Explanatory Notes
on the

Draft Protocol to the
International Convention for the Unification of Certain Rules of Law With Respect to Collisions Between Vessels, 1910

and the

Consolidated Version of the revised Collision Convention

A. Introduction

The IWG

In 2022, following a proposal by the Italian MLA, the Executive Council created an International Working Group (IWG) with instructions to consider the review of the 1910 Collision Convention and related Conventions, such as the 1952 Jurisdiction Convention. The Executive Council appointed John O'Connor from Canada as chair. The IWG had its opening meeting at the CMI Conference in Antwerp 2022. The first task of the IWG was to prepare a Questionnaire to obtain the views of the National MLAs on a number of issues relating to collision liability the IWG considered to be relevant. The Questionnaire was sent out in February 2023. Responses were received from the MLAs of Belgium, Canada, China, Croatia, Denmark, Finland, Germany, Greece, Italy, Japan, South Korea, Malta, the Netherlands, Nigeria, Norway, Poland, Singapore, Spain, Turkey, United Kingdom, Ukraine, USA, and also from the Instituto Iberoamericano de Derecho Marítimo (IIDM), the ICS and IUMI. The IWG had further open and closed meetings at the CMI Colloquium in Montreal in 2023, the CMI Colloquium in Gothenburg in 2024, the CMI Conference in Tokyo in 2025 and the CMI Colloquium in Rio de Janeiro in 2026, as well as numerous Team meetings on a regular basis.

The Need for a Revision

The responses received from the National MLAs were divided on the question whether the 1910 Collision Convention at all should be revised or whether it should be left untouched. It was found that a majority was in favor of a revision, and that view was shared within the IWG. As a result, it proceeded to consider ways to modify the 1910 Collision Convention.

The Protocol

One of the basic formal issues the IWG then had to decide was whether there should be a completely new Collision Convention replacing the 1910 Collision Convention or merely a Protocol to the 1910 Convention. The IWG found that a Protocol would be more

appropriate, as it would build on a recognized liability regime and thereby better serve to promote the modernization of the 1910 Collision Convention. The IWG also decided to introduce provisions on procedural issues, in particular on jurisdiction, into the new Collision Convention (see Article 9*quater*). In that respect, the IWG also discussed to propose a Protocol to the 1952 Jurisdiction Convention, but decided against it.

The Concept of the Protocol

The 1910 Collision Convention is more than 115 years old. However, the IWG acknowledged that it would appear that its application largely did not give rise to any problems. The IWG therefore did not wish to disturb the underlying concept of the 1910 Convention and sought to carefully modernize and update it. As this is done by way of a Protocol, many of the provisions of the 1910 Convention were left intact, and supplemented, where appropriate with new provisions. As a result, the 1910 Convention, as amended by the Protocol, is a combination of the previous and a more modern terminology. The numbering of the original Articles of the 1910 Convention which were maintained in the new Convention was left intact, in order to facilitate legal research.

The Rio Draft, the Lisbon Rules

To some extent, the IWG was able to rely on texts previously prepared by CMI in relation to liability arising from a collision. The IWG considered and reviewed the Draft International Convention for the Unification of Certain Rules Concerning Civil Jurisdiction, Choice of Law, and Recognition and Enforcement of Judgment in Matters of Collision, adopted by the Plenary Section of the Conference at Rio de Janeiro on 30 September 1977 (the Rio Draft), and, secondly, the Lisbon Rules 1987 on the recoverable property damage following a collision (the Lisbon Rules). Some of the provisions of both instruments found their way into the draft Convention.

