

**RESOLUTIONS  
OF THE  
INSTITUTE OF  
INTERNATIONAL LAW  
DEALING WITH THE LAW OF NATIONS**

**with an Historical Introduction  
and Explanatory Notes**

*COLLECTED AND TRANSLATED UNDER THE SUPERVISION OF  
AND EDITED BY  
James Brown Scott  
Director*

William S. Hein & Co., Inc.  
Buffalo, New York  
2003

Library of Congress Cataloging-in-Publication Data

Institute of International Law.

Resolutions of the Institute of International Law dealing with the law of nations : with an historical introduction and explanatory notes / collected and translated under the supervision of and edited by James Brown Scott.

p. cm.

Originally published: New York : Oxford University Press, 1916.

Includes index.

ISBN 1-57588-791-6 (alk. paper)

1. International law. 2. War (International law) I. Scott, James Brown, 1866-1943. II. Title.

KZ24.I47 2003

341--dc22

2003056612

This acid-free reprint was digitally archived under the strict quality control guidelines established by William S. Hein & Co., Inc.'s "Preservation Program" This program was established to preserve the integrity of legal classics for future generations of legal researchers.

This paper meets the requirements of  
ANSI/NISO Z39.48-1992 (Permanence of Paper).



Printed in the United States of America.

**RESOLUTIONS**  
**OF THE**  
**INSTITUTE OF**  
**INTERNATIONAL LAW**



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

COLLECTED AND TRANSLATED UNDER THE SUPERVISION OF  
AND EDITED BY

**JAMES BROWN SCOTT**  
DIRECTOR

---

NEW YORK  
OXFORD UNIVERSITY PRESS  
AMERICAN BRANCH: 35 West 32nd Street  
LONDON, TORONTO, MELBOURNE, AND BOMBAY  
HUMPHREY MILFORD

1916

**COPYRIGHT 1918**  
**BY THE**  
**CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE**  
**WASHINGTON, D. C.**

**THE QUINN & BODEN CO. PRESS**  
**RAHWAY, N. J.**

## 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.

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.<sup>1</sup>

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.<sup>2</sup>

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*.<sup>3</sup>

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:

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

<sup>2</sup> *Ibid.*, p. 367.

<sup>3</sup> *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.<sup>1</sup>

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-Jaequemyns' 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.<sup>2</sup>

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,

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

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

which served as a basis of discussion for the code of arbitral procedure adopted by the First Hague Conference in 1899. One more reference must suffice. Even a hurried and cursory examination of the reports of the Hague Conferences explaining and interpreting the different conventions shows the influence of the Institute upon the deliberations of this august international assembly. Reference is made, without quoting, to the reports on the questions of the opening of hostilities, contraband of war, automatic submarine contact mines, inviolability of correspondence, and very especially to the report of the most distinguished of all international reporters, on the convention relative to the creation of an international prize court, which it is hardly necessary to say was prepared by Louis Renault. In this masterly report, at once a model and a monument, Professor Renault said:

The Institute of International Law has studied the question for a long time. In 1875, at the session held at The Hague, it appointed a committee to study a project for the organization of an international prize tribunal; but it was not until 1887 that it adopted its international regulations on maritime prizes. So far as jurisdiction is concerned, the principle laid down was that "the organization of prize tribunals of first instance remains regulated by the legislation of each State. . . ." <sup>1</sup>

In view of the respect which the resolutions of this unofficial body of devoted jurists has already won in the world of affairs, as well as in the realm of thought, it is a matter of congratulation to the Trustees of the Carnegie Endowment, and a guaranty of the usefulness and the practical character of its plans, that the Institute of International Law has consented to act as adviser to the Endowment's Division of International Law, and has appointed a Consultative Committee for this purpose, composed of the following distinguished publicists: Gregers W. W. Gram (Norway), Francis Hagerup (Norway), H. Harburger (Germany), Thomas Erskine Holland (Great Britain), Heinrich Lammasch (Austria), Charles Edouard Lardy (Switzerland), Louis Renault (France), Albéric Rolin (Belgium), Milenko R. Vesnitch (Serbia).

