Territorial Asylum in the Americas: Practical Considerations for Relocation

Nancy Schleifer
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In December, when the Caribbean world turned to glass, he would take the closed carriage on a climb along the cornices of crags until he came to the house perched on top of the reefs and he would spend the afternoon playing dominoes with the former dictators of other nations of the continent, the dethroned fathers of other countries to whom he had granted asylum over the course of many years and who were now growing old in the shadow of his mercy dreaming in chairs on the terrace about the chimerical vessel of their second chance, talking to themselves, dying dead in the rest home he had built for them on the balcony of the sea after having received all of them as if each were the only one, for they all appeared at dawn in the dress uniform they had put on inside out over their pajamas, with a chest of money they had pilfered from the public treasury and a suitcase with a box of decorations, newspaper clippings pasted into old ledgers, and a photograph album they would show him at the first audience as if they were credentials, saying look general, that's me when I was lieutenant, this was the day I was inaugurated, this was the sixteenth anniversary of my taking power . . .

From Gabriel Garcia Marquez,
The Autumn of the Patriarch

The Latin American nationals and leaders of today frequently become the refugees of tomorrow. The recent overthrow of the governments of Nicaragua, El Salvador, and Bolivia guarantee an outflow of refugees seeking asylum on political grounds. Other countries are so carefully repressive that potential revolutionaries cannot equip the machinery necessary to carry out a revolution. Under threat of governmental retaliation, activists attempt to escape the country in hopes of a grant of asylum on foreign soil. The masses of Haitians seeking asylum first in the Bahamas and then in the United States typify this second type of refugee. In many cases, the United States will not accommodate these refugees. Latin America, however, with its long-

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standing tradition of according territorial asylum,¹ may grant asylum to refugees who are rejected by the United States.

If a refugee is forced to leave his homeland for ostensibly political purposes, he may need guidance as to where he should seek asylum. In order to give that guidance, the practitioner should be acquainted with the concepts which underlie the granting of asylum. He should also be aware of the various factors concerning his client which should influence the client's choice of country and which may prevent his client from enjoying a grant of asylum in the country of his choice.

I. BACKGROUND INFORMATION

The Concept of Political Asylum

A person may choose to leave his native or resident country for many reasons. He may want to avoid poverty and hardship, evade prosecution for a criminal act, or escape political persecution. When he arrives on foreign soil, he may be refused permission to stay, or he may be expelled or extradited. He is granted asylum only when he is admitted to the territory by territorial authorities or permitted to remain in the territory, allowing him to escape his pursuers. The authorities may also grant asylum by refraining from using the expulsion process or by refusing extradition.²

The reason underlying the refugee's departure may result in a grant or a refusal of asylum. In general, asylum is granted to political refugees. A common criminal is not a political refugee; the poor and downtrodden are not political refugees. One writer has assigned six elements to the general notion of the political refugee:

1. The refugee must flee for political reasons.
2. The source of the political troubles is in events occurring between the state and its citizens.
3. Such circumstances compel him to flee from his state of nationality or habitual residence. However, his exile may be either voluntary or involuntary.

¹. See generally S. Prakash Sinha, Asylum and International Law 218-21 (1971) suggesting that the Latin American tradition of granting diplomatic asylum originated in the ecclesiastical grant of asylum. See also 2 A. Grahl-Madsen, The Status of Refugees in International Law 57 (1972) attributing the Latin American tradition of granting asylum to the unusual amount of political upheavals which made migration to neighboring countries commonplace.

². Grahl-Madsen, supra note 1, at 4.
4. His person or property is in danger if he stays in, or returns to, that country.
5. He must take refuge in another state.
6. He must not have acquired a new nationality.  

Asylum may be granted under customary law or under treaty. Asylum granted under treaty may be either positive or negative in nature. When asylum is granted under a treaty governing asylum, the asylum is positively given. However, asylum may also be granted by a negative act by simply refusing to extradite the refugee under an extradition treaty. Most extradition treaties have political exception clauses under which the country which is being asked to extradite the "criminal" can refuse to extradite him if the crime is political in nature.

Both extradition treaties and asylum treaties recognize the political refugee as distinct from the criminal refugee. The problem with such a characterization, however, is that "[p]ure political crimes are rare to find." When the refugee is accused of committing a political crime, he is more than likely to be simultaneously accused of a non-political crime. Non-political crimes are extraditable offenses.

