NATIONAL SOVEREIGNTY AND THE REUNITING OF FAMILIES

At the University of Königstein-Taunus (Federal Republic of Germany) last year, during a seminar on various aspects of state sovereignty, Mr. H. G. Beckh, president of the AWR and former ICRC delegate, gave a lecture on "National sovereignty and the reuniting of families separated by war and post-war events". Since this subject dealt with a humanitarian question, it seems appropriate to give extensive excerpts from his paper.

In terms of the concept now prevalent, "national sovereignty" can be equated to "state power", referring essentially to the independent status of a State capable of concluding international agreements direct with other States.

The present paper deals with the reuniting of families, as carried out in Europe after the Second World War, a process still going on. These activities provide remarkable evidence of the fact that affirmations of natural law have a practical outcome when they are based on sound and undisputable premises and are put forward in an apolitical manner. These operations for the reuniting of families are based upon the principle that the family is the basic unit of society,[1] independent of the political characteristics of the State and of ideological difference.[2]

Whereas hundreds of thousands of persons separated by unbreachable frontiers did not exactly constitute an element which encouraged detente, those persons who were restored to normal family life tended to forget

[1] In the meaning of Resolution 2018 (XX) of the UN General Assembly, adopted on 1 November 1965.

[2] The operations for the reuniting of families are not concerned with separations which have occurred for family reasons.

the hardships that they and their relatives had undergone. Instead, they began to think of the future and of peace.[1] This is one of the moral arguments for the reuniting of families by the Red Cross, with the assistance of both public and private organizations...

The legal basis for the reuniting of families

It is appropriate to cite the Geneva Conventions of 12 August 1949 as the basic relevant positive law and in particular the Fourth Convention concerning the protection of civilian persons in time of war.[2] The first draft of this convention was already in existence before the Second World War. Following its approval by the International Conference of the Red Cross at Tokyo in 1934, it was to be the subject of a diplomatic conference. The invitations were sent out, but the replies were slow in coming, so that it was not until 1939 that the date of the conference was set for the beginning of 1940. It was already too late.

The International Committee of the Red Cross arranged for at least some of the provisions of the Tokyo draft to be applied in the Second World War, through various special agreements, and 160,000 civilians were granted the legal status of protected persons and the benefit of guarantees analogous to those of prisoners of war.[3]

The duties of the belligerents, in principle, had already been established before the beginning of the Second World War by Article 46 of the Regulations concerning the laws and customs of land warfare annexed to the IVth Hague Convention of 1907. It is true of course that that convention was binding only upon signatory States—that is, constituting a positive law effective under specified circumstances. In other words, the contracting parties had agreed to renounce their sovereignty by undertaking to respect these provisions, but the provisions themselves consisted only of certain concessions intended to prevent families from being separated and to facilitate the reuniting of families separated as a direct result of war.

Other sources of law

Reuniting families in Europe did not begin in earnest until about two years after the Second World War. There was no positive legal

[1] H. G. Beckh, "ICRC action on behalf of the ethnic minorities known as the 'Volksdeutsche' and of the Germans in the East", *Revue internationale de la Croix-Rouge*, July 1950.

[2] Articles 8, 25, 26, 27, 30, 50 and 82.

[3] The 4th Convention of 1949 went into effect on 21 October 1950.

basis for them, except for the governmental conventions which were subsequently concluded. An attempt to understand how it was nevertheless possible, in the face of national sovereignty, to bring together more than 700,000 members of dispersed families, brings us to the very heart of the problem. This would appear to be a typical example of the application of the principles of natural law, under the impetus of an over-riding moral incentive.

