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PARALLEL 2 : Collision Convention

THE COLLISION CONVENTION 1910 AND NATIONAL LAW -COLLISION LAW AMENDMENTS TO THE JAPANESE COMMERCIAL CODE-

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0. Background

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At the last session in the Montreal Colloquium 2023...

Cons to revising the Convention

Even if some obsolete or unreasonable parts remain in the Convention, each **national law** properly covers such issues (so we don't need to change the current Convention).

Pros to revising the Convention

Relying on **national law** is not favorable for the unification of maritime law.

Question :
Is the national law approach
working effectively?



1. Collisions in Japan

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Year	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	TOTAL
Ship Collision	515	469	538	515	467	445	397	492	441	388	396	408	363	5834
Single Collision	125	128	137	148	147	137	109	119	133	114	125	125	124	1671

Source: Number of Vessels Involved in Marine Accidents (Japan Coast Guard)

Year	Ship Collision	Single Collision	Landing	Sinking	Inundation	Capsize	Fire	Explosion	Missing	Facility Damage	Casualty Toll	Others	Total
2025	18	14	20	0	1	5	9	0	0	1	19	0	87
2024	129	83	164	7	15	49	30	1	0	9	105	1	593
2023	169	103	148	9	22	44	28	2	0	12	122	1	660
2022	193	99	146	9	18	54	30	2	0	12	139	3	705
2021	199	81	173	3	36	66	26	3	0	33	125	2	747

Source: Number of Marine Accidents Investigated by the Japan Transport Safety Board

2. Legislative Situation before 2018 Law Reform

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□ History

- 1897: Enacted **Civil Code***
- 1899: Enacted **Commercial Code*** (with two provisions for collisions of seagoing vessels)
*Modeled after the existed legislation of **civil (continental) law countries** such as France, Germany, Austria, the Netherlands, Italy, and Spain
- 1913: **Became a Contracting State to Collision Convention and Salvage Convention 1910**, but the Commercial Code remained untouched (allowing a gap between the Convention and national law)
- 1935: Recommendation from Legislative Council of the Ministry of Justice
“The provisions on collision of vessels in the Commercial Code should be revised in line with the Convention.”
- 2018: Enacted **Revised Commercial Code** (entered into force in 2019)

Former Provisions of the Commercial Code	Gaps with the Convention
<p><i>Art. 797: If two Ships collide with each other due to the negligence of the mariners of both Ships, and it is impossible to determine which Ship was more seriously negligent, both shipowners bear the damage arising from the collision equally.</i></p>	<ul style="list-style-type: none"> • Fault of mariners (not vessels) (cf. Arts. 3 & 4) • No division between property and passenger damages (cf. Arts. 4(1) & (2)) • No limitation to the on-board damages (cf. Arts. 1 & 4(2)) • No indication to that the parties shall be liable according to their respective degrees of fault (cf. Art. 4(1)) • No indication to whether the liability of these shipowners against third parties is joint or separate (cf. Art. 3)
<p>Art. 798: <i>(1) A claim arising in general average or from the collision of Ships is extinguished by prescription once one year has passed.</i></p>	<ul style="list-style-type: none"> • One year prescription (cf. Art. 7(1)) • No indication when the period commences (cf. Art. 7(1))

Joint Liability against Third Parties (Former Supreme Court Decision, November 6, 1911)

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- ❑ A cargo vessel “A” collided with a seagoing vessel “B” in Japanese territorial waters.
- ❑ The insurer “C” compensated for the loss of cargo on vessel “A” and demanded full compensation from the owner of “B”, while the same claim would be partially denied if brought against the carrier (the owner of vessel “A”), which could enjoy the defense of navigational fault.
- ❑ The Court held that each party is liable for the full damage to third parties (including owners of cargo on board) resulting from the collision, which is considered a joint tort under the Civil Code (current Art. 719(1) of the Civil Code).

Article 719(1) of the Civil Code: *If more than one person has inflicted damage on another person by a joint tort, each of them is jointly and severally liable to compensate for the damage. The same applies if it cannot be ascertained which of the joint tortfeasors inflicted the damage.*

One-Year Prescription

(Supreme Court Decision, November 21, 2005)

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- ❑ A Liberian-flagged cargo vessel collided with a fishing vessel and ran away in the dark night and heavy fog.
- ❑ The tortfeasor was detected for the first time two years after the collision.
- ❑ The Convention did not apply because the flag state (Liberia) was not a party to it.
- ❑ The Court held that the one-year period of former Art. 798 started at the time when the victim identified the damage and the tortfeasor (*mutatis mutandis* application of general tort law (current Art. 724(1))).

