MARITIME LAW ASSOCIATION OF THE UNITED STATES.

September 12, 1927.

Mr. Louis Franck, former President of the International Maritime Committee and now one of its Hon. Secretaries, is at present visiting the United States and will be in New York between September 22nd and October 8th. Mr. Franck is at present Governor of the National Bank of Belgium and was formerly Secretary of State for the Colonies of the Kingdom of Belgium.

The Executive Committee has invited Mr. Franck to be the guest of the Association at a dinner in the nature of a special meeting, to be held in his honor on Wednesday, October 5th, at 7:30 p. m. at the Yale Club in New York City. Mr. Franck has been invited to address the members after the dinner on the work of the International Maritime Committee and on such other maritime and legal subjects as may occur to him. Please notify the secretary as promptly as possible, and before October 1st, whether you wish to attend the dinner. The price is tentatively fixed at $4 a plate, for which, if you are attending, kindly enclose your check.

Very truly yours,

HAROLD S. DEMING, Secretary,
27 William Street,
New York City.

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MARITIME LAW ASSOCIATION OF THE UNITED STATES

ADDRESS

AT

YALE CLUB, NEW YORK

October 5, 1927

BY

M. LOUIS FRANCK

PRESIDENT OF THE INTERNATIONAL MARITIME COMMITTEE

To the Members of the
Maritime Law Association of the United States:

M. Louis Franck: I am fully aware of the difficulties of speaking in a foreign language before such a distinguished audience and so many men who are accustomed to speak and to speak well. And I am not going to avail myself of your permission to make a long speech. I remember a British proverb, and I suppose it is also an American one, "Short but sweet." I am not so sure that I can say very sweet things, but I shall try, in any case, to make it brief.

But let me first recall that when, more than twenty-five years ago, I was a struggling young lawyer at the Antwerp Bar, I was very much struck, after I had been reading collision and other maritime cases, to see how great the divergency of law was, in the case of a collision, where both ships were to blame. The practical result could be quite different according to the locality where the case was to be tried. If the matter went to London, they would, under the rule of their court, divide the damage by

halves. If it came to French shores, or to our Belgian side, the Judge would make a difference between grossly or wilfully bad navigation, and perhaps a technical infringement of the rules. But if it went to Holland, they would get a very nice and able court, and if both ships were to blame, nobody would get anything, under the law of contributory negligence.

Well, I was so foolish, nearly thirty years ago, as to think that that was not right, although it was only an instance amongst so many others. And when some day I happened to go walking by myself, more than once I was brooding over that difference. That is the sort of classical turn of mind we have got over there. We are able to believe that when things should not be, even though you are only a very small and unknown man, if you believe really in a cause, you should try to go for that end. And I am not quite sure that some of the very great ideals which have been fought for in this country were not of the same invention. I at least know in your history some men who, in an entirely unselfish spirit, often found themselves before lots of powers of all sorts, and did their bit, and they won their prize. And at least at home we always bear in mind the saying of one of the greatest men that ever lived and reigned—William the Silent—who, in the sixteenth century, said, "It is not necessary to hope in order to undertake; nor to succeed in order to persevere."

Well, that ideal was perhaps a little too high and rather ambitious. But we started with that idea. And I went first to England, and I went to two important shipowners I knew. They received me most kindly, and said, "We do not take any interest in these affairs; it is a matter for our solicitors." And then one said, "Do you know a way of making the day have forty-eight hours? If you do, I shall give you some of those hours." Then I said, "No. But I think that a man in your position, with your eminence in business, ought to do something else than look after your immediate business and your immediate interests, and you ought to consider a little further what is good generally for the welfare of your trade, so that you may hope that when you have got all the money possible out of freights, and all the good side of things, you may also say that you had

been of some use for the general welfare of your trade, and the general rules under which it is to be carried on." And I was fortunate enough to convince them, and they said, "Well, we can't do everything, but you go and see Sir John Gray Hill with our compliments, and try to persuade him, and if he thinks that the matter is right, we will stand by you."