No Mandatory Insurance

One of the major and intensively debated issues the IWG had to consider was whether the Protocol should provide for a mandatory insurance of the vessels' liability arising from a collision, possibly combined with a direct action against the insurer. The responses received on the Questionnaire by the National MLAs were divided, and industry stakeholders were against any form of mandatory insurance and/or direct action with the view expressed that the property damage sustained in a collision is private property that can be and usually is insured against such damage by cargo insurance and hull and machinery (H&M) insurance and protection for passengers and crew is already in place in the Athens Convention and Maritime Labour Convention, respectively. As such there is no public interest involved to justify mandatory insurance and a distinction was drawn between the IMO liability and compensation conventions where the Owner is required to maintain insurance and which provide rights of direct action, as these conventions concern public international law and deal with liabilities in areas of public interest, for example protection of the environment.

The issue was discussed within the IWG in great detail. Ultimately, the IWG abandoned the idea, to the effect, that the Protocol does not include any provisions on mandatory insurance or direct action.

B. Explanatory Notes on the Draft Protocol

The Preamble

As is usual in international conventions, the Preamble seeks to outline the underlying considerations relevant in respect of the Protocol. There are references to the 1910 Collision Convention as well as the 1952 Jurisdiction Convention and their role today. The Preamble also emphasizes the need for uniformity in respect of the liability arising from a collision, concludes that the provisions on liability and procedural issues should be merged in one single instrument, and confirms that the 1910 Collision Convention should be modernized. Finally, the Preamble confirms the decision to amend the 1910 Collision Convention by way of a Protocol instead of drafting a completely new Collision Convention for the purpose of replacing the 1910 Convention.

Articles 1 through 6

Articles 1 through 6 of the Protocol amend the operational provisions of Articles 1 through 13 of the 1910 Collision Convention by rewording, adding and deleting text: Article 1 is reworded, Articles 1*bis* and 1*ter* are added, Article 2 (2) of the 1910 Convention is repealed, Articles 4*bis*, 7*bis*, 9*bis*, 9*ter* and 9*quater* are added, Article 11 is reworded, Articles 12 and 13 are repealed. The "Final Clauses" of Articles 14 through 17 and the Additional Article of the 1910 Collision Convention are left intact. For comments on the consolidated new wording of the Convention see below C.

Final Clauses
Article 7

The first of the Final Clauses, Article 7, includes a definition of the term "Collision Convention", which is used in the following Articles 8 through 19.

Articles 8 and 9

Articles 8 and 9 address formal points such as ratification etc and entry into force issues.

Article 10

The relationship between the Protocol and the 1910 Collision Convention is considered in Article 10. The text is based on the provisions of Article 9 of the LLMC Protocol 1996 which deals with the relationship between the LLMC 1976 and the LLMC Protocol 1996.

Article 10 (1) (= Article 9 (1) of the LLMC Protocol 1996) provides that the 1910 Collision Convention and the Protocol shall be read and interpreted together as one single instrument, as between the parties to the Protocol.

Article 10 (2) and 4 (= Article 9 (2) and (4) of the LLMC Protocol 1996) addresses the binding effect of the 1910 Collision Convention and the Protocol on the respective state parties, in line with Article 30 (3) and (4) of the Vienna Treaties Convention. Article 10 (2) is concerned with the situation that a state party to the Protocol is not at the same time a state party to the 1910 Convention, be it because that state never ratified the 1910 Convention or because the 1910 Convention has been subsequently denounced. In that case, Article 10 (2) says that that state must apply

- those provisions of the 1910 Convention that are amended by the Protocol, ie which are reworded or added to the 1910 Convention, and
- Articles 2 to 10 of the 1910 Convention which are left intact by the Protocol,

in relation to all other state parties of the Protocol, but is not required to apply the 1910 Convention vis-à-vis state parties of the 1910 Convention which are not state parties of the Protocol. The effects of Article 10 (2) would essentially be comparable with those of Article 55 (1) Montreal Convention, which concern the relation between the Montreal and the Warsaw Convention instruments.

Article 10 (4) looks at the scenario that a state is at the same time a state party of the 1910 Collision Convention and the Protocol. Here, the respective state remains bound to apply the 1910 Collision Convention with respect to the state parties to the 1910 Collision Convention which have not (yet) ratified the Protocol.

