

British Institute of International and Comparative Law

A brief history: 1895 - 1958

Norman Marsh QC, November 1998



A brief history of the Institute: 1895 - 1998

Part I: 1898 – 1915

1. The earlier of the two societies involved in the eventual setting up of the British Institute was The Society of Comparative Legislation. The circumstances of its founding were very impressive. A meeting was held at the Imperial Institute in 1894 under the chairmanship of the then Lord Chancellor, Lord Herschell; its purpose was, "To consider the best means of furthering the study of Comparative Legislation, as suggested in a paper lately read at the Institute by Sir Courtenay Ilbert, KCSI". Sir Courtenay Ilbert (1841-1924) was a very distinguished lawyer who had been Law Member of the Viceroy of India's Council; on returning to England he had been appointed Assistant Parliamentary Counsel to the Treasury (and later Head of that Department), finally serving as Clerk to the House of Commons.
2. The substance of Courtenay Ilbert's suggestion may be gathered from Volume I (1896-97) of the Journal of Comparative Legislation which, under the heading "Statement of the Objects of the Society", cited a motion moved by the Lord Chancellor, calling for the establishment of "A Society of Comparative Legislation, with the object of promoting knowledge of the course of legislation in different countries, more particularly in the several parts of Her Majesty's Dominions and in the United States". The "Statement" continued by pointing out that societies of this kind already could be found in France, Germany and America, and that, in striking contrast, no modern book existed with adequate treatment on the systems of law in force in the British Empire. It concluded by stating its aim of enlisting the aid of "Governors, Chief Justices and Judges of our colonies, Chambers of Commerce throughout the Empire, of the Inns of Court and Incorporated Law Societies, of the Universities, of the Diplomatic and Consular Services, of the Bar Associations and Statute Revision Commissions of the United States". Finally, it promised availability of the information obtained to members of the Society for a modest fee of one guinea (or of ten guineas for life membership).
3. The resulting survey in Volume I of the Journal of Comparative Legislation extended to more than four hundred pages and was the work of many contributors, outstandingly of Courtenay Ilbert himself. Even in its first year it was not limited to the British Empire and United States, as it included an article on the new German Civil Code, which was to come into effect in 1900, nor in later years did the Society's emphasis on legislation exclude comment on court decisions. Indeed, Lord Denning, who had been chairman of the Executive Committee of the Society of Legislation from 1951, said, when in 1965 he was contributing a Foreword to the Annual Survey of Commonwealth Law published under the joint auspices of the British Institute and the Faculty of Law of the University of Oxford, that it would be valuable to compare specific House of Lords decisions with those taking a contrary view in the Commonwealth, "... so that it [i.e. the common law] continues to be one whole and not split into fragments".
4. The survey continued to appear year by year until in 1950 in Volume XXXIII (Parts III and IV) of its Journal it was stated that the cost of publishing the "Review of Legislation" "had become the least justifiable drain on the Society's resources" and that in future "the "Society" must inevitably depend very largely for its pages of Notes on unsolicited research sent in from outside".
5. To avoid confusion arising from the nomenclature it should be added that in 1947 there first appeared the International Law Quarterly, edited by Professor G.C. Cheshire and Dr. Colombos, with a Foreword by Sir Cecil Hurst GCMG, President of the Grotius Society and former President of the Permanent Court of International Justice. Although a number of members of the Executive

Committee of the new Quarterly were also closely connected with the Grotius Society, the Quarterly did not appear as a journal of the Grotius Society. In any event, in 1952 there first appeared the International and Comparative Law Quarterly with a Foreword by the Chairman of the Executive Committee of the Society of Comparative Legislation who was then Lord Justice Denning. In the Foreword Lord Justice Denning referred to the British Commonwealth as "the great exemplar for most of our problems to which the Journal [of Legislation] has throughout the years devoted so much thought and study". He said that the new Quarterly, published by the Society of Comparative Legislation "as its Journal", will try to give "a due place" in its pages to international law, to the conflict of laws, and to comparative law, but "will seek explicitly to be a focus for Commonwealth legal studies".