Certain non-political crimes are invariably associated with political crimes: "for instance, under most extradition and asylum treaties, it is a non-political crime to attempt to murder, or to murder a head of state; yet, such a crime is inherently political in nature." Under some treaties, murder is always non-political, and is, therefore, an extraditable crime. Other treaties do not make murder per se non-political; "thus, murder committed solely or predominantly with the intent to destroy a national, ethnic, racial, or religious group would be considered a non-political crime, whereas murder directly related to a struggle for power might be a political crime." Where otherwise criminal offenses are incidental to an escape from a country, the parties committing the offenses may avoid extradition under the political exclusion; yet, if the same offense is not committed during a violent disturbance, the act does not qualify as a political offense.

In general, the distinction between extraditable and non-extraditable offenses may be characterized as follows:

4. Id. at 177.
5. Id. at 179.
6. Id.
7. Id. at 183-84.
8. I. Shearer, Extradition in International Law 180 (1971).
1. Non-extraditable political offenses:
   a. A mixed offense in which the political crime clearly predominates in the composition of the mixture.
   b. An offense incident to escape from a country for political reasons.
   c. Revolutionary activities.
   d. Religious offenses.
2. Extraditable offenses:
   a. Murder of a head of state.
   b. Murder not directly related to a struggle for power.
   c. Acts which would otherwise be a political offense but which are carried out with unusual brutality.
   d. Acts committed for personal gain rather than for political motivation. Such acts include bribery, robbery, and forgery.
   e. Genocide.
   f. Terrorism.

Historical Background of Asylum in the Americas

UNITED STATES

Asylum may be granted by customary law or by the law of enforceable treaties. Customary law includes the general policies and attitudes of the state toward asylum. The open door policy, granting entrance to practically all immigrants other than criminals and lepers, has long ago passed in the United States. The laws on immigration and quota systems now govern United States policy toward aliens. Political refugees, of course, obtain the highest priority under the immigration laws. Nevertheless, many immigrants from troublesome hotspot countries find it hard to prove that they are political refugees. According to one author, alluding to the Haitian refugee situation:

[T]he trick of obtaining asylum status is to employ Section 243(h) of the Immigration and Nationality Act of 1952 which authorizes the Attorney General to "withhold deportation of any alien within the United States to any country in which in his opinion the alien would be subject to persecution on account of race, religion or political opinion and for such a period of time as he deems to be necessary for such reason." Section 243(h) thus creates a means by which a refugee or other alien, already in the United States,

9. Cf. Sinha, supra note 1, at 179-86. This author cites several other categories, and should be consulted for his supporting use of case law under these categories.
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whether legally or illegally, can remain here and avoid return to a country in which he would be subject to persecution. There is, however, no absolute right to political asylum in the United States. Rather, asylum is dispensed solely as a matter of discretion. Victims of persecution must, therefore, overcome formidable obstacles to be granted refuge in the United States. Moreover, reported cases strongly suggest that 243(h) relief is extremely difficult to obtain.10

The United States is not party to any explicit asylum treaty. The United States does, however, adhere to the United Nations Protocol relating to the Status of Refugees,11 which incorporates the 1951 Geneva Convention Relating to the Status of Refugees.12 The terms of the Protocol may give the refugee, at least in theory, a strong argument avoiding the "discretionary" aspect of Section 243(h) of the Immigration and Naturalization Act.13 Additionally, the United States is a party to numerous bilateral extradition agreements,14 and to the Multilateral Convention on Extradition signed at Montevideo on December 26, 1933.15 All of these extradition agreements contain, in one form or another, a political exception under which a refugee committing a purely political offense cannot be extradited.16

14. For a full listing of extradition treaties entered into force by the United States and their citations, see 18 U.S.C. § 3181 (1976) (list follows the text of the statute). The United States has bilateral treaties with the following countries in the Americas: Argentina, Bahamas, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Trinidad and Tobago, Uruguay, and Venezuela.
16. An example of the political exception may be found in the newly-concluded Extradition Treaty Between the United States of America and the United Mexican States, dated May 4, 1978. Article 5 of this treaty appertains: Political and Military Offenses
1.—Extradition shall not be granted when the offense for which it is requested is political or of a political character.
If any question arises as to the application of the foregoing paragraph, the Executive authority of the requested Party shall decide.
2.—For the purpose of this Treaty, the following offenses shall not be considered to be offenses included in paragraph 1:
a) The murder or other willful crime against the life or physical integrity of a Head of State or Head of Government or his family, including attempts to commit such an offense.
Once a refugee has entered the United States claiming political asylum, and once it has been determined that his crimes are at least in part political, the refugee still must be wary of extradition procedures. Should the offender's crimes be characterized as mixed political and criminal offenses, the refugee may face extradition. The most familiar example of extradition on the basis of mixed political-criminal charges is the extradition of ex-President Jiménez of Venezuela. Jiménez was deposed by a coup—a notable instance of flight for political reasons. Jiménez came to the United States, and extradition proceedings began. The Venezuelan government accused Jiménez of murder and of taking kickbacks for his personal gain. Concentrating on the issue of the kickbacks, the Fifth Circuit Court of Appeals determined that there was "no evidence that the financial crimes charged were committed in the course of and incidentally to a revolutionary uprising or other violent political disturbance." 

