CMI IWG on the Collision Conventions
Questionnaire

RESPONSE BY THE NIGERIAN MARITIME LAW ASSOCIATION

1. **Definitions**

1.1 **Vessel**

The 1910 Collision Convention applies to the collision of vessels (Art. 1) but does not feature a definition of a vessel.

Should the revised Convention define "vessel"? If so, should the definition include all floating structures?

It is suggested that the revised convention define a "vessel". it is further suggested that this definition should include a floating structure. This is premised on the fact that most floating structures perform some transportation function and may be subject to collision damage.

1.2 **Ocean/Inland Navigation Vessels**

The 1910 Convention applies to collisions between sea-going vessels and between sea-going vessels and vessels of inland navigation (Art. 1), and thus not to collisions between vessels of inland navigation.

Should the revised Convention apply to any collision between vessels? It is advised that a new convention should include collisions between vessels of inland navigation.

1.3 **Collision**

The 1910 Convention applies to collisions between vessels but does not say what a collision is.
Should the revised Convention define "collision"?

The term 'collision' should be defined as broadly as possible in a revised convention to account for all possible and probable circumstances.

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?

A revised convention should include situations in which one vessel is damaged by the manoeuvre of another, even if there is no physical contact between the two. This is known as a "near-miss" collision because it can still cause damage to a vessel as well as potential harm to crew members and passengers. There are also known instances of damage created by "wash" without physical contact with the superstructure of vessels.

Should it include vessels engaged in a towing situation?

Vessels involved in towing operations should be covered by a revised convention, as these types of operations can still result in collisions and damage to other vessels through negligent navigation.

Should it include collisions where both vessels are owned by the same beneficial owner?

While it is debatable whether collisions by vessels under same beneficial ownership should be covered by a revised convention in order to ensure consistency and fairness in liability and compensation, regardless of ownership. it may lead to the possibility of fraudulent claims or double-recovery. It is advisable that the collision of vessels with same beneficial owner should not be included

2. **Scope of Application**

2.1 **Reference to the Flag**

The 1910 Convention applies if all vessels involved fly the flag of Contracting States (Art. 12), in whatever waters the collision occurs (Art. 1).

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?

Yes. Most Contracting States are able to exercise territorial jurisdiction over ships in their waters.

2.2 **REIO-Clause**

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).

From a global perspective, it is worth noting that the European Union (EU) has the authority to participate in international private law conventions on behalf of its member states, due to the regional treaties granting the EU exclusive competence in certain legal areas, including international private law. However, it is important to consider the balance of interests when deciding whether to allow only member states or to include a Regional Economic Integration Organizations Clause (REIO-Clause) in the revised collision convention. The REIO-Clause may be permitted under exceptional circumstances, allowing for arrangements on behalf of member states, provided that the unique characteristics of a specific Regional Economic Community (REC) allow for such provisions.

3. **Liability**

3.1 **Fault-Based Liability**

The principal underlying decision of the 1910 Convention is that the vessels' liability arising from a collision is fault-based (Art. 2(1), Art. 3 and Art. 4(1)) and that there is no strict liability. **Should fault-based liability be maintained?**

Yes, since a fault-based liability system assigns responsibility for collision-related damages to the party at fault, it will encourage vessel operators to navigate and operate their vessels with greater care, as they would be financially responsible for any incidents caused by their negligence or recklessness. In addition, a fault-based system permits a more individualised assessment of liability, taking into consideration the collision's specific circumstances and causes.

If not, can you provide your reasoning for abandoning fault-based liability? N/A

3.2 **Fault of the Vessel**

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.

The current liability concept in maritime law has traditionally focused on attributing fault to the vessel rather than specifically identifying individuals who may have acted negligently. However, it is important to note that the liability frameworks have evolved over time. Subsequent conventions and legal developments have recognized the need to address the issue of personal negligence and individual liability.

Considering these advancements, there is a suggestion that a new convention should specifically identify the persons who acted negligently or are vicariously liable rather than solely attributing fault to "the vessel." This approach would enable a more nuanced and comprehensive assessment of liability, taking into account the actions or omissions of individuals involved in maritime operations.

By recognizing personal negligence, vicarious liabilty and individual liability, the new convention would provide a clearer framework for determining responsibility in maritime incidents. It would enhance the legal process by allowing for a more accurate allocation of liability, potentially leading to fairer outcomes for all parties involved.

It is worth noting that this suggestion aligns with the broader trend in modern legal systems to attribute responsibility to individuals for their actions rather than solely focusing on the legal entity, such as a vessel

Should this concept be maintained in the revised Convention, or should the revised Convention identify who needs to be at fault?

3.3 **Title to Sue**

The 1910 Convention is silent as to who is entitled to bring an action against the liable "vessel".

Should the revised Convention identify which parties (registered shipowners, bareboat charterers, etc.) may bring suit against the liable vessel?

