

THE GENEVA CONVENTION OF 1864 AND THE BRUSSELS CONFERENCE OF 1874¹

by Danièle Bujard

II

International Committee's fears

Yet, though Gustave Moynier recognized that the rules relative to wounded or sick troops should clearly form a part of a plan for the codification of the most important laws of war—for it was he who had suggested in 1868 to the President of the Swiss Confederation that, because of the very close connection existing between the Law of Geneva and Alexander II's project, the Geneva Conference might be linked to the Conference of Saint Petersburg, to alleviate "as much as possible the calamities of war" — he did not show much enthusiasm, even while declaring his approval of the new Russian proposals, and did not hide his attitude of reserve.

For though the Russian proposals, in substance, were not of a nature to cause any uneasiness to the International Committee, there were other reasons why it greeted the Czarist Government's move with a certain amount of disquiet.

There was no doubt in the minds of the members of the International Committee that the future of the additional articles introduced in 1868 was gravely compromised by the Brussels Conference. Those articles, which had given rise to much controversial debate, were not in force, and the Russian draft, which did not replace them, contained no allusion to them. Would there not be an attempt to take advantage of the Confer-

¹ The first part of this article appeared in our last issue.

ence to discard them altogether? On 10 June 1874, Gustave Moynier suggested to Mr. Schenk that the Swiss Government should send to all the States parties to the 1864 Convention a circular letter urging them to complete in Brussels the work begun in 1868 in Geneva; the Swiss Federal Council, without asking for a pure and simple acceptance of that instrument, might propose its revision "... prior to the examination of the new Russian proposals, or parallel to it". The circular letter was sent on 8 July by the Federal Council to all the Governments of States signatories to the 1864 Geneva Convention. In it, the Federal Council reviewed the steps it had taken to hasten the ratification of the 1868 Act and presented an account of the state of affairs at the moment when the Brussels Conference was convened by the Russian Imperial Government; it further pointed out that the latter had informed it that it did not see any objection to the problem of the ratification of the additional articles being submitted to the Brussels Conference for examination, that this question had not been originally included in the programme, and that it would let the Federal Council take the initiative of raising it. The communication ended with the following sentence: "... It (the Federal Council) considers, too, that it feels compelled, on grounds of expediency, to leave it to the Brussels Conference to decide for itself whether it is appropriate to proceed with the ratification of the additional articles of 1868 in their present form or whether it would be more advisable to include them in the draft general convention which the Conference would be called upon to discuss".

These concluding considerations on the form which the additional articles could finally take were close to the intentions of the International Committee. For although the latter wished to do its utmost in order that the 1868 instrument should not sink into oblivion, it was nevertheless concerned about the complex treaty situation resulting, on the one hand, from the ratification of the additional articles and, on the other hand, from the adoption of the new Russian proposals. The rules relative to the wounded and sick would then have been dispersed in three different instruments, a state of affairs not calculated to make it any easier for anyone to get to know them better and, consequently, to apply them. Would it not be possible to arrange for the Russian proposals concerning non-combatants and the wounded to form, together with the additional articles of 1868, a separate instrument, annexed to the 1864 Convention and complementary to it? The Brussels Conference need only refer to

the Geneva Conventions and its additional articles in respect of anything concerning the medical services and the wounded.

Though they were pursuing the same objective, the Federal Council and the International Committee arrived at opposite conclusions: the former suggested that the additional articles should be embodied in the Convention to be drawn up at Brussels, the latter wished the rules of the Russian draft on non-combatants and wounded to be added to the additional articles of 1868.

However anxious the International Committee may have been to preserve the additional articles of 1868, it had before it a subject of still graver concern. Would not the Russian proposals give the plenipotentiaries gathered at Brussels the opportunity to re-examine the question of the very existence of the 1864 Convention? There was some foundation for this fear, for at the time when the Brussels Conference was convened, the Geneva Convention had lost considerable favour and had to contend against a number of resolute adversaries. This sorry situation had its origin in the Franco-German War. The Law of Geneva did not hold the same importance for the belligerents facing each other in that conflict; the Prussian Army had been instructed in the rules of the 1864 Convention and its medical services had been perfectly organized. Unfortunately, it had been different on the French side; their army knew nothing about the Geneva Convention, the medical services were practically non-existent and the small number of persons comprising the medical personnel did not wear the distinctive sign. The inevitable consequence of this state of affairs was that the breaches committed by one of the parties led to reprisals by the other. Furthermore, it became apparent that it was difficult to apply certain provisions; for instance, in the case of Article 5 relative to the neutrality of the inhabitants who brought help and provided shelter for the wounded; as the enemy approached, makeshift hospitals were hastily improvised, sometimes holding only a single bed, and whole villages were covered with Red Cross flags. In such cases, the enemy paid scant heed to the Red Cross sign.

