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CONFÉRENCE DE LA HAYE DE DROIT INTERNATIONAL PRIVÉ

PROPOSAL BY THE GOVERNMENT OF BRAZIL ON A DRAFT CONVENTION ON CO-OPERATION AND ACCESS TO JUSTICE FOR INTERNATIONAL TOURISTS

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PROPOSITION DU GOUVERNEMENT BRESILIEN RELATIVE A UN PROJET DE CONVENTION SUR LA COOPERATION ET L'ACCES A LA JUSTICE A L'INTENTION DES TOURISTES INTERNATIONAUX

(DISPONIBLE EN ANGLAIS UNIQUEMENT)

Preliminary Document No 2 of January 2015 for the attention of the Council of March 2015 on General Affairs and Policy of the Conference

Document préliminaire No 2 de janvier 2015 à l'attention du Conseil de mars 2015 sur les affaires générales et la politique de la Conférence

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EMBASSY OF THE FEDERATIVE REPUBLIC OF BRAZIL

N. 72 /2014

The Embassy of the Federative Republic of Brazil presents its compliments to the Permanent Bureau of the Hague Conference on Private International Law, and has the honour to forward a complementary document on the Brazilian proposal of a Draft Convention on Co-operation and Access to Justice for International Tourists, to be considered at the next Meeting of the Council on General Affairs and Policy, on March 2015.

The Embassy of Brazil kindly requests the Permanent Bureau to circulate the aforementioned document to the members of the HccH.

The Embassy of Brazil avails itself of this opportunity to renew to the Permanent Bureau the assurances of its highest consideration.

The Hague, 16 December 2014

MINISTÉRIO DA JUSTIÇA

SECRETARIA NACIONAL DO CONSUMIDOR
GABINETE DA SECRETÁRIA

Complementary Document to the Hague Conference on Private International Law on the Proposal of International Regulation to the Consumer-Tourist Protection

"Il faut (...) relever un élemént qui échappe à une analyse précise. C'est l'influence qu'on eue les inmombrables contacts personnels que la Conférence de La Haye a permis d'établir entre les délégués de systémes juridiques et de formations tres diverses. Deux à trois semaines de travail en commun créent une atmosphere favorable non seulement pour l'elaboration de conventions, mais également pour la comprehénsion de mentalités et de conceptions juridiques étrangeres. Cette évolution des esprits dans un sens internationaliste se répercutera à toutes sortes d'ocassions.» [1]

I. Introduction

This document aims to propose a brief complementary report regarding the Draft Convention on Co-operation and Access to Justice for International Tourists to be considered in the next Meeting of the Council on General Affairs and Policy, on March, 2015.

In 2012, among the activities of the American Association on Private International Law (ASADIP) and considering the development of tourism services and the increasing of visitors and tourists in the world, 108 experts from more than 14 countries have manifested officially their support to the creation of a document with the objective to protect tourists and visitors internationally. The so called "Declaration of *Rio de Janeiro*" proposed the accomplishment of studies, under the scope of the Hague Conference on Private International Law, on the cooperation and

[1] OVERBECK, Alfred E. von. La contribution de la conférence de la Haye au developpement du droit international privé. Recueil des Cours. La Haye, v. 233, p.9-98, n II, 1992, p. 32

protection of consumers as tourists considering all vulnerabilities as foreign people, i.e., the short time that they dispose and the circumstances of being away from their culture, language and home country, the need for information, also about the proper venue to complain and to get access to Justice, alternative dispute resolution and small claim courts, access to an easy administrative and legal aid without discrimination.

On March 15th, 2013, on the occasion of the World Consumer Rights Day, the Brazilian president released the "National Plan on Consumption and Citizenship", PLANDEC, which aims the development of policies and actions of consumer defense and protection, especially in the areas of after-sales services, regulated products and tourism. Regarding the specific topic of tourism, PLANDEC has established a series of actions aiming the cooperation and coordination of the subject of consumer protection in the tourism field, involving many governmental actors and, also, the trade. The educational actions in the field of consumption and tourism may be concretely observed in the Annex II, concerning the experience of cooperation among many actors on the occasion of the 2014 World Cup.

In 2013, Brazil presented at the Hague Conference on Private International Law (HCCH) the Draft Convention on Co-operation and Access to Justice for International Tourists, having its text elaborated by the joint studies accomplished by the American Association on Private International Law (ASADIP) and the Federal University of Rio Grande do Sul (UFRGS). The proposal's presentation had as main objective to introduce the issue at Hague Conference, considering the tourism growth and its importance economically, and the necessity to create mechanisms to dispute settlement by administrative and legal cooperation among the countries.

On March, 2014, aiming to develop even more the debate about the issue of international tourist-consumer protection, the Brazilian Ministry of Justice, through the National Secretariat for Consumer alongside the Brazilian Tourism Institute, EMBRATUR, organized the I International Seminar on Consumption and Tourism, when it was launched the book "*A Proteção Internacional do Consumidor Turista e Visitante*" (The International Protection of Consumer Tourist and Visitor), which reunites articles of experts and authorities of consumer protection and tourism from Australia, Brazil, Canada, Chile, China, Colombia, Costa Rica, The Netherlands, Peru, Portugal, Switzerland, Uruguay and *Consumers International.*

The ASADIP have sent a questionnaire to their members about: i) if the Hague Conference would be the proper organization to submit this proposal, ii) the existence of bilateral agreements regarding the subject, and iii) the dialogue of this proposal with the one of UNWTO (Draft Convention on the Protection of Tourists and Tourism Service Providers). The answers were discussed in a multinational working group in the Rio de Janeiro Meeting, in 2014, and the concrete suggestions of the proposal evolution were sent to the Brazilian government, through the Ministry of Justice, and to Latin-American countries' authorities.

