DIPLOMATIC ASYLUM AS A TOOL FOR EXTRATERRITORIAL PROTECTION OF HUMAN RIGHTS: BALANCING THE VIENNA CONVENTIONS WITH HUMAN RIGHTS CONCERNS

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I. INTRODUCTION

Diplomatic asylum has been regarded as a "legal loophole,"[1] wherein states grant asylum to an individual in its diplomatic missions,[2] but the grounds in international law for the right to do so is unclear. Critics contend that diplomatic asylum has been largely used by states for political reasons, and constitutes abuse of the principle of inviolability of embassies

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1. Laura Hughes-Gerber, Diplomatic Asylum: Exploring a Legal Basis for the Practice Under General International Law 196 (2021).

2. *See* U.N. Secretary-General, *Question of Diplomatic Asylum,* ¶ 1, U.N. Doc. A/10150 (Sept. 22, 1975) (defining diplomatic asylum).

and consulates.[3] This view ignores the recognition of human rights' capacity–even if limited–to have extraterritorial reach.[4] While diplomatic asylum has not traditionally been considered to be an instrument of human rights, the understanding of diplomatic asylum has shifted to recognize its viability to protect the human rights of vulnerable individuals, especially when those rights are threatened by a host state.

Nevertheless, acknowledging the centrality of state sovereignty to the legal regimes posited by the Vienna Convention on Diplomatic Relations (VCDR) and the Vienna Convention on Consular Relations (VCCR), there must be a "sliding scale" mechanism that allows for the extraterritorial protection of human rights while simultaneously preventing abuse of diplomatic premises by sending states. This mechanism would operate using non-refoulement as the key *erga omnes* obligation supporting its framework. Overall, this comment aims to show how a more expansive reading of the VCDR and VCCR can balance the interests of state sovereignty and the universality of human rights, preventing a stalemate between two traditionally competing interests and "updating" the current framework to ensure its fit for this purpose.

II. Defining and Contextualizing Diplomatic Asylum

A. *The Shift Towards Human Rights: Julian Assange, Chen Guangcheng, World Politics, and Non-Refoulement*

While diplomatic asylum, as traditionally employed by states, has not been considered an instrument of human rights protection, the cases of Julian Assange and Chen Guangcheng show how diplomatic asylum and human rights can overlap. In 2012, Assange claimed asylum in the Ecuadorian embassy in

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3. *See, e.g.*, *Hughes-Gerber*, *supra* note 1, at 26 (criticizing using diplomatic asylum for political reasons as a "derogation from the sovereignty of the state in which the offense was committed"); Ralph Wilde, *Diplomatic Asylum and Extraterritorial Non-Refoulement: The Foundational and Enduring Contribution of Latin America to Extraterritorial Human Rights Obligations, in The Routledge Handbook on Extraterritorial Human Rights Obligations* 196, 202 (Mark Gibney et al. eds., 2021) (noting that international lawyers often contend diplomatic asylum abuses the inviolability of diplomatic premises).

4. *See* Mark Gibney, *The Historical Development of Extraterritorial Obligations, in The Routledge Handbook on Extraterritorial Human Rights Obligations*, 202 (Mark Gibney et al. eds., 2021) (contending that human rights have increasingly been given extraterritorial reach).

the United Kingdom to avoid extradition for the publication of information from U.S. Army intelligence analyst Chelsea Manning on Wikileaks, a website that he managed.[5] Ecuador sheltered Assange, overtly on the grounds that he would suffer political persecution if extradited to Sweden, and later the United States.[6] The issue of how extradition might affect Assange's human rights remains unresolved, as he has recently been granted permission to appeal his potential extradition to the U.K. Supreme Court.[7]

Around the same time as the events involving Assange, Chinese civil rights activist Chen Guangcheng sought asylum in the U.S. embassy in Beijing. Guangcheng alleged that he was being persecuted by Chinese authorities for his role in leading a lawsuit challenging the strict application of China's one-child policy in Shandong Province, in response to which he claims that he and his wife were beaten and interrogated by Chinese authorities.[8] The United States accepted his request on humanitarian grounds and offered him assistance in obtaining medical treatment,[9] despite the United States' prior rejection of the legitimacy of diplomatic asylum.[10]

These recent cases represent a shift in the nature and practice of diplomatic asylum. Ecuador and the United States deployed diplomatic asylum to protect the human rights of As-

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5. Mohammed Abbas & Eduardo Garcia, *Ecuador Grants Asylum to Assange, Angering Britain, Reuters (*Aug. 17, 2012), https://www.reuters.com/article/us-wikileaks-assange-idUSBRE87F0KQ20120817 [https://perma.cc/DY7N-Y4SJ].

