

CJI/RES.50 (LXI-O/02)

**THE APPLICABLE LAW AND COMPETENCY OF INTERNATIONAL
JURISDICTION WITH RESPECT TO EXTRACONTRACTUAL CIVIL
LIABILITY**

THE INTER-AMERICAN JURIDICAL COMMITTEE,

RECALLING that, in resolution CP/RES. 815 (1318/02), the Permanent Council resolves to:

“1. Instruct the Inter-American Juridical Committee to examine the documentation on the topic regarding the applicable law and competency of international jurisdiction with respect to extracontractual civil liability, bearing in mind the guidelines set out in CIDIP-VI/RES.7/02,” and

2. Instruct the Inter-American Juridical Committee to issue a report on the subject, drawing up recommendations and possible solutions, all of which are to be presented to the Permanent Council as soon as practicable, for its consideration and determination of future steps.”

BEARING IN MIND that the guidelines set forth in CIDIP-VI/RES.7/02, to which the Permanent Council refers, provide that:

“a. The Inter-American Specialized Conference on Private International Law acknowledges the need to consider regulation of applicable law and competency of jurisdiction with respect to extracontractual civil liability. Therefore, the Conference is in favor of conducting a preliminary study to identify specific areas revealing progressive development of regulation in this field through conflict of law solutions, as well as a comparative analysis of national norms currently in effect.

b. That study may refer to such areas of the aforementioned subject matter as proven to be relevant and are likely to be broadly accepted.

c. As regards the issues to be analyzed, the Conference recognizes the advisability of contemplating the reasonable expectation of plaintiffs that they will be able to sue before forums that are accessible and have a legal system in

their favor, as well as the reasonable expectations of defendants not to be sued and judged before forums or by laws lacking a reasonable connection with the subject of the suit or with the parties.”

2. Request(s) the Permanent Council to encumber the Inter-American Juridical Committee to examine the documentation on the matter and, taking into account the preceding bases, issue a report, make recommendations and possible solutions, all to be submitted to a Meeting of Experts.”

HAVING BENEFITTED from a thorough discussion of this subject at its current regular session,

RESOLVES:

1. To welcome the preliminary studies presented by the co-rapporteurs, Dr. Ana Elizabeth Villalta Vizcarra (*Recommendations and possible solutions proposed to the topic related to the Applicable Law and Competency of International Jurisdiction with Regard to Extracontractual Civil Responsibility*, CJI/doc.97/02) and Dr. Carlos Manuel Vázquez (*The Desirability of Pursuing the Negotiation of an Inter-American Instrument on Choice of Law and Competency of International Jurisdiction with Respect to Non-Contractual Civil Liability: A Framework for Analysis and Agenda for Research*, CJI/doc.104/02 rev.2).

2. To ask the rapporteurs to complete a draft report in time for consideration by the Committee at its 62nd regular session, adhering to the following parameters:

a. The report should include an enumeration of the specific categories of obligations that are encompassed within the broad category of “non-contractual obligations.” Such an analysis will serve to illustrate the enormous breadth and variety of obligations that an Inter-American instrument on jurisdiction and choice of law in this field could potentially affect.

b. The report should focus primarily on the task of identifying specific areas within the broad category of extracontractual liability which might be suitable subjects for an Inter-American instrument regulating applicable law and

competency of jurisdiction. Such a focus is consistent with the CIDIP resolution referenced by the Permanent Council, which we have been instructed by the Permanent Council to treat as a Guideline, which specifically asks the Committee to “identify *specific* areas revealing progressive development of regulation in this field through conflict of law solutions.” Such a focus is also consistent with the conclusion of the Hague Conference on Private International Law, which in 1967 concluded that, because of the great variety of claims encompassed in the field of non-contractual liability, addressing the question of applicable law through a general convention addressing to the entire field was not feasible and accordingly proceeded to pursue the adoption of instruments regulating applicable law in specific subcategories of non-contractual civil liability.

c. The report should complete the project already begun in the preliminary reports of Drs. Villalta and Vázquez, of surveying the approaches to jurisdiction and choice of law currently being employed in the hemisphere in the field of non-contractual liability. With respect to some Members States, the report must focus on the approaches followed by subnational as well as national units. The survey should, where relevant, describe not only the current approaches followed by the Members States, but also the historical evolution of the states’ approach to the questions of applicable law and competency of international jurisdiction in the field of extracontractual liability. As far as possible, the report should also address scholarly critiques and proposals for change that have been made in the areas of jurisdiction and choice of law in non-contractual disputes.

d. The report should, as far as possible, address the approaches employed by Members States to decide the applicable law and competency of international jurisdiction with respect to particular subcategories of non-contractual obligations, to the end of fulfilling the mandate to “identify specific areas revealing progressive development of regulation in this field through conflict of law solutions.” Given the breadth of the category of non-contractual obligations, it will not be possible to survey the Members States’ approaches to applicable

law and competency of international jurisdiction with respect to each and every subcategory of non-contractual obligation. The rapporteurs will accordingly have to limit their research to some subcategories. Having conducted this survey, the rapporteurs should seek to identify those specific subcategories within the field of non-contractual obligations as to which there exists sufficient harmony among the approaches of the Member States so as to make possible the successful adoption of an inter-American instrument on the subject.

e. The report should also consider the past and ongoing efforts of global, regional, and subregional organizations that have sought, and in some cases continue to seek, conflict of laws solutions in this field. As discussed in the reports of Drs. Villalta and Vázquez, efforts have been undertaken, or are currently being undertaken, by the Hague Conference at the global level, by the European Union at the regional level, and by Mercosur at the subregional level, among other public and private organizations that have studied the problem and in some cases have proposed solutions. All of these efforts should be closely studied for the lessons they might offer and what they might suggest about the likelihood of success or failure.

f. With respect to the particular subcategories of non-contractual obligations that the rapporteurs regard as potentially suitable for treatment in an Inter-American conflict of laws instrument, the report should provide options as to the form and content of such an instrument. As to form, the report should consider whether the instrument should take the form of a convention or a model law. With respect to content, the report should set forth the possible approaches the instrument might take to the question of international jurisdiction and choice of law. Specifically, the report should consider whether, with respect to the particular subcategory of non-contractual obligation being considered, a conflict of laws approach is preferable to an attempt to harmonize the substantive laws of the Member States. With respect to both form and content, the report should discuss the pros and cons of following the various options considered.

g. If the rapporteurs consider it desirable, the report could also set forth the

provisions that a conflict of laws instrument might include.

This resolution was unanimously adopted at the session held on 23 August 2002, in the presence of the following members: Drs. Brynmor Thornton Pollard, Orlando R. Rebagliati, Felipe Paolillo, Ana Elizabeth Villalta Vizcarra, Kenneth O. Rattray, Carlos Manuel Vázquez and Sergio González Gálvez.