The motto of the Institute is *Justitia et Pace*, and it is to be

---

<sup>1</sup> *The Reports to the Hague Conferences of 1899 and 1907* (Oxford, 1916), p. 761.

hoped that, by the coöperation of two such institutions, the cause of justice, which is also the cause of peace, may be advanced.

It is therefore a very great pleasure, and a very great honor, to be able to make the first collection of the resolutions of the Institute dealing with international law and to offer them in an English translation to the reading public. It is often difficult to draw the line between a resolution dealing with international law and one dealing with the conflict of laws, or, to use the European expression, with private international law. Still, it is necessary to draw the line; and in so doing care has been taken to include resolutions of great international interest which would perhaps have difficulty in making good their claim to be considered as international public law.

There are also certain documents which could not, for one reason or another, be included among the resolutions, but which are nevertheless so germane and important that they should not be omitted. They are therefore printed in the appendix. Special reference is made to the original project and report and the supplemental observations of Dr. Goldschmidt concerning international arbitral procedure, Mr. Fauchille's project of a convention dealing with aircraft, and likewise Dr. von Bar's project on the same subject.

The translations are the work of many hands. Some of the documents had been translated in whole or in part a number of times, and in such cases they have been compared with the originals and revised whenever it seemed necessary or advisable. Most of the translations, however, were made especially for this volume. The word *ressortissants* is often retained, as opinions differ as to the exact nature and meaning of the word.<sup>1</sup>

JAMES BROWN SCOTT,

*Director of the Division of International Law.*

WASHINGTON, D. C.

*April 15, 1916.*

<sup>1</sup> Colonel Borel, a *rappporteur* of the Second Hague Peace Conference, said that "the word *ressortissants* seems clearly to refer only to persons belonging to a state by virtue of the juridical tie of nationality" (*Actes et documents*, vol. i, p. 151). The late Professor Westlake, on the contrary, said that the term "includes persons, if any, over whom jurisdiction is claimed by reason of domicile as well as proper subjects or nationals" (*International Law*, 2d ed., part i, p. 193).

## CONTENTS

	PAGE
Preface . . . . .	v
Historical introduction . . . . .	xv
Constitution of the Institute . . . . .	xx
By-laws of the Institute . . . . .	xxv
Personnel of the Institute . . . . .	xxxvi
International arbitral procedure. Regulations adopted by the Institute August 28, 1875 . . . . .	1
Laws and customs of war on land. Examination of the Declara- tion of Brussels of 1874. Conclusions adopted at The Hague August 30, 1875 . . . . .	7
International duties of neutral States. Rules of Washington. Conclusions adopted at The Hague August 30, 1875 . . . . .	12
Treatment of private property in naval warfare. Conclusions adopted at The Hague August 31, 1875 . . . . .	14
Conclusions adopted at Zürich September 11, 1877 . . . . .	15
International arbitration. <i>Compromis</i> clause. Resolution adopted September 12, 1877 . . . . .	16
Regulation of the laws and customs of war. Application of the law of nations to the War of 1877 between Russia and Turkey. Observations and <i>vœux</i> considered by the Insti- tute September 12, 1877 . . . . .	17
Organization of an International Prize Court. Resolutions adopted September 12, 1877 . . . . .	22
International protection of the Suez Canal. Resolutions adopted September 4, 1879 . . . . .	23
Submarine cables. Resolutions concerning the protection of submarine cables adopted September 5, 1879 . . . . .	24
Laws and customs of war on land. Manual adopted at Oxford September 9, 1880 . . . . .	25
Extradition. Resolutions of Oxford voted September 9, 1880 . . . . .	42
International regulations concerning prizes. Articles 1 to 62 adopted at Turin September 13, 1882 . . . . .	45

