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**IN SEARCH OF A LEGAL CONSCIENCE:
JURIDICAL REFORMISM IN THE MID-19TH CENTURY
PEACE MOVEMENT**

1. INTRODUCTION

On 8 September 1873 the very first meeting of the *Institut de droit international* was held in the Belgian city of Ghent. During this meeting a Statute was adopted which proclaimed in its Article 1 that the primary objective of the new institution would be to become the “organ of the legal consciousness of the civilized world”¹. The men of the institute would henceforth devote themselves to formulate general principles of international law, the norms that derived from these principles, and to share this knowledge with the world. In short, international law was to become a *science*. It has since become a generally accepted notion that this singular event inaugurated the birth of international law as a modern and autonomous scientific discipline, after it was first interpreted as such by Martti Koskenniemi in the opening chapter of his famous *The Gentle Civilizer of Nations*².

¹ M. Koskenniemi, *The Gentle Civilizer of Nations*, Cambridge 2001, p. 41.

² *Ibidem*; see also B.A. Coates, *Legalist Empire*, Oxford 2016, p. 18; F. Dhondt, *Complete the Chain of Universal Law and Order*, Core Working Paper 2017, p. 28; M. Koskenniemi, V. Kari, *A More Elevated Patriotism. The Emergence of International and Comparative Law*, (in:) D. Dubber et al. (eds.), *Oxford Handbook of European Legal History*, Oxford 2018, p. 976; L. Mälksoo, *Sources of International Law in the nineteenth-century European Tradition*, (in:) S. Besson et al. (eds.), *Oxford Handbook on the Sources of International Law*, Oxford 2017, p. 147; For views that challenge or nuance this interpretation, see A. Lev, *The Transformation of International Law in the 19th Century*, (in:) A. Orakhelasvili (ed.), *Research Handbook on the Theory and History of International Law*, Cheltenham 2011, p. 111; A. Carty, *Did International Law Really become a Science at the End of the 19th Century?*, (in:) L. Nuzzo, M. Vec (eds.), *Constructing International Law. The Birth of a Discipline*, Frankfurt 2012, p. 230.

In this work he argued that a fundamental conceptual shift occurred in the last quarter of the 19th century in the academic and professional approach to international public law. The true extent of this shift can perhaps be most aptly demonstrated through the double meaning of the original French word *conscience*, which carries with it a certain ambivalence that is lost in translation, for it can also be translated, quite literally, as “conscience”. Thus, the so-called *conscience juridique du monde civilisé* combined, in the words of Koskenniemi, a “romantic sensibility with Enlightenment rationalism”³. The founders of the *Institut* could be considered, oxymoronically, as rational romantics, because they shared a reformist sensibility typical of the late 19th century upper middle-class while at the same time tried to realise their liberal ideals through the legitimising language of legal norms and institutions⁴. These bourgeois lawyers were internationalists who aspired to change international law in favour of such liberal reformist causes as international integration, free trade, public education, penal reform and, ultimately, peace amongst nations⁵.

This fundamental alteration of international legal thought knew a long pre-history of legal culture which existed in the anterior reformist movements. It did not occur almost overnight as might be inferred from the above. According to the prevailing view, a professional and reformist international law could not have developed earlier because the liberalist forces of the first half of the 19th century were radically activist and deeply distrusting of governments and the existing law of nations; Koskenniemi specifically targeted the peace movement of 1840s and 1850s⁶. However, modes of legal argumentation were routinely employed in the transnational peace movement of the middle of the 19th century. The so-called “Friends of Peace” held five congresses between 1843 and 1851 in which peace advocates from both the Anglo-Saxon world as well as Continental Europe assembled to discuss how peace amongst civilised states might best be achieved⁷. The resolutions they drafted and the arguments they voiced were frequently of a legal nature; debates focused on international adjudication, a congress of nations, a world court, and the drafting of an international code of public law⁸. Though they indeed distrusted the political restoration regimes installed in Europe after

³ M. Koskenniemi, *The Gentle Civilizer...*, p 47.

⁴ *Ibidem*, pp. 4-6.

⁵ *Ibidem*, p. 58.

⁶ M. Koskenniemi, *The Gentle Civilizer...*, p. 35; M. Koskenniemi, *Doctrines: Between Apology and Utopia*, (in:) J.D. Armstrong (ed.), *Routledge Handbook of International Law*, New York 2008, p. 148.

⁷ S. Cooper, *Patriotic Pacifism. Waging War on War in Europe, 1815-1874*, New York 1991, p. 22.

⁸ W.H. van der Linden, *The International Peace Movement 1815-1874*, Amsterdam 1987, pp. 365-375.

the Congress of Vienna, they believed in their gradual reform through a reinvigorated international law enforced by the power of public opinion.

This article aims to nuance and supplement Koskeniemi's thesis by highlighting some aspects indicative of a transnational legal culture prevalent in the peace movement of the middle of the 19th century. I will first elaborate upon the shift from the old law of nations, which condoned war, to the present-day *ius contra bellum* (I). Then I will turn my attention to the pacifist internationalist movement of the first half of the 19th century (II). Two brief case studies will illustrate the point: the life and career of the Belgian magistrate Auguste Visschers shall exemplify a typical network of the mid-century liberal reform movement (III) and an analysis of the Brussels conference of 1848 shall provide an overview of the legal arguments most often invoked by the peace movement (IV).

2. FROM THE *ULTIMA RATIO REGUM* TO *IUS CONTRA BELLUM*

What had been called international law up until the late 19th century could not truly be called law in the modern and progressive sense as understood by the professional sensibility developed around 1873. To be sure, a vast and self-referencing body of authors, tracts, treaties, and customs had been painstakingly compiled throughout the centuries. Textbooks had been printed for the benefit of princes, diplomats and governments which included such illustrious names as Francisco de Vitoria, Hugo Grotius, Cornelius Bynkershoek, or Emer de Vattel who had designed all-encompassing natural law systems that dealt with such topics as sovereignty, maritime law, diplomatic privilege or the laws of war and peace.