No, it should not. It's not just the registered shipowners, bareboat charterers, etc., who might want to sue. Potential third parties may have a veritable recourse action against a liable vessel. For example, cargo owners must not be denied the right of election to sue the wrongdoer /offending vessel.

3.4 **Crew, Pilot etc. Channelling of Negligence**

The 1910 Convention does not preclude entities other than the shipowners being liable for collision damage.

Should this concept to be maintained in the revised Convention or should liability be channelled solely to the owner of the liable vessel?

This concept should be maintained

3.5 **Pro Rata versus Joint Liability**

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)).

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.

However, in respect of claims to property damage on board one of the colliding vessels, the 1910 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?

We propose it be extended.

If so, what justifies your reasoning? **Extending joint liability for third-party property damage will improve clarity and uniformity in how liability is treated in collision scenarios. This would also ensure that innocent third parties are not left with no recourse if their property suffers damage as a result of a collision involving multiple vessels.**

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?

There should be no exceptions. Irrespective of whether the owner applied due diligence, a vessel should be held liable. However, the convention may allow for limited circumstances where an exception to the general rule, which excludes liability when due diligence has been exercised, may apply. One such example is when defects on oil tankers lead to oil pollution damage.

If so, should the revised Convention then define "defects", for which no fault is required to lead to liability?

Yes, this is suggested

3.7 **Legal Presumptions**

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.

Should the revised Convention expressly adopt some internationally recognised presumptions, and if so, what type of presumption?

It should not

3.8 **Recoverable Damages**

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.

Should the revised Convention define recoverable damages?

It is highly recommended that a revised Convention establishes a distinct framework for recoverable damages in collision cases to give better clarity and consistency in the treatment of damages in instances involving collisions. This will provide clear guidance to all parties involved, ensuring their respective rights and responsibilities with regard to damages are well-defined and free from potential disputes or ambiguity in the event of a collision.

If so, should the Lisbon Rules 1987 on recoverable damages in collision cases be made part of the revised Convention?

it is suggested that the revised Convention provides detailed and comprehensive provisions on recoverable damages, rather than incorporate the Lisbon Rules 1987 which may further create a level of intricacy

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? Yes

If so, what justifies this change in your view?

Mandatory insurance could provide greater protection for third parties who may be injured or sustain property damage as a result of a collision. Insurance coverage could ensure that adequate compensation is available to these parties, even in cases where the vessel owner may not have sufficient assets to satisfy a judgment or settlement.

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? YES

If so, what justifies this change in your view?

The provision of direct actions against insurers is necessary as it simplifies and expedites the claims and compensation process. By allowing the injured party to directly pursue a claim against the insurer, the requirement to establish liability against the insured is bypassed. As a result, the legal process is streamlined, enabling the injured party to promptly seek compensation without protracted legal disputes concerning liability.

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?

N/A

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?

Yes, insurers should benefit from defences which are industry wide agreed defences

Would this include the bankruptcy or winding up of the vessel owner and pay-to-be-paid clauses?

Yes, absolutely fair to include this

5. **International Private Law**

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.
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? **Yes** **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, https://comitemaritime.org/publications-documents/cmi-yearbook/ ?**

Yes, it is suggested that Articles 4 and 5 be adopted

6. **Jurisdiction**

The 1910 Convention does not include any provisions as to jurisdiction.
Should a revised Convention provide for jurisdiction?

Yes, it should. This is for the purpose of legal certainty and eliminates the risk of dilatory tactics through jurisdictional challenges and the possible impact of that on enforceability of judgments in collision matters.

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?

The CMI 1977 Rio Draft Convention should be the basis of the jurisdiction provision of the revised convention as it allows for greater flexibility in the choice of forum for collision suits.

The CMI 1977 Rio Draft Convention allowed for jurisdiction:

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; 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.

7. **Recognition and Enforcement**

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.
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?

Yes. It is worth considering the adoption of similar provisions in the revised Convention. For instance, incorporating provisions that enable judgments in collision matters rendered by the court of one Contracting State to be enforced in another Contracting State would be beneficial. This would establish a framework for the mutual recognition and enforcement of judgments, enhancing the effectiveness and efficiency of the legal process in collision matters across different jurisdictions.

8. **Autonomous and Unmanned Ships**

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.

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?

Yes, it should include all types of vessels including autonomous vessels.

If autonomous vessels should be included, should the revised Convention include specific rules for collisions involving autonomous ships?

To ensure that the revised 1910 Collision Convention remains relevant and effective in the current maritime landscape, it is necessary to consider including specific rules for collisions involving autonomous ships. This may involve adopting an appendix or annex to the convention that would regulate autonomous vessels. The unique issues raised by autonomous vessels, such as determining fault in collisions, establishing communication protocols, and addressing liability for technical malfunctions or system errors would require tailored rules and regulations. By including these specific rules, the revised Convention would remain applicable to the rapid advancements in maritime technology and help ensure safety at sea.

9. Conclusions

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?

We believe that the revisions to the 1910 Collision Convention which our Association supports, justifies the amendment of the Convention.