

“ASILO AMERICANO” AND THE INTERPLAY OF SOVEREIGNTY, REVOLUTION, AND LATIN AMERICAN HUMAN RIGHTS ADVOCACY: THE CASE OF 20TH-CENTURY ARGENTINA

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Introduction

In 1952, Carlos Sánchez Viamonte, a prominent Argentine lawyer, congressman, and early human rights advocate, called “*el derecho de asilo*” – the right of diplomatic asylum – the most significant Latin American contribution to public international law.² He labeled it a “guarantee in favor of the... oppressed...[,] sometimes the only possible protection for individual liberty inside the territorial limits of a nation whose government invokes sovereignty with repressive...ends.”³ Other commentators have called it “the highest tribute that can be paid to individual liberty,”⁴ “not only an exceptionally noble conquest of American International Law, but a tradition that extols the humanitarian and democratic spirit of the hemisphere’s countries, since it is founded on the defense of all men’s freedom to speak out against a government or political system.”⁵

This understudied Latin American practice allows political dissidents to seek refuge in, and safe passage out, of embassies and other extraterritorial sites located in the very countries that deem them threats.⁶ Frequently employed during the civil wars and revolutionary conflicts of the 19th century, diplomatic asylum became

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² Carlos Sánchez Viamonte, *EL DERECHO DE ASILO*, LIBERALIS, March-April 1952, at 50.

³ *Id.* at 48-49.

⁴ R.B. Greenburgh, *Developments in the Law of Diplomatic Asylum*, 41 TRANSACTIONS OF THE GROTIUS SOCIETY 103, n.13 (1955) (citing Julio Luelmo, *Teoría del derecho del asilo*, REVISTA DE LA ESCUELA NACIONAL DE JURISPRUDENCIA, Jan.-March 1947, at 165.).

⁵ Luis Carlos Zárate, *EL ASILO EN EL DERECHO INTERNACIONAL AMERICANO* 374 (1958).

⁶ It should be noted that in Latin America, “asilo” and related words have been used inconsistently, causing significant confusion. Historically, “asilo” has generally referred to diplomatic asylum and is therefore used that way here. See Jaime Esponda Fernández, *La tradición latinoamericana de asilo y la protección internacional de los refugiados*, in *EL ASILO Y LA PROTECCIÓN INTERNACIONAL DE LOS REFUGIADOS EN AMÉRICA LATINA. ANÁLISIS CRÍTICO DEL DUALISMO “ASILO-REFUGIO” A LA LUZ DEL DERECHO INTERNACIONAL DE LOS DERECHOS HUMANOS* (María Laura Gianelli Dublanc et al. eds., 2004).

by the middle of the 20th century both a mechanism for states to assert their sovereignty and a method for non-governmental advocates to defend individuals from state-sponsored persecution. By the late 20th century, while never disappearing, it had faded as a celebrated advocacy tool in the region. This paper examines diplomatic asylum and its links to sovereignty, political dissent, and the development of Latin American human rights activism.

To explore the uses and meanings of Latin American diplomatic asylum law in concrete terms, this paper focuses on the national context of 20th-century Argentina. Part I briefly describes the deep historical origins of diplomatic asylum before turning to the 1880s and early 20th-century, when the first inter-American treaties codifying the practice were adopted. Part II explores the diverse applications of this legal framework in the 1930s by government representatives and non-governmental advocates. Part III examines international challenges to Latin American asylum law and advocates' defense of the institution by turning to the 1950s and the famous case of Víctor Raúl Haya de la Torre. The final section, Part IV, analyzes another, much more serious challenge to diplomatic asylum in Latin America: the political violence of the 1970s.

My preliminary research suggests that Argentine non-governmental advocates, through their use of diplomatic asylum, were working to incorporate universal rights principles into international legal practice long before the development of the modern human rights movement in the 1970s.⁷ But this is not to say that human rights law activism was constant over time. The century I consider reveals an apparent shift in strategy among advocates: from taking advantage of spaces in international law that allowed for individual rights – and political dissent – to coexist with state sovereignty, to applying a new international law framework premised on basic individual rights. I seek to understand what drove this shift and what it meant for the development of human rights advocacy.

This paper was originally presented at the 2012 South-North Exchange on Theory, Culture, and Law (SNX). Paired with Sheila Vélez Martínez's presentation on present-day asylum claims for LGBTQ people, it provided a historical perspective on Latin American asylum advocacy on behalf of victims of persecution. My hope is that my work also engaged some of the questions that animated this year's SNX, chief among them 1) the relationship between national sovereignty and human rights (explored by Yanira Reyes Gil), 2)

⁷ This paper is part of a dissertation project that examines Argentine individual rights advocacy and executive power over the course of the 20th century.

political crime, the law, and human rights (treated by Farid Samir Benavides Vanegas), and 3) human rights tools and their application in the Americas (addressed by Wilmai Rivera). This revised version of the essay attempts to incorporate the thought-provoking insights and comments of my fellow presenters and conference participants. Specifically, I have added analysis of the Haya de la Torre case in response to Farid Samir Benavides Vanegas's questions on this point and additional discussion of Chilean asylum-seekers to address Mara Sankey's feedback.

