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CJI/RES.59 (LXIII-O/03)

**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 instructed 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, and 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 CIDIP-VI/RES.7/02, which the Permanent Council instructed the Inter-American Juridical Committee to treat as a guideline, contemplated a “preliminary study, to be submitted to a Meeting of Experts, identifying 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;”

RECALLING that at its 62nd regular session, the Inter-American Juridical Committee concluded, on the basis of studies by rapporteurs Drs. Ana Elizabeth Villalta Vizcarra and Carlos Manuel Vázquez, that “because of the complexity of the subject and the wide variety of diverging forms of responsibility encompassed within the category of ‘non-contractual civil liability,’ it would be more appropriate to recommend initially the adoption of inter-American instruments to regulate jurisdiction and choice of law with respect to specific sub-categories of non-contractual civil liability, and only afterwards, should the proper conditions exist, pursue the adoption of a general inter-American instrument to address jurisdiction and choice of law for the entire field of non-contractual liability” [CJI/RES.55 (LXII-O/03)];

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

RESOLVES:

1, To welcome the additional studies presented by the co-rapporteurs, Dr. Ana Elizabeth Villalta Vizcarra (*Applicable Law and Competency of International Jurisdiction with Respect to Extracontractual Civil Liability*, CJI/doc.130/03) and Dr. Carlos Manuel Vázquez (*Jurisdiction And Choice Of Law For Non-Contractual Obligations – Part II: Specific Types Of Non-Contractual Liability Potentially Suitable For Treatment In An Inter-American Private International Law Instrument*, CJI/doc.133/03).

2. To reaffirm its conclusion that, because of the complexity of the subject and the wide variety of diverging forms of responsibility encompassed within the category of “non-contractual civil liability,” it would be more appropriate to recommend initially the adoption of inter-American instruments to regulate jurisdiction and

choice of law with respect to specific sub-categories of non-contractual civil liability, and only afterwards, should the proper conditions exist, pursue the adoption of a general inter-American instrument to address jurisdiction and choice of law for the entire field of non-contractual liability.

3. To conclude that:

- a) favorable conditions currently exist for the elaboration of an Inter-American instrument addressing jurisdiction and applicable law with respect to non-contractual obligations arising out of traffic accidents;
- b) favorable conditions currently exist for the elaboration of an Inter-American instrument addressing jurisdiction and applicable law with respect to non-contractual liability of manufacturers and others for defective products (product liability), although the elaboration of such an instrument would be more challenging than the elaboration of an instrument addressing jurisdiction and choice of law for non-contractual obligations arising out of traffic accidents;
- c) the elaboration of an inter-American instrument addressing jurisdiction and choice of law with respect to non-contractual liability arising out of transboundary environmental damage would be considerably more challenging than the elaboration of an instrument addressing jurisdiction and applicable law for non-contractual obligations arising out of traffic accidents and for non-contractual liability of manufacturers and others for defective products (product liability);
- d) favorable conditions do not currently exist for the elaboration of an inter-American instrument addressing jurisdiction and applicable law with respect to non-contractual liability resulting from acts occurring in cyberspace.

4. To transmit to the Permanent Council, along with this resolution, the reports presented to the Committee by the rapporteurs on this topic at the 61st, 62nd and 63rd regular sessions, and to recommend that this resolution and the accompanying reports be made available, as contemplated by CIDIP-VI/RES.7/02, to the Meetings of Experts that may be convened to study possible topics to be included in the agenda of CIDIP-VII.

5. To convey to the Permanent Council its continuing desire to support the work of the Organization relating to the harmonization and development of private international law in the Hemisphere as the Permanent Council may request.

This resolution was unanimously adopted at the session held on 12 August 2003, in the presence of the following members: Drs. João Grandino Rodas, Brynmor Thornton Pollard, Antonio Gómez-Robledo, Ana Elizabeth Villalta Vizcarra, Jonathan T. Fried, Carlos Manuel Vázquez, Luis Herrera Marcano and Felipe Paolillo.

Annexes:

1. CJI/doc.97/02 – Recommendations and Possible Solutions Proposed to the Topic Related to the Law Applicable to International Jurisdictional Competence with Regard to Extracontractual Civil Liability, presented by Dr. Ana Elizabeth Villalta Vizcarra.
2. CJI/doc.104/02 rev.2 - 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, presented by Dr. Carlos Manuel Vázquez

3. CJI/doc.119/03 - The Applicable Law and Competency of International Jurisdiction in Relation to Extracontractual Civil Liability, presented by Dr. Ana Elizabeth Villalta Vizcarra.
4. CJI/doc.122/03 corr.1 - Jurisdiction and Choice of Law for Non-Contractual Obligations – Part I: Hemispheric Approaches to Jurisdiction and Aplicable Law for Non-Contractual Civil Liability, presented by Dr. Carlos Manuel Vázquez.
5. CJI/doc.130/03 - Applicable Law and Competence of International Jurisdiction Concerning Non-Contractual Civil Liability, presented by Dr. Ana Elizabeth Villalta Vizcarra.
6. CJI/doc.133/03 – Jurisdiction and Choice of Law for Non-Contractual Obligations – Part II: Specific Types of Non-Contractual Liability Potentially Suitable for Treatment in an Inter-American Private International Law Instrument, presented by Dr. Carlos Manuel Vázquez.

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