The Jiménez case, which is still being cited for its interpretation of the political-criminal context of the crime in extradition proceedings, has received unfavorable comment by authors discussing extradition. One commentator described the Jiménez formula:

Taking this formula at face value, and applying it strictly (as the Court of Appeals for the Fifth Circuit did), we can conclude two things. (1) A premium is placed on violence. If the situation which puts the fugitive in opposition to the requesting government is not accompanied by violence, then his crime cannot be political. (2) If the offence is not committed in the course of and incidentally to a violent disturbance the offence also cannot be characterized as political. Thus an act which preceded and perhaps precipitated the violent disturbance would not qualify as a political offence. To put it crudely, if Jimenez had personally executed prisoners at the height of the rebellion he could not have been extradited for murder, but because of the practical impossibility of committing financial crimes in the course of and incidentally to a violent disturbance, his offense could not be...
characterized as political no matter how he now stood in relation to the government which was demanding his surrender.19

In fact, the United States policy in granting or denying political asylum, or in granting or denying extradition, depends on political policy objectives. Obviously, under the Jiménez doctrine, deposed leaders and other top-level officials of a deposed government will almost always be accused of mishandling finances. The United States may have strong economic and diplomatic reasons for wanting to curry the favor of the new government. Perhaps there are strong policy arguments as well for shutting the doors of democracy to the former heads of totalitarian governments. However, such policy might be better couched in other forms than in extradition law which places a premium on violence and bloodshed.

LATIN AMERICA

Latin America has a well established attitude with regard to the granting of asylum and extradition. Rooted in the institution of ecclesiastical asylum, nourished by the political instabilities of closely neighboring countries, and fixed into law by various treaties, Latin America probably has the most traceable and extended body of law pertaining to extradition and asylum in the world today. Before the separate Latin American countries participated in treaties on asylum, the practice of granting asylum was based on several theories. At times, the granting of asylum was based on a general "duty to humanity." 20 The grant of asylum, at least the grant of diplomatic asylum, was often based on the fact that asylum was a "special characteristic of the Latin American practice." 21 Certain Latin American countries had strong views as to the basis under which asylum could be granted. Individual positions with respect to asylum which have been articulated by various Latin American countries will be analyzed later in this article.

Latin American countries have established six multilateral treaties on asylum:

1. Treaty on International Penal Law, signed in Montevideo on January 23, 1889. Revised by the Treaty on International Law, signed at Montevideo, March 19, 1940.22

19. Shearer, supra note 8, at 180-81.
20. Sinha, supra note 1, at 220.
21. Id.
22. Title II on Asylum; Articles 15-16: Territorial Asylum; Article 17(C): Diplomatic Asylum.
2. Convention on Asylum, signed in Havana, February 20, 1928, at the Sixth International Conference of American States. The Convention grants both territorial and diplomatic asylum. The Convention Article I(1) establishes that no new rights of asylum are created; the Convention merely delimits an already recognized right. Persons accused or condemned of common crimes and deserters are not to enjoy the right to asylum.

3. Convention on Political Asylum, signed in Montevideo, December 26, 1933, at the Seventh International Conference of American States. Supplements the Havana Convention. Asylum does not apply to "those accused of common offenses who may have been duly prosecuted or who may have been sentenced by ordinary courts of justice," or to deserters. The state offering asylum has the right to determine whether the offense of which the refugee is accused is political or not. Political asylum is not subject to reciprocity.

4. Treaty on Political Asylum and Refuge, signed in Montevideo, August 4, 1939. State which grants diplomatic asylum has no obligation to admit refugees into its territory except where the refugees are not given admission by other states. Limits the scope of diplomatic asylum to embassies, legations, men-of-war, military camps or military airplanes, and to persons pursued for political crimes which are not extraditable. Asylum will not be granted to persons accused of political offenses who have been indicted or condemned previously for common offenses. States that permit territorial asylum shall prevent the refugees from committing acts which would endanger the public peace of the state from which they came.