I. REFUGE FOR POLITICAL CRIMINALS AND THE EXERCISE OF SOVEREIGNTY, 1889-1929

I will begin by stepping back in time and space to address the following question: Where did the right of diplomatic asylum come from and how, when, and why did it become a Latin American institution? The practice of providing physical protection to individuals fleeing harm is an ancient one that existed in the Greek, Roman, Jewish, and Christian civilizations. It was in its very early forms a religious practice based in religious sanctity. This early asylum offered protection in churches, temples, and at altars to non-political fugitives; political crimes were the gravest of offenses and treated as such.⁸ Over the centuries, with the development of sovereign states, asylum's foundation shifted from religious inviolability to territorial sovereignty.⁹ Asylum became available in towns and other countries rather than sacred places. Another important change occurred in the 18th century: jurists began to invoke the institution of asylum to protect political rather than common criminals. This move to defend political dissidents was, in important part, a result of the French Revolution's celebration of the right of insurrection.¹⁰ Other authors have emphasized the rise of nationalism in the 19th century and its recasting of the political offender as patriot.¹¹

With the development of permanent diplomacy starting in the 15th century, and then the creation of permanent embassies, another form of asylum developed: diplomatic asylum. This form of asylum was originally based on the principle that the ambassador and his dwelling were inviolable, and was bolstered by the legal fiction of

⁸ See S. Prakash Sinha, *ASYLUM AND INTERNATIONAL LAW* 5-15 (1971).

⁹ *Id.* at 15; see also John Bassett Moore, *A DIGEST OF INTERNATIONAL LAW* 755-57 (1906).

¹⁰ Mario Sznajder & Luis Roniger, *THE POLITICS OF EXILE IN LATIN AMERICA* 146-47 (2009); Prakash Sinha, *supra* note 8, at 19.

¹¹ See Alona E. Evans, *The Colombian-Peruvian Asylum Case: The Practice of Diplomatic Asylum*, 46 *AM. POL. SCI. REV.* 142, 143 (1951).

extraterritoriality.¹² As with territorial asylum, diplomatic asylum first protected common criminals before being reconfigured in the late 18th and early 19th centuries to protect political criminals. But while the invention of territorial asylum relied on the development of territorial sovereignty, diplomatic asylum depended on a restriction of that sovereignty, since embassies now provided refuge *inside* the borders of a nation-state.¹³ It is precisely this challenge to national sovereignty, denying a government the ability to categorize and deal with alleged criminals as it sees fit, as well as the potentially bloody repercussions, that has made diplomatic asylum controversial from its inception.¹⁴ In addition, at various points in history governments have been accused of misusing asylum for political ends.¹⁵

Diplomatic asylum became a well-established practice before falling into disuse in most places over the course of the 19th century, rejected as an unacceptable limitation on territorial sovereignty. But its decline was not immediate or without reversals, especially during periods of political upheaval.¹⁶ The United States government has never recognized diplomatic asylum as part of international law.¹⁷ That said, the United States and European countries have provided diplomatic asylum on occasion in modern times.¹⁸ During the Spanish Civil War in particular, European governments that had rejected diplomatic asylum as a legal principle made use of the practice to protect thousands of people from persecution, Nationalists and Republicans.¹⁹

In Latin America, diplomatic asylum during the 19th century, far from fading away, became an important custom, and was codified in law.²⁰ Authors have explained the survival of the institution in Latin America by pointing to the region's plentiful revolutions and civil wars, its history of liberalism, humanitarianism, and tolerance,²¹ or its ties to Spain, where diplomatic asylum had been an important tradition.²² Linking liberty and violence, the International Court of Justice has explained Latin America's embrace of diplomatic asylum

¹² See UN General Assembly, QUESTION OF DIPLOMATIC ASYLUM: REPORT OF THE SECRETARY-GENERAL, September 22, 1975, A/10139 (Part II), available at <http://www.unhcr.org/refworld/docid/3ae68bf10.html>.

¹³ Prakash Sinha, *supra* note 8, at 20.

¹⁴ See Evans, *supra* note 11, at 143.

¹⁵ See Moore, *supra* note 9, at 763-66; Greenburgh, *supra* note 4, at 104.

¹⁶ See Prakash Sinha, *supra* note 8, at 25-27; Moore, *supra* note 8, at 766-77.

¹⁷ See Esponda Fernández, *supra* note 6, at 86.

¹⁸ See Prakash Sinha, *supra* note 8, at 27.

¹⁹ Greenburgh, *supra* note 4, at 103-4.

²⁰ Esponda Fernández, *supra* note 6, at 85.

²¹ Carlos Bollini Shaw, DERECHO DE ASILO 31-33 (1937).

²² Lucio M. Moreno Quintana, DERECHO DE ASILO 2 (1952).

as the product both of the region's celebration of individual rights and its experiences of civil unrest:

The American institution of asylum, with the special characteristics which it assumes on the continent, is... the result of two coexisting phenomena deriving from law and politics respectively and in evidence throughout the history of this group of States: on the one hand, the power of democratic principles, respect for the individual and for freedom of thought; on the other hand, the unusual frequency of revolutions and armed struggles which, after each internal conflict, have often endangered the safety and life of persons on the losing side.²³

Other authors have emphasized the class dimension of this development, noting that elite government leaders and elite rebels shared an interest in preserving an institution that could avert full-blown civil war by physically removing, and protecting, well-connected rebels.²⁴

During a period marked by widespread labor activism, the rise of mass politics, and anarchist and communist mobilization, diplomatic asylum was formalized in Latin America. An 1889 treaty signed at the First South American Congress on Private International Law, the Treaty on International Penal Law, was the first to codify Latin American asylum law, regulating both territorial and diplomatic asylum.²⁵ Inter-American and sub-regional treaties governing diplomatic asylum, and in some cases territorial asylum, were signed in Havana in 1928, Montevideo in 1933 and 1939, and Caracas in 1954.²⁶ In addition to these conventions, one lingering

²³ UN General Assembly, *Question of Diplomatic Asylum : Report of the Secretary-General*, 22 September 1975, A/10139 (Part II), available at: <http://www.unhcr.org/refworld/docid/3ae68bf10.html> [accessed 28 July 2012] (citing ICJ, Pleadings, Oral Arguments, Documents, Colombian-Peruvian Asylum Case, vol. I, p. 25.).

