

BOOKS AND REVIEWS

H. MONTEALEGRE KLENNER: STATE SECURITY AND HUMAN RIGHTS ¹

The maintenance of the security of the State and the respect of human rights are today two subjects of major concern, especially in Latin American countries.

To satisfy both those imperatives, which at times may appear to be in conflict with each other, H. Montealegre offers a comprehensive and universal solution: the respect of municipal law and of international law. In his book, he endeavours to give a rigorously reasoned demonstration of the validity of this proposition.

The author points out that today there are numerous countries where regimes rule under emergency powers which they claim to be necessary to safeguard the gravely threatened security of the State. These circumstances have led to the proclamation of martial law, and to various persons or groups of citizens being branded as enemies of the State and brought to trial on charges of treason, which is equivalent to applying the concepts of traditional law of war to situations which they were not intended to cover. On the other hand, modern international law, which was specifically designed to deal with such problems, has not been referred to in the majority of cases. These abnormal juridical situations reveal a profound uneasiness, arising from the determination to maintain the security of the State. The factors of State security and juridical mechanisms of its defence are systematically described in detail by H. Montealegre.

His analysis considers traditional law and traces its evolution in order to explain the problem in the light of contemporary juridical thought. While wars were formerly considered to be matters affecting exclusively the parties involved, and internal conflicts to be the affair

¹H. Montealegre Klenner: *La seguridad del Estado y los derechos humanos*. Academia de Humanismo cristiano. Santiago de Chile, 1979, 772 pp. (in Spanish only).

solely of the country in which they occurred, today that is no longer true. A conflict, whatever its nature, can represent a threat to international peace and security; the security of the State no longer appears to be a purely internal matter and begins to assume a universal character.

For a scientific approach to this vast and controversial problem, the author has taken as his starting-point an axiom of international law, namely that a State is made up of three constitutive elements: territory, government and population. According to Montealegre, the security of the State is ensured if a juridical system exists that will allow it to act efficaciously when one of those three elements is threatened, and if it is possible to secure the country's territorial integrity, the government's stability and the respect of the inhabitants' fundamental rights. Since none of those constitutive elements can alone represent the State, the defence of the State can only be obtained by the balance of all three elements in such a way that none of them is in a position of supremacy in relation to the other two. Should one of them be threatened or attacked, the State should be able to call upon the law in order to exercise a form of self-defence which should always be in due proportion.

The security of the State may be threatened from outside by a war which would endanger its territory; in such situations, the law of war and international humanitarian law are applicable and the author gives an account of their development and content. Internally, the security of the State may be menaced by an insurrection trying to overthrow the government; in this connection, the norms applicable in non-international armed conflicts are discussed in the second part of the book. But a threat to the security of the State may also come from the government itself, when the latter systematically violates the fundamental and inalienable rights of its citizens; this is therefore the subject-matter of the third part of the book, in which human rights are outlined.

The originality of Montealegre's book lies in his treatment of the violation of human rights as a factor undermining the security of the State. The author considers that the State has a twofold responsibility where the respect of human rights is concerned. First, if a State has ratified the Geneva Conventions, it is responsible towards the international community for the enforcement of the rights contained in the Conventions; and secondly, the constitutions of States impose a specific duty on the authorities to guarantee those rights to the inhabitants. The systematic violation of human rights by the State is a threat to its own security, because its action provokes both an external and an internal reaction. Every oppressive regime finishes up by generating an aggressive response. In contrast, the respect of human rights is an element of

international peace; that is why the defence of the dignity of the human person—defence which is often at the origin of oppressive or aggressive plans—constitutes a defence of peace. In this respect, the individual is to be considered as a valid element of the international juridical system.

In the author's view, the law of nations must take into account, over and above the States, the human person and beyond the universal community of nations there is the universal community of human beings, whose vital rights and mutual recognition constitute a fundamental mechanism of the security system.

Writings on international humanitarian law in Spanish are far from numerous. This particular book, which examines, in addition to that law, the classical law of war and human rights, is also a valuable work of reference, for in it may be found a consideration of the latest developments in international law in general, including the 1977 Protocols to the Geneva Conventions in particular.

The publication of this book is an event and its author deserves our thanks. It is primarily a scholarly and legal work, but it also holds a message of peace.

Sylvie Junod

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Such articles must, however, comply with the following rule: they must avoid all reference to current political situations or events and sterile controversies on political, religious or racial topics.

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