

**CARNEGIE ENDOWMENT FOR INTERNATIONAL
PEACE, DIVISION OF INTERNATIONAL LAW.
RESOLUTIONS OF THE INSTITUTE OF
INTERNATIONAL LAW DEALING WITH THE LAW
OF NATIONS, WITH
AN HISTORICAL INTRODUCTION AND
EXPLANATORY NOTES. [1916]**

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COLLECTED AND TRANSLATED UNDER THE SUPERVISION OF
AND EDITED BY

JAMES BROWN SCOTT
DIRECTOR

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PREFACE

For some years past it has been difficult to obtain copies of the *Annuaire* of the Institute of International Law, because only a relatively small number was issued; and the volumes, being valuable to students and practitioners of international law, have long since disappeared from the market. To cite a concrete instance, the Carnegie Endowment for International Peace has tried and tried in vain to acquire by purchase several numbers of the *Annuaire* in order to complete its set, and, although it placed orders with responsible dealers five years ago, it has not yet been able to procure the volumes. As this experience might be matched by the experience of libraries and of persons interested in international law, it has been decided to reproduce in handy and convenient form the resolutions of the Institute of International Law dealing with international law which it has framed and adopted during the forty years of its successful and beneficent existence since its organization in 1873. The members of the Institute themselves have felt the need of reissuing the *Annuaire*, and on two occasions, namely, in 1894 and in 1904, published collections of the resolutions: the first dealing with those from the organization until 1894, and the latter containing the resolutions for the following decade. The *Tableau Général*, issued in 1894, forms a separate volume; the *Tableau Décennal* forms the last part of the *Annuaire* for 1904.

It has been stated that the resolutions of the Institute are of great service to students and practitioners of international law, so that their collection and publication in a convenient volume would be in the nature of a public service. In justification of this remark, an examination of almost any treatise on international law published since the organization of the Institute would show the dependence of teachers and students upon its resolutions. But men of affairs, too, have referred to the resolutions and have accepted them as authority and pressed their acceptance upon foreign governments in international controversies. From many examples, one will suffice. In the correspondence with Guatemala concerning the expulsion of Mr.

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Hollander, an American citizen, Mr. Richard Olney, then Secretary of State of the United States, quoted and relied upon the resolutions of the Institute of International Law concerning the right of a government to expel aliens from its midst and the conditions to which such expulsion should be subjected.¹

In international arbitrations, the resolutions of the Institute have been invoked and relied upon by arbitrators in reaching decisions and have been quoted extensively as authorities in their awards. A single instance of this must suffice; and in view of the many, the award of Ralston, umpire, in the Buffalo case, may be cited, in which that distinguished jurist based his judgment upon the resolutions of the Institute of International Law.²

But it is not alone in treatises on international law, in the diplomatic correspondence of nations, and in the adjustment of controversies by arbitration that the resolutions of the Institute have been used as authorities. A distinguished American statesman, whom President Roosevelt considered to be the ablest man in public life in this or any other country, has repeatedly referred to the resolutions of the Institute as furnishing the framework of various conventions of the First and Second Hague Peace Conferences. And of these many references one alone can be quoted, to the effect that "in practice the work of the unofficial members of the Institute of International Law has made possible the success of the official conferences at The Hague, by preparing their work beforehand and agreeing upon conclusions which the official conferences could accept." This quotation has been taken purposely from Mr. Root's address on Francis Lieber,³ delivered before the American Society of International Law in 1913, because in this address, from which the other quotations in this preface are likewise taken, Mr. Root shows that the proposal to establish the Institute was due to the distinguished German publicist whose liberal sentiments exiled him from the land of his birth, but made him a welcome guest in the United States, of which he became a citizen by naturalization, and whose abilities and achievements reflect credit upon both countries. In a letter written

¹ Mr. Olney, Secretary of State, to Mr. Young, Minister to Guatemala, January 30, 1896, *Foreign Relations of the United States*, 1895, pt. ii, p. 775; Moore's *International Law Digest*, vol. 4, p. 102 *et seq.*

² Ralston, *Venezuelan Arbitrations of 1903*, p. 696.