²⁴ See Sznajder and Roniger, *supra* note 10.

²⁵ Esponanda Fernández, *supra* note 6, at 96-97.

²⁶ The inter-American treaties on diplomatic asylum include the following: Convención sobre Asilo adoptada en la VI Conferencia Internacional Americana, La Habana 1928; Convención sobre Asilo Político adoptada en la VII Conferencia Internacional Americana, Montevideo 1933; and Convención sobre Asilo Diplomático adoptada en la IX Conferencia Internacional Americana, Caracas 1954. Subregional treaties that addressed the issue of diplomatic asylum were the following: Tratado sobre Derecho Penal Internacional, Montevideo 1889; Tratado General de Paz y Amistad Centro Americana de 1907; Convención Bolivariana de 1911; and Convención sobre Asilo y Refugio Político, Montevideo 1939. See Héctor Gros Espiell, *El derecho internacional americano sobre asilo territorial y extradición en sus relaciones con la Convención de 1951 y el Protocolo de 1967 sobre estatuto de*

question was whether there was a legally binding *custom* of asylum in the region. This issue would be addressed, if not put to rest, in the 1950 International Court of Justice case of Víctor Raúl Haya de la Torre, discussed below. While not all Latin American authors and states supported diplomatic asylum as a legal institution, many spoke enthusiastically in favor of the practice as a protection firmly established in the region's unique humanitarian or legal tradition, calling it an American, or sometimes South American, law.²⁷

II. STATE POWER, REVOLUTION, AND HUMAN RIGHTS IN THE 1930S

What was this tradition from the perspective of people on the ground? Now we move to Argentina. The Argentine government ratified the 1889 Treaty on International Penal Law and signed the 1928, 1933, 1939, and 1954 treaties. Prior to the late 1970s, it frequently granted asylum.²⁸ The government expressly supported the institution on multiple occasions, most notably during the Spanish Civil War, when its representatives lauded diplomatic asylum as an American right to be respected, sent warships to Spain to pick up asylum-seekers, and presented to the League of Nations a draft treaty on asylum, covering both diplomatic and territorial asylum.²⁹

But what did it mean for the government to support asylum as a legal right? An important feature of the treaties ratified and signed by Argentina is the balancing act they attempt to strike between sovereignty, political dissent, and protection of the physical integrity of the asylum-seeker. The 1889 Treaty on International Penal Law, for example, provides that asylum is inviolable for people tried for political crimes. But if a government gives territorial asylum to such people, a potential outcome of diplomatic asylum, it must ensure that they do not endanger the safety of their home countries. National security was a concern built into the early asylum regime. It should therefore perhaps come as no surprise that the Argentine government in the 1940s and 1950s granted requests for "internación política," political internment, issued by neighboring governments like Chile, Bolivia, and Paraguay. When these neighboring states claimed that asylees already in Argentina posed a threat to them, they requested that Argentina remove the asylees from border areas and relocate them in politically safer, more remote, terrain. Argentine

los refugiados. Primera parte, in ASILO Y PROTECCIÓN INTERNACIONAL DE REFUGIADOS EN AMÉRICA LATINA 44 (1982).

²⁷ See Bollini Shaw, *supra* note 21, at 23 n.28.

²⁸ Moreno Quintana, *supra* note 22, at 46.

²⁹ Prakash Sinha, *supra* note 8, at 222; Esponda Fernández, *supra* note 6, at 93-94.

Interior Ministry documents indicate that the Argentine government obliged on multiple occasions, sometimes meeting the resistance of Congress and the asylees themselves.³⁰ The key point is that this practice of “internación política,” which limited asylees’ liberty rights, was utterly consistent with the codified version of the right of asylum. This right, after all, belonged to sovereign states and their representatives. It was a right to be applied at their discretion to the benefit of asylees’ personal integrity, but it was not the asylum-seeker’s to exercise. This argument was made by the Argentine representatives so active in efforts to improve asylum law codification in the late 1930s. Carlos Bollini Shaw, who advised the Argentine delegation on the 1939 Treaty on Asylum and Political Refuge, wrote in a memorandum about the treaty that, “Asylum is a humanitarian more than a legal institution; it is not an international obligation on the part of the asylum-granting state, nor is it a right whose realization can be demanded by an individual....”³¹ The secretary of the same Argentine delegation concurred, explaining that no asylum treaties, from the 1889 Treaty on International Penal Law to the recently signed 1939 convention contained a state obligation to grant asylum or an individual’s right to obtain it.³²

Nongovernmental activists and advocates in Argentina also promoted “derecho de asilo,” but from a very different perspective, or rather, perspectives. They intervened in this realm of international law in letters to the Ministry of the Interior, Ministry of Foreign Relations, and Congress, through organizational publications and newspapers, and via habeas corpus petitions. In terms of the substance of the messages they conveyed, I will describe two trends I have identified.

Some nongovernmental political actors in the first part of the 20th century used the same language of “derecho de asilo” not as a safety valve to maintain peace, but rather as a tool for revolution. In the early 1930s, the Argentine branch of International Red Aid/Socorro Rojo was founded. This was the international social service organization started in the 1920s by the Communist International to provide legal, material, and social support to political prisoners. Referring especially to territorial asylum, Socorro Rojo

³⁰ Departamento Archivo Intermedio - Archivo General de la Nación, Fondo: Ministerio del Interior, expedientes secretos, confidenciales y reservados (1932 - 1983), Box 88, documents num. 83, 100.