5. Convention on Territorial Asylum, signed in Caracas, March 28, 1954, at the Tenth Inter-American Conference. Gives every state the right to admit into its territory such persons as it deems advisable without giving cause for complaint by any

23. 132 L.N.T.S. 323.
25. Id.
27. Grah-Madsen, supra note 1, at 59.
28. See note 26 supra.
29. See generally Grah-Madsen, supra note 1, at 60-61.
30. 18 Pan-Am T.S.
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other state. Denies the right of any government to pursue an individual into the territory of another state. A very important Article IV provides that extradition is not applicable to persons who are sought for political offenses, or for common offenses committed for political reasons, or when extradition is sought for predominantly political motives. This Convention gives refugees the right to speak out against the state from which they have been forced to flee. However, that state has the right to request that the state granting asylum shall take steps to keep watch over those refugees who present a threat of subversion.81

6. Convention on Diplomatic Asylum, signed in Caracas on March 28, 1954, at the Tenth Inter-American Conference.32 Further defines what entities shall constitute areas in which diplomatic asylum may be granted. Any state may refuse to grant diplomatic asylum without reason. Diplomatic asylum is reserved to urgent cases.33

Asylum treaties should be viewed in conjunction with extradition treaties. Many Latin American countries are party to several of these extradition treaties. The major extradition treaties are as follows: (1) Montevideo Convention of 1889; (2) The Bolivarian Convention at Caracas in 1911; (3) The Bustamonte Code, adopted in Havana by the Sixth International Conference of American States in 1928; (4) The Montevideo Convention of 1933 (this Convention is most important because the United States is a party); and (5) The Central American Convention on Extradition of 1934.34 Currently in draft form is a new version of an inter-American Convention on Extradition, which was approved by the Inter-American Juridical Committee on February 1, 1977.35 It is important to note that these conventions are cumulative and that "no single collective treaty has wiped the slate clean of pre-existing treaty commitments so as to give formal as

31. See generally Grahl-Madsen, supra note 1, at 62-64.
32. 19 Pan-Am T.S.
33. See generally Grahl-Madsen, supra note 1, at 65-66.
34. All Inter-American treaties and conventions on asylum and extradition are available in Tratados y convenciones interamericanos sobre asilo y extradición (Unión Panamericana, Serie Sobre Tratados, No. 34—OAS Official Records OEA/Ser. X/7 (Español)). English translations can be found in Inter-American Treaties and Conventions on Asylum and Extradition (Pan-American Union, Treaty Series, No. 34—OAS Official Records OEA/Ser. X/1 (English)). See generally Shearer, supra note 8, at 62-63; Grahl-Madsen, supra note 1, at 57.
well as substantial unity to the extradition law and practice of the region.” 36

II. PRACTICAL FACTORS TO CONSIDER

It should be obvious, at this point, that several factors must be considered, and several questions must be asked, in order to determine which Latin American country is most likely to accord political asylum and to refuse extradition. The background information provided within this article articulates some of the legal considerations. From these legal theories flow the following key questions:

1. Why has this refugee left his country?
2. Are there publicized events occurring in the country from which the refugee has fled which would support a finding that the refugee had to leave for political reasons?
3. Does the refugee risk his life or his property rights by staying in that country?
4. Is there a more practical “safe harbor” for that refugee? (In other words, has the refugee passed some time peacefully in another country so that the crisis situation which might entitle him to asylum in the chosen country no longer exists?)
5. To what asylum treaties is the country granting asylum a party?
6. To what extradition treaties is the country granting asylum a party?
7. Does the country seem to favor the grant of asylum over the grant of extradition in questionable cases?

Unfortunately, lawyers will first look to the law in determining whether a foreign state is or is not likely to grant asylum. Such reasoning ignores the obvious fact that the refugee is looking for more than a favorable treaty. The refugee is looking for a suitable climate of acceptance. For instance, the President of a government which is being overthrown by a leftist revolution and the Communist who is avoiding retaliation of a right-wing government will not be likely to find asylum on the same foreign soil. It is further unlikely that either one of these refugees will wish to seek asylum in a politically and economically unstable government. The political orientation of a country which is being considered by the refugee in his search for

36. Shearer, supra note 8, at 63.
asylum is not a legal consideration, but it is an essential consideration. Predictably, there is no discussion of the political orientation of countries granting asylum in legal treatises written on the subject of asylum. Since the political situation in Latin America is often volatile, a discussion of the political situations of individual countries might be wasted in long treatises on the subject. However, the practitioner guiding a refugee must be cognizant of the very strong relationship between politics and asylum.