It was therefore not surprising that, after the end of the war, the weak points in the Geneva Convention came to the surface. Recriminations were exchanged on the subject of violations and abuses of its provisions. Army commanders opposed what they considered to be gross interference in the smooth development of military operations and attacked the Convention as an instrument detrimental to the security

of armies because it would be conducive to pillage and spying. It was considered in many quarters that the Convention had shown it could not work in practice and that it should be buried. In 1873, at the time when the Austrian Government was busy with the preparation of the Universal Exhibition in Vienna, it refused to associate the International Conference of the Red Cross with that event. "Why was this measure taken? The Central Committee in Vienna transmitted privately to Moynier the reasons for such a decision: first of all, it was feared that the Conference might have been the scene of stormy discussions which would have troubled the harmony of the essentially peaceful nature of the Universal Exhibition Festival. But that was not all. The real motives for this decision . . . , taken in concert with the other governments, could be found in a draft of an agreement of an exclusively official nature, the purpose of which was to put aside, or at least to modify, the Geneva Convention. It is thus that the International Committee learnt that the States were secretly considering withdrawing from the undertakings pledged in 1864." ¹

But, during those critical years, Moynier had fearlessly defended the Geneva Convention; he was convinced that no harm could result from it. Untiringly, he had striven to display all its advantages and persuade its disparagers that, provided it was well applied, it could save the lives of large numbers of wounded. But, in order that it should be well applied, it was necessary for the Convention to be known and for the armed forces to be instructed in their rights and obligations. In addition, sanctions should be applied against those who violated the Convention. Breaking new ground, Gustave Moynier displayed how this could be done in a paper entitled *Note sur la Création d'une Institution judiciaire internationale propre à prévenir et à réprimer les Infractions à la Convention de Genève*.

In addition, Moynier, convinced that the codification of all the laws and customs of war was an excellent undertaking that should be furthered, was aware that it would be useful if the Geneva Convention could be revised and supplemented on a number of points; although he was pressed to do so by various persons, who considered it the only way to save the Convention, Moynier believed such a step to be premature at

¹ Pierre Boissier, *Histoire du Comité international de la Croix-Rouge, de Solférino à Tsoushima*, Paris 1963, pp. 363 and 364.

the time when the Brussels Conference was being convened. Agitation was still active concerning the Geneva Convention and he feared that any discussion of it would only have resulted in its emasculation or, perhaps even, its disappearance. It was essential, at all costs, that the Brussels Conference should not deal with this question; only one solution remained: to obtain that the examination of the articles of the Russian draft concerning non-combatants and wounded be put off. Moynier consequently multiplied his efforts for an adjournment, invoked arguments and canvassed the support of the Central Committees of National Societies for Relief to the Wounded.

Early in June, he received from Mr. von Holleben, President of the Central Committee of the German Society for Relief to Wounded and Sick Soldiers, some indications of the intentions of the German Government who, according to the Secretary of State, Mr. von Bülow, had no desire to suppress the Convention. Nevertheless, von Holleben added: "... On the other hand, Mr. von Bülow and I recognized the risks that might arise, if the Convention were to be discussed under present circumstances, all the more so as it was well-known that the view was current, among people in high places in our country but whose influence was fortunately not decisive, that the outright suppression of the Convention might be advisable, and that the observance of its principles should be abandoned in favour of the practice of war..."

The matter had therefore not been settled! Moynier accordingly wrote on 15 June to General de Baumgarten, President of the Russian Central Committee of the Society for Relief to Wounded and Sick Soldiers: "... I have before me the draft convention which the Russian Government intends to submit to the Brussels Conference, and I have been able to study it at leisure. My considered opinion corresponds to yours, in the sense that the plan in question is much too vast to be worked out straight away, however desirable its accomplishment might be... It is therefore not unlikely that the Conference, feeling the need to restrict its field of work, will eliminate some sections of the programme; in anticipation of this possibility, the Red Cross Societies should make use of their influence in order to obtain that everything relating to the Geneva Convention (Arts. 38 to 44) should be set aside..."