³¹ *Memorandum presentado por el Secretario Asesor de la Delegación Argentina, doctor Carlos Bollini Shaw, acerca del Tratado sobre Asilo y Refugio Políticos*, in Zárate, *supra* note 5, at 88.

³² *Memorandum Presentado por el Secretario de la Delegación Argentina, Doctor Isidoro Ruíz Moreno (H), Sobre el Derecho de Asilar: los Precedentes Americanos y el Tratado de Montevideo*, in Zárate, *supra* note 5, at 82-86.

Internacional called on its national branches to back “derecho de asilo” as a way to protect fellow revolutionaries and advance the revolutionary cause.³³

Another version of the right of asylum was also promoted by Argentine nongovernmental groups starting at least in the 1930s. This was a less politicized variety rooted in universal human rights principles. The legal developments of 1930s Argentina were shaped in important ways not only by the Spanish Civil War, as noted before, but also by the international rise of fascism and, domestically, by the first military coup in modern Argentine history. One of these developments was the appearance of new progressive organizations, formed to protect the rights of Argentines and foreigners alike. The plight of political prisoners and fulfillment of “derecho de asilo” were among the important themes in their work. Prominent among these groups was the Comité Pro Amnistia a Presos Políticos y Exiliados de América, which, in 1937, reorganized to form Argentina’s first human rights organization, the Liga Argentina por los Derechos del Hombre.³⁴ The Liga had ties to the Communist Party, but it included among its members and beneficiaries non-Communists and used self-consciously nonpartisan, universal rights language.³⁵ Another group, the Comité Contra el Racismo y el Antisemitismo de la Argentina, likewise employed universal rights principles in its advocacy. In an event it organized in 1939 to celebrate the 150th anniversary of France’s Declaration of the Rights of Man and of the Citizen, the Comité emphasized the right of asylum. It explained in a letter to the Liga that the protection of people persecuted for political – and social, religious, or racial – reasons epitomized the human rights values born of the French Revolution.³⁶ Labor organizations, whose members were frequently represented by Liga lawyers, also invoked the right of diplomatic asylum. In a 1937 letter to the Argentine lower house of Congress, a group of unions and cultural organizations highlighted the Argentine government’s hypocrisy in supporting the right of asylum in Spain while violating the same right at home by deporting workers that the executive branch deemed to be subversives or common criminals.³⁷

³³ Socorro Rojo Internacional, 10 AÑOS DE S.R.I. 244-50, Biblioteca del Centro de Documentación e Investigación de la Cultura de Izquierdas en la Argentina.

³⁴ See Mauricio Chama, *Activismo social y político, represión estatal y defensa de “presos Conintes”: la experiencia de Cofade (1960-1963)*, paper presented at V Jornadas de Historia Política “Las provincias en perspectiva comparada,” Universidad Nacional de Mar del Plata, September 29-October 1, 2010, 3, *available at* historiapolitica.com, http://historiapolitica.com/datos/biblioteca/vj_chama.pdf (last accessed January 19, 2012); Ian Guest, BEHIND THE DISAPPEARANCES: ARGENTINA’S DIRTY WAR AGAINST HUMAN RIGHTS AND THE UNITED Nations 51 (1990); Emilio F. Mignone, *Derechos humanos y sociedad: El caso argentino* 100-01 (1991).

³⁵ Héctor Ricardo Leis, *EL MOVIMIENTO POR LOS DERECHOS HUMANOS Y LA POLÍTICA ARGENTINA*/1 14 (1989); Alfredo Villalba Welsh, *TIEMPOS DE IRA, TIEMPOS DE ESPERANZA* (1984).

³⁶ Letter from the Comité Contra el Racismo y el Antisemitismo de la Argentina to Mario Bravo, president of the Liga Argentina por los Derechos del Hombre, June 2, 1939, Subfondo Arturo Frondizi - Fondo Centro de Estudios Nacionales (Subfondo AF - CEN), Archivos y Colecciones Particulares, Biblioteca Nacional de la Republica Argentina.

³⁷ Letter from Organizaciones Obreras y Culturales de la Capital Federal Solicitan el Rechazo del Proyecto de Ley de Represión del Comunismo to the Chamber of Deputies, Aug. 19, 1947, Cámara de

III. AMERICAN ASYLUM IN INTERNATIONAL LAW: THE
CASE OF VÍCTOR RAÚL HAYA DE LA TORRE

The Latin American tradition of asylum attracted renewed international scrutiny in the early 1950s, when the International Court of Justice decided the case of Víctor Raúl Haya de la Torre. This was a pivotal moment, sparking vociferous discussion about the place of individual human beings in international law.

In the wake of a 1948 military uprising in Peru, Haya de la Torre, founder and leader of the Alianza Popular Revolucionaria Americana, was charged with instigating the rebellion. Evading capture, he sought protection in the Colombian embassy in Lima. Though granted asylum by the Colombian ambassador, who qualified Haya de la Torre as a political offender, Haya de la Torre was stuck; the Peruvian government refused to grant Haya de la Torre safe-conduct out of the country, considering him a common criminal who should be tried in Peruvian courts.³⁸ While Haya de la Torre remained in the embassy, the two governments took the case to the International Court of Justice in The Hague, which issued decisions in 1950 and again in 1951.³⁹

The 1950 decision hinged on two major questions: whether Colombia could unilaterally and definitively qualify Haya de la Torre's alleged crime as political, making Haya de la Torre eligible for asylum, and whether Peru was obligated to provide safe-conduct. Colombia based its arguments on conventional law and custom, specifically American international law. After reviewing the applicability of the treaties invoked by Colombia – the Bolivarian Agreement of 1911 on Extradition, the Havana Convention of 1928 on Asylum, and the Montevideo Convention of 1933 on Political Asylum – the court determined that conventional law did not support Colombia's qualification of Haya de la Torre's crime as political over Peru's objections, nor did it require that Peru provide safe-conduct. Moreover, the court rejected Colombia's claim that regional custom constituted a legal norm allowing the asylum-granting government to qualify the asylum-seeker's alleged offense as it saw fit. The court explained that in Latin America the practice of unilateral and definitive qualification of offenses by asylum-granting governments lacked the constancy, uniformity, and *opinio juris* necessary to be

Diputados de la Nación, Secretaría Parlamentaria, Dirección de Archivo, Publicaciones y Museo, Caja 21, Expediente 00809-P-1937, at 11.

