Gustave Moynier
(Gêne)

Membre Fondateur de l'Institut de Droit International

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The role of Gustave Moynier in the founding of the Institute of International Law (1873)

THE WAR IN THE BALKANS (1857-1878)
THE MANUAL OF THE LAWS OF WAR (1880)

by André Durand

The Franco-Prussian War of 1870 had shown just how difficult it was to ensure respect for international law during actual fighting. Mutual accusations of violations of the Geneva Convention, or more generally of the customary laws of war, showed that neither the scope of humanitarian law nor the dissemination of its principles had been sufficient to avert excesses by the combatants. The protection of medical services and of the wounded should remain independent of the conduct of hostilities. But violations of the law of war, whether real or imagined, inevitably undermine the implementation of the Convention. Public opinion (quickly aroused), the press (always keen on shoring up the spirit of resistance), and governments themselves never miss an opportunity to highlight or exaggerate criminal acts committed by the adversary and to make a blanket condemnation of all enemy combatants.

Gustave Moynier was aware of the possible implications of such excesses for the activities of the Red Cross. As soon as the war was over he wrote down his observations and conclusions in a study entitled The Geneva Convention during the Franco-Prussian War, and put forward a proposal both for the creation of an international legal institution to investigate breaches of the Convention and for an international law making it possible to punish such violations. At the same time, he thought of extending the legal system to encompass the laws of war, with a view to introducing into the conduct of hostilities rules that he believed would protect the wounded.
"During the Franco-Prussian War, he wrote, I had often been pain-
fully struck by the uncertainty surrounding legal regulations governing
the conduct of hostilities. The belligerents were in constant disagreement
as to how far they could go in their struggle against the enemy and what
they should refrain from doing, no one among them being able to make
an authoritative statement on the matter. This state of affairs seemed to
me to have done much to intensify already inflamed passions and to give
the fighting a savagery unworthy of civilized nations. Once peace had
been restored, it was time to seek ways of preventing a repetition of such
cruelty and the means that suggested itself to my mind was to bring
together those most expert in international law so that they could pro-
claim, with a single voice if possible, the rules of moderation which the
legal conscience of the time found indispensable.

But I was not one to spearhead such an undertaking with much
prospect of success, being fully aware of the insurmountable difficulties
it presented. To my knowledge, only one man had the qualities required.
He was a young lawyer from Ghent, Mr. Rolin-Jaequemyns, with whom
I had been in contact since the International Charity Conference in
London in 1862. Mr. Rolin had founded and was ably directing an "In-
ternational Law Journal", which placed him at the centre of the scholarly
circles that I wished to reach".¹

In 1869 Rolin-Jaequemyns² had founded the Revue de droit interna-
tional et de législation comparée (Journal of International and Compara-
tive Law) in conjunction with Tobias Asser, future Nobel Peace Prize
winner (1911) and with John Westlake. It was the principal publication

¹ G. Moynier, Réminiscences — Belgique, Pays-Bas, Luxembourg, pp. 23-24. Typed
manuscript, ICRC Archives, Moynier collection. Bernard BOUVIER quoted part of this
text in his pamphlet devoted to Gustave Moynier (Gustave Moynier, printery of the Journal
de Genève, 1918, p. 26), based on a lecture given at the assembly hall of the University
of Geneva on 12 March 1917. An excerpt from the lecture (pp. 22-34) appeared in the
Tribune de Genève of 10-13 February 1918, entitled De la création par Gustave Moynier
de l'Institut de Droit International.

² Gustave Rolin-Jaequemyns, born in Ghent (1835-1902), a doctor of laws and
political and administrative sciences. One of the founders and editor-in-chief (1869-1878)
of the Revue de droit international et de législation comparée (Journal of International
and Comparative Law). Principal founder of the Institute of International Law, first
General Secretary, then president in 1879. Member of the Academy of Belgium. Member
of the House of Representatives of Belgium, Minister of the Interior (1878). His brother
Albéric Rolin, a lawyer at the Court of Appeal at Ghent, was assistant secretary of the
III. when it was founded, then secretary and auxiliary member (1874).
of the Institute of International Law until war stopped its publication in 1939. In that same year 1869, Gustave Moynier, concerned to provide the National Relief Societies with an information and communication channel, established the Bulletin International des Sociétés de Secours aux Militaires blessés, which later became the International Review of the Red Cross. It has remained in print until the present day and retains its founder’s rigour and concern to provide a broad range of information. The two jurists accordingly found themselves at the head of international journals devoted to the dissemination and to the advancement of international law and humanitarian law.

Naturally therefore, it was to Rolin-Jaequemyns that Moynier turned first to discuss his ideas. In September 1871, he entrusted one of his friends, Alphonse Rivier, a law professor in Brussels, with presenting his project to him. But this had no effect. Supposing that his request had not been forwarded, Moynier decided to approach Rolin-Jaequemyns directly. In November 1872 he visited him in Ghent in order, he said, to win him over to his idea and persuade him to be its champion.

Nevertheless, great plans engendered by similar circumstances are sometimes conceived simultaneously by several individuals. So it was in the case of Moynier’s project, which coincided with proposals from different jurists of international renown, in particular, Francis Lieber.