Article 10 (3) is a transitional provision confirming that the Convention only applies to claims arising from a collision occurring after the Protocol enters into force for each state party to the Protocol.

Article 11

Article 11 allows a state party to the Protocol which has two or more territorial units with different systems of law in relation to matters covered by the Convention to declare, when the Protocol is ratified etc, that the Convention is applicable in one or some or all territorial units. An example for state with non-unified legal systems is Canada, where either the common or the civil law system is applied in the different Provinces. Article 11 is based on Article 19 of the Judicial Sales Convention.

Article 12

The Protocol's Article 12 is the so-called REIO-Clause (regional economic integration organization). Basically, only states are subjects of international law and entitled to ratify etc international conventions including the Protocol. However, in certain circumstances an organization may become a party to a Convention, thereby obtaining a status similar to that

of a regular state party. Ratification etc by organizations must be specifically allowed in the convention. REIO-Clauses also define the type of organizations allowed to become state parties. Article 12 (1) sentence 1 provides that the organization must be constituted by states and has competence over certain matters governed by the Convention. The wording of Article 12 has been adopted from Art. 18 (1) through (3) Judicial Sales Convention.

In particular, Article 12 seeks to allow a ratification by the EU, which is constituted by its member states. The EU has obtained competence over, inter alia, issues of jurisdiction and international private law. As a result, the member states are no longer entitled to ratify conventions which include provisions on jurisdiction and international private law, even if they are of a mere ancillary nature within the respective convention. As Article 9*ter* and 9*quater* of the 1910 Convention as amended by the Protocol are concerned with both, all EU Member States would be prohibited from ratifying the Convention. The preferred way out of that situation is a direct ratification of the Convention by the EU, which as a result would likewise and automatically bind all Member States.

Article 13

Additional Article 1*ter* (1) (c) of the 1910 Collision Convention as amended by the Protocol provides that a state party may extend the scope of application of the Protocol to waters beyond its territorial sea, i.e. to the high seas, where not all colliding vessels fly the flag of a State Party, by making a declaration to that effect in accordance with Article 13 of the Protocol. Article 13 of the Protocol requires contracting states wishing to make such a declaration to do so when the Protocol is ratified by the respective state, or at any time thereafter, that the state may withdraw the declaration and that any such declaration shall take effect a certain period after it has been made.

Article 14

Additional Article 1*ter* (1) of the 1910 Collision Convention as amended by the Protocol positively describes the scope of application of the Convention, while Article 1*ter* (2) provides for a number of exceptions. Basically, the Convention applies irrespective of whether the vessels involved in the collision are seagoing or inland waterway vessels. However, Article 1*ter* (2) (ii) allows the state parties to the Protocol to declare that they do not apply the Protocol in case of collisions between inland waterway vessels. In respect of the formalities of such declaration, Article 1*ter* (2) (ii) of the 1910 Convention as amended by the Protocol refers to Article 14 of the Protocol. It provides, similar to Article 13, that the declaration may be made when the Protocol is ratified by the respective state, or at any time thereafter, that the state may withdraw the declaration of exclusion and that any such declarations take effect a certain period after it has been made.

Articles 15 through 19

The last Articles 15 through 19 of the Convention include the further routine Final Clauses concerning revision and amendment, denunciation, and the cessation of the Protocol, as well as the Depositary and languages.

C. Explanatory Notes on the consolidated draft Convention

Article 1

The Convention's Article 1, which basically re-writes Article 1 of the 1910 Collision Convention, remains the basic introductory provision to the Convention. However, some of the points addressed in Article 1 of the 1910 Collision Convention have been removed, as they are covered by other provisions elsewhere in the Convention. The reference to seagoing and inland waterway vessels in Article 1 of the 1910 Collision Convention is considered in Article 1*ter* (2) (i) and (ii). Also, the clarification in Article 1 of the 1910 Collision Convention that the Convention is concerned with damages caused (i) to the vessels and (ii) to any things or persons on board thereof has been deleted from Article 1 and is now set out in Article 9*bis* (4) (c). Finally, the concept that the Convention applies to collisions in whatever waters they take place has been replaced by the provisions of Article 1*ter* (1).