³⁸ Colombian-Peruvian Asylum Case, 1950 ICJ 266, 272-73 (Nov. 20), available at <http://www.icj-cij.org/docket/files/7/1849.pdf>.

³⁹ *Id.*; Haya de la Torre Case (Colombia v. Peru), 1951 ICJ 71 (June 13), available at <http://www.icj-cij.org/docket/files/14/1937.pdf>.

legally binding.⁴⁰ It was, instead, a decision governments generally made on the basis of political expediency.

But in its 1951 decision, the court nonetheless recognized a tradition of American asylum and its legal implications. Following the 1950 judgment, Colombia submitted an application to the court to challenge Peru's demand that the embassy hand over Haya de la Torre. While Haya de la Torre's asylum had been granted improperly, as established in the 1950 judgment, the Latin American tradition of asylum held that refugees should not be surrendered. Without an explicit treaty provision modifying this traditional ban on surrender, the court reasoned, Colombia was not required to turn in Haya de la Torre.⁴¹ The court's judgments, taken together, thus protected Haya de la Torre from surrender while demanding an immediate end to his asylum. In limbo, Haya de la Torre spent five years in the Colombian embassy until, finally, bilateral negotiations resulted in his release by the Peruvian government.⁴²

Latin American states responded to the Haya de la Torre case by further developing regional treaties on diplomatic asylum. The Haya de la Torre decisions inspired Latin American countries to address some of the defects in existing conventional law, giving rise in 1954 to the Caracas Convention on Territorial Asylum and the Caracas Convention on Diplomatic Asylum.⁴³ Among their provisions, the former treaty established that governments are not obligated to surrender people persecuted for political offenses or motives, and the latter treaty made clear that safe-conduct, once requested, was generally required by the territorial state.⁴⁴

Some proponents of asylum demanded more than further elaboration of existing treaties. In books, articles, and court documents, they insisted that asylum was not a right of governments but of individuals, and that states were obligated to grant asylum on the basis of universal, humanitarian norms. One writer on the topic was Argentine human rights lawyer and congressman Carlos Sánchez Viamonte, whose words open this article. Asylum was, according to Sánchez Viamonte, much more than an abstract and

⁴⁰ See Gros Espiell, *supra* note 26, at 53.

⁴¹ Haya de la Torre Case, *supra* note 39, at 80-81.

⁴² See Galindo Vélez, Francisco, *El asilo en el sistema de las Naciones Unidas y en el sistema Interamericano*, COMPILACIÓN DE INSTRUMENTOS JURÍDICOS REGIONALES RELATIVOS A DERECHOS HUMANOS, REFUGIADOS Y ASILO. COLECCIÓN DE TEXTOS BÁSICOS DE DERECHOS HUMANOS Y DERECHO DE LOS REFUGIADOS, TOMO II 35 (2003).

⁴³ *Id.* at 55.

⁴⁴ Caracas Convention on Diplomatic Asylum art. XII, March 28, 1954, 1438 U.N.T.S. 101; Caracas Convention on Territorial Asylum art. III, March 28, 1954, 1438 U.N.T.S. 127; See Esponda Fernández, *supra* note 6, at 96.

subjective individual right; it was a legal guarantee.⁴⁵ In a 1952 magazine article, Sánchez Viamonte proclaimed the special role of Latin America, and Argentina in particular, in promoting the idea that sovereignty and international relations must advance the interests of the people, not governments.⁴⁶ Advocates also expressed these views in domestic legal proceedings. Following the 1954 coup in Guatemala, a group of 33 Guatemalan exiles found safety in the Argentine embassy and were transported out of the country on Argentine Air Force planes. But when they arrived in Argentina, the men were arrested. The team of lawyers who came to their defense, including members of the Liga Argentina por los Derechos del Hombre, argued in their habeas corpus petition that Latin America and Argentina had a proud history of defending “el derecho de asilo” in international law and, citing the 1939 Treaty on Asylum and Political Refuge, the new Universal Declaration of Human Rights, and the “derecho de gentes” (law of peoples), they urged the law of asylum to be interpreted as obligating states to provide protection to asylum-seekers who requested it at their embassies. The right of diplomatic asylum was a right to be enjoyed by the individual seeking protection from persecution, not a right exercised by the state at its discretion.⁴⁷ Similar arguments were made by Latin American authors explicitly in connection with the Haya de la Torre case; they answered the international court’s challenge to regional asylum law with affirmations of its universal legal foundations in natural law.⁴⁸ In so doing, these advocates pushed for an international legal framework that would serve the needs of people before states.

IV. FROM AMERICAN ASYLUM TO PLAN CÓNDOR: THE 1970S AND NEW CHALLENGES TO ASYLUM LAW

By the late 1970s, the Latin American tradition of diplomatic asylum was under great pressure. In Argentina, the two decades following Juan Perón’s overthrow in 1955 were marked by revolutionary and reactionary violence. The military junta that seized power on March 24, 1976, pledging to bring order as well as economic improvement, ushered in unprecedented levels of bloodshed and, in collaboration with its fellow military regimes in the region, restricted previously available channels for refuge. The government relied most often on the extralegal realm to fight its opponents, discarding legal

⁴⁵ Sánchez Viamonte, *supra* note 2, at 48.