I saw Sir John Gray Hill, one of the most eminent lawyers I have ever met, a man of great practical knowledge, but also with a broad sort of mind, a man who, in England, dared to be a brilliant man, which is a very dangerous thing indeed. He had a villa in the neighborhood of Palestine, and he used to go there and rest from the joys he got in his activities. And we won him over. We could not accomplish more at that time, because whenever we were meeting with a lawyer, either counsel or judge, he would listen, and then he would say: "Yes, but our law is satisfactory to us—and most probably our clients have the greatest amount of cargo belonging to British subjects, all the credit being run by British banks, but, in any case, we are insuring the largest amount of all damage." So it was very simple. You should have the British law. There was no better law, whatever you might suggest to them. The American law or the Continental law was different from the British, yes, but "It is not our Admiralty law." And that seemed to be amen to all.

We got around that. We formed the International Maritime Committee, and we invited them to come in, and they finally did. They saw that if each of the interests concerned in the maritime domain all over the world was going to look at things from its own selfish point of view, and if cargo people said, "If what you propose is good for cargo, I will take it, but what is not so favorable, I reject"—if the shipowners were going to say, "I will only support you if you are going to make your rules more favorable to our side," and if on the other hand the bankers would come in looking for some practical advantage of their own, things would remain confused to the end of time. It would be just the same, if you are going to listen to all those who believe that their own law system is the best of all.

After all—I suppose we are all lawyers here—we are all of a conservative turn of mind. If conservatism were dead in the world, it would still be found alive among lawyers. And to speak the truth, the most reactionary of us are those lawyers who get into Parliament. Whenever you raise a question of social or political importance in Parliament, they are among the most radical and the most generous, but pay attention—there comes up a question of law—they have perhaps never had ten cases in their lives to defend, but they think of what was taught to them in the law school, and it is the holy scripture. (Laughter.) And to the left, and to the right, and in the centre, they all rise and say, "That is not according to common law; that is not according to our law; and that is not good." Well, that is, after all, wrong. It is quite true that you must not unify for the safe of unification itself, in such a way that you must not make a worse law or accept a bad law. There is one thing which is quite sure, that any law of the seas which is a uniform law, by that alone must be far and away the best; because, if you think about these matters, after all, gentlemen, the sea is not the domain of one nation. There is no national sovereignty over the high seas. Some of your forefathers fought against Spanish and English fleets to make the sea free, and if the sea be free, as the sea is free, then rules of law applicable there should be settled. They cannot be settled by one nation alone. All that one nation can do is to settle them for its own ports. After that you may go on speculating that you will more or less be able to get hold of the ship you want in your ports. But that is not true in all cases. In many cases your own people will have interests in ships in foreign ports, which never come here. Or in other cases, interests which have begun here will develop in other lands, and be decided in reference to foreign vessels, under foreign flags. Everywhere you will meet with conflicts of law and difficulties.

So you must try to find a system which will be uniform, and in which all nations will agree. The way to do that was not very simple. The first idea was, naturally, to frame a system and defend it on its economic merits, and to hope that all Parliaments all over the world would be reasonably advised. But

when that system was suggested to me, I said to some friends who were with us, "That will never do. In the Parliaments you are sure to get amendments, and even if one Parliament prefers to pass a law, it will not do it, because it will always wait and see what its neighbor is going to do. There is only one way of getting over that difficulty, and that is to bring them proposals in the form of international conventions." International conventions must be accepted by Parliament as a whole, or rejected as a whole. And if a Ministry or Cabinet agrees to pass them, we shall probably get these measures through. In any case, Parliaments will be assured that when they do pass such a law, the form will not be changed in other countries.

As you know, the first set of our treaties were on salvage and collision; they have succeeded, have become law nearly everywhere. But there was another reason why we succeeded. We made it a principle that the International Maritime Committee was not going to consider itself as a sort of legal prophet in maritime matters, trying to draft a perfect law, for all the rest of mankind to accept. We went to the business men themselves, in the various commercial and maritime countries, and we brought them together with the lawyers. And I was just saying to one of our friends here that while I very much enjoy your most charming hospitality, and the acquaintance and long relation which I have had with most of you, and I would not wish to make an unkind remark to my hosts—(I only made the point to show the difference)—yet, if we had a meeting of this sort in England, or in Belgium, we should have met not only with many maritime lawyers in the same branch of the profession as you are, but also would have found in the room at least as many shipowners, underwriters, merchants and bankers. We have educated them all to the idea that it was their duty to take part in a business which was their concern first, and that we, the men of the law, were only there to do what they thought to be practical and reasonable among themselves, and acceptable as a universal maritime law. If they could agree, we would put it in reasonable form. And that has been the secret of our success. Because, with that idea before us, we have treated this matter as a great thing, to be dealt with in a broad spirit,

not to be considered branch by branch, but as a whole. And there should certainly be give and take for every interest, in order that the whole may be acceptable to everyone.

