At any rate, he is certain that States will never be able to handle all aspects of life and that "people who show their solidarity through volunteer work will be manning the outposts for a long time to come".[1]

Jacques Meurant

HUMANITARIAN LAW AND INTERNAL CONFLICTS

The achievements of the Law

The adoption of Article 3 common to the four Geneva Conventions of 1949 was hailed as a great victory of the humanitarian spirit: for the first time positive law contained a provision which submitted a national phenomenon—internal conflicts—to international law and granted minimum humanitarian protection to the victims of such conflicts.

How was this success achieved? Who were its originators and architects? How did Article 3 stand up to the test of the new situations which emerged between 1950 and 1970? And what has been the contribution of Protocol II additional to the Geneva Conventions, relative to the protection of victims of non-international armed conflicts?

In her book *Droit humanitaire et conflits internes*,[2] Rosemary Abi-Saab attempts to answer all these important questions and to trace the origin and development of legal provisions relative to internal conflicts.

In effect, this entails nothing less than describing and analysing the historical and juridical process through which humanitarian principles have gained ascendancy over State sovereignty and, in some cases, arbi trary political action. The advance was slow and laborious, and the work itself was often cast into doubt by the great changes of our time. Its accomplishment testifies, however, to the efforts made by the ICRC, the International Conferences of the Red Cross and certain States to ensure that through a progressive codification of humanitarian principles, the greatest possible protection is given to the victims of all armed conflicts.

The first two chapters of the book deal with the inception and development of such legislation, from the nineteenth century to the adoption of Article 3 common to the 1949 Geneva Conventions. In those pages we discover Francis Lieber and Gustave Moynier, whose pioneering efforts were of crucial importance; a new light is also thrown upon the initiatives of National Societies such as the American Red Cross, which submitted a

[1] The author has attached as an annex a draft charter for the protection of medical missions. It suggests that the same protection be extended to the medical personnel of non-governmental medical associations as that granted in the Protocols additonal to the Geneva Conventions to the medical personnel of Parties to conflicts and of National Societies. An interesting line of thought which might be examined in one of the forthcoming issues of the *Review*.

[2] Rosemary Abi-Saab, *Droit humanitaire et conflits internes—Origines et évolution de la réglementation internationale*, Henry Dunant Institute, Editions A. Pedone, Geneva, Paris, 1986, 280 pp., FF 120.

draft international convention on the application of the law of war in times of civil war to the International Red Cross Conference of 1912.

The author skilfully shows how, through action taken by humanitarian organizations (such as ICRC activities from 1917 to 1919 and during the Spanish civil war) and under pressure from the International Red Cross Conferences of 1912, 1924, 1938 and 1948, the very principle of extending humanitarian protection to the victims of internal conflicts was gradually accepted by the governments and eventually became embodied in Article 3 common to the 1949 Geneva Conventions.

In the following chapters, Mrs. Abi-Saab's main aim is to bring back to life the debates which took place at the 1949 Diplomatic Conference on the ICRC's draft text relative to internal conflicts, and at the same time analyse the provisions in detail. We thus rediscover, face to face, the supporters of the idea that all the Conventions should be applicable in *all* armed conflicts, as advocated by the ICRC following the International Red Cross Conference held in Stockholm in 1948, and the opponents, who were in the majority, anxious to give a restrictive definition to non-international armed conflicts and thereby limit the field of application of the proposed legislation.

The only possible solution was a compromise: the adoption of Article 3 guaranteeing a minimum of humanitarian protection and leaving open the possibility of providing for a greater degree of protection through specific agreements is undoubtedly a significant step forward, but the text as a whole is not free from shortcomings: the definition of internal conflict is vague, the fields of material and personal application are limited, substantive rules are insufficient, and no provision is made for a system of monitoring the application of the Conventions.

The author gives a prominent place to the ICRC's efforts to overcome or by-pass those obstacles (especially because since the 1950s, it has been increasingly called upon to take action in situations of internal disturbances) and to go deeper into the legal aspects of the issue by learning from its practical experience.

With the help of well-chosen examples, the author shows how the ICRC makes effective use of the arms at its disposal: the first, a means of concrete action, consists in carrying out assistance operations which are more readily accepted by the parties concerned and are a kind of "open sesame" for protection activities; the second, of a legal nature, is the ICRC's right of humanitarian initiative. The ICRC achieved notable results during the armed unrest in Guatemala, Nicaragua and Lebanon, as well as during the conflicts in Cuba, Algeria, Biafra and Yemen, since its right of initiative opens more doors than would any mention of legal provisions, in this case Article 3. However, the increase in the number of new conflict situations and the necessity of having the parties' consent before being able to implement humanitarian law in internal conflicts made it imperative to enact new legislation granting greater protection. This meant extending the field of application of Article 3 and the content of existing legislation.