6. *Id.*

7. Dominic Casciani, *Julian Assange Can Ask Supreme Court to Consider Extradition Case*, Brit. Broad. Corp. (Jan. 24, 2022), https://www.bbc.com/news/uk-60108379 (https://perma.cc/BJT6-U4QC).

8. *Case History: Chen Guangcheng*, Frontline Defenders, https://www.frontlinedefenders.org/en/case/case-history-chen-guangcheng [https://perma.cc/5QS8-3ASC] (last visited Mar. 21, 2022).

9. Dan Levin, *Chen Guangcheng Pulls Off Escape, May Be Able to Live Free in China, Daily Beast (*Jul. 13, 2017), https://www.thedailybeast.com/chen-guangcheng-pulls-off-escape-may-be-able-to-live-free-in-china [https://perma.cc/K2R5-8PY9].

10. Press Release, Off. of the Spokesperson, *U.S. Dep't of State,* Conventions on Diplomatic Asylum and OAS Permanent Council Meeting: Taken Question (Aug. 17, 2012), https://2009-2017.state.gov/r/pa/prs/ps/2012/08/196663.htm [https://perma.cc/3CTG-46MB] ("The United States . . . does not recognize the concept of diplomatic asylum as a matter of international law.")

sange and Chen, respectively; in statements from both countries, the threat of violations of Assange and Chen's human rights were cited as justifications for granting asylum.[11] If such practice continues–and it appears likely that diplomatic asylum will persist through the 21st century–it will become increasingly important to mediate between the host state's interest in protecting its territorial sovereignty and the human rights obligations of the sending state.

In particular, these cases implicate states' non-refoulement obligations. Non-refoulement prohibits states from transferring or removing individuals from their jurisdiction or effective control when there are substantial grounds for believing that the individual would be at risk of irreparable harm upon return, including persecution, torture, ill-treatment or other serious human rights violations.[12] Non-refoulement is crucial in the diplomatic asylum context as it potentially provides a legal basis for granting asylum: if the sending state concludes there is a real risk that returning the asylum-seeker will put the asylum-seeker at risk of these harms, then the provision of diplomatic asylum is required in order to satisfy the sending state's human rights obligations under treaty and customary law.

In an era of increasing government repression and regression of human rights protections, along with travel restrictions to combat COVID-19, activists seeking protection from human rights abuses may begin knocking on embassies and consulates' doors seeking protection much more frequently. This concern is not unfounded, given the frequency with which the practice has proliferated since the beginning of the twentieth

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11. *See* Simeon Tegel, *Assange Asylum, Ecuador's Statement, Decoded*, World (Aug. 17, 2012), https://theworld.org/stories/2012-08-17/assange-asylum-ecuador-s-statement-decoded [https://perma.cc/CH7T-NQLT] (noting that Ecuador argued Assange may suffer "cruel or degrading treatment" or be denied a fair trial if sent to the United States); *U.S. Statement on China Dissident Chen Guangcheng, Chi. Trib. (May 02, 2012),* https://www.chicagotribune.com/news/ct-xpm-2012-05-02-sns-rt-us-usa-china-statementbre8410k9-20120502-story.html quoting U.S. (quoting U.S. statement that it sought to resolve [Chen's case] "consistent with. . . our commitment to human rights").

12. *The Principle of Non-Refoulment Under International Human Rights Law,* Off. of the High Comm'r for Hum. Rts. 1 https://www.ohchr.org/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf [https://perma.cc/74U5-WZB2] (last visited Mar. 14, 2022).

century.[13] It is equally possible that breaches of the human rights of asylum seekers may become so grievous as to trigger the non-refoulement obligations of the sending state.[14]

Nevertheless, in contrast to these universal notions of human rights, the VCCR and VCDR operate rigidly. These conventions hail from an era in which state sovereignty and consent reigned supreme above all other considerations,[15] and consequently gave no consideration to human rights. Despite this, international law has since moved to recognize the extraterritorial application of human rights in certain circumstances.

