

CMI IWG on the Collision Conventions

Questionnaire

1. Definitions

1.1 Vessel

The 1910 Collision Convention applies to the collision of vessels (Art. 1) but does not feature a definition of a vessel.

Should the revised Convention define “vessel”?

If so, should the definition include all floating structures?

1.2 Ocean/Inland Navigation Vessels

The 1910 Convention applies to collisions between sea-going vessels and between sea-going vessels and vessels of inland navigation (Art. 1), and thus not to collisions between vessels of inland navigation.

Should the revised Convention apply to any collision between vessels?

1.3 Collision

The 1910 Convention applies to collisions between vessels but does not say what a collision is.

Should the revised Convention define “collision”?

If so, should it include cases where damage is caused to one vessel by the manoeuvre of another even though there was no physical contact between the two?

Should it include vessels engaged in a towing situation?

Should it include collisions where both vessels are owned by the same beneficial owner?

2. Scope of Application

2.1 Reference to the Flag

The 1910 Convention applies if all vessels involved fly the flag of Contracting States (Art. 12), in whatever waters the collision occurs (Art. 1).

Should the scope of application of the revised Convention be expanded (i) to the effect that the revised Convention applies, irrespective of the involved vessels’ flags, if the collision occurred within a Contracting State’s internal waters, coastal sea and/or exclusive economic zone and (ii) to the effect that the revised

Convention applies to any collision in any other waters if one or more of the colliding vessels flies the flag of a Contracting State?

2.2 REIO-Clause

Should the revised Convention include a REIO-Clause (Regional Economic Integration Organisation) which would in particular allow the EU to become a contracting party? This may in particular be relevant if the revised Convention features provisions on international private law (point 5 below), jurisdiction and recognition/enforcement (points 6 and 7 below).

3. Liability

3.1 Fault-Based Liability

The principal underlying decision of the 1910 Convention is that the vessels' liability arising from a collision is fault-based (Art. 2(1), Art. 3 and Art. 4(1)) and that there is no strict liability.

Should fault-based liability be maintained? If not, can you provide your reasoning for abandoning fault-based liability?

3.2 Fault of the Vessel

The 1910 Convention's liability concept is based on the fault of the vessel. However, the Convention does not identify the persons who must act negligently, but merely refers to "the vessel" being in fault.

Should this concept be maintained in the revised Convention, or should the revised Convention identify who needs to be at fault?

3.3 Title to Sue

The 1910 Convention is silent as to who is entitled to bring an action against the liable "vessel".

Should the revised Convention identify which parties (registered shipowners, bareboat charterers, etc.) may bring suit against the liable vessel?

3.4 Crew, Pilot etc. Channelling of Negligence

The 1910 Convention does not preclude entities other than the shipowners being liable for collision damage.

Should this concept to be maintained in the revised Convention or should liability be channelled solely to the owner of the liable vessel?

3.5 Pro Rata versus Joint Liability

The 1910 Convention liability system provides for joint liability of the involved vessels in relation to third parties' personal injury claims (Art. 4 (3)). A vessel that

settles the full amount of the claim may recover from the other vessel in proportion to its share of liability (Art. 4 (3)).

The 1910 Convention does not apply to damage caused to the property of third parties *not* on board one of the vessels involved. For example, a collision leading to damage to a bridge. It is to be presumed that national law would apply to any claim for such damage.

However, in respect of claims to property damage on board one of the colliding vessels, the 1910 Convention provides for a pro-rata liability in proportion to the degree of fault of the vessels involved (Art. 4 (1) and (2)). This becomes relevant in cases where two or more than two vessels are involved in the collision and one vessel seeks to recover from one or more of the other vessels, or where there is damage to property, in particular cargo, and the property owner claims from the two (or more) vessels involved.

Should the joint liability for *personal injury* claims of all involved vessels found to be at fault be explicitly extended to liability for third-party *property* damage in the revised convention? Even if not on board one of the colliding vessels? If so, what justifies your reasoning?

3.6 Defects in the Vessel

Under the 1910 Convention, the vessel owner will not be liable if the collision was caused by some defect in the vessel which the owner, by applying due diligence in all respects, was unable to detect.

Should there be an exception to the effect that the vessel should be strictly liable for such defects irrespective of fault?

If so, should the revised Convention then define “defects”, for which no fault is required to lead to liability?

3.7 Legal Presumptions

Art. 6 (2) of the 1910 Convention provides that legal presumptions relating to fault are not applicable when it comes to determining liability under the Convention.