Yet none of this accounted for a veritable *profession*. None of the famed and much-cited scholars had ever considered themselves international lawyers *sensu stricto*. Vitoria was a Dominican monk. Vattel had enjoyed a fruitful career as a diplomat. Even Grotius had written his classic *Mare Liberum* as a Dutch jurist trying to advance the commercial causes of the United Provinces and its East India Company (*Vereenigde Oostindische Compagnie*). In fact, the term "international public law" itself was something of a novelty. It was coined by Jeremy Bentham in the late 18th century; up until then, and later also, the phenomenon went under a myriad of names: *law of nations*, *droit des gens*, *droit public de l'Europe* and *Völkerrecht* amongst others⁹.

⁹ S. Neff, *Justice among Nations*, Cambridge 2014, p. 265; A. Nussbaum, *A concise history of the law of nations*, New York 1947, p. 122.

Simultaneously, international law had in the past commonly been perceived as pertaining more to the field of philosophy than to that of jurisprudence. This rang especially true for the 17th and 18th centuries, before the positivist era of the 19th century¹⁰. Here, it frequently went under the guise of *ius naturae et gentium* and formed part of the natural law tradition purportedly dating back to Roman times. If the subject was taught at all at university, it belonged to chairs in the philosophy department. Not until late 19th century did international law gain ground in the law curricula, though it continued to retain an uncomfortably ambiguous scent to it in the eyes of the positivist lawyer. As late as 1894, a student at Princeton duly noted his professor's words in class that international law was "free from technicalities and [had a] dash of philosophy in it" – this professor was, incidentally, future president Woodrow Wilson¹¹. That such prejudices persisted for so long was relatively understandable, given the abstract and arbitrary shapes natural law often assumed. One of the main exponents of this tradition, for instance, was the German Enlightenment professor and philosopher Christian Wolff (1679-1754), who developed an entirely closed system of laws based on what he considered mathematical principles¹². This in spite of him never having received any formal training in law or having gained any first-hand experience in affairs of state. To his credit, he conceded himself that his work consisted almost entirely of purely theoretical speculation and that it bore little resemblance to actual contemporary state practice. Wolff's rigorous academic endeavour, albeit an extreme example, is however emblematic of the mistake philosophers and lawyers working in the natural law tradition habitually made, in that they too easily fell into the seductive trap of conflating ethics and law¹³. Such conflation was utter taboo for the archetypically positivist legal scholar of the late 19th century, to whom verifiable state practice mattered above all else.

Yet positivism *sensu stricto* was considered equally unfit to render international law in conformity with the ever-evolving standards of civilization to which reformists laid claim¹⁴. Pure positivism failed, because it relied too exclusively on state practice in general, and, more specifically, on the very real and ostensibly dirty world of diplomatic practice. International law had always served a concrete practical purpose. As a field of study it had for centuries functioned primarily as a necessary corollary to other types of political activity. It was the domain not

¹⁰ The dominant view of the 19th century as a purely positivist age is a not entirely correct one; see for instance M. Vec, *The Myth of Positivism*, (in:) S. Besson *et al.* (eds.), *Oxford Handbook on the Sources...*, pp. 136-137.

¹¹ B. A. Coates, *Legalist Empire...*, pp. 19, 61; M. Koskenniemi, *The Gentle Civilizer...*, p. 31.

¹² C. Wolff, *The Law of Nations Treated According to the Scientific Method* (orig. *Jus Gentium Methodo Scientifica Pertractatum*), J. H. Drake (transl.), Oxford 1934.

¹³ L. Frey, M. Frey, *The History of Diplomatic Immunity*, Columbus 1999, p. 265.

¹⁴ M. Koskenniemi, *The Gentle Civilizer...*, p. 8.

of the democratic, liberal-minded and educated middle-class citizen, but of the aristocratic ambassador, the admiral, the general and the sovereign. This was not yet the liberal commercial world of which the likes of Richard Cobden and Victor Hugo dreamed, but that of the reactionism of Metternich, the Holy Alliance of tsar Alexander I and the aftermath of the Congress of Vienna¹⁵. Widely read authors such as Georg Friedrich von Martens (1756-1821) and Johann Ludwig Klüber (1762-1837) deliberately catered to this élite audience in the early 19th century¹⁶. Their dedicated positivist project emphasised sovereignty and the rights of the independent state, largely abandoned the moral pretences of the naturalist tradition, and fully ignored internal constitutional dynamics within states¹⁷. Consequently, lines were effectively blurred and it was often difficult to demarcate the borders between the study of diplomacy, of public law, and of international public law proper¹⁸.

It thus seemed that the law of nations of Europe served merely to continue and solidify the post-Napoleonic settlement of the Restoration and its accompanying Old Regime mentalities. This was expressed most succinctly in the right to make war, which contemporary doctrine regarded as the ultimate hall-mark of sovereignty, as it had done in the past. Standard 19th-century textbooks on international law continued to rely on precedents of the 17th and 18th centuries. Klüber's opening paragraphs on the *ius ad bellum* in his *Droit des gens moderne de l'Europe* in an exemplary manner demonstrated this when he remarked that "the right to make war in the name of the state [was] a *sovereign right of majesty*"¹⁹. He emphasised the modern principle of *Kriegsfreiheit*; war was a means of legal appeal whose origin was a factual event and the alleged "justice" of which was largely reduced to a juridically irrelevant matter of personal ethics²⁰. No impartial judge existed above states who could decide upon the justness of the claims of the warring parties²¹. Consequently, war declarations were by no means incompatible with international law – in fact, no formal declaration of war was even required at all according to Klüber²². If all necessary conditions were fulfilled and, importantly, all less-drastic resorts of obtaining satisfaction were exhausted, an injured sovereign was fully entitled, at least in a strictly legal sense, to raise his battle-standard and send his armies marching off. War remained the *ultima ratio*

¹⁵ J. P. Bois, *La Paix. Histoire Politique et Militaire*, Paris 2012, pp. 492-493.