Article 1*bis* – Definitions

Additional Article 1*bis* features a catalogue of definitions of terms used in the Convention.

a) "Collision"

According to Article 1*bis* (a), a collision requires a physical contact between two or more vessels. Further, the definition clarifies that a situation where there is no physical contact but where the navigation of one vessel causes damage to another vessel is likewise considered to be a collision. This part of the definition adopts the terminology of Article 13 of the 1910 Collision Convention. Finally, the definition clarifies that the collision may occur if vessels involved were lying at anchor or were otherwise made fast at the time of the collision. This provision copies Article 2 (2) of the 1910 Collision Convention (which is repealed by the Protocol).

b) "Inland waterway vessel"

The term "Inland waterway vessel" is defined in Article 1*bis* (b) and used in Articles 1*ter* (1) and (2), and 17. The definition provides that an "inland waterway vessel", for the purposes of the Convention, is any watercraft solely designed for inland navigation.

c) "Owner"

The term "Owner" as defined in Article 1*bis* (c) is referred to in Articles 4 (4), 4*bis*, 7*bis*, 8 (3), 9*quater* (1), and 10. The definition principally encompasses the registered owner and the bareboat charterer. Further, it includes any other person having possession of the vessel, be it by way of demise, lease or other legitimate contractual engagement, or as a matter of fact. There may be more than one person who qualifies as an owner of the purposes of the Convention.

d) "Vessel"

The definition of "Vessel" in Article 1*bis* (d) refers to any watercraft, ship, structure or artificial means. It qualifies as a ship if it is designed for or capable of navigation on or within the water. Further included are floating platforms or mobile offshore drilling units, as long as they are not stationary in one location and engaged in the exploration, exploitation or production of sea bed mineral resources.

Article 1*ter* – Scope of Application

a) The Basic Principles

Para.(1) of Article 1*ter* defines the scope of application of the Convention and specifies that it governs the jurisdiction (see Article 9*quater*), choice of law (Article 9*ter*), allocation of liabilities (Articles 3 and 4), and the evaluation of damages (Article 9*bis*) in collision actions for loss or damage arising from collisions between vessels. Article 1*ter* (1) expressly includes recourse actions, ie for the compensation of damages suffered by a party entitled to claim under the Convention which has been held liable by some third party, for damages arising from the collision.

Whilst the 1910 Collision Convention, in order to describe the scope of application, solely refers to the flags of the vessels involved (see its Article 12), the new Convention in Article 1*ter* extends the scope of application by adding geographical concepts. The first scenario considered in Article 1*ter* (1) (a) basically adopts the approach of the 1910 Collision Convention by providing that the Convention applies to collisions in any waters if the vessels fly the flags of state parties.

Article 1*ter* (1) (1) (b) adds that the Convention applies if the collision occurred in the inland waters or territorial sea of a member state. This is so even if none of or not all the vessels involved fly the flag of a state party. The IWG at length discussed the question whether the geographical scope of application should be extended to a state party's Exclusive Economic Zone, but finally decided against that idea, as there were doubts whether that approach would be in line with the United Nations Convention for the Laws of the Seas.

Finally, under Article 1*ter* (1) (c) the Convention applies in any waters if the respective state party has made a declaration to that effect in accordance with Protocol Article 13.

Here, it is clarified that the State may declare that the Protocol applies to collisions in waters beyond the territorial sea of the State. The principle of Article 1*ter* (1) (c) is adopted from Article 12 (1) of the 1910 Collision Convention ("… and in any other cases for which the national laws provide."), without the reservations laid down in (2).

b) The Exceptions

Article 1*ter* (2) features a number of exceptions to the application of the Convention. Article 1*ter* (2) (a) addresses the relation between the Convention and the 1960 Inland Waterway Collision Convention (applicable in Europe) by giving priority to the 1960 Convention. It further requires that the state where proceedings are brought at the same time must be a state party of the 1960 Collision Convention, which thus is bound to apply the Convention by international law principles. As a result, it is not sufficient that the requirements of the 1960 Collision Convention are met, ie that there is a collision between inland waterway vessels in the waters of a state party (see Article 1(1) of the 1960 Collision Convention), if the case is not heard before the court of a state Party of the 1960 Collision Convention.

