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ORIGINAL ARTICLE

INTERNATIONAL LEGAL THEORY

Deciphering *l'esprit d'internationalité*: The 1872 *Alabama* arbitration and the pacifist antithesis of modern international law profession

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Abstract

In international legal historiography, it becomes a commonplace that the successful resolution of the *Alabama* dispute between Britain and the US by the 1872 Geneva Tribunal of arbitration – the 1872 *Alabama* arbitration – kindled the progressivist enthusiasm of liberal internationalists for projects of humanitarianism, the codification of international law, and international arbitration. The article aims to take this scholarship further by arguing that, against this backdrop of reformist enthusiasm for international law, two transnational social reform movements – pacifist internationalism and legalist internationalism – converged in a joint effort of social and intellectual mobilization in furtherance of an ordered system of international law and its judicial application in practice. The epitome of this encounter was the almost simultaneous creation of the International Law Association and the *Institut de Droit International* in 1873. The article shows that international jurists sought to delineate the nascent modern international law profession by strategically distancing their scientific cause of international law from the one embarked on by their pacifist counterparts. By demarcating international legal science in contrast to the contemporary pacifist activism of international law, international jurists set the parameters of their social networks, and manoeuvred for professional outreach. Yet it is precisely by bringing back the pacifist antithesis that had been deliberately relegated into the secondary by international jurists – 'the men of 1873' – that some previously under-emphasized aspects of the sensibility of *l'esprit d'internationalité* can be grasped.

Keywords: the *Alabama* arbitration; *Institut de Droit International*; International Law Association; *l'esprit d'internationalité*; modern international law profession

1. Introduction: Revisiting the emergence of modern international law profession

It is widely accepted in the current international legal historiography that modern international law profession emerged in the second half of the nineteenth century, as attested to by the launching of the first professional international law journal, *Revue de droit international et de législation comparée* (RDILC) in 1869, the creation of the International Law Association (ILA) and the *Institut de Droit International* (IDI) in 1873, and above all by the reformist cosmopolitan sensibility of a selective group of liberal international jurists, 'the men of 1873'.[1] *L'esprit*

[1]See M. Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960* (2001), 11–97. This notion has become a common understanding among international legal historians. See also L. Nuzzo, *Origini di una Scienza. Diritto Internazionale e Colonialismo nel XIX Secolo* (2012), 133–44; S. Moyn, *Humane: How the United States Abandoned Peace and Reinvented War* (2021), 83; D. Bell, *Dreamworlds of Race: Empire and the Utopian Destiny of Anglo-America* (2020), 305–6.

d'internationalité,[2] a dictum encapsulating the progressive and cosmopolitan beliefs of these international jurists, is understood to indicate a rupture that broke from the previous scholarly tradition of international law.[3] Nevertheless, this notion does not necessarily go uncontested. As Anthony Carty points out, the concept of *l'esprit d'internationalité* is so loosely defined that it is difficult to expound what 'the foundations of their beliefs' were.[4] Robert Cryer opines that the break of the men of 1873 from the early intellectual tradition is contestable.[5] George Rodrigo Bandeira Galindo also questions whether that the *esprit* justifies a discontinuity and breach from early international legal history is already assumed *a priori*.[6] These criticisms together point to an explanatory deficiency in foregrounding the late 1860s and early 1870s as the point of origin for modern international law profession.

To tackle the puzzle of *l'esprit d'internationalité*, including its contextual connotations and its implications for the birth of international law as a professional discipline, this article highlights a previously under-emphasized and less-trodden pacifist strand of international law that ran parallel and intimately interacted with the scientific vocation of international jurists of the time. As Gerald Fitzmaurice observes, the IDI was constituted based on the convergence of different trends of thought, 'which might be said to have come together with the reference to arbitration of the celebrated *Alabama* case in 1871'.[7] No doubt, the success of the *Alabama* arbitration has been totemically recognized as a case in point that gave social enthusiasm and political momentum for the development of international law and international adjudication in the late nineteenth century.[8] Against the backdrop of this enthusiastic mobilization for international legal reform, two previously separate transnational social reform movements – pacifist internationalism and legalist internationalism – joined forces in the immediate aftermath of the 1872 *Alabama* arbitration, with a common objective to promote an ordered system of international law and its judicial application mainly by international arbitration. The almost simultaneous foundation of the pacifism-oriented ILA and the scientism-based IDI in 1873, and the intensive interactions between the two institutions in their early years, were symptomatic of such joint reformist endeavour of pacifists and international jurists.[9]

Nevertheless, my argument is that it was precisely by measuring against their pacifist antithesis at a time when these two reformist movements crossed paths that international jurists demarcated the disciplinary boundary of international legal science, set the parameters of their social networks, and manoeuvred for professional outreach. The article zooms in on this historical juncture of the 1872 *Alabama* arbitration and shows that international jurists deliberately distanced themselves from their pacifist counterparts, whose pursuit of international law was often considered by jurists as radical, unsophisticated, and fundamentally impractical. While pacifists prioritized the systematization of international law first and foremost through the rapid adoption of an international code and mandatory arbitral settlement of international disputes, international jurists insisted on the empirical and positivist nature of

[2]See G. Rolin-Jaequemyns, 'De L'étude de la Législation Comparée et du Droit International', (1869) 1 *Revue de Droit International et de Législation Comparée* 1, at 17.

[3]See Koskenniemi, *supra* note 1, at 3–4, 19.

[4]A. Carty, 'The Evolution of International Legal Scholarship in Germany during the Kaiserreich and the Weimarer Republik (1871–1933)', (2007) 50 *German Yearbook of International Law* 29, at 36.

[5]R. Cryer, 'Déjà vu in International Law', (2002) 65 *Modern Law Review* 931, at 934–5.

[6]G. R. B. Galindo, 'Martti Koskenniemi and the Historiographical Turn in International Law', (2005) 16 EJIL 539, at 552–3.

[7]G. Fitzmaurice, 'The Contribution of the Institute of International Law to the Development of International Law', (1973) 138 *Recueil des Cours* 203, at 212.

[8]See D. Caron, 'War and International Adjudication: Reflections on the 1899 Peace Conference', (2000) 94 AJIL 4, at 9. See also Koskenniemi, *supra* note 1, at 40.

[9]See I. Abrams, 'The Emergence of the International Law Societies', (1957) 19 *Review of Politics* 361; X. Chen, 'The Institutionalization of International Law at a Crossroads: Pacifists, Jurists, and the Creation of the ILA and the IDI', (2023) 117 *AJIL Unbound* 204.

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law and held that a code stipulating all rights and duties of states was premature, and the absolutist view of arbitration unrealistic.