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3 Alphonse Rivier, from Lausanne, Doctor of Law from the University of Berlin (1858) lecturer at that university (1862), professor at the Universities of Bern (1863-67) and Brussels (1867), Secretary and auxiliary member of the IIL (1874), author of many legal studies, member of the Swiss Federal Commission for the drafting of a federal code of obligations.


5 Francis Lieber (1798-1872), Professor of International Law at Columbia College (University of New York). Author of Instructions for the Government of Armies of the United States in the Field, published by the War Department, 24 April 1863. Collaborator of the Journal of International and Comparative Law. He died on 22 October 1872, 11 months before the founding of the IIL of which he was one of the initiators.
Gaspard Bluntschli\(^6\) and David Dudley Field\(^7\). These ideas had been brought to the attention of the legal world as a result of the American Civil War and the new possibilities for the peaceful settlement of disputes through mediation. Lieber had outlined his initial ideas in April 1866 in a letter to Bluntschli, then in September 1881 in a letter to Rolin-Jaequemyns, reminding him of one of his favourite ideas, the holding of a public, international congress, with no official status, involving the foremost international jurists, for which, he said, *Ghent would be an excellent place*.\(^8\) He had withdrawn this suggestion on 10 April 1872 in a letter to General Dufour, in response to a circular by Moynier concerning the creation of an international legal institution. The author of *Instructions for the Government of Armies of the United States in Field*, who did not approve of Moynier’s idea of a permanent international tribunal, stressed in his conclusion the utility and effectiveness of a meeting of the most eminent international jurisconsults — in their personal capacities and not under a public mandate — to settle some important but still unclarified points.\(^9\) Bluntschli had made similar proposals and in many of his works had also proved to be a pioneer of the codification of international law. The decision of an Alabama court, handed down in Geneva on 14 September 1872 and settling by arbitration a 10-year dispute between the United States and Great Britain, showed that the recourse to legal norms accepted by common agreement was a necessary precondition for the settlement of disputes. Gustave Moynier had already stressed this point in his draft for an international judiciary body: “The constitution of an

\(^{6}\) Jean-Gaspard Bluntschli (1808-1881), from Zurich. He had a legal and political career, first at Zurich (professor of Roman Law, State Councillor, drafter of the Zurich Civil Code), then at Munich and Heidelberg (professor of international law and political sciences, member of the parliament of Baden), member of the drafting commission of the Federal Code of Obligations. See Dietrich Schindler, “Jean Gaspard Bluntschli”, in *Livre du Centenaire*, op. cit., 1973, pp. 45-60.

\(^{7}\) David Dudley Field (1805-1894) initiator of the *Association pour la réforme et la codification du droit des gens*, founded in Brussels in 1873, which was later to become the *International Law Association*.

\(^{8}\) Lieber to Rolin-Jaequemyns, Sept. 1871. Letter quoted in English by Rolin-Jaequemyns, with the translation as a note, in his important article in the *Revue de droit international et de législation comparée*, 5th year, 1873: *De la nécessité d’organiser une institution scientifique permanente pour favoriser l’étude et les progrès du droit international*, pp. 480-481.

\(^{9}\) Lieber to General Dufour, 10 April 1872. Based on the French translation published by Rolin-Jaequemyns in “Note sur le projet de M. Moynier, relatif à l’établissement d’une institution judiciaire”, protectrice de la Convention, *Revue de droit international et de législation comparée*, 1872, 4th year, 2nd edition, p. 325. The circular containing Moynier’s note (No. 28, of 28 January 1882) was signed by General Dufour, honorary President, “in the absence of the President”.

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arbitration court which is charged with the task of finding a settlement for the *Alabama* affair, and which has its headquarters in our city, is a far-reaching precedent. And it is known that the arbitrators concerning the *Alabama*, like those whom I propose for the Geneva Convention, will have to model themselves according to the principles adopted previously by the interested powers, and laid down in a treaty”.10

Commenting on the letter from Lieber to General Dufour, Rolin-Jaequemyns wrote: “It would seem to us that, in this connection, a kind of international parliament of persons elected from the domain of law, as proposed by Mr. Lieber, would be responsible for rendering the greatest services. It would be a conference of diplomats of a new kind, without the drawbacks of diplomacy, and the participants would be prompted by their very own reciprocal influence to reconcile the desirable with the possible.

We hasten to take note of Mr. Lieber’s wish and we promise ourselves to work towards its realization with the help of this group which has had the good and unexpected fortune of having within it such a large number of such examples.”11

Here Rolin-Jaequemyns added a note:

“What seems to prove that Mr. Lieber’s wish is filling a real need is that around the time when our eminent New York correspondent discussed it with us for the first time (summer of 1871), Mr. Moynier had asked a mutual friend to discuss a similar project with us. Shortly afterwards Mr. de Holtzendorff wrote to us along the same lines.

