

# A Brief History

By F. L. Wiswall

**The CMI, which was formally established in 1897, is the oldest international organization in the maritime field. Although its foundation followed that of the International Law Association (ILA) by several years, and the CMI was perhaps in one sense a descendant of the ILA, the Comité was the first international organization concerned exclusively with maritime law and related commercial practices.**

The known historical record makes it difficult to say with certainty when the CMI began its existence. Its origins lie in the efforts of a group led by Belgian commercial and political persons who came together in the early 1880's to discuss and to put before the ILA a proposal to codify the whole body of maritime international law. As extreme as this sounds in the present day, the roots of the effort run back to the 17th century when there were attempts to make a 'universal' codification of uniform principles extracted from the various mediaeval maritime codes. This theme had been picked up by maritime jurists in the first half of the 19th century, when it was commonly acknowledged that the courts of admiralty and maritime law were courts of international law. In the common law system this view gathered strength from landmark judgements in England [1] and America [2] that were founded upon declared universal principles. The latter half of the 19th century was an age of idealism in international law, and the quest for uniformity in maritime law was given greater impetus when the first collision regulations began to be adopted on a wide geographical scale by national legislation in the 1860s. At about the same time the first international codification of principles of general average was drawn up in London, and this culminated in the ILA Conference of 1890 that adopted the first York/Antwerp Rules. It should also be borne in mind that until the mid-20th century there were academic maritime lawyers in several countries who could make an arguable claim to know the whole body of their national maritime law as well as the common principles of international maritime law. While the effort over a century ago to make an international codification of maritime law would have been gargantuan, the ideals of that time made the obstacles appear smaller than reality.

The discussions of the early 1880s included plans for a diplomatic conference to effect the proposed codification, and such a conference was organised and hosted by the Belgian Government and held in Antwerp in 1885. When the 1885 Conference failed to accomplish the task, a second diplomatic conference was held in Brussels in 1888. While one may regret that the 1888 Conference also failed to attain what was in retrospect an over-ambitious goal, it is clear that the CMI was formally organised as a direct outgrowth of the two failed diplomatic conferences. In the aftermath of the 1888 Conference the ILA lost its appetite for continued work on a grand unification of maritime law, and it was eventually agreed between the ILA and the interests who wished to carry on the work of unification that a specialist organization should be formed to pursue this goal.

The agreement with the ILA was announced in a circular letter from the Comité Maritime International dated 2 July 1896; thus we know that the CMI was already in existence and functioning at least in a limited way for some period prior to its formal establishment in 1897. The letter stated the decision that the CMI would promote the establishment of national associations of maritime law, and would ensure a structured relationship between these associations. It was also stated that the national associations should be comprised of jurists, mercantile and insurance interests, shipowners, and all others concerned with maritime commerce. Finally, the Comité's letter stated that the first task to be

undertaken in the pursuit of unification would be the international codification of the law relating to collision at sea.

At least some of the persons principally responsible for the formation of the CMI had been involved in the unification efforts of the previous decade. Among these were the Comité's acknowledged founding fathers: Louis Franck, an Antwerp maritime barrister and later Belgian Minister for Colonial Affairs and a Governor of the Bank of Belgium, was the acknowledged progenitor of the concept of a 'Grand Unification of the Law of the Sea'. Franck persuaded his colleague Charles LeJeune, a Belgian marine underwriter, to capture the interest and influence of LeJeune's close friend Auguste Beernaert, President of the Chamber of Deputies and a Governor of the Bank of Belgium, who later became Belgian Prime Minister. Thus Beernaert became the moving force behind the diplomatic conferences of the 1880's, and it was Franck himself who made the impassioned address to the ILA in 1896 that directly resulted in the establishment of the Comité. These three principal founders were joined by figures from the Belgian government, the judiciary and the legal profession, shipowners, average adjusters, and insurance and commercial men, who signed a second circular letter in August 1896. The August letter suggested that, in response to the CMI's letter of the previous month, there should be formed a "Belgian Association for the Unification of Maritime Law". It announced a general assembly to be held in Antwerp in early October of 1896 to approve the Constitution of the Belgian Association; this was done, and the first meeting of the Association was scheduled for the following month. At that meeting, held in Antwerp on 22 November 1896, Auguste Beernaert was elected President, Charles LeJeune Vice-President, and Louis Franck Secretary-General. It cannot be a coincidence that these same persons were elected to exactly the same positions in the first bureau of the CMI and this fact, taken together with the statements made in a speech delivered at the first meeting of the Association by LeJeune, makes clear that the moving spirits were identical in the formation of both the CMI and the Belgian Association.<sup>[3]</sup>