Section 2 of the article tackles the riddle of the 1872 *Alabama* arbitration in the history of pacifist internationalism. It explores how the *Alabama* arbitration was perceived by its contemporary pacifists and consequentially ushered in a period of pacifist activism for international legal reform. While international law and international arbitration had long been two essential pacifist visions from the mid-nineteenth century onwards, the 1872 *Alabama* arbitration served as a catalyst for pacifists to further pursue social mobilization and seek political transformations of international law. Section 3 recounts the interventions of professional international jurists into the *Alabama* dispute by showcasing their legalist projects of arbitral courts to replace the 'old system of arbitration'. As international arbitration gradually became a frequently discussed topic in transnational reformist fora and networks, international jurists also embarked on an array of reflections on the function and limits of international law and international arbitration in the international domain where state sovereignty was insurmountable. In Section 4, the article shows that the two trends of pacifist internationalism and legalist internationalism converged when the social and intellectual enthusiasm for international law surged in the immediate aftermath of the 1872 *Alabama* arbitration. Nevertheless, the division between idealism and pragmatism, pacifism and scientism, and institutional friction between the ILA and the IDI broke pacifists and international jurists apart. In the quest for organizational respectability and practical feasibility, international jurists stressed that international legal science had to be moderate and empirical, which was fundamentally different from the absolutist perceptions of pacifists. Through meticulously distancing themselves from the pacifist strand of international law, international jurists defined the nature of international legal science, and thereby marked the nascent yet small community of international law.

The article fills several important gaps in our understandings of late-nineteenth-century international law. First, the article shows that pacifist internationalism and legalist internationalism were two synchronous and interwoven constituents, two conditions of possibility that had been channelled into the evolutionary progressivism of international law in the late nineteenth century. In more than one way, pacifists and international jurists simultaneously took on the task of restraining war and maintaining peace by venturing further into an international legal reform in the immediate aftermath of the 1870 Franco-Prussian War and the 1872 *Alabama* arbitration.[10] Second, the article offers an elaborate and multifaceted account of how international jurists carefully demarcated their collectivist scientific vocation and navigated the organizational avenues of the IDI by strategically portraying the contemporaneous pacifist strand as their antithesis, and accordingly marked the 'epistemic community'[11] – to borrow a term from Peter M. Haas – of international jurists. Third, although the pacifist tradition of international law, especially by the turn of the century, has been to a certain extent explored in the recent historiography of international law,[12] the article resituates the periodization and thereby traces such pacifist tradition to a much early period. By showing that the development of international law in the late 1860s and early 1870s was intimately tied up with the dynamics of different competing reformist visions of international law, the article recovers and fleshes out some under-appreciated episodes at the point of origin of modern international law profession.

[10]See Abrams, ibid.

[11]See P. M. Haas, 'Introduction: Epistemic Communities and International Policy Coordination', (1992) 46 *International Organization* 1.

[12]See M. García-Salmones, 'Walther Schücking and the Pacifist Traditions of International Law', (2011) 22 EJIL 755, at 758–82; J. Hepp, 'James Brown Scott and the Rise of Public International Law', (2008) 7 *Journal of the Gilded Age and Progressive Era* 151.

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2. The riddle of the *Alabama* arbitration in the history of pacifist internationalism

The *Alabama* arbitration was the arbitral resolution of a diplomatic crisis between Britain and the US from 1862–1872, the *Alabama* dispute.[13] During the American Civil War, the Confederacy instructed its agents to purchase and build warships in Britain and France, with the purpose of undermining the maritime commerce of the Union and breaking through the blockade of the southern ports. The *Alabama*, constructed in Liverpool and called by some a 'British pirate', had caused considerable damage to the Union, taking more than 60 prizes before it was defeated. Whether the acts of destruction and depredation by the *Alabama* and some other British-built vessels violated rules of neutrality and whether Britain was accountable, were the main contested issues in the *Alabama* dispute. The US claimed that Britain's negligence and failure to prevent the construction of warships within British territory and their replenishment in British ports for the benefit of the Confederacy violated Britain's duty of neutrality and inevitably prolonged the war. After a protracted negotiation process filled with the twists and turns of diplomatic protests, changes of government, and public agitation, two parties eventually concluded the 1871 Treaty of Washington. According to the 1871 treaty, the *Alabama* dispute was submitted to a tribunal of arbitration convened in Geneva. The final award of the Geneva Tribunal was delivered on 14 September 1872 hugely in favour of the US.

In the history of the international peace movement, the 1872 *Alabama* arbitration was highlighted as a watershed that rekindled international peace activism on both sides of the Atlantic, spurring a much proactive disposition to international law and international arbitration in the cause of peace.[14] The secretary of the London Peace Society, Henry Richard (1812–1888), stated in the British Parliament in 1872 that the *Alabama* arbitration constituted 'a landmark in the history of civilisation'.[15] The official journal of the American Peace Society (APS), *The Advocate of Peace*, also commented that the *Alabama* success was a 'great example and precedent upon all civilized nations'.[16] This orientation to 'peace through international law' entailed a strategic shift to an international legal reform, the aim of which was to promote the finalization of an international code stipulating all rights and duties of states, and the entrenchment of legalized international dispute settlement in diplomatic practice. As the historian Sandi E. Cooper observes, '[f]rom 1872 on, the *Alabama* decision provided fuel for peace and international law arguments that filled books, scholarly journals, tracts for peace propaganda, political speeches, and a library of academic literature'.[17]

The pacifist inclination to the legalist approach of international law, generated by the *Alabama* arbitration, was built on and historically allied to a cluster of pacifist visions and initiatives from the mid-nineteenth century onwards, including a congress of nations, the codification of international law, disarmament, international arbitration, free trade, and the abolition of war.[18] Among many other claims, that peace was best secured by convening a congress of nations to facilitate the adoption of an international code and the establishment of an international court had long been an essential argument among adherents of transatlantic peace activism. One of the most influential works in this respect was *An Essay on a Congress of Nations* published in 1840 by the president of the APS William Ladd (1778–1841), and Ladd's vision had become a dominant peace agenda of the day.[19] In the 1840s and 1850s, international peace congresses without exception

[13]For a comprehensive account and analysis of the *Alabama* arbitration see T. Bingham, 'The *Alabama* Claims Arbitration', (2005) 54 ICLQ 1.

[14]See S. E. Cooper, *Patriotic Pacifism: Waging War on War in Europe 1815–1914* (1991), 45–6.

[15]H. Richard, *International Arbitration and the Improvement of International Law: The Debate in the House of Commons, on Tuesday, July 8th, 1873* (1872), 24.

[16]"The Uses of the Geneva Arbitration', (1872) 3 (46) *The Advocate of Peace (1847–1884)* 221, at 221.

[17]See Cooper, *supra* note 14, at 46.

[18]See W. H. van der Linden, *The International Peace Movement 1815–1874* (1987), 365–415.

[19]See W. Ladd, *An Essay on a Congress of Nations, for the Adjustment of International Disputes Without Resort to Arms* (1840), 13–17.