On April, 2014, at the Council on General Affairs and Policy of the Hague Conference on Private International, the Brazilian delegation, headed by Ambassador of Brazil at the Hague, Piragibe Tarragô, and composed by members from the Ministry of Foreign Affairs, Ministry of Justice, Ministry of Tourism and the Office of the Attorney General, has presented once again the motivation to the draft Convention on Co-operation and Access to Justice for International Tourists, presented in 2013, justifying the importance of protecting the consumer as an international economic and security development tool. Considering the "*support received from a significant number of Members, the Council decided to retain this topic on the Agenda of the Hague Conference*"[2] in order to keep the dialogue with hesitant delegations, clarifying doubts and get new supports.

In 2014, Brazil has been benefited by the visiting of many foreign tourists during the World Cup, creating a pilot project of a Convention that was used by consumer protection authorities in all 12 host cities, under Senacon-MJ coordination, which has made possible the diagnosis of strong and weak aspects of the Draft Convention, as well as has helped to surely decrease the number of problems with foreign tourists during the 2014 World Cup. Likewise, informal previous contacts had been accomplished with partner countries and studies were undertaken by the *Ministry of Justice Especial Working Group*, coordinated by Professors Claudia Lima Marques (UFRGS) and Nádia de Araújo (PUC-Rio), in order to develop the proposal, overcoming supposed hesitations expressed by the States during previous meetings.

[2] « The Council noted the proposal on co-operation in respect of protection of tourists and visitors abroad presented in Preliminary Document no. 13 and discussed the possibility to undertake work on this matter. In view of the support received from a significant number of Members, the Council decided to retain this topic on the Agenda of the Hague Conference" http://www.hcch.net/upload/ar2013.pdf

A detailed report of the Draft Convention evolution and its multiple language complaint form, which has been improved after its massive use during the World Cup to allow the communication among the foreign tourists and the local consumer protection authorities, presented below.

The present document aims to clarify doubts pointed out during the last Council meeting, on April 2014, such as: the motivation to the existence of a tourist consumer protection mechanism; the relevance of the Hague Conference on Private International Law to discuss and to develop the issue instead of other organizations as the United National World Tourism Organization (UNWTO).

The idea is that the international tourist shall be assisted, through the already established costumer service in the member States, both at its destination and at its home country. This cooperation system among legal and administrative bodies would provide a more effective protection at both tourist consumers' visited countries and countries of origin, avoiding expensive and ineffective international demands.

This complementary document will be summarized as follows:

II. The work of the Hague Conference on access to Justice and networks of judicial cooperation and how the proposal is part of the Hague Conference scope of work

a. Adequacy of the forum of the Hague Conference for the development of negotiations on a global framework for the tourist consumer protection

b. The expertise of the Hague Conference on international legal cooperation and access to justice

III. Differences in the UNWTO proposal and the dialogue with other already established conventions

IV. Final remarks: the new draft Convention on Co-operation and Access to Justice for International Tourists

Annexes

II. The work of the Hague Conference on access to Justice and networks of judicial cooperation and the protection of consumers and how the Brazilian proposal is part of the Hague Conference scope of work

Considering the needs of the international traveler, of the global citizen, and especially considering that the great mission of The Hague Conference on Private International Law is to facilitate people's lives, the access to justice[3] swiftly and without excessive costs is something essential today.

The proposal presented and defended, not only for Brazil focuses on private international law and the administrative and judicial cooperation. The main idea is to make use of systems and authorities established in the countries[4]. Applying the principle of non-discrimination, not just help, but guarantee the rights of tourist consumers, consequently providing security in the tourism sector and ensuring access to justice and administrative help for tourists internationally. The data from the international organizations only show year after year the growth of this sector, especially considering the participation in the international market of countries like Brazil, Russia, China, India and South Africa. The growth of tourism flow worldwide is increasing and, considering the various types of tourism (business, leisure, study, migration) is irreversible. Therefore, it is extremely relevant and important to create a legal instrument to facilitate consumer disputes. It is necessary to ensure that tourists have access to justice, access to information and, therefore, that they have easier access to a network of bodies that ensure the protection of those consumers.

The experience of the Brazilian government within MERCOSUR in receiving demands and knowledge of demands within this market that motivated a lot for the elaboration of the Convention proposal presented in the Private International Law Hague Conference.

The idea of presenting a draft convention was precisely to show the commitment to the theme, seeking an improvement through the support not only of each member of the HCCH, but mostly the Conference of

[3] http://www.hcch.net/index_en.php?act=text.display&tid=27 (Retrieve November 16, 2014)

[4] "The Brazilian Draft Convention on Co-operation in respect of tourists and visitors abroad" at the Hague Conference and the UN World Tourism Organization's Draft Convention, Claudia Lima Marques em ' Los servicios en el Derecho Internacional Privado / Coordenadores: José Antonio Moreno Rodriguez, Claudia Lima Marques; Colaboradores; Agatha Brandão de Oliveira ...[et al.] – Porto Alegre : Gráfica Editora RJR, 2014. p. 829

expertise in the development of this type of document and in establishing such cooperation. The experience of the Hague Conference on access to Justice and the development of judicial cooperation networks makes the forum not only appropriate, but the most relevant to the development of a focused Convention on the protection of tourist consumers.

a. Adequacy of the forum of the Hague Conference for the development of negotiations on a global framework for the tourist consumer protection

The Hague Conference brings together more than 70 countries and has among the countries that negotiated and signed their conventions more than 125 countries, being a global forum of cooperation in civil and commercial matters, represented on every continent and allowing dialogue between common law countries and civil law countries, Islamic and secular countries, large integration processes, such as the European Union one and developing countries, in order to progress in the protection of individuals, families and world trade. The mission of this intergovernmental organization is the progressive unification of private international law. (Art. 1 of the Statute of the Private International Law Hague Conference).

Since its founding in 1893, the Hague Conference has already produced more than 45 instruments, a great part of them are conventions, but also principles, most of them on the issue of child protection in the area of family and inheritance (23 conventions), but also on disputes and international legal co-operation developed 10 conventions, as well as in trade and international finances, 10 conventions. The Convention's review process of July 15, 1955 on the law applied to international sales, produced a project of 10 articles on consumer sale contracts (approved in the 14 session of the Council in 1980), which served as an inspiration for many consumer protection rules in Europe (Rome Convention 1980, Rome I Regulation) and in the Americas (Civil Code of Quebec, the new Civil and Commercial Code of Argentina approved in 2014), as well as many of its conventions can be used on the protection of consumers (Products Liability, 1973) and tourists (Convention on Access to Justice, 1980).

