

BOOKS AND REVIEWS

JACQUES MOREILLON: " LE COMITÉ INTERNATIONAL DE LA CROIX-ROUGE ET LA PROTECTION DES DÉTENUS POLITIQUES " ¹

It is now recognized that the law comes after, rather than before, events. It can also be asserted that one of the fundamental elements of law is its stability. That is why history must occupy a privileged position in legal studies.

It is therefore highly satisfying to find that this important subject has been treated from the aspect of its historical development by a particularly qualified writer. Mr. Jacques Moreillon has carried out a full, systematic and profound study of the matter. The thesis presented by him before the Geneva Graduate Institute of International Studies constitutes a welcome addition to the valuable survey written in 1958 by Professor Jean Siotis: " Le droit de la guerre et les conflits d'un caractère non international ". Both books are compulsory reading for anyone wishing to make a study of these questions and of ICRC activities in general.

No one better than Mr. Moreillon could have been chosen for the investigation of such a subject, for, having been brought up, so to speak, in this kind of work, he is thoroughly acquainted with all its various aspects. For many years now, he has co-operated in ICRC activities, rising to the post of delegate and later to that of delegate-general in widely different parts of the globe. In addition, with a view to stimulating the completion of such a study, the ICRC, in the interest of its own activities, made available its archives and authorized Miss S. Schumacher, the head of the archives department, to co-operate extensively with him.

In his voluminous work, which has just appeared in French, Mr. Moreillon traces the patient efforts which the ICRC made, during a hundred years or so, to advance onto hitherto forbidden ground and to subject the phenomenon of political detention to some rudimentary legal concepts, to drive the stakes bearing the Red Cross emblem into the virgin soil of human suffering and to

¹ Institut Henry-Dunant, Geneva, Éditions L'Âge d'Homme, Lausanne, 1973, 303 pages.

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create favourable precedents for future custom and so erode the rock—the metaphor was coined by Mr. H.G. Beckh—of State sovereignty.

When the Red Cross was founded in 1863, its single aim was to come to the aid of soldiers wounded in battle. But its compassionate concern soon was gradually extended to prisoners of war, shipwrecked sailors and civilian victims, and its efforts directed to various peacetime activities (care of the sick, hygiene, assistance following natural disasters) which are now co-ordinated with the League of Red Cross Societies.

Wartime activities—the ICRC's special field of action at international level—were at first confined to those carried out during hostilities between States. It was in 1872, during the Carlist insurrection, that the ICRC went a decisive step forward, demanding and obtaining the protection of prisoners taken during this internecine conflict. The 1921 International Conference of the Red Cross expressed its concern for political detainees and encouraged the ICRC to devote its care to them.

The end of the Second World War ushered in a new era of ICRC activities, encouraged by its then president, Mr. Paul Ruegger: through a liberal interpretation of the mandate given to it, the ICRC began to concern itself with the effects of internal strife other than civil wars characterized as such and, consequent on a still more recent evolution, with the victims of emergency measures, such as the suspension of judicial guarantees or more or less mass internments, introduced as a result of grave political tension.

On the legal plane, a parallel development began to take shape. Until 1949, the Geneva Conventions had applied only to conflicts between States. At the 1949 Diplomatic Conference, a new article was introduced: this was Article 3 common to the four Conventions, which laid down minimum guarantees for the victims of conflicts not of an international character. The revolutionary nature of this provision, now become widely known, was that it subjected a national phenomenon to international law. It has already rendered most signal service.

In actual practice, the ICRC has gone further still, since it endeavours to bring aid and protection to political detainees, even when there have been no armed disturbances. Its success in these

efforts depends upon the good will shown by the States concerned. But it is most encouraging to discover, as has been made clear in Mr. Moreillon's study, that during the last fourteen years ICRC delegates made some 1,300 visits to approximately 100,000 political detainees in 65 countries, basing themselves only on the ICRC's "right of initiative" and referring to the general principles of law and humanity. After all, it is only a question of ensuring to this particular category of detainee minimum guarantees that are already accorded by civilized peoples to ordinary criminals, even to the wickedest among the latter, and creating precedents for more favourable standards of usage: places of detention for political detainees are open to visits by ICRC delegates. That is, in fact, in the interest of everybody, not only of the internees but also of the Detaining Powers, which can in this way substantiate the treatment they reserve to detainees and clear themselves of any unfounded allegations.

As has been in effect pointed out by the author, many of the experts consulted expressed the opinion that it was the duty of the ICRC to continue and develop its work for political detainees, so long as no other organization was able to perform such work efficaciously. Furthermore, the victims of political events, throughout the world, have their eyes turned to the ICRC, often pinning their only hope on its intervention.

It is impossible to tell at the present moment, in the rapidly changing world of today, what are the prospects for this kind of activity and how it will develop. One thing is certain and that is that the ICRC, acting with all the necessary caution, will know how to adapt itself to circumstances and make use of all the various possibilities that might become available.

It will be observed with pleasure, too, that Mr. Moreillon has examined the part played in this field by other institutions, particularly "Amnesty International". The ICRC does not claim for itself the monopoly of activities of this sort. It is concerned only with the way victims are treated and not with the merits of the reasons for their detention or its causes. For there can be no shadowy no man's land in the territory of human suffering.

J. P.