

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

THE IDI, THE ILA, AND THEIR IMPACT ON THE INSTITUTIONALIZATION OF  
INTERNATIONAL LAW IN THE AMERICAS: RESONANCES AND DISSONANCES

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The Institut de Droit International (IDI) and the International Law Association (ILA) have bequeathed complex and contradictory legacies to the Americas. This essay explores both the resonances and the dissonances that the formation of the IDI, and to a lesser extent, the ILA, had in the institutionalization of the modern discipline of international law in the Americas. On the one hand, the IDI's establishment as an elite Eurocentric organization with a missionary imperial approach to the promotion and reform of international law, generated resonances across the Americas, inspiring the creation of the American Institute of International Law (AIIL). On the other hand, the AIIL emerged as a reaction to the IDI, insofar as the former promoted juridical values based on the idea of American international law and a distinctive sense of U.S. and continental legal exceptionalism. The essay argues that the institutionalization of international law in the Americas was both inspired by the Eurocentric imperial and elitist legal approach promoted by the IDI, and the desire to forge a distinctive Western Hemispheric counterpart: a continental American international law.

*Resonances*

The creation of the IDI in 1873 was part of a much broader European-led “gentle civilizer” imperial project, as described by Martti Koskenniemi. This project had lasting resonances in the Americas, stimulating, four decades later, the institutionalization of international law through the creation of the AIIL in 1913. The U.S. jurist and legal advisor James Brown Scott and the Chilean legal scholar Alejandro Alvarez envisioned the AIIL as a Pan-American organization that would embody a U.S.-led civilizing imperial mission inspired by U.S. legal values and an elitist legal sensibility.<sup>1</sup>

Funded by the Carnegie Endowment of International Peace, the AIIL sought to become, like the IDI, a new scientific “organ of the common legal consciousness of the civilized world” as manifested in the Americas.<sup>2</sup> While the IDI was instrumental for the imperial projection of the European standard of civilization and sought to represent the “civilized world” as a whole, the AIIL was confined to promote “US legal and political values as the standard of civilization for the Americas.”<sup>3</sup> Indeed, the AIIL gained inspiration and drew on the experience of

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<sup>1</sup> MARTTI KOSKENNIEMI, *THE GENTLE CIVILIZER OF NATIONS: THE RISE AND FALL OF INTERNATIONAL LAW, 1870–1960* (2001).

<sup>2</sup> *Statutes of the Institute of International Law*, Art. 1 (*adopted* Sept. 10, 1873), *cited in* KOSKENNIEMI, *supra* note 1, at 42.

<sup>3</sup> JUAN PABLO SCARFI, *THE HIDDEN HISTORY OF INTERNATIONAL LAW IN THE AMERICAS: EMPIRE AND LEGAL NETWORKS* (2017).

both the IDI and the recent creation of the American Society of International Law (ASIL) in the United States, transplanting the European legal project and extending U.S. values to the Americas.

Scott, who was then an IDI member, and Alvarez presented the project for the AAIL in a letter sent in 1911 to Elihu Root, who was by then former secretary of state (1905–1909) and president of the ASIL and the Carnegie Endowment for International Peace, stating their opinion “that what an institute of international law had done in Europe, an American institute of international law might hope to do in the new world.” Specifically, “the subject uppermost in their minds was codification” with the aim of adopting continental principles of American international law.<sup>4</sup> The letter concluded that “the best way to draw the leaders of thought together would be to create an institute of international law in which each country would have equal representation, say, five members of each country should organize at their capital a local society of international law.”<sup>5</sup>

Scott and Alvarez also emphasized that the central missions of the AAIL and the enlightened legal elite in charge of the organization would be the promotion of peace, along with the codification of American international law. They thus proposed that “The American Institute should hold at Washington the first of its periodic meetings to discuss scientific questions of international law, especially those related to peace, so that little by little a code of international law might be drafted which should represent the enlightened thought of American publicists and be the result of their sympathetic collaboration.”<sup>6</sup>

Like the IDI’s European founders, Scott felt compelled to respond to the jurisprudential challenge raised by the British jurist John Austin, who famously argued that international law was not law proper, since it cannot be enforced against states by any global sovereign authority.<sup>7</sup> Similarly to the British jurist John Westlake, Scott highlighted the concepts of civilization and public opinion in his response.<sup>8</sup> He argued that international law could not be enforced by any global authority due to the principle of sovereignty, but only through the “persuasive force of [international] public opinion.”<sup>9</sup> According to Scott, the civilizing missions of the IDI and the AAIL were led by an elite of enlightened jurists who had the task of educating the international public, popularizing international law and advancing its codification.

