

BOOKS AND REVIEWS

THE PROTECTION OF JOURNALISTS ON DANGEROUS ASSIGNMENTS IN AREAS OF ARMED CONFLICT

Prestige and problems of reporting in wartime

The journalist has always had a certain fascination for the general public. He supplies the proportion of dreams and adventures which we all need for our sustenance, whether consciously or not. He is the one who reveals an event to us, who puts us in direct touch with what is happening. As a result of radio and television, he has become a kind of member of the family.

The profession has its myths and its heroes among those who expose themselves to danger every day in areas of conflict or in the thick of natural disasters; it also has its martyrs. How many journalists have been deliberately rather than accidentally killed? Compared with the number of those arrested and released, how many have been imprisoned or have disappeared? Is the general public aware of this? There is no denying the facts. The journalist doing his job in a situation of armed conflict is in jeopardy. What is being done to protect him?

In her monumental work on the subject¹, Sylvie Boiton-Malherbe has made a successful attempt to deal comprehensively with the problem of protecting journalists on dangerous assignments, to set forth the justification for doing so and in particular to assess, with the help of many case studies, the efforts of the international community since the 1930s to establish the legal foundations for such protection.

The author presents the problem straight away: in the form of tables and maps, she establishes a veritable memorial to those journalists who died in the exercise of their profession between 1968 and 1988, in their own countries and elsewhere, and then illustrates the types of coercive measures adopted against journalists on mission abroad.

Names, familiar and unfamiliar, catch our eye, and eloquent examples are given: imprisonment, kidnapping, disappearance, torture, taken hostage, sentenced to death by hanging. Some of the journalists mentioned were to recover their freedom; others never returned.

¹ Sylvie Boiton-Malherbe, *La protection des journalistes en mission périlleuse dans les zones de conflit armé*, foreword by Jean Pictet, preface by Mario Bettati (Brussels, Bruylant, University of Brussels, 1989) XXV, 404 p., ill., tabl., fac-sim. (Collection de Droit international No. 23).

It is not easy to be a journalist when, to meet reporting needs, one has to move about in dangerous areas. His status as a reporter and a witness is, to say the least, ambiguous when he has to conceal his professional identity to track down the truth, the truth that his public is calling for and which does not always coincide with the "truth" of the powers that be! The author goes on to show that journalists have become the bad conscience of States, the more so in that "*l'explosion médiatique... a décuplé le risque qu'ils représentent*" ("the media explosion... has multiplied tenfold the danger that they represent") (p. 6).

With the help of relevant, and often striking, examples, the author examines the reasons put forward by States to justify their behaviour towards journalists: violations of domestic law ranging from a lack of courtesy, abuse of the authorities' good faith and defamation of the State to breaches of State security, i.e. subversion, espionage, and illegal frontier-crossing, with consequent accusations of spying and subversion. Such reasons are indeed well-founded if the State has been deliberately made the victim of reprehensible or illegal activities but, in many cases, the reasons are greatly exaggerated and drawn from legal quibbling which nonetheless gives every impression of being based on the law. What State would in fact risk failing to assert its claim, in the eyes of international public opinion, of being a State in which the rule of law prevails, and thereby jeopardize its position "*dans le marchandage politique international*" ("in international political bargaining"), to repeat one of the author's expressions? The author thus puts her finger on the role and the responsibilities of the journalist, a key figure on the international chessboard, and on the limits to the right of freedom of expression, which States do tend to interpret rather over-restrictively.

In part I, the author considers the legal foundations for the free circulation of information since the work of the League of Nations; the outlawing of misinformation and war propaganda as being conducive to tension; the establishment, in 1931, of a journalists' court of honour which emphasized the responsibility of journalists to promote peace; up to the 1948 United Nations Conference on freedom of expression. That Conference stated the principle of non-discrimination between foreign journalists and nationals of the host country, which marked the beginning of legal progress towards the right to freedom of expression enshrined in Article 19 of the Universal Declaration of Human Rights.

A further step forward was taken in 1978 by UNESCO, which reaffirmed that the exercise of freedom of opinion, expression and information was a vital factor in the strengthening of peace and international understanding and declared it essential that journalists be assured of protection guaranteeing them the best conditions for the exercise of their profession.

Besides the principles recognized by these various forums concerning the role of the journalist, in upholding the freedom of expression and opinion, the United Nations General Assembly in 1973, on the initiative of Maurice Schumann, Minister for Foreign Affairs of France, examined a draft convention intended to ensure the protection of journalists on dangerous assignments. The

draft in question provided for a legal status based on identification: an identity card establishing the journalist's right to bear a distinctive device, a black P on a gold field. The author points out that the draft convention was innovative in that it imposed on the State party a moral obligation, but she also indicates its limitations: by attracting the adversary's attention, the device might prove dangerous not only for the journalist himself but also for the civilian population surrounding him. She also demonstrates that *"toute tentative pour établir une protection de la fonction journalistique, par un contrôle de la personne qui l'exerce, conduit au dilemme constant du choix des limites à tracer entre son droit individuel, corollaire du droit des citoyens à la liberté d'expression, et le droit des Etats souverains de se protéger"* ("any attempt to establish protection for the journalist's profession, by controlling the person exercising it, leads to the ongoing dilemma of selecting the borders to be drawn between his individual rights, arising from the right of citizens to freedom of expression, and the right of sovereign States to protect themselves") (p. 130).