B. *The Extraterritorial Application of Non-Refoulement and Human Rights*

i. *International Treaties*

Many major international human rights treaties have directly addressed the extraterritorial application of their provisions. For instance, the International Covenant on Civil and Political Rights (ICCPR) provides that "Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant."[16] The United Nations Human Rights Committee (HRC), widely understood to be the chief interpreter of the ICCPR,[17] has clarified that state parties must ensure and respect the rights outlined in the Covenant of anyone "within the power or effective control" of that

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13. *Hughes-Gerber*, *supra* note 1, at 215–218 (cataloguing recent exercises of diplomatic asylum).

14. *See, e.g.*, Hirsi Jamaa v. Italy, App. No. 27765/09 (Feb. 23, 2012), https://hudoc.echr.coe.int/eng?i=001-109231 [https://perma.cc/N64D-J5BX] (finding a breach of the non-refoulement obligation by Italy based on violations of the European Convention on Human Rights).

15. Wilde, *supra* note 3, at 197 (contending that European notions of sovereignty were universalized during the colonial era).

16. International Covenant on Civil and Political Rights art. 2, ¶ 1, Dec. 16, 1966, 999 U.N.T.S. 171.

17. Gabriella Citroni, *The Human Rights Committee and its Role in Interpreting the International Covenant on Civil and Political Rights vis-á-vis States Parties*, EJIL: TALK! (Aug. 28, 2015), https://www.ejiltalk.org/the-human-rights-committee-and-its-role-in-interpreting-the-international-covenant-on-civil-and-political-rights-vis-a-vis-states-parties/ [https://perma.cc/38G2-GG4F] ("[T]he HRC has an interpretative authority that prevails over that of States parties . . .").

state, even if they are outside the state's territory.[18] The HRC in *Lopez v. Uruguay* explained that it was the "relationship between the individual and the State in relation to a violation of any of the rights set forth in the covenant [that was of concern], wherever they occurred."[19]

The Convention Against Torture (CAT) provides similar wording to the ICCPR with respect to its extraterritoriality, directing that "Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture within its territory and subject to its jurisdiction."[20] The Committee Against Torture has confirmed that "any territory" imposes exterritorial application, as it includes all areas where the State Party exercises, directly or indirectly, *de jure* or *de facto* effective control.[21] Article 3 of the CAT also explicitly prohibits refoulement where there are "substantial grounds" for believing that the asylee would be in danger of being subjected to torture, taking into account all relevant considerations including the existence in the state concerned of a consistent pattern of gross, flagrant or mass violations of human rights.[22] "Substantial grounds" exist where the risk of torture is "foreseeable, present and real."[23]

The 1951 Refugee Convention and its associated Optional Protocol, which is often used in the asylum context, also prohibits refoulement and has extraterritorial application. Under Article 33 of the Refugee Convention, no contracting state shall "expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, na-

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18. U.N. Human Rights Committee, General Comment No. 31: The Nature of the General Legal Obligation Imposed on State Parties to the Covenant, ¶ 10, U.N. Doc. CCPR/C/21/Rev.1/Add. 13 (May 26, 2004).

19. U.N. Human Rights Committee, Lopez v. Uruguay, Communication No. 52/1979, ¶ 12.2, U.N. Doc. CCPR/C/13/D/52/1979 (Jul. 29, 1981).

20. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 2, ¶ 1, Dec. 10, 1984, 1465 U.N.T.S. 85 [hereinafter CAT].

21. U.N. Committee Against Torture, General Comment No. 2: Implementation of Article 2 by States Parties, ¶ 16, U.N. Doc. CAT/C/GC/2 (Jan. 24, 2008).