¹⁶ M. Koskenniemi, *The Gentle Civilizer...*, pp. 20-22.

¹⁷ *Ibidem*.

¹⁸ B.A. Coates, *Legalist Empire...*, p. 18.

¹⁹ J. L. Klüber, *Droit des Gens moderne de l'Europe*, Stuttgart 1819, p. 375.

²⁰ *Ibidem*, p. 376; W.H. Grewe, *The Epochs of International Law*, New York 2000, pp. 530-532.

²¹ *Ibidem*.

²² *Ibidem*, p. 378.

regum – the final argument of kings – as Louis XIV had somewhat grandiosely cast on his cannons. Peace was consequently both in effect as well as in theory but a temporary state of affairs. All peace is always a construction, representing a consensus on the international status quo and reflecting the power architecture of the world, but international law doctrine such as Klüber’s reinforced balance-of-power reasoning which endangered more lasting forms of peace and which seemed progressively out of place in the minds of the emerging liberal bourgeois classes of the 19th century²³.

The men of the *Institut de droit international* in 1873 belonged to these classes. The founders consisted of an exclusive circle of jurists and scholars specialising in international law and comparative legislative law. Two of the leading figures who took the initiative were the Swiss law professor Gustave Moynier (1826-1910) and the Belgian law professor and diplomat Gustave Rolin-Jaequemyns (1835-1902); the two had met two decades earlier in 1852 at an international charity conference²⁴. Between November 1872 and March 1873 the pair quickly set up to contact other leading experts in the field; amongst these were Francis Lieber (1800-1872), famous for his drafting of the Union Army “Lieber Code” during the American Civil War, Johan Caspar Bluntschli (1808-1881), another Swiss jurist who had published several important textbooks, Carlos Calvo (1824-1906), one of the most eminent South-American legal scholars, and about a dozen and a half others²⁵. In all, twenty-two scholars were invited²⁶. This was clearly a very small circle. They were not at all interested in becoming a wide movement aimed at directly influencing political decision-making, though of course they hoped that their scientific restatements would eventually be studied and copied on the international legislative level²⁷. What they did deem highly necessary at this stage was “an intimate reunion of restrained men already known in the science of international law by their works and acts and belonging as much as possible to a diverse group of countries”²⁸. Together these members of the *Institut* would become the “conscience” of the aforementioned Article 1 of the Statute. What they meant by this was what Rolin-Jaequemyns had already written a few years earlier in the “Revue de Droit international”: “the collective opinion of enlightened men, (...)”

²³ B. Arcidiacono, *Cinq Types de Paix. Une Histoire des Plans de Pacification perpétuelle (XVII^e-XX^e Siècles)*, Paris 2011, pp. XVI-XVIII.

²⁴ A. Rolin-Jaequemyns, *Les Origines de L’Institut de Droit International, 1873-1923: Souvenirs d’un Témoin*, Bruxelles 1923, pp. 5-8; M. Koskenniemi, *The Gentle Civilizer...*, p. 39.

²⁵ *Ibidem*, p. 11.

²⁶ W.H. van der Linden, *The International Peace Movement...*, p. 920.

²⁷ M. Koskenniemi, *The Gentle Civilizer...*, p. 57.

²⁸ A. Rolin-Jaequemyns, *Les Origines...*, p. 15.

[a conscience that] is eminently progressive”²⁹. It was public opinion, not of any one person, but that of the collective wisdom of the specialised jurist who was guided by his own introspection³⁰. This was decidedly not a phrase a convinced and absolute positivist would use. It was an utterance belonging to a pragmatic idealist, to resort to another oxymoron.

The establishment of the *Institut* and its distinct legal conscience was an important legal milestone on the long road to the rise of the *ius contra bellum* which holds sway today. At present, international public law in principle only allows for defensive war³¹. States can no longer rely on force to press forward any claims or grievances they might have as they were able to in Klüber’s days. This pillar of the current legal order is enshrined in the Charter of the United Nations³². This charter itself only reaffirms, with respect to the use of force, clauses previously written down in the Charter of the League of Nations and the Kellogg-Briand Pact of 1928, both of which prohibited non-defensive wars³³. These treaties in turn were spiritual successors to a legal process that was set in motion at the first Hague Peace Conferences of 1899 and 1907 which regulated selected aspects of international humanitarian law. Finally, the Hague conferences have arguably taken their cue from the Geneva Convention of 1864 which witnessed the signing of the first treaty codifying humanitarian law and which also established the International Committee of the Red Cross³⁴.

Political scientist Martin Ceadel’s conceptual framework best illustrated this fundamental “shift of norms” as he named it³⁵. Ceadel cited the historian Hinsley in calling it “a greater displacement of assumptions about relations between states than any that has taken place in history”, “a shift so fundamental it must have been a long time in the making”³⁶. What both meant was the gradual revival of the distinction between defensive and offensive war. To use specific international relations terminology, “bellicism” started to be replaced by other attitudes, such as the awkwardly termed “pacific-ism”³⁷. Bellicism referred to the fatalistic Old

²⁹ G. Rolin-Jaequemyns, *De l’Étude de la Législation Comparée et de Droit International*, “Revue de Droit International” 1869, issue 1, p. 228.

