

Gustav Moynier

by Paul Ruegger

*The following article is a tribute to an outstanding jurist whose name is inalienably linked to the foundation and development of the Red Cross. In fact, Gustave Moynier was President of the ICRC from 1864 to 1910! We express our thanks to the Institute of International Law for allowing us to reproduce this article.*¹ (Ed.)

Gustave Moynier, whose contribution to the establishment of the Institute of International Law one century ago at Ghent constituted a milestone in a long and constructive life, provided a vivid definition of that scholarly society, as it appeared to him from the very beginning:

“The creation of the Institute of International Law marks the dawn of a new epoch in the evolution of the law of nations, through the introduction of a new active element. This is a kind of cosmopolitan and benevolent parliament, not imposing its views on anyone, but constituted with such care as to enjoy a great scientific stature, to such a degree that it can be regarded as the authoritative organ of the legal understanding of the human mind.”²

The period during which Gustave Moynier turned toward the work from which the formal foundation of the Institute at Ghent was to emerge came shortly after the end of the Franco-Prussian War of 1870.

¹ *Institut de Droit international, Livre du Centenaire 1873-1973 — Evolution et perspectives du droit international* — Editions S. Karger S.A., Basle, 1973; pp. 90-98.

² G. Moynier, *Aperçu de nos travaux*, unpublished, 1894, quoted by Bernard Bouvier in « Gustave Moynier », Geneva, 1918.

At that time, the First Red Cross Convention of 1864—and there is no need to pause here to consider the vicissitudes entailed in the creation of that instrument of fundamental principles as part of the history of the law of nations—was already firmly rooted in the spirit of a large part although not all of mankind. Gustave Moynier had contributed greatly to the creation of that Convention, based upon the inspiration of Henry Dunant, which was the first instrument, as pointed out in the well known comment by Max Huber, to introduce the concept of protection of the individual into the structure and theory of public international law.

After the War of 1870, this “witness for internationally organized charity”—a witness who did not shrink from the bold assumption of the mantle of *Cato censorius* whenever he felt that circumstances required, a witness who stood and still stands as an example for the ensuing generations—felt it was his duty to summarize both his observations and opinions in what, to use the language of the 20th century, might be called a “White Paper”. This, in his opinion, should be objective and impartial and, in the noblest sense of the term, neutral, not a plea for any cause or any institution whatsoever. To the best of his understanding, Gustave Moynier wrote his “White Paper” on the subject of “*La Convention de Genève pendant la guerre franco-allemande*”.¹ It certainly had its faults. Nevertheless it was greatly to his credit to have written it and thus to have drawn attention to some urgent humanitarian problems.

It is meditation, it is thought, which, as a rule, leads to action, and sometimes—perhaps not often enough—to truly benevolent action. The meditations of Gustave Moynier about the sanguinary events of the war, still too little tempered by any protection from the crude early stages of a new idea and a new organization, must certainly have served as a catalyst.

Gustave Moynier then looked to more distant horizons. When peace came, he felt that the time had arrived “to bring together the most learned men in the field of international law”.² The purpose was “to proclaim with a single voice, if possible, rules of moderation from which the legal conscience of our time would permit no departure...”

¹ G. Moynier, Geneva, 1873.

² B. Bouvier, op. cit., p. 26.

This was typical of the thinking of Gustave Moynier, destined one day to become the honorary president of the Institute of International Law, concerning the permanent programme and the future of the Institute.

With that generosity which was always one of his characteristics, the great Louis Renault made the following comments about the work of Gustave Moynier when the latter was named honorary president of the Institute. "While we have been slowly and painfully developing our theories, Monsieur Moynier has been accomplishing something practical. He has demonstrated the existence of an international law, not through learned and laborious reasoning, as we are trying to do, but in the manner of the philosopher of antiquity who demonstrated the nature of movement. He marched ahead, and everyone else followed him. He could see, with amazing clarity, what could be done to introduce the principles of law into the practice of war, to ease the lot of the wounded and sick."¹

Born in Geneva on 21 September 1826, Gustave Moynier, with his family, left that city when he was still very young, due to political circumstances, and he finished his studies in Paris in 1850. Upon returning to Geneva, he submitted a thesis on "Interdictions in Roman Law". Disappointed by the reception accorded to his thesis by the bar, he passed a very severe judgement upon himself, self-criticism being one of his most engaging characteristics.² He sought to make himself useful, as he expressed it in his own words, by working for the welfare of his fellow beings.³ He went to work for Geneva's "Public Welfare Society", of which he soon became the president and which he was inspired to utilize as his first means for putting into effect the generous ideals of Henry Dunant.