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were piled with papers, pamphlets, and resolutions calling for an authoritative code of international law and interstate arbitration.[20] In more than one way, these pacifist appeals also carved their paths into political realms and parliamentary debates. In 1849, the British liberal politician Richard Cobden (1804–1865), under the auspices of the London Peace Society, brought to the attention of the British House of Commons a motion of international arbitration, recommending the British government to incorporate a clause of arbitration in future treaties as a dispute settlement mechanism.[21] In 1856, a delegation of the British peace camp was dispatched to the Congress of Paris, lobbying for an arbitration clause in the peace treaty among European powers after the Crimean War, as a consequence of which a clause of mediation was adopted.[22]

For peace advocates who had devoted themselves to the ideas of an international code and international arbitration, the achievements of the 1871 Treaty of Washington and the *Alabama* arbitration were profound and unprecedented. The three rules of neutrality stipulated by the 1871 treaty were interpreted by pacifists as an important step towards the codification of international law. And the convening of the Geneva Tribunal of arbitration, set up to solve a serious diplomatic crisis implicating the national honour and interests of two big powers, was considered as a concrete advancement of the idea of international arbitration to eradicate war and maintain peace. The immediate impacts of the *Alabama* arbitration on international peace movement can be evaluated from several dimensions. First, largely encouraged by the *Alabama* arbitration, promoting international law and international arbitration as a means to achieve friendly relations of states soon became a widely shared agenda in various European peace societies. Previously paying little attention to the ideas of law and arbitration, the reconstituted *Société des amis de la paix* (Paris) claimed in 1872 that its objective was to achieve the practical application of international law and arbitration to settle the Franco-Prussian conflict.[23] The change of agenda of the *Ligue internationale de la paix et de la liberté* (Geneva) was equally conspicuous – it passed a resolution in 1873, fully devoting itself to the cause of an international code and arbitration.[24] Second, reformist pacifists and liberal politicians brought to the front political initiatives and parliamentary motions in favour of the development of international law and international arbitration in European and American legislatures. The most notable was the parliamentary motion submitted to the British House of Commons by Richard in July 1873, which was passed by majority; Richard's parliamentary success encouraged a series of other parliamentary initiatives in support of international law and arbitration across the Atlantic.[25]

In tandem with the rapid development of international peace movement both in geographical scope and political influence, there was also a fast-growing conviction among pacifists that an international conference of jurists conversant with international law was paramount for laying the groundwork for the much-desired international code and the scheme of international arbitration. As pacifists saw it, the victory of the *Alabama* arbitration had reinvigorated the enthusiastic spirit of transnational peace activism and therefore yielded the perfect timing for an international legal reform by marshalling the collective wisdom of international jurists. Two American pacifists distinguished themselves by taking this vision into practice – the 'learned Blacksmith' and a disciple of Ladd, Elihu Burritt (1810–1879), and the secretary of the APS James B. Miles (1823–1875). Inspired and emboldened by the 1872 *Alabama* success, Burritt and Miles agreed that

[20]See V. L. Lambert, 'The Dynamics of Transnational Activism: The International Peace Congresses, 1843–51', (2016) 38 *International History Review* 126, at 130–3.

[21]See M. Ceadel, *The Origins of War Prevention: The British Peace Movement and International Relations 1730–1854* (1996), 427–31.

[22]See M. M. Robson, 'Liberals and "Vital Interests": The Debate on International Arbitration, 1815–72', (1959) 32 *Historical Research* 38, at 49–50.

[23]See F. Passy, *Revanche et Relèvement* (1872), 16–17. See also M. Clinton, '"Revanche ou Relèvement": The French Peace Movement Confronts Alsace and Lorraine, 1871–1918', (2005) 40 *Canadian Journal of History* 431, at 437.

[24]See Clinton, ibid., at 438.

[25]See F. S. L. Lyons, *Internationalism in Europe 1815–1914* (1963), 323–4.

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it was a favourable time to act on the ideas of an international code and international arbitration. Therefore, two months after the Geneva Tribunal had delivered its award, Burritt wrote to Miles that 'the present is the most favorable juncture the world ever saw for making a great movement to establish permanent and universal peace' and 'this new year [1873] should not be allowed to pass by without such a movement to distinguish it'.[26] What Burritt had in mind was to convene two parallel but different meetings with different objectives. One was an international peace conference with mass audience from various professions and parties. The other and most innovative one was a private conference of a number of selective international jurists, a 'senate of jurists', to discuss the drafting of an international code 'clause by clause'.[27] Miles accordingly travelled to Europe in early 1873 to liaise with European international jurists, and with such aim in Philadelphia the International Code Committee was instituted, composed of well-situated American international jurists including Theodore Dwight Woolsey (1801–1889), David Dudley Field (1805–1894), and William Beach Lawrence (1800–1881).[28] As a result, the 1873 Brussels conference was convened in October 1873, which led to the establishment of the Association for the Reform and Codification of the Law of Nations (renamed International Law Association in 1895).

The pacifist origin and nature of the ILA enabled it to secure cordial support from social activists and pacifists. The 1873 Brussels conference was made possible due to the assistance of the Belgian statesman and philanthropist Auguste Visschers (1804–1874), who was the chairman of the 1848 Brussels peace congress and had remained one of the close friends of peace camp. To a certain extent, the ILA was built upon the existing transatlantic network of pacifism, which was formed in the mid-nineteenth century and had gradually expanded ever since. Burritt was a tremendously important figure in strengthening the transatlantic pacifist alliance in the late 1840s and early 1850s.[29] And it was Burritt, together with Miles, that brought the idea of the ILA to life. This was the reason why the pacifist network easily made its way towards the ILA in its early years. In early 1873 when Miles travelled to Europe, his mission was warmly welcomed and supported by peace colleagues from the London Peace Society and the *Société des amis de la paix*.[30] The secretary of the London Peace Society, Richard, and the secretary general of the *Société des amis de la paix*, Frédéric Passy (1822–1912), later became main participants and discussants at the Brussels conference of the ILA.

The pacifist visions of international law, especially the adoption of an international code and international arbitration, resonated strongly in the transnational activism of the late-nineteenth-century international legal reform. The programmes of the 1873 Brussels conference to a great extent replicated these two pacifist agendas.[31] Though not without compromises, two resolutions in favour of the codification of international law and international arbitration were passed at the Brussels conference.[32] In addition, that the progress of international law hinged on the elaboration of an international code and the practical application of arbitration became an idea shared by a group of European and American legal reformers. The Belgian liberal economist and one of the founders of the IDI Émile de Laveleye (1822–1892) wrote in 1873 that the utmost important remedy for restraining war was to formulate an international code containing all rights and duties of states, and to establish a permanent court of arbitration.[33] Field had been a steadfast promoter

[26]M. Curti, *The Learned Blacksmith: The Letters and Journals of Elihu Burritt* (1937), 204.

[27]Ibid., at 206–8.

[28]See J. B. Miles, *Association for the Reform and Codification of the Law of Nations: A Brief Sketch of Its Formation* (1875), 4–10. See also Abrams, *supra* note 9, at 364–72.

[29]See P. Tolis, *Elihu Burritt: Crusader for Brotherhood* (1968), 173–202.

[30]See 'Editorial Correspondence', (1873) 4(4) *The Advocate of Peace (1847–1884)* 28, at 28; 'Editorial Correspondence', (1873) 4 (5) *The Advocate of Peace (1847–1884)* 36, at 37.

[31]See *The International Law Association, Reports of the First Conference Held at Brussels, 1873, and of the Second Conference Held at Geneva, 1874* (1903), 5.

[32]See ibid., at 23–4, 43.

[33]See É. de Laveleye, *Des Causes Actuelles de Guerre en Europe et de L'arbitrage* (1873), 161.

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of an international code since 1866, and he embarked on this task himself and published in 1872 *Draft Outlines of an International Code*.[34] Later in 1887, the British jurist and professor of commercial law at King's College London Leone Levi (1821–1888) would still argue that a code of international law was of great benefit to peaceful international dispute settlement by way of international arbitration.[35]

As the historian Irwin Abrams observes, previously tilling in their own fields, peace advocates and international jurists joined forces in the 1870s in a shared endeavour of international legal reform, advocating for a more decisive role of international law and international arbitration as a path for peace.[36] Before elaborating on how the paths of pacifist internationalism and legalist internationalism converged, and how international jurists soon realized that their scientific sensibility was fundamentally different from the pacifist strand and hence deliberately distanced themselves from their pacifist counterparts, the article shall first investigate how international jurists likewise thought of the necessity of international legal reform in the immediate aftermath of the 1872 *Alabama* arbitration.