That draft convention was doomed to failure from the moment it became impossible to set limits to the right of freedom of expression which were acceptable to States in situations of conflict. By regarding the journalist on a dangerous assignment not as an obvious culprit or as a virtual defendant, but instead as a potential victim, the Conference on the Reaffirmation and Development of International Humanitarian Law (1974-1977) then succeeded in laying the legal foundations for the protection of the journalist.

The whole of part II of the work is devoted to the protection of journalists on dangerous assignments in terms of humanitarian law, and more particularly of Article 79 of Protocol I. By this article, the journalist has civilian status and is thus protected against abuse of power and the effects of hostilities. This protection establishes the journalist's mission as being to inform the public and not to take sides with any one party to the conflict.

The journalist does not of course enjoy a special status, such as that of medical staff, nor is he entitled to a protection emblem. Article 79 is not constituent but declaratory. Nevertheless, its originality arises from the fact that the reason for his protection is not linked to assisting the sick and wounded but to his information mission, which does not normally come within the ambit of humanitarian law. As the author puts it: *"D'une manière générale, le point commun entre le médecin et le journaliste est qu'ils se trouvent l'un et l'autre sur les lieux du combat, mais quand bien même le journaliste ne serait pas indispensable à la survie de la communauté, il lui est utile. En cela, il fait partie, au sein du droit de Genève, non pas des victimes, mais de ceux qui ne doivent pas le devenir"* ("Generally speaking, what is common to doctors and journalists is that they both find themselves in areas of combat, but even though the journalist would not be essential to the survival of the community he is useful to it. As such he belongs, within the law of Geneva, not to the victims but to those who should not become victims.") (p. 168).

The author also draws some interesting comparisons between war correspondents, journalists accredited to armed forces and freelance journalists on dangerous assignments, and demonstrates that the identity card, which according to Article 79.3 may be issued to journalists, is not a condition for protection but solely a presumption in favour of the journalist if arrested.

It is still left to the journalist's own discretion to obtain such a card, thus proving that the machinery for protection when on a dangerous assignment does not stem from the acknowledgement that the person concerned is a journalist, since such an acknowledgement is optional, but from the acknowledgement of the presumed journalist as being a civilian. And it is likewise as a civilian that the journalist on mission in a non-international conflict can benefit from the protection in particular of Article 13 of Protocol II.

What are we to think of Article 79 of Protocol I? "*Portée singulièrement limitée*" ("of very limited scope"), thinks Prof. Bettati in his preface to the work. In the view of Jean Pictet, the author of the foreword, it is a "*base modeste mais non négligeable*" ("modest but not negligible foundation"). For Sylvie Boiton-Malherbe, Article 79 reaffirms, first of all, a customary law rule which already existed in the Geneva Conventions of 1929 and 1949, namely the right to a civilian status of non-combatant journalists, but it also breaks new ground "en légitimant les missions professionnelles périlleuses pour un journaliste qui se rend dans des pays étrangers en guerre sans autorisation particulière des forces armées de ces pays, et sans contrôle de leur propre gouvernement" ("by legitimizing dangerous professional assignments for journalists who, in visiting foreign countries that are at war, make those visits without special authorization by the armed forces of those countries and without supervision by the said countries' Governments") (p. 213).

The article also establishes a normative link between humanitarian law and human rights law in that the humanitarian norm of the right to freedom of expression has been incorporated into humanitarian law. Article 79, by consolidating the principle of the free circulation of information and ideas, has helped the progress of law; it stresses the need to prevent armed conflicts and hence to disseminate knowledge of humanitarian law.

The author does not fail to mention the humanitarian steps taken by the International Committee of the Red Cross (ICRC) in response to the disappearance, captivity or detention of journalists and describes what it has done to familiarize journalists with humanitarian law. Indeed, in the "planetary village" the role of the journalist is becoming more and more important and training for that role necessarily implies a knowledge of human rights and humanitarian law.

A lawyer, historian and sociologist, Sylvie Boiton-Malherbe has devised, structured and written her book with great variety of style: her rigorous and detailed legal analysis is lightened by the many case histories and commentaries that an experienced historian would not deny. Her love for elliptical

words and formulas is equalled only by her liking for the recapitulatory or explanatory synoptic tables which are interspersed throughout the work. Teachers and disseminators of humanitarian law will find this a valuable source of inspiration. The author has furthermore enriched her work with some twenty annexes and a detailed bibliography.

There can be no doubt that this is an important book.

Jacques Meurant