Among the provisions of humanitarian law, it is relevant to recall the terms of the Universal Declaration of Human Rights of 10 December 1948, especially Articles 2, 12 and 13, which provide not only for free circulation across national borders but refer also to family unity which is essential for the human community.[1] It therefore became clear that it was a duty to bring together the members of separated families, except under particular family circumstances. But the Universal Declaration of Human Rights is, after all, only a declaration; it imposes no obligation upon the signatory States.[2]

The European Convention on Human Rights of 4 November 1950, on the other hand, constitutes positive law, but only for the member States. Families have no longer been confronted with the problems of reuniting their members since the signature of this Convention which lays stress on the importance of and strengthens the provisions of the Universal Declaration of Human Rights of 1948. The humanitarian concerns which inspired this Declaration were also confirmed by Resolution 2018 (XX) of the United Nations General Assembly on 1 November 1959.

While not creating positive law, these proclamations and recommendations have nevertheless facilitated the drawing up of provisions which conform with considerations of natural law.

This was the case with regard to the right of initiative which was invoked by the ICRC when it proposed to organize the reuniting of families. The right derives from Article 4, (1) (d), (1) (f) and (2) of its Statutes, which were approved by the International Conferences of the Red Cross, attended by government representatives.[3] The ICRC thus obtained a certain freedom of judgement and action in the field of international law.[4] At the same time, the resolutions of the International

[1] See also the Final Act of the United Nations Plenipotentiary Conference on the Status of Refugees and the related Convention of 28 July 1951, as well as Resolution XVIII of the Conference on Human Rights (Teheran, 1968).

[2] This is also the case with the International Convention of 16 December 1966 on Civil and Political Rights, especially Article 12 (not yet in force).

[3] Hague and Toronto Conferences, 1928 and 1952.

[4] See: O. Kimminich, *Humanitäres Völkerrecht — humanitäre Actionen*, p. 98.

Conferences of the Red Cross also had the effect of recommendations.[1]

All these circumstances have served to demonstrate the importance of this humanitarian principle and the great moral value which must be ascribed to the reuniting of families. The concern for this principle serves quite naturally as a basis for positive law.[2] Numerous examples testify to the fact that the operation of reuniting families is an application of a natural law. With few exceptions, the authorities responsible for exercising national sovereignty or State power have been persuaded to accept the apolitical ideas on this subject, as a humanitarian principle derived from the universal conscience.

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Eventually, the original concepts of natural law concerning the reuniting of families in Europe gave way to a series of bilateral governmental conventions, making it a matter of positive law, thereby making it possible to some extent to compare the two different types of action, by looking at the way in which they worked out in practice.

In the earlier way of looking at the matter, the essential criterion was the natural and moral right to reconstitute the unity of the family. When it was a question of acting on the basis of agreements under positive law, however, difficulties in the interpretation of signed conventions sometimes constituted an obstacle to complete success.

The reuniting of families thus provides a good example of the influence which natural law can exert when no other juridical basis has been found for such an essential act. Experience demonstrates that humanitarian principles, soundly based upon conscience, often make it possible to overcome objections and obstacles presented by national sovereignty, provided that the objective pursued is presented in an apolitical manner and is supported by moral arguments. There are distressing situations, caused by man, for which no remedies can be found in positive law. Under such conditions, it is the fundamental rights of man—as embodied in the Universal Declaration of Human Rights of 10 December 1948—which then prevail.

These conclusions were demonstrated in a gratifying manner by recently adopted resolutions (June 1973, at San Remo, and June 1974, at Florence) and by the Final Act of the Interparliamentary Conference on European Co-operation and Security (January 1973, at Helsinki).

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[1] Resolution No. XX of the Toronto Conference, 1952; No. XX of the New Delhi Conference, 1957, and No. XIX of the Vienna Conference, 1965.

[2] See: A. Verdross, *Statisches und dynamisches Naturrecht*, pp. 89-91.

This document asked parliaments to intervene in a spirit of humanitarianism to induce governments to find a solution for the problems posed by the separation of members of families who wish to reunite. Perhaps we are not so very far away from a time when the States in question will reach agreement on this matter on the basis of positive law, giving up some of the objections they have previously raised in the name of national sovereignty.