⁴⁶ *Id.* at 48-50.

⁴⁷ Comisión Pro Defensa de la Libertad y de los Presos Políticos, *POR LA LIBERTAD DE LOS PRESOS POLÍTICOS Y GREMIALES. DOCUMENTOS RELATIVOS A LA EXISTENCIA DE MÁS DE 600 PRESOS POLÍTICOS Y GREMIALES EN LA ARGENTINA, Y LA LUCHA POR SU LIBERTAD* (1955), Biblioteca del Centro de Documentación e Investigación de la Cultura de Izquierdas en la Argentina.

⁴⁸ See Zárate, *supra* note 5, at 9.

process for clandestine violence.⁴⁹ In what would become its trademark tactic, the regime “disappeared” tens of thousands of people.⁵⁰ Advocates had to craft new strategies to protect those targeted for state-sponsored violence.

In the years just prior to the 1976 coup, during a brief and tumultuous period of democratic rule (1973-1976), thousands of Latin Americans fleeing political persecution in their own countries found legal protection in Argentina. Alongside the inter-American and sub-regional asylum treaties created between the turn of the 20th century and 1954, the creation of the United Nations in 1948 and adoption of the 1951 UN Convention relating to the Status of Refugees introduced a new regime to govern the treatment of refugees. Argentina became a party to the Refugee Convention in 1961 and, in 1967, acceded to the Protocol adopted that year. However, until 1984, Argentina did not accept the Protocol’s removal of the geographic restrictions originally set by the 1951 treaty, which, reflecting its focus on World War II atrocities, had allowed parties to limit protection to those people who fled persecution in Europe before January 1, 1951. Argentina’s legal commitments under the UN system to Latin American exiles seeking protection were thus limited.⁵¹

Especially in the wake of the September 11, 1973 military coup in Chile, these legal protections were put to the test, and the right to asylum was once again the topic of public debate and advocacy efforts.⁵² Estimates of the numbers of Chileans who left their country during the Pinochet regime, many for political reasons,

⁴⁹ See Anthony W. Pereira, *POLITICAL (IN)JUSTICE: AUTHORITARIANISM AND THE RULE OF LAW IN BRAZIL, CHILE, AND ARGENTINA* Chapt. 6 (2005).

⁵⁰ Estimates of the number of people forcibly disappeared by the Argentine dictatorship range from 9,000 to 30,000. See John Dinges, *THE CONDOR YEARS: HOW PINOCHET AND HIS ALLIES BROUGHT TERRORISM TO THREE CONTINENTS* 139-40 (2004); Alison Brysk, *THE POLITICS OF HUMAN RIGHTS IN ARGENTINA: PROTEST, CHANGE, AND DEMOCRATIZATION* 36-40 (1994).

⁵¹ United Nations High Commissioner for Refugees, *INPUT PROVIDED BY THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES INTO THE OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS’ COMPILATION AND STAKEHOLDERS REPORTS FOR THE UNIVERSAL PERIODIC REVIEW OF ARGENTINA* (2007), available at http://lib.ohchr.org/HRBodies/UPR/Documents/Session1/AR/UNHCR_ARG_UPR_2008_UnitedNationsHighCommissionerforRefugees_uprsubmission.pdf. See too María Cecilia Azconegui, *Triple Alianza para el Refugio: las Iglesias, el ACNUR y el gobierno argentino en la protección y asistencia a los refugiados chilenos (1973-1976)* (2012).

⁵² For example, See *El derecho de asilo*, CLARIN, Oct. 5, 1973, *El derecho de asilo y la realidad histórica*, LA PRENSA, Oct. 6, 1973, SM 2431 bis Asilados políticos, Subfondo documental Secretaría de Medios – Departamento Archivo – Microfilm, Presidencia de la Nación (1934-1990), Archivo Nacional de la Memoria; See also Azconegui, *supra* note 51.

range from hundreds of thousands to almost two million.⁵³ Argentina was a major destination for Chilean exiles.⁵⁴ Hundreds sought protection from the Argentine government while still inside of Chile, requesting asylum at the embassy in Santiago. The Argentine government's response to these asylum-seekers prompted criticism on the part of the Peronist left and prominent intellectuals, led to a congressional investigation and the submission of habeas corpus petitions on the asylum-seekers' behalf, and garnered ample coverage in the press.⁵⁵ After waiting two weeks in the embassy, those who received diplomatic asylum soon after the coup were flown to Argentina, where they complained of being held under guard and incommunicado in a hotel. Some of these asylees, demanding their immediate release and territorial asylum in Argentina, issued a statement to the press.⁵⁶ Many more were denied diplomatic asylum or permission to remain in Argentina. In particular, foreigners who were in Chile were deemed ineligible for asylum by the Argentine government. This situation laid bare one of the weaknesses in existing diplomatic asylum treaties, which did not specify the treatment owed to people seeking diplomatic asylum outside of their home countries.⁵⁷

The plight of the Chileans seeking protection in embassies brought greater attention to the international legal landscape as well. Invoking the historical example of the Spanish Civil War as well as the contemporary example in Chile, the Australian government asked the UN General Assembly to consider universal guidelines to govern diplomatic asylum. In 1975, the UN Secretary General issued a thorough report on the topic, but as Francisco Galindo Vélez notes, this was as far as the issue got in the United Nations.⁵⁸

⁵³ Sznajder and Roniger, *Exile Communities and Their Differential Institutional Dynamics: A Comparative Analysis of the Chilean and Uruguayan Political Diasporas*, 27 REVISTA DE CIENCIA POLÍTICA 43, 46 (2007).