Gustave Moynier's 64 published works, catalogued at the Henry Dunant Institute in Geneva, embraced a wide variety of subjects, at greater or lesser length. Some of them were major works, such as *La guerre et la charité*, 1867, of 401 pages; *La Croix-Rouge, son passé et son avenir*, a theoretical and practical work on applied philanthropy, 1871,

¹ This quotation from a statement probably in the archives of the Institute, was taken from the remarkable work by Pierre Boissier, *Histoire du Comité international de la Croix Rouge, de Solferino à Hiroshima*, published by Plon, p. 476.

² Concerning the personality of Moynier, refer to the splendid pages by Pierre Boissier, *op. cit.*, pp. 60-66.

³ *Op. cit.*, p. 62.

288 pages; *Etude de la Convention de Genève*, 1870, 376 pages; *Essais sur les caractères généraux de la guerre*, 1895, 123 pages; and *Des institutions ouvrières de la Suisse*, 1867, 195 pages. Others were short monographs, designed mainly to set forth his thinking. Moynier was convinced that any new developments in the field of law, if they were to have any real importance, had to make an impact on public opinion. His mind was always turned toward the necessary diffusion of what he deemed were vital principles.

Such diffusion and popularization of information and thoughts was his constant concern, first of all in the world of the Red Cross,¹ but also in that of the Institute of International Law. Referring to the *Oxford Manual* on the laws of land warfare, Moynier wrote the following in his report for 1880:

“If this purpose is to be achieved, it is not enough for sovereigns to promulgate new laws. It is also essential that they disseminate knowledge of them...”²

The wide variety of Moynier’s writings is especially striking.³ In 1859, he published a biblical biography of the Apostle Paul. Social problems drew his attention very early, and in the same year he concerned himself, in connection with the situation of Orleans railway employees, with the problem of participation, which is a matter of such great present-day interest. His book concerning workers’ organizations in Switzerland, published in 1877 by the Federal Government at Berne, is the work of a sociologist. According to the perceptive comment of B. Bouvier,⁴ he was a man of “social action” and not a “do-gooder”, a lawyer of accomplishment in the field of philanthropy, through civic spirit and inclination.

From 1879 to 1895, due to his fascination with the problems of Africa—in 1877 he had participated as representative of the National Swiss-African Committee in a meeting at Brussels which was of interest

¹ See the ICRC circular of 22 November 1870 to the central relief committees about the treatment of prisoners of war, “The news we receive convinces us that in order to remedy all this suffering, it is most important to expose it...”

² Report to the Institute.

³ This diversity was especially remarked upon by Bernard Bouvier in his *Gustave Moynier*, 1918.

⁴ B. Bouvier, *op. cit.*, 98-99.

to King Leopold II—he was director of the magazine *Afrique explorée et civilisée*. This work was done at first with enthusiasm and then, in view of conditions, with greater moderation until cessation of publication; but always with honesty and undeniable objectivity.¹

Devoted as he was to the Institute of International Law, Gustave Moynier wanted to give that institution, of which he was one of the founders, the benefit of this thinking about the Congo, for which he served as honorary consul general in Switzerland, beginning in 1890. Hence the memorandum he presented to the Munich meeting of the Institute on 4 September 1883 on “The Establishment of the Independent State of the Congo from the Legal Point of View”, and a monograph on “The Congo Question before the Institute of International Law”. In these, in addition of course to advocating the abolition of slavery and the slave trade, he proposed freedom of navigation on the River Congo, based on the precedent of the Danube Convention of 1856.

The main drive however in the numerous publications written by Gustave Moynier was his concern for the development of, and the general and specific problems relating to, the universal Red Cross movement which had been born in Geneva. These works constituted an enormous bibliography, which no student of the origins of the Red Cross can afford to overlook.

The activity and the role of Gustave Moynier in the service of the Institute of International Law, of which he was one of the founders along with the eminent Rolin-Jaequemyns, the inspiration and builder of the institution, have never been disputed. Quite the contrary: Albéric Rolin, in his stirring recollections on *Les origines de l'Institut de droit international*, published in 1923,² in which he evokes, as a witness of the early days of the origins of the Institute, the outstanding people who gave assistance to Rolin-Jaequemyns, wrote concerning Moynier that, “the place held by that fervent apostle of peace and justice, and of pity without which there can be no true justice, was outstanding among those who founded the Institute”.³

We shall revert to some aspects of the highly meritorious work of Gustave Moynier for international legal order.

¹ M. C. Berguer, *Les relations entre l'Etat indépendant du Congo et la Suisse*, thesis, Brussels, 1957-58, p. 26.

² Brussels, Vromant & Cie.

³ *Op. cit.*, p. 41.

Notes on the life of a man who made his mark on history—as Gustave Moynier certainly and fortunately did—could not reflect the whole truth however if confined to a chronological recitation of his notable achievements.