During their meeting in November of 1872 at Ghent (probably the 15th or 16th), Rolin-Jaequemyns spoke favourably of Moynier’s project. On Sunday 17 November Moynier wrote to Bluntschli proposing a meeting between them at Heidelberg on the Wednesday of that same week.12 In a letter also dated 17 November, Rolin-Jaequemyns informed Bluntschli of the forthcoming visit by his colleague: “Mr. Moynier will no doubt discuss with you an idea which was very dear to our late and distinguished

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12 Gustave Moynier to Bluntschli, 17 November 1872, Zurich Central Library. Facsimile, Geneva University Library.
friend Mr. Lieber; that of a congress or perhaps a conference of international jurists for the purpose of conferring collective academic authority upon and accordingly recommending to the general public and to governments certain proposals of international law that specifically meet present needs. As a result of discussions I have had with Mr. Moynier, I intend to formulate a draft appeal in that regard which will be submitted for your opinion before being publicized.\(^\text{13}\) Bluntschli replied to Rolin-Jaequemyns on 22 November, assuring him of his full agreement: “What seems crucial to me is to set up a standing institution which could and should gradually and imperceptibly become a world authority”.\(^\text{14}\) Thus, through these two initiatives guided by his unwavering concern to translate a theoretical concept into reality, Moynier seems to have started, or speeded up, the process leading to the creation of the Institute of International Law and, if Rolin-Jaequemyns was still hesitating, to have convinced him to assume responsibility for its execution. His memoirs contain a brief account of these meetings:

“I managed to convince my friend without much difficulty, the more so since my overtures did not catch him entirely off his guard since, before me, other persons had given him suggestions that were more or less similar to mine. After brief hesitation he agreed to assume responsibility for setting out guidelines to the practitioners of the legal profession and which I left entirely up to his wisdom and enthusiasm. We agreed moreover that the projected meeting would have to be given greater scope than provided for in my initial programme, extending its purview to cover international law as a whole and creating a permanent institution rather than a temporary body. I therefore set out for Heidelberg to outline our common views to Professor Bluntschli, whose support we had good reason to anticipate and who approved of them unreservedly”.\(^\text{15}\)

Having agreed to take on the leadership of the movement, Rolin-Jaequemyns sent a confidential note dated 10 March 1873 to some of his colleagues, discussing the objectives and statutes of the new body, academy or international institute of public law. In his reply of 7 April 1873, Moynier included a commentary on Rolin-Jaequemyns’ proposals, the

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\(^\text{15}\) G. Moynier, Ma contribution aux progrès du droit international, pp. 9-10, typed manuscript, ICRC archives, Moynier collection.
basic points of which he approved. Moynier's own ideas on certain issues showed through, deriving as they did from his experience in running the Red Cross. Rather than a standing commission with members in different places and hence difficult to bring together, he preferred the appointment of a director who would be obliged to seek the opinion of subordinate advisers in important matters. He also emphasized the undesirability of governments having a say in the composition of the new body and a right to inspect its finances.

"The right of veto is a regrettable restriction on the independence of the Academy, and I must confess that your arguments in its defense have not convinced me. Allowing a government to oppose the appointment of a distinguished intellectual on account of his political opinions would amount to an excessive abdication of dignity by the members of the legal profession and to the implicit admission that politics takes precedence over law. Moreover, the States will find the firmest guarantee in the fact that it behoves the Academy not to compromise its credibility vis-à-vis governments by making unpopular choices. We can be confident that it will exercise tact in deliberations. Nor am I much in favour of receiving regular contributions from governments to cover expenses".16

In his concern to inform the general public, Gustave Moynier published an initial study on the projects under way in the Journal de Genève of 5 August 1873:

"If there is one universal sentiment that has been engendered by the most recent wars, it is surely that of the inadequacy of a society in which there is no positive law governing international conflicts, with the result that reciprocal grievances of nations or their governments can force them, without formally committing any illegal act, to behave in the most arbitrary or regrettable manner and even in a manner most repugnant to the public conscience. Where are the rules agreed to by one and all that make it possible, for example, to determine the unjust character of an aggression and to require the parties to have recourse to arbitration before resorting to force, to oblige the stronger to make concessions, determine the rights and duties of neutral parties, or to condemn this or that condition for peace as abusive? On all these and on many other points, the law is still unclear. [...]"

16 G. Moynier to Rolin-Jaquémyys, 7 April 1873. ACICR, Moynier collection, copies of letters dispatched, p. 12.
The creation of a special, standing body to focus all endeavours in this direction would seem imperative. Between the official initiative of governments, which it would be premature to include as a constant factor, and individual opinions which very often carry little weight, collective academic action, removed, as far as is humanly possible, from any local influence, would emerge as a new and potent intermediary force capable of producing the best results if wisely directed. [...] 

Though not old, this idea is not entirely new either and it would be difficult to identify its originator. Yet, in recent times it seems to have occurred to several men of different nationalities. Some of them even thought that the time was right for translating this theoretical concept into fact. They will be trying to do this at the Ghent congress. [...] 17

The founding members met at Ghent on 8 September 1873 in the Arsenal Room of the Town Hall. On 10 September, statutes were adopted for the Institute of International Law, its primary objective being to work for the advancement of international law by endeavouring to become the voice of the legal conscience of the civilized world. “This date”, Gustave Moynier was to write subsequently, “deserves to be remembered as marking the formation of a group that has grown steadily in public esteem, which has already rendered signal services to the fields of both law and administration and which has a bright future ahead. We were a mere 11 founders present at Ghent, but we felt encouraged by an august body of persons not present, but whose declared support lent weight to our decisions”. 18