Huber-Saladin, to whom Moynier had also written for support, shared the International Committee's apprehensions; in a letter to Moynier sent on 25 June, he speculated upon the future of the Geneva

Convention: "... And now what part will the Geneva Convention play at Brussels? In what way will those diplomatic and military conferences affect the Convention and the Relief Societies? It is hard to tell... At all events, like you, I believe the Convention is in danger. The neutralization of the wounded, with the general principles attached thereto, has been irrevocably gained; but the military men are generally hostile to the Articles, which you, as well as they, know to be vulnerable... All this augurs ill. Who will assume the defence of the Convention at Brussels? And who will be capable of undertaking it with authority and conviction?"

Huber-Saladin was prepared to do everything possible to safeguard the Convention, but all the same he had doubts regarding the effective pressure which the French Society for Relief to the Wounded could have exerted at Brussels. Besides, he would have had to overcome the opposition within his own Society, some of whose members "showed a pronounced lack of enthusiasm for anything savouring of an international flavour"; in addition, private initiatives were rather frowned upon by people in French Government circles. But why should Moynier himself not have tried his luck? "Your past record, your writings, your position as President of the International Committee—everything gives you the right to claim attention. Write something which is clear, brief and in your most accomplished and familiar style... You represent international charity..."

Huber-Saladin's advice coincided with the intentions of the International Committee, which had prepared a circular letter, dated 20 June 1874, under the heading *Le Congrès de Bruxelles et la Révision de la Convention de Genève*, that was to be sent soon to all Central Committees of National Societies for Relief to Wounded Soldiers.

In this letter, the International Committee set forth in detail the reasons, which have just been mentioned, why the Committee considered it advisable—in the interest of the 1864 Convention—to defer the examination of the articles concerning non-combatants and wounded in the Russian draft. It pointed out that the interests of the Societies were also at issue and that those same Societies had not been given an opportunity to express their views and wishes, "... while any modification of the law established by the Geneva Convention will affect them most seriously". Then some slight embarrassment could be faintly perceived, for the International Committee requested the Central Committees to

provide assistance without having sounded their views, since Moynier had not had the time, contrary to his customary rule, to consult them: "We therefore request you, Gentlemen, to weigh the considerations we have taken the liberty of setting forth to you and, should you find them to be correct, to do everything that lies within your discretion in order that your country's delegates to the Brussels Conference may receive instructions consistent with our own conclusions, that is to say, couched in terms:

- (1) permitting an adjournment, to which we attach the utmost importance;
- (2) or, only should the proposal for adjournment be rejected, permitting an improvement to be effected by means of additional articles, but taking into account the 1868 draft and preserving intact the text of the 1864 Convention."

Moynier also sent this circular letter, to which he attached comments and suggestions, to a number of his friends who had contacts with officials in the governments concerned. On 1 July he wrote to the Prince of Hohenlohe, who, as soon as the Russian Government's intentions had become known, had regularly informed the International Committee of the prevailing attitude in the German capital: "... The International Committee has sent a circular, a copy of which I take the liberty of enclosing herewith. The views expressed therein are exactly the same as those of the German Central Committee, of Her Imperial Majesty and, I believe, too, even of the Imperial Government. I venture to hope that you will also share those views and that you will consent, in so far as that is possible, to use your great influence to have them adopted at the Brussels Conference...".

In addition, the International Committee kept the Federal Political Department regularly informed of its action and of the views of its correspondents.

Gustave Moynier spared no effort to achieve his aim and was supported by friends convinced of the rightfulness of his cause: Huber-Saladin and von Holleben were most active, and the President of the Swiss Confederation, Mr. Schenk, took his views into consideration. The Empress of Germany, Augusta, did all that was in her power to ensure that the Geneva Convention should not be discarded at the Brussels

Conference and tried very hard, though without any success, to have Red Cross representatives invited to take part in the Conference. That was the state of affairs when, on 27 July, the Conference opened at Brussels; there followed for Moynier a period of uncertainty, for, not having been asked to take part, he was unable to see for himself whether the International Committee's action would lead to some particular result.

It seems that the Swiss Government had been convinced by the reasoning put forward by the International Committee, as may be seen from the instructions it gave to its representative, Colonel Hammer: "... With special reference to the Geneva Convention of August 22, 1864, the Federal Council representative shall act in such a way as to ensure that its content shall remain unchanged and that it shall continue to be considered as an independent Convention. In conformity with this general principle, the Federal Council representative shall act with a view to the elimination of analogous provisions contained in the Russian draft, or secondarily with a view to their explicit designation as being supplementary provisions of the Geneva Convention. The new provisions contained in Chapter VI of the said draft should therefore be worded in such a way as to show that they extend and supplement the Geneva Convention...".