While Article 1 of the 1910 Collision Convention distinguishes between two types of vessels (sea going and inland waterway), the new Convention at the outset applies to collisions between any types of vessels. There is however an implied reference to inland waterway vessels in the Article 1*ter* (2) (a) scenario described in the previous paragraph. Further, Article 1*ter* (2) (b) allows the contracting states, when ratifying the Protocol or at any time thereafter, to file a reservation that the new Convention is not applicable to collisions between inland waterway vessels occurring in that state, ie in its internal waters or territorial sea. For details as to the declaration of exclusion see Article 14.

Finally, Article 1*ter* (2) (c) excludes warships or state operated ships from the application of the Convention. This is subject to the national law of the state of origin, which may provide otherwise.

Article 2

Article 2 (1) of the 1910 Collision Convention is left intact by the Protocol. However, it deletes Article 2 (2) from the Convention, which clarifies that Article 2 remains applicable even if the vessels may be at anchor are or otherwise made fast at the time of the casualty. A provision to that effect has been included in the definition of "collision" in Article 1*bis*.

Articles 3 and 4

The Protocol leaves Articles 3 and 4 of the 1910 Collision Convention fully intact. These are the core liability provisions of the 1910 Convention.

Article 4*bis* – Owner's Liability

The 1910 Collision Convention attaches the issues of fault and liability to "the vessel" or "vessels". In many jurisdictions, vessels (or any other objects) cannot have legal personalities and cannot be held liable for damages. Therefore, Article 4*bis* clarifies that if the Convention refers to the vessel as being at fault or liable, it is the owner who shall be at fault or liable. The owner is identified in the definitions section in Article 1*bis*.

Article 5

The 1910 Collision Convention basically does not indicate the persons for whom the "vessel" – or the owner, respectively (see Article 4*bis* above) – is responsible. The Protocol maintains this approach. The only exception is Article 5 of the 1910 Collision Convention which clarifies that the vessel is liable also in cases where the collision is caused by the fault of a pilot, and this provision is unaltered by the Protocol.

Articles 6 and 7

Articles 6 and 7 of the 1910 Collision Convention are unaltered by the Protocol. Article 6 (1) clarifies that damage claims under the Convention are not subject to any formalities that need to be observed. It further says that claims may be brought even if a person who suffered a loss had the opportunity to avoid the loss and failed to do so. Finally, Article 6 (2) sets out that all legal presumptions of fault in relation to collision liability which may be relevant in the respective jurisdictions are inapplicable. Article 7is concerned with time and provides for a two year limitation period in relation to claims arising from the collision.

Article 7*bis* – Himalaya Clause

The additional provision of Article 7*bis* of the 1910 Collision Convention as amended by the Protocol features a Himalaya Clause type of regulation. It clarifies that in case claims arising from the collision under some tort concept are brought against a servant of the owner, which expressly include the crew of the vessel or a pilot, these persons enjoy the same rights under the Convention as the owner of the vessel. As a result, the servants

- may rely on the pro-rata liability in case of property damage (see Article 4 (2)),
- are entitled to obtain a contribution under Article 4 (3) from the other vessel(s) after being held liable for death and personal injury, and
- are able to rely on the two year limitation period provided for in Article 7.

However, the servant is not entitled to these rights if the claimant proves that the loss resulted from the servant's personal act or omission, committed with intent to cause such loss or recklessly and with knowledge that such loss would probably result. A reservation to that effect is found in many other international or national liability regimes and appears to be today's industry standard.

