

COMMENTS

THE RIGHT OF DIPLOMATIC ASYLUM*

ARTURO E. BALBASTRO **

"It is a blessing to be given opportunity to improve ourselves by taking warning from the mistakes of others, and in all the chances and changes of this mortal life to be free to copy the successes of the past instead of being compelled to make a painful trial of the present."

—ARNOLD J. TOYNBEE

I. Introduction

An unprecedented and almost turbulent chapter has just been written into the Philippine diplomatic history. This took place when top Huk Propagandist Alfredo B. Saulo sought sanctuary in the Indonesian chancery.¹ One of the better local magazines listed as its sixth top story for 1958 the sensational but abortive attempt of this No. 3 Huk to seek asylum in Indonesia through the Indonesian embassy in Manila.²

Maybe due to its being unexpected, if not entirely novel, the incident elicited various and varied reactions from the Filipino people and their leaders. During the heat of the occurrence, there were even talks in congressional circles about severance of relations with Indonesia for the latter's "apparent" refusal to surrender the person of Saulo to the Philippine government.³ Some 150 yelling student demonstrators staged a rally, shouted invectives at Saulo, stoned the embassy, and burned the effigy of Indonesian Ambassador Nazir Datuk Pamontjak in front of the Indonesian embassy along Taft Avenue for giving sanctuary to Saulo.⁴ There was an indication that "coercive force" might have been employed to get the Huk fugitive from the embassy.⁵

The following is a concise but candid account of the impact caused by the happening in its early stage:⁶

"... When Saulo, dapper, well-dressed and looking very much well-fed, breezed into the Indon embassy one morning in November, top police, legal and diplomatic authorities were for some time stumped. First to recover his bearings was Foreign Secretary Felix-

* This paper was prepared by the author while enrolled in the graduate seminar on Human Rights.

** A.B. (U.P.) LL.B. (U.P.)

¹ The Manila Chronicle, November 13, 1958.

² Philippines Free Press, December 27, 1958, p. 15. See also The Manila Chronicle, December 31, 1958.

³ The Daily Mirror, November 13, 1958.

⁴ The Evening News, November 13, 1958; The Manila Chronicle, November 14, 1958; The Manila Times, November 14, 1958.

⁵ The Manila Chronicle, November 14, 1958.

⁶ Philippines Free Press, December 27, 1958, p. 15.

berto Serrano, who finally succeeded in persuading the Indon government to allow Saulo 'to surrender on his own volition' to the Philippine government. The top Huk is now in Camp Crame stockade awaiting trial for various offenses against the Filipino people."

During the settlement of the difficulty between the two governments, Filipino legal minds expressed their unanimous stand on the question.⁷ From the press releases, however, it is easily noticeable that the opinions set forth were obviously wanting in depth and breadth which characterize the product of an exhaustive and objective study that could have given justice to the delicate, if not altogether complicated, subject under consideration.⁸ This may be attributed to the lack of material time as well as to the excitement generated by the occasion.

Now that the heat of the controversy has vanished and feelings have calmed down, it is the humble purpose of this paper to examine the subject as objectively as possible in the light of available materials. If only a little more clarification is shed on this matter, this work shall not be in vain.

Scope. — As its title indicates, this paper deals with the right of asylum in connection with embassies and legations. Discussion will center on the right of asylum as proclaimed in the Universal Declaration of Human Rights,⁹ its history and binding effect, and its probable application to such actual cases as those of Saulo, Haya de la Torre and Cardinal Mindszenty. The existence or non-existence of this right in traditional international law also receives due consideration.

Approach. — The main assumption of this work is the willingness and desire of every State to recognize and accept the Universal Declaration of Human Rights as a standard and guide for its action on matters concerning the right of asylum in embassies and legations.

On the formal side, the treatment is partly historical in the sense that consideration of the origin of the right starts with traditional international law and winds up to the Universal Declaration of Human Rights and the subsequent draft proposals. However, the discussion is on the main viewed from the legal angle, specially when it comes to the analysis of the facts and the principles involved in the actual cases considered.¹⁰

Definition of Terms. — For convenience and to avoid unnecessary repetition, a definition of the terms repeatedly used in this paper is believed to be in order.

"Diplomatic Asylum" means the seeking and/or taking of refuge in an embassy or legation.

7 The Daily Mirror, November 13, 1958; The Evening News, November 13, 1958; The Manila Chronicle, November 14, 1958; The Manila Times, November 14, 1958; The Manila Chronicle, November 15, 1958; The Evening News, November 15, 1958; The Saturday Mirror, November 15, 1958; The Manila Times, November 15, 1958.

8 Ibid.

9 Article 14.

10 Emphasis is laid on the Saulo, Mindszenty and Haya de la Torre cases.

"Charter" refers to the Charter of the United Nations.

"Declaration" stands for the Universal Declaration of Human Rights as adopted by the United Nations General Assembly at its third session.

"Right" shall be construed as the right of diplomatic asylum.

By "international law" is meant traditional international law as distinguished from the Declaration and the draft conventions dealing with human rights and fundamental freedoms.

"Court" is understood to mean the International Court of Justice.

II. Brief Historical Antecedents

According to a well-known authority, the term asylum was highly descriptive in its original sense. It was applied to privileged places which, by positive law or by superstition, were protected from invasion, and in reality formed sanctuaries. It was said that if the fugitive could reach one of these places, he became clothed with an inviolable right to protection and was therefore safe from pursuit. This right was the natural product of the condition under which it arose. Under systems based entirely upon the *lex talionis*, it is not strange that sentiments of religion and humanity, as well as justice, should have suggested means of escape from indiscriminating violence. From temples of gods and other places which it was a sacrilege to violate, the right of asylum as an obstacle to violence was extended to cities, islands and other portions of territory. It existed in Egypt, in Greece, and indeed in all the ancient world.¹¹

As superstition declined and private vengeance was displaced by the regulated action of judicial tribunals, these places of refuge ceased to exist. Although all the ideas with which the practice of asylum was identified did not perish with the disappearance of these places, the term lost its ancient meaning. The notion that protection was a right belonging to the fugitive disappeared. In its place was established the right of the state either to grant or to withhold the privilege.¹²

With the establishment of permanent missions, ambassadors took under their protection large number of persons to whom was thereby afforded an asylum.¹³ This started sometime in the fifteenth century.¹⁴

The principle that called for the inviolability of the person of an ambassador necessitated also the inviolability of his house.¹⁵ In other words, it included not only the extraterritoriality of the minister and his suite, but also that of his dwelling or hotel and of other buildings over which he placed the arms of his sovereign as well

11 JOHN BASSETT MOORE, A DIGEST OF INTERNATIONAL LAW, Vol. II, p. 756 (1906).

12 *Op. cit.*, pp. 756-757.

13 CHARLES CHENEY HYDE, INTERNATIONAL LAW, Vol. II, pp. 1284-1285 (1945).

14 JOHN BASSETT MOORE, A DIGEST OF INTERNATIONAL LAW, Vol. II, p. 759 (1906).

15 CHARLES CHENEY HYDE, INTERNATIONAL LAW, Vol. II, p. 1285 (1945).

as his carriage.¹⁶ This was necessary because he could not exercise his functions freely and independently unless the latter were also exempt from local jurisdiction.¹⁷ Hence there was general acquiescence that both should enjoy immunity. To this extent the existing usage was accepted without resistance, and remains today unchallenged.¹⁸

Since the first quarter of the nineteenth century, the claim to grant asylum has assumed a new aspect. Formerly it was in regard to common crimes that the privilege was conceded, while in respect to political offenses the right was denounced and violated. Now, asylum for common offenders is no longer heard of; it is for political refugees that it is claimed and tolerated. This may be due to the fact that, the judicial trial of common crimes having been secured, the obstruction of the ordinary course of law was conceded to be inadmissible. But in politics, the principle of liberty, enforced by the exercise of the "right of revolution", threw society into a violent ferment, in which the political offender, if not extolled as a hero, was regarded as falling within Vattel's category of "persons who often prove to be rather unfortunate than criminal". It is because of this change of popular ideas that political offenders were to some extent accorded the benefit of Vattel's opinion that for unfortunates the "house of an ambassador may well serve as an asylum", and that it is better to "suffer them to escape than expose the ambassador to frequent molestation under pretense of a search for them, and thus involve the State in any difficulty which might arise from such proceedings."¹⁹