³⁰ D. Kennedy, *International Law and the Nineteenth Century: History of an Illusion*, “Nordic Journal of International Law” 1996, issue 65, p. 390.

³¹ C. Gray, *The Use of Force in International Law*, Oxford 2008, p. 30.

³² Article 2(3), Charter of the United Nations, 1 UNTS XVI: “All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered”.

³³ Article 1, General Treaty for Renunciation of War as an Instrument of National Policy, 94 LNTS 57; W. H. Grewe, *The Epochs...*, p. 621.

³⁴ *Ibidem*, p. 513.

³⁵ M. Ceadel, *Thinking about Peace and War*, Oxford 1989, p. 10.

³⁶ *Ibidem*.

³⁷ *Ibidem*, pp. 11-12.

Regime modes of reasoning which conditionally permitted wars of aggression, as described above, whereas the latter term encompassed the more optimistic idea that war was an evil which, just like slavery, would eventually be abolished by legal and societal reforms and only allowed for defensive war to protect advances made in the domestic sphere; as opposed to the unconditional pacifist stances³⁸. It is hardly coincidental that Ceadel also, and independently from Koskenniemi, singled out the 1870s as a turning point for this shift; the progressive character of Rolin's enlightened opinion gave eloquent expression to the same reformist spirit that had animated Henri Dunant and Gustave Moynier – the same of the *Institut* – when they founded the Red Cross a couple of years earlier³⁹.

The founders of the *Institut* regarded their strict legal approach as novel, even if fully aware that they were not the first to pursue the objective of universal peace. When describing the contemporary tendency for scientific and philanthropic societies to organise themselves internationally, Albéric Rolin-Jaequemyns – Gustave's brother and also a law professor involved in the *Institut* – made explicit reference to the peace movement⁴⁰. He dismissed them as frivolous or even downright dangerous: "Have we not seen in Lausanne reunions, under the name of *Congrès de la Paix et de la Liberté*, whose title itself seems to evoke derision in those composed enough to read their debate reports?"⁴¹. Albéric Rolin disapproved of the "mediocre pretentions" and the passionate appeals to "theories that were more elaborate than they were solid" which together formed part of an "underdefined programme"⁴². Unimpressed as he was by contemporary peace activism, he did grant the "brilliant and generous" conferences of the *Congrès de Paix*, held between 1843 and 1851 at several European locations, a more appreciative treatment, even if they were "a bit sterile"⁴³. Yet even they did not venture much further than superficial "maledictions against war and wishes expressed in general terms", according to the scholarly minded Rolin⁴⁴. "Fanciful imagination and illusions" were preferred over the serious study of international law⁴⁵. Was this truly the case?

³⁸ This has become so engrained in the modern mindset it has affected language itself: governments today no longer have a ministry of war. They have a ministry of "defence"; *Ibidem*, pp. 101-134.

³⁹ *Ibidem*, p. 11.

⁴⁰ A. Rolin-Jaequemyns, *Les Origines...*, pp. 13-14.

⁴¹ *Ibidem*, p. 14.

⁴² *Ibidem*.

⁴³ *Ibidem*.

⁴⁴ *Ibidem*, p. 15.

⁴⁵ *Ibidem*, p. 14.

3. THE PEACE MOVEMENT OF THE EARLY 19TH CENTURY

A practical and progressive legal culture had in fact already emerged several decades prior to the establishment of the *Institut* in the gatherings of philanthropists, intellectuals, politicians, journalists, Quakers, abolitionists, free-traders, and all-round liberals who together formed the core of the *Amis de la Paix universelle*. Though now largely forgotten in the popular imagination, due to their inability to prevent the massive explosion of violence during the Great War at the conclusion of the “long 19th century”, the “friends of peace” were the first to substantively construct an international agenda for peace⁴⁶. Mercilessly ridiculed by a substantial part of the press at the time – “»The Times« especially has honoured it with more than one of those sneering tirades, which is almost invariably its first form of greeting to any new enterprise of social right, justice or humanity”, the Brussels conference report noted dryly – they nonetheless left an important legacy⁴⁷. Virtually every resolution which these apostles of peace introduced as a resolution during one of their meetings has either become an important achievement of the 20th century or remains a desideratum of the peace cause today⁴⁸. The International Criminal Court and the International Court of Justice at the Hague both share aspects of a “World Court”, though neither possesses a binding global jurisdiction. Similarly, the European Union bears traits of the much-discussed “Congress of Nations”, even if it is only a regional organisation. The International Law Commission presently pursues the old objective of comprehensively codifying international law.

The rise and fall of the peace movement of the first half of the 19th century has been well-documented⁴⁹. The original societies were constituted in the wake of the Napoleonic Wars⁵⁰. On 14 June 1816 the Society for the Promotion of Permanent and Universal Peace came into being in London, henceforward simply referred to

⁴⁶ V. Lambert, *The Dynamics of Transnational Activism: The International Peace Congresses, 1843-51*, “The International History Review” 2016, issue 38, p. 126.

⁴⁷ *The Peace Conference at Brussels*, London 1948, p. 46.

⁴⁸ V. Lambert, *The Dynamics of Transnational Activism...*, p. 126.

⁴⁹ J. P. Bois, *La Paix. Histoire Politique et Militaire...*, pp. 503-518; S. Cooper, *Patriotic Pacifism. Waging War on War...*, pp. 1-50; W. H. van der Linden, *The International Peace Movement...*, pp. 1-605; P. Brock, *Freedom from War. Non-sectarian Pacifism 1814-1914*, Toronto 1991, pp. 1-135; P. Brock, *Pacifism in Europe to 1914*, Princeton 2015, pp. 378-400; D. Cortright, *Peace. A History of Movement and Ideas*, Cambridge 2008, pp. 25-44; F. H. Hinsley, *Power and Pursuit of Peace. Theory and Practice in the History of Relations between States*, Cambridge 1963, pp. 92-110.