Article 8 and 9

Articles 8 and 9 of the 1910 Collision Convention are concerned with the obligations of master of the vessel involved in a collision, namely to render assistance and provide certain information. These provisions are unaltered by the Protocol.

Article 9*bis* – Recoverable Damages

The new Article 9*bis* of the Convention is concerned with the recoverability of damages arising from a collision. Article 9*bis* (1), (2), (3) and (4) (a) apply to both property damage as well as death and personal injury, (3) (b) through (d) only to property damage. The assessment of claims for death and personal injury is left to the law otherwise applicable (see Article 9*ter*). Many of the provisions of Article 9*bis* are adopted from the Lisbon Rules.

The basic principles are laid out in Article 9*bis* (1). Sentence 1 confirms that only such damages are recoverable which were caused by the collision. Sentence 2 adds the basic yardstick to assess the damages: the claimant must be put in the same financial position he would have been in had the collision not occurred. Article 9*bis* (2) confirms that the burden of proof in relation to loss or damage is upon the claimant. Article 9*bis* (3) addresses the issue of contributory negligence and provides that damages shall not be recoverable in so far as the claimant could have avoided or mitigated the loss or damage by applying reasonable diligence. The burden of proof is upon the person asserting contributory negligence.

Article 9*bis* (4) (a) sets out the type of damages which are recoverable. They include damages to the vessels involved in the collision as well as damage to property or persons on board the vessel involved in the collision. The second part of the provision confirms that the Convention is not only concerned with claims between the vessels involved in the collision, but likewise with claims brought by third parties as a result of damage to property on board and for death of or personal injury to persons on board.

Article 9*bis* (4) (b) provides that damages to the vessel include any loss of use of the vessel, loss of earning or other financial loss and any incidental expense or cost.

Article 9*bis* (4) (c) specifies that recoverable damages may include any reimbursement of salvage, general average, wreck removal and other charges and expenses reasonably incurred as a result of the collision. If following a collision between Vessel A and B, the latter requires assistance and a salvor renders services to Vessel B, then, depending on the apportionment of liability for the collision, Vessel B may be able to recover some or all of the salvage award it paid to the salvor from Vessel A.

Article 9*bis* (4) (d) says that the damages recoverable encompass any liability incurred towards third parties for loss or damage caused by the vessel involved in the collision to property or persons, whether on board of the respective vessel or not. This would include a vessel's liability in relation to the owners of property on board of that vessel, in particular

the cargo, or to persons on board of the vessel, namely passengers and crew. For example, if Vessel B is liable for loss or damage to property on board Vessel B or for death or personal injury suffered by persons on board Vessel B as a result of the collision, Vessel B may, depending on the apportionment of liability for the collision, recover some or all of any amounts paid from Vessel A under Articles 3 and 4 of the Convention. Article 9*bis* (4) (d) does not prevent the property owner and the passenger or crew to claim directly from the other Vessel A under Article 4 (2) ("… and even to third parties a vessel is not liable for more than such proportion of such damages") and Article 4 (3) ("… the vessels are … liable to third parties …"), together with Article 9*bis* (4) (a).

Article 9*bis* (4) (d) likewise refers to the vessels' liability vis-à-vis property or persons not on board of either vessel involved in the collision. Vessel B may, as a result of a collision with Vessel A, eg run over a swimmer or hit a bridge. Likewise, Vessel B may cause pollution damage for which it is strictly liable to third parties under the International Convention on Civil Liability for Oil Pollution Damage (CLC 1992) or the Bunker Oil Convention, even if Vessel A is solely to blame for the collision. Neither Article 4 (2) and (3) nor Article 9*bis* (4) (d) of the Convention allow any direct claims of the damaged third party against either Vessel A or B. But Article 9*bis* (4) (d) does not prevent the damaged third party to pursue a claim against Vessel A or B under the relevant local tort law or the relevant pollution liability convention, as the case may be. If eg Vessel B is found liable under the relevant national law or a pollution convention, Article 9*bis* (4) (d) allows Vessel B's claim for recoverable damages to include recourse claims against Vessel A (see Article III (5) CLC 1992, Article 3 (6) Bunker Oil Convention).