But what was the mood of the other delegations when they arrived in Brussels?

The Brussels Conference

The circular letter prepared by the International Committee having been transmitted by the Russian Imperial Government to its delegation, the latter proposed that this document be submitted to the Conference for examination. The proposal was adopted and the President of the Conference, Baron Jomini, accordingly read it out in plenary session on 5 August 1874. The Conference referred the letter to a commission. "Our wish to see the text of the 1864 Convention remain unchanged was fully realized," wrote Moynier in a report on the work of the Conference which he published in the *Bulletin International*¹ of January 1875, "and

¹ The *Bulletin international des Sociétés de secours aux militaires blessés* was published later under the title of *Revue internationale de la Croix-Rouge*.

we noted with satisfaction the very clear and categorical sentiments expressed by several delegates on this point. The Russian, German, Swiss, Swedish, Belgian and Dutch representatives stressed one after the other their firm determination to preserve the Geneva Convention in its integrality and took pleasure in stating that this view was held by all participants at the Conference....". "But while the Commission bore witness to its fidelity in respect of the 1864 document—to the spirit rather than to the letter—and refused to restrict its application in any fashion, it at the same time tackled first the subject of the improvement of the Convention by means of supplementary articles".¹

After having examined several draft amendments to the Russian proposals, the Commission finally agreed that Chapter VII, concerning non-combatants and the wounded, should contain only one article stating that the wounded would be treated in accordance with the Geneva Convention, with any changes that might subsequently be deemed to be necessary. The Commission also agreed to take up the examination of the changes which past experience of wars had shown to be necessary and that the result should be incorporated in a Protocol that would be submitted to the governments with a view to a future revision of the Convention. At this stage the composition of the Commission was changed and, except for its chairman, only military representatives took part in the discussion. No doubt, this pleased General de Voigts-Rhetz, who liked to say concerning the Geneva Convention: "If, at the time it was prepared, there had been as many army men as doctors, it would certainly have been formulated differently".

The Conference adopted without discussion the Commission's proposal, which became Article 35 of the International Declaration of Brussels on the laws and customs of war: "The obligations of belligerents with respect to the service to the sick and wounded are governed by the Geneva Convention of August 22, 1864, save such modifications as the latter may undergo". In addition, the Conference decided to add to the three articles concerning interned belligerents and wounded cared for by neutrals a further article (Art. 56) extending the application of the Convention to sick and wounded interned in neutral territory.

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¹J. DE BREUCKER, *La Déclaration de Bruxelles de 1874 concernant les lois et coutumes de la guerre*, Institut royal des relations internationales, chronique de politique étrangère, Volume XXVII, No. 1 — Brussels, January 1974.

Conclusion

Thus, the Geneva Convention, after the Brussels Conference, not only emerged unchanged but its position was also strengthened. It would not be an exaggeration to say that this Conference, in giving the plenipotentiaries the opportunity to reaffirm their respect for the principles proclaimed in 1864, contributed in no small measure to pulling the Geneva Convention through the critical period through which it was passing; furthermore, interest in the Geneva instrument had been revived, for besides respecting the original text of the 1864 Convention, the Conference had recognized the need to improve it and, foreseeing that in a more or less distant future this instrument would have to be revised, it had not hesitated to examine the appropriate reforms.

Immediately after the end of the Conference, the International Committee started work on following up the conclusions and recommendations formulated at Brussels.

Full of renewed confidence, Gustave Moynier plunged into his work with enthusiasm. On 3 December 1874, he wrote to his friend Huber-Saladin: "... Here, too, we are getting ready for a probable campaign of revision. . . . In addition, we shall on Tuesday next be holding the first of a series of weekly sessions devoted to a detailed study of the improvements to be made to the Convention, drawing upon the latest documents and, most particularly, on the opinions expressed at Brussels....".

The whole period, however, covering the last few years of the nineteenth century turned out to be one of the most eventful times in the history of Europe, and the International Committee was unable to pursue straight away its work in the field of humanitarian law: the time was not yet ripe for a new Geneva Convention. Moynier drew up a new version for the Convention (*Nouvelle rédaction de la Convention de Genève*) and wrote countless comments and alternative drafts, but in 1886 he had to bow to facts and to acknowledge in an article that appeared in the *Revue de Droit international* that it was necessary to wait. In fact, it was not until 11 June 1906 that this waiting period drew to an end, when a Conference opened in Geneva in order to draw up the Geneva Convention of July 6, 1906 for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field.

Danièle BUJARD

Deputy Head of the ICRC Legal Division