



BOOK REVIEWS

Prisoners of War, by R. C. HINGORANI, N. M. Tripathi Ltd. Bombay, 1963, pp. XXVIII and 327.

Professor Hingorani divided his work into an *introduction* and three Parts. Part I, entitled "Capture", deals with the commencement of hostilities, with the belligerent personnel entitled to PW status, with the antecedent relations with the captor of traitors, deserters, violators of parole, and with armed forces after surrender, of armed forces of unrecognized States, of armed forces consisting of national militia or volunteer corps, and other combattant groups, as well as auxiliary or non-combatant forces. Special attention is devoted to resistance movements. All those situations are presented and analyzed by the author from the point of view of the right of the captured personnel to a treatment as prisoners of war under the Geneva Convention of 1949.

Part II discusses the problems of maintenance of the prisoners of war, control and discipline, welfare, financial and labour questions, and the possible external relations of the prisoners, including the very important role of the Protecting Power. Part III analyses the conditions of and under which the captivity is terminated. Follow conclusions concerning both the past and the future implementation of the law of nations pertaining to the protection and treatment of prisoners of war. The difficulties of the captor State are also thoroughly taken into consideration since, on the one hand, the prisoner endures hardships, and on the other hand the captor has to cope with all the various aspects of the prisoner's maintenance.

The four so called *Red Cross Conventions*, signed at Geneva on August 12, 1949, are generally considered one of the outstanding achievements of codification of international law. All possible humanitarian aspects seem to be taken into consideration, and the legal wording of the provisions seem to be very precise, and clear at the same time. The *Convention relative to the treatment of prisoners of war* discussed in the book under review seems to this reviewer even more precise and complete than the other three Conventions, which may be explained by the fact that the drafter could take advantage of all the shortcomings of the previous conventions in the field, of 1929, in spite of the truly great service it has rendered to the many PW of the last War. However, such is not the opinion of the author. For him :



“ Many of the provisions of the Geneva Convention of 1949 seem to be out of date today.....International prescriptions which do not reflect the realities of war are unlikely to be effective. It could be disastrous for the commendable provisions of the Geneva Convention if they become so anachronistic as to be of no effect as a guide to rights and privileges of prisoners ” (p. viii). To this reviewer, this statement seems absolutely overpessimistic at the present time, and it seems also not sufficiently substantiated.

The presentation of the subject by the author is clear and informative. The particular topics are based upon the divisions of the Convention itself (its text is annexed), and the interpretations of the most important provisions is carried out against the background of the practical cases as well as of opinions of many publicists. The author does not limit himself to the presentation of the points of view expressed by other writers, but on many issues states his personal opinions, and proposes some solutions for the future practice.

While many of the author's ideas seem right, exception may be taken to following statements :

“ Such was the situation in all the occupied territories. While it is admitted that the Germany took ruthless measures against the partisans and resistance movements for their suppression (sometimes justifiably), they could not possibly prevent the uprisings mainly due to the fact that they were assisted from outside by the Allied Powers..... None of the resistance movements fulfilled the four requirements..... Nowhere, however, were these movements effective except partly in Yugoslavia and Greece..... etc. (55/56) ”.

The author clearly condemns the partisans' activities in the above and other statements, and has no appreciation whatsoever of their selfless struggles for freedom, and their exalted patriotism. Fortunately, the Convention's provisions go in an opposite direction. The author's research in that field seems to be most inadequate. He by-passes the French resistance of some 200,000 regularly organised troops, called “ Forces Francaises de l' Interieur ” (FFI) which tied up some 10 to 15 German divisions inside France. With small exceptions, the soldiers of that resistance complied strictly with the four requirements: they had uniforms or arm-bands, carried their arms openly, had regional and superior commanders, and complied with the laws of war. In Poland, since 1942, an army of a quarter of a million soldiers

constituted the "National Resistance Army". Their detachments fought pitched battles in various parts of the territory, and, in summer 1944, occupied Warsaw, the capital. Germans needed a whole army, and completely destroyed the city to quell that "Uprising" of ten weeks. While, during the first years of the occupation, Germans executed mercilessly captive partisans, towards the end of the war, they took them prisoners, both in France and in Poland. After a solemn declaration by Churchill and Gen. Eisenhower in 1944 that Polish forces fighting in Warsaw are under their command, Germans granted full prisoners of War status to some 30,000 captives of that "National Army".

It seems that the author confuses the air-reconnaissance, a regular military operation, with espionage activities (66, 67). The author writes: "The above enumeration, it is hoped, is not exhaustive. Asylum in a neutral chancery or man-of-war could also be considered as amounting to successful escape" (206).

This statement is right in what concerns a neutral warship, and wrong in respect to a neutral chancery. With the exception of some fourteen Latin American States which signed and ratified the 1928 Havana Convention on Asylum, diplomatic missions have no right, legally, to grant Asylum to anyone. An attempt to grant asylum is a serious infringement upon the State's territorial sovereignty, unless there is in force between the countries concerned an agreement to the contrary (Cf. ICJ *Asylum* case).

The author by-passes the problem of reciprocity, of such a vital importance in the treatment of prisoners of war. During the year 1941, 1942, Germans, making a point of the fact that the USSR was not a party to the Convention of 1929, treated Soviet prisoners in a most inhuman way, starving tens of thousands to death. This practice was gradually changed when more and more German soldiers fell into the Soviet captivity.

However, Germans granted full PW status to soldiers captured in Poland in 1939, and to Poles, Czechs, Slovaks etc. who, as members of the Allied Forces, fell into their hands. This was one of the light spots (not mentioned by the author) in the whole grim picture of German conduct during the second World War, as evidenced in the Nuremberg Trial.

The author uses at least two expressions which greatly bother a jurist: "Nation-State", and "prescriptions". He constantly applies



the first term in the sense of a State under international law. However, "nation" is a sociological concept", and "State" is a legal one! there may be tens of nations in one State. When in international law we speak of a State, we mean this body politic which is a direct subject of that law. We then exclude so-called states-members of a federation, and any other territorial organisation which is not a sovereign member of the international community. The unhappy term "nation State" may be also found in some popular Indian text books, and it thoroughly disorients students as well as professors; it should not be tolerated in a book by a jurist, while Prof. Hingorani makes of it a constant use all through his book. The other term "prescription", means usually either a medical ordinance, or, *in law*, acquisition or loss of a right by an undisturbed elapse of time. But, for Prof. Hingorani, it means the same as "provision", "regulations", "clause", "rule" etc. Instead of applying these four last terms, he clings to his "prescription", which might induce in error the non-yet-initiated students.

This informative book needs a thorough revision from many points of view. It certainly deserves a second, revised edition, which would also eliminate many misprints.

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The Constitution of India, by T. K. Tope, Second Edition, (Popular Prakashan, Bombay) 1963, pp. 614, Rs. 17.50.

Professor Tope, who is the Principal of the Government Law College, Bombay, has offered in this book a clear and concise survey of the salient features of the Indian Constitution and of the case-law relating to the Constitution. He has also dealt occasionally with the political developments bearing on the Constitution. As the author remarks in his preface, the book is primarily meant for University students of law, but he has not hesitated to express his views on the several issues he discusses and to support them with cogent and forceful arguments.

His study of the constitutional status and powers of the President of India *vis-a-vis* the Prime Minister is particularly erudite and interesting. He thinks that the President represents the nation, while the Prime Minister represents merely the majority party, and that the former "will be justified in ignoring the advice" of the latter "if it is inconsistent with the interest of the nation". His reasons for coming to such a conclusion are certain alleged deviations from English