

## THE RIGHT OF ASYLUM

*The "International Review" has the pleasure of publishing elsewhere in this issue an article on the right of asylum by Dr. P. Weis. The same theme has been discussed by Mr. P. Mertens in a detailed article entitled "The right of asylum in Belgium at a time of constitutional revision", in the Revue Belge de droit international (Brussels, January 1966). We now reproduce some extracts from this fresh study of the problem.*

"There is no legal term which probably lacks such uniformity and precision in its definition as that of the right of asylum". However, as Mr. Henri Rolin has aptly remarked, asylum cannot really be seriously disputed, except under its extra-territorial aspect. It is only this aspect in the context of constitutional protection granted by the State on its own territory which will be studied here. The few differences of interpretation which exist are due to the evolution it has undergone through the centuries, an evolution which is perhaps not even complete today. One cannot, of course, expect to find in its origins the explanation for most of its present characteristics.

The right of asylum has certainly always existed, but it was only since the second part of the XIXth Century that it has been radically transformed.

That Belgium had not proclaimed the right of asylum in its original charter is easily understandable. It was only after 1831 that the principle was affirmed on the universal level, "because in many cases people belonging to opposing political levels had successively to flee the same country". The first extradition treaty was signed in 1831 between France and Switzerland by which no one could be extradited for political acts. Belgium was to follow suit in 1833. "Thus, after 1831 the practice was established according to which States refused in principle to extradite, and therefore gave asylum in principle to political refugees". However, it was not until after

the 1848 revolutions that the principle of political asylum was to be definitely achieved.

As a result of this evolution, extradition which was formerly "refused then granted for political crimes" was henceforth "generally accorded, except for political delinquents".

Finally, as time went on and strangely enough after the end of the Second World War, asylum has been exercised more and more for individuals or entire social groups not having committed any crime or misdemeanour in their countries of origin, but who had fled under the threat of persecution for ethnic or political reasons and having abandoned all hope of ever returning. At the same time, many of them, nationals of totalitarian States, had been deprived of their nationality. So there arose under a variety of names such as political refugees, displaced persons, stateless in fact or in law, a great number of new situations everywhere breaking through the traditional limits of asylum and thus deeply transforming its very nature. Delinquents or victims, deportees or fugitives, only have in common the arbitrary or iniquitous character of the decisions or threats weighing on them. It is, however, precisely in this character where asylum can be found in its long-term aspect.

However, the problems raised and their complexity have never, until today, been so great.

Even when after the last war, it was thought that one could distinguish and localize the refugee problem in time and space, one knows now that it will always be raised since, as Mr. Hammarskjöld said, it is a problem which will be "eternal unless the world is at peace".

In spite of the slow progress made and even lagging by some States, accused paradoxically by the European and world organizations, in formulating the principle on the constitutional level, one need not fear to affirm that the doctrine's present trend and even its practice should be to place the recognition of the right of asylum in the general frame of the protection of human rights. This evolution naturally goes together with the recognition of the individual as a subject of international law.