Organizationally, the founders of the AAIL proposed the creation of national societies of international law across the Americas, emulating the model of the ASIL, which would be affiliated to the AAIL based in Washington D.C.<sup>10</sup> Substantively, Scott and Alvarez regarded U.S. legal and political values, such as the Monroe Doctrine, the U.S. Declaration of Independence and the U.S. Constitution as standards for the Americas at large, and considered the U.S. Supreme Court as a model for continental and world courts.<sup>11</sup> This U.S.-led imperial orientation was epitomized in the AAIL Declaration of the Rights and Duties of States, drafted by Scott in the AAIL’s first meeting in 1915. In Article 3 of the AAIL Declaration, Scott defended the principle of sovereign equality, drawing on the U.S. Declaration of Independence as a model for the Americas, stating that “every nation is in law and before law the equal of every other nation belonging to the society of nations, and all nations have the right to claim and, according to the Declaration of

<sup>4</sup> James Brown Scott, *The Gradual and Progressive Codification of International Law*, 21 AJIL 417, 425 (1927).

<sup>5</sup> *Id.* at 425–26.

<sup>6</sup> *Id.* at 426.

<sup>7</sup> KOSKENNIEMI, *supra* note 1, at 48.

<sup>8</sup> Casper Sylvest, *The Foundations of Victorian International Law*, in *VICTORIAN VISIONS OF GLOBAL ORDER: EMPIRE AND INTERNATIONAL RELATIONS IN NINETEENTH-CENTURY POLITICAL THOUGHT* 66 (Duncan Bell ed., 2007).

<sup>9</sup> James Brown Scott, *The Legal Nature of International Law*, 1 AJIL 831, 844 (1907).

<sup>10</sup> See FREDERIC KIRGIS, *THE AMERICAN SOCIETY OF INTERNATIONAL LAW’S FIRST CENTURY, 1906–2006* (2006).

<sup>11</sup> SCARFI, *supra* note 3, at xxv.

Independence of the United States, ‘to assume, among the Powers of the earth, the separate and equal station to which the laws of nature and of nature’s God entitle them.’”<sup>12</sup>

While the AAIL adopted different organizational strategies from those of the IDI, drawing on the experience of the ASIL and U.S. legal traditions, it also moved away from the latter in doctrinal terms. Indeed, doctrinally, the AAIL departed from the formalist spirit that inspired the IDI’s founders and instead embraced an anti-formalist legal approach, which challenged traditional notions of sovereignty and individualism with modern notions of international society and continental solidarity.<sup>13</sup> For instance, Article 1 of the AAIL Declaration entailed a departure from traditional notions of sovereignty, for it stated “every nation has the right to exist, and to protect and to conserve its existence but this right neither implies the right nor justifies the act of the state to protect itself or to conserve its existence by the commission of unlawful acts against innocent and unoffending states.”<sup>14</sup>

Alvarez provided the intellectual tenets for the AAIL to the extent that he conceptualized the solidarist approach driving the organization. As such, he sought to renew the discipline of international law along the lines of the new geopolitical realities of the Western Hemisphere (the United States and Latin America), American international law and Pan-American solidarity. He believed that American continental international society was founded on the promotion of the legal settlement of international disputes, the consolidation of continental institutions of international organization such as the Pan American Union, the precedent of the Organization of American States (OAS), and well-established republican legal traditions. He saw these developments in the Western Hemisphere as reflecting a new juridical conscience that would shape the international legal order of the future.<sup>15</sup>

### *Dissonances*

The creation of the AAIL was simultaneously a *reaction* to the European-led project associated with the IDI, since Scott and especially Alvarez advocated an ideal of U.S. and continental exceptionalism, and Pan Americanism. As a member of the organization, Scott was not as committed to the IDI’s Eurocentric imperial project as his European counterparts, since he maintained a strong faith in U.S. legal exceptionalism and its legal traditions. Alvarez went a step further than Scott, arguing that both the United States and especially the solidarist legal approach of the Americas were exceptional and as such they were authentic legal examples for Europe. In fact, Alvarez posited that the Americas could serve as a perfect model for Europe. He traced a contrast between the European legal tradition, based on the principles of the balance of power, imperial competition, and monarchical regimes, and an “American international law,” which was founded on the notions of peace and non-intervention, the legal settlement of international disputes, continental solidarity, and republicanism.<sup>16</sup> In this respect, Alvarez’s ideas regarding the existence of a distinctive continental American international law, and his claim that U.S. hegemony was beneficial for Latin American nations, broke sharply with the IDI’s European-led mission.

