

Responses to the Questionnaire on the revision of the 1910 Collision Convention

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¹ **Disclaimer:** Ukraine is not a party to the 1910 Collision Convention, however some of its provisions are implemented in the Merchant Shipping Code of Ukraine (**the MSCU**). So, the questions below are answered in the light of practice and legislation in Ukraine, as well as the prospects for legal developments in collision regulation.

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Questions	Answers
<p>1. Definitions</p> <p>1.1 Vessel</p> <p>The 1910 Collision Convention applies to the collision of vessels (Art. 1) but does not feature a definition of a vessel.</p> <p>Should the revised Convention define “vessel”? If so, should the definition include all floating structures?</p>	<p><i>The revised Convention should define "vessel" to avoid any ambiguity or confusion. It is important to have a clear and precise definition of "vessel" for the purposes of applying the Convention and determining its scope of application.</i></p> <p><i>Furthermore, the definition of "vessel" should include all floating structures. This is because modern technology has led to the development of various types of floating structures that are not necessarily designed or used for navigation, but may still pose a collision risk to other vessels. Therefore, it is important for the Convention to address these types of structures and provide a clear framework for determining liability in case of collision.</i></p>
<p>1.2 Ocean/Inland Navigation Vessels</p> <p>The 1910 Convention applies to collisions between sea-going vessels and between seagoing vessels and vessels of inland navigation (Art. 1), and thus not to collisions between vessels of inland navigation.</p> <p>Should the revised Convention apply to any collision between vessels?</p>	<p><i>It would depend on the scope and purpose of the revised Convention.</i></p> <p><i>If the goal of the revision is to address all types of vessel collisions and promote safety in all waterways, including those used for inland navigation, then it may be appropriate to extend the application of the Convention to all vessel collisions.</i></p> <p><i>It is important to note that expanding the scope of the Convention to cover all types of vessel collisions would require careful consideration of various factors, including the differences in regulations and standards between sea-going vessels and inland navigation vessels, the potential impact on the liability and compensation regimes in different jurisdictions, current legal regulations on the collision of vessels of inland navigation.</i></p>

	<p><i>However, for the time being, our association is inclined to not extend the revised Convention to inland waterway vessels any further than it already has and this position is also supported by the article 297 of the MSCU.</i></p>
<p>1.3 Collision</p> <p>The 1910 Convention applies to collisions between vessels but does not say what a collision is.</p> <p>Should the revised Convention define “collision”?</p> <p>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?</p>	<p><i>It is advisable for the revised Convention to define the term "collision" to avoid any confusion or ambiguity in its application. The definition should cover situations where there is physical contact between two or more vessels resulting in damage or loss, and also include cases where there is no physical contact between two vessels, but one vessel causes damage to another vessel due to its manoeuvres, as this can also lead to disputes and claims for compensation.</i></p> <p><i>It is also recommended that the revised Convention should include vessels engaged in a towing situation, as such situations can also result in collisions and damage.</i></p> <p><i>Regarding collisions where both vessels are owned by the same beneficial owner, it may not be necessary to include them in the definition of "collision" as they may not give rise to claims for compensation. However, it would depend on the specific circumstances and the intention of the revised Convention.</i></p>
<p>2. Scope of Application</p> <p>2.1 Reference to the Flag</p> <p>The 1910 Convention applies if all vessels involved fly the flag of Contracting States (Art. 12), in whatever waters the collision occurs (Art. 1).</p>	<p><i>Regarding (i): expanding the scope of application of the revised Convention in such way would make sense as it would provide more comprehensive coverage and avoid potential gaps in liability regimes, especially when there can be collision between vessels under different flags, which are party to different legal regimes on the collision issues. This would ensure that all</i></p>

<p>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?</p>	<p><i>vessels, regardless of their flag, are subject to the same set of collision regulations in these waters.</i></p> <p><i>Regarding (ii): expanding the scope of the revised Convention in this way could also be beneficial. This would ensure that the Convention applies to a wider range of collisions. However, it may also raise practical issues with enforcement, particularly in cases where one of the vessels involved is not flagged by a Contracting State. Therefore, careful consideration should be given to the potential implications of such an expansion.</i></p>
<p>2.2 REIO-Clause</p> <p>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).</p>	<p><i>It would be beneficial for the revised Convention to include such a clause and facilitate the implementation and application of the Convention within the member states of the EU, especially when the EU has been a driving force in maritime safety and environmental protection, and its involvement in the Convention would enhance its effectiveness and global reach.</i></p>
<p>3. Liability</p> <p>3.1 Fault-Based Liability</p> <p>The principal underlying decision of the 1910 Convention is that the vessels' liability arising</p>	<p><i>We believe that the fault-based liability should be maintained.</i></p>