Unlike the UNWTO, which is a forum of states in dialogue with the tourist service providers and interested in the harmonization of standards and substantive practices and materials in terms of tourist services, the Hague Conference is a forum for States with experts and non governmental organizations specialized in private international law and international legal cooperation, that tries to overcome the lack of global substantive standards for the protection of tourists, especially in its civil, consumption and trade relations.

The Hague Conference has expertise in dealing with issues related to the international legal cooperation when it is necessary to have a networking involving the figure of the central authorities. In recent years, it was highlighted for its post-conventional work, when promotes regular meetings to verify the great progress of your documents. Thus, it assists the various networks to stay in touch, they elaborated forms for the development of the communication, and thus to provide the appropriate assistance to the private parties.

Besides its working methods, in which a subject performs several steps to become a global nature document, is undoubtedly the proper format to address the issue. These steps, beginning with studies on the feasibility of the proposal, the composition of expert groups to discuss the beginning of the work and subsequently the negotiations on special committees with the participation of all member states and observer states, have the function to help in the elaboration of an international document that reflects the needs of its members.

If the subject matter of the tourist consumer protection will be included in the agenda of the Hague Conference, its renowned Permanent Bureau could prepare an in-depth study of the comparative law and the feasibility of the proposal, and then it could establish a working group to start the works on negotiation, through the elaboration of a first text, from what has already been presented, approaching it from other agreements or non-binding instruments already produced by the Conference and its member countries.

There is no doubt that a draft Convention for the Protection of the Tourist Consumers and Visitors fall within the scope of work of the Hague Conference. After all the Conference's mission is *"to be a forum of members to the development and implementation of common rules of private international law, in order to coordinate the relations between different legal systems in international situations."* It is also objective of the Conference, to promote judicial and administrative cooperation in the areas of civil and commercial law.

b. The expertise of the Hague Conference on international legal cooperation and access to justice

It's great the specialization of the Hague Conference is vastly specialized on international legal cooperation, particularly in civil and commercial law issues, with various conventions using the figure of the central authority to facilitate the communication and the joint implementation of tasks in cases of conflict and problems that cross borders[5].

Moreover, that the Hague Conference on Private International Law is world *"renowned for the quality of its scientific works and the development of universally acceptable solutions"*[6] for over 100 years.

Among the international forums that deal with global unification, which does not distinguish the participating States by reason of any aspect, whether geographic, economic, political, social or religious, we just have the Hague Conference on Private International Law as *"an universal forum par excellence"*. This universality is observed in concern for the unification of private international law regardless the subject[7].

Considering the expertise of The Hague Conference that is a center of experts and delegates from all over the world, engaged with the spirit of working together, also makes the Hague an appropriate forum for the

[5] www.hcch.net
[6] http://www.hcch.net/index_en.php?act=text.display&tid=27
[7] RODAS, João Grandino. A Conferência da Haia de Direito Internacional Privado: A Participação do Brasil / João Grandino Rodas; Gustavo Ferraz de Campos Mônaco – Brasília : Fundação Alexandre Gusmão, 2007, p. 94

discussion and the elaboration of the document that will protect tourist consumers.

III. Differences in the UNWTO proposal and the dialogue with other already established conventions

During the meetings of the Hague Conference on Private International Law on April 2014, one of the subjects raised to debate was the existence of two proposed conventions having the international tourism as the main aspect, generically and in a broader sense: the draft Convention in respect of the Protection of Consumers, formally presented at the Hague Conference on Private International Law (HCCH) to be included in the future working agenda of this forum of legal international cooperation and the draft UNWTO Convention regarding the protection of tourists and tourism services providers, which is being elaborated by the Working Group on the protection of tourists/consumers and travel organizers at the United National World Tourism Organization (UNWTO), already in its third draft.

In order to answer any doubts related to the differences between the draft conventions, their subject, objective and forums, it was elaborated a document (Annex III) by the experts working group coordinated by the Brazilian Ministry of Justice, counting on the collaboration of the Professor Claudia Lima Marques (UFRGS) and Nádia de Araújo (PUC-Rio)

IV. Final remarks: the new draft Convention on Co-operation and Access to Justice for International Tourists

The proposal main objectives still being the same as established by the first draft, which are the formation of a global network to protect foreign tourists as consumers, allowing them to use the visited country's consumer protection and legal services, without discrimination. As indicated by the new title, it was only given more emphasis for access to justice and for *ex ante* cooperation by the use of alternative dispute resolution at the visited country by the foreign tourist. The section regarding international cooperation among the countries was specified and summarized, as in the section regarding central authorities, with clean and clear text.

The new draft (Annex I) is more clear in its definitions, now using only the expression 'international tourists' (and not *tourists and visitors abroad* any

more) and it highlights the importance of the multiple language complaint form, easier to handle, making possible to the international tourist fill out the form in its mother language and to report the problem to the visited country's authority.

The draft convention remains with 9 articles, ensuring also the dialogue with other conventions, but it was not yet complemented with general stile rules of the Hague Conference.

The idea to present a draft Convention in respect to the protection of international tourists was surely to demonstrate the commitment with the issue, therefore it is not a final document and nor already finished, but it is aimed to establish a starting point, and to be worked alongside with other HCCH members, considering its expertise.

As can be seen from the 9 (nine) drafted articles, the main objective is to establish cooperation channels through legal cooperation, i.e., facilitating the access to small claim courts and establishing a legal and administrative cooperation system, as settled by the Regulation N. 2006/2004 of the European Parliament. This would make possible for the tourist to complain in the visited country, with the form in its native language, be assisted by consumer defense authorities of that country, even having little time, have the solution of its problem through mediation and conciliation (alternative dispute resolution) as the tourist was a resident, fill the complaint up to two weeks after, count on the support of these authorities and – if the problem could not be solved by the visiting country authorities – count on the cooperation of the authorities in its home country or, at least, with a public document about the problem that happened and the efforts that were taken to solve the issue.