3. International jurists and the *Alabama* arbitration: Situating law and arbitration

Like pacifists, the attention of contemporary international jurists was also drawn to the *Alabama* dispute, and the way jurists approached the legal essence of the dispute featured the then comparatively small professional network of international law. The characteristic of such a network of international jurists was a shared belief in legal expertise and the impartiality of legal science in settling the *Alabama* crisis. First, jurists called into question the 'old system of arbitration', the way in which sovereigns were often chosen as arbitrators. Instead, they envisaged a handful of legalized schemes of arbitral courts, through which both parties could debate their claims and settle their disputes according to the principles of international law. Relatedly, they believed that the crux of settling the *Alabama* dispute depended on the clarification of international rules, and therefore they set sights on ascertaining the applicable rules of neutrality. Second, jurists insisted on a clear demarcation of the function and limits of international arbitration, contending that a legally moderate approach, by clarifying what international arbitration could do and could not do in a heterogeneous international society, was fundamental for arbitration to be practically desirable.

3.1 Replacing the 'old system of arbitration'

American jurists were among the first group of legal specialists who went out to tackle the legal nature of the *Alabama* dispute and advocate for arbitral settlement. By emphasizing the impartiality of legal means, some American jurists made incessant attempts to propagate the scheme of arbitral settlement with the aim of preventing the incrementally escalated dispute from falling into war. On 13 May 1865, Thomas Balch (1821–1877), an American historian and lawyer residing in Paris, published his plan of international arbitration in the *New York Daily Tribune*, and diligently lobbied for such a plan.[37] As Balch saw it, the 'old system of arbitration' was practicably unstable and scientifically outmoded, and his plan was to infuse it with legal structure by transforming it into an arbitral court composed of professional jurists whose decisions were final.[38] Francis Lieber (1798–1872) soon joined the ranks, and made public his version of international arbitration on 22 September 1865, in an open letter nominally addressed to the US

[34]See D. D. Field, *Draft Outlines of an International Code* (1872).

[35]See L. Levi, *International Law with the Materials for a Code of International Law* (1887).

[36]See Abrams, *supra* note 9, at 363–4.

[37]See T. Balch, 'England and the United States: A Letter from Thomas Balch, Paris, March 31, 1865', *New York Daily Tribune*, 13 May 1865, 4.

[38]See ibid.

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State Secretary William H. Seward (1801–1872).[39] Like Balch, Lieber claimed that arbitration was a modern method of international dispute settlement symbolizing the 'advancing civilisation' of 'recent times'.[40] However, unlike Balch, who was in favour of the decision of an arbitral tribunal composed of jurists, Lieber suggested that the dispute could be entrusted to a European law faculty, to the University of Berlin 'with the international jurist Heffter in it', or to the law faculties of Heidelberg and Leiden.[41] Notwithstanding minor differences, Balch and Lieber believed that international arbitration was an encouraging phenomenon of the progress of their times, but the 'old system of arbitration' was incompatible with the principles of law and justice. Accordingly, the existing arbitration praxis needed to be ameliorated in accordance with the principles and structures of law.

British jurists also concurred that the current diplomacy-oriented arbitration practice needed to be transformed to a legal mechanism, the success of which fundamentally relied upon the perfection of the system of international law. In his brief review of the *Alabama* dispute in 1868, John Westlake (1828–1913) endorsed arbitral settlement – 'international arbitration is of great value'.[42] However, he questioned whether the current structure of arbitration was satisfactory in cases where the applicable rules were uncertain and controversial. Therefore, the stake of international arbitration as applied to the *Alabama* dispute was to clarify the legal questions therein and the applicable international rules – it was a question of legislative nature.[43] In his meticulously researched work *A Historical Account of the Neutrality of Great Britain during the American Civil War*, Chichele Professor of International Law and Diplomacy at Oxford Montague Bernard (1820–1882), who would later be appointed one of the British high commissioners to the 1871 Washington Treaty, also wrote that international arbitration was an impartial mode if states wanted their respective rights settled, and there were 'few classes of questions more suitable for arbitration' than the *Alabama* disputes.[44] Bernard added that the ascertainment of international rules would 'furnish a common standard for the adjustment of disputes'.[45]

In response to the pending *Alabama* dispute, Anglo-American reformist international jurists saw an invaluable opportunity of advocating for a more decisive role of international law and international arbitration in the evolutionary progress of international society.[46] To transform the 'old system of arbitration' into a legally concocted one was an important step in such an evolutionary and progressive process. Balch wrote that arbitral tribunals could produce precedents

[39]See F. Lieber, 'International Arbitration: A Letter to Hon. William H. Seward, Secretary of State', *New-York Times*, 22 September 1865, 4.

[40]Ibid.

[41]Ibid.

[42]J. Westlake, 'The Alabama Claims: To the Editor of The Daily News', *Daily News*, 24 January 1868, 5.

[43]Westlake's attitude towards international arbitration was indeed full of contradictions. On the one hand, he called into question whether international arbitration could solve disputes concerning interpretations of international law, especially given the fact that international law was still at an underdeveloped stage. This was particularly the case in the *Alabama* dispute where rules of neutrality were uncertain and difficult to be agreed on by Britain and the US. Therefore, it was doubtful whether 'arbitration is the true remedy in disputes as to international law'. On the other hand, Westlake thought that the opposition of John Russell (1792–1878) to arbitration 'can hardly be deemed satisfactory', and Westlake showed a sense of confidence in reaching a final arbitral resolution of the *Alabama* dispute. This article contends that Westlake's vacillation was determined by his dissatisfaction with the primitive state of international law, and this was the reason why he was strongly in favour of the systematic development of international law. See ibid. John Russell was the British foreign secretary from 1859–1865 and the British prime minister from 1865–1866, and he was a persistent objector to the arbitral settlement of the *Alabama* dispute. His famous doctrine of 'vital interests and honour' was coined and popularized by his diplomatic dispatch of 30 August 1865 to the then American ambassador to Britain Charles Francis Adams (1807–1886). In the dispatch, Russell stated that 'Her Majesty's government are the sole guardians of their own honour'. See 'Earl Russell to Mr. Adams, Foreign Office, August 30, 1865', in *The Case of Great Britain as Laid before the Tribunal of Arbitration* (1872), vol. III, at 596–609.

[44]M. Bernard, *A Historical Account of the Neutrality of Great Britain during the American Civil War* (1870), 494–5.

[45]Ibid., at 504.

[46]For the late-nineteenth-century Darwinist evolutionary understandings of international law in the progress of civilization, see C. Sylvest, *British Liberal Internationalism, 1880–1930: Making Progress?* (2009), 66–73.

