



RESEARCH PAPER

Origin of Maritime and Admiralty Laws: An Overview with special Reference to the Black Book of Admiralty

¹Dr. Qamar Abad ²Dr. Ghulam Murtiza*

³Dr. Muhammad Mumtaz Ali Khan

1. In charge Ph.D. Program, School of Law, University of Karachi, Sindh, Pakistan
2. Assistant Professor, College of Law, Government College University, Faisalabad, Punjab, Pakistan
3. Director Administration, Punjab Higher Education Commission, Lahore, Punjab, Pakistan

PAPER INFO	ABSTRACT
<p>Received: January 29, 2020</p> <p>Accepted: March 24, 2020</p> <p>Online: March 31, 2020</p> <p>Keywords: Admiralty, Black Book, Courts, International Law, Maritime</p> <p>*Corresponding Author:</p> <p>ghulammurtiza@gcuf.edu.pk</p>	<p>This article is based on descriptive research and joint efforts of the authors namely the first author's expertise of traversing the sea for a considerable period of time, legal practice in the fields of Maritime and Admiralty laws and second author's educational and academia skills and expertise. Modern Maritime and Admiralty Laws in the form of statutes and customary laws in their present form are presumed to have been developed in the United Kingdom over a span of centuries. Maritime and Admiralty statutes in developing countries including Pakistan have mainly been adopted from English law which necessarily requires amendments and modifications in the contemporary environments resulting from advancements in science and technology. The legislative process needs proper knowledge and expertise in the specialized fields including Maritime and Admiralty legislations to initiate the required indispensable modifications. Without such amendments our existing laws become redundant to serve the desired purposes. A number of incidents have occurred in the near past including 'Tasman Spirit' disaster where we failed to make our cases for available international compensation due to lack of specific knowledge of Maritime and Admiralty affairs. This article endeavors to draw attention towards the process leading to necessary developments and modifications in the existing and new legislative regimes.</p>

Introduction

The Black Book of Admiralty in four volumes, compiled in the middle ages, provides the history of development of maritime laws also referred as sea laws. However, 'law of the sea' or 'sea laws' later have been separated from Maritime and Admiralty laws and form an independent important branch of International law mainly consolidated in the 'United Nations Convention on Law of the Sea (UNCLOS) 1982. The Black Book of Admiralty covers the origin, developments and compilation of English Admiralty law during several centuries and various monarch reigns. It includes important decisions of the High Court of Admiralty in United Kingdom. Also a number of manuscripts which are significant in the

history of Maritime activities and developments of relevant laws form part of the book. The book marks establishment of the Court of admiralty during the rule of the King Edward I (1272-1307). However, some later scholars place it during the time of King Edward III (1327-1377). The book is originally handwritten in old French with varying handwriting and tone. It contains ancient statutes of Admiralty by harbors and seaports, at seas and other waters connected therewith shown forming part of the book (Twiss, 1871, p. 9). The earliest surviving copy dates 1450 A.D. kept in National Archives in London. Printed editions include the notable edition of Sir Travers Twiss in four volumes which includes other medieval legal texts additionally. The Black Book of Admiralty was first published in 1871-6, at London by *Longman & Co., Trubner & Co., Paternoster Row; also by Parker & Co. Oxford; and Macmillan & Co., Cambridge; A.C. Black, Edinburgh; and A. Thom, Dublin* and reprinted in 1998 and 2011 by the Law book Exchange, Ltd. ISBN -13: 97818863397. ISBN-10: 1886363390. The editing and thereafter first publication of the book with an Appendix, *Monumenta Juridica*, was made under the direction of the Master of Rolls exercising the authority of the Lords Commissioners of Her Majesty's Treasury.

