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The 1960 Geneva Convention – a look over the fence: will the 1910 Collision Convention for oceangoing vessels be revised? A report on the current state of discussions

Presented by Prof. Dr. Dieter Schwampe

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Background

- The 1910 Collision Convention is a CMI Convention, not a convention under the auspices of the International Maritime Organization (IMO)
- Entry into force 1 March 1913
- 89 member states
- Revision Mechanism: Art. 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.

Any Power exercising this right must notify its intention to the other Powers, through the Belgian Government, which will make arrangements for convening the conference within six months.

How it all started and where it stands today

- 2019: Italian Maritime Law Association sets up an own working group to consider a revision of the 1910 Collision Convention.
- 2021: IMLA approaches CMI Executive Council and proposes this as a new work product for CMI.
- 2022: CMI Executive Council resolves to add this to its work program and installs an International Working Group.
- 2022: CMI liaises with the IMO Legal Committee.
- 2022: IWG sends out a Questionnaire to CVMI members (National Maritime Law Associations.
- 2023: Replies from Belgium, Denmark, Finland, Germany, Greece, Italy, Japan, Korea, Malta, Nigeria, Norway, Poland, Singapore, Spain, Turkey, United Kingdom, Ukraine;
  International Chamber of Shipping, International Union of Marine Insurance, Instituto Iberoamericano de Derecho Maritima
- 2023: Work session during the CMI Colloquium in Montreal

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Major Topics:

- Definition of Vessel?
  - Including all floating structures?
- Definition of Collision?
- Scope of Application?
- Fault based liability or no-fault liability?
  - Strict liability at least for vessel defects?
  - Special Rules for Autonomous Ships?
- Channeling of liability exclusively to the owner?
- Mandatory Insurance?
- Direct Action against the Insurer?

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Shall there be a definition of “Vessel”?

- Mixed views, but majority in favor.
- Those opposed either believe that it is not necessary, or that it may be an obstacle for ratification.
- Include floating structures?
  - Small majority in favor.
  - Repeated Reference to art. 3 of the Collision Regulations:

    The word “vessel” includes every description of water craft, including nondisplacement craft, WIG craft and seaplanes, used or capable of being used as a means of transportation on water.

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Shall there be a definition of “Collision”?

- Split views
- Those in favor: adds to clarity.
- Those against: 110 years of court practice have proven that this is not necssary.

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Shall the scope of application only be dependent on occurrence in a member state?

- Very mixed views, but small majority in favor.
- Arguments of those against:
  - Flagg state is an accepted principle in international maritime law
  - Confusion if one vessel sues the other in one jurisdiction under the new CC regime, and the other vessel commences proceedings under her internal/flag laws on collision in another jurisdiction.
  - No need, as Art. 12 already now allows national laws to provide this.
  - At least not for EEZ collisions, as this may not be compatible with the jurisdictional rights of a coastal State under UNCLOS.
  - Rule should be like in the 1989 Salvage Convention: Convention shall apply whenever judicial or arbitral proceedings relating to matters dealt with in the Convention itself are brought in a State Party.

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Shall there be no-fault liability?

- Unanimous view against for traditional ships.
- All but one MLA also against strict liability for vessel defects.
- Maybe different in respect of autonomous ships, but:
  - Too early to determine now.
  - Wait for the IMO MASS Code.

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Shall liability be channeled to the owner only?

- Overwhelming opposition
  - No need. Current system works.
  - No reasonable ground why channeling should be introduced.
  - No reason why a person at fault and subject to tort liability should be released from such liability because it is channeled to the owner.
  - Collision claims being substantially tort claims, any limitation of those who have a right to bring suit would be problematic and against the general tort concepts which have no such limitation.
  - Channeling of liability is a concept for public interest no-fault conventions. It has no place in the area of collision liability.

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Shall there be joint liability for property damage?

- Almost equal support and opposition
  - Yes. This would be in line with general concepts of tort law.
  - Yes. No reason to treat property damage different from personal injury.
  - No. Separate liability is in line with the error in navigation defence. Joint liability would disturb this.
  - No. If it were introduced, “both to blame collision clauses” would wipe out the effect anyhow.
  - No. Joint liability could lead to attempts to circumvent limitation under LLMC.
  - No need, as property usually is insured.

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Shall there be mandatory insurance?

- Small majority against.
- Yes. The EU has it already. Including it in the Collision Convention, this would bring level playing field.
- Yes. Overall increase of safety standards and prospective emergence of autonomous ships justify it.
- Yes. It serves the original purpose of the Convention to facilitate indemnification of the innocent victim.

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Shall there be mandatory insurance?

- No. Mandatory insurance should remain reserved for matters of specific overriding importance, such as pollution, loss of life. These areas have their own conventions, including mandatory insurance (Athens; CLC; Bunkers).
- No. Property (ship and cargo) is usually insured anyhow, so there is insurance protection existing. Mandatory insurance would only be a benefit for other insurers. No need for that.
- No. It would create difficulties in view of different insurance markets for collision risks.
- No. Collision Convention would not be the right place for such a rule. If it is desired, it should be dealt with in LLMC (see the European Directive 2009/20).
- Exiting conventions with mandatory insurance are in the area of public interest (pollution; passengers; crew).
- ICS/IUMI: No need.

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If so, shall there be direct action?

- Yes. The split between P&I insurance and H&M insurance (Running Down Clause) is outdated anyhow.
- Yes. It gives better protection of the insured party.
- Yes. In particular for personal injury.
- Yes. It simplifies and expedite claims settlement.

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If so, shall there be direct action?

- No need. Ship and cargo are usually insured. Such subrogated insurers do not need a direct action against collision liability insurers.
- Passengers and crew are already protected by other conventions with direct action.
- No established need for direct action. Current system works.
- In view of the market split between P&I and H&M, direct action would be difficult to handle. E.g. different renewal dates, different cover concepts. Conventions should not interfere with cover concepts in the market.
- Could work against a wide acceptance of a revised Convention.
- ICS/IUMI: No justification, as no public policy issues involved

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Summary

- Joint views in some areas:
  - fault principle
  - No rules on MASS
  - Channeling of claims to owners
- Split views in some areas:
  - Joint liability for property damage
  - Definitions for *Vessel* and *Collison*
- Widespread view: No change of the Convention, if there are either too few or too many changes:
  - If too few changes: Not worth the effort.
  - If too many changes: Risk of dishamonization, as some states may ratify, others not.

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  - Definitions
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Shipowner / P&I Clubs / Cargo Insurers / Hull Insurers:
Do not touch it !
It works well since 110 years !

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