⁵⁰ J. P. Bois, *La Paix. Histoire Politique et Militaire...*, p. 505.

as the London Peace Society⁵¹. This was the principal peace organisation within the United Kingdom for the first half-century, with several affiliate organisations and subsidiaries in other cities such as Birmingham or Manchester⁵². Around the same time, and independently from both each other as well as the London Society, Peace Societies were born in Boston and New York⁵³. In all some fifty local American societies came into existence during these early years until they were merged in 1828 by William Ladd into the larger American Peace Society⁵⁴. Peace activism in continental Europe lagged behind. The French *Société de la morale chrétienne* launched by the Duc de la Rochefoucauld-Liancourt included peace only as one minor aspect of Christian charity; its main activities were directed against the slave trade⁵⁵. The first continental society devoted exclusively to the cause of peace began its activities in 1830 in Switzerland. The major driving force behind this organisation was another aristocrat, the charismatic Comte Jean-Jacques de Sellon, and when he died nine years later the group quietly dispersed again⁵⁶. The earliest peace activism was thus primarily an Anglo-Saxon affair⁵⁷. Predominantly belonging to pacifist protestant denominations such as the Society of Friends of Jesus – popularly known as the Quakers – they set about their task of influencing public opinion with the religious zeal of a genuine crusader⁵⁸. English agents travelled to the Netherlands, Belgium, the German states and France to hold lectures and meetings⁵⁹. France in particular was targeted as it had a reputation of the most warlike state of Europe, the battlefields of the last Great War that ended near Waterloo still looming large in collective memory – particularly among the British. In 1841 one such agent, Stephen Rigaud, descendant of exiled French Huguenots, managed to install a peace committee at the *Société morale* in Paris under difficult circumstances⁶⁰.

⁵¹ P. Brock, *Freedom from War...*, p. 22; W. H. van der Linden, *The International Peace Movement...*, p. 3.

⁵² *Ibidem*.

⁵³ J. P. Bois, *La Paix. Histoire Politique et Militaire...*, p. 505.

⁵⁴ W. H. van der Linden, *The International Peace Movement...*, p. 37.

⁵⁵ L.C. Jennings, *French Anti-Slavery under the Restoration: The Société de la morale chrétienne*, “*Revue française d’Histoire d’Outre-Mer*” 1994, issue 304, p. 322.

⁵⁶ Not before Sellon had an obelisk built on his estate at the shore of Lake Geneva to commemorate the event for posterity; S. Cooper, *Patriotic Pacifism. Waging War on War...*, p. 16.

⁵⁷ One explanation holds that peace activism was particularly strong in these countries because they already possessed a well-established constitutional tradition, a protestant culture of religious dissent, good degrees of material prosperity and were isolationist or assured of world leadership; F. H. Hinsley, *Power and Pursuit of Peace...*, p. 93.

⁵⁸ S. Cooper, *Patriotic Pacifism. Waging War on War...*, p. 15.

⁵⁹ *Ibidem*.

⁶⁰ His visit coincided with the return of Napoleon’s remains from St. Helena and patriotic militaristic fervour swept the capital; *Herald of Peace*, April 1841, pp. 281-284.

Despite these and other efforts substantial peace societies failed to take firm root on the Continent⁶¹. They remained small and left little trace of their brief existence⁶². Indifference was their worst foe, but in Prussia, perhaps unsurprisingly, peace activists were actively stalked by the police; Germany remained a bastion of militarism where the organised peace movement remained practically nonexistent⁶³. This first generation of peace activism would eventually decline in the 1850s and 1860s due to profound differences between the various strands of peace activism, the defeat of the revolutionary wave of 1848 and the renewal of large-scale warfare involving major Western states, such as the Crimean war or the American Civil War⁶⁴.

But before its fall the generation of the *Amis de la Paix* had reached its absolute apogee with the organisation of five transnational peace congresses held between 1843 and 1851 in London, Brussels, Paris, Frankfurt, and Edinburgh⁶⁵. They were inspired by the great success the 1840 World Anti-Slavery Convention in London had achieved in influencing public opinion and decided to copy the congress model⁶⁶. These were congresses organised by civil society, but which took their symbolic significance from the world of politics and of legal procedure, imitating the rituals of the diplomatic gatherings of the Vienna system or the Holy Alliance⁶⁷. The following two case studies will try to highlight the reformist legalistic spirit present in these conferences and in the general movement. Auguste Visschers was a Belgian lawyer and civil servant present at all but one of the conferences. The Brussels Conference of 1848 meanwhile broached subjects which would return in all subsequent peace meetings.

4. THE MISSING LINK OF AUGUSTE VISSCHERS

The life and career of Auguste Visschers (1804-1874) provide a prime example of the juridical visions several mid-19th century peace apostles held. Born in

⁶¹ S. Cooper, *Patriotic Pacifism. Waging War on War...*, p. 22.

⁶² For the Netherlands, see W. H. van der Linden, *The International Peace Movement...*, p. 64; for Belgium, see N. Lubelski-Bernard, *Les Mouvements et les Idéologies pacifistes en Belgique 1830-1914*, Liège 1977, p. 324.

⁶³ S. Rigaud wrote of the German leg of his trip: "I never met with a more martial spirit". Another British activist complained in 1848 that Prussian children played with real, albeit unloaded, guns; W. H. van der Linden, *The International Peace Movement...*, p. 247-248.

⁶⁴ S. Cooper, *Patriotic Pacifism. Waging War on War...*, p. 30.

⁶⁵ *Ibidem*, p. 22.