III. LATIN AMERICAN UPDATE

This section attempts to show the current political and legal status of individual countries. The practitioner must use this section with understandable caveats. First, the political situations in several countries are so volatile, that once the practitioner has determined that a single country is a likely candidate, he should update the political information. Second, the information as to bilateral treaties between individual Central and South American countries is so well-buried and poorly indexed that the practitioner should attempt a statutory search for any bilateral treaties that may exist once he finds a Latin American country that, all other factors considered, would seem to be a likely state to grant asylum.

Argentina

Argentina is currently ruled by an armed forces junta. Various guerrilla groups and other anti-governmental movements have resulted in a recent wave of governmental repression. For these reasons, Argentina is not, at this time, a politically or economically stable country.

Argentina ratified the 1889 Treaty on International Penal Law which contained articles devoted to asylum. Argentina was signatory to the Convention on Asylum, signed in Havana, 1928; the Convention on Political Asylum, signed in Montevideo, 1933; the Treaty on Political Asylum and Refuge, signed in Montevideo, 1939; and the Convention on Diplomatic Asylum, signed in Caracas, 1954. Argentina signed the Convention on Territorial Asylum, signed in Caracas, 1954, with reservations.

37. Much of the current international political information was derived through the help of Ed Tassinari, a doctoral candidate associated with the University of Miami Center for Advanced International Studies. Various newspapers and international journals were consulted generally.
Argentina was also a party to the 1889 Montevideo Convention on Extradition and the 1902 Convention on Extradition, held in Mexico. Argentina ratified the important Montevideo Convention on Extradition of 1933.

On September 15, 1972, Argentina and the United States executed a new treaty of extradition. Argentina also participated in a bilateral extradition treaty with Brazil.

Argentina has followed a position that diplomatic asylum is a right consecrated and sustained in Latin America. The Argentine government respects the right of asylum.

Bahamas

The Bahamas and the United States executed a continuation of the currently existing extradition treaty, effected by exchange of notes at Nassau and Washington, March 7, June 19, and August 17, 1978.

Bolivia


Bolivia was party to the Treaty on Extradition, signed in Montevideo, 1889. Bolivia signed the Treaty for the Extradition of Criminals, Mexico, 1911, and ratified the Bolivarian Agreement on Extradition, signed at Caracas, Venezuela in 1911. Bolivia was also party to the Bustamonte Code, Havana, 1928. Bolivia did not participate in the Montevideo Convention of 1933.

Bolivia has entered into bilateral treaties with the United States and Brazil.

38. 23 U.S.T. 3501.
40. Sinha, supra note 1, at 222.
41. See 18 INT'L LEGAL MATERIALS 282 (1979).
42. 32 Stat. 1857 (1902).
43. TV, Tratados Vigentes, 319-26 (1938), 54 U.N.T.S. 333.
Bolivia's modern trend is to recognize the right of asylum only within the conditions stipulated by the treaties and conventions to which it is a party.44

Brazil

Until recently, Brazil had a right-wing government headed by a military regime, and was vehemently anti-Communist. In 1978, Brazil, by a democratic election, elected a new president, Oliveira Figueredo. In October 1979, Figueredo announced that only one official pro-government party would be permitted, thereby abolishing the previous two party system.

Brazil has ratified the Convention on Asylum, signed in Havana, 1928; the Convention on Political Asylum, Montevideo, 1933; the Convention on Territorial Asylum, Caracas, 1954; and the Convention on Diplomatic Asylum, Caracas, 1954.

Brazil was party to the Bustamonte Code on Extradition, Havana, 1928. Brazil signed, but did not ratify, the Montevideo Convention on Extradition of 1933.

Brazil has numerous bilateral extradition treaties including a treaty with the United States,45 Bolivia,46 Colombia,47 Ecuador,48 Mexico,49 Uruguay,50 and Venezuela.51

Brazil has in the past considered asylum to be a purely humanitarian act, which may be accorded even in the absence of a treaty right. There is, however, no absolute right to asylum.52

Chile

Since the military takeover in 1973, Chile has had an extremely right wing, repressive government which is violently anti-Communist.

Chile has ratified the Convention on Political Asylum, Montevideo, 1933, and has signed the Convention on Asylum, Havana, 1928; the

44. Sinha, supra note 1, at 223-24.
45. 15 U.S.T. 2112.
46. See note 43 supra.
52. Sinha, supra note 1, at 224.
Treaty on Political Asylum and Refuge, Montevideo, 1939; and the Caracas Conventions on Territorial and Diplomatic Asylum, 1954.