Art. 724 of the Civil Code: *In the following cases, the claim for compensation for loss or damage caused by tort is extinguished by prescription:*

(i) the right is not exercised within three years from the time when the victim or legal representative thereof comes to know the damage and the identity of the perpetrator;

3. Commercial Code Reform in 2018

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□ Basic Policy: Alignment with the Convention

- (1) Two-year prescription (**only for property damage**) counted from the time of the “tort” (nearly equal but not the same as the “accident”) (new Art. 789. Art. 7(1) of the Convention)
- (2) Extension of the coverage to a collision between a seagoing ship and a non-seagoing ship (new Art. 791. Cf. Arts. 1 & 13 of the Convention)
- (3) Quasi-collision (new Art. 790. Cf. Art. 13 of the Convention)

▣ Intentional Deviation from the Convention

- Joint Liability even **for property damage**

- The claimant may not know the degree of fault of each shipowner.
- In domestic shipping (which is not covered by COGSA (the Hague-Visby Rules)), providing navigational fault defense is not necessarily common.
- A both-to-blame collision clause can effectively address this problem.

- **For the loss of life and personal injury, a five-year prescription** from the time when the victim knows of the damage and the tortfeasor

- To respect human lives and bodily integrity in line with the Civil Code Reform 2017 (new Art. 724-2)

Article 724-2 of the Civil Code: *For the purpose of the application of the provisions of item (i) of the preceding Article with regard to the extinctive prescription of the claim for compensation for loss or damage for death or injury to person caused by tort, the term “three years” in the same item is deemed to be replaced with “five years.”*

New Provisions of Revised Commercial Code

Article 788: Apportionment of Liability

When an accident of a ship colliding with another ship (referred to as a “collision of ships” in the subsequent provisions) occurs and the shipowners or the crews of both ships are negligent, a court shall determine whether and to what extent each shipowner shall be liable, taking into consideration the degree of the negligence. In such a case, when the court cannot establish the degree of respective negligence, the liability and amount of the damages are apportioned equally between the shipowners.

Article 789: Extinction of Claims Arising from a Collision

A claim for damages arising from a tort of a collision of ships (limited to the claims for property damage) shall be extinguished by prescription unless the claim is invoked within a period of two years after the time when the tort has been committed.

Article 790: Quasi-collision

The preceding two Articles shall apply mutatis mutandis to an accident where a ship gets extremely close to another ship due to an act of navigation or management of the ship or due to the breach of a regulation regarding ships, and the other ship, or persons or goods on board the other ship, suffer damage.

Article 791: Collision with Non-Seagoing Ship

The preceding three Articles shall apply mutatis mutandis to an accident between a ship and a non-seagoing ship.

4. Remaining Questions

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- Who bears liability resulting from a collision?
 - Tokyo District Court Decision, June 17, 1974
 - On the high seas, the MV “Full Moon” (Liberian-flagged and time-chartered by a Japanese company) collided with a Japanese fishing vessel, killing two fishermen on board.
 - The time-charterer was held to be a material owner in this case.
 - The Convention does not address the issue of *who* is liable when the colliding vessel is chartered.

■ Direct Actions

- The Insurance Act of 2008 does not provide for a direct claim against liability insurers, while the victim may enjoy a statutory lien on the shipowner's claim (Art. 22(1)).

Article 22(1) of Insurance Act: *A person that has a claim for compensation for damages against an insured under a liability insurance policy arising from an insured event under said policy shall have a statutory lien over the right to claim the insurance payment.*

■ Autonomous and Uncrewed Vessels

- Limits of “fault of mariners” style (cf. fault of vessels)
- If no person could be expected to avoid the collision, could the shipowner be exonerated from the liability at all? Is it permissible to impose the risks (technological uncertainties) of autonomous shipping on the victims?
- How can we assess the degree of fault between uncrewed vessels and crewed vessels?

5. Lessons Learned from Japanese Experience

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□ National Law Approach

- Likely to be affected by domestic legal principles: general tort law and insurance law, general prescription system, equal protection among tort victims, and statutory liens under domestic law.
- It is difficult to justify any change without external reasons, such as harmonization of maritime law.

□ The Convention as a Model

- International conventions can serve as a model or reference for national legislation, regardless of whether the subject of the legislation falls within the scope of application of the convention.
- The Japanese experience shows that some parts of the current Collision Convention are no longer suitable to serve as a model in the modern age and, in this respect, need to be updated.

Thank you for your attention!
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