Part II: 1915 – 1954

6. The Grotius Society was founded in 1915 with Lord Reay KT as President and Professor Goudy DCL, Regius Professor of Civil Law, Oxford, as Vice-President. In the Introduction to Volume I of the Proceedings of the Grotius Society, Professor Goudy wrote that "the object of founding the Society has been to afford an opportunity to those interested in International Law of discussing from a cosmopolitan point of view the acts of the belligerent and neutral States in the present war and the problems to which it almost daily is giving birth". He went on to explain that the role of the new Society would not have been necessary had the already existing International Law Association, with its seat in London, been able to carry on its work, which was in fact hampered by having a considerable number of foreign members of belligerent or neutral nationality; it was for this reason that membership of the Grotius Society was initially restricted to British subjects, without excluding, "as occasion offers", foreign international lawyers as honorary or corresponding members, or an invitation to "non-members to read Papers" to the Society or to take part in the Society's discussions. Professor Goudy added, however, that it was not intended "to discuss international questions from a purely British standpoint. International Law, if it is to have any standing authority, must be based on the fundamental principle of human rights and must give effect to the common welfare of nations". He concluded with a critical statement of "military necessity" and "reprisals" as alleged exceptions to the rules of International Law.
7. In the forty-four volumes of the Transactions of the Grotius Society covering the years 1915 to 1959 the text of some 380 lectures given at meetings of the Society in London, at conferences organised by the Society in London or in the Provinces, were regularly printed. These lectures stretched over a wide field of International Law, extending after World War I far beyond the role of International Law in time of war. Even if my figure of 380 for the total number of lectures given is not strictly accurate, it emphasises a very important characteristic of the Grotius Society's work. This is that the lectures as such attracted a regular core of Grotius Society members and thereby strengthened the Society as a social as well as a legal institution.
8. Although it is not feasible within the confines of this short paper to give any adequate account of all the subjects covered by lectures given to the Grotius Society, the paper presented in 1956 (see Volume XLII of the Transactions of the Grotius Society) by Mr. G. Tracey Watts, its Honorary Librarian, bore the title "Forty Years of the Grotius Society". It may be used here selectively to illustrate some of the memorable events in the Society's history.
9. Thus, it is stated that the original members of the Grotius Society numbered thirty-five and that the name, Grotius Society, was suggested by one of them, Dr. Thomas Baty DCL, LL.D. (In the list of members at 31 December 1958, as

given in Volume XLIII of the Grotius Society Transactions, the Honorary Members are stated to number six, Associated Members ten, Corresponding Members twenty-five and Ordinary Members 201.)

10. By 1919, with the War over, the title of Transactions was altered from "Problems of War and Peace" to "Problems of Peace and War" and new premises were found at No. 2, King's Bench Walk with the International Law Association. There it was possible to start a collection of books relating to International Law (which under the title of the "Grotius Library" is now housed in the offices of the British Institute).
11. In 1920 Lord Birkenhead, the Lord Chancellor, President Woodrow Wilson, James Brown Scott LL.B, General the Rt. Hon. Jan Christian Smuts KC, LL.D, MA, Prime Minister of the Union of South Africa, and Senator Elihu Root were elected as Honorary Members of the Society. In 1921, at the sixth Annual General Meeting, the Lord Chancellor made a speech (although the text has been lost) and in 1923, at the Annual General Meeting, a later Lord Chancellor, the Rt. Hon. Viscount Cave, was elected President of the Society. At the 10th Annual General Meeting in 1925 Lord Blanesburgh was elected President; this was followed by a banquet in celebration of the publication of Hugo Grotius' *De Jure Belli et Pacis*. In 1928 Hugh Bellot DCL, Honorary Secretary of the Society since its foundation, died and was succeeded by Mr. Wyndham Bewes.
12. In 1935, at the 20th Annual General Meeting, Lord Macmillan, Lord of Appeal in Ordinary, referred to the suggestion made by Lord Atkin as Chairman of a Committee appointed by the Lord Chancellor that London would soon become the home of an Institute of Legal Research and of a "really great institution of post-graduate legal study". (This was an anticipation of the foundation of the Institute of Advanced Legal Studies, which now shares premises with the British Institute of International and Comparative Law in Charles Clore House, 17 Russell Square.)
13. In February 1939 a tablet on which were inscribed in English the concluding words of Grotius' *De Jure Belli et Pacis* was unveiled by the Earl of Athlone, Chancellor of London University, in the Dutch Reformed Church, Austin Friars, London E.C.2. The project had been inaugurated by the Executive Committee of the Grotius Society and Queen Wilhelmina of the Netherlands sent an appreciative message. Following the ceremony a large company was entertained to a luncheon by the Master and Wardens of the Worshipful Company of Drapers. But in World War II, which followed in the same year, the Church, originally presented by Edward VI to the Dutch Protestant Worshipers 400 years before, was destroyed and although it seems that the tablet survived, no vestige of it has since been found. A photograph of it, however, appears as frontispiece in the 25th Volume of the Transactions of the Grotius Society.
14. In 1940 at the 25th Annual General Meeting of the Grotius Society, Sir Cecil Hurst GCMG, KCB, KC, former President of the Permanent International Court of Justice, was elected President of the Grotius Society. On that occasion an address was delivered by the Lord Chancellor, the Rt. Hon. Viscount Caldecote. He referred to a remark recently made in the House of Lords that International Law was so difficult and obscure that only a very brave layman would dare to speak about it. In his reply, Sir Cecil Hurst agreed and said that it was for the Grotius Society to make International Law more accessible to the non-specialist lawyer and to the layman alike. In particular, he emphasised the importance of teaching International Law to practising and academic lawyers alike.
15. In 1943 Rule 2, dealing with the Objects of the Society, was amended to read, "The Objects of the Society shall be to afford facilities for the study, discussion and advancement of Public and Private International Law, and to make suggestions for their reform". The membership provision of the Rules was also changed to consist of (1) Members who were British nationals; (2) Associate Members, i.e. non-British nationals permanently resident in the United