The proposal merits are to use the system already established in the countries, and to better organize them to international cases, avoiding the tourist discrimination on the access to justice and to alternative dispute resolution – where it still with little international cooperation and use, as it can be seen in small claim courts - , and also make available the multiple language complaint form, adapted to *online* environment, in order to facilitate report of the problem to national authorities, which know the providers and would put efforts to the tourist problem solving, avoiding unfeasible and inefficient international litigations and personal frustration.

The proposal takes into account the tourist consumers' vulnerability[8], considering the time spent in the visiting country, the language, lack of specific information or even of ease access, and the difficulties when a consumption conflict is settled in foreign country. Even though there's any access to international justice, in practice, it is financially unfeasible considering the costs involved, for instance hiring a legal representative in other country. The proposal of a convention regarding tourist consumer protection aims the establishment of a multilateral global cooperation instrument of authorities and access to justice[9], by which the countries would apply its own consumer protection and defense law. Such cooperation would use the already established authorities and instruments (institutions, legal and administrative authorities), therefore facilitating the *ex ante* cooperation and understanding the possibility to the tourist to complain to the visiting country authorities, even after returning to its home country, improving tourist protection and providing the possibility to use alternative dispute resolution, without discrimination.

[8] RODAS, João Grandino. A Conferência da Haia de Direito Internacional Privado: A Participação do Brasil / João Grandino Rodas; Gustavo Ferraz de Campos Mônaco – Brasília : Fundação Alexandre Gusmão, 2007, p. 831
[9] Ibdem, p. 829

ANNEX I

DRAFT CONVENTION ON CO-OPERATION AND ACCESS TO JUSTICE CONCERNING INTERNATIONAL TOURISTS

November 2014

The States signatory to the present Convention,

NOTING the development of global tourism and its important economic and social role with benefits for all States involved, and, in particular, the contribution by international tourists to the strengthening of the tourism sector and the economic development of all States,

CONSIDERING that international tourists, not being habitually resident in or nationals of the States visited, may face special challenges in terms of access to the courts and to alternative procedures, available in the States visited, to resolve issues and disputes relating to their economic interests and their safety and security;

HAVING REGARD to the standards concerning information and protection of tourists adopted at the global level – in particular the *Global Code of Ethics for Tourism* adopted by the General Assembly of the World Tourism Organization on 1 October 1999 through its Resolution 406 (XIII) and endorsed by UN General Assembly Resolution 56/212 of 21 December 2001, and the UN *Guidelines for Consumer Protection* (UN General Assembly Resolution 39/248 of 16 April 1985, as amended in 1999) – and at the regional level as well as in numerous bilateral instruments;

HAVING REGARD to the *Hague Convention of 25 October 1980 on International Access to Justice;*

BELIEVING that international tourists should be provided with appropriate access to the courts and to alternative procedures for dispute resolution available in the State visited; with accessible information on such alternative and relevant court procedures; and with a uniform form for complaints regarding common travel and related issues as well as with an accessible channel to present such complaints so that effective action may be taken to resolve such issues in the State visited;

CONSIDERING that the achievement of these objectives requires the support of a system of cooperation between the authorities of the Contracting States;

HAVE RESOLVED to conclude a Convention to this end, and agreed on the following provisions:

CHAPTER I – OBJECT AND DEFINITIONS

Article 1 – Object

The object of this Convention is to –

a) Provide international tourists who are habitually resident in, or nationals of, any Contracting State and who are travelling to, or in, another Contracting State ("the State visited"), with access to judicial proceedings, and alternative procedures for the settlement of disputes, such as conciliation, mediation or arbitration including complaint procedures for the protection of consumers' interests available in the State visited on an equal footing with persons who are nationals of and habitually resident in that State;

b) Provide such tourists with accessible information on such procedures, and with a uniform multilingual form for complaints regarding common travel and related issues, as well as an accessible channel to present such complaints so that prompt and expeditious may be taken to resolve these issues;

Establish a system of cooperation between authorities of each Contracting State.

Article 2 – Definitions

In this Convention –

a) "International tourist" means a person habitually resident in or national of a Contracting State taking a trip to a main destination in another Contracting State for less than a year, for any main purpose (business, conferences, leisure or other personal purpose), other than to be employed by a resident entity in the country or place visited, and who to that end purchases or undertakes to purchase a tourism service, or is a beneficiary or transferee of such a purchase, [or who purchases or undertakes to purchase consumer products or is a beneficiary or transferee of such a purchase in the Contracting State visited];

b) "Issues relating to tourism service" means any issue relating to –
- a tourism service purchased by the international tourist or which he or she has undertaken to purchase, in relation to transport, hotels, travel agency services, sightseeing, museums, national parks, or restaurants, or similar services;
- discrimination of the international tourist regarding prices of products and services; or
- personal safety and security of the international tourist.

c) "Seller or supplier" means any natural or legal person who, in relation to tourism services, is acting for purposes relating to his trade, business, craft or profession;

d) "Alternative procedures" means any procedure, other than court proceedings, for the settlement of disputes, such as conciliation, mediation or arbitration, including complaint procedures for the protection of consumers' interests;

e) "Complaint" means a statement, supported by reasonable evidence, that a seller or supplier has committed, or is likely to commit, an infringement of the laws, especially consumer protection laws, that respect the international tourist's interests, or concerning another issue relating to tourism service, including the personal safety and security of the international tourist.

CHAPTER II - INFORMATION AND COMPLAINTS

Article 3 - General information

(1) Each Contracting State shall provide at terminals, other appropriate public places and where applicable on the Internet general information to international tourists regarding access to alternative procedures and relevant court proceedings, and contact details, including the website address, of the competent authority designated under Article 6, or shall ensure that such information is provided, including by sellers and suppliers.

(2) Regard shall be had to the need to provide such general information in foreign languages, and to special needs regarding information of persons with disabilities.

