

SYMPOSIUM ON 150 YEARS OF THE INSTITUT DE DROIT INTERNATIONAL AND
THE INTERNATIONAL LAW ASSOCIATION

THE INSTITUTIONALIZATION OF INTERNATIONAL LAW AT A CROSSROADS:
PACIFISTS, JURISTS, AND THE CREATION OF THE ILA AND THE IDI

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The International Law Association (ILA) and the Institut de Droit International (IDI) were both founded in 1873 at a critical juncture in the history of pacifism and internationalism, in the immediate aftermath of the 1870–1871 Franco-Prussian War and the 1872 British-American Alabama arbitration. Frustrated by the blatant violations of international rules during the war and then emboldened by the arbitral resolution of the protracted Alabama dispute between Britain and the United States, pacifists and international jurists joined forces to promote an ordered system of international law and advocate for legalized international dispute settlement. The aim was to marshal the scattered reformist forces of international law in furtherance of international legal reform—“international law needed to be institutionalized,” as Gerald Fitzmaurice put it.¹ This resulted in the almost simultaneous establishment of the pacifism-originated ILA and the legal-scientism-oriented IDI, and helped to explain the similarity in institutional telos and the high degree of overlap in membership between the two institutions in their early years.² Nevertheless, the ILA and the IDI differed in their working agendas and strategies. In terms of agendas, while the ILA tended to adopt an idealist view of international law hardly succumbing to compromises, the IDI mainly adhered to a scientifically pragmatic approach. With respect to strategies, the ILA sought social influence based on expansive membership, while the IDI’s membership consisted of a limited number of international jurists. Despite changes over time, these organizational structures and distinctions between the two institutions at their founding moment are still visible.

The Pacifist Strand of International Law and the Creation of the ILA

The creation of the ILA emanated from the pacifist enthusiasm and mobilization for international law, spurred by the success of the 1872 Alabama arbitration. The Alabama arbitration was the final arbitral settlement of a diplomatic dispute between Britain and the United States from 1862–1872. The dispute resulted from Britain’s failure to prevent the building of warships within British territory and their replenishment in British ports to the

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¹ Sir Gerald Fitzmaurice, *The Contribution of the Institute of International Law to the Development of International Law*, 138 RECUEIL DES COURS 203, 213 (1973).

² Drawing upon archival research, my doctoral dissertation examines the professional and social networks of the founders and interlocutors of the ILA and the IDI, and narrates their contributions to the discourse of international arbitration and international law. Xiaohang Chen, *The Imagination of Alternatives: The History of International Arbitration in the Late Nineteenth Century 1863–1888* (Ph.D. dissertation, European University Institute, 2022).

advantage of the Confederacy during the American Civil War. The United States claimed that Britain violated its duty of neutrality and should be accountable for the depredations of these British-built sea raiders (the *Alabama* included) against American ships. After a protracted negotiation process for almost a decade, the two parties concluded the 1871 Treaty of Washington, according to which the Alabama dispute was submitted to an arbitral tribunal convened in Geneva. The award of the Geneva Tribunal was delivered on September 14, 1872 in favor of the claims of the United States.

The conclusion of the 1871 Treaty of Washington and the 1872 Alabama arbitration reinvigorated and gave momentum to the international peace movement's orientation toward the legalist approach of international law. The pacifist enthusiasm for the development of international law envisioned a congress of nations, the codification of international law, disarmament, international arbitration, and above all, the abolition of war.³ As pacifists saw it, the 1872 Alabama arbitration was an unprecedented triumph for the idea of peace, and "a landmark in the history of civilization."⁴ This enthusiasm for peace through law and arbitration was transatlantic. The official journal of the American Peace Society, *The Advocate of Peace* stated that the Alabama arbitration would bring "the most powerful and benign effects . . . upon all civilized nations."⁵ Likewise, both the newly established Dutch national peace league, *Algemeene Nederlandsche Vredebond* (1871) and the reconstituted French peace society, *Société française des amis de la paix* (1872) highlighted international law and international arbitration as their essential objectives.⁶ The commitment to peace through law also found expression in political fora. Parliamentary motions in favor of the development of international law and arbitration in diplomacy were proposed by reformist pacifists and peace-minded politicians in various European and American legislatures.⁷