⁵⁴ *Id.* at 48.

⁵⁵ *El recurso en favor de los asilados*, LA NACIÓN, Oct. 6, 1973, *Libertad y detención de ciudadanos extranjeros*, LA PRENSA, May 8, 1974, SM 2431 bis Asilados políticos, Subfondo documental Secretaría de Medios – Departamento Archivo – Microfilm, Presidencia de la Nación (1934-1990), Archivo Nacional de la Memoria; See Francisco Corigliano, *Las relaciones entre Argentina y Chile 1973-1976: El doble canal de vinculación*, POSTDATA, Sept. 2002, at 170-72.

⁵⁶ “*Al pueblo argentino*,” EL MUNDO, Oct. 15, 1973, SM 2431 bis Asilados políticos, Subfondo documental Secretaría de Medios – Departamento Archivo – Microfilm, Presidencia de la Nación (1934-1990), Archivo Nacional de la Memoria.

⁵⁷ Ana María Buriano Castro and Silvia Elena Dutrénit Bielous, *En torno a la política Mexicana de asilo en el Cono Sur*, HAOL, Fall 2003, at 61-62, 64.

⁵⁸ Galindo Vélez, *supra* note 42, at 40; UN General Assembly,

The situation facing Latin American exiles and asylum-seekers in the Southern Cone, and the legal framework meant to protect them, worsened after the Argentine coup. Though always contested and often abused or ignored, the “derecho de asilo” faced unprecedented challenges as the region’s military dictatorships cooperated to eliminate political opponents across borders. Plan Cóndor, Operation Condor in English, was a secret military alliance formally created in 1975 by South American governments including Argentina and Chile that targeted alleged “subversives” in member countries (and elsewhere) for surveillance, enforced disappearance, torture, and assassination.⁵⁹ Its diverse victims – who included students, labor activists, prominent politicians, nuns, and guerrillas – had all fled political persecution in their home countries in search of safety abroad, with some having secured U.N. refugee status.⁶⁰ In Argentina, the Southern Cone, and beyond, Operation Condor undermined the legal protections for asylum-seekers and refugees.⁶¹ Of the many thousands of people in the affected countries who pursued protection from foreign governments, those requesting diplomatic asylum were the smallest group.⁶² But some people did manage to leave the country this way, including around 60 Argentines who were given asylum through the Mexican embassy.⁶³ The Mexican embassy was also the site of one of the most prominent diplomatic asylum controversies during the last dictatorship. Recalling the Peruvian case of Haya de la Torre, the ex-president of Argentina, Héctor Cámpora, his son, and a Peronist leader spent years awaiting safe-conduct in the Mexican embassy in Argentina after being granted asylum.⁶⁴ The Inter-American Commission on Human Rights (IACHR) investigated the case as part of its much-publicized 1979 visit to Argentina, concluding in its report that while diplomatic asylum was a right possessed by the state rather than the individual, the prolonged detention of asylum-seekers due to the

QUESTION OF DIPLOMATIC ASYLUM. REPORT OF THE SECRETARY-GENERAL, 2 September 1975, A/10139 (Part I), *available at* <http://www.unhcr.org/refworld/docid/3ae68bee0.html>; See Esponda Fernández, *supra* note 6, at 91.

⁵⁹ The original members of Operation Condor also included Bolivia, Paraguay, and Uruguay, with Brazil joining in 1976. Peru and Ecuador joined in 1978. Dinges, *supra* note 50, at 10-15, 224; J. Patrice McSherry, PREDATORY STATES: OPERATION CONDOR AND COVERT WAR IN LATIN AMERICA (2005).

⁶⁰ Dinges, *supra* note 50, at 1-2; J. Patrice McSherry, *Tracking the Origins of a State Terror Network: Operation Condor*, 29 LAT. AM. PERSPECTIVES 38, 38 (2002); NUNCA MÁŠ: THE REPORT OF THE ARGENTINE NATIONAL COMMISSION ON THE DISAPPEARED 254-55 (1986).

⁶¹ See NUNCA MÁŠ, *supra* note 60, at 254-55; Dinges, *supra* note 50, at 14.

⁶² Buriano Castro and Dutrénit Bielous, *supra* note 57, at 60.

⁶³ *Id.* at 60-61.

⁶⁴ Buriano Castro and Dutrénit Bielous, *supra* note 57, at 64-65.

Argentine government's protracted refusal to provide safe-conduct was inconsistent with the country's liberal asylum tradition and constituted a violation of asylum-seekers' freedom.⁶⁵

Coordinated state violence against refugees and asylum-seekers was an important focus of human rights advocates during the dictatorship, but diplomatic asylum does not appear to have been a major tool they employed to combat it. While diplomatic asylum remained part of the public debate about individual rights and state power, the debate's scope was limited. For example, one of Argentina's major human rights organizations founded during the period, the Centro de Estudios Legales y Sociales (CELS), invoked "derecho de asilo" to challenge the continued confinement of the Peronist politician who remained in the Mexican embassy after the Argentine government permitted a critically ill Héctor Cámpora and his son to leave the country.⁶⁶ Like the Inter-American Commission on Human Rights, and other international bodies, CELS targeted this particular case when appealing to the right to diplomatic asylum in Argentina.⁶⁷

For more generally applicable legal protections, Argentine advocates looked beyond Latin American diplomatic missions. This was a time when an embassy – as was the case for the Argentine embassy in Madrid – might itself be implicated in transnational human rights violations.⁶⁸ It was also a time, as noted above, when exiles inside Argentina – from Paraguay, Uruguay, and Bolivia, in addition to Chile, and including prominent political leaders – were being disappeared and assassinated. In their work on behalf of exiles and asylum-seekers, 1970s and 1980s human rights groups – including the still-active Liga Argentina por los Derechos del Hombre – worked to uncover these abuses and the clandestine international coordination that produced them.⁶⁹ Jaime Esponda Fernández has observed that in this period, and especially as a result of the Central

⁶⁵ Inter-American Commission on Human Rights, *The Situation of Those in Asylum, Chapt. IV. The Right to Liberty*, REPORT ON THE SITUATION OF HUMAN RIGHTS IN ARGENTINA (1980).

