

B O O K S

PRISONERS OF WAR AND THE PROTECTING POWER¹

Some months ago Colonel Howard S. Levie, Legal Adviser, Headquarters, United States European Command, published an important study on the Protecting Power in the Geneva Conventions. A well documented account traces the origin of the institution to the Capitulations of the Ottoman Empire of the XVIth century. The author recalls the intervention of Protecting Powers, during the Franco-Prussian war (1870), the Greco-Turkish war (1897), the Spanish-American war (1898), the Russo-Japanese war (1904), and the Italo-Turkish war (1911) as well as the Boer war (1899-1902) during which the United States succeeded to a certain extent, in assuming the protection of British prisoners of war.

Colonel Levie points out, however, that in spite of these numerous precedents, the 1899 and 1907 Hague Conferences did not codify this international practice.

It was the Geneva Convention of July 27, 1929, relative to the treatment of prisoners of war, which was to incorporate the idea of the Protecting Power into written International Law. The four Geneva Conventions of August 12, 1949, consolidated this result. An article common to these four texts (I, II, III, 8 ; IV, 9) enjoins that " The present Convention shall be applied with the co-operation and under the scrutiny of the Protecting Powers ".

The author, who pays particular attention to the protection of prisoners of war, then goes on to study the modern conception of the Protecting Power (designation, personnel, functions) and its relations with the International Committee of the Red Cross. On this latter point, Colonel Levie points out that, although the allocation of functions between the Protecting Power and the International Committee of the Red Cross has not always been as clearly defined as it might have been, the " fundamental differences between the two and between their methods of operation are such that conflicts between them would be extremely rare ".

¹ American Journal of International Law—Vol. 55, No. 2, April 1961.

This study quotes freely from the Commentary on the Conventions published by the ICRC. It is recommended to all those who are engaged in obtaining a thorough knowledge of the contents of the Geneva Conventions and we reproduce the conclusion below :

“ The past century has seen tremendous advances made in the concept of the Protecting Power as an instrument of international law, both in the rôle which it is called upon to play and in the prestige which it enjoys and which goes far in assisting it to perform the numerous functions which have now been assigned to it. It appears unquestionable that :

The presence of the Protecting Powers today remains the sole means of putting a brake on the excesses of Detaining Powers, the sole element of moderation and of morality in the treatment of enemy persons, their belongings, and their interests : this was noted and affirmed many times at Geneva.

The results of the 1949 Diplomatic Conference reveal clearly that the nations of the world were generally prepared to accept a solid basis for the activities of the Protecting Power. It was conceded a mission of close observation of the application of the provisions of the Prisoner of War Convention drafted at that Conference, a mission which necessarily incorporates within it a right to call to the attention of the Detaining Power any failure of performance which it finds and to report any such failure of performance to the Power of Origin ; a sizeable expansion was made in its functions and, correlatively, in its power and authority ; provision was made for substitutes for Protecting Powers in order to ensure that prisoners of war would at all times benefit from the exercise of the functions of the Protecting Power, thus correcting the situation which had arisen all too frequently during World War II ; and the use of the institution of the Protecting Power was extended not only to the Red Cross Convention (Wounded and Sick of Armed Forces in the Field), but also to the convention which adapts the Red Cross Convention to maritime warfare (Wounded, Sick and Shipwrecked at Sea), and to the completely new Civilian Convention. These few examples alone demonstrate the great distance which has been traversed since 1907, when the prisoner-of-war provisions of the Regulations Respecting the Laws

and Customs of War on Land were drafted at the Hague and contained no reference whatsoever to the Protecting Power.

In many respects the provisions of the 1949 Geneva Conventions relating to the Protecting Power represent compromises. Positions reached solely in order to bring about agreement between opposing viewpoints can rarely be considered perfect and the present case is no exception. However, these provisions unquestionably represent a great step forward in the evolution of international law and would undoubtedly be viewed with amazement by those who drafted the first Red Cross Convention in 1864 or even by those who acted on behalf of the Protecting Powers as recently as in 1914, at the beginning of World War I.

The Protecting Power is now a generally accepted institution of international law. It is the subject of international agreements to which most of the States of the world are parties. There are clear indications that it has been weighed in the balance and not been found wanting, with the result that it has been, and in the future will continue to be, requested to assume numerous new functions on behalf of states at war."

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THE LEGAL POSITION AND THE RIGHTS OF THE PROTECTING POWER

Mr. Hans Haug, Secretary General of the Swiss Red Cross, has recently published an extremely interesting study on "The legal position and the rights of the Protecting Power".¹

Pointing out, at the very beginning of his work, that Switzerland's neutrality has encouraged the representation of foreign interests by this country and that in 1944, Switzerland was acting as Protecting Power for thirty five nations, the author notes the experience gained, not only by the authorities, but by Swiss institutions interested in humanitarian law and, first and foremost, the Red Cross.

¹ *Schweizer Monatshefte*, 41st year, section 8, November 1961.