⁶⁶ *Ibidem*.

⁶⁷ T. Hippler, *From Nationalist Peace to Democratic War. The Peace Congresses in Paris (1849) and Geneva (1867)*, (in:) T. Hippler, M. Vec (eds.), *Paradoxes of Peace in Nineteenth Century Europe*, Oxford 2015, pp. 175-176.

Maastricht under the French regime, he studied law at the university of Liège and upon his graduation subsequently registered at the Liège bar as an attorney in 1821⁶⁸. At the law faculty, he had earlier gained the acquaintance of Edouard Ducpétiaux, a journalist and penal reformer with whom Visschers would later in life collaborate to reform primary education in Belgium and to abolish the death penalty⁶⁹. Visschers did not remain at the bar very long, as he soon undertook a two-year long *grand tour* across the European continent to study educational methods, charity organisations, prison systems, and savings institutions⁷⁰.

This brought him into first contact with the broad reformist movement in Western Europe of which the peace cause formed part. In Paris he visited the *Société de la morale chrétienne* of the aging Rochefoucauld-Liancourt. In Switzerland he met the extravagant Comte de Sellon and his Genevan peace society. Finally in the United Kingdom Visschers discovered the existence of peace societies in cities such as Edinburgh, Glasgow and Manchester and started a correspondence with members of the London Peace Society⁷¹. The people active in these organisations did not limit themselves merely to the peace cause; they fought for the abolition of slavery, of the pervasive practice of duelling, of the death penalty, or for the improvement of the sanitation and education of the lower classes⁷². All of these campaigns appealed strongly to Visschers. He would ultimately become best known for his establishment of the first pension funds for miners and railroad workers and for several polemic publications against the death penalty and duelling⁷³. As a conscientious and high-ranking civil servant in his professional career, he would consecutively act as a substitute judge, a director at the justice department, a committee member overseeing a proposed reform of the penal code, and a mining supervisor⁷⁴.

It came as no surprise that Visschers, known for his philanthropic sentiment, was the man suggested by liberal prime minister Charles Rogier to assist in the organisation of the peace conference in Brussels in 1848⁷⁵. He would end up serving as its president during the proceedings and would later attend all subsequent

⁶⁸ N. Lubelski-Bernard, "Auguste Visschers", *Biographie Nationale de Belgique*, Vol. XLIV, Bruxelles 1985, p. 746.

⁶⁹ R. Aubert, "Edouard Ducpétiaux", *Biographie Nationale de Belgique*, Vol. XXXII, Bruxelles 1964, p. 155.

⁷⁰ *Notice sur la Vie et les Travaux de Guillaume-Joseph-Auguste Visschers*, Bruxelles 1874, p. 2.

⁷¹ N. Lubelski-Bernard, "Auguste Visschers", *Biographie Nationale...*, p. 747.

⁷² *Ibidem*.

⁷³ *Ibidem*, pp. 749, 756; F. Dhondt, *Complete the Chain of Universal Law and Order...*, p. 7.

⁷⁴ *Ibidem*, pp. 747, 756.

⁷⁵ *Congrès des Amis de la Paix universelle. Réuni à Bruxelles en 1848*, Paris 1849, p. IV.

conferences at Paris (1849), Frankfurt (1850), and London and Edinburgh (1851) in the capacity of vice-president for Belgium⁷⁶.

The remainder of his life Visschers would continue down the path he started when he was young and his activism would spill over into the next generation of the peace movement. He was made an honorary member of the *Ligue universelle du Bien Public* founded in Antwerp in 1858 by the Frenchman Edouard Potonié⁷⁷. In 1867 he became vice-president of the moderate *Ligue internationale et permanente de la Paix* created in Paris by Frédéric Passy, who would later win the very first Nobel Peace Prize along with Henri Dunant⁷⁸. Visschers knew the latter as well; in 1864 he had signed as the Belgian plenipotentiary the first Geneva Convention which established the International Committee of the Red Cross⁷⁹.

The *Ligue internationale* of Passy believed that only a legalistic approach would have any chance of convincing sceptics that these were not utopian ideas. Potonié meanwhile advocated that “peace could only spring from justice”, so his programme included proposals for broad social reforms⁸⁰. There is much reason to believe Visschers was inclined to lean to Passy’s position. Visschers was always most intensely involved with mainstream pacifist societies that refrained from calling for sweeping social advances⁸¹. Passy and the London Peace Society explicitly viewed themselves as “respectable”; they certainly did not call for violent revolution and generally eschewed current political discussions⁸².

Towards the end of his life he became involved in another respectable project: the plan of the American Peace Society’s secretary James B. Miles to establish an Association for the Reform and Codification of the Law Nations⁸³. This organisation largely shared the same legalistic object of codifying international law as the *Institut*, and its preparatory 1873 conference included some of the founders such as Rolin and Bluntschli. This group was however not limited solely to jurists;

⁷⁶ N. Lubelski-Bernard, “Auguste Visschers”, *Biographie nationale...*, p. 767.

⁷⁷ *Ibidem*.

⁷⁸ *Ibidem*; This *Ligue* is not to be confused with the more radical *Ligue internationale de la Paix et de la Liberté* whose congress at Lausanne Albéric Rolin had criticized above, presumably because, amongst other things, it featured controversial figures like Bakunin and Garibaldi.

⁷⁹ *Notice sur la Vie...*, p. 8

⁸⁰ S. Cooper, *Patriotic Pacifism. Waging War on War...*, p. 34.

⁸¹ This was the main reason socialists did not ally themselves with these societies; a resolution of the class struggle was the necessary condition which would automatically bring universal peace; *Ibidem*, p. 35.