The Belgian move was quickly followed by organising efforts in other countries. The CMI's founding fathers as well as persons from other countries who were actively working to organise national maritime law associations came together in Brussels in June of 1897 to formally establish the Comité Maritime International as the parent international organization to carry on the effort to unify the world's maritime laws and to adopt a constitution for the CMI. In attendance were representatives of 8 nations,<sup>[4]</sup> and this first International Conference of the CMI led directly to the formation of several new National Member Associations (NMAs). Though the Belgian Association celebrated its Centenary in 1996, and the CMI did not convene its Centenary Conference until 1997, it is now clear that the Comité was in actual (if informal) existence for a brief time before any of its constituent NMAs were formed.

The failed diplomatic conferences of the 1880's also laid the foundation for the partnership between the Belgian Government and the Comité that resulted in the famous series of "Brussels Diplomatic Conferences on Maritime Law". These conferences considered and ultimately adopted the conventions and protocols drafted by the CMI over the eight decades prior to the advent of IMO's Legal Committee, and were held between February 1905 (Collision and Salvage) and December 1979 (Hague-Visby/SDR). The Comité's 1897 Conference wasted no time in beginning work on two of the subjects that had been the subject of work by the Maritime Committee of the ILA: (1) Collision and (2) Limitation of the Liability of Shipowners. Subsequent annual conferences from Antwerp in 1898 through Amsterdam in 1904 continued that work and added (3) Salvage to the drafts presented to the initial session of the first Brussels Diplomatic Conference in 1905.

The 1905 Diplomatic Conference was not fully attended (most notably, the United Kingdom was not present) and did not take any substantive action on the drafts; therefore the CMI's own Liverpool

Conference in June 1905 adopted a resolution – again at the instigation of Auguste Beernaert – requesting the Belgian Government to convene another session of the Diplomatic Conference to examine the Comité’s draft conventions on collision and salvage, and so after five years of further work on Collision and Salvage the continued Conférence Diplomatique de Droit Maritime took place in September of 1910 and adopted the first Conventions on those subjects. An interesting footnote is that Beernaert (and others involved in the earlier maritime work) remained active in the International Law Association to varying degrees, and the ILA itself continued to work on specific maritime subjects for nearly three decades; indeed, Auguste Beernaert was President of the ILA’s 1903 Antwerp Conference. It is an interesting foreshadow of the nature of some current work of the Comité that this ILA Conference considered, inter alia, a model convention for the Execution of Foreign Judgments as well as a “Rule” concerning the Effect of the Captain’s Fault upon Incidents of General Average.

At its 1897 Antwerp Conference the CMI adopted a very short and somewhat vague constitution. By the time of the London Conference two years later a slightly longer and considerably more sophisticated constitution had emerged, which established the Founding Members as Titulary Members by right, set the limit for Titulary Members at nine per country, set the number of delegates of NMAs at six, and established a “Bureau Permanent” as the interim governing body of the CMI to function between conferences. The constitutionally-mandated norm during the early years of the Comité was to hold an International Conference each year, but these conferences also fulfilled the functions of a general assembly and were not solely devoted to the debate and adoption of drafts and resolutions which have characterised the less-frequent conferences of the second fifty years of the CMI’s existence.