Article 4 – Complaints –Model Form

(1) Any international tourist may present a complaint concerning issues relating to tourism service to the competent authority designated under Article 6 of the State visited, using the multilingual model form attached to the Convention

(2) Before ratifying, accepting, approving of, or acceding to, this Convention, each Contracting State must deposit with the Permanent Bureau the translation in its official language or languages of the standard entries which must appear in the complaint form in conformity with the model attached to the Convention; any modification of these translations must also be deposited with the Permanent Bureau.

(3) The Permanent Bureau shall notify the other Contracting States of these translations and any modifications thereof, and shall publish them on the website of the Hague Conference.

(4) International tourists may utilise the complaint form in English or French or in the official language or languages of the State visited as deposited by Contracting States with the Permanent Bureau in accordance with paragraph 2.

CHAPTER III - CENTRAL AND COMPETENT AUTHORITIES

Article 5 - Central Authorities and their functions

(1) A Contracting State shall designate a Central Authority to discharge the duties that are imposed by the Convention on such an Authority. Federal States, States with more than one system of law or States having autonomous territorial units shall be free to appoint more than one Central Authority and shall specify the territorial or personal extent of their functions. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which any communication may be addressed for transmission to the appropriate Central Authority within that State.

(2) Central Authorities shall –
a) Cooperate with each other and promote cooperation amongst the competent authorities in their States to achieve the purpose of the Convention;
b) Provide each other with general information on laws, including consumer protection laws, relevant to the protection of tourists' interests, and on alternative procedures for the settlement of disputes, such as conciliation, mediation or

arbitration, including complaint procedures for the protection of consumers' interests, as well as relevant court procedures, such as small claims procedures, available in their State which may offer redress for issues relating to tourism service;

c) Assist international tourists who are habitually resident in or nationals of the Central Authority's State and who return from another Contracting State visited, upon their application –

if a complaint procedure commenced by them according to Articles 4 and 6 in that State was not completed before their return, by contacting on their behalf the Central Authority of the State visited with a view to ensuring the follow up on such procedure, or

if no such complaint procedure was commenced by them in that State and provided they apply to the Central Authority within two weeks after their return, by providing them with information and directions enabling them to present a complaint to the competent authority in the State visited, or by forwarding a complaint on their behalf to the Central Authority of that State with a view to transmitting it to the competent authorityd) Seek as far as possible solutions to difficulties which arise in the application of the Convention

Article 6 - Competent authorities and their functions

(1) A Contracting State shall designate the competent authority or authorities responsible to act on a complaint presented in accordance with Article 4. If more than one competent authority is designated, one of these authorities shall be designated as the competent authority to which complaints under this Convention may be addressed.

(2) The competent authority shall maintain a public website on which the complaint form, in all the languages referred to in Article 4, shall be published

(3) Competent authorities shall take directly or through public authorities or other bodies having responsibilities for, or a legitimate interest in, the cessation or prohibition of infringements of the laws (including consumer protection laws) that protect the tourist's interests, all appropriate steps, including by providing information, practical assistance, and referral to the appropriate institution in charge of providing legal advice or of alternative procedures, or to the relevant court, to try and resolve the issue relating to tourism service that is the object of the complaint.

(4) They shall act promptly and expeditiously, taking into account the usual short period during which tourists stay in their State and in the place visited, and paying due regard to special needs of persons with disabilities.

(5)They shall keep a register of complaints and of the action taken upon those complaints in accordance with the laws of their State.

CHAPTER IV - ACCESS TO JUDICIAL AND ALTERNATIVE PROCEEDINGS

Article 7 - Non-discrimination in respect of judicial and alternative proceedings

(1) International tourists shall in any other Contracting State, in respect of Issues relating to tourism service, be entitled to access to, and where applicable legal aid provided for, court proceedings and available alternative procedures in civil and commercial and administrative matters, on the same conditions as if they themselves were nationals of, or habitually resident in, that State;

(2) Paragraph 1 shall also apply to legal advice provided the international tourist is present in the Contracting State where advice is sought.

Article 8 - Non-discrimination in respect of security for costs and enforceability of awards of costs in judicial and alternative proceedings

(1) No security, bond or deposit of any kind may be required by reason only of their foreign nationality or of their not being domiciled or resident in the Contracting State in which proceedings are commenced, from international tourists who are plaintiffs or parties intervening in respect of Issues relating to tourism service in proceedings before the courts or tribunals, or alternative procedures, of another Contracting State. This also applies to any payment required of plaintiffs or intervening parties as security for fees charged for such procedures.

(2) Any award of costs and expenses, made in one of the Contracting States against any international tourist exempt from requirements as to security, bond, deposit, or payment by virtue of paragraph 1 or of the law of the State where the proceedings has been commenced shall, on the application of the person entitled to benefit of the order be rendered enforceable without charge in any other Contracting State.

CHAPTER V - GENERAL PROVISIONS

Article 9 – Relationship with the Hague Convention of 25 October 1980 on International Access to Justice and with other international instruments on co-operation

(1) Contracting States which are also Parties to the *Hague Convention of 25 October 1980 on International Access to Justice* shall, to the extent possible, coordinate their cooperation under both Conventions, and ensure that both instruments are applied in a complementary manner.

(2) The Convention shall not prevent the application of any agreement, arrangement or international instrument in force between Contracting States that provides for [broader] protection of international tourists.

Article 10 Revision of the multilingual model complaint form

(1) The model form annexed to the Convention may be amended by a decision of a Special Commission convened by the Secretary General of the Hague Conference to which all Contracting States and all Members shall be invited. Notice of the proposal to amend the form shall be included in the agenda for the meeting;

(2) Amendments adopted by the Contracting States present at the Special Commissions, shall come into force for all Contracting States on the first day of the the seventh month after the date of their communication by the depositary to all Contracting States.

CHAPTER VI - FINAL CLAUSES

[...]