While editing the ancient work, the object of the Editor was to bring together the most ancient texts of the collections available of the mediaeval Sea Laws (Maritime and Admiralty laws). Such ancient laws have been in use in various regions especially in Mediterranean and its adjacent waters and neighborhoods. These laws were either reproduction of Rhodian Sea laws or established after the Rhodian Sea laws ended to be governing Sea laws of the then civilized world. For this purpose the Editor Sir Travers Twiss personally as well as through experts consulted and perused the earliest relevant Manuscripts (MSS) in existence of each collection of Sea Laws. It reveals that England is said to be holding the most antique manuscripts of the ancient sea law. The claim appears rightly made on the ground that there was no manuscript of medieval Sea law found in existence which is of more ancient nature than the manuscript text of the Judgment of the Sea forming part of the *Liber Memorandum* kept in the Guildhall record rooms of London during early fourteenth century.

The book is in four volumes with Appendixes. It was reprinted in 1998 by the Law-book Exchange, Ltd. New York, U.S.A. The Book provides the earliest and authentic records of the proceedings in the court of Admiralty contributing to the origin of maritime laws. Due to the international nature of the maritime law and jurisdiction of the court of Admiralty over commercial maritime contracts, collisions at sea between merchant ships, salvage, foreign trade and similar matters of international character and international involvements, the book is also a source of jurisprudence of the Maritime and Admiralty laws and provides reliable record for modern international law.

Literature Review

Numerous statutes and documents containing legal practices and precedents had been in existence whether written or not in the areas where maritime and international (regional) trading was in practice. Such trading necessarily required a statute or customary practice to handle the routine matters and resolution of disputes arising from commercial activities. Statutes of 'Fermo', Ordinances of Trani, Rhodian Sea laws and numerous other laws were available in their respective trading areas and jurisdictions. A number of such laws were included in the Roman law in written form, for example 'laws of general average' with acknowledgment of their name as 'Rhodian Sea laws'. These laws were, from time to

time imported into other jurisdictions for beneficial use and to developing new laws. The Ordinances of Trani 1063 AD, in written form were lost sight for centuries in consequence of foreign invasions and finally found annexed to the Statutes of Fermo written on parchments during early years of sixteenth century. M Pardessus work '*Lois Maritimes Tom. i.p. 143*' published in Paris A.D. 1828 played a historic role in discovering the Ordinances of Trani in their written form.

The official documents during the middle Ages were copied into books with black or red covers under the control of the English Exchequers. The practice was followed by the Admiral for his relating documents of historical background and importance. The historical documents and important Manuscripts were mainly collected by the officials of the Admiralty during the reign of Henry VI (1421-1471 A.D.), (reigned: 1422-1461 and 1470-1471). The Admiralty officials of the Crown collected the early and contemporary documents relating to the maritime customs, usages and practices in the region and Manuscripts into a single edition, which was scrutinized carefully and edited omitting some documents and information not meeting the requisite criterion. The compilation was named "The Black Book of the Admiralty" edited by Sir Travers Twiss in 1871-6.

Editing under the Directions of the Master of the Rolls

The manuscripts (MSS) forming part of the book were copied into it on the initiative and direction of the Master of the Rolls who submitted to the British Treasury on January 26, 1857, a proposal for the publication of materials already in collection forming the historical records of the Kingdom (Stevenson, 1875). It mainly covers the period from the Roman invasion of England (43-410 A.D) to the rule of Henry VIII (1491-1547), reigned (1509-1547) (British Broadcasting Company, 2021). The Black Book of the Admiralty contains documents from various sources which went through proper investigation and scrutiny and verification of their veracity and authenticity before being included in the book. It includes regulations for criminal jurisdiction of the Admiralty, the rights of the Monarch, the Admiralty rights and claims (droits), wages, prizes, mercantile and maritime contracts, collisions and inquiries, the character of the Admiralty courts model as civil rather than common law procedure and findings.

Directions for Compilation

The Master of the Rolls suggested the guidelines and criterion for the selection of the documents to be made part of the book for publication. The publication and selection was under the direct supervision and control of competent editors. It was among the scheme of the work that preference of the documents would be based on the principle that the documents which were the most important and rare would be given preference at first instance. References to periodical or chronological arrangements were not necessary and documents to be selected without disfigurement or abridgment.