The half-century from 1899 through 1955 saw little change in either structure or operation. The number of Titulary Members was increased by one per country, the Bureau Permanent functioned in much the same way as the later Executive Council, and the annual contributions of the Titulary Members is shown in 1947 as being £1.1.0 (one Guinea) or 150 Belgian francs. Then as now, the constitution provided that the contributions of the NMAs would give the Comité its primary support, but it was without detail as to the apportionment of contributions. In 1907 a second Secretary-General, Leslie (later Lord Justice) Scott of the U.K., was appointed to assist Franck, and later became a Vice-President of the CMI. In 1913 Charles LeJeune succeeded Auguste Beernaert as President of the Comité. Shortly before his death LeJeune was succeeded in turn by Louis Franck in 1921, and Franck served until his own death just before the CMI Conference of 1937. Upon the passing of these founders quickly followed the final troubled years of the gathering clouds, the years of the Second World War itself and the earliest years of post-war reconstruction, during all of which the Comité was virtually dormant.

The advent of the Second World War was sudden enough to prevent the three instruments adopted by the 1937 Conference – (1) Civil and (2) Penal Jurisdiction in cases of Collision, and (3) Arrest of Ships – from being formally presented to the Belgian Government with the request for a diplomatic conference. A further toll was taken by natural mortality and war casualties, such that in 1946 Lord Justice Scott found himself President of the CMI, and he turned for assistance to Cyril T. Miller, a scion of the marine insurance family of Thomas R. Miller & Co. and a stalwart of the British Maritime Law Association; together they resolved to rebuild the Comité as well as the BMLA. From personal experience as well as consultation with those having strong post-war contacts with maritime lawyers in continental Europe it was decided that the person best suited to become President of the CMI would be a certain Belgian Senator, Albert Lilar.

Before coming to Lilar, however, some exposition should be made of both the constitutional shortcomings that were revealed over the first six decades of the Comité’s existence and the measures

taken to mitigate them. The 1955 Madrid Conference adopted a constitution that began the transition to the present structure of the Comité. The Bureau Permanent was expanded to include “one or more Vice-Presidents”, “one or more Secretaries-General and Secretaries” and “a Secretary for Administration”, as well as the President, Treasurer, and one delegate from each NMA. An Administrative Council was added, consisting of the President, the Secretaries-General and Secretaries, the Treasurer and the Secretary for Administration; the Administrative Council was given most of the functions originally assigned to the Bureau Permanent. The rationale for these changes in structure was quite clearly that the Bureau Permanent had with the admission of new NMAs become much larger over more than half a century, while at the same time the frequency of International Conferences had declined. During the first 15 years of existence there were 11 International Conferences; in the 20 years between the First and Second World Wars there were 8 International Conferences, and in the 25 years from the first post-war conference of 1947 there were 10 International Conferences. Thus the interim responsibility of the Bureau Permanent, which normally met on an annual basis, was often spanning 3 or 4 years between conferences – apart from the periods of six years (1914-1920) and ten years (1937-1947) during wartime when no International Conferences were convened.

The ‘Era of Baron Lilar’ deserves its own discussion at this point. Albert Jean Julien François Lilar of Antwerp was without doubt the most formidable figure of the Comité since the days of the founders. A Professor at the University of Brussels but primarily a politician like Beernaert, he was eventually elevated from the Belgian Senate to become the Minister of Justice; with his election in Antwerp in September 1947 both as President of the first post-war Conference and also as President of the Bureau Permanent he quickly emerged as the dominant figure within the Comité. When one considers that he served as President of the CMI from 1947 through 1975 and that from Madrid in 1955 to Hamburg in 1974 he also served President of eight successive CMI International Conferences and four Brussels Diplomatic Conferences, there is no doubt that he was heavily influential all of the affairs of the Comité, and most particularly in designing and obtaining the reforms of 1955 and 1972. M. le Baron Lilar is remembered as a colourful character, with a Churchillian love of cigars and a penchant for motorcades – at least during CMI meetings in Belgium. There is a great trove of Lilar anecdotes, but this is not the place nor is there time and space to begin to relate them.