Nevertheless the practice died slowly. It did not, however, completely disappear in Europe until late in the nineteenth century. While it never existed in the United States, traces possibly still linger in certain parts of Spanish America.²⁰

III. Basis of the Right

Traditional International Law. — The granting of asylum is considered an abuse of the principle of extraterritoriality.²¹ Notwithstanding its unreasonable and pernicious effects, *franchise des quartiers* seems to have survived for a long time in spite of efforts to suppress it.²² That the imperfect conception of the state's supreme and exclusive jurisdiction bears a casual relationship to the enjoyment of inordinate privileges by diplomatic agents is more than probable. The coat of arms of his sovereign, which he placed above the portal of his dwelling, not only guaranteed his freedom from molestation, but also imported authority.²³

16 JOHN BASSETT MOORE, A DIGEST OF INTERNATIONAL LAW, Vol. II, pp. 750-700 (1906).

17 Op. cit., p. 774. See also Note 15, supra.

18 See Note 15, supra.

19 JOHN BASSETT MOORE, A DIGEST OF INTERNATIONAL LAW, Vol. II, p. 773 (1906).

"Experience, however, has taught that opposition to government may represent the spirit of anarchy than liberty." — Ibid.

20 See Note 15, supra. Also op. cit., pp. 776, 781-845.

21 CHARLES CHENEY HYDE, INTERNATIONAL LAW, Vol. II, p. 1285 (1945).

22 JOHN BASSETT MOORE, A DIGEST OF INTERNATIONAL LAW, Vol. II, p. 701 (1906).

23 Op. cit., pp. 762-763.

Hackworth tersely enunciated this principle as follows:

"Foreign ambassadors, ministers, and other accredited diplomatic officers are entitled under international law to certain well-recognized immunities from local jurisdiction, including, among others, immunity of their official residences and offices from invasion by local authorities. Such authorities may not enter an embassy or a legation for the purpose of serving legal process or of making an arrest."

Calvo sets a modification to the foregoing. He holds that "in the midst of civil disturbances" a minister's dwelling can and ought to offer an assured refuge "to political persons whom danger to life forces on the moment to take refuge there". To this extent, he maintains that asylum has been respected in Europe as well as in America, but he does not advocate the theory of extraterritoriality.²⁵ He lays down the following limitations of inviolability of a minister's domicile:²⁶

"The dwelling of a public minister is inviolable in so far as it affects things indispensable to his official services and to the free and regular exercise of his functions; but whenever the conduct or the imprudent attitude of a diplomatic agent puts in peril the peace of the state, violates or tends to elude the laws of the country, by converting, for example, the legation into a refuge for criminals or into a habitation of conspiracy against the established government, the privilege of inviolability of domicile disappears, and the offended state is fully warranted in refusing to the dwelling of the agent an immunity which reason and justice cease to sustain."

As to the right of asylum itself, authorities are to the effect that it has no basis in international law but merely in the consent of the state concerned. On this point, Hackworth says:²⁷

"Since the right of legation asylum can hardly be said to be recognized in international law, its practice wherever resorted to must of necessity be at the tolerance of the local state."

This is corroborated by Moore in a more direct manner thus:²⁸

"Since the practice of asylum is not sanctioned by international law, it can be defended only on the ground of the consent of the state within whose jurisdiction it is sought to be maintained."

With particular reference to the United States interpretation of the law on this subject, Jessup expresses the following opinion:²⁹

"The right of asylum in international relations, like the right of expatriation, has been talked about as if it were a right of the individual, whereas actually under traditional international law it has referred to the right of a state to afford a safe haven to individuals who sought its protection. The state was privileged, not obligated, to grant asylum. In connection with the clearly distinguishable 'right of asylum' in foreign embassies and consulates, the United States has denied the right but has admitted that its foreign missions might give temporary refuge to persons fleeing from a mob in time of unrest or political turmoil."

24 GREEN HAYWOOD HACKWORTH, *DIGEST OF INTERNATIONAL LAW*, Vol. I, p. 621 (1941). See also *op. cit.*, p. 781.

25 *Op. cit.*, p. 776.

26 *Op. cit.*, pp. 776-777, citing *DROIT INTERNATIONAL*, 4th ed., sec. 1521.

27 *Op. cit.*, p. 622.

28 JOHN BASSETT MOORE, *A DIGEST OF INTERNATIONAL LAW*, Vol. II, p. 779 (1906).

29 PHILIP C. JESSUP, *A MODERN LAW OF NATIONS*, pp. 82-83 (1948).

Lord McNair says of the United Kingdom position on this matter:¹⁰

"The United Kingdom Government recognizes no legal right to grant asylum upon diplomatic premises and no legal right to demand it, but on humanitarian grounds it has frequently authorized its diplomatic and other officers to grant temporary asylum in cases of emergency."

Universal Declaration of Human Rights. — Under the Declaration, it is proclaimed that everyone has the right to seek and to enjoy in other countries asylum from persecution subject to certain exceptions.¹¹ Due to the important bearing which this provision has upon the subject under consideration, it may be worthwhile to look into its evolution.

The draft of the United Nations Secretariat reads as follows:¹²

"No alien who has been legally admitted to the territory of a State may be expelled therefrom except in pursuance of a judicial decision or recommendation as a punishment for offences laid down by law as warranting expulsion.

"Every State shall have the right to grant asylum to political refugees."

In its first session, the Drafting Committee proposed the following:¹³

"Everyone has the right to escape persecution on grounds of political or other beliefs or on grounds of racial prejudice by taking refuge on the territory of any State willing to grant him asylum."

At its second session in December of 1947, the Commission on Human Rights decided "to examine at an early opportunity the question of the inclusion of the right of asylum of refugees from persecution in the International Bill of Human Rights or in a special convention for that purpose".¹⁴ At the same time, the Working Group on the Declaration of Human Rights prepared the first draft of the Declaration, article 11 of which reads as follows:¹⁵

"Everyone shall have the right to seek and be granted asylum from persecution. This right will not be accorded to criminals nor to those whose acts are contrary to the principles and aims of the United Nations."

At its third session held from May 24 to June 18, 1948, the Commission examined and revised the draft Declaration. It submitted the revised draft to the Economic and Social Council of the United Nations with article 12 of the draft reading thus:¹⁶

"1. Everyone has the right to seek and be granted, in other countries, asylum from persecution.

80 LORD MCNAIR, *INTERNATIONAL LAW OPINIONS*, Vol. II, pp. 67-70 (1950).

81 Article 14.

82 ENRIQUE M. FERNANDO, *The Right of Asylum*, *The Manila Times*, November 15, 1958.

83 *Ibid.*

84 *YEARBOOK ON HUMAN RIGHTS* FOR 1948, p. 510. See also paragraph 49 of E/600.

85 *Ibid.* See also Annex A of E/600.

86 *Ibid.* See also Annex A of E/800.

"2. Prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations do not constitute persecution."

In its resolution 151 (VII), the Council decided to transmit the draft Declaration to the United Nations General Assembly.³⁷

During the consideration of the particular provision of the draft above quoted, the discussion centered around whether any group of persecuted persons, no matter how large, may demand the right to enter any country. The United Kingdom representative characterized the text as a manifestation of defeatism, the Declaration supposedly contemplating an ideal life for all members of society, yet the article admitting the existence of persecution within that society. Significantly, moreover, the same representative contended that no State could accept the responsibilities imposed by the article as reproduced above. It was therefore proposed to amend the first part thereof thus:³⁸

"Everyone has the right to seek, and to enjoy in other countries, asylum from persecution."

As adopted by the General Assembly at its third session (Part I), article 14 of the Declaration which deals with the right of asylum reads as follows:³⁹

"(1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.

"(2) This right may not be invoked in case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations."

Binding Effect of the Declaration. — In its preamble, the Declaration has been proclaimed thus:⁴⁰

" . . . as a common standard of achievement for all peoples and all nations, to the end that every individual and organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction."

