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C.M.I. - ITS PAST ACHIEVEMENTS AND
EXPECTATIONS

by

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COMITÉ MARITIME INTERNATIONAL : ITS PAST ACHIEVEMENTS & EXPECTATIONS

1. INTRODUCTION

Ten years ago Albert Lilar, the then President of the C.M.I., commenced a short history of the Comité with these words :-

"L'histoire du droit maritime porte l'empreinte d'une recherche constante de stabilité et de sécurité dans les rapports entre les hommes qui confient leur personne et leurs biens à la mer capricieuse et indomptable. Depuis des temps immémoriaux, le postulat qui a inspiré toutes les approches du problème, implique l'établissement d'un droit uniforme." ¹

Since its foundation in 1897, the objective of the C.M.I. has been to continue the progress towards a uniform maritime law which commenced in the Middle Ages.

As an introduction to this paper and in order to put the work of the C.M.I. into context, it is thought appropriate to go back into history and to consider, albeit briefly, the early steps taken in Europe towards unification.

2. THE REGIONAL CODES

In the Middle Ages uniformity had as its basis the fusion of regional customs into codes, each taking the name from a port in the region. The main thrust towards unification arose in the twelfth century through the Rules of Oleron. These Rules are, by common acceptance, attributed to Richard I ² who, having suffered greatly during his exploits in the Crusades, is claimed to have ordered the Rules to be drafted in order to mitigate the hardships involved in sea transit.

Although other early Codes ³ were of great importance, they were all much influenced by the Rules of Oleron.

It was these Rules which, in England, were incorporated into the Black Book of the Admiralty at some period in the reign of Henry VIth.
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The Black Book of the Admiralty regulated, in a comprehensive manner, the whole scope of ship management and navigation. ⁵ For the purposes of this paper, only a brief summary can be given of its provisions.

First, it contains a number of sections governing the position and power of the Master of the ship and his relationship with his crew. Second, there are a number of rules relating to the rights and duties of the parties to the Contract of Carriage. (The Merchant who hires a ship must load her within the stipulated time or pay damages. The Merchant must pay the freight stipulated when the goods reach their destination etc.) Finally, there are a number of rules about the usual risks of maritime adventure. (In case of collision with a ship at anchor, the curious rule was laid down that, unless the moving ship struck the other on purpose, the resultant damage was shared between the two ships and their cargoes. The subject of jettison is covered and if jettison was thought to be necessary the Master and crew were to be consulted. Both cargo and ship contributed to the loss.)

3. THE LEGAL PHILOSOPHIES OF THE 17TH AND 18TH CENTURIES

It was from these early beginnings that, as international trade grew so, gradually, further steps were taken towards unification.

There were two main theories current in the 17th Century, the theory of Mare Liberum advocated by Grotius and the theory of Mare Clausum preferred by Selden. Selden's book was written in 1618, its purpose being to influence a commission set up to settle disputes which had arisen in consequence of the claim of Dutch fishermen to fish in English waters without the King's licence. It was intended as an answer to Grotius's Mare Liberum. Selden argued that the sea is not common to all men, but is the subject of private property and he

maintained that the oceans surrounding Great Britain belonged to the Crown as an indivisible and perpetual appendage. As has already been mentioned, it was the growth of foreign trade which gave to all questions connected with sovereignty of the seas an international importance. On one hand England resisted the claims of Spain to prevent all other nations from trading to the New World and insisted that they had no right to countries which they had not occupied whilst, at the same time, rigidly asserting her right to the sovereignty of the four British seas. ⁶

The Dutch were supporters of the Mare Liberum. Their refusal at the beginning of the 17th Century to recognise the English claims and, in particular, their refusal to obey the Royal Proclamation which attempted to confine the rights to fish off the British coasts to British ships, led to much negotiation and to threats of war. ⁷

The first real attempt at general codification of maritime law was made in France in 1681 with the publication of the Ordonnance de la Marine. This Ordonnance made liberal use of the regional codes referred to above.

