

International Private Law Aspects in Collision Cases: Should they be adopted in the New Convention?

CMI Tokyo Conference 2025
IWG Collision Conventions
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International Private Law

- the regulations that determine what law is applicable in a legal relationship – be it
 - a contract, or
 - a non-contractual claim, including tort claim
- as a result, we need to distinguish
 - international private law provisions from
 - substantive law provisions
 - example: if there is a cargo claim under a charter against the owner, international private law will identify the substantive law (which eg may allow and accept a choice of law clause), which then will decide on the liability issue

International Private Law

- basically, a court applies its own international private law
 - as opposed to the substantive law
 - a court in State X may apply the substantial law of State Y, if the international private law of state X so dictates
- but there may be a *renvoi*
 - the international private law of State X may order that the international private law of State Y is to be applied, which then may refer on to the substantial law of third State Z or back to the substantial law of State X
 - such situation is avoided by expressly excluding any renvoi in the international private law of State X

International Private Law

- the principles of international private law applied by the relevant court may be found in
 - its own national law, or
 - in an international convention, if the court is located in a contracting state
 - in other instruments, such as the EU Rome I and II Regulations (on contractual and non-contractual obligations), binding the Member States

International Conventions

- the purpose of international conventions is to unify the law
 - to the effect that the relevant regulations are applied in the same way in all contracting states
- international conventions focus on substantive law
- however, the relevant regulations normally are not (and cannot be) exhaustive – as a result, issues not addressed in the convention are determined by the law otherwise applicable
 - a court required to “close the gaps” will apply
 - its international private law to identify the relevant substantial law (including renvoi, as the case may be), and
 - the substantial law thereby determined
 - example

International Conventions

- the registered owner of Ship A claims from the bareboat charterer of Ship B (100% at fault) for damages suffered by Ship A
- the court applies Art. 3 of the Collision Convention 1910:

If the collision is caused by the fault of one of the vessels, liability to make good the damages attaches to the one which has committed the fault.

- who is entitled to claim on Ship A's side? the registered owner? the bareboat charterer? the manager? all of them?
- and who may that person claim from of Ship B? the registered owner? the bareboat Charterer? the manager? all of them?
- this is determined by the substantive law otherwise applicable

International Conventions

- an international convention lays out the relevant substantive law, but it may include “on board” international private law regulations seeking to determine the law otherwise applicable
- example: Art. 29 of the Budapest Convention on the Contract for the Carriage of Goods by Inland Waterway, of 21 June 2001

International Private Law

Article 29 CMNI

Additional national provisions

1. In cases not provided for in this Convention, the contract of carriage is governed by the law of the State agreed by the Parties.
2. In the absence of such agreement, the law of the State with which the contract of carriage is most closely connected is to be applied.
3. It is to be presumed that the contract of carriage is most closely connected with the State in which the principal place of business of the carrier is located at the time when the contract was concluded, if the port of loading or the place where the goods are taken over, or the port of discharge or the place of delivery or the shipper's principal place of business is also located in that State. Where the carrier has no place of business on land and concludes the contract of carriage on board his vessel, it is to be presumed that the contract is most closely connected with the State in which the vessel is registered or whose flag it flies, if the port of loading or the place where the goods are taken over, or the port of discharge or the place of delivery or the shipper's principal place of business is also located in that State.
4. The law of the State where the goods are located governs the real guarantee granted to the carrier for claims set out in article 10, paragraph 1. [lien on the goods]

The Collision Convention 1910

- the Collision Convention 1910 is concerned with
 - the claims of Ship A against Ship B and the claims of Ship B against Ship A, arising from the collision, and
 - certain third party claims against Ship A and Ship B arising from the collision
 - personal injuries suffered by persons on board of Ship A or Ship B
 - loss of and damage to property on board of Ship A or Ship B

The Collision Convention 1910

- the Collision Convention 1910 is very rudimentary – it is basically only concerned with
 - a confirmation that liability of Ship A and Ship B is fault based
 - that Ship A and Ship B are liable in proportion to their share of fault
 - time
- as a result, there are many gaps that need to be closed by the law otherwise applicable
 - who may be sued; title to sue; definition of fault; the responsible party, the persons that party is responsible for; damages recoverable

Towards a new Collision Convention

- should international private law aspects be adopted in a new Collision Convention?
- my answer is

YES

- unified international private law regulations concerning the law otherwise applicable would promote uniformity for liability in collision cases beyond the mere substantive law provisions in the new Collision Convention
 - all details of claims arising from a collision would be subject to the same substantial law
 - this would be particularly relevant for mutual claims between Ship A and Ship B – these should be governed by the same substantive law

Towards a new Collision Convention

- assuming that international private law provisions should be included: what regulations should be adopted?
- the CMI Rio Draft:
International Convention for the Unification of Certain Rules concerning Civil Jurisdiction, **Choice of Law** and Recognition and Enforcement of Judgments in Collision Cases – adopted by the Plenary Session of the CMI Conference at Rio des Janeiro on 30 September 1977
- the Rio Draft applies, in particular, to
 - actions for damages resulting from loss of or damage to a vessel and to property on board a vessel (Art. 1 para.1) – not to personal damage

Towards a new Collision Convention

Art. 4 through 6 of the Rio Draft

- Art. 4
 - collision occurring in internal waters or the territorial sea of a state – that state's law applies;
 - collision occurring in waters beyond the territorial sea – the law of the state of the court seized applies
 - if all vessels fly the same flag or are registered in the same state, the law of that state applies (wherever the collision occurred)
 - the parties may agree on the law applicable
- Art. 5 contains a catalogue of items which are governed by the respective law – such as liability, defences, recoverable damages, quantum, title to sue, the persons a shipowner is liable for, burden of proof, time
- Art. 6 expressly excludes any renvoi

Towards a new Collision Convention

Summary

- there is a distinction between international private law and substantive law
- an international convention may feature, side by side, regulations of international private law and substantive law
- the new Collision Convention should include provisions assisting to identify the law otherwise applicable, in respect of issues relating to collision liability but not covered in the new Convention
- Art. 4 through 6 of the Rio Draft provide some guidance as to the concept and the wording of these international private law regulations

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