A practice that prevailed until 1955 was the election of the President of the hosting NMA as President of each International Conference of the CMI. Some historically familiar names appear: Sir Walter Phillimore (later a Lord Justice of Appeal and son of Dr. Sir Robert Phillimore, last Judge of the English High Court of Admiralty and himself President of the ILA London Conference of 1879) as President of the 1899 London Conference; Dr. Friedrich Sieveking (Chief Judge of the Hanseatic Supreme Court, President of three of the ILA maritime conferences of the 1880s and 90s and heavily involved in the CMI’s early work) as President of the 1902 Hamburg and 1909 Bremen Conferences; Sir William Kennedy (Kennedy on Salvage) as President of the 1905 Liverpool Conference; Dr. Francesco Berlingieri as President of the 1925 Genoa Conference; Louis Franck as President of the Antwerp Conferences of 1921 and 1930; and Sir Henry Duke (later Lord Merrivale) as President of the London Conference of 1922.

The history of the CMI through the Lilar era is closely tied to that of the Belgian Maritime Law Association, and it is hardly possible to draw attention to Albert Lilar himself without noting certain other Belgian officers of the Comité who have had a significant impact on its internal organization and operation – most notably Carlo van den Bosch and the Voets. Van den Bosch was a Professor at the Free University of Brussels and became responsible for much of the preparation for the first post-war meeting of the Bureau Permanent in Antwerp, where he was elected Secretary and later Secretary-

General of the CMI. He had a keen interest in the history of the Comité's work, but not so much in the structural evolution of the CMI and the personalities who have constituted it. That said, van den Bosch was the chief author, together with Albert Lilar, of the history produced for the Comité's seventy-fifth anniversary and published in 1972. He eventually became a Vice-President of the Comité, and the 'Antwerp workload' then largely devolved upon the Antwerp average adjusting firm Henry Voet-Genicot. The 1955 constitutional reforms instituted, in Article 4, a provision that the Administrative Secretary might be either a natural or a juridical person; from that time for more than 40 years the 'Administrator' of the CMI was the Voet firm. Henry Voet 'The Elder' had held the office of 'Administrative Secretary' (later "Secretary-General Administrative") even before the 1955 Constitution and was succeeded by his son Dr. Henri F. Voet upon the institution of the constitutional reform of 1972. Henri Voet took up the further responsibility of Treasurer in 1974, and he served in that capacity for 23 years.

By the late 1960's it became clear that the International Conference could no longer serve as the supreme legislative organ of the CMI, that the Bureau Permanent had become too unwieldy to serve as the interim governing body, and that the Administrative Council had proven too limited in representation of NMAs to take over as the governing body. The 1972 Antwerp Conference was wholly dedicated to reform of the constitutional structure of the Comité. The International Conference was now constitutionally contemplated to convene at 3- or 4-year intervals and was replaced as the supreme authority of the CMI by an annual general Assembly of the NMAs. The Bureau Permanent was dissolved after 74 years and the Administrative Council after only 17 years, both being replaced by an Executive Council composed of the CMI officers and 6 representatives elected by the Assembly. The officers and the members of the Executive Council were elected for 3-year terms of office, all being elected at the same time by the Assembly. The indefinite number of Secretaries-General and Secretaries was replaced by one Secretary-General (Executive) and one Secretary-General (Administrative), with provision for an Administrative Officer which might be a body corporate rather than an individual. The remaining anomaly in this structure was the office of "one or more Vice-

Presidents" which by custom had become 10 in number, elected from various geographical areas according to the pattern that had earlier become established for vice-presidents of diplomatic conferences.

These "International Vice-Presidents" had no defined duties and were not constitutional members of the Executive Council, but again by custom attended sessions of the Executive Council as well as the annual meetings of the Assembly.



