising from CIDIP's, the contents of the conventional normativity have had such an influence to the point they have served as true Model Laws, in some states that did not subscribe them, or as mentioned earlier, the "indirect" reception of the rules of Interamerican conventions has provoked their applicability.

III. CODIFICATION OF INTERAMERICAN PRIVATE INTERNATIONAL LAW

On the other hand, it is worth keeping in sight another key idea in this route towards Interamerican PIL codification, and outline that the inception of CIDIP was difficult, especially because of the previous existence of a Universal codification forum such as the Hague Conference on Private International Law, where current relevant issues were discussed, and the existence of another forum with the same purpose was regarded as unnecessary.

This idea of an unnecessary duplicity was discarded rather rapidly, since CIDIP worked focused especially on problems presented by the American region, dealing with them in their concrete reality.

Summarizing, codification in the American continent is successful, and this is due to two main factors: first, there is the thematic specialization of this codification forum¹⁵; the second factor is the fact that two important stages have taken place, a first stage where unification was achieved through Conventions (CIDIP I through V), and a second stage where unification has taken place by leaving behind the conventional instruments and other regulation techniques are chosen, for instance, the use of Model Laws (CIDIP VI y VII).

As mentioned earlier, the codification process, initiated in 1975 by the CIDIP of the OAS, underwent fundamental changes during its sixth edition in 2002. Indeed, the CIDIP VI (2002) changed courses, moving the

International child adoption) and 3. the eventual realization of reserves and /or interpretative declarations.

¹⁵ After abandoning the original idea of an omnicomprehensive codification, it dedicates to the study of concrete and specialized topics.

codification of the Interamerican PIL towards a) privatization and/or commercialization, b) the use of soft-law techniques and c) the harmonization of substantive, rather than conflicts, law.¹⁶

The CIDIP VI, in 2002 has changed this ‘paradigm’ of condition, enlarging even more the scope of the inter-American codification.¹⁷

The current state of affairs on the treatment of the subject-matter of consumer protection offers a mix of proposals made by Brazil —international conventions—, Canada —Model Law— and the United States of America —Guidelines—, reaffirming the change introduced in 2002.

It is rather unusual in the Americas to have at once three different proposals aimed at the same harmonization objective; however such diversity should be welcome as it offers an opportunity to try the existing techniques and to assess the compatibility between them.¹⁸

The ongoing situation in the OAS is noteworthy:

Brazil’s proposal is a “sui generis” convention since it contains elements of both limited party autonomy and the most favourable law for the consumer.

Canada, on the other hand, from the outset of CIDIP VII, has maintained that a model law dealing only with the jurisdiction is the way to accomplish harmonization of international consumer law in the Americas. In spite of its traditional scepticism about harmonization issues, Canada

¹⁶ Fernández Arroyo, Diego P., “Current approaches towards harmonization of consumer private International law in the Americas”, *International and Comparative Law Quarterly*, vol. 58, april 2009, pp. 411 y ss.; Fernández Arroyo, Diego P., “What’s new in Latin American Private International Law?”, *Yearbook of Private International Law*, vol. 7, 2005, pp. 86- 87.

¹⁷ Parra-Aranguren G., “Los trabajos de la Sexta Conferencia Especializada Interamericana sobre Derecho Internacional Privado”, *Liber Amicorum en homenaje al profesor Dr. Didier Operti Badán*, Montevideo, 2005, pp. 443 y ss.; Siqueiros, José Luis, “La Sexta Conferencia Especializada Interamericana sobre Derecho Internacional Privado (CIDIP-VI)”, *Revista Mexicana de Derecho Internacional Privado y Comparado*, 2002, pp. 9 y ss; Fernández Arroyo, Diego P. et Kleinheister Kamp, J., “The VI Inter-American Specialized Conference on Private International Law (CIDIP-VI). A new step towards Inter-American Legal Integration”, *Yearbook of Private International Law*, 2002, pp. 237 y ss.; Fernández Arroyo, Diego P., “La CIDIP-VI: ¿cambio de paradigma en la codificación interamericana del derecho internacional privado?”, *XXXIX Curso de Derecho Internacional -2002-*, Washington, 2003.

¹⁸ Fernández Arroyo, Diego P., “Current approaches towards harmonization of consumer private International law in the Americas”, *International and Comparative Law Quarterly*, vol. 58, april 2009, pp. 411 y ss.

has thus made a significant contribution towards the achievement of a regional process of codification in the Americas.

The USA initially stated that rules could be formulated as an Interamerican Convention. However a Model Law was accepted. Nonetheless the US also proposed:

New uniform rules on cross-border investment transaction security.

Rules to provide for electronic filings.

Eventually, the US submitted on October 24 2006, its 'Draft Proposal for a Model Inter-American Law on Availability of Consumer Dispute Resolution and Redress for Consumers', which is not structured as a model law but rather as list of guidelines and goals to be accomplished.

The nature of the US proposal was changed and became a (general) legislative guide with tree (specific) model laws.¹⁹

The difference of approach is also reflected in the issues covered by the three projects. The scope of the Brazilian Draft is limited to applicable law issues.

The narrower the ambit of a convention, the easier it is to negotiate it and to bring debates to a satisfactory and prompt resolution.²⁰

IV. CONCLUSIONS

In spite of the fact that I am a personal advocate for Model Laws as the best present and future codification instrument for Interamerican PIL, In the meantime, while this instrument becomes generally accepted, We may provisionally accept that there is compatibility among different instruments dealing with diverse aspects of the same issue, and for now, avoid questioning the necessity and worth of each.

Regarding current approaches towards harmonization of consumer law in the Americas, we may draw a final remark:

The consumer law must be dealt with as a whole. A single model law or convention is, at present, not enough to solve the problems; the conjunction of all of them is required.

Definitely, the best regulation achievable for the time being can be achieved through an inclusive approach.

¹⁹ *Ibidem*, pp. 412-419.

²⁰ *Ibidem*, p. 419.

The incipient, yet successful implementation of Soft Law rules, represents a meaningful contribution in the modernization of the state's PIL systems in America.

CIDIP today stands for progress towards modernity through the implementation of Model Laws; thus, it could be said we are headed for change in the conventional "*Iter*" (way or route), towards this other regulation technique, represented by the Model Law. Such adjustments stem from evolution, adaptation and juridical dynamics.

The American continent pioneered the search for harmonization and unification of PIL, and this trend should continue while maintaining a constructive dialogue with all other codification forums, both universal and regional, where there is no hierarchy among them, nor any incompatibility in the regulation of the same subject-matter, UNCITRAL, UNIDROIT and the Hague Conference on PIL, pay close attention to CIDIP's proceedings and establish a certain dialogue between them and the OAS; in fact, UNCITRAL²¹ in Workgroup VI dedicated to security interests, had "on its table" the 2002 Interamerican Model Law on security interests that lead to the legislative guidelines on the subject.

²¹ As an outstanding fact regarding feedback among different codification forums, we have that, for example, within the Model Registry Regulations under the Model Inter-American Law on Secured Transactions, some characteristics recommended by UNCITRAL on its 2008 legislative guidelines on secured transactions were incorporated.