Kingdom; (3) Corresponding Members, i.e. non-British nationals not resident in the United Kingdom; and (4) Honorary Members.

16. In 1944 came the death of Dr. William Roosegaarde Bisschop, who had been Honorary Secretary of the Grotius Society and of the International Law Association. He was succeeded as Honorary Secretary of the Grotius Society by Dr. C.J. Colombos (who continued in that office until his retirement in 1955). In 1945 the President of the Grotius Society returned to the subject of the need for better education in International Law and at the 31st Annual General Meeting in 1946 he said that, "The study of International Law in Great Britain at present falls rather within the power of the specialist. The man in the street knows very little about it [but it is] the function of the Society to endeavour to popularise the subject and particularly to get the younger generation to take a greater interest in its development".
17. In 1948 at the 33rd Annual General Meeting, Sir Cecil Hurst was succeeded as President by Sir Arnold (later Lord) McNair CBE, KC, LL.D, FBA, and a presentation was made to Sir Cecil Hurst of his portrait by William Dring ARA by the Lord Chancellor, the Rt. Hon. Viscount Jowitt, in recognition of Sir Cecil's services as President. Sir Cecil in reply made a plea for younger men to carry on the work of the Grotius Society in encouraging a better and greater understanding of International Law.
18. In July 1949 the Grotius Society's International Law Conference was held in the Inner Temple under the chairmanship of the Society's President, Sir Arnold McNair (as he then was). At the preceding dinner Mr. Justice Hodson MC, proposing the health of "International Law and the Grotius Society" said that ignorance of International Law was betrayed not only by many practising lawyers in England but also by judges.
19. In 1950 at the Society's 35th Annual General Meeting Sir Arnold McNair resigned from the office of President, in view of his duties at the International Court at the Hague, and was succeeded as President of the Grotius Society by Sir Patrick Spens KBE, KC, MP, formerly Chief Justice of India.
20. Also in 1950 at the Annual General Meeting a resolution of the Executive Committee was approved to the effect that no case had been made out for the amalgamation of the Grotius Society with the British Branch of the International Law Association.
21. The Society's International Law Conference in 1950 was held in the Middle Temple Hall and at the dinner preceding it the health of "The Grotius Society and International Law" was proposed by the Attorney General, Sir Hartley Shawcross KC, MP, who spoke of the importance for the Society to obtain the full support of the Bench and the legal profession.
22. In May 1951 at the first of its Provincial Meetings in New College, Oxford, the Attorney General, the Rt. Hon. Sir Frank Soskice KC, MP, spoke on "Some Practical Aspects of International Law" and the meetings were largely attended by graduate and undergraduate members of the University.
23. At the Annual General Meeting in April 1952 Sir Eric Beckett KCMG, QC, was elected President. Also in that year at the dinner preceding the Society's International Conference in London the Rt. Hon. Lord Asquith of Bishopstone PC observed of International Law that few subjects so vital were known to so few; it was deplorable that it was difficult to interest either the man in the street or the average student in International Law.
24. At the dinner before the Society's Law Conference in 1953 Sir Lionel Heald QC, MP, Attorney General, in proposing the by now customary health of "The Grotius Society and International Law" suggested that the Society had not made International Law sufficiently attractive to members of the Bar who were

apt to think of it as an academic subject of which they did not know anything and only a subject for experts.