<p>from a collision is fault-based (Art. 2(1), Art. 3 and Art. 4(1)) and that there is no strict liability.</p> <p>Should fault-based liability be maintained? If not, can you provide your reasoning for abandoning fault-based liability?</p>	
<p>3.2 Fault of the Vessel</p> <p>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.</p> <p>Should this concept be maintained in the revised Convention, or should the revised Convention identify who needs to be at fault?</p>	<p><i>From our perspective this concept should be maintained, otherwise it may increase the complexity and uncertainty of determining liability, potentially leading to more legal disputes.</i></p>
<p>3.3 Title to Sue</p> <p>The 1910 Convention is silent as to who is entitled to bring an action against the liable “vessel”.</p> <p>Should the revised Convention identify which parties (registered shipowners, bareboat charterers, etc.) may bring suit against the liable vessel?</p>	<p><i>It would be helpful for the revised Convention to provide clarity on who is entitled to bring an action against the liable vessel. This would ensure that there is no ambiguity regarding the standing to sue and prevent unnecessary disputes. Therefore, the revised Convention should identify which parties may bring claim against the liable vessel. The Convention could provide a non-exhaustive list of potential claimants, such as the registered shipowner, bareboat charterer, and any other party that has a proprietary or possessory interest in the vessel. This would provide greater certainty and predictability for all parties involved.</i></p>

<p>3.4 Crew, Pilot etc. Channelling of Negligence</p> <p>The 1910 Convention does not preclude entities other than the shipowners being liable for collision damage.</p> <p>Should this concept to be maintained in the revised Convention or should liability be channelled solely to the owner of the liable vessel?</p>	<p><i>This concept should be maintained in the revised Convention. This allows for a more flexible and comprehensive approach to liability, as there may be cases where the shipowner is not the only party responsible for the collision.</i></p>
<p>3.5 Pro Rata versus Joint Liability</p> <p>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)).</p> <p>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.</p> <p>However, in respect of claims to property damage on board one of the colliding vessels, the 1910</p>	<p><i>Extending joint liability for personal injury claims to third-party property damage caused by the involved vessels would provide a more comprehensive and consistent liability regime in the revised Convention and probably will be less dependent on different national approaches. This would ensure that third-party property owners who suffer damage as a result of a collision between vessels are able to recover their losses in a fair and efficient manner, without the need to resort to potentially complex and time-consuming legal proceedings under national law.</i></p> <p><i>Furthermore, such an extension of liability would be consistent with the overall potential purpose of the revised Convention, which is to provide a modern and effective framework for the resolution of collision claims between vessels. It would also align the revised Convention more closely with the liability regimes established under other international maritime conventions, such as the International Convention on Civil Liability for Oil Pollution Damage.</i></p>

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?

It makes sense to consider clarifying the definition of "defects" and the level of diligence expected of vessel owners to detect them. This would provide more guidance and certainty to owners and help avoid disputes about what constitutes a defect and whether it was detectable with due diligence. Also, it is better to stipulate that the owner shall have the burden of proving that due care was taken on its part and that the cause of the collision was a defect it could not detect.

<p>If so, should the revised Convention then define “defects”, for which no fault is required to lead to liability?</p>	
<p>3.7 Legal Presumptions</p> <p>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.</p> <p>Should the revised Convention expressly adopt some internationally recognised presumptions, and if so, what type of presumption?</p>	<p><i>Introducing internationally recognized presumptions could potentially provide clarity and consistency in determining liability in collision cases. However, we consider that it would be better not to adopt such presumptions in the text of the revised convention so as not to add more confusion to the application of those presumptions that may not be mentioned.</i></p>
<p>3.8 Recoverable Damages</p> <p>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.</p> <p>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?</p>	<p><i>Providing clarity on the recoverable damages in collision cases can be beneficial, as it ensures consistency and predictability in determining the extent of compensation that can be awarded to the injured parties. This clarity can assist in resolving disputes and promoting fairness.</i></p> <p><i>The Lisbon Rules 1987, issued by the Comité Maritime International (CMI), already provide detailed principles on the recoverable damages and their assessment in typical collision cases. These rules, not being reviewed periodically, have been accepted by the international maritime community and are considered a respected and widely recognized framework.</i></p> <p><i>Incorporating these Rules into the revised Convention could contribute to the harmonization of collision liability and the assessment of damages across jurisdictions. This could enhance legal certainty and facilitate consistent application and interpretation of the rules in collision cases.</i></p>

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?

On the one side, providing mandatory insurance in the revised Convention may lead to resolve such issues as ensuring relatively prompt and adequate compensation (also simplifying claims process), encouraging responsible ownership and so on.

However, in our opinion, there are already enough cases of compulsory insurance in the shipping industry. For this reason we believe that the revised Convention should not cover this issue and provide one more.

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?

Bearing in mind our response to question no. 4 above, and in case of introduction of the mandatory collision insurance, the revised Convention should provide the possibility for direct actions against such insurers, since:

- *it would provide a direct avenue for damaged parties to seek compensation: this can streamline the claims process, remove potential obstacles, and ensure that such parties have a more efficient and effective means to recover their losses. It can simplify the process, potentially reduce litigation, and lead to more prompt compensation for them.*

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?