From the aforecited portion of its preamble, it can be gathered that the Declaration is merely a "standard of achievement" and that the "universal and effective recognition and observance" of the rights and freedoms therein contained has been left for implementation "by progressive measures, national and international". Merely proclaiming standards towards which nations should strive, the Declaration has therefore no legal binding force.⁴¹

³⁷ *Ibid.* See Note 32, *supra*.

³⁸ See Note 32, *supra*.

³⁹ YEARBOOK ON HUMAN RIGHTS FOR 1948, p. 467. See also Note 34, *supra*.

⁴⁰ *Op. cit.*, p. 466.

⁴¹ ALEJO LABRADOR, *The Universal Declaration of Human Rights*, *Philippine Law Journal*, Vol. XXVIII, No. 5, October, 1953, pp. 830-836.

The lack of legal binding effect of the Declaration is further recognized in that there is still a need to embody the rights and freedoms in covenants to be agreed upon by States in order to have such effect. In fact due to existing differences in national social and economic conditions, there has arisen in the preparation of an enforceable international bill of human rights the necessity of preparing two draft covenants, one for political and civil rights expressed in terms of enforceable rights, and another for economic, social and cultural rights subject to further implementation programs.⁴²

Regarding the right of asylum, it was still on the agenda of the Commission on Human Rights at the end of 1948. The question at the time was whether the right of asylum should be included as one of the rights to be regulated by the Covenant on Human Rights, and whether a separate international convention on this right should be drafted.⁴³

It is significant to note that the right of asylum has not been embodied in either of the draft covenants on human rights aforementioned.⁴⁴ The following portion of Bebr's work entitled "International Protection of Human Rights and Freedoms" is rather enlightening:⁴⁵

"The enjoyment of human rights would be inconceivable without a right to freedom of movement, including the right to choose a residence and leave the country freely. This right, equally applicable to nationals and aliens, is limited by the requirements for national security and public health. Presently an unrestricted movement across national boundaries cannot be seriously considered let alone guaranteed. For this reason the Covenant guaranteeing everyone's right to leave the country does not — contrary to the Universal Declaration of Human Rights — assure the right to seek and enjoy political asylum. x x x "

IV. The Saulo Case

Factual Background. — When Saulo left his house at Kawit, Cavite on September 12, 1950, his family thought that he was only going to the office of the Congress of Labor Organizations (CLO), of which he was an executive director. His family did not know that he was leaving them for the mountain fastnesses to become Huk propaganda chief.⁴⁶ He rose to become No. 3 in the Huk hierarchy⁴⁷ with ₱50,000 prize on his head, directly below Jesus Lava, Communist Party chief, and Casto Alejandrino, Communist Party top military leader.⁴⁸

42 GERHARD BEBR, *International Protection of Human Rights and Freedoms*, Philippine Law Journal, Vol. XXIX, No. 3, July, 1954, pp. 312-344.

43 YEARBOOK ON HUMAN RIGHTS FOR 1948, p. 519.

44 See YEARBOOK ON HUMAN RIGHTS FOR 1952, pp. 424-430. Also YEARBOOK ON HUMAN RIGHTS FOR 1953, pp. 370-371.

45 Philippine Law Journal, Vol. XXIX, No. 3, July, 1954, p. 329.

46 The Manila Times, November 19, 1950.

47 The Daily Mirror, November 13, 1958; The Evening News, November 13, 1958; The Manila Chronicle November 13, 1958.

48 The Manila Chronicle, November 13, 1958.

As recalled by Saulo himself, the sedition charge has been pending against him ever since he went to the field in 1950. The charge was based on his reading a supposedly seditious letter of Luis Taruc, a former Huk chieftain, before a labor rally in Manila some eight years ago in his capacity as secretary of the Congress of Labor Organizations.⁴⁹

Saulo claimed that the rebellion charge filed against him in September 1950, during the administration of the late President Quirino was "politically inspired" and that it was "ridiculous and groundless" since the Congress of Labor Organizations of which he was national secretary at the time was "a legal and legitimate workers organization duly registered with the Department of Labor". He was thus discharging his functions as CLO secretary and as editor of its official organ *Bisig* when the headquarters of the organization was raided by men armed with an order to arrest him for rebellion. However, he was not in the CLO headquarters during the raid on September 12, 1950. Shortly thereafter, he fled Manila and went into hiding in the mountains.⁵⁰

Sometime in February or March, 1958, Saulo briefed through a courier the city editor of *The Manila Times*, who had been his close friend and fellow newspaperman from pre-war years, of his intention to seek political sanctuary with a neutral foreign embassy in Manila. According to the *Times* city editor, he kept silent about this matter because he thought that it was not within the scope of international law for a wanted citizen to seek and to be offered protection at a foreign embassy in his own country.⁵¹ Testifying before the House of Representatives anti-Filipino activities committee, the *Times* city editor said nothing but that the "achievement of a scoop for his paper" motivated him in keeping to himself the presence of Saulo in Manila.⁵²

In May, 1958, Saulo tried to seek asylum in the Indonesian Embassy. His application for sanctuary included his wife and four minor children. They wanted to go to Indonesia and reside there. But the Indonesian ambassador turned down Saulo's request,⁵³ apparently trying to avoid political involvement in Philippine affairs.⁵⁴

49 *The Daily Mirror*, November 15, 1958.

50 *Ibid.*

Saulo began his life as a fugitive on September 13, 1950 a day after he, Mariano P. Balgos and Guillermo Capadocla, top Huk leaders who were subsequently slain, were charged before the Manila Court of First Instance with the crime of inciting to rebellion.

—*The Daily Mirror*, November 18, 1958.

51 *Ibid.*

52 *The Daily Mirror*, November 19, 1958.

53 *The Daily Mirror*, November 18, 1958.

54 *The Daily Mirror*, November 15, 1958.

The House of Representatives anti-Filipino activities committee disclosed that it was told of a two-pronged plan to effect Saulo's escape to any nearby neutralist country like Indonesia and India. This plan was outlined in the so-called "Bulacan Memo", a document seized on the person of Agaton Bulaong, a ranking Huk commander, who was captured sometime in September, 1958. In this "memo", Saulo proposed a swift flight to any nearby neutralist country by any of the following "plans":

1. Sulu Plan — A frog-leaping cruise by sailboat from island to island until he reaches the southern port of Jolo and there leave the country to nearby Borneo.

2. The Lenin Plan — This calls for Saulo leaving the country "legally" through a falsified passport. — *The Manila Chronicle*, November 18, 1958.

After eight years and two months of hiding from the Philippine Government, Saulo sought political asylum at the Indonesian Embassy at nine o'clock in the morning of November 12, 1958. Without the knowledge of Ambassador Pamontjak, he "invited himself" to become a "guest" at the Indonesian Embassy.⁵⁵ Saulo turned up at the embassy armed with letters to the Indonesian Government, President Carlos Garcia, United Nations Secretary General Dag Hammarskjold and Press Secretary Nable. He first presented himself to the press attache of the Indonesian Embassy, saying that he had come to seek political asylum. The Indonesian Ambassador lost no time in contacting the foreign office of the Philippine Government about Saulo's presence in the chancery and his desire to seek the decision of the Indonesian Government on Saulo's request for asylum.⁵⁶

Shortly before noon of November 13, 1958. Foreign Secretary Felixberto Serrano demanded from the Indonesian Ambassador the turnover of Saulo to the Philippine Government. Secretary Serrano told Ambassador Pamontjak that should the latter's government decide not to yield Saulo, they should at least ask him to leave the Indonesian Embassy. The Indonesian Ambassador informed Secretary Serrano that he had not yet received any word from his home government regarding the Saulo request for sanctuary for himself and his family in Indonesia.⁵⁷

In demanding the person of Saulo, the Philippine Government warned that the No. 3 Huk was not a victim of persecution and, therefore, Indonesia had no right to grant him asylum.⁵⁸ The Indon Embassy was assured of the necessary assistance in the event that it found difficulty in ejecting Saulo out of the embassy building.⁵⁹

Ambassador Pamontjak received on the night of November 13, 1958 instruction from his home government to inform the Philippine Government that Saulo would not be surrendered until further notice.⁶⁰ That same night a peaceful rally against the Indonesian embassy for giving asylum to Saulo turned into a riot when the demonstrators found no response to their cries outside the chancery gates. This was accompanied by the burning of Ambassador Pamontjak's effigy. A squad of policemen was able to stop the riot and maintain order.⁶¹

After Ambassador Pamontjak had registered a formal protest against the rioting, Secretary Serrano extended his government's regrets to the former and assured him that all appropriate agencies of the Philippine Government had been alerted to prevent a repetition of the incident. Secretary Serrano offered to pay the damage caused.⁶²

⁵⁵ *Ibid.*

⁵⁶ *The Manila Chronicle*, November 13, 1958.