Annex to the Convention (example of Multiple Language Complaint Form - final text will be in English and French only)

COMPLAINT FORM FOR TOURISTS AND VISITING CONSUMERS – 2014
(Formulaire de reclamation pour le touriste consommateur – Formulario de reclamación – Formulário para reclamações dos turistas, visitantes e consumidores) Ing-Fr-Esp-Port

Case Nr./Cas n./Caso n. :_____/2014 Date: ___/___/_____

I – CONSUMER DATA – IDENTIFICATION DU CONSOMMATEUR – IDENTIFICACIÓN DEL CONSUMIDOR – IDENTIFICAÇÃO E DADOS SOBRE O CONSUMIDOR

1. Name and Surname / Nom complet / Nombre y Apellidos / Nome completo:
_____

2. Type and number of document / Document d'identification / Número y tipo del documento / Tipo e número do documento:
_____ – _____

3. Country of issue/ Pays du document / País de origen/ País de origem:
_____

4. Country of habitual residence / Pays de résidence / País de residencia / País de residência:
_____

5. Adress at the home State /Adresse d'origine /Dirección/Endereço principal completo:
_____

6. City / Ville / Ciudad / Cidade: _____

7. Country / Pays / País / País: _____

8.Phones / Numéros de téléphone / Teléfonos / Telefones:
+ ____ ____ _____ + ____ ____ _____
Ex: +55 61 2222222

9. E-mails:
_____

10. Alternative Address at the visited State / Adresse provisoire dans la pays visité / Dirección provisoria en el país visitado / Endereço provisório no pais visitado:

_____

_____

11. Nationality / Nationalité / Nacionalidad / Nacionalidade:_____

12. Travel date / Date de départ / Fecha de partida / Data da viagem:
___/____ /_____

13. Optional information / Informations optionnelles / Informaciones opcionales / Informações opcionais

Ocupation / Profession / Ocupación / Profissão: _____

Professional Adress / Adresse proféssionnelle / Dirección profesional / Endereço professional:

_____

Phone / Téléphone / Teléfono / Telefone : + ____ ____ _____

E-mail: _____

II - CONSUMER CENTER OR AGENCY / ORGANE DE PROTECTION DU CONSOMMATEUR / ÓRGANO DE PROTECCIÓN AL CONSUMIDOR / ÓRGÃO DE PROTEÇÃO AO CONSUMIDOR

_____

III - SUPPLIER DATA / PROFESSIONNEL RECLAMÉ / DATOS DEL PROVEEDOR / DADOS DO FORNECEDOR

1. Trade name / Nom commercial / nombre comercial / nome comercial de fantasia: _____

2. Legal name / Nom légal / Razón social / razão social:

_____

3. Registration number / Numéro de registre / Registro legal / CNPJ:

_____

4. Market sector / Secteur d'activité / Sector de actuación/ Ramo de atividade:
_____

5. Address / Adresse / Dirección / Endereço:
_____
_____

6. Phones / Numéros de téléphone / Teléfonos / Telefones:
+ ____ ____ _____ + ____ ____ _____

7. Website: _____

8. E-mails: _____

9. Contacted person / Responsable / Responsable / Responsável:
_____

IV – COMPLAINT / RÉCLAMATION/ RECLAMACIÓN /RECLAMAÇÃO

1. Date of incident / Date de la réclamation / Fecha del incidente / Data do problema: _____/_____/_____

2. Reason for complaint / Cause de la réclamation / Motivación / Motivo da Reclamação:

1. Transport/Transporte: Air/Aéreo.....Bus/Omnibus.....Taxi/Automotor:..... (Late service/demora.....overbooking..... Rent a Car/Alquiler de autos..... (quality of the cars/calidad de los vehículos)..... other/Autre / otros.....
2. Hotel/Hôtel / Alojamiento..... .....Reservation/reservas:.....
3. Travel agency/Agence de voyage/Agencia de Viajes.....Defect services/incumplimiento de servicios de terceiros..... other/autre/otros.....
4. High prices for foreignrs/Prix différents pour les touristes étranger/Precios diferenciados a turistas extranjeros.....
4ª Sightseeings
5. Museos/Musé/Museus.....
6. Tickets/Entry/Games/Entrée/Entradas.....National Parks/Parques nacionales.....
7. Restaurants/Gastronomie/Gastronomía.....Quality/Qualité / qualidad.....Prices/Prix /sobrefacturación.....
8. Security/Sécurité /Seguridad.....Violency/Violence / Violência..... Erassment/Asedio.....

9. Products/Produits/Produtos.....
10. Other problems/Autres problèmes/ Otros.....
.....
.....

3. Measures taken to settle the conflict / Intervention de l'Agence / Medidas tomadas para resolver el conflicto/ Medidas tomadas para resolver o conflito:

_____

_____

4. Means of evidence / Documents et preuves / Pruebas y documentos / Meios de prova e documentos:

_____

5. Complaint's Petition/ Demande / Pedido / Petição:

_____

_____

6. Signature / Signature / Firma / Assinatura: _____

7. Results/Résultats/Resultados:

_____

_____

8. Legal aid: ☐ available ☐not available
Contact person: _____

Assistance juridique: ☐ existante ☐pas existante
Responsable: _____

Asistencia jurídica: ☐ existente ☐no existente
Persona responsable: _____

Assistência jurídica: ☐existente ☐ não existente
Responsável: _____

9. Consumer satisfation / Satisfation du consommateur / Satisfacción del consumidor / Grau de satisfação do consumidor: _____
0 (not satisfied / pas contente / no contento / não satisfeito)- 10 (very satisfied / très contante /muy contento/muito satisfeito)

ANNEX II

The importance of tourist consumer issue under the last international events – The World Cup

WORLD CUP LESSONS

Aiming the implementation of actions regarding Consumer Protection during de 2014 World Cup, the National Secretariat for Consumers, Senacon, developed the Integrated Center for Tourist Consumer Protection. Established in the scope of the Consumption and Tourism Technical Committee, of the National Observatory for Consumer Relations, the Center provided the integration between federal agencies, local authorities and market representatives.

The objective of the Integrated Center action was to monitor eventual consumption conflicts in the host cities during the football World Cup, by the previously dialogue achieved with the Local Technical Chambers for Tourist Consumer Protection, as well as solve national and international eventual demands that require an intervention of federal agencies.

There was no significant consumption demand registered in the local level, and the few ones registered where briefly solved due to the previously dialog implemented.