The founding meeting assigned the Belgian economist Emile de Laveleye and Moynier to draft, as a preamble to the statutes, a manifesto proclaiming the establishment of the Institute. That text, dated 11 Sep-

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18 G. Moynier, Ma contribution..., op. cit., p. 10. Present at the Ghent meeting were: Asser (Amsterdam), W. Besobrasoff (St. Petersburg), Bluntschli (Heidelberg), Carlos Calvo (Buenos Aires), D. Dudley Field (New York), E. de Laveleye (Liege), J. Lorimer (Edinburgh), Mancini (Rome), Moynier (Geneva), Pierantoni (Naples), Rolin-Jaequemyns (Ghent). Twenty-two of the jurists invited had presented their excuses, but approved the project, with or without reservations. It was to their encouragement that Gustave Moynier was referring when he used the word exhorte, an archaic French term for exhortation, counsel (F. Godefroy, Dictionnaire de l’ancienne langue française.... Paris, 1884).
tember 1873, was signed by the 11 founding members and widely disseminated to governments and to specialists of international law.\textsuperscript{19}

In his memoirs on the trip he made on this occasion to Belgium, Moynier recalls the excellent reception given him by Rolin-Jaequemyns’s father and by the burgomaster, the Count of Kerchove, and his meeting with the Baroness of Crombrugghe, the Burgomaster’s sister, who had devoted herself to serving the wounded during the Franco-Prussian War.\textsuperscript{20} He was invited by Rolin-Jaequemyns to visit his Minderhout estate in Campine. “A few days spent in this solitude, wrote Moynier, surrounded by the charming family of my host, left me an impression that was as pleasant as it was unforgettable. Staying there at the same time was the distinguished agronomist, Mr. Jaequemyns, Mrs. Rolin’s father, who was one of the most fervent supporters of the restoration of la Campine. He was good enough to give me excellent lessons on rural economics right there in a natural setting”.\textsuperscript{21}

In his reply to Rolin-Jaequemyns concerning the draft statutes for the Institute, Moynier, while supporting Ghent as the venue for the constituent meeting, nevertheless pleaded the cause of his native city, which had already brought success, he wrote, to two important initiatives: the 1864 Geneva Convention and the Alabama arbitration. “Nevertheless, I believe that Geneva should be chosen for a subsequent session, seeing that the first assembly will require exceptional preparatory work for which it is highly desirable to take advantage of the facilities of the \textit{Revue de droit international} which you so kindly place at our disposal”.\textsuperscript{22}

Moynier’s proposal having been accepted, Geneva was chosen to host the Institute’s first session following the constituent meeting at Ghent. The meeting took place in the historic Alabama Room, made available to the congress by the Geneva State Council. The session, chaired by Mancini,\textsuperscript{23}
open on 31 August 1874. Antoine Carteret, President of the State Council, and Michel Chauvet, State Councillor, brought greetings from the authorities to the delegates.

The Institute of International Law was not alone in championing the establishment of legal rules to govern the conduct of war. In February 1874, the International Executive Committee for the Amelioration of the Situation of Prisoners of War, created at the initiative of Henry Dunant who was its international secretary, convened a preparatory meeting and proposed the convening of a diplomatic conference in Paris, on 4 May 1874, to legislate on the treatment of prisoners. But this latter project was overtaken by events when, in April of that same year, Czar Alexander II proposed that a Conference should be held in Brussels to establish rules that “would serve to reduce to the extent possible the calamity of international conflict by specifying the rights and duties of armies in wartime.” The Conference opened in Brussels on 27 July 1874.24

Gustave Moynier was naturally greatly interested in a project that matched his own concerns so exactly. He was, however, disquieted to see that the conference agenda included a draft revision of the Geneva Convention, the wording of which did not in his view represent a step forward with respect to the treaty in force. Indeed he felt it risked compromising the Convention’s implementation. Hence his reaction, recorded in his memoirs as follows:

“The moment I got hold of the Russian draft that was to be discussed, I was struck by its shortcomings, which I pointed out to the (Swiss) Federal Council. I also sent the Council an alternative draft, which was submitted to the Swiss plenipotentiary, Colonel Hammer, for his use as necessary.

I was also alarmed at the fact that the Geneva Convention, incorporated into the Russian draft, risked ceasing to exist as a separate entity as it might be made part of a whole which was not sure to be adopted”.25


25 G. Moynier, Réminiscences, pp. 32-33, ACICR, Moynier collection. Gustave Moynier did not attend the Brussels Conference of 1874.
The International Committee therefore sent a circular to National Red Cross Societies, asking them to take initiatives vis-à-vis their governments in an attempt to bring about a postponement of the examination of the Geneva Convention or, failing this, to get the Brussels Conference to resume discussion of the substance of the additional articles of 1868. Baron Jomini, the Conference Chairman, read it out at one of the sessions. The Conference then declined to include in its agenda the revision of the Geneva Convention, limiting itself instead to referring to the text of the Convention, barring any possible amendment thereto.

The Institute of International Law had placed on its agenda a detailed study of the Brussels Declaration on the laws of war and had assigned a commission (the Fourth Commission) the task of formulating an opinion as well as supplementary proposals on the matter. Moynier, as a member of this commission, submitted the report. Meeting at the Hague from 25 to 31 August 1875, the Institute proposed some improvements in those areas that it perceived as incomplete or vague, while recognizing the value of the Declaration’s substance.