⁵⁷ *The Daily Mirror*, November 13, 1958.

⁵⁸ *The Evening News*, November 13, 1958.

⁵⁹ See Note 57, *supra*.

⁶⁰ *The Manila Times*, November 14, 1958.

⁶¹ *The Manila Chronicle*, November 14, 1958.

⁶² *The Manila Times*, November 15, 1958.

Meanwhile negotiations continued between Secretary Serrano and Ambassador Pamontjak regarding the surrender of Saulo to the Philippine authorities.⁶³

Finally, at eleven o'clock in the morning of November 18, 1958, the Indonesian Ambassador yielded Saulo to the Philippine Government. Saulo was brought before Secretary Serrano at the latter's office in Padre Faura. Secretary Serrano immediately delivered him to Col. Flaviano Olivares, Philippine Constabulary Chief of Staff, with an admonition to treat the prisoner fairly. Col. Olivares lost no time in bringing Saulo to Camp Murphy for interrogation by military intelligence officer.⁶⁴

He is being detained at the Camp Crame stockade,⁶⁵ pending trial of the charges against him.⁶⁶

Legal Implications. — Saulo based his request for asylum on the provision of Article 14 of the Declaration which reads as follows:⁶⁷

"Everyone has the right to seek and to enjoy in other countries asylum from persecution. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations."

In a statement issued through the Indon press attaché, he stated that that it was his firm belief that the Declaration is legally and morally binding on all Member States of the United Nations, including the Philippines and Indonesia. He further stated his position thus:⁶⁸

"It is public knowledge that a rebellion charge was filed against me on September 12, 1950, during the Liberal Party regime of the late President Quirino. But little did the public realize that this complaint was politically inspired and designed to destroy my good name, to intimidate and possibly silence me forever."

Indonesian Prime Minister Hardi, who was concurrently foreign minister *ad interim*, issued a statement to the effect that "in accordance with existing international convention, the asylum rights of any person have to be recognized as it has been done so in many countries before." However, he said that before giving a final decision in the matter his government was closely examining the issue in accordance with international laws and conventions. He noted the absence of extradition treaties between Indonesia and other countries including the Philippines and said that the Saulo case made the need for such treaties felt more than ever. He also said:⁶⁹

63 *The Daily Mirror*, November 15, 1958; *The Manila Chronicle*, November 15, 1958; *The Manila Times*, November 15, 1958.

64 *The Evening News*, November 18, 1958.

65 *The Manila Times*, November 10, 1958.

66 *The Daily Mirror*, November 19, 1958; *The Manila Chronicle*, November 19, 1958.

Pending the preliminary investigation of the anti-subversion charge under Republic Act No. 1700, Saulo requested for his discharge on the ground that he was being illegally detained at the Camp Crame stockade. Saulo made this move after Manila Judge Gregorio S. Narvasa ordered his release after he had posted a bail bond of P40,000.00 on the charges of rebellion and inciting to rebellion. The government lawyers having interposed a vigorous opposition, the question as to Saulo's release is still pending resolution by the court.—*The Philippines Herald*, December 24, 1958; *The Manila Times*, December 30, 1958; *The Philippines Herald*, December 30, 1958.

67 *The Manila Chronicle*, November 18, 1958.

68 *Ibid.*

69 *The Manila Chronicle*, November 14, 1958; *The Manila Times*, November 15, 1958.

"Every decision which will be reached by the Indonesian Government will be in the nature of giving an incentive to the Philippine Government to consider more the interests of our country in facing the Indonesian adventurers who are still roaming the Philippines."

As stated by Secretary Serrano, the position of the Philippine Government is that Saulo is not entitled to diplomatic asylum. He pointed out that, in accordance with the authoritative opinion of the International Court of Justice, diplomatic asylum rests on a treaty basis and then only on two conditions—first, that the refugee is a political offender, and second, that his case has great urgency.⁷⁰ He observed that the philosophy behind this rationale is that any unjustified extension of diplomatic asylum constitutes an undue interference in the processes of justice of the territorial government.⁷¹ According to him, it was still a controversial issue whether Saulo is solely a political offender. Even on the assumption that Saulo is a political offender, it was contended that the condition of urgency was not present in his case as his life was not in imminent danger. Moreover, it was argued that the overwhelming factor against the granting of diplomatic asylum to him was the absence of a treaty on the institution of asylum between the Philippines and Indonesia.⁷²

It was also contended that the Déclaration is not legally binding on the Philippine Government and can hardly stand as a legal basis for seeking political asylum. Those arguing for the Philippine position pointed to the Charter itself which provides in Chapter I, Article 2, paragraph 7, as follows:

"Nothing contained in the present charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the members to submit such matters to settlement under the present charter . . ."

Besides, they contended, as far as the Philippine Government was concerned, Saulo was a common criminal subject to the jurisdiction of the Philippines.⁷³ On this point, the Chairman of the Philippine Senate foreign relations committee and an authority on international law elaborated that the right of asylum applies only to victims of political persecution, who are persecuted because their political beliefs or views are opposed to those of the government. From this spokesman, we quote:⁷⁴

"It does not apply to those who go beyond expressing their beliefs and commit or mastermind the commission of common crimes such as murder, grave physical injuries, kidnapping or robbery.

"Saulo is not a victim of political persecution. He, like other Huk leaders, is charged with the commission of common crimes. And he need not be afraid of being brought to trial in Philippine Courts. As well exemplified in the Hernandez' case, the Philippine Supreme Court is liberal in according to accused persons every protection guaranteed them by our constitution and our statutes, and there is no reason for Saulo seeking asylum in the Indonesian embassy when he is fully assured of a fair and impartial administration of justice."

⁷⁰ The Manila Times, November 15, 1958.

⁷¹ The Manila Chronicle, November 15, 1958.

⁷² The Manila Times, November 15, 1958.

⁷³ The Daily Mirror, November 15, 1958.

⁷⁴ The Manila Chronicle, November 15, 1958.

The Philippine Senate committee on national defense and security, in an executive session, declared its position as follows:⁷⁵

"The right to asylum from the known facts of the Saulo case does not exist. There is no persecution; there is no imminent danger to life; there is lacking that sense of urgency and gravity which may, in very exceptional cases, afford justification for the right of asylum.

"Moreover, all the branches of the government have been more than unusually sensitive about the protection of human rights. The judiciary has always been the bulwark of individual liberty. Congress' record in the matter has been equally noteworthy. The executive, particularly in his campaign against dissidence, has observed the rule of law. Saulo then has nothing to fear from the enforcement of the law and the administration of justice.

"It is the earnest hope of the committee that the Indonesian Embassy will weigh these considerations carefully in its disposition of the Saulo incident."

As tersely stated by Justice Secretary Barrera, for a person to claim diplomatic asylum, three conditions must be present, namely, that he is being persecuted for a political offense, that he is in danger of losing his life or limb if released, and that the courts of the land are corrupt. He concluded that none of the factors was present in the Saulo case. With respect to the third condition, he emphatically declared that "certainly, our Supreme Court, which has adopted a liberal doctrine on the theory of rebellion complexed with other crimes, cannot be said to be corrupt".⁷⁶

Distinguished from Haya de la Torre Case.—The so-called Haya de la Torre case was an incident involving Colombia and Peru. This took place when, after the suppression of a military rebellion which broke out in Peru on October 3, 1948, the President of the Republic of Peru issued a decree outlawing the American People's Revolutionary Alliance, which was charged with having organized and directed the rebellion. It was also decreed that the leaders of the Alliance would be brought to justice in the Peruvian courts as instigators of the rebellion.⁷⁷

On October 5, 1948, a "note of denunciation" was addressed to the Minister of the Navy against one Victor Raul Haya de la Torre who was the leader of the Alliance. Against him an examining magistrate issued an order for the opening of judicial proceedings in respect of the crime of military rebellion. Being one of those denounced but not yet detained, Haya de la Torre was ordered by the magistrate to be arrested. After the declaration of a state of siege on October 4, 1948 had been renewed three times, specifically on January 3, 1949, Haya de la Torre sought asylum in the Colombian embassy in Lima, Peru. On January 4, 1949, the Colombian Ambassador sent the following note to the Peruvian Minister for Foreign Affairs and Public Worship:⁷⁸

⁷⁵ The Manila Times, November 14, 1958.