Editio Princeps

Editio Princeps, was proposed for each chronicle or historical document ensuring their correctness to the maximum possible extent when selecting from a reliable collection of the available documents of credence or Manuscripts (MSS). In order to make the work more accurate and useful, the editors were advised by the Master of the Rolls to be

extremely careful in their remarks and any explanation or addition in the compilation. They were required to give an account and background of the Manuscripts employed in briefly only to the extent of their ages and peculiarities, with brief description of the author's life and period of work with any comments which were necessary to describe the chronology. General remarks, comments and views were not allowed in the edition except those necessarily required to determine the correctness or authenticity of the contents.

The editors, employed for the job were selected by the Master of the Rolls with the approval of the British Treasury and were made responsible in entirety for edition and publication of the work. The work was carried out and completed under the supervision and control of the Master of the Rolls.

Approval by Treasury

After careful consideration by Her Majesty's Treasury, the opinion of the Lords of the Treasury approved the plan submitted and recommended by the Master of the Rolls in minutes of the meeting on 9 February, 1857. The Treasury found the submitted plan of national importance to be practicable and well calculated and directed to be accomplished in effective and satisfactory manner in reasonable time frame budget without unnecessary expense (Stevenson, 1875).

The Black Book-Missing and Recovery

When Travers Twiss started his noble job he noticed that the book, which he called 'the old authentic book' missing from the Admiralty Registry. The Black Book of Admiralty remained missing from the sight for nearly half a century from the Admiralty Archives when Travers Twiss started his work, and during his work it was found at the bottom of a chest in 1873 (Twiss, 1873). Sir Travers Twiss stated the fact in introduction to volume 3 of the book that the book remained out of sight for more than half a century and had been recovered from the bottom of a chest containing papers of the Admiralty Registry and Court (Twiss, 1874). Remarkable evidence is available endorsing the authorities and commentaries available in the works of various authors regarding the existence and accuracy of the book and its content. A number of jurists and writers benefitted from the book and expressed their views in their works. Below are few examples showing that the book was seen and consulted by the reputable authors themselves.

Analysis and Commentaries

Dr. Exton, a judge of the High court of Admiralty in 1648, describes the Black Book of the Admiralty as "continuing ancient statutes of the Admiralty to be observed both upon the ports and havens, the high seas and beyond the seas..."

As per Dr. Exton, the book was kept in the registry of the Court, for consultations by the judges of the Admiralty court successively, in care and control, free from any doubt of it being corrupted or forged, in the same manner as the records of any Court in England.

Lord Coke in his Fourth Institute, after citing several passages from the book, describes the book of high significance and great authority in the Admiralty Court in a manner similar to the Red and Black books in the Court of Exchequer. He describes the book as an antique hand and in his opinion it had not been written at once, nor by one

person. According to him the first part had been written during Edward III, or Richard II, and the later during Henry IV and Henry VI, times. The time span, when it was written, according to Lord Coke, falls well clear of and long before the time when some controversies arose between the Admiralty and the King's Courts about jurisdiction on foreign contracts etc. Therefore, it was written during time free of disputes and controversies between the Admiralty courts and the Common law courts supporting the view that the book is free from any suspicion of being partial, doubtful or untrue (Twiss, 1871, p. 9). It infers from the above mentioned authorities that the authors of the commentaries had a chance to see the book in its original shape.

The Black Book of Admiralty remained in the archives of the Admiralty during the eighteenth century. Evidences suggest that Sir E. Simpson consulted the original book while preparing his work of Rowghton's Articles of the Admiralty printed for the first time in an appendix to Clerke's Admiralty Practice, re-edited by Sir E. Simpson in 1743 (Twiss, 1871, p. 10).