⁶⁶ Centro de Estudios Legales y Sociales, INFORME SOBRE LA SITUACIÓN DE LOS DERECHOS HUMANOS EN ARGENTINA (NOVIEMBRE DE 1980 – FEBRERO DE 1982) Sec. 11 (1982).

⁶⁷ See Documents produced by the IV Conferencia de los Parlamentos Europeo y Latinoamericano (no title), Feb. 19-21, 1979, Archivo institucional del Centro de Estudios Legales y Sociales, Víctimas 5 (CIDH).

⁶⁸ *La Embajada argentina, guarida de asesinos*, DIARIO 16, Aug. 7, 1980, reprinted in Comisión Argentina por los Derechos Humanos, *Dossier Molino* (1980), Archivo institucional del Centro de Estudios Legales y Sociales, Víctimas 5 (CIDH).

⁶⁹ Liga Argentina por los Derechos del Hombre, DOCUMENTO PRESENTADO A LA COMISIÓN INTERAMERICANA DE DERECHOS HUMANOS DE LA ORGANIZACIÓN DE ESTADOS AMERICANOS, 21-22 (July 1979).

American refugee crisis, the regional tradition of asylum entered into crisis and Latin American countries turned to broader international law and the United Nations system for support.⁷⁰ Advocates for individual victims in Argentina, like their predecessors earlier in the century, submitted habeas corpus petitions to challenge unlawful detentions. But these petitions were almost invariably denied. The writ of habeas corpus became a “mere formality, rendering it totally ineffective,” and the judicial process “almost inoperative as a means of appeal.”⁷¹ Lawyers responded by persisting in domestic courts and by addressing enforced disappearance and other human rights violations in the international arena, where, among their achievements, they helped to craft a UN treaty on the topic.⁷² In doing so, Argentine activists not only reacted to a changed environment for advocacy, they helped transform it.

Conclusion

By the late 1970s, human rights in Argentina could not be protected by relying on the region’s governments and their tolerance for political dissent, a safety valve built into international law that in the past, however imperfectly, had allowed some individuals to escape state violence. Having earlier emphasized the right of diplomatic asylum, which allowed dissent – and even revolution – to coexist to some extent with state sovereignty and human rights protections, Argentine legal activists, while not abandoning diplomatic asylum as a human rights tool, focused during the last dictatorship and after on different methods for protecting human rights. They had new institutions and instruments at their disposal, and many used them: the Inter-American Commission on Human Rights, national bodies like specialized congressional subcommittees in Washington, the United Nations and its new human rights conventions, and international human rights NGOs like Amnesty International and Human Rights Watch.

But my preliminary research suggests that advocates’ shift away from diplomatic asylum was the result of more than changing government repression and international conditions. In the first part of the 20th-century Argentina, the flexibility of diplomatic asylum allowed both statesmen and early human rights advocates to embrace the institution as a proud Latin American tradition. For statesmen, it was generally viewed as an exercise of state sovereignty in the service of humanitarianism. For advocates, it was a fundamental form of

⁷⁰ Esponda Fernández, *supra* note 6, at 106-07.

⁷¹ NUNCA MÁS, *supra* note 60, at 386-87.

⁷² See Kathryn Sikkink, *From Pariah State to Global Protagonist: Argentina and the Struggle for International Human Rights*, *LAT. AM. POL. & SOC.*, 2008, at 5.

protection for individual liberty. Responding to the Spanish Civil War and anti-Semitism in Europe, Argentine progressive advocates adopted the framework of universal human rights rooted in the legacy of the French Revolution. They located diplomatic asylum within that legacy, emphasizing not only individuals' right to be free of repression but also their right to resist oppression. By the 1950s, applying the new UN Universal Declaration of Human Rights and influenced by the international community's scrutiny in the Haya de la Torre case, Argentine advocates were speaking clearly in favor of diplomatic asylum as an individual right and state obligation. Little more than two decades later, diplomatic asylum ceased to be the vaunted advocacy tool it once was, and other strategies for protecting human rights inside state borders were crafted.

There is a range of likely reasons for this development in Argentina, which I will explore in my future research.⁷³ The fact that some Argentine dissidents had already fled the country as violence escalated in the run-up to the 1976 coup, for example, might have been a factor in reducing the perceived utility of diplomatic asylum during the dictatorship.⁷⁴ Other factors were likely the product of a longer-term trend: the changing nature of human rights advocacy in Argentina and Latin America more broadly. Despite their insistence that diplomatic asylum was an individual right and state obligation, for example, advocates might have recognized that international resistance to this argument made desirable a shift to the more widely accepted international human rights law framework. On a more fundamental level, the decline of diplomatic asylum as an advocacy tool might have reflected a change in the substance of human rights. While earlier advocates linked diplomatic asylum to the right to resist oppression, the revolutionary bloodshed of the 1960s and 1970s might have convinced some that human rights would be better served if they were disassociated from the potentially violent forms such political resistance could take.

⁷³ I will also continue my search for statistics on diplomatic asylum applications submitted to and granted by the Argentine government, information I have not yet been able to locate in state archives.

⁷⁴ Buriano Castro and Dutrénit Bielous, *supra* note 57, at 63.