22. CAT, *supra* note 20, at art. 3, ¶¶ 1–2.

23. U.N. Committee Against Torture, General Comment No. 4: Implementation of Article 3 of the Convention in the Context of Article 22, ¶ 11, U.N. Doc. CAT/C/GC/4 (Feb. 9, 2018).

tionality, membership of a particular social group or political opinion."[24] The Refugee Convention does provide that national security concerns or the conviction of the refugee of a particularly serious crime may displace the obligation of non-refoulement.[25] Still, the United Nations High Commissioner for Refugees (UNHCR) has recognized that extraterritorial applicability of Article 33 is "clear from the text of the provisions itself."[26]

ii. *Examples in Regional Human Rights Treaties*

The extraterritorial application of human rights has also been recognized in the Latin American and European regional human rights regimes. The Latin American regime explicitly recognizes the right of states to grant diplomatic asylum through several treaties, consistent with widespread practice granting such asylum in the region.[27] Further, the Latin American system has supported the use of extraterritorial application of human rights as the legal basis for diplomatic asylum, as seen in the Inter-American Court of Human Rights' 2018 Advisory Opinion concerning the Assange case.[28] In contrast, the African and European systems have not concluded treaties specifically addressing diplomatic asylum.

Still, the European context provides support for the principle of extraterritorial application of human rights, especially in the context of asylum in general. In the United Kingdom, the Court of Appeal has held that states' non-refoulement obli-

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24. Convention Relating to the Status of Refugees art. 33, ¶ 1, Jul. 28, 1951, 189 U.N.T.S. 137.

25. *Id.* at art. 33, ¶ 2.

26. *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol*, U.N. HIGH COMM'R FOR REFUGEES 12 https://www.unhcr.org/4d9486929.pdf (Jan. 26, 2007).

27. *See, e.g.*, Organization of American States, Convention on Asylum, Feb. 20, 1928, O.A.S.T.S. No. 34, 3046 L.N.T.S. 325 (agreeing to respect political asylum at diplomatic missions in certain situations); Organization of American States, Convention on Diplomatic Asylum, Mar. 28, 1954, O.A.S.T.S. No. 18, 1438 U.N.T.S. 105 (same).

28. The Institution of Asylum and its Recognition as a Human Right in the Inter-American System of Protection, Advisory Opinion OC-25/18, Inter-Am. Ct. H.R. (ser. A) No. 25, ¶¶ 99, 107, 123 (May 30, 2018) (describing the extraterritorial application of diplomatic asylum under treaty and non-refoulement obligations).

gations to provide diplomatic asylum could potentially be triggered by a "lesser level of threatened harm" than that which is required by peremptory norms if it would serve to prevent a risk of "serious injury."[29] In *Hirsi Jamaa v. Italy,* the non-refoulement-type obligation found in the European Convention on Human Rights (ECHR) was deemed by the European Court of Human Rights to apply extraterritorially.[30] *Hirsi* was seen as a landmark affirmation of the extraterritorial application of non-refoulement,[31] building upon earlier cases which found that the ECHR more generally may apply extraterritorially.[32]

However, the Court later limited the scope of extraterritoriality in *MN v. Belgium,* applying a high threshold for a state to be considered to have exercised control over an individual: an asylum seeker applying for visas at an embassy with the intent to seek protection was deemed insufficient control to trigger the application of the ECHR.[33] As the applicants could enter and leave the embassy at will, the Court held that Belgium did not exercise sufficient *de facto* control to trigger non-refoulement obligations towards them.[34]

These examples reveal the acceptance of some degree of extraterritorial application of human rights and non-refoulement obligations by important institutions that regulate key human rights instruments. Nevertheless, the extraterritoriality of human rights remains contested by some states.[35] As a nor-

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29. B & Others v. Sec'y of State for the Foreign & Commonwealth Off. [2004] EWCA (Civ) 1344 [89] (Eng.).

30. Hirsi Jamaa v. Italy, App. No. 27765/09, ¶ 75 (Feb. 23, 2012).

31. *See* Seunghwan Kim, *Non-Refoulement and Extraterritorial Jurisdiction: State Sovereignty and Migration Controls at Sea in the European Context,* 30 LEIDEN J. INT'L. L. 49, 50 (2017) ("*Hirsi* has . . . expand[ed] the scope of application of the non-refoulement obligation beyond state territory.").

32. *See, e.g.*, Bankovic v. Belgium, App. No. 52207/99, ¶ 61 (Dec. 12, 2001) ("Article 1 of the Convention must be considered to reflect this ordinary and essential territorial notion of jurisdiction, other bases of jurisdiction being exceptional and requiring special justification . . .").

33. M.N. v. Belgium, App. No. 3599/18, ¶ 118, (May 5, 2020), https://hudoc.echr.coe.int/fre?i=001-202468 [https://perma.cc/8X4V-XFQK].

