



ASSOCIAZIONE ITALIANA
DI DIRITTO MARITTIMO



The Collision Convention 1910: Is CMI'S Oldest Convention in Need of Modernization?

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	1960	1970	1980	1990	2000	2010	2020
1910 COLLISION							
1910 SALVAGE			NEW				
1924 LIMITATION	NEW	NEW					
1924 B/L		PROT.	PROT.				
1926 LIEN	NEW		NEW				
1952 CIVIL JUR							
1952 PENAL JUR							
1952 ARREST				NEW			
1964 CLC				PROT.	PROT.		
1971 FUND			PROT.	PROT.			
1974 TRANS PASS					PROT.		
1976 HNS (NYF)						PROT.	
1978 HAMBURG							
2001 BUNKER							
2007 WRECK							
2009 R'DAM RULES (NYF)							

all Conventions in force before year 2000 (except cjur e pjur) have been amended or replaced



ISSUES CONSIDERED

- SCOPE OF APPLICATION
- JURISDICTION
- GOVERNING LAW
- RECOVERABLE DAMAGE
- JOINT & SEVERAL LIABILITY FOR THIRD PARTIES PROPERTY
- COMPULSORY INSURANCE?
- DIRECT ACTION?
- DEFINITIONS



SCOPE OF APPLICATION

COLLISION CONVENTION → FLAG

BUT → Article 14

Any one of the High Contracting Parties shall have the right, three years after this Convention comes into force, to call for a fresh conference with a view to possible amendments therein, and particularly with a view to extend, if possible, the sphere of its application.

«NEW» CONVENTIONS: LLMC – SALVAGE – ARREST '99 → JURISDICTION IN STATE PARTY

... WHENEVER CIVIL OR ARBITRAL PROCEEDINGS RELATING TO MATTERS DEALT WITH IN THIS CONV. ARE BROUGHT IN A STATE PARTY (SALVAGE 1989 ART. 2)



JURISDICTION

JURISDICTION RULED IN A SEPARATE CONVENTION CIVIL JURISDICTION CONVENTION 1952

PROPOSAL

BRING AND IMPLEMENT RULES IN THE COLL. CONV. BY ADOPTING

- CMI RIO DRAFT 1977

(1)Unless the parties otherwise agree, the plaintiff may prosecute such an action only in a Court of a State Party to this Convention:

(a)Where the **defendant** has his **habitual residence** or domicile, or principal place of business; or

(b)In the internal waters or **territorial sea** of which the **collision** has **occurred**; or

(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; or

(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.

ADD

PROVIDED HOWEVER THAT NOTHING WILL PREVENT THE PARTIES' AGREEMENT TO SUBMIT THE ACTION TO ANY OTHER COURT OR ARBITRAL TRIBUNAL APPLYING THIS CONVENTION



EXTENDING THE INT'L UNIFORM REGIME RECOVERABLE DAMAGE (1)

- COLLISION CONV.

Art. 4 “The damages caused either to the vessels or their cargoes or to the effects or other property of the crew, passengers or other persons onboard ...”.

Damage to property outside colliding vessels ashore or at sea not covered and subject to national laws.

EXTEND TO DAMAGE DIRECTLY RESULTING FROM COLLISION INFLICTED



EXTENDING THE INT'L UNIFORM REGIME ASSESSMENT OF RECOVERABLE DAMAGE (2)

COLLISION CONV.

→ NOT COVERED

DIFFERENCES IN NATIONAL LAWS

ADOPT

CMI LISBON RULES 1987

I. DEFINITIONS

II. LETTERED RULES A-E:

GENERAL: (CAUSAL LINK – RESTITUTIO – BURDEN OF PROOF)

III. NUMBERED RULES IV-V (RECOVERABILITY CRITERIA)

OR INCLUDE

RULE OF CONFLICT TO IDENTIFY GOV. LAW

OR RESERVE

TO LEX FORI



IDENTIFYING GOVERNING LAW FOR SPECIFIC MATTERS

COLLISION CONV.

→ NOT COVERED

RIO DRAFT 1977

Art. 4 (governing law)

Internal/territ. Waters

→ Law of the STATE

Beyond/territ. Waters

→ Law of the COURT

(except for some FLAG VESSELS)

Art. 5 (matters governed)

Basis of liability

grounds for exemption

Kind of damage recoverable (LISBON)

Quantum of damage (LISBON)

Title to claim (LISBON)

Burden of proof (LISBON)

Prescription





OTHER ISSUES (1)

JOINT AND SEVERAL LIABILITY

COLLISION CONV.

Art. 4

If two or more vessels are in fault the liability of each vessel is in proportion to the degree of the fault respectively committed.

The damages caused, are borne by the vessel in fault in the above proportions and a vessel is not liable for more than such proportion of such damages.

In respect of damages caused by death or personal injuries, the vessels in fault are jointly as well as severally liable to third parties.

EXTEND JOINT LIABILITY RULE TO PROPERTY DAMAGE SUFFERED BY THIRD PARTIES?



OTHER ISSUES (2) COMPULSORY INSURANCE DIRECT ACTION

CONVENTIONS ADOPTING REGIME

1. CLC 1969/1992
2. ATHENS 1974/2002
3. HNS 1996/2010
4. BUNKER 2001
5. NAIROBI 2007

IS THE REGIME JUSTIFIED BY REASONS OF PUBLIC POLICY, IN PARTICULAR AS PROTECTION OF THE GENERAL PUBLIC IN THE EVENT OF POTENTIALLY CATASTROPHIC EVENTS??

ARE CURRENT INT'L INSTRUMENTS ALREADY ANSWERING THIS ISSUE?



DEFINITIONS (cntd)

DEFINE ?

VESSEL (ColReg?)

DEFINE EXTEND SCOPE ?

COLLISION

DEFINE – IDENTIFY ?

(PERSON(S) LIABLE