The ILA was born in the context of this widespread passion for international legal reform and rooted in the late nineteenth-century international peace movement. As pacifists saw it, the Alabama arbitration was momentous, and it produced a favorable environment to further propagate the pacifist visions of international law by convening an international conference of jurists, "a senate of publicists," to draft a code of international law and advocate for legalized international dispute settlement—in the form of either an international court or international arbitration.⁸ This plan was initiated by the American pacifist Elihu Burritt (1810–1879), and was made possible due to the arduous work of James B. Miles (1823–1875), secretary of the American Peace Society.⁹ As a result, under the auspices of American legal reformers like David Dudley Field (1805–1894), and the Belgian philanthropist Auguste Visschers (1804–1874), the Brussels conference was convened in October 1873, which led to the formation of the Association for the Reform and Codification of the Law of Nations (renamed the International Law Association in 1895).¹⁰ It is therefore understandable that the working programs of the 1873 Brussels conference mirrored to a great extent the two pacifist agendas of international law: an international

³ See W. H. VAN DER LINDEN, [THE INTERNATIONAL PEACE MOVEMENT 1815–1874](#), at 365–415 (1987).

⁴ HENRY RICHARD, [INTERNATIONAL ARBITRATION AND THE IMPROVEMENT OF INTERNATIONAL LAW](#) 24 (1873).

⁵ *The Uses of the Geneva Arbitration*, 3 *ADVOCATE OF PEACE* (1847–1884) 221, 221 (1872).

⁶ See Gustave Rolin-Jaequemyns, *Notices diverses*, 4 *REV. DROIT INT'L & LEGIS. COMP.* 355, 357 (1872); Frédéric Passy, *Exposé de situation*, 1 *BULLETIN DE LA SOCIÉTÉ DES AMIS DE LA PAIX* 1, 16–17 (1872).

⁷ See Christian L. Lange, *Histoire de la doctrine pacifique et de son influence sur le développement du droit international*, 13 *RECUEIL DES COURS* 171, 398 (1926).

⁸ See JAMES B. MILES, [ASSOCIATION FOR THE REFORM AND CODIFICATION OF THE LAW OF NATIONS: A BRIEF SKETCH OF ITS FORMATION](#) 4–5 (1875).

⁹ See MERLE CURTI, [THE LEARNED BLACKSMITH: THE LETTERS AND JOURNALS OF ELIHU BURRITT](#) 204–08 (1937).

¹⁰ See [MILES](#), *supra* note 8, at 7–14.

code and the settlement of disputes through international arbitration. The ILA's objective was "to further the progress of international law in its practical application and in public opinion."¹¹

A Collectivist Vocation of International Jurists and the Foundation of the IDI

In contrast with the ILA, the establishment of the IDI was based upon an already existing yet loosely connected network of reformist international jurists.¹² In 1871, the time when Francis Lieber (1800–1872) and Gustave Moynier (1826–1910) separately conveyed to the Belgian lawyer Gustave Rolin-Jaequemyns (1835–1902) their plans for a private conference of international jurists, the community of international jurists had not yet come of age. As Rolin-Jaequemyns himself counted, there were only twenty to thirty international jurists devoted to the study of international law.¹³ Nevertheless, these international jurists were acquainted with each other either through transnational social reform networks, or through their scholarship. Rolin-Jaequemyns, Tobias Asser (1838–1913), and John Westlake (1828–1913) had already met during the 1862 conference of the *Association internationale pour le progrès des sciences sociales* in Brussels and had become close friends ever since.¹⁴ More importantly, these international jurists were able to regularly share with each other their studies of international law through the first professional international law journal, *Revue de droit international et de législation comparée* co-founded by Rolin in 1869.

The immediate impacts of the Franco-Prussian War and the Alabama arbitration on the establishment of the IDI were significant. While the turbulence of the Franco-Prussian War and the twists and turns of the Alabama dispute lent urgency to calls for a decisive role of an ordered system of international law in maintaining peace and eradicating war, the Alabama arbitration kindled beliefs in a collectivist vocation of international jurists. In March 1873, the intermediary of these jurists, Rolin-Jaequemyns decided to circulate a Note Confidentielle to twenty-two European jurists, illuminating the necessity of a permanent institution of international jurists. It was "a collective scientific action," as Rolin-Jaequemyns termed it.¹⁵ The Note Confidentielle set the scene for the foundation of the IDI in Ghent in September 1873, approximately one month prior to the creation of the ILA. As the preamble of the IDI Statutes stated, the imperfect stage of international law was a constant threat to international peace.¹⁶ Therefore, like the ILA, the IDI devoted itself to the progress of international law and endorsed the settlement of disputes through international arbitration. At the 1873 Ghent meeting, the IDI set up two working commissions to further clarify "the three rules of the Treaty of Washington" and "the rules of international arbitration."¹⁷

The IDI was born out of "the love of science," and it was designated as an association "exclusively scientific and without official character."¹⁸ The 1873 IDI Statutes set out the IDI's guiding vision and aim to become "the organ

¹¹ THE INTERNATIONAL LAW ASSOCIATION, [REPORTS OF THE FIRST CONFERENCE HELD AT BRUSSELS, 1873, AND OF THE SECOND CONFERENCE HELD AT GENEVA, 1874](#), at 46 (1903).