34. *Id.*

35. *See, e.g.*, Paul Hunt (Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health), *Addendum: Mission to Sweden*, U.N. Doc. A/HRC/4/28/Add.2 (Feb. 28, 2007) (outlining Sweden's human rights practices).

mative matter, however, human rights cannot and should not be territorially limited. Such a view of human rights detracts from the universality that underpins the international human rights regime. In the context of diplomatic asylum, the clash of state-centric Vienna Conventions and the goal of universal application of human rights creates significant tension.

III. The Quandary of Diplomatic Asylum

A. *The Vienna Conventions and Other Treaties*

The treaties that govern the use of embassies and consulates are the VCDR and VCCR, respectively. The treaties are similar in their scope, although the VCCR remains more restrictive on the functions and inviolability of consulates.[36] Both treaties are silent on whether diplomatic asylum can be granted, though several provisions of the treaties suggest that diplomatic asylum is incompatible with their framework. In particular, under both the VCDR and VCCR, the sending state is under a duty not to interfere in the internal affairs of the receiving state.[37] If the sending state grants diplomatic asylum to an individual being prosecuted by the receiving state, the sending state would be in breach of the conventions; by sheltering the asylee from prosecution, the sending state would likely be seen as impermissibly interfering in the internal affairs of the receiving state.

Furthermore, granting asylum does not fall under a diplomatic mission's functions as prescribed by the treaties.[38] It is difficult to interpret granting asylum as a component of the diplomatic function of "protecting in the receiving State the interests of the sending State,"[39] if based on broad notions of human rights. Granting asylum also likely runs counter to the enumerated function of promoting friendly relations between

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36. *Compare* Vienna Convention on Diplomatic Relations arts. 3, 22, Apr. 18, 1961, 500 U.N.T.S. 95 [hereinafter VCDR], *with* Vienna Convention on Consular Relations arts. 5, 31, Apr. 24, 1963, 596 U.N.T.S. 261 [hereinafter VCCR] (providing a closed list of consular functions and narrower rules on inviolability than the VCDR).

37. VCCR, *supra* note 36, at art. 55; VCDR, *supra* note 36, at art. 41.

38. VCDR, *supra* note 36, at art. 3; VCCR, *supra* note 36, at art. 5.

39. VCDR, *supra* note 36, at art. 3(1)(b); VCCR, *supra* note 36, at art. 5(a).

the sending and receiving states.[40] Additionally, no other international or European treaty has recognized a legal right to grant diplomatic asylum. Latin American treaties have recognized such a right,[41] but this arguably reflects longstanding regional practice recognizing diplomatic asylum which has yet to crystallize into custom.[42] Accordingly, diplomatic asylum is unlikely to find its legal basis in treaty law.

B. *Customary International Law*

Although Denza has argued for the recognition of this right under customary international law,[43] her contention is problematic as it depends heavily on an ICJ case interpreting a regional treaty involving Latin American states.[44] Regional practice alone cannot constitute sufficient state practice to create customary law.[45] In light of surveys of state practice performed by the United Nations General Assembly in 1975,[46] and by Hughes-Gerber in 2021,[47] state practice and *opinio juris* remain insufficient to establish a customary law right to diplomatic asylum.

Still, overarching human rights concerns should allow for at least a limited right by which states may grant diplomatic asylum to individuals whose human rights are threatened by the host state. By using a "sliding scale" approach that balances interference with the internal affairs of the host state against

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40. *See, e.g.*, Draft Articles on Consular Relations, and Commentaries, [1961] 2 Y.B. Int'l. L. Comm'n 92, 124, U.N. Doc. A/CN.4/SER.A/1961/Add. 1 ("T]his inviolability does not permit the consular premises to be used for purposes incompatible with these articles . . . [C]onsular premises may not be used as an asylum for persons prosecuted or convicted by local authorities.").

41. *See* note 27.

42. *See* Wilde, *supra* note 3, at 203–205 (describing the limitations on using Latin American treaties to establish wider state practice).

43. *See* EILEEN DENZA, DIPLOMATIC LAW: COMMENTARY ON THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS (4th ed. 2016).

44. Wilde, *supra* note 3, at 203 (critiquing Denza's argued-for customary law basis for diplomatic asylum).

45. *Id.* at 204.