Article 9*ter* – Applicable Law

The newly introduced Article 9*ter* is an international private law provision which determines the law applicable to claims arising from a collision. It corresponds to Article 4 of the Rio Draft. Article 9*ter* assumes that the Convention applies in the first place to the relevant claims and identifies the law otherwise relevant in relation to aspects not covered by the convention. This is spelt out by the words "… shall apply to issues not otherwise regulated by this Convention, …" in Article 9*ter* sentence 1. Such issues eg are title to sue points, the question whose acts the owner is responsible for, and the assessment of damages in case of death and personal injury (which is not covered by Article 9*bis* (4) (b) to (d)).

Article 9*ter* sentence 1 clarifies at the outset that the parties are entitled to choose the law applicable to their claims arising from a collision by way of an agreement. The term "agree or have otherwise agreed" seeks to address agreements entered into after the collision as well as prior agreements included in some contract between the parties already in place when the collision occurred, if the relevant choice of law agreement includes claims arising from a collision.

The following provisions of Article 9*ter* sentence 1 apply when there is no choice of law agreement. Three scenarios are distinguished. Firstly, if the collision occurs in the internal waters or territorial sea of a state party of the Convention, the law of that state applies. Secondly, in case the collision occurs elsewhere, eg on the High Seas or in the internal

waters or territorial sea of a state which is not a state party to the Convention, the law of the court seized shall apply. The third scenario refers to the case where all vessels involved in the collision fly the same flag (be it a state party to the Convention or not). Here, the law of the common flag is applicable. This option has priority over both the first and the second scenario.

Article 9*quater* sentence 2 adds that the law identified in sentence 1 refers to the substantive rules of the relevant legislation only and does not include any of its private international law, thereby preventing a renvoi.

Article 9 *quater* – Jurisdiction

The new Article 9*quater* concerns procedural concepts. Para.(1) (a) and (b) (i) deals with jurisdiction, while (1) (b) (ii) addresses *lis pendens* issues. Para.(2) and (3) provide for general exceptions to the application of (1). The provisions correspond to some of the regulations of the Rio Draft and the 1952 Jurisdiction Convention.

a) Jurisdiction

aa) Jurisdiction Agreements

At the outset, the parties are free to enter into an agreement on jurisdiction. This is clarified in Article 9*quater* (1) (a) by the introducing term "Unless the parties agree or have otherwise agreed …" (see the introducing words to Article 2 (1) of the Rio Draft and Article 2 of the 1952 Jurisdiction Convention). Normally, any jurisdiction agreements would be concluded after the collision. However, the words "… or have otherwise agreed …" cover the situation that there is some prior contract in place, such as eg a towage contract, which includes a jurisdiction agreement which also covers claims arising from a collision. Such prior agreement is accepted by Article 9*quater* of the Convention. The chosen jurisdiction may be that of a State Party to the Convention or of any other state.

bb) General Provisions

In case there is no jurisdiction agreement, the alternative jurisdictions laid out further in Article 9*quater* (1) (a) become relevant (see Article 2 (1) of the Rio Draft, Article 1(1) of the 1952 Jurisdiction Convention). All of them are subject to the overriding reservation that proceedings must be brought in a court of a state party to the Convention. If more than one jurisdiction would be available, the claimant is entitled to choose where he wishes to proceed, as is clarified by the words "… actions on the merits … shall be brought by a claimant …". Further, the word "… shall …" confirms that the jurisdictions identified in the four alternatives of Article 9*quater* (1) (a) are exclusive, to the effect that proceedings may not be commenced in other jurisdictions. Also, the four alternatives define the states where proceedings may be brought. The respective court within that state is then determined by the applicable national regulations on jurisdiction.