Take, for instance, to make my mind clear, this question of collision. The collision treaty was passed in 1910, and was signed by the United States, agreed upon by your delegates. Mr. Burlingham was one of them. It has been passed by all maritime nations, and is the law everywhere throughout the world. Only your country has not ratified this treaty. For what reason? You have not agreed as to the rule of apportionment of damage in cases where both ships are to blame.

My good friend Mr. Jones has just explained to me the most striking academical reasons for your refusal. (Laughter.) But he made it quite plain that the American cargo underwriters were not facing the point. The underwriters in England, France and Germany, sitting around a table like this, after half an hour have said, "You are right, and we agree to support you."

Why did they agree? The first reason is that the underwriter deals in averages, in big figures. He wants to have unity in the law. He is not interested in national differences. There is no man in the world who, if he understands his business and sees it rightly, has a broader interest than an underwriter. He wants to see this great unification of the law go through.

Take Lloyds, the biggest underwriters in the world, or the great English companies. They have from the beginning supported the work of the International Maritime Committee with the most constant co-operation. The big International Union of Marine Underwriters take the same view. What do they see in it? Were they looking at the petty question whether, where both ships were to blame, they could cash in at the happy coincidence? They had much further insight in the matter, and they said to themselves, "Uniformity of maritime law is not going to be a matter of collision cases only. There is a bigger thing in which we are interested. Certainly, the shipowner, under modern conditions, cannot reasonably be made liable for every act of negligence of a captain or a member of the crew, a man on watch, and so on, as against his own cargo, in navigating his ship. If in some collision cases we are being paid less, we

can very well assess the premiums in order to meet that small risk. The thing which interests us, a matter which has been troubling our business for much more than twenty-five years, is the negligence clause in the bill of lading as to the management of the cargo and the care taken of the cargo, because taking care of the cargo is the primary duty of the captain. That is a part of the contract of the shipowner, receiving cargo in good condition, and delivering it in the same condition, as far as reception, stowage, and landing and delivery of the cargo is concerned. The amount of damage claims due to bad handling of the cargo, in the statistics of the insurance companies, far exceeds all other claims, and is a constant cause of trouble. You can, in the long run, figure out what will be the average number of casualties on the sea. I mean big casualties—strandings, collisions, burnings, and such things. But negligence in respect of cargo is an unforeseeable thing. And that is the risk we must minimize by international convention."

So the cargo underwriters, from the beginning, knew quite well that if we went on treating first the less difficult questions, we should some day come to the big question for the cargo interests—the question of the bill of lading and the negligence clause.

They wanted from the beginning to have your Harter Act become international law; and, if I might put that in the form of a bargain, I would say that their implicit bargain with the shipowners was that "We want the negligence clause regulated; we are willing to give in on other points, such as the collision convention, even though there may be a slight difference in our losses."

And, really, they were right, and it has come out that way. For, after the collision clause, we got the bill of lading convention—the Hague Rules so-called.

And let me say that this is greatly to the credit of the juridical mind of America. The Harter Act is a creation of yours which is very soon to become universal law. I would say it is so already, because you know, perhaps, that in the last Colonial Imperial Conference in London, the British Government promised the various Dominions to pass legislation and to enact

our Brussels Convention, and they have done it all over the British Empire. A bill is at present pending in France; and we are passing it on the Continent, and we are making it applicable not only for the outgoing trade, but also for the incoming trade.

In the long run the cargo interests cannot first say to the shipowner, "The bargain we have made with you is that you are not going to be liable for damage as against your own cargo, if there is collision caused by negligence of your servants," and having made that bargain, given that promise, made that universal law, turn around and say, "But we are going to get the damages from you by way of the other ship, with which yours has been in collision." I am speaking a little in an analytical way, but you follow it all, do you not? Here is the point. Both ships are to blame. My cargo is in ship A. I cannot recover from ship A under the negligence clause, but I am paid full damage by ship B; and ship B collects from ship A her share in my damage. Do you call that law?

If you say the Harter Act is wrong, if you say the universal convention of 1923 is wrong, all right, get it suppressed. But if it is not suppressed, you can't consider that an interpretation of law is sound which permits you to get around the agreed principle. You may defend it, if you like, all you like—but it is not justice.