How easy it would be for us to limit ourselves to a eulogy of the jurist, the organizer of the emergent Red Cross, the author of the *Oxford Manual*, the founder of the Institute and the promotor of so many other generous undertakings ! Unfortunately however, a shadow is cast upon the personal history of Gustave Moynier by the attitude of antagonism, even of hostility, toward the real and inspired promotor of the Red Cross concept, Henry Dunant. In the beginning, true enough, Gustave Moynier was profoundly moved by *A Memory of Solferino* and went to see its author to congratulate him, and also, as he admitted, to propose himself as the one to carry out Dunant's proposals.¹ Dunant agreed to this, and the Geneva Public Welfare Society, under the direction of Gustave Moynier, became the spokesman and instrument which, with the active co-operation of Henry Dunant, was to lead to the drafting of the First Geneva Convention. Much has been said and written about the differences, which were unhappily very real, between these two heroic figures, this Castor and this Pollux, whose common efforts, if they had been able to work together with mutual confidence, would have overcome far more rapidly the initial barriers which lay athwart the path taken by Dunant's ideal, destined as it was, eventually, to conquer the world.

“During the early days of this philanthropic undertaking, until 1864, the temperaments of Moynier and Dunant ran counter to each other, undoubtedly causing friction”, wrote Alexis François.² In itself, this might not necessarily have been a bad thing, since the birth of any great new idea may have to be a painful process and entail great sacrifice. What seems harder to understand is the fact that Moynier, who raised high the banner bearing the device, *Inter arma caritas*, was lacking in charity toward Dunant when the latter, suffering from financial reverses, felt obliged to take the road to exile; that he seemed to forget that the generous ideals of Henry Dunant had indeed lighted the way for his own elevation, linked as it was with the creation and expansion of the Red

¹ See Gustave Moynier, *Mes heures de travail*, Geneva, 1907, p. 35: “I decided to take the initiative for this charitable campaign and assume the role of founder, which at that time belonged to no one else.”

² Alexis François, *Le Berceau de la Croix Rouge*, Geneva, 1918, p. 112.

Cross, and even for his advance in the more general field of international law.

Human tragedies of this kind are not uncommon in the course of history. In any event, the antagonism between Gustave Moynier and Henry Dunant did not do too great an injury to the concept of the Red Cross. In prolonging his exile, Dunant removed himself from the scene of public affairs, for the sake of the work he had begun.¹

Even though Moynier, nearly up to the day of his death in 1910, spoke harshly of Dunant, we must forget neither the vast record of achievement which stands to the credit of this outstanding jurist nor his deeds, his written works and his preaching on behalf of the Red Cross, which redeemed his human failings.

The great Max Huber—who was himself the president of the International Committee of the Red Cross for some decades, including the difficult years of World War Two, after serving as a distinguished president of the Permanent International Court of Justice at the Hague and as an honorary member of the Institute of International Law, to which he made many vital contributions and for which he put forward many proposals of exceptional importance—was wise enough, imbued as he was with the noblest of moral principles, to allocate due credit both to the historic merits of Henry Dunant and to those, which were also considerable, of the scrupulous jurist Gustave Moynier. It is true enough that in his voluminous writings on the Red Cross, as the most important top-level theoretician for the institution and its doctrine, Max Huber spoke mostly, with unbounded admiration, of the inspired ideals of Henry Dunant; and with erudition about the tragic vicissitudes in the life of the founder of the Red Cross and the recognition which destiny had accorded him, despite everything, during his lifetime.² In his reflections upon the early days of the Red Cross, Max Huber paid due honour to the achievements of General Dufour, who devoted his great heart and his national and international prestige to the institution which he served, as its first president and as a farseeing and wise mediator. He also paid unstinting tribute to Gustave Moynier, whom he described as a “tremendously experienced jurist and philanthropist”, for the wisdom displayed on so many occasions by this outstanding man of action.

¹ See the excellent biography of Henry Dunant by Ellen Hart.

² See in particular Max Huber's *La pensée et l'action de la Croix Rouge*, Geneva, 1964, p. 131.