³ *American Journal of International Law*, 1913, vol. 7, pp. 453, 464-5.

on April 16, 1866, to his friend Bluntschli, then professor of international law at Heidelberg, Dr. Lieber said:

For a long time it was a favorite project of mine that four or five of the most distinguished jurists should hold a congress in order to decide on several important but still unsettled questions of national equity, and perhaps draw up a code. First I proposed that it should be an official congress, under the government . . . But after awhile it became clear to me that it would be much better if a private congress were established, whose work would stand as an authority by its excellence, truthfulness, justice, and superiority in every respect.¹

And again in a letter dated December 15, 1866, to our distinguished countryman, Andrew D. White, he wrote:

I fancy sometimes—but only fancy—how fine a thing it would be for one of the Peabodies, or some such gold vessel, to give, say twenty-five thousand dollars gold, for the holding of a private—*i.e.* not diplomatic, although international—congress of some eight or ten jurists, to concentrate international authority and combined weight on certain great points, on which we have now only individual authorities. I have spoken about this years ago to Mr. Field.²

A little later, in a letter of May 7, 1869, to Judge Thayer, he said:

The strength, authority, and grandeur of the law of nations rests on, and consists in, the very fact that reason, justice, equity, speak through men “greater than he who takes a city”—single men, plain Grotius; and that nations, and even Congresses of Vienna, cannot avoid hearing, acknowledging, and quoting them. But it has ever been, and is still, a favorite idea of mine that there should be a congress of from five to ten acknowledged jurists to settle a dozen or two of important yet unsettled points—a private and boldly self-appointed congress, whose whole authority should rest on the inherent truth and energy of their own *proclama*.³

The idea was what might be called an obsession with this distinguished publicist, but it was destined to take definite form and shape. In a letter of April 10, 1872, to General Dufour, of Switzerland, Lieber wrote:

¹ *The Life and Letters of Francis Lieber* (Perry, ed.), p. 362.

² *Ibid.*, p. 367.

³ *Ibid.*, p. 391.

One of far the most effectual and beneficent things that, at this very juncture, could be done for the promotion of the intercourse of nations in peace or war (and there is *intercourse* in war, since man cannot meet man without intercourse)—one of the most promising things in matters of internationalism, would be the meeting of the most prominent jurists of the law of nations, of our Ciscaucasian race—one from each country, in their individual and not in any public capacity—to settle among themselves certain great questions of the law of nations as yet unsettled, such as neutrality, or the aid of barbarians, or the duration of the claims or obligations of citizenship. I mean *settle* as Grotius *settled*,—by the strength of the great argument of justice. A code or proclamation, as it were, of such a body, would soon acquire far greater authority than the book of the greatest single jurist. I hope such a meeting may be brought about in 1874.¹

It was brought about a year earlier, but the great and good man had passed away, as so often happens in this world of ours, before his idea had taken visible form and shape. His leadership, however, in the matter is recognized. Thus his friend Bluntschli wrote:

Lieber had great influence, I may add, in founding the *Institut de Droit International*, which was started in Ghent, in 1873, and forms a permanent alliance of leading international jurists from all civilized nations, for the purpose of working harmoniously together, and thus serving as an organ for the legal consciousness of the civilized world. Lieber was the first to propose and to encourage the idea of professional jurists of all nations thus coming together for consultation, and seeking to establish a common understanding. From this impulse proceeded Rolin-Jacquemyns' circular letter, drawn up in Ghent, calling together a number of men eminent for their learning. This latter proposal to found a *permanent academy for international law* met with general acceptance, but this was merely a further development of the original idea of Lieber, which was at the bottom of the whole scheme.²

Reverting to Mr. Root's statements as to the relation between the Institute of International Law and the work of the Hague Conferences, no better example could be quoted than the code of arbitral procedure drafted by the distinguished German publicist, Professor Goldschmidt, in 1873, and adopted with sundry amendments in 1875,

¹ *The Life and Letters of Francis Lieber* (Perry, ed.), p. 423.

² *The miscellaneous writings of Francis Lieber* (Gilman, ed.), vol. ii, p. 14.