25. In 1954, on the retirement of Sir Eric Beckett as President on the grounds of ill health, Sir Harold Duncan KCMG, QC, former Legal Adviser to the Dominions and Colonial Office, was elected in his stead.

Part III: 1954 – 1958

26. On 25 March 1954 a proposal was made by the Society of Comparative Legislation and International Law that the Grotius Society should co-operate with it in setting up a "British Institute of International and Comparative Law", but with the members of the two Societies retaining their present identities and continuing, as far as they desired, their present activities. (Although this "Formal Proposition" was recommended for agreement by the Executive Committee at the 38th Annual General Meeting held in April 1954, it was agreed that the matter should be held in abeyance pending further discussions with the Society of Comparative Legislation, which eventually resulted in the incorporation documents of 17 November 1958.)
27. In 1955 at the dinner preceding the Society's International Conference, the now familiar toast of "The Grotius Society and International Law" was proposed by the Attorney General, the Rt. Hon. Sir Reginald Manningham-Buller QC, MP who referred to the high prestige which the Society and the fifty volumes of its Transactions enjoyed throughout the whole Commonwealth. At the dinner the President and the Hon. Secretary of the Grotius Society were invested with the insignia of Commander in the Order of Orange Nassau on behalf of Her Majesty, Queen Juliana of the Netherlands.
28. At the Annual General Meeting on 3 April 1956, the following were elected as officers of the Society for the coming year: as President, Sir Gerald Gray Fitzmaurice KCMG, QC; as Vice-President, Sir Harold Duncan KCMG, QC; as Hon. Treasurer, Dr. F.A. Mann LL.D; as Hon. Secretary, Mr. Richard O'Sullivan QC; and as Hon. Librarian, Mr. G. Tracey Watts.
29. From the Report of the Executive Committee 1956-7 (see Volume XLII of the Transactions of the Grotius Society) it appears that ten lectures were delivered under the auspices of the Society during the period, either at ordinary meetings of the Society, at a Provincial Meeting in Bristol University, or at an International Law Conference of the Society; all these lectures were published in Volume XLII.
30. At the annual dinner in the Inner Temple on 26 October 1956, Sir Hartley Shawcross QC, MP proposed the "International Law and Grotius Society" toast. His speech was reported at length in Volume XLII of the Transactions of the Grotius Society. He spoke of the different methods of settling international disputes, whether by law or political compromise; of the regrettably growing popularity of repudiating international contracts; of the problem of lending money to other countries; of the danger of not including International Law in the examinations for the legal profession; and of the limited value of the Charter of the United Nations in the settlement of disputes or in the enforcement of the law.
31. In Volume XLIII of the Transactions of the Grotius Society in the year 1957 the Report of the Executive Committee records that the Provincial Conference was held in that year at Birmingham University at which two papers - one on "Piracy in Modern International Law" by [Professor] D.H.M. Johnson, and the other on

"The Unknown Province in the Conflict of Laws" by Mr. Josef Unger LL.M - were read.

32. The International Conference of the Society in 1957 was held in Gray's Inn and at the dinner preceding it the principal guest was the Rt. Hon. Lord Strang GCB, GCMG, MBE. In his speech he referred to contacts made by him as a non-lawyer in the course of a long professional life with international lawyers and he emphasised the contrast between municipal law, which in a mature system is generally observed, and International Law which is "less comprehensive and less mature". (His speech is reported at length in Volume XLIII of the Grotius Society Transactions at pp. 5-13.)
33. In Volume XLVIII (the last of the pre-British Institute of International and Comparative Law volumes of the Transactions of the Grotius Society) no less than fifteen papers are printed which were read at ordinary meetings of the Society, at the Society's Annual Conference in 1958 or at its Provincial Conference held in the University of Southampton on 31 January 1959.
34. The foregoing broadly drawn and necessarily incomplete picture of the two Societies, which had left valuable legacies to the British Institute of International and Comparative Law in the form of achievements to develop or difficulties which are still waiting to be overcome, may be both expanded and sharpened in perspective by consulting the Journal of Comparative Legislation and The Transactions of the Grotius Society. All the present writer has been able to provide is a sketch of the foundations on which I felt the British Institute of International and Comparative Law had to be built when I arrived in 1960 at No. 1 Temple Gardens, as the British Institute's newly appointed Director.

Norman S Marsh QC

Director, British Institute of International and Comparative Law: 1960 - 1965
Member of the Council of Management of the Institute: 1966 - 1997
General Editor, International and Comparative Law Quarterly: 1960 - 1965
Member of the Board of Editors of the International and Comparative Law Quarterly: 1966 - 1996

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