

BOOK REVIEWS

LE DROIT D'ASILE, by Leopold Bolesta-Koziebrodzki, Associate Professor at the University of North Carolina. [Leyden: A. W. Sythoff, 1962. 374 pp. D.fl.34.]

This work by a pre-war Polish diplomat, now settled in an academic position in the U.S.A., is devoted to an attempt to persuade nations of the need for a wider, more generous recognition of the right of the refugee to asylum. Very much of the work is taken up by a historical treatment of the question. The author must be thanked for devoting a chapter to the experiences of the Spanish Civil War. More of the local population were granted diplomatic asylum during those years in foreign embassy and legation premises than in any civil war before. In his position as *Charge d'Affaires* of Poland in Spain during 1936 and 1937 the author had a better insight into the happenings in Spain than most other people. However, it must be doubted whether experiences gained during this upheaval which even today does not appear to have gained an impartial assessment can be used in the sense suggested by the author.

The 1951 Convention relating to the Status of Refugees which was the result of much work by the U.N. is treated in detail. It has now been ratified by a great number of nations. The author regrets the limits the Convention laid down with regard to the definition of "political offences" within the meaning of the Convention. It is true that the 1937 Agreement on the Prevention and Repression of Terrorism and the 1943 and 1945 Allied Declarations on War Criminals deprived persons who in the late 19th Century might have passed as refugees of this chance under the 1951 Convention. This is a piece of international legislation which went to the limit of agreement between the majority of states. Neither they nor their inhabitants would probably agree to treat as refugees persons such as Pierre Laval, Ante Pavelic and Leon Degrelle whom the author lists, among others, as being deprived of this fundamental right by Allied wartime agreements (p. 87). An interesting phenomenon is treated by the author when he refers to "latent refugees". The problem of their status arose mainly when persons who resided at a certain place against their will later refused to return to their homeland owing to the political situation there. It became particularly acute when former prisoners of war and forced labour from Russia and other East European countries overrun by the German armies in the last war elected to remain outside their home countries, thus becoming one of the many groups of "displaced persons". The author lists the limited legal remedies open to refugees in the widest sense for defence of their status under municipal legislation: not even the Federal Republic of Germany allows appeal to the Supreme Court or to the Supreme Administrative Tribunal under its 1951 statute (p. 102). The position of the refugee is not better under French or U.S. law. (p. 183).

The author subdivides his treatment of the law of asylum into asylum granted in a state's territory, and asylum granted outside that territory. Under the latter fall the kinds of asylum granted in diplomatic premises, and on board military aeroplanes on airports. Latin American state practice had gone further than state practice elsewhere in granting and recognising such diplomatic asylum. The author deals with the various attempts at codifying that practice. He discusses in particular

the latest codification, the Caracas Convention of 1954 (p. 269 ff.) which goes further than its predecessors in trying to place usage into treaty form. By early 1961 almost one half of the Latin American states had ratified the Convention, among them Brazil, Mexico and Venezuela. Under its terms the State granting asylum is clearly entitled to qualify the offence, and also the question of urgency: the two questions on which customary international law remains silent, as the International Court of Justice held in the judgments concerning Haya de la Torre. However, it must most seriously be doubted whether Latin American State practice and treaty law will recommend themselves to other parts of the world.

In the Annex Professor Bolesta-Koziebrodzki presents the reader with a Draft of a General Asylum Convention. In view of the serious limitations on normal state rights which it suggests it will hardly find favour with the majority of states to-day. However, some of the ideas should be ventilated when the U.N. Draft Declaration on the Right of Asylum comes up again before the United Nations General Assembly. It will be remembered that in its last, seventeenth session the Committee of the United Nations considering the Draft Declaration merely adopted the preamble and Article 1 of that Declaration which provides that asylum, properly granted by a State, shall be respected by all other States. The task of achieving agreement on the other provisions of the Declaration, will be before the eighteenth session of the U.N. To move from a mere Declaration to a Convention laying down rules binding States will be a still more formidable proposition. The book under review should assist in achieving the work before the U.N., especially if a translation into English is made available.