Picture 1: Henry Voet 'The Eldest', the one in the middle

The Assembly at its meeting in Brussels in March 1975 elected Prof. Francesco Berlingieri of Genoa as President in succession to Albert Lilar. For one coming without previous study to read the archives of the CMI it will quickly appear that Francesco Berlingieri is in competition with Methuselah – apart from references to the name in mediaeval literature, he appears early in the archive in many capacities: as a delegate to the Conferences of Hamburg in 1902, Amsterdam in 1904 and Venice in 1907, as a Member of the CMI in 1911, as President of the Genoa Conference of 1925, as a Member of the Bureau

Permanent in Paris in 1937, reappears as President of the CMI and of the International Conferences of 1977 through 1990, and is triumphantly present at the Signature ceremony of the Rotterdam Rules in 2009. The truth, of course, is that members of the shipping and maritime legal dynasty of the Berlingieris of Genoa have been ardent and active supporters of the Comité and its work since the ink was barely dry on the letters of 1896, and most of them have been named Francesco (or, as one reads on, Giorgio). The present Francesco Berlingieri is an institution within the CMI, and when his biography is justifiably written much of it will be inextricably linked with the history of the Comité.

His Presidential successors Alan Phillip, Patrick Griggs, Jean-Serge Rohart and Karl Gombrii have benefitted from his continued and remarkable exertions, as have all members of and persons associated with the CMI.

The next Constitution, adopted by the 1992 Genoa Assembly, was intended to complete the restructuring of the CMI. The number of Vice-Presidents was set at 2; they were given constitutional duties and made members of the Executive Council. The office of Executive Councillor was established, and the number of councillors increased to 8 with criteria for election which strive to ensure broad geographical representation as well as representation of the various legal systems. The title of the Secretary-General (Administrative) was changed to Administrator, and the Immediate Past President was given a constitutional role. The result was a net reduction in the number of officers of the Comité from 20 to 15. All officers were now given 4-year terms of office, but these were made staggered terms for the Vice-Presidents and Executive Councillors in order to avoid the election of an entire bureau at the same time. A two-term limitation was adopted for the number of terms in office that could be served by the President and Vice-Presidents as well as the Executive Councillors, but no term limitation was placed upon the offices of Administrator, Treasurer and Secretary-General.

A critical and growing problem by the 1980's was that a number of NMAs had fallen seriously in arrears of payment of their contributions. These were for the most part small national associations formed in the late 1960's and 1970's in developing countries who had been accorded the lowest category of assessment of contributions, but who for various reasons declined into a position of chronic non-payment. An attempt has been made to deal by Article 21 in a firm manner with the problem of chronic arrears of contributions; there has been some success but Article 21 has not by itself provided a complete answer to this persistent problem. The 4-year terms of office Instituted in 1992 were intended to provide stability and assurance of 'institutional memory' within the executive, but after nearly two decades it was determined that the better policy would be to encourage more frequent turnover in office; consequently it was decided by the Assembly at its Rotterdam meeting in 2009 that the Constitution should be amended so as to revert to 3-year terms of office.

The 1992 Constitution also created two new categories of membership and clarified a third. The clarification is the category of Consultative Member, which is designed to bring the CMI into closer working relationships with other international organisations; currently Consultative Membership has been granted to 17 organisations, 2 of which are inter-governmental in character; there are additionally close working relationships with other IGOs and NGOs who are for structural reasons unable to enter into Consultative Membership. The new categories were those of Provisional Member for individuals in countries where the formation of an NMA is underway but not complete, and Member Honoris Causa in recognition of outstanding service to the Comité. Over the years a number of extraordinary honours have also been conferred by the Comité, including the award of the CMI Gold Medal to Arthur Boal and to Henri Voet, the title of Honorary President for Charles LeJeune in 1921, for Lord Justice Scott in 1949 and for Francesco Berlingieri in 1992 and that of Honorary Vice-President for Cyril Miller in 1972 and Honorary Secretary-General for Carlo van den Bosch also in 1972. In 1992, six of the then-existing Vice-Presidents and five retiring Vice-Presidents were given the title of

Honorary Vice-President: Nicholas J. Healy, J. Niall McGovern, Walter E. Müller, Jose D. Ray, Jean Warot, Eugenio Cornejo, Anatoliy Kolodkin, Tsuneo Ohtori, Jan Ramberg, Jan Schultsz and William R. Tetley, and at a later date Hisashi Tanikawa.