¹² See MARTTI KOSKENNIEMI, [THE GENTLE CIVILIZER OF NATIONS: THE RISE AND FALL OF INTERNATIONAL LAW 1870–1960](#), at 39–41 (2001); Vincent Genin, [L'Institutionnalisation du droit international comme phénomène transnational \(1869–1873\): Les réseaux Européens de Gustave Rolin-Jaequemyns](#), 18 J. HIST. INT'L L. 181 (2016).

¹³ Gustave Rolin-Jaequemyns, [De la nécessité d'organiser une institution scientifique permanente pour favoriser l'étude et les progrès du droit international](#), 5 REV. DROIT INT'L & LEGIS. COMP. 463, 486 (1873).

¹⁴ See KOSKENNIEMI, *supra* note 12, at 12.

¹⁵ Gustave Rolin-Jaequemyns, *Note Confidentielle sur un Projet de Congrès ou de Conférence Juridique Internationale* 6 (Mar. 10, 1873, unpublished manuscript) (on file with author).

¹⁶ [Communications relatives à l'Institut de Droit International](#), 5 REV. DROIT INT'L & LEGIS. COMP. 667, 705 (1873).

¹⁷ *Id.* at 689.

¹⁸ *Id.* at 671, 708.

of the legal consciousness of the civilized world.”¹⁹ In order to secure its autonomous and independent status, the IDI sought to stand at a distance from the political realm. For example, incumbent diplomats were not eligible for IDI membership, and members who were later appointed as state diplomats would be deprived of their rights to vote within the IDI.²⁰

Joining Hands at a Crossroads

Both pacifists and international jurists viewed 1873 as a significant turning point for international legal reform. They agreed that international law was to play a crucial role in restraining war and perpetuating peace, and this objective was better accomplished by channeling individual efforts into professionally institutionalized bodies of international law. The creation of the ILA and the IDI was a reflection as well as the product of this spirit of enthusiasm, seized upon and advanced by pacifists and jurists.

In their founding days, these two institutions were historically connected through the similarity in their founding ideals and a high degree of overlap in membership. First, both the ILA and the IDI were created with an overarching reformist aim of promoting international law. Second, a substantial overlap in membership facilitated intensive, if short-lived, interactions between these two institutions.²¹ To take their inaugural conferences of 1873 as an example, in addition to his status as the honorary president and one of the initiators of the ILA, Field was also one of the eleven founders of the IDI. The famed Italian statesman and first president of the IDI, Pasquale Stanislao Mancini (1817–1888) also served as the vice president of the ILA. The Belgian economist and jurist, Émile de Laveleye (1822–1892) was a founder of the IDI and drafted the preamble of the IDI Statutes, but he was also a pacifist and the general secretary of the ILA in 1873. Last but not least, four out of five American members of the IDI in 1873 were also initiators of the ILA.

Two Trajectories of International Legal Reform

Despite the similarity in foundational ideas and close interactions between the institutions, the ILA and the IDI emerged from two different reformist movements. Those who had contributed to the creation of the ILA, such as Burritt, Miles, and Visschers, were adherents of the international peace movement. In comparison, IDI members came from a group of well-situated international jurists, featuring a close yet comparatively small professional network. In 1873, although it seemed possible that the two initiatives of the ILA and the IDI could merge into one, international jurists associated with the IDI soon noticed that their views on legal science were different from those of the ILA who embraced the pacifist visions of international law.²²

From the outset, international jurists sought to demarcate the discipline of international legal science and the task of the IDI by strategically distancing themselves from their pacifist counterparts. In the 1873 Note *Confidentielle*, Rolin-Jaequemyns made a stark distinction between the approach of international peace movement, and the scientific nature of the envisaged IDI. He wrote that “there is a great deal of illusion and exaggeration in the enthusiasm” toward the ongoing arbitration movement among pacifists.²³ At the 1873 Ghent meeting, Rolin-Jaequemyns reiterated this distinction: this meeting was not “one of those brilliant assemblies [of peace

¹⁹ Statutes of the Institute of International Law, Art. 1 (*adopted* Sept. 10, 1873), *reprinted in id.* at 708.