Sir Christopher Robinson who was the Judge of the Admiralty court in England, a later author, appears to have had access to the original Black Book of admiralty. In introduction to his work, upon Maritime Prize Law, he mentions of the Black Book of Admiralty in a manner as if he had definitely inspected the original book. He writes:

"The venerable collection of the Black Book of the Admiralty, opens in its first chapter with so impressive a concern for this requisite attainment"..... in the person to whom the administration of the laws of the High Court is in-trusted, that I will transcribe it literally....(Twiss, 1871, p.11).

The Documents contained in the Black Book of Admiralty

There are at first instance, eleven original documents out of which the first eight in the collection are of special interest as they pertain to the Admiral and his duties. The first two of the eight relevant documents appear to be drafted in or around 1340 A.D. They mainly deal with regulations of the Admiral and the fleet regarding duties, appointments, pay scales, sailing orders and port clearances, the rights of visit, inspections and searches of the ships and premises, discipline over mariners in ports and at sea, landing parties, and collisions between ships in ports, coastal waters and open sea. The third document, dated between 1360 and 1369, which is titled, "Rules or Orders about Matters belonging to the Admiralty", mainly concerns the matters coming under the Admiralty jurisdiction. The jurisdiction included certain thefts of ropes, boats, anchors and cables, theft from foreigners and their ships in ports, maritime contracts, customs, fisheries, weights and measures, wrecks, flotsam and jetsam, and other similar matters. The extent of jurisdiction applied and exercised could not be ascertained in comparison with the authority and jurisdiction available under the document. The document, however, reveals the expanded jurisdiction of the Admiral.

The fourth document is a copy of the Rolls of Oleron, which had become part of the maritime laws of England for considerable time and also formed basis for the modern Maritime law. It consists of the original 24 articles of the Rolls, and eighteen more articles had been added to the document, some of them from the English origin, and some from other sources.

The fifth document referred to as the 'Inquisition of Queens borough', contains 70 articles dated between 1375 to 1422, relating to tariffs on wages, the law of prize, and statement of jurisdiction of the Admiral. The sixth document which is written in Latin rather than in Norman French is a treatise on practice and procedure made on the general principles of the civil law, suggesting that the Admiralty was in consideration of such procedures for determination of its cases. The seventh document which is also in Latin covers the matters in which Admiral's inquisition and action is warranted. Such matters are similar to those listed in the third and fifth documents. It can be easily observed that it contains no references in the document to the maritime commercial contracts, charter parties and other maritime affairs. It infers that the common law procedures were applicable to the levy of charges and dues, inquests, and trials by jury in all the criminal cases including those under the Admiralty. The document dates in the first half of the fifteenth century. And the eighth document is a collection of documents of several kinds of rules, releases, inquiries of maritime matters, commissions formed, letters of witnesses, letters of pardons, committals, and other documents of the similar kinds. Such documents are dated between 1443 and 1446.

The Veracity and Correctness

The veracity and correctness of the documents compiled in the book appears to be quite fair and reliable. It reveals from the reading of these documents that the office of the Admiral and its courts had broadened their jurisdiction and activities in the Great Britain during the fourteenth and Fifteenth centuries. The content of the documents suggest that the Admiralty courts in Great Britain were assuming jurisdiction on all the matters enumerated in the above mentioned documents and were determining the issues relating to them. But the fact otherwise, is that the Admiralty courts during this periods declined considerably reaching to their lowest point in jurisdiction and authority in the second half of the Fifteenth century around 1475. There appears to be a state of struggle between the Admiralty courts and the Common law courts in respect of powers to decide the cases of maritime affairs and jurisdiction. It may not be wrong to conclude that a state of confusion existed as the Common law courts being popular and effective, were not ready to provide room for a parallel system of courts in the name of Admiralty courts and also not ready to lessen their jurisdiction which they had assumed for the time immemorial. The local courts insistence upon their privileges in maritime matters which was gaining support from the Commons was also supported by the Chancellor who intervened or took original jurisdiction in many maritime cases including the most popular case of charges of piracy giving hard blow to the already declining Admiralty courts. One of the major objectives of the office of the Admiral which was directly under the control of the Monarch was the generation and collection of revenue for the Crown. The office of the Admiral, thus, exercised its powers, issued directives and attempted the jurisdiction accordingly. But due to various causes, primarily, the resistance from the Common law courts, established and functioning for long time and secondarily, the levy of new taxes and extension of existing taxes such as 'ship-money' beyond their original limits resulted in disturbance among the subjects (Twiss, 1876). The complaints against Admiralty courts were very widespread. The incompetency and inefficiency of the Admiralty courts was evident as they lingered for years on some cases and also the courts were headed by unskilled officials. Moreover, the Admiralty courts were generally summary courts and their officials visited as, when and where required. The officials of the Admiralty courts were not as competent and