The author then demonstrates that, as they already had done before 1949, the International Red Cross Conferences (Vienna, 1965, and Istanbul, 1969) acted as veritable pressure groups in favour of extending the legislation then in force. Their action was echoed by the United Nations which, as of 1968, took a special interest in the question of human rights in armed conflicts. That marked the beginning of a new phase in the humanitarian campaign which was to lead to the adoption of Protocol II in 1977.

In view of the legal complexity of the subject of internal conflicts and its political repercussions, tracing the origin of Protocol II might seem to be attempting the impossible. And yet the author manages, with a logical and systematic approach, to unravel the intricacies of its evolution.

She first of all sets the scene, presenting and evaluating the forces in the field, in particular the representatives of Third World countries and national liberation movements, as well as drawing attention to the political standpoints of the various protagonists.

The author then tackles the substance of Protocol II, analysing in turn the work on the definition of non-international armed conflict, the material and personal fields of application, safeguard clauses, general and specific material protection and measures of enforcement.

She leads us confidently through the maze of amendments and counter-amendments, tracing the evolution of the views of the blocs and groups present at the Conference, which is also the evolution of the texts under discussion, not forgetting to draw useful comparisons between the latter and the provisions of Article 3 or those of the ICRC's initial draft.

This painstaking analysis enables us to understand better why the "simplified" Protocol II of 1977 did not retain the prohibition of unnecessary suffering, of treacherous conduct and of reprisals, and did not grant protection to the enemy placed *hors de combat*. Mrs. Abi-Saab remarks, not unjustifiably, that in the political context of the 1970s no ambitious project had any chance of being adopted: the new States which had just broadened the international community were certainly open to the ideas of humanitarian law and its progress, but their internal fragility forced them to tread cautiously. As a consequence, the bastion of State sovereignty proved to be just as impregnable as in 1949—if not even more so.

The author also finds that "by proposing a draft far too reminiscent of the regulations applicable in international conflicts, the ICRC opted for an approach based on the principles of the law of war, whereas the protection envisaged was essentially of a humanitarian nature. The States would undoubtedly have been readier to accept an approach based on respect for human rights in all circumstances".

Nevertheless, these shortcomings cannot obscure the progress made, such as the more extensive protection granted to the civilian population and to the medical services, the ban on inflicting collective punishment on persons belonging to the adverse party, etc. The main achievement lies in

having been able to provide for the compulsory application of a minimum of humanitarian rules in situations covered by Protocol II. However, as in the case of Article 3, the conditions in which an armed conflict, within the meaning of Article 1 of Protocol II, is considered to exist must not be subject to the findings and acknowledgement of the government concerned, but must be independent of its will. And it is well known that on this point States rarely see eye to eye.

The history of legislation relative to internal conflicts is dominated by the interaction of two major tendencies: a progressive one, represented by the International Conferences of the Red Cross, which encourage the ICRC to persevere in its efforts to provide greater protection to the victims, as well as by the ICRC itself through its practical work; the other, a conservative tendency, is that of the Diplomatic Conferences and the majority of States, whose reticence can be explained by the curbing considerations of national sovereignty. It is a good thing that the curb seems to be loosening.

In short, the book we are presenting is equally fascinating for historians and for jurists; it has a rich bibliography, a detailed index and useful diagrams illustrating the legislative history of the various provisions of Protocol II.

J.M.

REFUGEE MOVEMENTS

This study * aims to present the different aspects (political, legal and geographical) of the current refugee problem and to outline practical solutions for the present and the future.

The authors first of all set out their overall approach to the problem, providing very recent figures which demonstrate its full extent. Their sources are based mainly on the "Fact sheet" published by the information division of the United Nations High Commissioner for Refugees (UNHCR) and on governmental and non-governmental publications available at the UNHCR documentation centre, of which they were in charge.

The authors then proceed to dispel the confusion surrounding certain concepts. They make a distinction, for instance, between "population movements" and "refugee movements", explaining that the fundamental difference between the two notions is that, unlike migrant persons, refugees can under no circumstances call on their natural protector, i.e. their state of origin, to meet its international responsibility by granting them diplomatic protection. The main reason for this is that refugees are defined as persons fleeing their country of origin because of some political, social, religious, ethnic or racial conflict (including armed conflict). To this list should be added territorial disputes, famine and internal power struggles. The experience of the past few decades has demonstrated the usefulness of

* Jovica Patrnogic, Zidane Mériboute, *Refugee movements*, International Institute of Humanitarian Law, Collected publications, San Remo, 1986, 55 pages.