

RESOLUTION No.1/2016

COMMITTEE ON THE INTERNATIONAL PROTECTION OF CONSUMERS

The 77th Conference of the International Law Association held in Johannesburg, South Africa, 7 - 11 August 2016:

HAVING CONSIDERED the Report on the Role of International Law on Contemporary Consumer Protection;

NOTING the book prepared by the Committee as well as its survey of the consumer protection laws and regulations in the global financial crisis;

THANKING the Chair, the Rapporteur and the members of the Committee for the valuable work done;

RECOGNISING the emergence of the international dimension in consumer protection, the role of international law in helping to develop more equitable standards of consumer protection, and the need to take the consumer into account in international trade regulation;

ACKNOWLEDGING that individuals are usually the weaker parties in consumer contracts in general, and in cross-border contracts in particular, most notably with respect to the choice of applicable law and jurisdiction;

CONCERNED about the lack of universal models to protect consumers in cross-border contracts;

AWARE that *ILA Resolution No. 4/2012 - Sofia Statement on the Development of International Principles on Consumer Protection* was utilised by the UNCTAD during the Revision of the UN Guidelines for Consumer Protection in 2015;

DESIRING to contribute to the debate on the creation of fair and equitable principles for international consumer protection;

ADOPTS the Recommendations and Guidelines annexed to this Resolution;

COMMENDS the Recommendations to international organisations, States and consumer groups that are working on national, regional or international initiatives relating to consumer issues, with a view to enhancing international cooperation in such initiatives and to focusing the attention of all concerned on the need to develop fair and equitable standards and models for all consumers in the world, without discrimination;

INVITES the Committee to continue and to complete its work on the development of mechanisms for the international protection of consumers and to focus on the protection of tourists.

JOHANNESBURG RECOMMENDATIONS AND GUIDELINES ON THE BEST PRACTICES ON INTERNATIONAL PROTECTION OF CONSUMERS

RECOMMENDATIONS

1. CONSIDERING that consumers as natural persons acting outside of their professions or trade do not have expert knowledge, and are in an unequal bargaining position making the application of the rules on commercial transactions (which often includes *lex mercatoria*) unfair to them; STRESSING the differences between consumer contracts and other business contracts and the need for special rules to protect consumers not only nationally but also in international contracts and with respect to dispute resolution,

RECOMMENDS acknowledgement of the protection of consumers as weaker parties as a principle in national and international transactions.

2. NOTING that several international law initiatives have been undertaken with respect to the harmonisation of laws relating to cross-border consumer transactions by different international bodies, which have produced conventions, model laws, and legislative guides; ALSO NOTING that the 2015 Revision of the UN Guidelines for Consumer Protection has acknowledged the international dimensions of consumer protection; WELCOMING the efforts of the Hague Conference on Private International Law concerning the necessity to regulate international tourism,

RECOMMENDS the adoption of special rules on applicable law and jurisdiction for cross-border consumer protection.

3. AWARE that foreign tourists demand special protection related to their consumer rights, especially when they are away from their place of habitual residence, culture, and language; ACKNOWLEDGING the efforts made at the UN World Tourism Organisation to enhance the protection of tourists in case of emergency situations and the efforts of the Hague Conference on Private International Law on the field,

RECOMMENDS more international co-operation on consumer protection, especially in the field of international tourism.

4. CONSIDERING the recent efforts to update national and regional laws, regulating international consumer contracts (especially in the EU, Mercosur, OEA, Japan, China, Korea, Brazil, Argentina, Panamá, Dominican Republic),

RECOMMENDS that States consider best practices on international protection of consumers, and to that end also RECOMMENDS the use of the models set out in Guidelines on the Best Practices on the Law Applicable to International Protection of Consumers, with the aim of helping the development of fair and equitable legal standards for all consumers in the world, without discrimination.

GUIDELINES ON THE BEST PRACTICES ON THE LAW APPLICABLE TO INTERNATIONAL PROTECTION OF CONSUMERS

CONSIDERING the 2012 ILA's Sofia Statement on the Development of International Principles on Consumer Protection which acknowledges that "It is desirable to develop standards and to apply rules of private international law that entitle consumers to take advantage of the most favourable consumer protection", the International Law Association RECOMMENDS the following models reflecting the best practices on applicable law to international consumer contracts, selected by the Committee on International Protection of Consumers.

Model Rule 1: Limiting the Chosen Law by Reference to Mandatory Rules

Article [X]. Consumer Contracts

1. An international consumer contract shall be governed by the law of the country where the consumer has his habitual residence, provided that the professional:
 - a) pursues his commercial or professional activities in the country where the consumer has his habitual residence, or
 - b) by any means, directs such activities to that country or to several countries including that country, and in both cases, the contract falls within the scope of such activities.¹
2. If the requirements in points (a) or (b) of paragraph 1 are not fulfilled, the law applicable to a contract between a consumer and a professional shall be governed by the law chosen by the parties, or in the absence of a choice, by the law of the country where the goods or services were agreed to be supplied.²

¹ Adaptation of the European model.

² Adaptation of the Argentinean model.

3. Where paragraph 2 above applies, a choice of law may not have the result of depriving the consumer of the protection afforded to him by the mandatory rules of his habitual residence.³

Model Rule 2: Party Autonomy Limited to Choice of the Law Most Favourable to Consumers

Article [X]. Consumer Contracts

1. An international consumer contract shall be governed by the law of the habitual residence or domicile of the consumer or by the law chosen by the parties, provided that the latter is more favourable to the consumer.
2. The parties may choose between the law of the habitual resident or domicile of the consumer, of the place of the conclusion of the contract, of the place of performance and of the main office of the professional or provider of goods or services.
3. Under paragraph 1 above, the law more favourable to the consumer means the law that, viewed overall when the contract was made, assures the remedies or the redress more protective of the consumer's interests.

Model Rule 3: Limiting Party Autonomy by Reference to Connecting Factors

Article [X]. Consumer Contracts

1. The law of performance, meaning the law of the place where the goods or services were agreed to be supplied, shall govern an international consumer contract, if either (i) the consumer expressly chooses this law or (ii) the supplier/professional has under the contract no duty to undertake any business activities, related to the goods or services to be supplied, in the country of the consumer's habitual residence.
2. Save where paragraph 1 applied, international consumer contracts shall be governed by the law of the habitual residence of the consumer.

³ Adaptation of the European model.

Model Rule 4 of the Committee

Article [X]. Consumer Contracts

1. An international consumer contract shall be governed by the law of the country where the consumer has his/her habitual residence, provided that the supplier or professional:
 - a. pursues his/her commercial or professional activities in the country where the consumer has his/her habitual residence, or
 - b. by any means, directs such activities to that country or to several countries including that country, and in both cases, the contract falls within the scope of such activities.⁴

2. If the requirements in points (a) or (b) of paragraph 1 are not fulfilled, the law applicable to a contract between a consumer and a professional shall be the law chosen by the parties and in absence of choice, the law of the country where the goods or services were agreed to be supplied.⁵

3. Where paragraph 2 above applies, a choice of law may not have the result of depriving the consumer of the benefit of the law of habitual residence where that law is more favourable to the consumer.⁶ The law more favourable to the consumer means the law that, viewed overall when the contract was made, assures the remedies or redress more protective of the consumer's interests.⁷

⁴ Adaptation of the European model.

⁵ Adaptation of the Chinese model.

⁶ Adaptation of the Brazilian model.

⁷ Adaptation of the Panama model.