The revision of the laws of war and the conclusion of new international treaties were not therefore of merely theoretical interest. Even as the Institute held its meeting, the Turkish-dominated Balkans was the theatre of major fighting. The insurrection of Herzegovina and of Bosnia in July 1875, the uprising in Bulgaria, the war pitting Serbia and Montenegro against Turkey in July 1876, all these upset Europe’s balance in its most fragile region, while the violence of the battles and the severity of the repression showed that despite the provisions of the Geneva Convention and the proposals of the Brussels Conference, warfare remained the domain of the arbitrary and the cruel. On 24 April 1877, following fruitless negotiations, Czar Alexander II, in alliance with the Rumanians, Serbs and Montenegrins, declared war on Turkey.

Moynier reacted immediately. On 7 May he communicated his disquiet to Bluntschli, proposing a public declaration by the Institute of International Law:

“I am deeply concerned about what will happen in the East with respect to the observance (or rather the lack of observance) of the laws

26 ICRC. 30th circular, 20 June 1874.
of war. I am doing the utmost in my limited sphere to secure respect for the Geneva Convention, without being overly optimistic about the outcome of my initiatives. But what will become of the other points of the declaration of Brussels (where Turkey was represented)? Could the Institute not launch a public initiative in this regard, if only to state publicly that the conduct of the belligerents is being watched? Would it not be timely to convene an ad hoc session of the special commission for the implementation of the Brussels Declaration? I draw your attention to this point, which seems important to me as a way for the Institute to make itself useful while affirming its existence, without exceeding the bounds of its purview (Art. 1.5 of the Statutes). Should you approve of my proposal, it would be necessary to act immediately so that our action would be preventive rather than appear to be a reprimand addressed to the belligerents after the fact. I am personally ready to depart for Heidelberg should you convene the commission there.28

Bluntschli immediately agreed and proposed that Rolin-Jaequemyns should join them in drawing up the statement. Moynier set out for Heidelberg, where he arrived on 19 May. He was accompanied by his father and took the opportunity to visit his son Adolph, who was learning German with the Reverend Anthes in Bensheim near Heidelberg. He had already sent to Bluntschli a draft statement with the following comment: “Were it not a matter of a statement to be issued by the Institute, I would have tried to be somewhat more passionate in my style, but it seemed to me that coming from us, anything that smacks of emotionalism would be out of place, and that our utterances should be made with dignity and measure”.29

As he had written to Bluntschli, Moynier wished to lose no time in acting. Therefore, he suggested that the document should be published immediately, without consulting the other members of the Institute. The following text is taken from a note published in the Institute’s yearbook as a preamble to the Statement:

“All although the Institute was not in session at the start of the war in 1877 between Russia and Turkey, at the initiative of one of its members.

28 Gustave Moynier to Bluntschli, 7 May 1877, Zurich Central Library. Facsimile. Geneva University Library. Articles 1.5 of the Statutes of the Institute states one of its objectives as follows: To work, within the limits of its competence, either for the maintenance of peace or for the observance of the laws of war.

29 Ibid., 16 May 1877.
Mr. Moynier, its secretariat undertook to publish the following document drafted at Heidelberg by Messrs Bluntschli, Moynier and Rolin-Jaquémyen and subsequently approved by Messrs Parieu and Asser". The statement was published on 28 May 1877 under the title: The laws of war — an appeal to the belligerents and to the press. It started with a description of the current state of the laws of war, both codified and customary: the Paris Declaration of 1856 concerning privateering and blockades; the Geneva Convention of 1864 concerning the protection of wounded soldiers and the Additional Articles of 1868, not ratified, but adopted as a modus vivendi by both sides in the Franco-Prussian war of 1870; the St Petersburg Declaration of 1868 forbidding the use of explosive projectiles; finally and above all the Brussels Declaration of 1874, which was not ratified but should be considered, according to the statement, "as the reasonable expression of obligations that the legal conscience of European peoples today imposes on belligerent armies and in respect of populations under occupation." The statement then set out the substance of the rules that should be observed in wartime with regard to parliamentarians, soldiers who are hors de combat and the civilian population and asked that armies be instructed in these rules. It concluded:

"We know how difficult it is to bear constantly in mind, amidst the perils of warfare, the strict prescriptions of humanity. The soldier, excited by the intensity of battle, the intoxication of victory, by a battle that could turn either way, by his instinct for self-preservation, is only naturally led to violate the rules of moderation unthinkingly and without scruples, even though he had fully approved of them when in a sober frame of mind. But the supreme goal of law — to maintain humane relations among human beings — should apply no less to the conduct of war itself. It is difficult to overemphasize this truth to those who govern nations or command armies.

It is with this in mind that we invite the newspapers of the belligerent states and of neutral countries to publicize this appeal. In so doing they will help us wipe out the last vestiges of the barbarous and tragically ill-conceived notion that 'all is fair in war'. And they would also help to promote knowledge and practice of the true principles of international law".

30 Annuaire..., 2nd year, 1878, pp. 132-137. In response to the manifesto by the IIL, the Ottoman Red Crescent Society published a memorandum rejecting the allegations it contained regarding the conduct of the Turkish armed forces and declaring that from the start of hostilities the Ottoman Empire had been careful to ensure that its forces respected the laws of war. (See the Bulletin international, 9th year, January 1878, pp. 109-112.)