In the context of World War I, Alvarez became convinced that the solutions to this conflict were embodied in international law as practiced in the Americas, where the international law of the future was emerging. As he stated in his book *The International Law of the Future* (1916), the Americas were the epitome of the new international legal order of the future and thus the model for Europe was continental American international law. It followed that, in

<sup>12</sup> JAMES BROWN SCOTT, [THE AMERICAN INSTITUTE OF INTERNATIONAL LAW: ITS DECLARATION OF RIGHTS AND DUTIES OF NATIONS](#) 87–88 (1916).

<sup>13</sup> [KOSKENNIEMI](#), *supra* note 1, at 47, 302.

<sup>14</sup> [SCOTT](#), *supra* note 12, at 87.

<sup>15</sup> ALEJANDRO ALVAREZ, [LE DROIT INTERNATIONAL AMÉRICAIN: SON FONDEMENT, SA NATURE](#) (1910).

<sup>16</sup> Alejandro Alvarez, [Latin America and International Law](#), 3 *AJIL* 269 (1909).

the aftermath of the Great War, the foremost responsibility for the process of reconstructing the principles of solidarity, peace, and justice fell to the AAIL and the Pan American Union.<sup>17</sup>

### *Connections*

The spirit of the AAIL was not as elitist as that of the IDI. This was in no small part because it drew on a much wider professional network of international lawyers in Latin America affiliated with the ILA, which since its inception had a global and less selective and elitist membership structure.<sup>18</sup> Scott and Alvarez sought to popularize international law in continental public opinion in order to gain adherents to the AAIL across the Americas. With this aim in mind, Scott approached a select group of affiliate members of the ILA following the creation of the AAIL in 1913. Moreover, Scott and Root commissioned Robert Bacon, former U.S. ambassador in France, to visit Argentina, Brazil, Chile, Uruguay, and Peru in 1913 under the financial sponsorship of the Carnegie Endowment for International Peace. The visit aimed to stimulate the creation of the national societies of international law to be affiliated to the AAIL, and foster closer engagement between United States and South American legal and diplomatic elites.<sup>19</sup> In preparation for the visit, Scott sent a series of formal letters to a number of prominent South American jurists affiliated with the ILA to promote Bacon's visit to the region. Thus, the AAIL fostered a somewhat more inclusive, albeit still U.S.-led, approach to American international law than that promoted by the IDI, as the creation of national societies of international law across the Americas generated the conditions for patterns of regional multilateral governance to emerge.

By the 1920s and 1930s, the connections and interactions between the IDI, the ILA, and the AAIL had become especially dynamic and fluid, as a series of pioneering projects advocating early notions of human rights proposed by Alvarez and the French jurist Albert de La Pradelle circulated within the three organizations. As Alvarez and La Pradelle cofounded the Institut des Hautes Études Internationales in Paris and maintained a dialogue through the AAIL and the IDI, their exchanges influenced both organizations.

Although concerns for validating the rights of individuals in international law emerged alongside the foundation of the IDI in the late nineteenth century, the 1917 second institutional meeting of the AAIL was the first time that Alvarez presented a project suggesting that “the international rights of the individual” should be recognized.<sup>20</sup> In this pioneering project, Alvarez included early notions of human rights, such as the inviolability of property, the right to enter and reside in any part of the territorial jurisdiction of the state, the right to associate and meet, the rights to liberty of press, conscience, religion, commerce, navigation, and industry, the rights of foreigners to be protected by the national tribunals of their country of residence, and the rights of states to protect their nationals when their rights have been affected.<sup>21</sup>

La Pradelle was captivated and drew on Alvarez's project when he presented a declaration on the rights of individuals before the IDI in 1921.<sup>22</sup> In 1923, Alvarez incorporated his 1917 proposal within a series of projects he

<sup>17</sup> ALEJANDRO ALVAREZ, *LE DROIT INTERNATIONAL DE L'AVENIR* (1916).

<sup>18</sup> Cecil J. Olmstead, *The International Law Association: A World-Wide Organization for Development and Promotion of International Law*, in *THE PRESENT STATE OF INTERNATIONAL LAW AND OTHER ESSAYS* (Maarten Bos ed., 1973).

<sup>19</sup> SCARFI, *supra* note 3, at 41–47.

<sup>20</sup> KOSKENNIEMI, *supra* note 1, at 54.

<sup>21</sup> INSTITUTO AMERICANO DE DERECHO INTERNACIONAL, *ACTAS, MEMORIAS Y PROYECTOS DE LAS SESIONES DE LA HABANA* 346–47 (1918).