No. (i) provides for jurisdiction at the place where the defendant has its habitual residence or domicile, statutory seat, central administration or principal place of business (see also Article 2 (1) (a) of the Rio Draft, Article 1(1) (a) of the 1952 Jurisdiction Convention). These options may result in more than one jurisdiction being available.

No. (ii) establishes jurisdiction in the state – which must be a state party of the Convention (see above) – in whose internal waters or territorial sea the collision occurred (see Article 2 (1) (b) of the Rio Draft, Article 1(1) (c) of the 1952 Jurisdiction Convention).

No. (iii) concerns the situation that the claimant, who pursues claims against a counterparty, successfully arrested – in a state party of the Convention (see above) – the counterparty's vessel involved in the collision or another vessel owned by the counterparty (see Article 2 (1) (c) of the Rio Draft, Article 1(1) (b) of the 1952 Jurisdiction Convention). Further, it is required that the arrest has not been challenged by the counterparty or, if challenged, has been upheld, or that the arrest has been lifted following the provision of a security. If all these requirements are met, the claimant may also bring proceedings on the merits in the respective jurisdiction.

No. (iv) refers to a scenario where the defendant properly constituted a limitation fund – in a state party of the Convention (see above) – in accordance with the law of that State on account of the collision (see Article 2 (1) (e) of the Rio Draft). Here, the claimant may bring proceedings on the merits before the courts of that State. If the limitation fund is constituted in a non-state party of the Convention, no. (iv) does not prevent the claimant from filing his claims in the limitation proceedings. He is however not allowed to bring proceedings on the merits in that state but must do so in any of the jurisdictions identified in Article 9*quater* (1) (a).

cc) Proceedings Pending

Article 9*quater* (1) (b) addresses the situation that proceedings on the merits are pending before a court of a state party and provides that further actions may be brought before the same court (see Article 3 of the Rio Draft, Article 3 of the 1952 Jurisdiction Convention). The catalogue of actions encompasses counterclaims, subrogation, recourse claims, and other claims. All of these further actions must relate to damages caused by the collision. In addition, Article 9*quater* (1) (b) (i) requires that there must be a reasonable risk that the action, if heard separately, would lead to contradictory judgments. This reservation mirrors Article 30 (3) of the Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast). Actions that may be brought before the court where proceedings are pending include further proceedings brought by the plaintiff against the defendant and by the defendant against the plaintiff ("counterclaims") as well as proceedings initiated by third parties against the plaintiff and/or the defendant.

b) Lis pendens

Article 9*quater* (1) (b) (ii) concerns the case that an action on the merits of a collision is pending before the court of a state party to the Convention (initial action) and that a further action to recover the same damage is brought in a court in another state party. Here, Article 9*quater* (1) (b) (ii) provides that the further action is stayed as long as the initial action is continued. A discontinuation includes the stay of the initial action, if permitted by the court. See also Article 2 (2) of the Rio Draft, Article 1(3) of the 1952 Jurisdiction Convention.

c) The Exceptions

Article 9*quater* (2) concerns the relation between Article 9*quater* (1) and the 1952 Jurisdiction Convention. At the outset, Article 9*quater* (2) confirms that both subparagraphs of (1) shall apply if the collision is governed by the Convention pursuant to Article 1*ter*. However, (1) is not applicable if

- none of the vessels involved in the collision fly the flag of State Parties to the Protocol, and
- all vessels involved fly the flag of the 1952 Jurisdiction Convention.

If the requirements are met, of Article 9*quater* (1) is replaced by the provisions of the 1952 Jurisdiction Convention.

And finally, Article 9*quater* (4) confirms that (1) does not apply in cases covered by the provisions of the Revised Rhine Navigation Convention of 17 October 1868. This reservation is adopted from Article 7of the 1952 Jurisdiction Convention and required to avoid the overlap between Article 9*quater* (1) and the Rhine Navigation Convention.

Article 10

The Protocol leaves Article 10 of the 1910 Collision Convention fully intact.