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'heretofore unknown as expositions of international law', which would eventually strengthen the beliefs of progress and reform throughout Europe.[47] Lieber opined that 'the law of nations is awaiting' a reform of international arbitration.[48] As the British barrister and later High Court judge of the Queen's Bench Charles S. C. Bowen (1835–1894) wrote, resorting to arbitration was to 'take one step further in the direction of European peace and progress'.[49] Contrary to the 'old system of arbitration' where international law had a limited role, jurists argued that arbitrators who were mandated to decide interstate controversies should be experts knowledgeable with international law, and they were to be bound by rules when making decisions instead of relying on their sense of equity or conducts of diplomacy. This reformist argument about replacing the 'old system of arbitration' testified to a growing consensus among reformist international jurists that law was to be given more places in service of the progressive social reform of the international domain.

3.2 The Alabama dispute and the growing reformist networks of international law

As the *Alabama* dispute gradually caught the public attention of both sides of the Atlantic, it also captured the attention of transnational social and political reformers, which rendered international law and international arbitration two important agendas in the networks of transnational reformist activism.[50] The British National Association for the Promotion of Social Science (NAPSS), one of the most prominent platforms of social reform, started tackling the various theoretical and practical implications of international arbitration in the late 1860s and early 1870s. In 1867, with the assistance of Westlake, foreign secretary of the NAPSS in charge of foreign contacts, Balch's 1865 letter was reprinted in the bimonthly journal *Social Science* of the NAPSS.[51] The arguments in Lieber's 1865 letter were also brought to notice by Field in one of his speeches at the 1867 Belfast meeting of the NAPSS.[52] As the NAPSS stated in its 1867 council report, there was 'a great international need' to clarify the principle of arbitration.[53] Since then, international arbitration had been an important and intensively debated theme at the annual meetings of the NAPSS from 1867–1874.[54]

More importantly, that the NAPSS was a liberal reformist forum closely in co-operation with politicians, parliamentarians, jurists, and social activists facilitated the dissemination of the topics of international law and international arbitration among European and American social and political reformers.[55] At the 1870 Newcastle meeting, the Spanish aristocrat, senator and pacifist Arturo de Marcoartu (1829–1904) articulated the principle of international arbitration in his plan of an international parliament of nations.[56] At the 1871 Leeds meeting, the British jurist Leone

[47]See Balch, *supra* note 37, at 4.

[48]See Lieber, *supra* note 39, at 4.

[49]C. S. C. Bowen, *The Alabama Claims and Arbitration: Considered from a Legal Point of View* (1868), 67.

[50]As arbitral settlement of the *Alabama* dispute became politically tangible when Edward Smith-Stanley (1799–1869) took office in June 1866, succeeding John Russell as British prime minister, international arbitration became a popular and frequently discussed theme across the transnational networks of social reformers. Stanley's cabinet was in favour of a conciliatory settlement of the *Alabama* dispute, and in principle supported arbitral settlement of the matter. See A. Cook, *The Alabama Claims: American Politics and Anglo-American Relations, 1865–1872* (1975), 34–6.

[51]See T. Balch, 'England and the United States', (1867) 1(10) *Social Science* 201, at 201–2.

[52]See G. W. Hastings (ed.), *Transactions of the National Association for the Promotion of Social Science: Belfast Meeting 1867* (1868), 258.

[53]Ibid., at xxxi.

[54]International arbitration had been an essential topic at the 1867 Belfast meeting, the 1870 Newcastle meeting, the 1871 Leeds meeting, the 1872 Plymouth and Devonport meeting, and the 1874 Glasgow meeting of the NAPSS.

[55]For the status and function of the NAPSS in social and political reform, serving as the intermediary between politicians and parliamentarians on the one hand, and the public on the other hand, see L. Goldman, *Science, Reform, and Politics in Victorian Britain: The Social Science Association 1857–1886* (2002).

[56]See A. de Marcoartu, 'On a Parliament of Nations and International Arbitration', in E. Pears (ed.), *Transactions of the National Association for the Promotion of Social Science: Newcastle-upon-Tyne Meeting 1870* (1871), 165, at 165.

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Levi anticipated that the successful conclusion of the 1871 Treaty of Washington heralded a permanent body of international arbitration.[57] Present at the 1872 Plymouth and Devonport meeting, the Swiss humanitarian Henry Dunant (1828–1910) took note of the civilizational progress and the growth of internationalist ideas of the time and opined that '[a]rbitration was one of those ideas, one of those stars of thought, which to-day, considered as a generous utopia, would soon become perhaps a diplomatic usage adopted by all nations'.[58] The American legal reformer Field was also an active participant of the NAPSS, where he spoke on various occasions of his plan for an international code and its relation with the principle of international arbitration – at the 1866 Manchester meeting, he advised the appointment of a committee for drafting an international code;[59] at the 1867 Belfast meeting, he delivered an address titled 'On the Community of Nations';[60] at the 1873 Norwich meeting, he introduced his recently published *Draft Outlines of an International Code* (1872) and the role of arbitration in such code.[61]

As the *Alabama* dispute and its possible arbitral settlement became a frequently debated topic in social reform associations such as the NAPSS, it also drew the utmost attention of the yet loosely connected transatlantic network of international jurists. Called by Martti Koskenniemi 'the men of 1873', this loose network would later evolve into an institutionalized organ of international law, the IDI, in 1873.[62] Prior to 1873, these international jurists equally saw the potentially significant influence of the *Alabama* affair for an international legal reform. In a private letter of October 1865 addressed to Lieber, the Swiss international jurist Johann Kaspar Bluntschli (1808–1881) wrote that Lieber's 1865 public letter interested him 'in the highest degree', and that it 'would signalize a great progress in civilisation' if the plan of international arbitration was adopted by Britain and the US.[63] Several years later, in 1869, Lieber would encourage Bluntschli to write a 'thorough article' on the *Alabama* question from the legal perspective of an international jurist,[64] and Bluntschli's 'impartial opinion' appeared on the 1870 issue of the RDILC.[65] International jurists argued that the legal stakes of the *Alabama* dispute consisted in the clarification of applicable rules in substance and the ascertainment of arbitral rules in procedure – these were two illustrations of legal science. The Belgian lawyer Gustave Rolin-Jaequemyns (1835–1902) wrote in 1869 that the *Alabama* dispute was in nature a judicial question and hence should be settled by an international tribunal 'according to law'.[66] The Italian international jurist and one of the founders of the IDI Augusto Pierantoni (1840–1911) was also a close observer, and he claimed that his interest in this affair was derived from his consciousness of clarifying the jurisprudential principles in the dispute.[67] In 1870, Pierantoni published his study on the merit of the *Alabama* dispute,[68]

[57]See L. Levi, 'On the Washington Treaty, and its Influence on International Arbitration', in E. Pears (ed.), *Transactions of the National Association for the Promotion of Social Science: Leeds Meeting 1871* (1872), 237, at 238.

[58]E. Pears (ed.), *Transactions of the National Association for the Promotion of Social Science: Plymouth and Devonport Meeting 1872* (1873), 124.

[59]See D. D. Field, 'On a Project for an International Code', in G. W. Hastings (ed.), *Transactions of the National Association for the Promotion of Social Science: Manchester Meeting 1866* (1867), 42, at 42–52.

[60]See D. D. Field, 'On the Community of Nations', in G. W. Hastings (ed.), *Transactions of the National Association for the Promotion of Social Science: Belfast Meeting 1867* (1868), 63, at 63–9.