⁸² *Ibidem*; A typical Victorian quote: “The attendance was very numerous and of the highest respectability”, *Twenty-Fifth Annual Report of the Committee of the Society for the Promotion of Permanent and Universal Peace*, London 1841, p. 10.

⁸³ N. Lubelski-Bernard, “Auguste Visschers”, *Biographie nationale...*, p. 768.

present also were peace apostles such as Passy and Henry Richard⁸⁴. Visschers did not live to see the fruit of this project as he died several months later in 1874⁸⁵.

In a sense Auguste Visschers represented a missing link between the mid-19th century peace movement and the *Institut* of 1873. The notion that the peace movement in the 1840s to 1860s was radically activist and politically suspect ignored the diversity within this movement. Albéric Rolin's invective was pointed to a different organisation than Passy's. The peace activism of Visschers and Passy was moderate and pragmatic and focused intensely on the gradual reform of international public law. This was not the career of a utopian dreamer, but of a cool-headed lawyer and bureaucrat deeply enmeshed in the offices of state who desired small and incremental legal change in society. To him the *Institut* would have constituted but a more specialised continuation of what he had been doing all his life.

5. THE BRUSSELS PEACE CONFERENCE OF 1848

In September 1848 Auguste Visschers presided over the second conference of the *Amis de la Paix universelle* with the assistance of four national secretaries: Elihu Burritt (United States), William Ewart (Britain), Francisque Bouvet (France), and Joachim Willem Suringar (Netherlands)⁸⁶. The event was formally opened on 20 September at the stately *Salle de la Société de la Grande Harmonie*, "decorated for the occasion with great splendour and taste"⁸⁷. Behind Visscher's desk stood an allegorical statue representing the arts, the sciences, agriculture and commerce⁸⁸. Flowery garlands and the national flags of Belgium, Britain, France, the United States, Germany and Italy were draped across the walls. Among these two plain white flags stood out: on these was inscribed in gold letters "The London Peace Society" and "The American Peace Societies"⁸⁹. These banners represented the transnational character of the conference, although it was really mostly an Anglo-Belgian affair: 158 British and Americans (only two Americans were delegates who actually spoke) and some 170 Belgians (again only the speakers are known) attended it; other nationalities remained absent or very small in number⁹⁰.

⁸⁴ W. H. van der Linden, *The International Peace Movement...*, p. 924.

⁸⁵ *Notice sur la Vie...*, p. 11.

⁸⁶ *The Peace Conference at Brussels...*, p. 4.

⁸⁷ *L'Indépendance Belge*, 21 September 1848, p. 7.

⁸⁸ *Congrès des Amis de la Paix universelle...*, p. 1.

⁸⁹ *The Peace Conference at Brussels...*, p. 3.

⁹⁰ The sole Dutchman, Suringar, was asked if he wanted to represent Germany as well, which he politely declined since Holland was a "separate kingdom". The only Spaniard, Ramon de la Sagra, refused to be secretary for Spain. Francisque Bouvet was the most prominent French-

The various delegations included catholic priests and protestant ministers, journalists and economists, and, most importantly, a striking number of lawyers and jurists.

The resolutions proposed, discussed and accepted at the conference were fourfold and would return in later conferences: the inhumanity of war, arbitration, a congress of nations and the codification of international law, and general disarmament. For the sake of brevity I shall only highlight some of the discussion involving the middle two resolutions.

Arbitration stood at the forefront of the entire mainstream peace movement of the 19th century and would achieve its greatest success at the tail-end of the century with the establishment of the Permanent Court of Arbitration at the Hague Peace Conference of 1899⁹¹. What was proposed in 1848 was the “utility and necessity of the adoption, by all Governments, of an Arbitration clause in all international treaties, by which question of dispute which may arise, and which might issue in an appeal to the sword, shall be settled by mediation”⁹². The discussion commenced with the reading aloud of an essay by William Stokes (1802-1882) of the London Peace Society. Though written by a Baptist minister, Christian charity was only mentioned in the most general of terms whilst the main thrust of his argument was overtly juridical in nature. According to Stokes a Congress of Nations would only come about as “the result of the frequent application of the principle of arbitration”⁹³. This new practice would convince governments that “a better law” was possible, whose influence would be “strengthened in proportion to the number of its decisions in national disputes”⁹⁴. This would be the best preliminary to “habituating governments and communities on the principles on which the Congress will be founded”⁹⁵.

Another letter to be read was one by Richard Cobden (1804-1865), the hero of the free trade movement who was largely responsible for the repeal of the Corn Laws some years earlier and who was absent⁹⁶. Cobden dissented from the text of the proposed resolution; he considered it more prudent that separate treaties were entered “*with the express purpose* of binding the contracting nations to submit their future quarrels to the decision of arbitrators”⁹⁷. His suggestion was not

man, of which there were few to begin with. W. H. van der Linden, *The International Peace Movement...*, p. 327.

⁹¹ Even if this “court” was at first little more than a list of arbitrators to be chosen by the parties; W. G. Grewe, *The Epochs...*, p. 521.

⁹² *The Peace Conference at Brussels...*, pp. 15-16.

⁹³ *Ibidem*, p. 16.

⁹⁴ *Ibidem*.

⁹⁵ *Ibidem*, p. 19.

⁹⁶ *Ibidem*.

⁹⁷ *Ibidem*.

reflected in the eventual resolution that was voted, which stuck to clauses in individual treaties⁹⁸. Armand-Adolphe Roussel (1809-1875), a Belgian law professor at the Free University of Brussels, meanwhile emphasised that arbitration was “the law of civilised humanity”, and drew comparisons with the good Abbé de Saint-Pierre’s project for perpetual peace⁹⁹. The most critical voice of all, however, was that of Ramon de la Sagra (1798-1871) who denied the enforceability of arbitral judgments without an ultimate possible resort to armed force¹⁰⁰.