	PAGE
Articles 63 to 84 adopted at Munich September 5 and 6, 1883 . . . . .	57
Marine insurance. Resolutions of September 7, 1883 . . . . .	62
International rivers. The Kongo. Conclusion of September 7, 1883 . . . . .	63
Communication of international treaties. <i>Vœu</i> adopted September 11, 1885 . . . . .	64
Maritime law and marine insurance. Resolution of September 11, 1885 . . . . .	65
Communication of foreign laws. Propositions adopted September 12, 1885 . . . . .	67
Blockade in the absence of a state of war . . . . .	69
Declaration adopted September 7, 1887 . . . . .	69
Communication of foreign laws. <i>Vœu</i> expressed by the Institute September 8, 1887 . . . . .	70
International regulations concerning prizes. Articles 85 to 122 adopted at Heidelberg September 8, 1887 . . . . .	71
Navigation of international rivers. Draft regulations adopted September 9, 1887 . . . . .	78
Marine collisions. Draft adopted September 4, 1888 . . . . .	83
Occupation of territories. Draft of international declaration of September 7, 1888 . . . . .	86
Admission and expulsion of aliens. Draft international declaration of September 8, 1888 . . . . .	88
Competence of courts in suits against foreign States or sovereigns. Project of international regulations adopted September 11, 1891 . . . . .	90
Communication of international treaties. Draft of resolution adopted September 12, 1891 . . . . .	93
Maritime slave trade. <i>Vœu</i> adopted September 12, 1891 . . . . .	93
Communication of international treaties. Text of draft convention adopted September 7, 1892 . . . . .	97
Extradition. Articles adopted September 8, 1892 . . . . .	102
Admission and expulsion of aliens. International regulations adopted September 9, 1892 . . . . .	103
Extradition—Revision of the final article of the Oxford resolutions. Resolution of March 27, 1894 . . . . .	110

## Contents

	xiii
	PAGE
International union for the suppression of the maritime slave trade. Draft regulations of March 30, 1894 . . .	111
Definition and status of the territorial sea. Rules adopted March 31, 1894 . . . . .	113
Union for the protection of works of literature and art. Revision of the Convention of Berne. Resolutions adopted August 10 and 12, 1895 . . . . .	115
Penal sanction to be given to the Geneva Convention of August 22, 1864. Resolutions adopted August 9 and 12, 1895	117
Diplomatic immunities. Resolutions adopted August 13, 1895	119
Consular immunities. Resolutions adopted September 26, 1896	123
Contraband of war. Rules adopted September 29, 1896 . . .	129
Bombardment of open towns by naval forces. Resolutions adopted September 29, 1896 . . . . .	131
Conflict of laws on the subjects of nationality and expatriation. Resolutions adopted September 29, 1896 . . .	133
Use of the national flag for merchant ships. Resolutions adopted September 30, 1896 . . . . .	135
Emigration from the point of view of international law. Resolutions adopted September 1, 1897 . . . . .	137
Naval prizes. Harmonizing of the draft regulations on prizes of 1887 with the draft regulations on contraband of war adopted in 1896. Amendments adopted in 1897 . . .	141
Status of ships and their crews in foreign ports in time of peace and in time of war. Resolutions adopted August 23, 1898	143
Application of the principles of the Geneva Convention to naval warfare. Resolution adopted September 7, 1900 . . .	156
Rights and duties of foreign Powers and their <i>ressortissants</i> towards established and recognized governments in case of insurrection. Conclusions adopted September 8, 1900 . . .	157
Responsibility of States by reason of damages suffered by aliens in case of riot or civil war. Resolutions adopted September 10, 1900 . . . . .	159
Submarine cables in time of war. Resolutions adopted September 23, 1902 . . . . .	161
International tribunals. The Hague Court of Arbitration. Resolution adopted in 1904 . . . . .	163