- *it would align with modern legal developments and practices, promoting consistency and harmonization in the treatment of liability insurance. For instance, the same approach can be found in Article 12 (8) of the International Convention on liability and compensation for damage in connection with the carriage of hazardous and noxious substances by sea, 1996; or Article 7 (10) of the International Convention on civil liability for bunker oil pollution damage, 2001.*

Regarding the sharing of liability cover between the vessel's hull and machinery insurers and P&I (Protection and Indemnity) insurers, it would require coordination/cooperation between insurers and amending their terms of insurance to allocate liability among them.

As for the defenses, it is common for insurers to benefit from any defenses they might have had vis-à-vis their insured.

Regarding bankruptcy / winding up:

While it is important to protect the interests of insurers, it would also be essential to strike a balance that ensures the rights of damaged parties to seek redress and receive fair compensation.

We believe that in this case the insurer should fulfil its obligations to compensate for the insured risks regardless of this fact. The insurer's defence may concern mainly such issues as the insured's liability and the amount of compensation.

Otherwise, the point of insurance may be lost and the injured party will be in the same difficult position in the event of bankruptcy or winding up of the vessel owner as if there was no insurance.

Therefore, it would be better if the revised Convention could address the interplay between direct actions, insurer defenses, and the effects of insolvency to provide clarity and consistency.

On top of that, *it is also necessary to consider whether the owner will be required to maintain only insurance or whether it is possible to have "other financial security, such as the guarantee*

	<p><i>of a bank or similar financial institution” and if yes, would the same approaches above apply to such other financial institutions.</i></p>
<p>5. International Private Law</p> <p>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.</p> <p>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,</p>	<p><i>As the revised Convention will aim to provide a unified liability regime, extending the scope to include international private law rules for determining the applicable law could be seen as a logical step. It would ensure that the principles governing liability and the law applicable to claims arising from collision cases are aligned, promoting coherence and fairness. So, UMBA supports this idea.</i></p> <p><i>Regarding CMI 1977 Rio Draft Convention: provisions of this convention could provide a comprehensive framework for determining the applicable law in collision cases and serve as a basis for further consideration.</i></p>

<p>https://comitemaritime.org/publications-documents/cmi-yearbook/?</p>	
<p>6. Jurisdiction</p> <p>The 1910 Convention does not include any provisions as to jurisdiction.</p> <p>Should a revised Convention provide for jurisdiction?</p> <p>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?</p> <p>The CMI 1977 Rio Draft Convention allowed for jurisdiction:</p> <ul style="list-style-type: none"> 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; 	<p><i>Including jurisdiction provisions in a revised Convention is supported by the UMBA since it can help establish a clear framework for determining the competent courts or tribunals to hear collision-related cases. It can provide guidance on the proper venue for initiating legal proceedings, ensuring consistency and predictability in the resolution of disputes.</i></p> <p><i>Considering both Article 1 of the International Convention on certain rules concerning civil jurisdiction in matters of collision, 1952, and Article 2 of the CMI 1977 Rio Draft Convention, we are inclined to the latter because of a more comprehensive set of jurisdictional provisions that address the complexities of collision cases.</i></p>

<p>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</p> <p>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.</p>	
<p>7. Recognition and Enforcement</p> <p>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.</p> <p>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?</p>	<p><i>Yes, it would be advisable for a revised Collision Convention to include provisions on the recognition and enforcement of judgments in collision matters. Such provisions would contribute to the effectiveness and harmonization of the Convention's application across different jurisdictions and enable judgments rendered in one Contracting State to be recognized and enforced in another Contracting State, subject to appropriate legal safeguards and conditions.</i></p>
<p>8. Autonomous and Unmanned Ships</p>	<p><i>Given the emerging development of Maritime Automated Surface Ships (MASS) and the potential impact on collision scenarios, it is worth considering the inclusion of autonomous</i></p>

<p>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.</p> <p>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?</p> <p>If autonomous vessels should be included, should the revised Convention include specific rules for collisions involving autonomous ships?</p>	<p><i>vessels in a revised Collision Convention. While the technology is still evolving and regulatory frameworks are being developed, it is essential to anticipate future challenges and establish appropriate rules. It would also help foster the safe and efficient integration of autonomous vessels into existing maritime practices.</i></p> <p><i>Otherwise, after a decade of our efforts on the revision of the Collision Convention, we will have to revisit it again.</i></p> <p><i>If autonomous vessels are to be included in the revised Convention, it should explicitly stipulate that the Convention applies to both manned and autonomous vessels (and here we return back to question no. 1 above regarding definition of “the vessel”). This would ensure that collision-related issues are addressed comprehensively and consistently, regardless of whether the vessel is operated by humans or through autonomous systems.</i></p> <p><i>It would also be prudent to incorporate specific rules for collisions involving autonomous ships.</i></p>
<p>9. Conclusions</p> <p>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?</p>	<p><i>Nothing stays on its path, the world is changing, and for this reason, we all need to make constant efforts to revise the previously agreed and established rules. It does not mean that we need to change everything and provide a new set of rules; we just need to look at the current situation and developments and consider how we can amend it to meet the current realities. For this reason, we support the idea of further considering the revision of the 1910 Collision Convention.</i></p>