In England we should remember Lord Mansfield who was, perhaps, the most innovative jurist in the field of maritime law in the 18th century. His contribution to this branch of the law was of the utmost importance, not only during his lifetime (1705/1793), but it was to influence the future development of mercantile and maritime law in a most profound manner. He considered that commercial and maritime law were distinct from other branches of law by three leading characteristics. In the first place he stressed the characteristic of universality which these branches of law had inherited from the mediaeval law. Maritime law was not the law of a particular country but the general law of nations. Second, he believed that this branch of the law ought to be untechnical and easily comprehended by the layman; "the daily negotiations and property of merchants ought not to depend upon subtleties and niceties but upon rules easily learned and easily retained because they are the dictates of commonsense drawn from the truth of the case". Finally, the rules had to be certain: "In all maritime transactions the great object should be certainty and therefore it is of more consequence that a rule should be certain than whether the rule is established one way or the other."

4. THE INFLUENCE OF ENGLISH LAW

But certainty is one thing, uniformity another. Codification - or co-ordination - of maritime law in England did not take place until 1854, but little progress was being made towards unification.

It should be remembered that, in the mid-19th century, the effects of the industrial revolution on the one hand and the expansion of the British Empire on the other resulted in more than half the world's fleet flying the Red Ensign. Exports from the United Kingdom of processed goods to the countries of the Empire were growing annually. Moreover, emigration to the United States and Australia required additional British tonnage to cater for this new trade. During the ten years 1825 to 1834, an average of 32,000 emigrants left Europe annually for the United States and during the following decade the average rose to 71,000. The discovery of gold in Australia resulted in an exodus from the United Kingdom of an average of 87,000 men women and children each year between 1876 and 1880. As a result the tonnage on the British register rose from about two and a half million tons in 1835 to nearly three and three quarter million tons in 1845 and to over eight million tons in 1880. (By 1914 it had grown to nearly nineteen million tons.)

With this great preponderance of tonnage over the fleets of other countries and with so much of the map of the world coloured red, it was, perhaps, tempting to attempt to impose English maritime law on the rest of the world; there was certainly little evidence that English legislators were striving toward international unification. "The cases tried and decided in our own common law courts in the latter part of the 18th and early part of the 19th centuries bear a melancholy witness to our concentration upon our own system of law to the exclusion of those which were developing upon divergent lines around us". 8

5. THE ADVANCE TOWARDS UNIFICATION IN THE NINETEENTH CENTURY

In the middle of the 19th century, however, there was evidence of a movement towards unification of maritime law. Lawyers and jurists in Europe, possibly aware of the threat to their own legal traditions by

the Anglo-Saxon system of law, started to meet under the auspices of a number of newly established associations. The first of these was the "Association for the Reform and Codification of the Law of Nations" which was founded in Brussels in 1873, out of which emerged the International Law Association (which sponsored the York/Antwerp Rules in 1890). In the same year, at Ghent, the "Institut de Droit International" was set up and which initiated the Hague International Conventions. Two international Congresses were held in Belgium in 1885 (Antwerp) and 1888 (Brussels) with the object of drawing up a comprehensive maritime code - but little real progress was made. Someone with real conviction and drive was required to grasp the glowing torch and blow it into flame.

In 1896 a young advocate practicing in Antwerp addressed the International Law Association, pleading for the creation of an international organisation capable of achieving unification of maritime law by the drafting of conventions on the particular topics of maritime law where there were divergent legal theories. His name was Louis Franck. Not only did he achieve outstanding eminence in his own country as a lawyer and a statesman but his contribution to international understanding in the field of maritime law was to be recognised in England, soon after the end of the first World War, when a knighthood was conferred upon him - a rare honour for a foreigner.