However, internationally there were two cases referring to consumption of major gravity registered. The first one was related to the North American enterprise Dynamics Airways, which has repeatedly failed to comply with Brazilian law and regulation, being obligated to withdraw its aircrafts from Brazil by the action of the National Civil Aviation Agency, responsible technical body and member of the Integrated Center. The second case occurred between Tesoro Tours, a Colombian tourism company, and consumers from that country, whom had no hotel reservation for the entire contracted period in the cities of Brasília, Cuiabá and Rio de Janeiro, neither airport shuttle service to hotels, as well as problems regarding air tickets. This case was only solved due to the joint and the coordinated action between the Integrated Center and the Superintendence of Industry and Commerce (SIC), the Colombian consumer protection body, the Brazilian local consumer protection bodies, the National Secretariat for Consumer (SENACON) and FIFA.

About the Integrated Center, it must also be emphasized the important work previously done articulated between the members of the Consumption and Tourism Technical Committee, whom held a series of meetings in the 12 host cities. Realized between 2013 and 2014, those meetings were attended by consumer defense and tourism local authorities, market representatives, and members of the Committee. The meetings primary objective was the development of an articulated space between the mentioned bodies, as an example of the articulation existing in the federal sphere promoted by the Committee, considering the importance of each member in each area. Meetings were also held in which the actions taken were presented by each member of the committee to the representatives of the host cities.

In addition to the actions related to the Consumption and Tourism Technical Committee and to the Integrated Center for Tourist Consumer Protection, the National Secretariat for Consumer sought rapprochement and coordination with agencies for consumer protection of other countries, showing that the Secretariat was open to the dialogue and to the cooperation.

Preoccupied with domestic and international consumers who would be moving during the World Cup, the Senacon produced, in partnership with the Brazilian Tourism Institute - EMBRATUR, the Guide of the Tourist Consumer, a trilingual material that aiming to clarify the main questions regarding consumer, also provide the main emergency numbers in Brazil, useful apps for travelers, telephone numbers and the addresses of local consumer protection bodies, Procons, available in the host cities. This material, was distributed in Brazil, and has been shared with several countries, including its digital version, with the goal to inform about Consumer Law in Brazil, to international citizens and other governments.

The work done by the Secretariat, in partnership with other members of the Brazilian government and with the other actors working in the area of consumer protection and tourism, proves that a previous joint to the problems of consumption contributes a lot to the effectiveness of protective actions and consumer protection, significantly decreasing the occurrence of consumer demands, as well as providing a quick and effective solution to any problem related to the consumer Law, especially in the area of tourism services.

ANNEX III

Differences in the UNWTO proposal and the dialogue with other already established conventions

COMPARATIVE ANALYSIS BETWEEN THE CONVENTIONS PROPOSED AT THE HAGUE CONFERENCE ON INTERNATIONAL PRIVATE LAW (HCCH) AND AT THE UNITED NATIONS WORLD TOURISM ORGANIZATION (UNWTO)

During the meetings of the Hague Conference on Private International Law on April 2014, one of the subjects raised to debate was the existence of two proposed conventions having the international tourism as the main aspect, generically and in a broader sense: the draft Convention in respect of the Protection of Consumers, formally presented at the Hague Conference on Private International Law (HCCH) and the draft UNWTO Convention regarding the protection of tourists and tourism services providers, which is being elaborated by the Working Group on the protection of tourists/consumers and travel organizers at the United National World Tourism Organization (UNWTO), already in its third draft.

The Technical Note and its justification both presented with the draft Convention in respect of the Protection of Consumers, present elements and have concluded that it is pertinent to create a legal instrument to protect consumers outside their country of origin. Such elements, in the contextualization of 2013, point out the growth of international tourism, as well as to the advance of such sector in Brazil as a result of the international situation at the time. However, the proposal's ideal is to be global in its scope, not regional, in order to widely embrace the tourists as consumers.

Noticing the titles of the proposals it is already possible to see that they target individuals are different. The proposal presented at the Hague seeks to protect the rights of vulnerable individuals *ex ante*, in other words, international tourists who are outside their country of residence, making use of the consumer protection system in the country visited, thus avoiding costly and inefficient international litigations (*ex post*) on consumer issues. The UNWTO proposal aims to standardize the rules of national law and to protect *ex post* not specifically the individual rights

of tourists, but a category, through measures that protect the interests of tourism services providers, in other words, commercial interests, especially in cases of emergency (environmental and nuclear disasters in Annex I, II and III, and travel agents bankruptcy in Annex II)[10].

It is also necessary to clarify that the objectives of the forums where the aforementioned conventions were proposed are different, hence the bringing of two conventions of different objects and legal natures in two different forums. The Hague Conference on Private International Law[11], as its very name, addresses relevant topics to the Private International Law, being suitable for the discussion of issues and documents, including proposals for convention, committing signatory countries to the protection of individual rights in the context of private international law, in other words, conflicts of laws and international legal cooperation. The World Tourism Organization[12], part of the United Nations, is a forum for tourism services providers, defending commercial interests of companies of its member countries.

Dissonant element between the two proposals is also the form of protection effectiveness being undertaken. The UNWTO proposal is strongly based on the so-called "best practices" (art. 6), which are indicative conducts for tourism services providers (especially travel agencies, Annex II) of the member States, i.e., without any coercive force and mandatory standards (art. 5) for the action of the States on protection of the tourists (assistance, Appendix I), but only in some cases of force majeure or emergency. Regarding the HCCH draft Convention, the characteristic feature of it is to be addressed to the Competent Authorities and the Central Authorities of the member States, making possible to directly protect tourists regarding their demands as consumers. in an international legal cooperation of all

[10] These annexes refer to the *UNWTO Convention on the protection of tourists and tourism service providers.*

[11] « Vision, Travailler en faveur d'un monde dans lequel les particuliers, familles comme entreprises ou autres entités dont les vies et activités transcendent les frontières de différents systèmes juridiques, bénéficient d'une grande sécurité juridique. ; Mission, Constituer un forum pour les Etats membres pour l'élaboration et la mise en œuvre de règles communes de droit international privé, afin de coordonner les relations entre différents systèmes de droit privé dans les situations à caractère international. Promouvoir la coopération internationale judiciaire et administrative en matière de protection de la famille et des enfants, de procédure civile et de droit commercial. Proposer des services juridiques et une assistance technique de haut niveau au profit des Etats membres et des Etats parties aux Conventions de La Haye, à leurs autorités administratives et judiciaires, ainsi qu'aux praticiens. »

[12] http://www.hcch.net/index_en.php?act=text.display&tid=27

administrative agencies of consumer protection (art. 6) and judicial cooperation, including small claims courts, today little used in the protection of international tourists.