Should the revised Convention expressly adopt some internationally recognised presumptions, and if so, what type of presumption?

3.8 Recoverable Damages

The 1910 Convention does not address what damages are recoverable. The Lisbon Rules 1987, issued by CMI, (<https://comitemaritime.org/work/collision/>), include detailed principles as to the recoverable damages and their assessment in typical collision cases.

Should the revised Convention define recoverable damages?

If so, should the Lisbon Rules 1987 on recoverable damages in collision cases be made part of the revised Convention?

4. **Mandatory Insurance**

A number of international liability conventions, including oil pollution conventions, provide that the vessel owner must maintain insurance which covers claims under the respective conventions. These conventions often have a public policy aim and may not be an appropriate model for the 1910 Collision Convention. In Europe, EU-Directive 2009/20 provides that the vessel owner must maintain insurance that covers claims up to the limitation amounts of the 1996 LLMC relevant for the vessel. The Directive does not provide for direct action against the vessel's liability insurers.

Should the revised Convention provide for mandatory insurance? If so, what justifies this change in your view?

4.1 **Direct Actions and Defences**

If mandatory collision insurance is to be introduced, should the revised Convention provide for direct actions by the damaged parties against the liability insurers of the liable vessel? If so, what justifies this change in your view?

If so, how would this be achieved given the usual sharing of liability cover between the vessel's hull and machinery and P&I insurers?

If it were to be achieved, should the insurers benefit from any defence they might have had vis-à-vis their insured related to their policy? Would this include the bankruptcy or winding up of the vessel owner and pay-to-be-paid clauses?

5. **International Private Law**

The 1910 Convention provides for a unified liability regime covering claims arising from the collision. Any further issues, *e.g.*, the recoverable damages, the identity of the liable parties, title to sue etc., are left to the law otherwise applicable, determined by international private law principles. These principles normally consider each claim separately, to the effect that a claim by a first vessel against a second may be decided on different rules of law than those applicable in the claim by the second vessel against the first, even though both claims concern the same collision.

Should a revised Convention include international private law rules on the law otherwise applicable to all claims, seeking to identify one law that is relevant? If so, should the revised Convention adopt the choice of law provisions of articles 4 and 5 of CMI's 1977 Draft International Convention for the Unification of certain rules concerning civil jurisdiction, choice of law, and recognition and enforcement of judgements in matters of collision (the "CMI 1977 Rio Draft Convention"), published in the CMI Yearbook 1977 Part I, p. 22, <https://comitemaritime.org/publications-documents/cmi-yearbook/> ?

6. **Jurisdiction**

The 1910 Convention does not include any provisions as to jurisdiction.

Should a revised Convention provide for jurisdiction?

If so, should the jurisdiction be based on the International Convention on certain rules concerning civil jurisdiction in matters of collision, 1952 or on the CMI 1977 Rio Draft Convention?

The CMI 1977 Rio Draft Convention allowed for jurisdiction:

- a) where the defendant has his habitual residence or domicile, or principal place of business;
- b) in the internal waters or territorial sea of which the collision occurred;
- c) where a vessel involved in the collision (other than the plaintiff's own vessel) or a vessel under the same ownership lawfully subject to arrest, has been arrested or security has been provided to avoid arrest on account of the collision;
- d) where the defendant has property subject to attachment under the law of that State and such property has been attached or security has been provided to avoid attachment on account of the collision; or
- e) where a limitation fund has been properly constituted by the defendant in accordance with the law of that State on account of the collision.

7. **Recognition and Enforcement**

Neither the 1910 nor the 1952 Convention include regulations on the recognition and enforcement of judgments in collision matters. The CMI 1977 Rio Draft Convention provided that State Parties would recognize judgments from other State Parties.

Should such provisions be adopted in the revised Convention, e.g., to the effect that judgments in collision matters rendered by the court of one Contracting State may be enforced in another Contracting State?

8. **Autonomous and Unmanned Ships**

Maritime Automated Surface Ships are coming. It is not yet clear whether this will require amendments to several conventions or the creation of a single MASS convention.

Should the revised Convention stipulate that it applies to any vessel whether manned or autonomous or is it too early to consider including autonomous vessels?

If autonomous vessels should be included, should the revised Convention include specific rules for collisions involving autonomous ships?

9. **Conclusions**

In light of the above questions, do the revisions to the 1910 Collision Convention which your association supports justify the amendment of the Convention at all,

or does the risk of creating a new convention which might not be as universally adopted as the 1910 Convention lead your association to the overall conclusion that the Convention should remain as it is at present?