Chile is party to the treaty on Extradition, Mexico, 1902; and to the Bustamonte Code, Havana, 1928. Chile ratified the Montevideo Convention on Extradition, 1933, with reservations.

Chile has a bilateral extradition agreement with the United States. Chile has in the past upheld the right of asylum on the basis of humanitarian reasons which preceded the conventions on asylum.

Colombia

Colombia has traditionally had a democratic form of government. In the last election, the Liberal Party retained control of the congress and the presidency. Certain urban guerilla groups have formed, which groups are being repressed by the government.

Colombia has ratified the Convention on Asylum, Havana, 1928; and the Convention on Political Asylum, Montevideo, 1933. Colombia has signed the Caracas Conventions on Territorial Asylum and Diplomatic Asylum, 1954.

Colombia was party to the 1902 Treaty on Extradition, Mexico; and to the Bolivarian Convention on Extradition at Caracas, 1911. Colombia ratified the Montevideo Convention, 1933.

A bilateral treaty exists between the United States and Colombia. Colombia also has bilateral treaties with Brazil and Peru.

Colombia has historically based its policy toward asylum on the grounds that asylum is the customary rule of law binding in Latin America.

Costa Rica

Costa Rica has a democratic elective process, currently dominated by a moderate conservative party. There is no real military in Costa Rica, and the economy is generally healthy.

53. 32 Stat. 1850 (1902).
54. Sinha, supra note 1, at 226.
55. 57 Stat. 824 (1943).
56. See note 47 supra.
58. Sinha, supra note 1, at 227.
The following asylum treaties were ratified by Costa Rica: the Convention on Asylum, Havana, 1928; the Convention on Political Asylum, Montevideo, 1933; the Convention on Territorial Asylum, Caracas, 1954; and the Convention on Diplomatic Asylum, Caracas, 1954.

Costa Rica was party to the Convention on Extradition, Mexico, 1902; the Central American Extradition Convention, 1934; and the Bustamonte Code, Havana, 1928. Costa Rica was not a party to the Montevideo Convention of 1933.

Costa Rica has a bilateral extradition treaty with the United States.59

Dominican Republic

In 1978, a military incumbent attempted to seize control. After international pressure, the opposition, Antonio Guzman of the center-left Dominican Revolution Party, won a majority in both houses.

The position of the Dominican Republic toward asylum seems somewhat untrustworthy. The Dominican Republic first ratified and later denounced both the Convention on Asylum, Havana, 1928, and the Convention on Political Asylum, Montevideo, 1933. The Dominican Republic signed the Convention on Territorial Asylum, Caracas, 1954, with reservations. The Convention on Diplomatic Asylum, Caracas, 1954, was ratified.

The Dominican Republic is party to the Convention on Extradition, Mexico, 1902, and has ratified the Montevideo Code of 1933.

The Dominican Republic has a bilateral extradition treaty with the United States.60

Ecuador

Until 1978, Ecuador was ruled by the military. After one inconclusive election, President Roldos achieved a slender majority. However, Roldos has not been able to win the support of the Ecuadorian congress, and the government continues to be shaky.

Ecuador ratified the Convention on Asylum, Havana, 1928; the Convention on Political Asylum, Montevideo, 1933; and the Caracas Conventions on Territorial and Diplomatic Asylum, Caracas, 1954.

59. 43 Stat. 1621 (1923).
60. 36 Stat. 2468 (1910).
Ecuador was also party to the Mexican Convention on Extradition, 1902; the Bolivarian Convention, Caracas, 1911; and the Bustamonte Code, Havana, 1928. Ecuador ratified, with reservations, the Montevideo Convention, 1933.

Ecuador has a bilateral treaty with the United States and Brazil. Ecuador has upheld the right to asylum on the basis of customary law as well as conventions. In 1950, in a Note to the government of El Salvador, Ecuador called the right of asylum "an irrenounceable achievement in America."

**El Salvador**

On October 15, 1979, after a long period of instability and revolution, a military coup ousted the El Salvadoran government. At this time, the military government still stands on very unsettled ground.

El Salvador has ratified the Convention on Asylum, signed in Havana, 1928; the Convention on Political Asylum, Montevideo, 1933; and the Conventions on Territorial Asylum and Diplomatic Asylum, Caracas, 1954.


The United States has a bilateral agreement with El Salvador.

**Guatemala**

In 1978, a presidential election was declared a fraud, and the army command chose General Lucas Garcia to be head of state.