31 Ibid., p. 136.
Meeting in Zurich from 10-13 September 1877, the assembly of the Institute of International Law unanimously ratified the drafting and publication of the circular and decided to supplement it with a new declaration urging implementation of the laws of war in the Russo-Turkish War. It assigned Moynier and Rolin-Jaequemyns to draft the declaration. Their draft was adopted by the assembly and published on 17 September.

Through this new circular and while the Institute sought not only to reiterate the manifesto of 28 May but also to ascertain the extent to which belligerents had instructed their combatants in the conventions in force and other provisions of public international law. It called upon the warring parties to strengthen measures to ensure respect for that law:

"The belligerents accuse each other of ignorance of the law. Each day brings detailed reports of new horrors. Unfortunately, while it must be acknowledged that most of these acts — and shameful they are in our day and age as well as a cause for concern about the future — are all too real, the means are often lacking to verify each particular case.

The Institute therefore cannot be expected to launch an impossible investigation of the daily growing number of impassioned allegations. But there is another issue that an assembly of jurists, established to 'work for the advancement of international law', has the duty to raise and the means to resolve: that of ascertaining the extent to which the belligerents have taken steps as far as possible to familiarize their respective armies with the laws of war”.

The Institute of International Law did not accept as valid the explanation that irregular troops were responsible for the acts of cruelty observed: "If these troops are utterly incapable of behaving like reasoning human beings, then the mere fact of engaging them constitutes a grave breach of the laws of war, as has long been the unanimous opinion of those who make international law. If this absolute incapability does not exist, then it is for the belligerents making use of those groups to bring them into line”.

The statement concluded by asking that “the laws and customs of war, which should be formulated in treaties, ought, for that very reason, to be considered entrusted to European States for safekeeping and that in order to inform the general public, these States should wherever possible develop the institution of military attachés responsible for monitoring the armies of the belligerents and reporting back to their government on all confirmed grave breaches of the laws of war”. It further called on the various governments to take the necessary steps to acquaint individual officers and soldiers with the laws and customs of war and proposed that
before embarking on campaigns, each officer should sign a statement that instructions in this regard had been read out to him and that he has received a copy of same.\footnote{Ibid., pp. 158-159.}

Even while participating in the work of the IIL Gustave Moynier ensured that the voice of the ICRC was heard. Indeed, he was among the leaders of the two bodies dealing respectively with the laws of war (Institute of International Law) and humanitarian law proper (ICRC). He could therefore act simultaneously in both domains, adding to the Institute’s endeavours to halt violations of the laws of war in the Balkans the full authority of the International Committee in matters concerning the Red Cross.\footnote{Regarding the action taken by the ICRC during the war in the Balkans, see Pierre Boissier, History of the International Committee of the Red Cross, pp. 298-312.}

But the ICRC’s possibilities for action were curtailed not only by the violence of ethnic, political and religious hatred but also by the fact that the provinces in rebellion, regarded by the Ottoman government as vassal or tributary provinces without political independence under international law, had not yet acceded in their own names to the Geneva Convention and hence had no autonomous Red Cross Societies. On 29 November 1875, Montenegro, which at the time had not yet entered the war, notified the Swiss Federal Council of its accession to the Convention and asked the ICRC to send a delegation. The latter responded positively and dispatched three delegates — Prof. Aloïs Humbert, Dr. Frédéric Ferrière (a future member of the Committee who had been a volunteer doctor in a Baden field hospital during the war of 1870, and the pharmacist Charles Goetz — who set out on 28 December). Their mission was to organize relief for the wounded and the sick who had taken refuge in the principality, to promote the formation of a national Red Cross and to conduct an information and publicity campaign to further that aim. Instructions given to them specified: “They shall use their full influence to ensure respect for the humanitarian principles of the Geneva Convention in the present war in Herzegovina”. The Montenegrin Relief Society was created on 15 January 1876.

Having set up a Red Cross Society on 21 January 1876, the principality of Serbia became party to the Convention on 24 March. But Turkey itself, party to the Convention since 1865 and possessing a National Relief
Society, did not recognize either the validity of these accessions or the formation of the societies. In its circular of 8 July 1876, the ICRC nonetheless called on National Committees to lend their support to the National Societies of Montenegro and Serbia.

The President of the ICRC analysed and commented on this situation and the resulting difficulties in a study that was attached to the 35th circular of the ICRC and bore the title Is the Geneva Convention being complied with in the war in Serbia? Moynier began expressing the opinion that Montenegro and Serbia did have sufficient independence and autonomy to enable them to accede in their own right to the Convention. He then posed the following question: “Can it be said that a State signatory to the Geneva Convention is at liberty to deny its subjects or rebellious vassals the benefit of the Convention?” His answer was naturally in the negative. He argued that the 1864 Convention was a kind of moral code binding on the signatory States in all circumstances. He then developed these arguments in a text that seemed to foreshadow Article 3 common to the 1949 Geneva Conventions:

“There would be nothing questionable about an affirmative answer if the Convention offered the governments party to it advantages only on a reciprocal basis, as would be the case in a trade agreement or postal convention. But the Geneva Convention is more than that. Nothing in its wording limits its effects to the contracting parties; on the contrary, all its articles are couched in very general terms, as though expressing rules to be observed not only in relations among the signatories, but in all circumstances. It is a sort of declaration of humanitarian faith, a moral code which cannot be binding in certain cases and optional in others [...]”.