<sup>22</sup> RICARDO J. ALFARO & THE UNITED NATIONS CONFERENCE ON INTERNATIONAL ORGANIZATION, *DERECHOS Y LIBERTADES FUNDAMENTALES DEL HOMBRE* (1946), *cited in* KATHRYN SIKKINK, *EVIDENCE FOR HOPE: MAKING HUMAN RIGHTS WORK IN THE 21ST CENTURY* 62 (2017).

presented before the AIIIL for the codification of American international law.<sup>23</sup> Finally, in 1931, Alvarez proposed a more ambitious universalist declaration, known as the Declaration on the Fundamental Basis and Great Principles of Modern International Law, before the AIIIL, the IDI, and the ILA, arguing that it was based on the basic principles of American international law, which were destined to shape, as he was still convinced in the inter-war period, the universal international law of the future.<sup>24</sup>

While the IDI remained an insulated elite organization with a limited impact on the formation of European human rights institutions, international organizations, and the UN Charter, the AIIIL created the grounds for consolidating a series of principles, doctrines, and traditions that contributed to the formation in the 1940s and 1950s of multilateral international organizations and human rights institutions, notably the Charter of the Organization of American States (OAS), the Inter-American Human Rights System and the Liberal International Order (LIO) in the Americas.<sup>25</sup> The U.S.-led LIO, created in 1945, was based on a set of institutional and multilateral arrangements in matters of security, military power, economic trade, consultation of U.S. decisions, and a set of shared liberal and human rights values, all historically grounded in U.S.-led liberal imperialist roots.<sup>26</sup> From the 1930s up to its final dissolution in 1943, when Scott passed away, the AIIIL remained basically inactive and dormant as a Pan American organization based in Washington, and managed almost exclusively by Scott himself. However, the notions of rights and duties of states Scott proposed in his 1915 declaration, as well as the projects for the codification of American international law prepared by Alvarez in 1923, shaped the core principles that contributed to the formation and consolidation of the OAS Charter. In particular, the early human rights conceptions Alvarez advanced in 1917, 1923, and 1931, and presented before the AIIIL, IDI, and ILA, were slightly reformulated in 1945 as a Project on the Fundamental Charter for the American Continent, which, in turn, was to shape the 1948 OAS Charter. As part of this ambitious project, Alvarez included a Declaration on the International Rights and Duties of Men and International Persons, incorporating important new social rights, including “the right to work and to be paid for that labor, the right to social security” and “the right to protection from misery.”<sup>27</sup>

### Conclusion

Although it was dissolved in 1943, the AIIIL had a more concrete institutional legacy in the Americas than either the IDI or the ILA. Unlike the ILA, the IDI and the AIIIL remained elite scientific legal organizations. However, like the ILA, the AIIIL became a more politically active organization. As this essay has shown, the AIIIL maintained the missionary imperial aspiration of disseminating the principles of American international law across the Americas and even outside the continent, as well as projecting the principles and traditions of American international law onto concrete institutions, such as the OAS and the Inter-American Human Rights System. These impacts can be understood as an indirect legacy of the IDI, and the resonances and dissonances it generated across the Americas.

<sup>23</sup> ALEJANDRO ALVAREZ, [LA CODIFICACIÓN DEL DERECHO INTERNACIONAL EN AMÉRICA: TRABAJOS DE LA TERCERA COMISIÓN DE LA ASAMBLEA DE JURISCONSULTOS REUNIDA EN SANTIAGO DE CHILE](#) (1923).

<sup>24</sup> ALEJANDRO ALVAREZ, [LA RECONSTRUCCIÓN DEL DERECHO DE GENTES: EL NUEVO ORDEN Y LA RENOVACIÓN SOCIAL](#) 85–93 (1945).

<sup>25</sup> Juan Pablo Scarfi, *Pan-American Human Rights: The Legacy of Pan-Americanism and the Intellectual Origins of the Inter-American Human Rights System*, in [THE NEW PAN-AMERICANISM AND THE STRUCTURING OF INTER-AMERICAN RELATIONS](#) 162 (Juan Pablo Scarfi & David Sheinin eds., 2022).

<sup>26</sup> Juan Pablo Scarfi, *The Latin American Politics of International Law: Latin American Countries' Engagements with International Law and Their Contradictory Impact on the Liberal International Order*, 35 *CAMBRIDGE REV. INT'L AFF.* 662, 664 (2022); DUNCAN BELL, [REORDERING THE WORLD: ESSAYS ON LIBERALISM AND EMPIRE](#) (2016).

<sup>27</sup> [ALVAREZ](#), *supra* note 24, at 311.