⁷⁶ Ibid.

⁷⁷ YEARBOOK ON HUMAN RIGHTS FOR 1950, p. 541. See also INTERNATIONAL COURT OF JUSTICE REPORTS, p. 266 (1950); INTERNATIONAL COURT OF JUSTICE YEARBOOK, pp. 77-83, 86-87, 94-98 (1950-1951).

⁷⁸ Op. cit., pp. 541-542.

⁷⁹ Op. cit., p. 542.

"I have the honor to inform Your Excellency, in accordance with what is provided in article 2, paragraph 2, of the Convention on Asylum signed by our two countries in the city of Havana in the year 1928, that Señor Victor Raul Haya de la Torre has been given asylum at the seat of this mission as from 9 a.m. yesterday.

"In view of the foregoing, and in view of the desire of this Embassy that Señor Haya de la Torre should leave Peru as early as possible, I request your Excellency to be good enough to give orders for the requisite safe-conduct to be issued, so that Señor Haya de la Torre may leave the country with the usual facilities attaching to the right of diplomatic asylum."

The Colombian Ambassador sent the Peruvian Minister a further note on January 14, 1949 as follows:⁷⁹

"Pursuant to instructions received from the Chancellery of my country, I have the honor to inform your Excellency that the Government of Colombia, in accordance with the right conferred upon it by article 2 of the Convention on Political Asylum signed by our two countries in the city of Montevideo on 26 December 1933, has qualified Señor Victor Raul de la Torre as a political refugee."

Article 2, paragraph 2, of the Havana Convention of 1928 provides as follows:⁸⁰

"Asylum may not be granted except in urgent cases and for the period of time strictly indispensable for the person who has sought asylum to ensure in some other way his safety."

It was argued for the Peruvian Government that Haya de la Torre was not a political offender, that the requirement of urgency of the aforecited provision of the Havana Convention of 1928 was not met, and that therefore the Colombian Government was not entitled to grant him diplomatic asylum in its embassy at Lima. As a consequence, the Peruvian Government contended that it was under no obligation to grant a safe-conduct for the departure of Haya de la Torre from the Peruvian territory.⁸¹

In holding that Colombia was not entitled to qualify the nature of Haya de la Torre's offense, the Court said that the principles of international law do not recognize any rule of unilateral and definitive qualification by the State granting diplomatic asylum. As to the regularity of the asylum, the Court upheld the Peruvian contention that the grant of asylum to Haya de la Torre was not made in conformity with article 2, paragraph 2, of the Havana Convention on Asylum of 1928, the essential justification for asylum which is the imminence or persistence of a danger for the refugee's person not being present.⁸²

After the Court had delivered its judgment of November 20, 1950,⁸³ the Government of Colombia submitted a request for its interpretation which the Court declared to be inadmissible in its judgment of November 27, 1950.⁸⁴

⁸⁰ *Op. cit.*, p. 541.

⁸¹ *Op. cit.*, p. 542.

⁸² *Ibid.*

⁸³ YEARBOOK ON HUMAN RIGHTS FOR 1950, pp. 541-542. See also INTERNATIONAL COURT OF JUSTICE REPORTS FOR 1950, p. 206.

⁸⁴ YEARBOOK ON HUMAN RIGHTS FOR 1951, p. 611.

On November 28, 1950 the Minister for Foreign Affairs and Public Worship of Peru sent a note to the Colombian Charge' d'Affaires at Lima, stating in particular thus:⁸⁵

"The moment has come to carry out the judgment delivered by the International Court of Justice by terminating the protection which the Embassy is improperly granting to Victor Raul Haya de la Torre. It is no longer possible further to prolong an asylum which is being maintained in open contradiction to the judgment which has been delivered. The Colombian Embassy cannot continue to protect the refugee, thus barring the action of the national courts.

"You must take the necessary steps, sir, with a view to terminating this protection, which is being improperly granted, by delivering the refugee Victor Raul Haya de la Torre, so that he may be placed at the disposal of the examining magistrate who summoned him to appear for judgment, in accordance with what I have recited above."

The Minister for Foreign Affairs of Colombia addressed a note of December 6, 1950 to the Minister for Foreign Affairs and Public Worship of Peru in which he refused to comply with his request and relied on the following considerations:⁸⁶

"... the Court formally rejected the complaint made against the Government of Colombia in the counterclaim of the Government of Peru, namely, that it had granted asylum to persons accused of or condemned for common crimes. Should Colombia proceed to the delivery of the refugee, as requested by your Excellency, (it) would not only disregard the judgment to which we are now referring, but would also violate article 1, paragraph 2, of the Havana Convention which provides that: 'Persons accused of or condemned for common crimes taking refuge in a legation shall be surrendered upon request of the local government.'"

Rejecting the submissions of the Governments of Colombia and Peru as to the manner in which the judgment of November 20, 1950 shall be executed because it cannot give effect to such submissions, the Court held that Colombia was under no obligation to surrender Haya de la Torre to the Peruvian authorities.⁸⁷ However, the Court ruled that the asylum granted to Haya de la Torre having been irregularly granted ought to have ceased after the delivery of the judgment of November 20, 1950, which judgment entailed a legal consequence, namely, that of putting an end to an illegal situation. In support of its holding that Colombia was under no obligation to surrender the refugee although Peru was legally entitled to claim that the asylum should cease, the Court observed that there was no contradiction between these two findings inasmuch as surrender is not the only way of terminating asylum.⁸⁸

This case may be distinguished from that of Saulo on three grounds: first, with respect to the basis of the right sought to be claimed; second, with respect to the nature of the charge; and third, with respect to the urgency of the situation.

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*

⁸⁷ *Op. cit.*, pp. 611-612.

⁸⁸ *Op. cit.*, p. 612.

As to the first ground, it may be noted that in the case of Haya de la Torre there was the Havana Convention on Asylum of 1928.⁸⁹ There is no question that in the case of Saulo, no treaty on the subject existed between the Philippines and Indonesia.⁹⁰ This distinction becomes practically academic, however, in view of the provisions of the Declaration on the matter.⁹¹

As to the second ground, namely, the nature of the charge, it is only to be recalled that the only accusation against Haya de la Torre concerned the crime of military rebellion⁹² which was clearly of a political nature. Moreover, the Court found that the Government of Peru failed to prove that the acts with which Haya de la Torre was charged constituted common crimes and that military rebellion in itself constitutes a common crime.⁹³ On the other hand, Saulo has been charged not only with rebellion but also with such common crimes as murder, serious physical injuries, arson, and kidnapping.⁹⁴ However, this has to be considered in the light of the Hernandez case.⁹⁵

The third ground, that is, the element of urgency, is lacking in both cases. In the Haya de la Torre case, the Court found that for three months Haya de la Torre had apparently been hiding in the country, refusing to obey the summons to appear of the legal authorities, and it was only on January 3, 1949 that he sought refuge, and held that there did not exist, on that date, a danger constituting a case of urgency within the meaning of article 2, paragraph 2, of the Havana Convention.⁹⁶ Coming to the case of Saulo, it has been noted earlier that he sought asylum only in the morning of November 12, 1958 after eight years and two months of hiding from the Philippine Government.⁹⁷ Besides, no contradiction was offered in behalf of the Indonesian Government to the unanimous claim of the proponents of the Philippine position on the matter to the effect that there was no imminent danger to Saulo's life.⁹⁸

Distinguished from Mindszenty Case.—The spiritual leader of Hungary's 9.2 million Roman Catholics, Joseph Cardinal Mindszenty was an implacable enemy of the Communists and his stubbornness and impolitic bluntness made him a major political target for the Red regime.⁹⁹

Even while still Archbishop of Esztergon in October 1945, he issued a pastoral letter of such vehemence that it was reported to have gained 500,000 votes for the Small Holders Party which he supported. His famous "Tatar Sermon", a thinly disguised descrip-

⁸⁹ See Note 83, *supra*.

