

BOOKS AND REVIEWS

MARC BOSSUYT : L'INTERDICTION DE LA DISCRIMINATION DANS LE DROIT INTERNATIONAL DES DROITS DE L'HOMME (1)

In the preface to this book, Professor Georges Abi-Saab writes that international law relating to human rights, having established its existence after the Second World War, has since been considered as a separate branch of international law. It is not easy to integrate international law on human rights into general international law, and Professor Abi-Saab congratulates Marc Bossuyt for attempting to do so, in both theoretical and practical terms, through the particularly difficult approach of the principle of prohibiting discrimination.

The author wisely chose, in an introductory chapter, to define « discrimination » as it has been understood both in general and international practice and in current doctrine, showing how its meaning has developed, sometimes differently in French and English.

In the first part of his book, Bossuyt seeks to define the prohibition of discrimination by considering the different motives for discrimination and their characteristics, then citing the rights generally recognized, among which he distinguishes guaranteed rights and subjective rights. He firmly delineates the limits to the prohibition of discrimination, primarily the limits to law itself which cannot provide rules for all possible cases: it is in defining the boundaries of our private lives that law defines its own boundaries and, in so doing, the limits to the scope of application of a general prohibition of discrimination.

In a separate chapter, he studies the prohibition of arbitrary action in connection with human rights, with special reference to two cases brought before the European Commission and the European Court of Human Rights.

The second part of the book is devoted to a study of the application of the prohibition of human rights.

In this part, the author first examines the autonomous application of the prohibition of discrimination. The problem is whether the pro-

¹ Ed. E. Bruylant, Bruxelles, 1976, XI + 262 p.

hibition of discrimination relating to a right or freedom can be violated without violating that right or freedom. The author's answer is qualified, although he does recognize that this autonomy is rare and that the matter is more theoretical than practical.

The study of different applications of the prohibition of discrimination according to the nature of the rights leads the author to distinguish between civil and social rights. In the case of civil rights (affecting life or freedom) the State can do no more than grant protection to rights which man already possesses, irrespective of any legal rules (it may therefore be observed that on this point the author inclines towards a "natural law" approach), while social rights, which presuppose a charge upon the State, may be granted by the latter only gradually, in relation to its means and its political options. In the first case, all the State has to do is to recognize civil rights by a declaratory act; for social rights, on the other hand, the State must issue a constituent instrument of new rights (cultural rights may be either civil or social rights, depending on whether respect for such cultural rights does or does not imply a positive grant on the part of the State). But as soon as social rights are recognized, the prohibition of discrimination must be applied to them, as much as to civil rights.

The relationship between internal legislation of States and international law, and the role of judges are also considered.

The value of Marc Bossuyt's book is further enhanced by numerous practical examples and tables, and it will be read with profit by all those who take an interest in human rights, a problem of crucial significance in the world of today.

Y.S.