The first Member Honoris Causa, elected in 1996, was William R.A. Birch Reynardson – the prime mover behind the establishment of the CMI Charitable Trust. The Charitable Trust is an entity established in 1985 under the Charities Act of the United Kingdom and completely separate from the CMI itself. Contributions to the Trust have been made by private parties and by NMAs of the Comité. The objectives as stated in the Deed of Trust are “the advancement of legal education for the public benefit” and “the advancement and promotion of research and study in the fields of comparative law and international marine and commercial law and the publication of the results of such research.” While there are many possible ways in which the Trustees – all of whom have or have had some close connection with the CMI – may give effect to these objectives, perhaps the most outstanding has been to forge a close link between the Comité and the IMO International Maritime Law Institute (IMLI). The CMI has funded lecturers visiting IMLI and has made scholarship contributions as well as grants to the IMLI Library and the funding of copies of the CMI Handbook of Maritime Conventions for LL.M. students at the institute. The 2001 Amendments in Singapore allowed the election of Officers Honoris Causa, and the first elected were Alan Phillip as President Honoris Causa and Henri Voet as Treasurer Honoris Causa in 2004, Frank Wiswall as Vice-President Honoris Causa in 2005 and Patrick Griggs as President Honoris Causa in 2006.

After the 1992 constitutional reforms a few structural matters remained to be dealt with. One was the limitation on numbers of Titulary Members (then 21 per NMA), which was a relic from the structure established nearly a century ago. This was dealt with by amendment of Article 3 of the Constitution



Picture 2: Henry Voet

at the 2001 International Conference in Singapore, removing any limitation on the numbers of Titulary Members. Another was the juridical status of the CMI – a matter which, remarkably, seems never to have been squarely raised until the decision to apply in 1997 to the United Nations for grant of Consultative Status. The rules for awarding status to Non-Governmental Organizations (NGOs) have a strong bias toward incorporated organizations, and though the CMI was recognized and given tax-free status by the Belgian Government, it had never achieved juridical personality. Article 2 of the Constitution was amended in Singapore in 2001 by specifically referencing the Belgian law of 25th October 1919, as amended, and on 9 November 2003 the King of Belgium by Royal Decree proclaimed the Comité an ‘International Not-for-Profit Association’ (Association International Sans But Lucratif – or AISBL).

A continuing and pressing need is to promote and achieve the formation of active, democratic and financially responsible regional member associations in lieu of the larger numbers of individual NMAs which have small memberships apparently incapable of meeting their financial obligations, however modest these are on the relative scale of contributions.

It is not only the structure of the Comité that has changed markedly in the post-war era. With the formation of the Legal Committee of the International Maritime Organization (IMO) in 1968 following the TORREY CANYON wreck and resulting pollution, the IMO began to take over from the Government of Belgium the role of organising diplomatic conferences in the field of maritime law. This by no means

brought the preparatory role of the CMI to an end, yet even today it is not generally appreciated that the International Sub-Committees and subsequent Conferences of the Comité have done the initial drafting of every convention considered by the IMO Legal Committee except the 1969 Intervention Convention and 1973 Protocol and the 1996 HNS Convention. Of these three, the first two deal with public international law and the last has been worked upon by the Legal Committee at varying levels of intensity for more than 14 years, resulting along the way in the ignominious failure of the 1984 diplomatic conference. The Comité has subsequently drafted conventions for consideration and adoption jointly by IMO and UNCTAD (the United Nations Conference on Trade and Development), including the 1994 International Convention on Maritime Liens and Mortgages, and the 1997 International Convention Relating to the Arrest of Sea-Going Ships.

In addition to its continuing work on maritime conventions, the CMI is involved in the formation and maintenance of codes of maritime and related commercial practice. In 1990 the CMI adopted uniform rules for Seawaybills, and for most of its existence the Comité has been custodian of the York-Antwerp Rules for adjustment of general average, which were most recently revised by the CMI at its Assembly in London in 2004. The Comité has worked with UNCITRAL (the United Nations Commission on International Trade Law) to bring about standards for electronic document interchange (EDI) that comprehend the 'electronic bill of lading'. Finally, the work done under CMI co-ordination in the 1990s with regard to Classification Societies could well provide a *modus operandi* for the study of broader maritime issues.

