



CMI TOKYO CONFERENCE 2025

Towards a new Collision Convention: Expanding the Scope of Application

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How can international uniformity be achieved

1. The international instrument proposed must consist in sound reasonable and clear regulation of the matter in question capable to replace the domestic rules and reduce areas of uncertainty produced by local inconsistent theories and judgments;
2. The application of that regime must be facilitated by an appropriate wide scope of application

The scope of application in the 1910 Collision Convention

Article 12:

*The provisions of this Convention shall be applied as regards all persons interested when **all the vessels** concerned in any action **belong to States of the High Contracting Parties**, and in any other cases for which the national laws provide ...*

This scope of application was deemed too restricted by the Authors themselves.

Article 14

*Any one of the High Contracting parties shall have the right, three years after this Convention comes into force, to call for a fresh conference with a view to a possible amendments therein, and particularly **with a view to extend, if possible, the sphere of its application** ...*

The effective scope of the application of the C.C.

States Parties of the Convention: 85

Number of merchant ships (over 100 grt) belonging the States Parties fleet v ships of other States: 53787/53172

Theoretical rate of application of the Conventional regime v NON Conventional Regime: 49,5%/48,9 ca

The flag as genuine link

Unclos art. 91.1

Every State shall fix the condition for the grant of its nationality to ships, for the registration of ships in its territory and for the right to fly its flag. There must exist a GENUINE LINK between the state and the ship.

The disappearance of the genuine link: the new flags (Vanuatu, Marshall Island, San Marino etc.) and the disjunction between State Regulatory Authorities and Owner's center of interest

Modern Convention have abandoned the flag as reference

Convention on Bs/1 Brussels 1924 art. 10 (further expanded by 1968 Prot.) (*territorial*)

Convention on Arrest o Ships Brussels 1952: art. 8.1 and 8.2 (*lex fori*)

Convention on Limitation of Liability of Shipowners Brussels 1957: art. 7 (*lex fori*)

Convention on Civil Liability for Oil Pollution Damage: Brussels 1969/1992 art. II (*territorial: territorial sea and EEZ*)

Modern Convention have abandoned the flag as reference

Convention on Limitation of Liability for Maritime Claims London 1976/1996 (art. 15) (*lex fori*)

Convention on Salvage London 1984 art. 2 (*lex fori*)

Convention on Liens and Morgages 1993 art. 13 (flag plus *lex fori*)

Convention on Arrest of Ships 1999 (art. 8) (*lex fori*)

Convention on the removal of wrecks Nairobi 2007 art. 3 (*territorial*)

A. LEX FORI

Main Features

It is simple and clear

It combines the two fundamental requisites of scope and jurisdiction: a competent judge is also a conventional judge

It does not cause interference with other instruments: Geneva

1960 for inland vessels – UNCLOS for State rights in EEZ (below)

It is an incentive to adoption for states who have not ratified the Convention but introduced its rules in the domestic law

LEX FORI

Does *lex fori* stimulate forum shopping

Forum shopping is in reality a problem of jurisdiction not of scope

The advantage to the plaintiff in the choice exists also under the current system

The defendant is protected as he is not bound to counterclaim before the judge of the first action

Proposed text:

Application of the Convention

This Convention shall apply whenever judicial or arbitral proceedings relating to a collision, are brought in a State Party

B. TERRITORY

Three main Areas:

- Inner waters – ports/roads - territorial sea (UNCLOS art. 2 to 15) (full sovereignty of Coastal State)
- Exclusive Economic Zone (UNCLOS arts. 55 and foll.) (limited sovereignty: art. 56)
- High Sea (UNCLOS 86 and foll.) (no sovereignty: art. 89)

TERRITORY

EEZ

Is the international legislator entitled to set forth a specific legal regime in the matter of collision in the EEZ

The EEZ as a separate functional zone of *sui generis* character and a compromise between sovereignty of coastal state and freedom - rights of **other States**, thus arguably not preventing an **international regulation** in a different private law field

TERRITORY

HIGH SEAS

Is the extension of scope to collisions in High Seas a too wide step in the absence of any other link?

Can the provision that at least one of the vessel involved flies a Convention flag bind a non conventional State?

The territorial criterion will not always ensure application of the Convention (collision occurred in non conventional waters)

TERRITORY

Proposed text:

«This Convention shall apply whenever (a) all the vessels concerned in any action belong the States Parties of the Convention, and/or (b) the collision occurs in the territorial waters, contiguous zone or Exclusive Economic Zone (as defined by the United Convention on the Law of the Sea) of a State Party and/or [(c) the collision occurs in the high seas (as defined by the said UN Convention) provided one of the vessels involved belong to a State Party to this Convention».]

Provided that nothing in this Convention will prevent the Parties to submit the actions arising from the collision to any other Court or Arbitral Tribunal applying this Convention

The Jurisdiction rules as necessary complement to an enlarged scope

No result can be achieved by extending the scope of application if the Convention does not contain a rule on jurisdiction entitling the conventional Judge to retain the case.

The 1952 Civil Jurisdiction Convention is not answer to the above need because its scope remains the flag criterion.

The C.C. 1910 and the Convention on civil jurisdiction 1952

States Parties to C.C. 1910: 85

States Parties to CJC 1952:

Non coincidence of ratifying States in the two Convention:

Theoretical rate of joint application of the C.C. and CJC regime: 15%

Need of a jurisdiction rule in the C.C. acknowledged by CMI in 1977
the RIO DRAFT