[61]See D. D. Field, 'Address on an International Code', in C. W. Ryalls (ed.), *Transactions of the National Association for the Promotion of Social Science: Norwich Meeting 1873* (1874), 219, at 219–25.

[62]See Koskenniemi, *supra* note 1, at 39–41.

[63]For the full text of this letter see B. Röben, *Johann Caspar Bluntschli, Francis Lieber und das moderne Völkerrecht 1861–1881* (2003), 260.

[64]Ibid., at 282–3.

[65]See J. C. Bluntschli, 'Opinion Impartiale sur la Question de l'Alabama et sur la Manière de la Résoudre', (1870) 2 *Revue de Droit International et de Législation Comparée* 452.

[66]G. Rolin-Jaequemyns, 'Chronique du droit international', (1869) 1 *Revue de Droit International et de Législation Comparée* 138, at 153–4.

[67]See A. Pierantoni, *Gli Arbitri Internazionali e il Trattato di Washington* (1872), 11–12.

[68]See A. Pierantoni, *La Questione Anglo-Americana dell'Alabama* (1870).

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and in 1872 his historical research on the history of international arbitration dating back to the ancient times.[69] As Rolin-Jaequemyns portrayed the significance of the *Alabama* dispute, it was 'destined to remain famous in the annals of international law'.[70]

The immediate impacts of the *Alabama* dispute on the development of international law were not only that it made popular the reform of propagating a more decisive role of international law, but also that it prompted a series of reflections and debates on the function and limits of international legal science. On the one hand, international jurists agreed that international law shall play a gradually important role, and that to that end the underdeveloped stage of international law was to be ameliorated.[71] For international jurists who closely followed the evolvement of the *Alabama* dispute, it was clear that its deteriorations on several occasions particularly resulted from the contrasting views on the obligations of neutrals separately held by Britain and the US. In the 1871 Treaty of Washington, these two parties even had to *ex post facto* agree on a set of rules assumed to be existed prior to the time of the dispute. This was particularly the reason why those international jurists who endorsed arbitral settlement of the *Alabama* dispute equally desired for the ascertainment and perfection of international rules. On the other hand, fundamental to a successful international legal reform, as many jurists saw it, was a clear consciousness of the function and limits of international law and international arbitration in the practical world. This moderate stance of international law inhered in various reformist argumentations of international jurists, with respect to the nature of legal science and the task of international jurists in such reform. At the 1870 Newcastle meeting of the NAPSS, Westlake argued that the time was not ripe for an international code and a system of arbitration to which states were obliged to submit all their disputes, and hence it was important to ascertain the 'practical difficulties' as for the applicability of international arbitration.[72] The Scottish international jurist James Lorimer (1818–1890) also opined in 1874 that 'the chief difficulties attending international arbitration' was to ascertain the justifiable questions that could be handled by arbitral courts.[73] The foremost task that the international jurists of the IDI were supposed to pursue, according to Lorimer, was to 'eliminate the impossible cases and moderate the expectations of its injudicious advocates' of international arbitration.[74] It was on these bases that international jurists fundamentally diverged from their pacifist counterparts in the path ahead of the surging enthusiasm for international legal reform.

4. Demarcating international legal science: Pacifists, international jurists, and the birth of international law profession

4.1 The enthusiasm for international legal reform

As reformist contemporaries saw it, the success of the *Alabama* arbitration was extraordinary, and it resolved a diplomatic crisis that could have led to war between two great powers. Both pacifists and international jurists believed that the *Alabama* success presaged a new era of progress, peace, and civilization. It brought on the spirit of enthusiasm for international legal reform discernible in social, intellectual, and political realms. More importantly, this spirit of enthusiasm was transatlantic. The American international jurist and former president of Yale College Woolsey wrote that '[t]he tribunal at Geneva was such an imposing spectacle' and 'an index of progress',

[69]See Pierantoni, *supra* note 67.

[70]See Bluntschli, *supra* note 65, at 480.

[71]See Rolin-Jaequemyns, *supra* note 2, at 225.

[72]E. Pears (ed.), *Transactions of the National Association for the Promotion of Social Science: Newcastle-upon-Tyne Meeting 1870* (1871), 169.

[73]J. Lorimer, 'Courts of Arbitration', *New York Daily Tribune*, 11 April 1874, 2.

[74]Ibid.

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and that it awakened the interest for legalized international dispute settlement.[75] The French pacifist and committee secretary of the *Société des amis de la paix* Henry Bellaire contended that the *Alabama* affair would certainly bring great changes in international law.[76] The famed Italian jurist, statesman and first president of the IDI Pasquale Stanislao Mancini (1817–1888) claimed in 1874 that international arbitration had recently gained much intellectual and political support in scholarly conferences and legislative bodies.[77] Looking back on the advancement of the arbitration movement animated by the *Alabama* arbitration, Charles Lyon-Caen (1843–1935), Professor of Law at the Faculty of Law of Paris, stated in 1877 that 'the thinking of offering nations a peaceful means of settling their disputes has made great progress at our times and particularly in recent years'.[78]

It is important to note that at this juncture of widespread spirit of enthusiasm, the two separate trends of transnational social reform movements discussed respectively in Section 2 and Section 3 of the article – pacifist internationalism and legalist internationalism – converged in a joint effort of international law reform in furtherance of an ordered system of international law and the application of international arbitration. The fact that both pacifists and international jurists took on the task of propagating international law and arbitration facilitated such reform in social, intellectual, and political dimensions. The emergence of modern international law profession was intricately tied to such convergence of forces with respect to the systematization and publicity of international law.

More importantly, both pacifists and international jurists believed that, in service of such reform of international law, they had to resort to the collectivist wisdom and the reformist networks needed to be strengthened, through establishing professional international law organizations with permanent standing. '[I]nternational law needed to be institutionalized.'[79] The Norwegian historian Christian L. Lange observes that one of the important outcomes of the *Alabama* arbitration was the foundation of the two permanent organizations of international law in 1873, the ILA and the IDI.[80] The creation of the ILA and the IDI, at a time when pacifists and international jurists joined forces in this enthusiastic reform of international law, was the epitome of the increasing social and political support for international law of the day. As already discussed, the ILA emanated from the initiative and efforts of two prominent American pacifists, Burritt and Miles, and grew out of the nineteenth-century international peace movement.[81] In contrast, the establishment of the IDI was based on a parallel but separate elitist network of liberal international jurists, featuring a close yet small circle largely thanks to their intermediary Rolin-Jaequemyns.[82] In March 1873, Rolin-Jaequemyns circulated a confidential note among a small group of 22 European jurists on the possibility of inaugurating a scientific and collective organization of international law, which set the scene for the Ghent meeting in September 1873 and eventually the creation of the IDI.[83]

[75]T. D. Woolsey, 'International Arbitration', (1874) 1 *International Review* 104, at 130.

[76]See H. Bellaire, *Étude Historique sur les Arbitrages dans les Conflits Internationaux* (1872), 17–18.

[77]See P. S. Mancini, *Della Vocazione del Nostro Secolo per la Riforma e la Codificazione del Diritto delle Genti e per L'ordinamento di una Giustizia Internazionale* (1874), 48.

[78]E. Rouard de Card, *L'arbitrage International Dans le Passé, le Présent et L'avenir* (1877), x.

[79]See Fitzmaurice, *supra* note 7, at 213.