The second resolution detailed a proposed Congress of Nations, “the object of which shall be to form an international code”¹⁰¹. An introductory treatise was read, this one by Elihu Burritt (1810-1879), the American learned blacksmith-turned-peace apostle who was instrumental in organizing the Brussels conference¹⁰². He strongly stressed the imperfection of the contemporary law of nations: “We have, in truth, no such law; and what passes under the name is of recent origin, and insufficient authority”¹⁰³. It was “not recognized at all in ancient Rome or Greece”, “little known in Christendom till after the Reformation”, and “owed more to Grotius than to all other writers put together”, who himself found it “a chaos of clashing precedents and principles”. The law of nations, as it existed in 1848, according to Burritt was “the work, not of legislators, but of scholars”, that owed its authority solely to “the deference spontaneously paid to the genius, wisdom and erudition of its compilers”. In short, it was “not law, but argument”¹⁰⁴.

Yet Burritt was no radical. “We do not necessarily ask for any serious innovation upon the established usages and acknowledged principles”. What he did wish as a committed democrat was that it should “acquire the authority which the suffrage of nations can only give to it through the solemn form of legislation”, and this desired legislation could “not be secured, in this constitutional age, without an International Legislature”. He then went into some detail into the composition and procedures of this *constitutional Congress*, which would subsequently adopt a *Code* and institute a permanent *High Court of Nations* that should judge according to said code, which would constitute “the common law of the people”, the “sublimest manifestation of the public mind that can be achieved by the representative principle”¹⁰⁵. Who should have the honour of participating in this

⁹⁸ *Congrès des Amis de la Paix universelle...*, p. 28.

⁹⁹ *Ibidem*, p. 31.

¹⁰⁰ The power of public opinion was sufficient to the peace friends; W. H. van der Linden, *The International Peace Movement...*, p. 327; F. Dhondt, *Complete the Chain of Universal Law and Order...*, pp. 11-12.

¹⁰¹ *The Peace Conference at Brussels...*, pp. 24.

¹⁰² *Ibidem*.

¹⁰³ *Ibidem*.

¹⁰⁴ *Ibidem*.

¹⁰⁵ *Ibidem*, p. 25.

project? Burritt knew who would certainly not be qualified: “it cannot be the place for the ambitious politician, the factious diplomat or reckless demagogue”. Instead it should be “a chosen body of wise and learned men”, enlightened by the “experience of the past and the lofty principles of the present age”. Who did he have in mind specifically? He suggested for each nation “two profound statesmen, or *jurists*”¹⁰⁶.

The above words read almost verbatim as the statement of principles published by Rolin-Jaequemyns in the *Revue de droit international* in 1869 which led him to establish the *Institut* four years later. Legal argumentations such as these lay at the heart of the most principal discussions of the conference in Brussels. The recurrence of these and similar themes in succeeding conferences belie to a great extent the allegations of Albéric Rolin at the start of the 20th century that the early peace movement lacked focus and was devoid of any real sense of legal pragmatism. Many of the apostles of peace in attendance had enjoyed a legal education or were otherwise juridically literate and employed the shared language of legal reasoning to transgress the national, cultural, political, and linguistical barriers between them.

6. CONCLUSION

When Lord Byron began his masterpiece *Don Juan* in the Summer of 1818 he arguably embodied the height of the Romantic spirit which captivated European culture at the time. Yet Byron was but one exponent of a larger movement which included previous generations of poets such as Coleridge and Blake¹⁰⁷. The same was true for the romantic sensibility which constituted one half of the legal conscience expressed by Gustave Rolin-Jaequemyns in 1869 and identified by Koskenniemi more than a century later as a critical element in the birth of international public law as an autonomous scientific discipline. A belief that international law could be modified to advance peaceful interactions amongst states was equally present at earlier reformist societies such as the peace societies of the 1840s and 1850s. Contrary to belief however these peace advocates also possessed to a substantial degree the other half of Rolin’s conscience; they were rationalists who routinely employed legal modes of reasoning to promote specific legalistic objectives such as mandatory arbitration, the codification of international law or the desirability of a permanent international judiciary organ. The peace friends

¹⁰⁶ *Ibidem*, p. 26.

¹⁰⁷ J. Stillinger, D. S. Lynch, *The Romantic Period*, (in:) S. Greenblatt (ed.), *Norton Anthology of English Literature*, London 2006, p. 669.

who organized the transnational conference of Brussels in 1848 were no credulous idealists like their artistic counterparts may have been, but moderate and restrained men like Auguste Visschers who were to a substantial degree well-versed in legal culture and who used this shared legal language to communicate their conviction that, indeed, “a better law” was possible.

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Summary

The rise of modern international law as an autonomous scientific discipline in the early 1870s can be considered the culmination of multiple legal and extra-legal processes which trace their origins back to much earlier in the century. Several decades before the founders of the *Institut de Droit International* declared themselves the "legal conscience of the civilized world", other societal groups had already expressed profound disaffection with the existing law of nations, which they viewed as inherently insufficient to guarantee lasting stability amongst civilized states. The conferences of the "Friends of Peace", held between 1843 and 1851 in several European cities, featured many jurists who routinely

employed legal modes of reasoning to communicate and advance legalistic objectives such as mandatory international adjudication and the codification of international law.

KEYWORDS

international public law, 19th century, internationalism, transnationalism, peace movement, arbitration, codification, Auguste Visschers, *Amis de la Paix*, *Institut de droit international*

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prawo międzynarodowe publiczne, XIX wiek, internacjonalizm, transnacjonalizm, ruch na rzecz pokoju, arbitraż, kodyfikacja, Auguste Visschers, *Amis de la Paix*, *Institut de droit international*