⁹⁰ *The Manila Times* November 14, 1958.

⁹¹ Article 14.

⁹² See Note 77, *supra*.

⁹³ *Ibid.*

⁹⁴ *The Manila Times*, November 10, 1958. See Note 29, *supra*.

⁹⁵ See Note 163, *infra*.

⁹⁶ *YEARBOOK ON HUMAN RIGHTS FOR 1950*, p. 542. See also Note 82, *supra*.

⁹⁷ *The Daily Mirror*, November 15, 1958. See Note 53, *supra*.

⁹⁸ See Notes 75 and 76, *supra*.

⁹⁹ *NEWSWEEK*, Vol. XLVI No. 4, p. 34, July 25, 1953.

tion of the Tatar invasion in the thirteenth century, was a vigorous attack against the Russian occupation of Hungary.¹⁰⁰

It is said, however, that his tribulations started from the moment he was made cardinal in 1946.¹⁰¹ The Primate's palace of Esztergon was infiltrated with spies and *agents provocateurs*. A trap was being set for him because of his refusal to bend to the will of the godless, and because he declined to be an instrument in the hands of the Stalinists ruling Hungary.¹⁰²

Between 1946 and 1948, the struggle grew in violence as the Communists moved into every area of Hungary's life. The months before his arrest were, in fact, a series of battles as the Cardinal, with full knowledge of his probable fate, pressed the attack with a series of sermons and pastoral letters. He urged a policy of passive resistance against "totalitarian materialism", fought the nationalization of church schools and warned that Hungarian Catholics should cease reading party newspapers and listening to official radio. On the day the schools were legally nationalized, he ordered the church bells to be tolled.¹⁰³

By this time, plans to silence the Cardinal obviously had long been under discussion. The final decision came from Moscow. Drawing on its own grisly tradition, the Kremlin decided to stage a state propaganda trial which would, in one stroke, solve Hungary's internal problem and "prove" to the world that the Vatican and the United States were conspiring against the "people's government".¹⁰⁴

On Christmas Eve, 1948, the dread AVH—Hungarian Communist security forces—burst into his palace to seize him.¹⁰⁵ The Cardinal was hustled into a car and taken to that most fearsome of all Central European torture chambers, AVH headquarters at 60 Andrássy Street in Budapest.¹⁰⁶

For several days, he was questioned. Then, the torture began. For days on end, he was beaten on the chest with a rubber hose, knowing as they did that he had a weak lung from childhood. They undressed him and stood him nude for hours in a cold, damp cell, berating and ridiculing him. They brought "devilish devices" into play, to humiliate and hurt. The Cardinal said he was dragged to a room where he was compelled to watch the most obscene orgies. Day and night, the questioning continued. The campaign to wear down his will and to extract a confession went on and on. For 29 full days it lasted—29 days and nights without sleep. The naked bulb in his cell was kept burning, and when he collapsed from ex-

100 Ibid.

101 LOOK, Vol. XX, No. 20, p. 23, December 23, 1953. See also Note 98, *supra*.

102 *Op. cit.*, p. 24.

103 See Note 98, *supra*.

104 Ibid.

105 LOOK, Vol. XX, No. 20, p. 24, December 23, 1953. See also Note 98, *supra*.

106 Ibid.

haustion, he was promptly revived so that he would be deprived of even the rest of lost consciousness.¹⁰⁷

Finally, the Cardinal scrawled his name to the trumped-up confessions. First, he resorted to a trick. After "Jozsef Mindszenty", he put the letters "C.F." When interrogated by an alert inquisitor as to the meaning of these letters, Mindszenty explained they were Latin ecclesiastical symbols indentifying him as a "Cardinal from the provinces". In reality, they stood for "contra fidem" — "against my will" — to show that they were signed under duress.¹⁰⁸ The next day, the AVH returned with a demand for a new set of confessions. Having learned the significance of "C.F.", they would accept nothing but the unadorned signature.¹⁰⁹

A few days before his trial, the Cardinal was transferred to the Marko jail. At that time, he was near collapse. As a final warning to the beaten, exhausted churchman, the hanging of a common murderer was staged outside his windows the night before the trial.¹¹⁰

After the familiar Communist travesty on justice, Cardinal Mindszenty was sentenced to life imprisonment. The prosecution appealed for death by hanging. Five months later, the National Council of People's Court, in all its mercy, reviewed the case and upheld the sentence.¹¹¹

The charges against him were: obstructing land reform and nationalization, organizing movement intended to restore the Hapsburgs, spying, and carrying out black-market activities.¹¹²

Told that the outside world believed that he was under the influence of drugs during the trial,¹¹³ the Cardinal replied: "No, not drugs, only the influence of 29 sleepless nights and a congested lung."¹¹⁴

By September 1949, after his trial and suffering from thyroid disturbance, he was transferred to Budapest's Conti Prison where he was held in solitary confinement for four years. On July 16, 1955, the day before the start of the Geneva Conference, he was driven to Castle Puspokszentlaszlo in southern Hungary, summer

107 "Mr. Bain who obtained this interview at the risk of his life is a newspaperman, Hungarian-speaking native American and personal friend of the Cardinal."—BALOGH BAIN, *Cardinal Mindszenty Tells How He Was Tortured*, *Ibid.* See also Note 100, *supra*.

108 See Note 104, *supra*.

One day they put before him a typewritten confession and commanded him to sign. "I did what they asked, and I remember clearly that I put the two letters, C.F., after my name. My torturers were surprised at this, and asked me what the letters C.F. meant. Despite my dazed state, the defense mechanism of the human body worked, and even smiling at them, I answered: "It means a cardinal without office." It took his captors some time to find out that C.F. stood for the Latin *coactus* (I have been forced to act") — a symbol used by many Christians to sign extorted confessions during the years of Turkish rule in Hungary (1547-1699). — *TIME*, Vol. LXVIII, No. 25, p. 37, December 17, 1956.

109 *Ibid.*

110 *Ibid.*

111 See Note 98, *supra*.

112 *Ibid.* See *TIME*, Vol. LXVI, No. 4, p. 38, July 25, 1953.

113 See Note 104, *supra*. Also *Ibid.*

114 *Ibid.*

residence of the bishop of Pecs.¹¹⁵ Four months later he was well enough to be moved to Felsopeteny Castle in the north, where the soldiers of Hungary's short-lived revolution found and liberated him.¹¹⁶

Early Sunday morning, November 4, 1955, Mindszenty awakened to the sound of cannonading. When the Russian assault on Budapest began, Premier Nagy had advised the Cardinal to take refuge in the U.S. Legation.¹¹⁷ That morning an excited voice called him thru a telephone telling him that Nagy and his cabinet were meeting in Parliament and asked him if he could come immediately. With Turchanyi, his trusted aide, and other aides, he left in two cars after slipping into their cassocks. As they crossed the Danube and turned into Liberty Square, they found out that the place was under the control of Soviet forces. Turchanyi suggested to the Cardinal that he reconnoiter alone. No sooner was Turchanyi inside the Parliament building than two blue-uniformed members of the AVH rushed toward him with drawn revolvers. At that moment the Cardinal's party managed to make a narrow escape and, under Turchanyi's direction, sought temporary refuge in a bank building.¹¹⁸

By telephone and through trusted intermediaries, Turchanyi started negotiations with the American Legation to grant the Cardinal asylum. Without hesitation, the United States ordered the Legation to open its door to Mindszenty. A car conveyed the Cardinal across the last few yards to safety.¹¹⁹ The United States beat the AVH only by minutes. Hardly was the Cardinal past the iron grill of the Legation entrance when a squad of plain-clothes agents and a Soviet tank lumbered to the building where he had been.¹²⁰

The next day, word went around that Soviet tanks were on their way to the Legation to seize Mindszenty. The U.S. Legation made a hasty plan. As soon as a Red Army man presented himself, an unarmed Marine guard would open the inner glass doors and a Russian-speaking official would announce through the iron grill that the premises were United States property and that no one had the right to enter. After having been informed as to what was feared at the time, the Cardinal insisted that he would surrender rather than endanger the position of the Legation. Happily, the expected invasion did not come to pass.¹²¹

Ever since his short-lived freedom from Communist jailers during the Hungarian revolution, Cardinal Mindszenty has been living in the U.S. Legation in Budapest. Forced by Russian intervention

¹¹⁵ *TIME*, Vol. LXVIII, No. 25, p. 38, December 17, 1956. See *LOOK*, Vol. XX, No. 26, p. 22, December 25, 1956.