6. LOUIS FRANCK AND THE FOUNDATION OF THE C.M.I.

Louis Franck believed that there were three conditions essential to the success of any international body whose object was to establish and maintain the uniformity of maritime laws. The first was to obtain the co-operation of those who were actively involved in maritime trade because they knew the difficulties caused by divergent laws. The second was to form a network of national associations with a central administrative organisation. The third was to devise a system for conveying the co-ordinated proposals of the national associations so that unifying legislation could be enacted.

On 29th April 1896, the International Law Association approved and supported Louis Franck's initiative and, the same year, the Belgian Maritime Law Association was founded in Antwerp under the patronage of Auguste Beernaert, an eminent Belgian Cabinet Minister, Charles Le

Jeune, a well known Average Adjuster in Belgium and Louis Franck.

These three founders, the politician, the business man and the jurist, threw themselves immediately into persuading their friends and colleagues in other countries to set up maritime law associations and by 1899 national associations had been founded in Denmark, France, Germany, Italy, Holland, Norway, Sweden, the United States and the United Kingdom.

The International Maritime Committee, or the Comité Maritime International as it is now known, was inaugurated in 1897 with Charles Le Jeune as its first President. The basic concept of the founders of the C.M.I. cannot be better expressed than in Louis Franck's own words:

"Our object was to give to the sea, which is the natural tie between the nations, the benefit of a uniform law, which will be rational, deliberated, equitable in its inception and practical in its text. We have considered that in our work, the shipowner, the merchant, the underwriter, the average adjuster, the banker, the parties directly interested should have the leading part: that the task of the lawyer was to discern what in this maritime community was the general feeling, which, among these divergent interests, is common to all; to discern also which of the various solutions is the best; to contribute to the common work his science and his experience, but that ultimately the lawyer should hold the pen and that the man of practice should dictate the solution."

These principles were reflected in the first Statutes of the Comité, in which its object it defined as:-

"to promote by the establishment of National Associations, by conferences, by publication and by any other activities or means, the unification of international maritime and commercial law and practice, whether by Treaty or Convention or by establishing uniformity of domestic laws, usages, customs or practices."

And the main function of the National Associations is expressed as follows:

"The National Associations shall use their utmost endeavour to enlist the recognised specialists in commerce and law in their respective countries, and should be in a position to maintain relations with their governmental authorities, so that they shall truly represent all commercial and maritime interests in their countries"

7. THE C.M.I., ITS ORGANISATION AND METHOD OF WORK

Until 1972, when the structural organisation was radically altered, the C.M.I. operated through a central Secretariat in Antwerp at the offices of Messrs. Henri Voet-Genicot. Its governing body was the Bureau Permanent, composed of a representative drawn from each of the constituent National Associations. The Bureau Permanent met at regular intervals to take general policy decisions and, in particular, to decide upon the topics to be discussed at forthcoming Plenary Conferences. Each topic was then referred to an International Commission, whose membership was drawn from the National Associations, which then reported the result of its study to the Bureau Permanent in advance of a Plenary Conference. If a Convention emerged from a Plenary Conference it was submitted, in draft form, to the Belgian Government which then convened a Diplomatic Conference in Brussels. The Diplomatic Conference, which was set up in 1905, was an international inter governmental body composed of representatives of all governments invited to the Conference. The majority of governmental delegations were composed not only of civil servants but also of practicing members of national associations.

Any Convention which, after discussion at a Diplomatic Conference, was adopted became an international Treaty for subsequent ratification by national legislation.

These arrangements were well suited to the rather simpler methods of international politics and diplomacy which were current until the Second World War. It must be remembered that, soon after the end of the First World War, the total world merchant fleet stood at about 54 million gross tons. Of this total, over 80% was controlled by the United Kingdom, France, Italy, Japan, the Netherlands, Norway and the United States. ⁹ The position after the Second World War was not greatly changed. This made negotiations on the unification of maritime

law a very much less complicated and lengthy affair than it has become with the erosion of empires and the emergence into the international arena of new countries, each with an equal right of hearing. ¹⁰

The structural reform of the C.M.I. in 1972 was necessary for a number of reasons. First, as already indicated, the task of unification was becoming more complicated as more countries voiced their opinions in international discussions. Second, the setting up of international intergovernmental organisations, such as IMCO and UNCTAD, took the place of the Diplomatic Conference. Third, it was felt that the Secretariat in Antwerp should be supplemented by an executive section which would be directly available to assist the President in the increasingly onerous task which confronted him. Further reference will be made to the subject of the reform of the C.M.I. and its effects on its work in a subsequent paragraph.