conversant with the law as the Common law courts were. Therefore, despite the directives from the Admiral, assumption of power and jurisdiction could not be achieved as desired.

One of the major factors which strengthened the power and authority of the English Admiralty was the sea piracy. The maritime commerce in the Mediterranean region, North and West Europe and west coast of Atlantic Ocean was badly affected by the outbreak of piracy in the late fifteenth century. Corsairs of privateers and sponsored by local lords or governments, grouped in well-organized manner were attacking and ravishing the merchant ships of all countries. It was generally impossible for a merchant ship becoming victim of such attacks to distinguish whether she was attacked by a group of private pirates or the government or local lords sponsored corsairs. The shipping was dangerous in all respects especially the lives of those on board merchant ships who were continuously under threats of vital attacks at sea and in the coastal waters. There was no proper forum nationally or internationally nor any international sanctions on such acts. The alarming situation in the developing region opened ways for strengthening the authority and powers of the Admirals and English Admiralty courts. A new dynasty in power in England at this time basically changed the economical culture of the region and introduced a new concept of international relations of England with other countries. This international character and concept of admiralty greatly affected the admiralty laws.

The breach between the content of documents and the fact which prevailed is thus, due to the above mentioned causes. The veracity and authenticity of the documents compiled in the book appears undoubtedly true but their implementation was either partly or none.

Conclusion and Recommendations

In order to introduce the significance of law in a civilized society, it is important to learn historically its (law) origin, backgrounds and developments. In the case of international law which developed from various customs, traditions and usages either locally, regionally or internationally through treaties and conventions from time to time, makes it more significant. All the laws benefiting societies (benefitting the society being the prime object of a law) developed from nerves of the members of the societies, contemporary environments and activities around the country or group of people. Maritime and admiralty laws being of an international nature may be one of the best examples in this regard. The importance of amendments in the existing laws to bring them in par with the contemporary laws especially the laws of international nature is undeniable. To achieve this, the knowledge of the specific law is necessary to propose any modifications or amendments necessary. Legal institutions and universities imparting legal education must endeavor to provide education and training in the fields of importance for economic growth of the country like Maritime and admiralty affairs and law. This area at present has not been properly identified in Pakistan. The Maritime and Admiralty sector should be given due priority in the national projects and researches.

References

British Broadcasting Company (2019). *History of Ancient Romans*
<http://www.bbc.co.uk/history/ancient/romans/>.

Stevenson, J. (1875). *The Chronicles and Memorials of Great Britain and Ireland during the Middle Ages*: London, Longman & Company.

Twiss, T. (1871). *Monumenta juridica; The black book of the admiralty*, Vol. 1: Longman

Twiss, T. (1873). *Monumenta juridica; The black book of the admiralty*, Vol. 2: Longman

Twiss, T. (1874). *Monumenta juridica; The black book of the admiralty*, Vol. 3: Longman

Twiss, T. (1876). *Monumenta juridica; The black book of the admiralty*, Vol. 4: Longman