



Association Internationale de Droit des Assurances
International Insurance Law Association
Associazione Internazionale di Diritto delle Assicurazioni
Internationale Vereinigung Versicherungsrecht
Asociacion Internacional de Derecho de Seguros

**5th AIDA CLIMATE CHANGE WORKING PARTY MEETING
XIII CONGRESSO IBERO LATINO-AMERICANO DE DIREITO DOS SEGUROS
CILA 2013 – LISBON**

**09:15hrs-11:15hrs
WEDNESDAY 8 MAY 2013**

**Fundação Calouste Gulbenkian, Avenida Berna 45, 1067-001 Lisbon, Portugal
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MINUTES OF MEETING

1. Welcome, introduction, apologies for absence, matters arising from last meeting

- 1.1 The Chairman welcomed everyone to the fifth meeting of the Climate Change Working Party (CCWP). He particularly thanked the host Chapter, AIDA Portugal for their help in staging the meeting, for the report prepared by Pedro Castro Caldas, to which reference would be made later. He also specifically welcomed Paula Rios of AIDA Portugal and Hilda Zornosa from Colombia, the CILA co-ordinator for the CCWP, to their first CCWP meetings, and introduced the other CCWP Officers, Marco Frigessi di Rattalma, Stijn Franken and Marcel Fontaine.
- 1.2 A number of apologies had been received. As ever, some of those unable to attend had delivered papers, a practice to be greatly encouraged. New attendees were encouraged to leave business cards/email contact details to allow them to be added to the CCWP circulation/contact list to help with information exchanges/planning/work being advanced between meetings.
- 1.3 As much to consider in two hours, introductory remarks would be confined to the observation that this was already the fifth meeting of the CCWP and nearly four years since National Section reports had been delivered to inform the General Report prepared by Marcel Fontaine. It was perhaps time for systematic updates and the supplementing of information on major topics from countries from which the CCWP had not previously heard or received reports.

**2. First Presentation:
Agricultural Insurance in Colombia – Effect of Private Insurance, Reinsurance and Government Policies**

- 2.1 Hilda Zornosa (Colombia) explained the particular changes facing Colombia in trying to protect their agricultural production against catastrophic losses and the impact of Climate Change. Torrential rain in the wrong season for

farmers in April 2010 caused major losses and prompted calls for a government insurance scheme to protect all crops in all regions. This presented a major challenge in a diverse country with desert to the north, mountains across the south and without four regular seasons, but a variable climate.

- 2.2 The Government had assumed that insurance and claims payments would diminish social problems caused, but quickly discovered a number of obstacles: crime, false claims, disputes over the distribution by local municipalities of claims payments based on policies issued. One ambitious pilot plan saw banana crops indemnified by one insurer for a global value with individual farmers receiving the same amount in the event of loss, but immediately apparent that some regions more prone to loss and geographical risk areas did not correspond with the municipality districts administering the schemes.
- 2.3 Despite the setbacks, some benefits emerged. A raised awareness of the need for: risk assessment and management; better risk-profiling and definitions of risks/distinction between crops/areas; reinsurance support for the scheme; and the imposition of VAT to ensure insurance fell within the formal economy. The development of a three-party system emerged in which the State, insurance companies and associations of farmers all have a role to play, with a Department of Risk Management created better to understand the risk and to rely on the professional help of insurers to deliver a more effective scheme.
- 2.4 The result has been the development of some distinct schemes which separate out some more specific risks from the most common form of crop protection where cover is made semi-obligatory to improve data collection and guard against anti-selection. Assistance is provided with the meeting of high premiums by loans akin to mortgages and bespoke commercial insurances protect major exporters or suppliers of domestic agricultural products.
- 2.5 Problems persist with the provision and retention of centralised technical risk information, overcoming issues arising from the displacement of farmers in some regions where land farmed has in the past been handed back to others and with the government wanting insurers to pay for the damage caused by natural perils but without any means of coercing private investment.

3. **Second presentation: Microinsurance and globalisation of insurance cover**

- 3.1 Ana Rita Petraroli (Brazil) reviewed the broad global picture of Climate Change and the challenges of prevention, adaptation and mitigation around the world. The projection of anticipated heightened risk likely to ensue from any projected global temperature increase was alarming.
- 3.2 Increasingly evident is how essential is the need for public answers and measures and the planning of adaption dependent upon the particular demands and features of a country, geographical area or sector. Private insurance solutions in isolation may only go so far.
- 3.3 Microinsurance serves as one tool to assist those on low incomes who may otherwise be denied the benefits and protection afforded by insurance. It is necessarily restricted to a small area. In truth, there remain very few policies issued. In Latin America there are no fewer than 4m people benefitting from microinsurance policies in Peru, and sizeable numbers in the likes of Chile and Ecuador.
- 3.4 In Brazil, the story is very different. Growth in economic and national activity and consumption has been very significant, but that there is a continuingly marked divide between those with money and those without. Those in the growing C and D classes have access to traditional forms of cover. For those in the bottom E class, 15% are notionally eligible for microinsurance, but if their house is in a *favela* (a shanty town) they are denied cover.
- 3.5 Steps are being taken in Brazil to try to inform the public about the availability of microinsurance and to improve the means by which it may realistically be sold. There remains a very long way to go. Data being gathered is serving to form the basis upon which a more viable plan for low income people may be created as one tool to help address the consequences of Climate Change.

