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Garcia-Mora: International Law and Asylum as a Human Right

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INTERNATIONAL LAW AND ASYLUM AS A HUMAN RIGHT. By *Manuel R. Garcia-Mora*. Washington: Public Affairs Press. 1956. Pp. 179. \$4.50.

Asylum is a paradoxical practice in the contemporary international legal order. The paradox lies in the fact that those for whom asylum is not only a benefit but a desperate necessity have no legal right to demand it, while the state as the agency which has the legal right to grant asylum is under no obligation to do so. In an inquiry into the contemporary practice of asylum, two basic problems emerge. There is the humanitarian problem, very evident today in regard to political asylum, and there is the politico-legal problem of regulation of a practice which may not only infringe upon the sovereign prerogatives of the asylum state but also involve that state in strained relations with other states. The treatment of asylum in international law has been directed mainly to the politico-legal aspect of the subject, as is evident in studies of the practice made by such groups as the Institut de Droit International or in the efforts of states, especially in Latin America, to regularize the practice through conventional international law. The humanitarian aspect, although readily recognized and deplored, has been the more difficult for states to deal with in terms of law. In his thoughtful study of *International Law and Asylum as a Human Right*, Professor Garcia-Mora has sought to direct attention to the humanitarian problem of asylum.

Taking a position in the vanguard of international law publicists, Professor Garcia-Mora supports the view that the progressive development of international law requires the recognition of the individual as a subject of that law. But in his opinion, this proposition must be carried farther, to acknowledge that the individual as subject possesses rights which he should be able to assert and enforce against the state, and that one of these rights is the right to asylum. The author uses the term "asylum" broadly to comprehend refuge for an individual, whether common criminal or political fugitive, who is in jeopardy of life or liberty in his own state, pointing out that while refuge may be terminated in short order for the common criminal through the process of extradition, humanitarian considerations require that no individual be denied the right to a temporary refuge. Professor Garcia-Mora admits at the outset that in the present stage of development of the international legal order, he is writing *de lege ferenda*, but he

justifies his purpose by pointing particularly to the incontrovertible evidence of the frequency of individual resort to political asylum in recent years. His study is confined to an examination of the practice of territorial asylum, as this is the form with which "international law is presently concerned." (p. 1)

Throughout his study of territorial asylum, Professor Garcia-Mora shows that in the extensive body of practice dealing with the subject, the right of the state is always dominant while the individual has little or no legal standing. Beginning with a consideration of the anomalous status of the individual in international law, the author finds that the acceptance of asylum as a guarantee of individual liberty by such early publicists as Suarez and Grotius came to be undermined by positivist theory, which in advancing the state as the sole subject of international law, made asylum a permissive grant on the part of the state. It is shown, however, that the competence of the state to grant asylum is not entirely unlimited, although self-limited, nor is the power necessarily exercised arbitrarily, for gradual acceptance by states of their mutual responsibility for the preservation of law and order has given rise to the customary and conventional law of extradition. In an analysis of treaties, internal law, and judicial decisions concerning the nature of common crimes and political offenses, the author takes the view that a strict definition of political offenses in international law "is neither feasible nor desirable," (p. 93) as such a definition might furnish a barrier to the individual's free exercise of the right of asylum. He does suggest, however, that a classification of political offenders is necessary, for adverting to the exclusion of anarchists from political asylum which is found in many extradition treaties, he would include "subversives" in this exception, although if the thesis of the book is to be supported, this term would require careful definition. Another aspect of the problem of protecting the individual in international law is the demand of deserters and prisoners of war for asylum, which will be recalled as a matter of grave concern in the negotiations for a truce in the recent Korean war. The Korean settlement leaves little doubt that both may properly be granted asylum at the discretion of the state. The author, however, is of the opinion that in such cases the individual should have a right to asylum against the detaining state.

In a chapter on the right of asylum in conventional international law and in municipal law, the author points to the Universal Declaration of Human Rights and the American Declaration of the Rights and Duties of Man as the two notable contemporary statements of principle on the subject. Both Declarations include territorial asylum among the listed individual rights. He cites the constitutional provisions of several states as further evidence of a trend toward acceptance of the right of territorial asylum, at least for the political fugitive. Some reference might also have been made to the Convention on Territorial Asylum, concluded at the Tenth Conference of American States at Caracas in 1954, for although this convention has been ratified by fewer states than have seemed willing to commit them-

selves to the companion Convention on Diplomatic Asylum, nevertheless, it represents an effort to treat the practice through conventional international law and so to give legal effect to one of the principles included in the two declarations.

In concluding his study, Professor Garcia-Mora urges the need for a reconsideration of the traditional view of asylum. Recognition of asylum as a basic right of the individual to be asserted against the state and to be enforceable in law is, in his opinion, essential to a sound international legal system, but he is not hopeful of the early accomplishment of this aim. In raising the issue, however, and presenting a scholarly examination of the problems involved therein, he has made a useful and timely contribution to the literature dealing with the practice of asylum.

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