“Ever since 1863, and for decades thereafter, nearly all the major official documents of the International Committee of Geneva were written by Moynier, whose distinctive style we can recognize.”¹

Eugène Borel, in a course given at the Academy of International Law at The Hague in 1925,² was inclined to see in Gustave Moynier the true architect of the institution. Other distinguished authors showed no reluctance in honouring him as the founder.³ This was certainly not correct; history and humanity now recognize the absolute preeminence of Henry Dunant as creator of the worldwide movement. The fact is that the founding organism of the Red Cross was the “Committee of Five”, consisting of Dufour, Dunant, Moynier, Appia and Maunoir. We can nevertheless agree with Eugene Borel when he insists upon the debt we owe to the qualities of Gustave Moynier, a man of action, for his great capacity for work and for his special ability as a talented jurist for giving a precise and suitable form to his thoughts.⁴

One comment by a particularly perceptive observer appears to do justice to Moynier: “Dunant was the living flame, Moynier the focusing lens.”¹

It was probably in the great and invaluable contribution he made to the creation and to the work of the Institute of International Law which was so close to his heart that Gustave Moynier gave the best of himself, that contribution and work being founded, of course, upon the vast experience he had gained from his devoted efforts on behalf of the Red Cross.

The most convincing passages and the noblest expression of Gustave Moynier’s thinking are found in the *Mémoire* he presented in 1890, as corresponding member of the *Institut de France*, to the *Académie des sciences morales et politiques* concerning the origins and future possibilities of the Institute of International Law.⁶ In this very long communication, which deserves renewed attention today, Moynier speaks not only of the origin of the Institute but of the horizons he believed were open to this highly impartial and unchallengeably prestigious body, after the first sixteen years of its existence.

¹ Alexis François, *op. cit.*

² E. Borel, *L’Organisation internationale de la Croix Rouge*, p. 4.

³ Including Bernard Bouvier, *op. cit.*, and Paul des Gouttes, more briefly, in the *Bulletin international des Sociétés de la Croix Rouge*, October, 1910.

⁴ E. Borel, *op. cit.*

⁶ In the official records of the *Académie*, A. Picard, Paris, 1890.

On the subject of the origin of the Institute—for which he credited himself in other writings with what might appear to be an exaggerated role, though not to the same extent as in the founding of the Red Cross—he abstained in his communication to the *Académie* from giving too much emphasis to the originality of his own initiatives, although these were indeed very meritorious.

He had this to say in his *Mémoire* :

“Historically, the movement goes back to the year 1871. Doctor Lieber in the United States was toying with the idea for a long time . . . during the very same period when this writer, moved by the same desire, was seeking an outlet for his aspirations. These two separate currents supported one another. From New York and Geneva, at virtually the same moment, appeals went forth from the persons in question to a great and warm-hearted scholar. I refer to Rolin-Jaequemyns, who was struck by the correctness and beneficial consequences of his friends’ views . . .”¹

The Institute of International Law was certainly in no greater need than the International Committee in Geneva to seek a “founder” elsewhere than in the collectivity which established it. Moynier’s testimony, however, helps us to recall, with gratitude and humility, the enormously preponderent role played by the great Belgian jurist Rolin-Jaequemyns in founding the Institute at Ghent a century ago.

Gustave Moynier’s work on behalf of the Institute was always constructive—otherwise he would never have been elected as its president—but he was also undoubtedly authoritarian, to a degree that the Institute in our time would hardly be willing to accept.

Let us consider, for example, the *Oxford Manual*, whose great significance in international law has always been recognized, as it should be. On 30 June 1880, Gustave Moynier, as rapporteur for the Fifth Commission—on the law of war—said in a circular to members and associate members:

“It will not be necessary for the Institute to consider separately the various articles in the Manual. The Commission, which exercised the greatest care in drafting it, would consider it quite out of place for the

¹ Op. cit., p. 7.

unity of this work to risk being compromised by unforeseen amendments . . . and its work will therefore not be exposed to the hazards of detailed discussion. ”

The Commission simply asked the Plenary session at Oxford to approve the Manual as a whole.

Although this was ultimately done, it should be noted in the interest of truth that every proposal and every subsequent decision was very carefully examined by Moynier and annotated in his own distinctive handwriting.

Let us try however to forget the details, however essential these may be for judging each separate achievement, especially those achievements in the field of human welfare, like those to which Gustave Moynier, despite his human failings, devoted the better part of his life, and let us instead look at these achievements as a whole, and recognize how positive and useful they were.

I should like to refer again to the *Mémoire* presented by Gustave Moynier to the *Académie des sciences politiques et morales* in Paris, for a few particularly significant quotations. First of all there was his citation of the comment by the great Swiss jurist Johann Caspar Bluntschli: “At Ghent, I could see how easy it is for men of science to understand one another, if only they have good will. Despite the well known tenacity of jurists in fighting for their own opinions, they always reached agreement in the end.”

Above all, there was this conclusion, marked by a lofty dignity, written by Moynier himself:

“The Institute of International Law is worthy of our efforts and deserves recognition for the services it renders to mankind; it discharged with honour the elevated role assigned to it amongst all the factors constituting social progress.”¹

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International Committee
of the Red Cross

¹ Op. cit., p. 25.