8. THE WORK OF THE C.M.I. - THE PAST

Clearly, it is impossible in a paper of this nature, to go into very much detail regarding the past achievements of the C.M.I. Appended to this paper will be found a list of all the Conferences held to date and the subjects discussed. ¹¹ Also attached ¹² is a list of the Conventions which have been adopted. From a perusal of this list it will be seen that all the main topics of maritime law have been covered and, in many cases, revised as the need arose.

9. THE WORK OF THE C.M.I. - THE PRESENT

Reference has already been made to the reform of the C.M.I. in 1972. ¹³ The main reason which prompted this was the setting up of a number of agencies under the United Nations - for example O.E.C.D., I.A.E.A., I.M.O. and UNCTAD - composed of governmental representatives and administered by international civil servants. It was clear that these agencies held the view that times had changed and that a "private" body such as the C.M.I. should make way for an internationally recognised organisation. No doubt there was something to be said for this attitude; nevertheless it was felt by the members of National Associations of the C.M.I. that it would be a real loss to the process of maritime law making if the practical knowledge and expertise of the members of the C.M.I. was not made available to these

bodies. It was for this reason that it was decided that the Statutes of the C.M.I. ¹⁴ should be revised to set out, as one of its objects, the co-operation with Governmental or Intergovernmental authorities. At the same time it was decided to do away with the Bureau Permanent which had proved a somewhat cumbersome body (upon which was represented each National Association) and for an Executive Council, with an increased number of Vice Presidents, to take its place. In addition, two new appointments were made - that of Chief Legal Officer and Secretary General Executive to assist the President in the day to day running of the Comite. ¹⁵

The process of co-operation with intergovernmental organisations had commenced ten years earlier - in 1962. At the Rijeka Conference of the C.M.I. a first draft Convention was prepared relating to the liability of operators of nuclear ships. Two other international bodies the Organisation for Economic Co-operation and Development (OECD) and the International Atomic Energy Agency (I.A.E.A.) had been studying international legislation covering the liability of operators of nuclear reactors and for the carriage of nuclear materials. The C.M.I. draft Convention, together with a text prepared by the I.A.E.A., was submitted, in May 1962, to a Diplomatic Conference under the Chairmanship of Albert Lilar and the text was accepted by a large majority.

The next occasion for co-operation with an international body occurred in 1968 when, at the Tokyo Conference of the C.M.I., a draft text on liability for oil pollution (the "Torrey Canyon") was formulated at the request of the International Maritime Consultative Organisation. This text resulted from the work done by an International Commission under the Chairmanship of Lord Devlin, the then President of the British Maritime Law Association. It formed the basis for the Convention on Civil Liability for Pollution damage of 1969.

Then, again, in 1974, I.M.C.O. requested the assistance of the C.M.I. in revising the Limitation Convention of 1957. This work was directed by Professor Alex Rein and culminated in the revised Convention of 1976.

Finally, in 1980, the C.M.I. was invited to contribute its

expertise to the revision of the Assistance and Salvage Convention of 1910. This revision was prompted by the "Amoco Cadiz" disaster and was adopted, as a draft, at the C.M.I. International Conference at Montreal in 1981.

Currently the C.M.I. is working with the International Maritime Organisation (the new name for I.M.C.O.) on the latter's revision of the Civil Liability Convention and the revision of the Maritime Liens and Mortgages Convention.