Another differing aspect of the analyzed proposals is the market niches covered for resolving disputes. In the HCCH proposal, consumer relations can be the object of any market niche that has a direct relation with the consumer, thereby importing a general protection for consumers in foreign lands. The UNWTO proposal focuses on the protection to be offered by its convention in the relation between the consumer and only the market niches directly involved with tourism, expressly excluding the involvement of transport companies, whether by air, sea, road or rail, as asserted the art. 1º, paragraph 3, in the latest draft of the UNWTO proposal.

Regarding the implementation of the proposed convention at HCCH, it counts on the expertise of the Conference on building global networks organized by Central Authorities[13], even as a way to increase the so-called International Legal Cooperation, an own goal of the Hague Conference. The draft Convention in respect of the Protection of Consumers forecasts the performance of the Central Authority figure (art. 4) and the Competent Authorities (art. 5) to be designated by the member State. In the UNWTO proposal, it was not established, until the present version, a specific name for a similar figure, it only mentions that the State that approves the convention will indicate necessary information and details of authorities and national agencies chosen to be part of this assignment, thus allowing the transfer of this information to other signatory countries of the Convention (annex I, Ch. 2, section 2.6).

The production of periodic reports to analyze the effectiveness of the conventions and possible improvements is a constant element in both proposals. Thus, it is shown a concern about the quality control of the service offered by these conventions, including the possibility of continuous improvement of the same operations.

Therefore, when analyzing the proposed convention of the World Tourism Organization (UNWTO) and the proposal submitted to the

[13] Convenção sobre o Acesso Internacional à Justiça; Convenção relativa à supressão da Exigência da Legalização dos Atos Públicos Estrangeiros; Convenção relativa à Proteção das Crianças e Cooperação em Matéria de Adoção Internacional; Convenção sobre os Aspectos Civis do Rapto Internacional de Crianças.

Hague Conference on Private International Law (HCCH), it can be stated that, although they are proposals on international tourism, the approaches of the protection offered by both are different and their purposes and nature are complementary and it does not constitute any form of protection overlapping.

The Hague Conference on Private International Law is the ideal forum for the discussion and development of the draft of a convention on tourist consumer protection, improving it by the working methodology within the Conference. It is precisely this approach that allows member States to take part in the deciding process, either by experience in establishing mechanisms of International Legal Cooperation and the participation of central authorities, either because of their expertise in the regulation of private international law.

Please note that the proposals are independent, but complementary in the aspect of the development of the tourism sector, because while one protects tourists *ex post* in an event of force majeure or distress and regulate the interests of tourism services providers (with repatriation, accommodation, etc); the other intends to protect consumers, vulnerable part of the business relation, ex ante, avoiding economic damage. Furthermore, by allowing the consumer protection system of the country visited work on negotiating consumer rights dispute and the use of courts of small claims by tourists, can also provide a safe and healthy environment for tourist relations on consumption, promoting, in turn, the confidence and the development of the tourism sector as a whole.

Finally, it is important to consider that the present draft convention, considering its objective, would not be presented to UNIDROIT, which is the organization of substantive unification (national material law about international civil procedure and contracts), with the objective to modernize, harmonize and coordinate private law, more specifically, the commercial law among States, elaborating unified law instruments, principals and unified rules. UNIDROIT, which is an observer member at the Hague Conference, has already expressed for the co-existence to the proposed model to deal with the theme, through its current Director at the meeting of the Council in 2012.

It can be noted that UNIDROIT has already tried to unify a theme related to tourism service provision through a Convention regarding travel

contracts (1970)[14], which has accomplished a limited success[15]. The 1970 Convention related to travel contracts, which has 63 member States[16], was ratified by only six countries, having Belgium and Argentina denouncing it, since it is a Convention of unification with substantive rules that restricts the responsibility – in general – from tourists contracts with travel agencies and allows the consumer arbitration, the consumer protection laws of both countries and the European Directives have imposed the protection, in consumer and civil law, as superior. The convention, however, was historically important, once it has ensured information rights to consumers and has regulated the figure of intermediaries and travel organizers, influencing the development of the theme in the world since 1970.

Therefore, according to the above mentioned explanations it is of great importance to increase the dialogue with the intention of keeping the subject of the protection of tourists and visitors as consumers on the Hague Conference on Private International Law agenda as well as the realization of a project of common convention for the countries of this international organization.

[14] http://www.unidroit.org/english/implement/i-70.pdf
[15] GARCIA RUBIO, Maria Paz. la responsabilidad contractual de las agencias de viaje. Madrid: Montecorvo, 1999, p. 29.
[16] A saber: África do Sul, Alemanha, Arábia Saudita, Argentina, Austrália, Áustria, Bélgica, Bolívia, Brasil, Bulgária, Canadá, Chile, China, Chipre, Colômbia, Croácia, Cuba, Dinamarca, Egito, Eslováquia, Eslovênia, Espanha, Estados Unidos da América, Estónia, Federação Russa, Finlândia, França, Grécia, Hungria, Índia, Indonésia, Irão, Iraque, Irlanda, Israel, Itália, Japão, Iugoslávia, Letônia, Lituânia, Luxemburgo, Malta, México, Nicarágua, Nigéria, Noruega, Paquistão, Paraguai, Países-Baixos, Polônia, Portugal, República da Coréia, República Checa, Romênia, Reino Unido, Rússia, São Marino, Santa Sé, Sérvia, Senegal, Suécia, Suíça, Tunísia, Turquia, Uruguai e Venezuela.