

Report of the CMI IWG Sub-Group on MASS and Collisions

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Overview

- ⚓ Background
- ⚓ Questions Considered by Sub-Group
- ⚓ Discussion

Q1: How is the term 'vessel' as referred to in Article 3 of the 1910 Convention ("fault of the vessel") to be interpreted in the context of MASS? Does it extend to faults by remote operators, or even by fully autonomous ships?

Discussion:

- ⚓ 'Vessel' not defined in 1910 Convention
- ⚓ National courts will define
- ⚓ COLREGs article 3(a) "vessel' as every description of watercraft, including non-displacement craft and seaplanes, used or capable of being used as a means of transportation on water"

Q2: Will an owner's vicarious liability for collisions extend to entities such as remote operators, software suppliers, or shipyards whose errors have caused/contributed to the collision?

Discussion

- ⚓ Vicarious liability not specific to MASS or collisions
- ⚓ What is the extent of vicarious liability?

Q3: Would a multi-ship collision involving one or more MASS pose any particular issues under the 1910 Convention?

Discussion:

⚓ If MASS is a 'vessel' then no.

⚓ Strict liability discussed – notions of fairness

Q4: Would article 5 of the 1910 Convention (on pilots) extend to e-pilotage undertaken from shore or to mandatory instructions from coastal authorities?

Discussion:

- 🚢 Shore-based pilotage exists
- 🚢 Pilot as 'crew' unproblematic
- 🚢 But.... what if e-pilotage 'industrialised' by coastal state?

Q5: To what extent does the 1910 Convention extend to collisions involving a MASS and a stationary object?

Discussion:

🚢 Only if the stationary object is a 'vessel'

🚢 Is it necessary to extend the 1910 Convention to

collision?

Q6: What applies if it is considered that the fault of the MASS was not a “fault of the vessel” under the 1910 Convention?

Discussion:

- ⚓ Failure of communications or software bugs – beyond the fault of the vessel
- ⚓ No fault of MASS (art 3); No fault of either ship (art 4(1)); cause unknown (art 2(1))

Q7: How does MASS affect the characterisation of fault in the context of collisions?

Discussion:

- ⚓ Look at outcomes
- ⚓ Responsibility for the use of technology
- ⚓ Rules on discovery when collision involves AI
- ⚓ Defences
- ⚓ Implications of fault – alternative course of action that should have been taken
- ⚓ Problem of assumption of liability without consideration of fault – does not sit easily with Collision

Convention 1910

- ⚓ Augmented liability where no crew is on board?

Q8: Would an unidentified programming error in a MASS' computer system lead to equal sharing of liability under Article 4 of the 1910 Convention?

Discussion:

⚓ No reason why the rule does not apply to MASS

Q9: Could the 1910 Convention accommodate features such as “cumulative” or “anonymous” culpa, whereby there is no need to identify a negligent individual in order to establish fault of the owner?

Discussion:

- ⚓ Refers to fault of the VESSEL not a person
- ⚓ If ‘things’ can be at fault 1910 Convention is MASS-proof

Q11: To what extent does the 1910 Convention (Article 6) rule out (different kinds of) presumptions of fault or liability placed on MASS?

Discussion:

- ⚓ Rules out LEGAL presumptions
- ⚓ Domestic legislation presuming MASS at fault would violate the 1910 Convention

Q12: Would a no-fault liability coupled with contributory negligence exception be compatible with the 1910 Convention?

Discussion:

🚢 No!

🚢 But....contributory negligence could address fairness if
MASS has augmented liability thresholds.

Q13: Is there a possibility to apply other liability schemes, such as product liability for equipment manufacturers, in parallel to the 1910 Convention?

Discussion:

- ⚓ 1910 Convention is non-exhaustive
- ⚓ LLMC may protect shipowners (and certain parties) but not manufacturers
- ⚓ IF 1910 Convention is amended MASS issue will need to be addressed
- ⚓ 1910 Convention can accommodate MASS but if changes are made – protocol would be preferable

Any questions?

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