4. Intervention:

Additional remarks upon microinsurance - report upon Unidroit project, the drafting of a legal guide on contract farming

- 4.1 Professor Marcel Fontaine (Belgium) reported upon a new project recently launched by UNIDROIT (the International Institute for the Unification of Private Law, the Rome-based intergovernmental organisation founded in 1926), the publication of a "Legal Guide on Contract Farming", with which he is associated.
- 4.2 It is designed to provide a helpful soft law instrument for those drafting agricultural product contracts, an important tool in agricultural production and marketing worldwide, with benefits to producer and purchaser alike, but also disadvantages sometimes resulting from unequal bargaining powers between parties. With agriculture being a business sector most obviously at risk from the effects of Climate Change, these necessarily now require particular consideration of, and possible express provision in respect of, the phenomenon.
- 4.3 *Force majeure* clauses, provisions taking into account defensive or precautionary measures imposed by insurers and/or new methods of production to take account of changes in climatic conditions or risks all merit particular care.
- 4.4 UNIDROIT is working in conjunction with the FAO (Food Agricultural Organization), the IFA (International Fund for Agricultural Development), the World Food Program, the World Bank and the International Finance Corporation, the World Farmers' Association and representatives from the Food manufacturing and marketing industry.
- 4.5 Working sessions have been organised over a period of two years, with the aim of producing a guide to warn parties to such contracts in an even-handed way of the major issues which ought to be addressed and provided for in the contract terms.

5. Additional materials delivered to the Meeting

- 5.1 The Chairman briefly introduced and commended three contributions made by those unable to attend the meeting in person, each of which would be loaded onto the CCWP page of the AIDA website, together with all materials being presented to the meeting:
- Report/presentation from Maria Kavanagh (Argentina) and other members of the MERCOSUR Group
 - Report/presentation from Pedro Castro Caldas (Portugal) - Impact of Climate Change on Insurance
 - Report from Chris Rodd (Australia) – Australian Report: Flood definitions, coverage, modelling and more

6. Third Presentation:

Environmental Insurance in Argentina: Problems and Questions, Proposals and Solutions

- 6.1 For the first meeting of the CCWP in Amsterdam in May 2011 Rosanna Bril (Argentina) had submitted a paper addressing issues concerning Environmental Insurance in Argentina. She now provided an updated analysis of what she described as a current crisis facing the country.
- 6.2 Since 1995 mandatory environmental insurance had been incorporated into many environmental regulations in the country, but it was only in 2008 that legislation first passed in 2002 formally came into effect. By this insurance policies were to be compulsorily taken out with a wide range in price depending upon a given company's activities, output and the potential risk involved.
- 6.3 She explained how the triggering event for the controlling authorities to proceed with the regulation of environmental insurance provided for in the General Environmental Law (*Ley General del Ambiente*) was the case then pending before the Argentine Supreme Court of Justice entitled "Mendoza, Beatriz et al vs. Argentine Government et al on damages (damages arising out of the environmental pollution of Río Matanza-Riachuelo)", CSJN, 8-24-2006, commonly referred as the Riachuelo case. The case had been pursued by local residents affected by the pollution of a local river for which the national, regional and local governments were all being held accountable.
- 6.4 The Plaintiffs had also claimed for the creation of an Environmental Compensation Fund for USD500m. Influential NGOs also supported the action to provide redress for collective environmental damage to prevent further pollution and to remedy already polluted areas.
- 6.5 The resulting compulsory legislation had a lot of faults. Risks and liabilities were not well defined. No insurers or reinsurers had felt able to provide coverage for the environmental pollution element of risk. Instead financial

guarantees were provided by banks. These contravened a number of basic requirements, including consumer protection laws, in the treatment of intended insureds. In consequence, there are significant limitations to the cover which is available, leaving both the consumer and the environment inadequately protected. Compulsory environmental insurance has meanwhile nonetheless been extended across the whole country, still deficient in terms of information or regulation to allow it to work. Premiums are at rates five times those of 2009.

- 6.6 A new team has been put together to encourage more effective collaboration between NGOs and insurers designed to assist government to draft a remodelled bill which will appropriately protect policyholders and the environment alike. On 30 May 2013 there is to be collaboration in the form of discussion at the National Senate about the proposed Act, "Guarantee Systems and Environmental Insurance", in which Rosanna is to be participating and upon which she shall report further in due course.

**7. Fourth Presentation:
Update on European Commission's Green Paper on natural catastrophes and insurance**

- 7.1 Marco Frigessi di Rattalma (Italy) had introduced the Green Paper issued by the EC at the CCWP's last meeting in London.
- 7.2 He briefly described some of the issues arising and of the work being done by himself and other colleagues in their preparation of a response to the Paper. A copy of this was to be provided to the CCWP for publication on its website page once this had been completed.

8. Future business of the Working Party and any other business

- 8.1 Owing to an enforced delayed start to the meeting and the early close of others there was time only left for the Chairman to thank all contributors and attendees as well as the translators and to announce that the next CCWP meeting was scheduled for **Wednesday 18 September 2013** to be held in Sydney, Australia during the AILA National Conference. This was to be a meeting held jointly with the AIDA Motor Insurance Working Party, whose meeting in Lisbon was to follow the CCWP meeting and for which all attendees were encouraged to stay.
- 8.2 The Agenda for that meeting was to be posted on the website in due course along with all the presentations made or introduced today. All new attendees who provided their details would be included in mailings going forward and were encouraged to visit the website page for news of developments.
- 8.3 The meeting closed at 11:15hrs.