10. THE WORK OF THE C.M.I. - THE FUTURE

It is not unreasonable to suggest that, when the various intergovernmental bodies, to which reference has been made, were first set up, there was a feeling - certainly in certain quarters - that the C.M.I. was an outmoded organisation and that the work previously done by it would be taken over by these new political bodies of the United Nations. Gradually, however, as we have seen, it became clear that the particular expertise of the C.M.I. was welcome. Although the machinery of the old Diplomatic Conferences of the C.M.I. was replaced by Plenary Conferences organised by the United Nations, the input of the C.M.I. to the work of the international organisations - particularly of I.M.O. - increased. It is believed that this trend will continue.

In addition, however, to the creation of international law through international conventions, there is scope for unification through the voluntary adoption of recognised rules by contracting parties. This, indeed, was the original intention behind the Hague Rules which only in the final stages of discussion became mandatory. Examples of this method are the York/Antwerp Rules on General Average and the Rio de Janeiro Rules on Charterparty Clauses.

Finally there is the growing involvement of the C.M.I. with the codification of maritime law in developing countries. Thus, for example, the C.M.I. has, through E.S.C.A.P., been invited to assist in the drafting of "guidelines" on maritime law for certain countries in South East Asia. These guidelines have been drafted under the Chairmanship of the President of the C.M.I., Professor Francesco Berlingieri, and are designed to serve as a basis for maritime codes which would be drafted by jurists in the countries concerned. Again,

the C.M.I. has recently drafted a set of "guidelines" on marine insurance at the request of the Peruvian Maritime Law Association.

Yet, while there is certainly a strong current flowing towards uniformity of maritime law, there is also a contrary current - not so strong but nevertheless significant - which cannot be disregarded. This is the desire of some developing countries to cast off the legal traditions imposed upon them in the past, as colonies, by the imperial powers whether British, French, Dutch or Spanish, and to adopt, instead, legal concepts dictated by political, rather than practical, considerations.

This tendency, which should certainly be treated with sympathy and understanding, is sometimes particularly noticeable in the debates at International Conferences.

It is, surely, one of the main functions of the C.M.I. to make itself available to the authorities in these developing countries to assist them in formulating their views as to the direction their national law should take. This has certainly been the role adopted by the C.M.I. in its work with ESCAP (the Economic and Social Commission for Asia and the Pacific) to which reference has already been made.

In addition, the C.M.I. proposes to make restatements of comparative maritime laws on a number of subjects, particularly those in respect of which there is already some degree of uniformity. This activity would have two objectives; first, it would provide information on the status of the law in different countries; second, it would serve as a basis for deciding whether an existing Convention is in need of revision either because it has received little support internationally or because of the passage of time.

The strength of the C.M.I. lies in the fact that it now has in its membership forty Member Associations from all over the world, with different legal traditions and systems.

It is essential that these National Associations participate fully in the work of the C.M.I. The customary method employed in commencing work on any particular subject is for the Chairman of an International

Commission to circulate a questionnaire seeking information from National Associations on the status of national law on certain specified items. In this way the Chairman is able to assess what changes would be necessary to reach uniformity on the subject under study. Clearly it is of the utmost importance that National Associations reply swiftly and accurately to these questionnaires in order that the work of International Commissions can proceed with despatch.

11. CONCLUSION

This review of the work of the C.M.I. over the last eighty five years and the changing nature of the manner in which this work has been done leads, inevitably, to the question of its position as an international legal institution of the future. An attempt has been made to demonstrate the manner in which the C.M.I. has been able to adapt itself to changed circumstances. It is this flexibility which has been crucial to its survival. There is no doubt that the international intergovernmental organisations under the United Nations now fully recognise the importance of C.M.I. as a unique body, willing and able to assist. But the involvement of the C.M.I. in other activities which have been mentioned has also strengthened its authority and reputation in the world. There is no doubt in the mind of the author that the C.M.I. will continue to play an essential part in the unification of maritime law and that the original objective, as expressed by Baron Lilar at the beginning of this paper, is still a goal which can only be attained with the assistance of the Comité.