Guatemala was party to the Convention on Extradition, Mexico, 1902; the Central American Extradition Convention, 1934; and the

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61. 55 Stat. 1196 (1941).
62. See note 48 supra.
63. Sinha, supra note 1, at 228.
64. 37 Stat. 1516 (1911).
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Guatemala has a bilateral treaty with the United States.\(^{65}\)

Guatemala regards the granting of asylum as a duty and accepted the Caracas Treaties on Asylum with reservations because the declaration states that there is no obligation to grant asylum. Guatemala very strongly defends the right of diplomatic asylum.\(^{66}\)

Guyana

Guyana is being ruled by a military government. Leftist protests are suppressed.

Guyana has a bilateral asylum treaty with the United States.\(^{67}\)

Haiti

One of the poorest nations in the world is ruled by one of the most repressive governments under Duvalier.

Haiti has denounced every asylum treaty of which it was a signator.

Honduras

In 1978, President General Juan Alberto Melgar was deposed by a military coup. A three man military junta headed by right-wing General Policarpo Ray García was installed.

Honduras ratified the Convention on Asylum, Havana, 1928, and the Convention on Political Asylum, signed in Montevideo, 1933. Honduras signed the treaties on Asylum, Caracas, 1928, with reservations.

Honduras was party to the Treaty on Extradition, Mexico, 1902; the Central American Extradition Convention, 1934; and the Bustamonte Code, Havana, 1928. Honduras signed the Montevideo Convention of 1933 with reservations.

Honduras has a bilateral extradition treaty with the United States,\(^{68}\) as well as with Nicaragua.\(^{69}\)

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65. 55 Stat. 1097 (1941).
66. Sinha, supra note 1, at 231.
68. 37 Stat. 1616 (1912).
Jamaica

Jamaica's ruling party, the People's National Party, tends slightly toward the Left.

Jamaica has a bilateral extradition treaty with the United States.\textsuperscript{70}

Mexico

Mexico has a democratic electoral process. Mexico is currently engaged in diplomatic efforts to establish closer relations with the United States.

Mexico ratified the Convention on Asylum, Havana, 1928; the Convention on Political Asylum, Montevideo, 1933; and the Convention on Diplomatic Asylum, Caracas, 1954. Mexico signed, with reservations, the Convention on Territorial Asylum, Caracas, 1954.

Mexico was party to the Convention on Extradition, Mexico, 1902, and signed the Montevideo Convention of 1933 with reservations.

Mexico recently completed a new treaty on extradition with the United States.\textsuperscript{71} Mexico has bilateral extradition treaties with Brazil \textsuperscript{72} and Panama.\textsuperscript{73}

Most recently, Mexico admitted the exiled Shah of Iran, but refused to readmit the Shah after his release from American hospitals in the wake of the Iranian hostage crisis. Still, Mexico generally has a warm climate of acceptance toward political refugees.

Nicaragua

Nicaragua's long-ruling Somoza family was ousted in July 1979, after a bitter revolution. The Sandinista government acquired the nation's entire economic structure, since the Somoza family had previously owned all key industries. The Sandinista government is extremely leftist. The civil war has had a harmful impact on an already shaky economy.


\textsuperscript{70} See note 67 supra.
\textsuperscript{71} A copy of this treaty may be found in 17 INT'L LEGAL MATERIALS 1058-73 (1978).
\textsuperscript{72} See note 49 supra.
\textsuperscript{73} Signed at Mexico City, Oct. 23, 1928; 194 L.N.T.S. 137.
signed both Caracas Conventions on Territorial and Diplomatic Asylum, 1954.

Nicaragua is party to the Convention on Extradition, Mexico, 1902; the Central American Extradition Convention, 1934; and the Bustamonte Code, Havana, 1928. Nicaragua ratified the Montevideo Convention of 1933.

Nicaragua has bilateral treaties with the United States and Honduras.

Panama

Panama accepted the deposed Shah of Iran as a political refugee. In January 1979, the Panamanian Ambassador to Washington stated that the basic policy of Panama was never to return a political refugee to a country having the death penalty for such individuals.

Panama ratified the Convention on Asylum, Havana, 1928; the Convention on Political Asylum, Montevideo, 1933; the Convention on Territorial Asylum, Caracas, 1954; and the Convention on Diplomatic Asylum, Caracas, 1954.

Panama signed the Bustamonte Code, Havana, 1928, and ratified the Montevideo Convention of 1933.

A bilateral treaty exists between Panama and the United States. Panama also has a bilateral extradition treaty with Mexico.