²⁰ IDI Statutes, Art. 6, *reprinted in id.* at 685, 708–09.

²¹ *See id.* at 667–712.

²² *See* Irwin Abrams, *The Emergence of the International Law Societies*, 19 *REV. POL.* 361, 369–70 (1957).

²³ Rolin-Jaequemyns, *supra* note 15, at 19.

congresses] where the eloquent orator receives, in the applause of a numerous audience, an immediate award.”²⁴ Other founding members of the IDI shared the approach of Rolin-Jaequemyns. Mancini believed that jurists should keep their distance from utopians who advocated for the immediate abolition of war,²⁵ and that pacifist demands for instant transformations deviated from the spirit of law and deterred the process of legal reform.²⁶ From the perspective of jurists, the progress of international law was a long-term process that required prudence and patience from its advocates.

More importantly, peace-minded adherents of the ILA and jurists from the IDI were fundamentally divided on the mechanisms through which international law reform should be pursued, and how reform agendas should be framed. This division was vividly exemplified by the 1873 inaugural conference of the ILA in Brussels, to which the IDI sent a delegation composed of eight members (five of them were finally present in Brussels). At the Brussels conference, the IDI delegation, represented by Bluntschli, Rolin-Jaequemyns, and Mancini, contested the proposals for the immediate adoption of an international code and mandatory arbitration for the settlement of international disputes, endorsed mostly by pacifist participants.²⁷ First, unlike the pioneers of the ILA, the founders of the IDI thought that a rushed codification of international law was too ambitious to be practically feasible, and it was incompatible with the spirit of science. On the contrary, such a code could only be achieved progressively. Second, contrary to the absolutist approach of pacifists, IDI jurists insisted that international arbitration was of a voluntary nature, and arbitral settlement was inapplicable to disputes where vital interests of states were at stake.

The divergence in reformist dispositions also accounted for the difference in membership strategy between the two institutions. The ILA sought alliances with a wide range of actors including philanthropists, journalists, economists, politicians, and jurists. The strength of the ILA, as Miles claimed, thus rested upon “securing as members a large number of the learned, wise and influential men of different countries.”²⁸ In comparison, the IDI was dedicated to the in-depth study of international law, and its membership was restricted to a group of international law specialists that should not exceed fifty members in total.²⁹

Concluding Remarks

With the benefit of hindsight, neither the ILA nor the IDI lived up to the expectations of their founders, with the ILA rather quickly deviating from its pacifist course and the IDI giving up its goal of becoming “the legal consciousness of the civilized world” in the revised 1880 IDI Statutes.³⁰ Both institutions also came under criticism for their lack of wide geographic representation. The executive council of the ILA was based in London and mainly consisted of Anglo-American members. And in the Europe-based IDI where the working language was mainly French, English-speaking members’ involvement was marginal and limited.

Some features of these two institutions have changed over time and their differences have narrowed, but some fundamental notions from their founding years and the influence thereof remain visible. The work of the ILA is still based upon the idea of a large membership currently amounting to more than four thousand members, and its

²⁴ *Communications relatives à l’Institut de Droit International*, *supra* note 16, at 671.

²⁵ See *id.* at 674.

²⁶ See PASQUALE STANISLAO MANCINI, *DELLA VOCAZIONE DEL NOSTRO SECOLO PER LA RIFORMA E LA CODIFICAZIONE DEL DIRITTO DELLE GENTI E PER L’ORDINAMENTO DI UNA GIUSTIZIA INTERNAZIONALE* 54 (1874).

²⁷ See *THE INTERNATIONAL LAW ASSOCIATION*, *supra* note 11, at 1–49.

²⁸ *MILES*, *supra* note 8, at 14.

²⁹ See *Communications relatives à l’Institut de Droit International*, *supra* note 16, at 704, 708.

³⁰ See *Abrams*, *supra* note 22, at 378–80.

scheme of regional branches is arguably robust. In contrast, the IDI continues to be composed of a highly selective group of international jurists, experts, and judges, although its restriction on apolitical membership has been lifted. While both institutions represent the idea of “peace and justice through law,” the ILA and the IDI nonetheless remain on two parallel but separate paths for the promotion and development of international law.