

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

CMI Tokyo Conference 2025
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International Private Law

- the regulations that determine what law is applicable in a particular legal relationship – be it
 - a contract, or
 - a non-contractual claim, including a tort claim
- as a result, we need to distinguish
 - international private law provisions from
 - substantive law provisions

International Private Law

- a two-step-procedure is required to identify the relevant provisions in the substantive law
 - example: if there is a cargo claim under a bill of lading against the owner,
 - (1) international private law will identify the substantive law relevant for cargo claims,
 - eg English law
 - (2) the substantive law provides the rules that decide on the liability issue
 - eg the UK COGSA

International Private Law

- the most important and recognized international private law rule is that the parties are entitled to agree on the substantive law applicable
- a court (almost) always applies its own international private law
 - whilst the substantive law may be that of another state

International Private Law

- the sources of international private law
 - the own national law of the court, or
 - law unified
 - in a 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 an international convention 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, eg the carrier's liability in the Hague-Viby Rules
- however, the relevant regulations normally are not (and cannot be) exhaustive – as a result, there are issues not addressed in the convention – these are determined by the law otherwise applicable
 - a court required to “close the gaps” will go through the two-step-procedure and apply
 - its international private law to identify the relevant substantial law, and
 - the substantial law thereby determined
 - example

International Conventions

- following a collision of Ships A and B, Ship A wishes to pursue claims against 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?
 - there is no answer to that in Art. 3 or anywhere else in the Convention
- rather, the title to sue point is determined by the law otherwise applicable, identified by the two-step-procedure

International Conventions

- wouldn't it be helpful if the convention itself featured “on board” international private law regulations 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 (CMNI)

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 only concerned with
 - a reconfirmation that Ship A's and Ship B's liability is fault based
 - ensuring that Ship A and Ship B are liable in proportion to their share of fault
 - time limits
- as a result, there are many gaps that need to be closed by the law otherwise applicable
 - title to sue; the responsible party; the persons that party is responsible for; the definition of fault; the 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 claims arising from a collision would be subject to the same substantive 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 de Janeiro on 30 September 1977

- the “choice of law” (= international private law) provisions are found in Art. 4 through 6

Towards a new Collision Convention

Art. 4 of the Rio Draft

- Art. 4
 - the parties may agree on the law applicable
 - 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)

Towards a new Collision Convention

Summary

- there is a distinction between international private law and substantive law
- an international convention may feature international private law and substantive law regulations side by side
- 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 CMI Rio Draft provide some guidance as to the concept and the wording of such international private law regulations

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