¹¹⁶ *Ibid.*

¹¹⁷ *Ibid.*

¹¹⁸ *LOOK*, Vol. XX, No. 26, p. 22, December 25, 1956.

¹¹⁹ *Op. cit.*, pp. 22-23.

¹²⁰ *Op. cit.*, p. 23.

¹²¹ *Ibid.*

to seek refuge, he now lives in a two-room apartment, gets his meals from the legation kitchen, works on his memoirs and takes infrequent strolls in a gloomy patio in the legation compound.¹²²

Sometime in April, 1957, the Italian Communist Party organ *Unita* printed a dispatch from its Budapest correspondent suggesting that if the United States would request it, Hungary's puppet Premier Janos Kadar would be happy to grant Mindszenty a safe-conduct allowing him to leave both the legation and Hungary. To these officially inspired Communist overtures, there was noticeable absence of response by both the Vatican and the U.S. hosts.¹²³

Like the Saulo case,¹²⁴ the case of Cardinal Mindszenty does not have any treaty to stand on. This distinguishes these two cases from that of Haya de la Torre where there was the Havana Convention of 1928 to be considered.¹²⁵

Regarding the nature of the charge, like the Haya de la Torre case,¹²⁶ and, possibly in view of the ruling of the Philippine Supreme Court in the Hernandez case,¹²⁷ the Saulo case,¹²⁸ Cardinal Mindszenty was accused of political crimes,¹²⁹ which were in great probability groundless and false, if not altogether fabricated.¹³⁰

The main difference between the Haya de la Torre and Saulo cases, on one hand, and the Mindszenty case, on the other, lies in that the element of urgency, while lacking in the former,¹³¹ existed in the latter.¹³² Moreover, the imminence of the danger to the Cardinal's life was clear from the circumstances under which the AVH acted as well as the latter's action itself on that fateful Sunday morning.¹³³

V. Conclusion and Recommendations

Conclusion.—A review of the authorities shows that the right of diplomatic asylum has no foundation in traditional international

122 TIME, Vol. LXIX, No. 17, p. 29, April 29, 1957.

Though the legation keeps him supplied with newspapers (including the Paris Herald Tribune), the protocol of diplomatic refuge forbids him to receive or send letters or to use the telephone.—Ibid.

123 Ibid.

124 See Note 90, *supra*.

125 See Note 89, *supra*.

126 See Note 93, *supra*.

127 See Note 163, *infra*.

128 See Note 94, *supra*.

129 See Note 112, *supra*.

130 See Notes 99-104, *supra*.

131 See Notes 96-98, *supra*.

132 See Notes 117-121, *supra*.

133 See Note 115, *supra*.

This can be further gathered from the following portion of the interview which Mr. Bain had with the Cardinal:

"'Why does the AVH want you now?' I asked as we sat there.

"'I have been a thorn in their flesh for a long time. They will certainly spare no effort to separate me from my people,' he replied.

"'Is this the propitious moment to dispose of you?'

"'It seems to be a good moment for them to try,' the Cardinal said with a rueful smile. 'The streets are deserted at such an early hour. With all the guns firing in Budapest, few people are about.'"—Ibid. See also Note 118, *supra*.

law.¹³⁴ Notwithstanding its practice in some countries,¹³⁵ the right finds basis only in the consent of the states concerned.¹³⁶

In the case of Cardinal Mindszenty,¹³⁷ it was through the implied consent of the territorial government that the right continued to be maintained. If it were not for the fact that the Cardinal's surrender was not insisted upon,¹³⁸ the Hungarian Government could have forcibly seized him¹³⁹ as was done by Sweden in the Springer case¹⁴⁰ and by the Spanish Government in the case of the Duke of Ripperda.¹⁴¹ The Philippine Government could have done the same in the case of Saulo had the Indonesian Embassy persisted in refusing to surrender the refugee.¹⁴² Significantly in the Mindszenty case, the feelers made to the effect that, if the United States would request it, the Hungarian Government would grant the Cardinal a safe-conduct allowing him to leave the legation as well as the country¹⁴³ constituted a tacit recognition by the Kadar government that the U.S. protection has been effectively extended to Mindszenty.¹⁴⁴

Recently, it has been reported that the first of the 77 former Batista henchmen who gained refuge in foreign embassies in Cuba were flown into exile with the permission of the new government under Fidel Castro,¹⁴⁵ Cuba's successful revolutionary leader.¹⁴⁶

This consent may be manifested individually and unilaterally on specific occasions as in the case of Hungary¹⁴⁷ and Cuba,¹⁴⁸ or collectively in a treaty or convention like the Havana Convention on Asylum of 1928 in the case of Haya de la Torre.¹⁴⁹ In the former, the granting of asylum is at the pleasure and, not unusually, political convenience of the state concerned. The same is true with respect to the consent of the territorial government. In other words, there is no such right in the legal sense without a treaty or convention. It is only when there is a treaty or convention on the subject that the right really exists for then there is the obligation to grant refuge on the part of the state requested to extend protection as well as the duty to recognize the right on the part of the territorial government.

134 See Notes 27-30, *supra*.

135 See Note 20, *supra*.

136 See Notes 27 and 28, *supra*.

137 *Supra*, pp. 88-47.

138 See Note 121, *supra*.

139 The U.S. had been fearful that the Communists might try to seize the Cardinal by force.—See Note 122, *supra*.

140 Springer was a native of Russia, living in Sweden. After his conviction for a crime, he escaped and took refuge in the British Embassy at Stockholm. His surrender was obtained by coercive measures.—JOHN BASSETT MOORE, *A DIGEST OF INTERNATIONAL LAW*, Vol. II, p. 766 (1906).

141 The Duke of Ripperda was a Spanish Minister of Foreign Affairs. In 1720, fearing that he would be held responsible for a certain offense, he took refuge in the British Embassy at Madrid. Nevertheless, he was seized by the Spanish officers.—*Op. cit.*, pp. 763-766.

142 See Note 5, *supra*.

143 See Note 123, *supra*.

144 *Ibid.*

145 *The Evening News*, January 17, 1959.

146 *The Philippines Herald*, January 3, 1959; *The Sunday Herald*, January 4, 1959; *The Manila Times*, January 6, 1959.

147 See Notes 143 and 144, *supra*.

148 See Note 145, *supra*.

149 See Note 89, *supra*.

150 See Note 67, *supra*.

As in the Saulo case, where there exists no treaty or convention, the provision of Article 14 of the Declaration has been invoked as the basis of the right.¹⁵⁰ It is significant to note, however, that this provision has no legal binding force.¹⁵¹ Moreover, it has not been included among the human rights and fundamental freedoms embodied in the draft covenant on civil and political rights.¹⁵² In view of this, even under the assumption stated earlier,¹⁵³ the recognition of the right is still dependent upon the sole will of the states.

Under these circumstances, it may be worthwhile to examine the position taken by the Philippine Government in the Saulo case.