[80]See C. L. Lange, 'Histoire de la Doctrine Pacifique et de Son Influence sur le Développement du Droit International', (1926) 13 *Recueil des Cours* 171, at 397–8.

[81]See notes 26–28 and accompanying text, *supra*.

[82]For the foundation and activities of the IDI in its early years see Koskenniemi, *supra* note 1, at 11–97. See also M. Koskenniemi, 'Gustave Rolin-Jaequemyns and the Establishment of the Institut de Droit International (1873)', (2004) 37 *Revue Belge de Droit International* 5; V. Genin, 'L'institutionnalisation du Droit International Comme Phénomène Transnational (1869–1873): Les Réseaux Européens de Gustave Rolin-Jaequemyns', (2016) 18 *Journal of the History of International Law* 181.

[83]Liber and the Swiss jurist Gustave Moynier (1826–1910) had already advocated for an international congress of jurists to tackle the knotty questions of international law for some years. But it was at the time of Miles's visit to continental Europe for the initiative of the ILA in early 1873 that Rolin-Jaequemyns finally made up his mind and circulated his confidential note of March 1873. See Abrams, *supra* note 9, at 367–71.

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That pacifists and international jurists were mutually connected in labouring at an international legal reform was one of the distinct characteristics in the process of professionalization and institutionalization of international law in the 1870s. The ILA emanated from the transnational activism of the nineteenth-century international peace movement, while the IDI was born out of the reformist network of international jurists. Nevertheless, the intimate connection in such international legal reform between pacifists and international jurists explained the fact that although the ILA and the IDI originated from different trends of thought, these two institutions had similar foundational objectives and a high level of personnel overlap at the time of their creation.[84]

4.2 Demarcating the profession of international law: Jurists' strategy of distancing

Despite similar objectives, pacifists and international jurists came from two different reformist mentalities and professional milieus of the late nineteenth century. International jurists, especially those intimately affiliated to the network of the IDI, contended that their scientific sensibility and positivist pursuit of international law was different from their pacifist counterparts. International jurists parted company with pacifists, first of all, on the nature and contents of the envisaged international legal reform. Additionally, the organizational friction and teleological differences between the ILA and the IDI further exacerbated the divergence between pacifists and international jurists.

In more than one way, international jurists demarcated the nascent international law profession and the institutional characteristics of the IDI by making a stark comparison with and then carefully distancing themselves from the parallel pacifist strand of international law. At the 1873 Ghent meeting, Rolin-Jaequemyns stated that the collectivist vocation of international jurists was inspired by 'the love of science'.[85] He claimed that pacifists often failed to distinguish law from morality, sentiment from practical reason. In contrast, for international jurists, international legal reform was a slow and painful process, and the task of international legal science was not to rush to illusory conclusions, but to report on empirical state practice and facilitate the gradual development of international law.[86] In other words, the 'epistemic community' of international jurists was built upon a conscious demarcation from the contemporaneous pacifist approach of international law, which was considered by jurists as utopian, absolutist, and practically inviable.

Indeed, such sensibility of 'love of science' was historically connected to the background of the rise of international legal positivism during the nineteenth century.[87] Based on their overall adherence to positivism and scientism, international jurists first and foremost disagreed with the two fundamental pacifist visions of international law – the immediate codification of international law and the absolutist view of international arbitration. This divergence was intensified at the Brussels conference of the ILA in October 1873, when pacifists and international jurists for the first time gathered and debated the projects of an international code and international arbitration. Founded one month earlier at Ghent in September, the IDI dispatched a delegation to the Brussels conference 'in order to advise the best means of arriving at such a codification [of international law], especially with regards to the rules of arbitration'.[88] Apart from ordinary courtesy during the

[84]See Chen, *supra* note 9, at 207.

[85]'Communications Relatives à L'Institut de Droit International', (1873) 5 *Revue de Droit International et de Législation Comparée* 667, at 671.

[86]See G. Rolin-Jaequemyns, 'De la Nécessité D'organiser une Institution Scientifique Permanente pour Favoriser L'étude et les Progrès du Droit International', (1873) 5 *Revue de Droit International et de Législation Comparée* 463, at 479.

[87]See S. C. Neff, *Justice Among Nations: A History of International Law* (2014), 221–43; A. Anghie, *Imperialism, Sovereignty and the Making of International Law* (2004), 40–52; M. García-Salmones Rovira, *The Project of Positivism in International Law* (2013), 20–4.

[88]See The International Law Association, *supra* note 31, at 9. The IDI delegation was composed of eight members, including Mancini, Bluntschli, Félix Esquirou de Parieu (1815–1893), Rolin-Jaequemyns, Tobias Asser (1838–1913), Carlos Calvo (1824–1906), Franzvon Holtzendorff (1829–1889), and de Laveleye. However, only five of them were present at the Brussels conference: Mancini, Bluntschli, Rolin-Jaequemyns, Calvo, and de Laveleye.

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conference, it soon turned out that peace advocates and international jurists were fundamentally divided on these two themes. The delegation of the IDI strongly contested the immediate adoption of an international code and the unconditional application of international arbitration regardless of its possible limits in circumstances concerning national honour and vital interests of states. In the discussion, Bluntschli held that the adoption of an international code was a task of great difficulties, 'a work [that] could not be accomplished all at once, but must be done little by little, by means of special treaties', and that arbitration was an insufficient means in disputes where the existence and vital interests of states were at stake.[89] The British jurist Bernard also claimed that he did not adhere to resolutions made of absolutist terms, since an immediate codification was 'too grave to be adopted by private individuals like themselves', and a resolution of arbitration without stating its exceptions only forced states to reject arbitration from the very beginning.[90] Rolin-Jaequemyns explained the reservations of jurists from a legalist and scientific perspective – in legal science, 'it is impossible to formulate general rules without exceptions'.[91] In other words, international legal science denoted a sharp sensitivity of its function and limits in an international world where state sovereignty and independence were insurmountable.[92] Other international jurists not present at the Brussels conference would concur with such reservations. For example, Balch wrote in 1874 that the advocates of arbitration should carefully examine the forms of international arbitration, and clarify the limits of those forms.[93] In agreement with Bernard, Lorimer also spoke in one of his 1873 lectures in Edinburgh that an instant codification '[was] little better than a chimera' and resorting to arbitration 'cannot be commanded in any form by what is called the positive law of nations'.[94]

At the Brussels conference, although the reservations of jurists provoked strong disagreements from the pacifist participants such as Richard and Passy, international jurists insisted that the rush adoption of an international code stipulating all rights and duties of states was too idealist and ambitious to be practically attainable, and that international arbitration should be of a voluntary nature. It is understandable, then, that the final resolutions adopted were to a large extent compromises of the two divided views of pacifists and jurists – instead of an immediate preparation for a code of international law, the conference only recognized that such code was 'eminently desirable in the interest of peace'; for international arbitration, the conference declared that arbitration was 'a means essentially just and reasonable, and even obligatory on all nations', but it 'abstain[ed] from affirming that this means can be applied in all cases without exception'.[95]

The friction between the ILA and the IDI on institutional objectives also highlighted the divergence between pacifists and international jurists with respect to the collectivist tasks they separately prioritized as essential in the promotion and dissemination of international law. Different from the ILA, an organization of action that did not shy away from recruiting pacifists, journalists, philanthropists, jurists, and politicians, the IDI was an association 'exclusively scientific and without official character'.[96] While the ILA sought to secure a large group of influential and learned members from various countries in order to influence public opinion and facilitate the dissemination of international law, the membership of the IDI was restricted to a group of highly selective international jurists.[97] International jurists believed in the spirit of science and modesty, and hence the IDI was a 'collective scientific action'[98] that placed much emphasis on

[89]Ibid., at 17, 25.
[90]Ibid., at 20, 35.
[91]Ibid., at 36.
[92]Ibid., at 36–7.
[93]See T. Balch, *International Court of Arbitration* (1874), 15.
[94]J. Lorimer, 'The Institute of International Law Founded at Ghent', (1873) 17 *Journal of Jurisprudence* 617, at 625–6.
[95]See The International Law Association, *supra* note 31, at 23, 43.
[96]Art. 1 of the 1873 IDI Statutes, see note 85, *supra*, at 708.
[97]Art. 4 of the 1873 IDI Statutes, see ibid., at 708.
[98]See Rolin-Jaequemyns, *supra* note 86, at 465.