After more than 110 years the CMI can claim as its greatest achievement the top-to-bottom reform of international maritime transport law. Working from the early 1990s at first internally in the customary manner and subsequently hand-in-hand with UNCITRAL for a decade, the Comité is the acknowledged parent of the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea, 2008 (the "Rotterdam Rules"). Meanwhile work has continued – primarily with IMO – on a number of highly important issues including Places of Refuge for vessels in distress, Fair Treatment of Seafarers, and Guidelines for National Legislation on Piracy and Serious Maritime Crime.

Until recently the CMI's activities were constitutionally focused upon private law; the 1972 Constitution declared the object of the Comité to be the unification of maritime "and commercial law, maritime customs, usages and practices". In view of the growing involvement of the CMI in questions of public law – and the increasing blend of private and public law issues in single conventions – the 1992 Constitution broadened the Comité's scope of activity to cover "maritime law in all its aspects." This has proven currently applicable in the context of oceans law, with the CMI's work on the legal status of offshore mobile craft involved in exploration and production on the high seas.

As of its Centenary, the CMI had admitted well over 50 National Member Associations of maritime law, though some of these have disappeared and some new ones have emerged as a consequence of changes in national political boundaries. The Comité was one of the first non-governmental international organisations (NGOs) to be granted consultative status by the IMO (which is itself a Consultative Member of the Comité) and the CMI remains in continual contact with all other recognised international organisations concerned in any way with maritime law. To facilitate its increasing work with subsidiary bodies of the United Nations such as UNCTAD, UNCITRAL and the Office for the Law of the Sea, the CMI has in 1997 been granted consultative status with the UN. In order to keep its members and others currently informed the CMI Newsletter is published quarterly. The annual CMI Yearbook summarises the current work of the Comité, contains a digest of recent court decisions involving the maritime conventions, and lists the names and addresses of officers and Titulary Members of the CMI as well as information concerning the NMAs.



Having looked at the changes in structure and operation of the CMI, it would be well to examine its composition. Most NMAs have as members not only individuals but law firms and companies in various sectors of the industry, [5] but it is fair to say that the image of the Comité as a sort of club representing the interests of shipowners has had validity until the past 25 years, during which period more representatives of the cargo interests have become increasingly active in the CMI. All present indications are that a real balance of the ship and cargo interests within the Comité is imminent, if it has not already been struck. Whether the same will ever be said for the representatives of seafarer and passenger interests on the one hand and the shipowning interests on the other is doubtful, particularly with regard to cases of personal injury. This is an area in which the CMI has taken only a peripheral interest, and given that the law of personal injury is almost wholly national in character, further involvement by the Comité seems unlikely.

It was said at the time of the 75th anniversary of the Comité that the dreams of the founders had succeeded completely thanks to the agreement of the Belgian Government to accept the CMI's drafts, to convene the Diplomatic Conferences on Maritime Law, and to serve as the depositary of the instruments adopted. [6] And we know that this agreement of the Belgian Government was secured and maintained by the efforts of active members of the Comité who were successful Belgian political figures, ranging from Auguste Beernaert to Albert Lilar. At the end of a century of existence the CMI has quite solid support from the counterparts of Louis Franck the lawyer and Charles LeJeune the 'commercial man', but where are the Beernaerts and Lilars? The answer is that the Comité has largely failed – at least in the post-Lilar period – to cultivate, convince and involve the modern counterparts of Beernaert the politician. It may be argued that this owes naturally to the decline of shipping from its once pre-eminent position in international trade; but not only may that argument fail to convince those who calculate the real present importance of shipping to the global economy, it begs the question whose fault it is that the industry in all its aspects does not today command the public attention and respect of previous generations. The plain answer is that the industry suffers from a lack of general public awareness because it has neglected the task of cultivating, educating and involving greater numbers of the younger generation of economists and business academics and also national as well as international political figures. Continuation of that neglect will further disadvantage the industry and prejudice attainment of the goal of international uniformity in maritime law, industry practices and commercial usages.