Although there was mention made as to the lack of binding effect of the Declaration,¹⁵⁴ it is submitted that the proper attitude for the Philippines was to make the Declaration, specifically Article 14, its guide in resolving the difficulty arising from the Saulo case. With this approach, it is further submitted that the Philippines, being a member of the United Nations, could reaffirm its adherence to the Charter, specially its "faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small".¹⁵⁵ Furthermore, it may be stated that this view offers more protection to human life, the value of which has been either overlooked or forgotten during moments of political excitement and vindictiveness. Even during these supposedly civilized times, such eventuality has to be guarded against. The recent mass execution in Cuba of Ex-Dictator Fulgencio Batista's henchmen by the successful rebels under Fidel Castro should serve as a reminder, if not a warning.¹⁵⁶

In applying Article 14 of the Declaration to a specific case like that of Saulo, it may be helpful to take into account the practices and precedents under the institution of asylum as recognized in some countries. As may be implied from the provision of Article 14, the first requisite is that the person seeking asylum must not be wanted in connection with "prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations". Conversely stated, he must be a political offender.

If this were the only requisite for granting asylum, the right can easily be subject to abuse. Besides, to grant asylum to a person just because he is allegedly a political offender would be undue encroachment upon the state's domestic jurisdiction.¹⁵⁷ In order to

151 See Notes 40-42, *supra*.

152 See Note 44, *supra*.

153 *Supra*, p. 4.

154 See Note 78, *supra*.

155 See Article 1, par. 8, Article 13, par. 1(b), Article 55 (c), Article 62, par. 2 (2), Article 78, para. c and d. CHARTER.

156 The Evening News, January 16, 1959.

157 In an editorial, "El Nacional", a newspaper which usually reflects the views of the Argentine Government, said among others: "In Cuba justice is performed not by dispassionate judges but by citizens who still carry their revolutionary rifles . . . Once again it has been demonstrated that though the victors are brave in battle they may also be cruel in victory . . . It is painful to know that the greatness of the rebel victory is bloodied and darkened . . ."—*Ibid*.

157 Article 2, par. 7. CHARTER. See *supra*, p. 28. Also Note 71, *supra*.

carry out the philosophy behind Article 14 of the Declaration, without rendering nugatory Article 2, paragraph 7, of the Charter, there is a need for another requisite to the enjoyment of the right.

Even before the General Assembly proclaimed the Declaration, one of the requisites for the granting of asylum was the imminence of the danger to the life of the refugee.¹⁵⁸ Moreover, there is the Court's interpretation of the Havana Convention on Asylum of 1928 contained in its decision in the *Haya de la Torre* case.¹⁵⁹

The problem arises as to who has the authority to determine whether a person seeking asylum is a political offender in the contemplation of the Declaration and whether there is imminent danger to his life. As to the first, the Court has already stated in the *Haya de la Torre* case that "the principles of international law do not recognize any rule of unilateral and definitive qualification by the State granting diplomatic asylum".¹⁶⁰ With respect to both these two questions, it is submitted that the Court has the authority to resolve the same.¹⁶¹

Coming now to the *Saulo* case, the question may be posed thus: Is *Saulo* a political offender within the purview of Article 14 of the Declaration? There have been two informations pending against *Saulo*: (1) inciting to rebellion filed on September 12, 1950; and (2) rebellion complexed with murders, arson and kidnapping filed on February 28, 1957.¹⁶²

The Philippine Supreme Court, after examining national and international laws and jurisprudence, has arrived at the following definition of political crimes:¹⁶³

"In short, political crimes are those directly aimed against the political order, as well as such common crimes as may be committed to achieve a political purpose. The decisive factor is the intent or motive. If a crime usually regarded as common, like homicide, is perpetrated for the purpose of removing from the allegiance 'to the Government the territory of the Philippine Islands or any party thereof', then said offense becomes stripped of its 'common' complexion, inasmuch as, being part and parcel of the crime or rebellion, the former acquires the political character of the latter.

"Thus, national, as well as international, laws and jurisprudence overwhelmingly favor the proposition that common crimes, perpetrated in furtherance of a political offense, are divested of their character as 'common' offenses and assume the political complexion of the main crime of which they are mere ingredients, and, consequently, cannot be punished separately from the principal offense, or complexed with the same, to justify the imposition of a graver penalty."

Under this definition, it is clear that the crimes with which *Saulo* has been charged are political in nature. This is especially so

¹⁵⁸ See Notes 70, 76 and 80, *supra*.

¹⁵⁹ See Note 82, *supra*.

¹⁶⁰ *Ibid*.

¹⁶¹ Chapter IV, Article 65, par. 1, **STATUTE OF THE COURT**.

¹⁶² *The Manila Times*, November 19, 1958.

The third charge against *Saulo* is under Republic Act No. 1700, known as the Anti-Subversion Act, which took effect on June 20, 1957.—*Ibid*.

¹⁶³ *People v. Hernandez, et al.*, G. R. Nos. L-8025-26, July 18, 1956.

when the allegations contained in the first two paragraphs of the amended information filed in connection with the second charge are considered.¹⁶⁴ On this point, the Philippine Supreme Court, speaking thru Mr. Justice Roberto Concepcion, said:¹⁶⁵

"In conclusion, we hold that, under the allegations of the amended information against defendant-appellant Amado V. Hernandez, the murders, arsons and robberies described therein are mere ingredients of the crime of rebellion allegedly committed by said defendant, as means 'necessary' (in the language of the information) for the perpetration of said offense of rebellion; that the crime charged in the aforementioned amended information is, therefore, simple rebellion, not the complex crime of rebellion with multiple murder, arsons and robberies; x x x"

It is therefore submitted that Saulo is a political offender and not a common criminal under the above stated ruling.

However, with respect to the second requisite, it has been discussed earlier that there existed no imminent danger to Saulo's life when he sought refuge at the Indonesian Embassy.¹⁶⁶ As events taking place subsequent to his surrender show, Saulo is being given a fair and impartial trial and afforded full protection of his rights under the Philippine Constitution.¹⁶⁷

From the foregoing, it can be concluded that even under the Declaration the Philippine Government was entitled to the termination of Saulo's asylum at the Indonesian Embassy, if not exactly to his surrender, in the light of the Haya de la Torre case.¹⁶⁸

Recommendations.—At this stage of our civilization, the value of human life deserves to be highly prized and safeguarded, to say the least. With a greater access to education and learning, a higher degree of awareness in governmental affairs has frequently resulted in political upheavals. Although in some instances, these uprisings may be without any meritorious objective, in others, they are not without any worthy purpose which is capable of arousing in the best elements of society the cravings for a change in the class running the government machinery, if not the machinery itself. This has found sanction in well-developed political thoughts as exemplified by the so-called "right of revolution".¹⁶⁹

Despite the foregoing considerations, our time has just witnessed the fact that vindictiveness and hatred can still get the better of men

164 *Ibid.* It should be noted that Saulo is named as one of the accused therein.

165 *Ibid.*

Justices Marcelino R. Montemayor, Sabino Padilla, and Alejo Labrador wrote dissenting opinions. Mr. Justice Pastor M. Endencia concurred with the dissenting opinion of Mr. Justice Montemayor.

166 See Notes 97 and 98, *supra*.

167 *The Evening News* November 29, 1958; *The Daily Mirror*, December 9, 1958; *The Evening News*, December 18, 1958; *The Evening News*, December 20, 1958; *The Daily Mirror*, December 24, 1958; *The Philippines Herald*, December 24, 1958; *The Manila Times*, December 30, 1958; *The Philippines Herald*, December 30, 1958; *The Daily Mirror*, January 8, 1959.

168 See Note 88, *supra*.

169 See Note 156, *supra*.

under the thin veil of "impartial and fair trial".¹⁷⁰ This calls for some safeguards for human life.

A step toward this objective is the embodying of the provisions of Article 14 of the Declaration in a treaty or convention. In this case, there will be a right of asylum which a person can claim when the occasion arises. Although, as provided for in the Declaration at present, by its terms, it does not constitute a demandable right, yet it can serve the purpose by giving enough time for the wheels of international justice to turn and determine the rights of the refugee. In this sense, the rule of law prevails over the savage impulse of revenge and emotional excitement.

As a general guide in this direction, states should adopt a more lenient attitude toward the institution of asylum. Abuses of the use of such right may arise at times, but this cannot be a valid argument against the right itself.

When states shall have developed and adopted a wholesome institution of asylum, the world will experience a wider observance of the rule of law in the latter's most important role in society—a greater protection of human life.

¹⁷⁰ *The Evening News*, January 21, 1959.