Paraguay

Paraguay has an authoritarian right-wing government under the absolute rule of President Alfredo Stroessner.

Paraguay has ratified every multilateral convention on asylum: the Treaty on International Penal Law, Montevideo, 1889; the Convention on Asylum, Havana, 1928; the Convention on Political Asylum, Montevideo, 1933; the Treaty on Political Asylum and Refuge, Montevideo, 1939; the Convention on Territorial Asylum, Caracas, 1954; and the Convention on Diplomatic Asylum, Caracas, 1954.

74. 35 Stat. 1869 (1907).
75. Instrument of ratification deposited by Nicaragua with the Pan American Union, May 28, 1959.
76. 34 Stat. 2851 (1905).
Paraguay was party to the Convention on Extradition, Montevideo, 1889, and the Convention on Extradition, Mexico, 1902. Paraguay signed, but did not ratify, the Montevideo Convention of 1933.

Paraguay has a bilateral extradition treaty with the United States.\(^7\) Paraguay has a history of according asylum to major deposed Latin American political figures, and has also gained notoriety as a hiding place for Nazi war criminals.\(^7\) In August 1979, Paraguayan Interior Minister Augusto Sabino Montanaro remarked that Paraguay has a "tradition of hospitality," when Paraguay allowed Anastasio Somoza, the ousted Nicaraguan head of state, to enter Paraguay as a temporary resident.\(^8\)

**Peru**

In 1968, the military gained control of Peru. The Peruvian government has moved from Left to Right in recent years and is making some attempts to establish an electoral process. A democracy has not yet been established, however, and the present government is engaging in anti-Communist campaigns.


Peru was party to the Montevideo Convention on Extradition, 1889; the Convention on Extradition, Mexico, 1902; the Bolivarian Convention, Caracas, 1911; and the Bustamonte Code, Havana, 1928. Peru signed, but did not ratify, the Montevideo Convention of 1933.

Peru has bilateral extradition treaties with the United States \(^{81}\) and Colombia.\(^{82}\)

Peru bases its grant of asylum upon the limitations expressed in the various conventions and treaties.\(^{83}\)

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78. The newest version of this treaty is dated May 7, 1974; T.I.A.S. No. 7838.
79. Miami Herald, Aug. 21, 1979, §A at 1, col. 2.
80. *Id.*
81. 31 Stat. 1921 (1901).
82. *See* note 57 *supra*.
83. Sinha, *supra* note 1, at 236.
Uruguay

In 1972, the democracy in Uruguay failed and an authoritarian regime assumed power. In 1973, the military gained control of the government, abolished the trappings of democracy, and proscribed left-wing activities. Opposition newspapers were shut down. At this time, Uruguay seems to be working toward a gradual return to a limited democracy.


Uruguay was party to the Convention on Extradition, Montevideo, 1889, and the Convention on Extradition, Mexico, 1902. Uruguay was not party to the Montevideo Convention of 1933.

Uruguay has bilateral extradition treaties with the United States\textsuperscript{84} and Brazil.\textsuperscript{85}

Venezuela

Venezuela is the most democratic country in Latin America and its political ideology closely resembles that of the United States.

Venezuela ratified the Conventions on Territorial Asylum and Diplomatic Asylum, Caracas, 1954, only. Venezuela signed the Convention on Political Asylum, Montevideo, 1933.

Venezuela was party to the Bolivarian Convention on Extradition, Caracas, 1911, and the Bustamonte Code, Havana, 1928.

Venezuela has bilateral extradition treaties with the United States\textsuperscript{86} and Brazil.\textsuperscript{87}

Venezuela refuses to recognize the right of diplomatic and territorial asylum except under the specific grant of a treaty to which it is a party.\textsuperscript{88}

\textsuperscript{84} 35 Stat. 2028 (1908).
\textsuperscript{85} See note 50 \textit{supra}.
\textsuperscript{86} 43 Stat. 1698 (1923).
\textsuperscript{87} See note 51 \textit{supra}.
\textsuperscript{88} Sinha, \textit{supra} note 1, at 237.
IV. Conclusion

When searching for an acceptable state which is likely to grant asylum, the practitioner must be aware of his client's needs, political orientation, and the factors which affect an individual's claim to the right of political asylum. The practitioner should then research the various possible Latin American countries on two levels: (1) to determine if the political ideology of the state will accommodate his client's needs; and (2) to determine whether otherwise suitable Latin American countries tend to look on the grant of asylum with favor or disfavor. In short, the concept of political asylum is not really limited to a narrow legal research problem.