Well, that is an example of the broad way in which you must do business. If the cargo underwriters get, as they are getting, this question of negligence clauses settled internationally, they have such a bounty, such an advantage, that they have no reason to complain if in other matters they have to give something up. It would not be fair if they did not.

I add that there are direct drawbacks to American cargo in the present position.

Let me remind you, gentlemen, of a collision some months ago, on the Dutch side of the Scheldt, between an American ship, with partly American cargo, and a Dutch ship. Both ships were held to blame, the American for one-fifth, the other four-fifths. The American paid one-fifth, but the other one got off scot-free. The reason? The Dutch have approved the 1910 treaty, but the treaty is applicable only to those countries and

for the benefit of those countries which are signers of the treaty. America, not having signed it, has not the benefit of the treaty. The Court applied the old Dutch law to the American ship. The rule under the old Dutch law of contributory negligence was: both to blame, nobody recovers.

Let us have a uniform law on the seas; but it cannot be made uniform by adopting the law of one nation, or to serve one interest.

Then take another treaty which is of importance, the treaty on limitation of shipowners' liability. In your country and mine, there is nothing to pay when the ship is at the bottom of the sea. But the British law is £8 to the ton, or up to £15, for personal injuries or loss of life. We have finally agreed on an international compromise. The liability is to be the value of the ship and freight, with a maximum of £8 per ton. I know from a practical point of view you may say that the shipowner gets out at both ends, because they are going to have an option. But there is something else in the treaty, to provide for a case of loss of life or personal injury. The terrible case of the Titanic has taught us a lesson—under the American law and under Continental law the relatives of the people who were drowned got a very, very cruel result. They were just to share among themselves what remained of the freight, I think, and some wreckage. In England it was a good deal better, and there, if you had a case where ten or twelve professional men of high distinction, earning a great income, had been drowned, instead of having a big case with hundreds of people, you would have seen that in England the widows and orphans would have been paid in full. With your law and our law they would have got nothing.

Well, we have provided for that, and there is a clause in the treaty saying that there shall be a special fund of £8 per ton earmarked for the claims for loss of life or personal injuries, a fund which will have to be provided by the shipowner or his underwriters. Then if the ship be at the bottom of the sea, you still have the fund. There you have again a quid pro quo. There may be some advantage to the shipowner as far as material

damage is concerned, but there is a burden on him as far as life claims and personal injuries are concerned.

Well, gentlemen, I think that is a very fair arrangement, and that treaty is also going to become law. The British Government and the Colonial Dominions have undertaken to pass it, and the bill will be before Parliament this winter. And it is going to be the law in France, in Belgium, Germany, in Holland—everywhere. What are you going to do here in the States? Suppose you stand aloof, and do not change your law. You will have two consequences as far as your shipowner is concerned. Most of your ships are not tramp steamers, but are highly valued liners, passenger steamers. These ships are going to be under a much heavier liability than their foreign competitors. The foreign competitor has to insure up to a maximum of £8 to the ton for the hull and cargo collision damage. The Leviathan, and many of your other ships, will have to insure up to £20 to the ton and more. They may be liable up to such amounts, and they will have to cover their risks, and include in their expenses a premium for that full amount. Why should you do that? What reason in the world is there for it, when you have already saddled your shipowners with a good many more burdens than foreign shipowners? They know it; they feel it. Are you going to render trade more difficult for them? Are you going to say that a law which is satisfactory to all other nations could not be accepted here? You can't do that.

There is more. There is the question of loss of life and personal injury. If you don't pass that law, what will your competitors say? They will say to travelers that the passengers and the crews are less well protected on American than on other ships, because if an American ship goes to the bottom of the sea, nothing is left, and people have no remedy. In other ships, you have £8 in the ton, all earmarked and fixed. This question of loss of life and personal injuries is of great practical value.

Now, I think you ought to get the bill of lading through. When you see that it is really going through, and that it has become the law of the world everywhere, our friends, Mr. Englar and Mr. Jones, who have, I understand, shown a very fine fighting spirit, will tell their clients that the negligence clause is

now internationally settled, and that the collision convention and the treaty as to limitation of shipowner's liability can go through, and you will get these two conventions through. And if you invite us, we will come in 1929 and have a conference in the United States, and we will talk all these matters over with the good will for settling them by agreement. But if I happen to be still the President of the International Maritime Committee, I will recommend to all the members coming from abroad to address you, not to make it as long as I have. (Great applause.)