Thus, Moynier observes, if in an international conflict “all signatories to the Geneva Convention are morally bound to abide by it in dealing with any adversary, then this should be even more so in internal conflict”. Civil wars are generally bloodier than others, but the greater the evil, the greater the need to resist it, and it is up to the States party to the Convention to set an example of clemency for their fractious citizens. In this regard he cited the precedent of Spain which, in the civil war of 1872 “declared that the wounded, the physicians and the field hospitals in the Carlist camp would be treated in full observance of the Convention”.

The extension of the conflict to Russia in April 1877 had given it an unquestionably international character. The Russian government, which
had issued precise instructions to its armed forces to observe the Convention, officially declared its acceptance of Turkey's request that the red cross emblem should be replaced by a red crescent in the Ottoman medical units, provided that the Turks respected the traditional emblem. The International Committee asked one of its members, Professor Adolphe d'Espine, to set up an international relief agency at Trieste, which he did on 7 July 1877.

But let us return to the work of the Institute of International Law. The Treaty of San Stefano of 3 March 1878, and the Treaty of Berlin on the following 13 July, had terminated three years of fighting on the Balkan Peninsula. But the extreme fierceness of the fighting had shown even more clearly than the war of 1870 that the law in force was inadequate and that even the rules whose applicability was not in dispute were all too often flouted by the combatants.

At the Brussels session of 1879, Moynier, who was rapporteur of the fifth commission (Regulations concerning the laws and customs of war), tabled a report requested by the Institute on the status of the codes and regulations concerning the laws and customs of war issued by different governments. His conclusions were hardly optimistic. Apart from Lieber's "Instructions" (1863), the existing national laws were not of recent date, some being so old and obsolete, the rapporteur noted, that one would certainly not think of referring to them in wartime: "The Governments themselves are quite perplexed about what instructions they ought to be giving to their soldiers and this is undoubtedly part of the reason that most of them refrain from issuing instructions in this regard". 35

Therefore, Moynier submitted the following two proposals to his colleagues:

(1) He suggested that international conventions on the law of war should receive a new provision to the effect that the powers bound by them undertake to inflict severe penalties upon violators. The rapporteur also asked the Institute to study ways of influencing governments by

35 Fifth study commission — Regulations concerning the laws and customs of war, report by Gustave Moynier. Annuaire, Vol. 3-4, 1880, t. I, pp. 312-320. In a letter of 1 December 1880, the Vice-President of the Central Committee of the Serb Red Cross informed Gustave Moynier that the Serb Government, following appeals by the Institute of International Law, had drawn up and published a manual entitled Laws of war under international law, which was given to all officers. (Annuaire, 6th year, 1883, vol. 2, pp. 283-285). See also "La Guerre d'Orient et la Conférence de Bruxelles", by Prof. de Martens, Bulletin international, 14th year, 1883, pp. 36-34.
moral suasion — more compelling than obligations deriving from humanitarian commitments devoid of penalties.

(2) He suggested that the Institute work towards fulfilling the ideals enunciated at the meeting in the Hague, in particular the following: “It would be desirable for the laws of war to be regulated by treaty, declaration or some kind of agreement among civilized states”.

During the deliberations of the fourth plenary session, several speakers proposed instructing the fifth commission to draft a Practical Manual of the Laws of War. Professor Rolin-Jaquemyns made a positive proposal in that connection. To conclude, the meeting adopted Moynier’s first proposal, together with that of Bluntschli.

The members of the fifth commission made Moynier responsible for preparing a draft, to be based on his work on the law in force, the Brussels Declaration, the manuals recently adopted in France, Russia and in the Netherlands and on Lieber’s “Instructions”. On 15 February 1880, Moynier forwarded the first draft to his colleagues, and then revised it on the basis of their comments and observations.

The second draft completed, Moynier circulated it to all the members of the Institute. The commission then met at Heidelberg from 18 to 20 June. Having agreed on the final version of the Manual, the members in attendance decided to submit it for approval to the next session of the Institute.

The Institute met at the Oxford Divinity School on 6 September 1880. Moynier, as rapporteur of the fifth commission, submitted the draft Manual to the meeting. After recalling its history and describing its layout, he concluded:

“If implemented, our Manual would change existing custom in many ways leading to moral and legal progress, yet it is no more demanding than is public conscience. There is, therefore, a serious motive for us, as we decided in Brussels in 1879, to urge all civilized governments to use it and there is also reason to hope that it will meet with no opposition among them. The commission believes that like itself, the Institute will be persuaded of its value and that, having ratified the work submitted to it, will be good enough to afford our Manual the widest possible publicity. both in official circles and elsewhere”.

\[\text{\scriptsize 36 Present were: Bluntschli, Hall, Holland, Martens, Rivier, Schultze and Moynier.\} \]

\[\text{\scriptsize 37 Annuaire, vol. 5, 1882, p. 156.}\]
The meeting unanimously adopted the *Manual of Laws of Land Warfare* and decided to pay tribute to its drafter. At Martens’ suggestion, the Institute gave a vote of thanks to Gustave Moynier, “the skilled, enthusiastic and devoted rapporteur who is the principal or rather the true author of the Manual”.