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the impartiality and expertise of authoritative professional jurists, instead of mass gathering and wider audience to which pacifists often preferred.

Yet, it is also misleading to think that international jurists stayed aloof from the appeal for international peace. On the contrary, scientific sensibility of international law equally contained pacifist and political implications. Most international jurists agreed that the progressive development of international law, no matter how much time such process would take, was in service of the purpose of international peace and the ultimate eradication of war. The preamble of the 1873 IDI Statutes clearly stated that the primitive and imperfect stage of international law posed a constant threat to international peace, as evidenced by the turbulence of the American Civil War and the Franco-Prussian War.[99] The destiny of international jurists, therefore, was to achieve justice and peace by becoming the 'legal consciousness of the civilized world'.[100] For example, de Laveleye's 1873 work *Des causes actuelles de guerre en Europe et de l'arbitrage* made him well-known and influential even among the peace camp. De Laveleye argued that the establishment of an international arbitral court was indispensable to the progress of peace and civilization.[101] Nevertheless, jurists were not disciples of 'peace at any cost', and they also held that war was a necessary last resort or a justifiable means in some circumstances when the independence and territorial integrity of states were threatened.[102] As Mancini characterized it, those who desired for the immediate and absolute abolition of war 'ignored the law of time and gradual progress', and such idealist obsession necessarily protracted the legal reform itself.[103]

Whatever the merit of this nascent 'invisible college of international law' in 1873, it placed itself in a sharp contrast to the pacifist strand of international law, which was understood by jurists to be contradictory with the nature of international legal science. Carefully demarcating its distance from contemporary pacifism therefore became an important feature of the international law community in the early 1870s, underscoring the complex and multi-layered story of the emergence of modern international law profession. In comparison with the idealist approach of pacifists, international jurists clung to the empirical nature of international law and held to the practicability of international arbitration in which the applicability of arbitration was determined by the nature of disputes.[104] This strategy of distancing was crucial to understand how 'the men of 1873' marked the parameters of their social network and envisaged the scientific and positivist vocation of international jurists and the IDI. From the point of view of international jurists, the idea of pacifism was revolutionary for the purpose of eradicating war but utopian and unfeasible, since the progress of international law required not only passion and enthusiasm, but also a sense of modest confidence in legal science.[105] As most international jurists saw it, if one had scientific modesty and patience for such reform of international law, it was then necessary to know that international legal science was defined by both its contents and limits. In this sense, although the scientific sensibility of the men of 1873 had long been pointed out in international legal historiography, the article nevertheless adds flesh to this scholarship by identifying its pacifist antithesis through which international jurists defined what international legal science was partly by articulating what it was not.

[99]See note 85, *supra*, at 703–4.

[100]Ibid., at 708.

[101]See de Laveleye, *supra* note 33, at 175–95.

[102]See Abrams, *supra* note 9, at 372.

[103]See Mancini, *supra* note 77, at 54.

[104]This was one of the essential arguments of the German jurist Levin Goldschmidt (1829–1897) in his 1874 report submitted to the IDI on the questions of international arbitral procedures. Goldschmidt argued that arbitral settlement could only be applied to disputes of legal nature, and non-legal disputes were not admissible for arbitral judgement based on the rules of law. See Goldschmidt, 'Projet de Règlement pour Tribunaux Arbitraux Internationaux', (1874) 6 *Revue de Droit International et de Législation Comparée* 421, at 424–5.

[105]See note 85, *supra*, at 674.

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5. Conclusion

By elaborating how international jurists carefully demarcated the discipline of international legal science and the task of the IDI when the pacifist strand and legalist strand of international law intersected due to the epochal success of the *Alabama* arbitration, the article adds nuances to the mainstream understandings of the emergence of international law profession in the late nineteenth century. It shows that the formation of the 'epistemic community' of international jurists in the 1870s was intimately tied up with their clear consciousness of distancing from their pacifist counterparts who simultaneously laboured at promoting international law in the period of widespread social, intellectual, and political enthusiasm for international legal reform. The scientific and empirical approach of international jurists transpired during the confrontations with pacifists on the projects of the codification of international law and international arbitration. In this sense, the pacifist strand of international law was a benchmark through which international jurists demarcated their disciplinary mindsets and social networks. It was in this background that the ILA and the IDI were separately launched, as both signs and products of the two trends of thoughts represented respectively by pacifists and international jurists.

In the recent international legal historiography, it has been accepted that the 1872 *Alabama* arbitration 'provided publicity and political support' for the establishment of the IDI[106] or 'rekindled the hesitant belief of international lawyers' in the judicial settlement of international disputes.[107] Yet, when we widen the spectrum of examination to the contemporaneous competing visions of international law, like the one held by pacifists, we see a much more complex and vivid picture of the epochal enthusiasm for international law mobilization brought forth by the *Alabama* arbitration. This reformist enthusiasm for progress and civilization, immediately seized by pacifists and international jurists, was channelled into two intricately linked but separate paths of international law, both of which played indispensable roles for the development of international law at the time.

It was on these bases that the connotations of *l'esprit d'internationalité* can be apprehended. If *l'esprit d'internationalité* did suggest a sense of novelty and discontinuity, this discontinuity rested not so much on an intellectual and conceptual rupture from the past, but on the transnational reformist enthusiasm such spirit reflected and sustained. In this period of enthusiasm teeming with projects of codification, rules of war, arbitration, and institutionalization, the development of international law was existentially anchored in the dynamics of the two mutually interacting forces of pacifist internationalism and legalist internationalism. However, these two trends of reformist movements never merged into one. On the contrary, pacifist internationalism turned out to be an important reference point, against which international jurists defended the autonomy and avenue of the emergent international law profession. Therefore, when Rolin-Jaequemyns declared in 1873 that the IDI was a 'purely scientific' institution, 'without intending either the realization of at least distant utopias or a sudden reform', he certainly had in mind the equally admirable pacifist antithesis from which international jurists tried hard to keep distance when modern international law profession took its shape.[108]

[106]See Koskenniemi, *supra* note 1, at 40.
[107]A. Eyffinger, *T.M.C. Asser (1838–1913): 'In Quest of Liberty, Justice, and Peace'* (2019), 541–2.
[108]See Rolin-Jaequemyns, *supra* note 86, at 480.

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