At the end of three-quarters of a century of illustrious co-operation with the Belgian Government, followed by over a quarter-century of adjustment to new circumstances in which the inter-governmental organisations (IGOs) have taken over this role, it seems expedient to ponder the changes that become necessary in the methods of work of the Comité. The historical evidence is that in the maritime legal field the IGOs have had no greater success in adopting international conventions and bringing them into force than the CMI. This must lead to acceptance that with regard to many issues confronting the industry, the predominant role of the CMI can no longer be the formulation of international conventions: the traditional process of negotiating, redrafting, adopting and ratifying conventions is too ponderous and time-consuming to result in anything but solutions which arrive too late to be an effective answer to pressing problems. This reality has driven IMO and some other IGOs to adopt methods for virtually 'instantaneous amendment' of technical requirements in international conventions, but the method is not suitable for amendment of the substantive provisions of conventions on maritime law. While its traditional work on conventions will remain an important part of the CMI's future activity, particularly in the areas that mix public and private law, it is the development and amendment of customary law arising out of agreed standardised practices of the industry that still remains the backbone of international maritime law in its daily application. To the extent that the CMI participates increasingly in the development of standardised practices, it will fulfil

its objective of international uniformity in a way different from but no less effective than that envisaged by its founders.

Two other areas of endeavour appear likely to engage the Comité. The first of these is the formulation of model national laws, which may be a more effective and suitable solution for some problems than either the international convention or the standardised practice approach. The second is the area of education, which may be the part of the work of the CMI which best ensures its own survival. This includes not only the formal educational endeavours made through IMLI, but educational ‘missions’ such as those already co-operatively undertaken by the Comité, both regionally as under the aegis of ESCAP (the Economic and Social Council for Asia and the Pacific) and to individual developing countries. An equally important educational effort is the further opening of CMI International Conferences, Seminars and Colloquia to governmental agencies and to the media.

It should be recognised that such education is also a most effective means of promoting good public relations, provided that the CMI talks not only to itself but opens its doors and beckons in those non-members who have an equal need to be informed. Over the past century we have come to take entirely for granted one of the cardinal principles set forth by the founders of the Comité, that “... in the final analysis, the jurist must wield the pen – but it is the man of experience who must dictate the solution”.<sup>[7]</sup> In the sense in which the term was used over 100 years ago, the “jurist” of today may be a general academic writer, a journalist, a government administrator or a legislator. Unless the Comité better educates the broader academics, the media and the politicians in the importance of its work, no “jurists” will be listening and that influence which the founders confidently presumed will simply disappear.

The history of the CMI to the time of this writing is on the whole an illustrious one. The challenge of the 21st Century is to so develop the Comité Maritime International that its work is of continuing and visible utility to the contemporary world.

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Vice-President Honoris Causa of the CMI

[1] E.g., *The Bold Buccleugh*, (1850-51) 13 E.R. 884, 7 Moo. P.C. 267 [Privy Council].

[2] E.g., *DeLovio v. Boit*, 7 Fed. Cas. 418 (No. 3776) (C.C.Mass. 1815) [U.S. Circuit Court].

[3] I am indebted for much of the foregoing to Professor Francesco Berlingieri, who has researched the history of the foundation of the Belgian Maritime Law Association. His citations are to Bulletin No. 1 of the Association, published 1 February 1897.

[4] Belgium, Denmark, France, Germany, Italy, Netherlands, Norway and the United Kingdom.

[5] The notable exception is the Maritime Law Association of the United States, which has over 3,600 individual members but which for external reasons is prevented from having firm or company members.

[6] *Le Comité Maritime International, 1897-1972*, by Albert Lilar and Carlo van den Bosch, Antwerp, 1972.

[7] From the Comité’s letter of 2 July 1896