The *Manual of Laws of Land Warfare*, also known as the *Oxford Manual*, was thus the culmination of the work done by the Institute to supplement or improve on the proposal of the Brussels Declaration in light of experience from the Russo-Turkish War. Establishing as the Manual’s general principles respect for defenceless civilians, the loyalties involved in combat, and abstention from inflicting unnecessary suffering, Moynier systematically set out the laws of war in 86 articles, consolidating in a single document the provisions of humanitarian law and of the law of war *per se*: protection of the wounded and the sick and of medical personnel, respect for the dead, treatment of spies, restraint in bombardment, rules concerning private property, prisoners of war, internees in neutral countries, penal sanctions and regulations for retaliation. In addition, Moynier prefaced the Manual’s main provisions with brief commentaries explaining their purpose and meaning.

“The Institute’s Manual, he wrote, was henceforth cited in laudatory terms by all those writing about the laws of land warfare. It was translated into several languages and often quoted by members of the Peace Conference in drafting the Hague Convention of 29 July 1899 to replace the draft Brussels Declaration. I naturally deeply regret not being able to participate in the assembly that took this decision and crowned the Institute’s efforts. The Swiss Federal Council had paid me the honour of delegating me to attend but, owing to my state of health, I was unable to cope with the rigours of the trip”. 38

The Institute of International Law had provided Moynier with the scholarly milieu that suited his character and temperament: an association of erudite jurists small in number but representing the enlightened branch of the legal profession, international in composition but at the same time supranational (in that its members were not actual representatives of the States of which they were citizens), a common perception of law and relations of friendship and trust among its members: “He threw himself wholeheartedly into it, unleashing his boundless enthusiasm and the sense of organization which he had so brilliantly demonstrated”. 39

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ing in its work he had himself improved his knowledge of international law, which he had first developed in the humanitarian domain:

“I personally very much appreciated the kind of verification practised by the Institute and submitted to it on several occasions, participating actively in the other endeavours of this association whenever I believed I could usefully do so, for I took a genuine interest in it. The desire to justify my membership had also led me to devote greater attention to international law than previously and I may say that it helped to make my work more rigorous and to make me more careful in expressing my thoughts”.40

In March 1890, Moynier had submitted a paper on the Institute of International Law to the Académie des sciences morales et politiques in Paris, of which he had been named correspondent on 12 June 1886, becoming a foreign associate on 15 March 1902. The following is an excerpt from the conclusion expressing his confidence in the Institute’s peace-promoting endeavours:

“Imbued with the profound truth that the ‘scientific spirit is the true architect of progress’41, it draws inspiration from the one to accompany the other, or rather, to advise unofficially those who hold the reins of power and to whom it must leave the responsibility for implementation. By striving to replace customary international law — under which we generally live — with written international law, or, if you prefer, ‘the transformation of a society of nations based on arbitrariness into a society based on law’42 and, in preparing the legal drafts of international covenants in that regard, it assists and stimulates the leaders of nations in accomplishing one of their more delicate tasks. If it continues along these lines, it will make a powerful contribution to installing the rule of law in the natural relations between States, and in so doing safeguard the inevitable contact among them from taking a disastrous turn.

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40 G. Moynier, Réminiscences, p. 32. Gustave Moynier continued to take active part in the work of the IIL. At its 1883 session in Munich he tabled a report on the Congo question at the sessions of Brussels in 1885, Heidelberg in 1887 and Lausanne in 1888; he submitted several papers on the subject of railways in wartime. He was appointed chairman of the Institute at its Geneva session in September 1892, honorary president on 26 March 1894 in Paris and honorary member on 18 August 1898 in The Hague.
41 Dameth, Le juste et l'utile, p. XIV. (Note by G.M.)
42 Rolin-Jacquemyns, Revue de droit international, V. 463. (Note by G. M.).
"In other words, its main focus is the pursuit of peace and, as such, responds to the aspirations of our time. Bluntschli has stated that ‘international law is one of the sturdiest guarantees of peaceful relations among peoples’. The Institute will therefore place the weight of its peace-seeking endeavours on the scales holding the destinies of nations, so as to counterbalance the opposite influence which takes the form of the terrifying advances in weaponry. The more solid and universally established its credibility, the more its voice will be heard and the less often will there be conflicts".

But the wars in the Balkan Peninsula were far from over. The provisions of the Treaty of Berlin had brought no more than temporary respite to the nations in conflict, without resolving the political problems dividing them. Insurrections and internal conflicts flared up periodically with the same violence as when members of the Institute of International Law had reminded the belligerents that while warfare led all too naturally to violation of the laws of humanity, the supreme goal of law, which is to maintain humane relations among human beings, should apply just as much to the conduct of war.*

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41 Communications et documents, p. 77 (Note by G.M.).
44 G. Moynier, Institute of International Law, Excerpt from the report of the Académie des sciences morales et politiques, Paris, Alphonse Picard, 1890. The text was read out to a gathering of the Academy by Léon Aucoc, jurist and former member of the State Council.