46. *Question of Diplomatic Asylum*, *supra* note 2 (compiling state views on diplomatic asylum).

47. *Hughes-Gerber*, *supra* note 1, at 193–195 (concluding that there is insufficient evidence of state practice on diplomatic asylum to establish custom outside of Latin America).

the severity of infringement to the asylee's human rights, both interests can be adequately protected.

IV. The Sliding Scale Solution

Consistent with the recent shift toward using human rights concerns to justify granting diplomatic asylum, along with the extraterritorial reach of human rights and non-refoulement obligations, it is possible to identify a limited right of states to grant diplomatic asylum to individuals whose human rights are being breached by the host state, *where the infringement to their rights is sufficiently gross or flagrant in comparison to the interference into the internal affairs of the host state implicated by providing asylum.*

Weighing the risk of infringement of the human rights of the asylee against, for example, charges or offenses claimed against the asylee by the host state, allows for balancing of the competing interests of human rights and sovereignty. On a normative level, this approach prevents the subjugation of human rights to strict conceptions of sovereignty, while ensuring that diplomatic premises are not abused by the sending state. This conception is not a *carte blanche* for the sending state to grant diplomatic asylum to, for instance, political activists trying to destabilize the government of the host state. The sending state must still comply with non-interference principles unless it can be proven that there is a risk of severe violations of human rights that would trigger the sending state's non-refoulement obligations. Case law and general comments suggest that non-refoulement would apply not only to instances of torture and cruel, inhuman, or degrading treatment, but also to violations of the right to life,[48] integrity or freedom of the person,[49] or serious forms of sexual and gender-based violence.[50]

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48. General Comment No. 31, *supra* note 18, at ¶ 12.

49. Pacheco Tineo Family v. Bolivia, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 272 (Nov. 25, 2013) (finding Bolivia violated plaintiffs' right to personal integrity in returning plaintiffs to Peru).

50. Njamba & Balikosa v. Sweden, Communication No. 322/2007, ¶ 9.5, U.N. Doc. CAT/C/44/D/322/2007 (Jun. 3 2010) (finding that the risk of sexual violence triggers non-refoulement obligations under the Convention Against Torture).

In this way, this approach is a variation of Behrens', who proposes a conciliatory approach to prevent fragmentation of international law by using the principle of proportionality as a framework to balance the competing interests of the Vienna Conventions and human rights.[51] This approach supports the proportionality framework Behrens articulated through the prism of non-refoulement, which can provide greater detail to a state's cost-benefit analysis in deciding whether to grant diplomatic asylum. Non-refoulement case law can give states examples of situations where breaches of the asylum-seeker's human rights are sufficiently strong as to warrant granting diplomatic asylum.

Considering other approaches to the question of diplomatic asylum, it is surprising that Hughes-Gerber dismissed the possibility of using human rights as a legal basis for diplomatic asylum altogether.[52] Nevertheless, the "sliding scale" solution is preferable to other proposed options in resolving this quandary. While codification by the International Law Commission (ILC) would undoubtedly provide the clearest solution, it is unlikely that the ILC will succeed in this regard as codification attempts by the ILC have failed on multiple occasions.[53] In light of the lack of widespread consensus among states with regards to asylum more generally, much less diplomatic asylum displayed in the 1975 Report of the Secretary General[54], there may thus be little appetite for the ILC to expend additional resources on this issue.

V. Conclusion

The issue of diplomatic asylum highlights the tension between two competing regimes: the sovereignty-centric regime of the Vienna Conventions and the universal human rights regime. As the practice of granting diplomatic asylum continues, and increasingly on a human rights basis, international law must mediate between concerns of both sovereignty and human rights. A more global assessment of the factors, influ-

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51. Paul Behrens, *The Law of Diplomatic Asylum–a Contextual Approach*, 35 Mich. J. Int'l L. 319 (2014).

52. *Hughes-Gerber*, *supra* note 1, at 173–189.

53. *See Question of Diplomatic Asylum*, *supra* note 2, at ¶¶ 151–168 (acknowledging three failed efforts in 1948-1950, 1962, and 1967).

54. *Id.* at ¶¶ 139–253.

enced by the principles of proportionality and non-refoulement, can act as an effective stopgap measure to balance these concerns through the extraterritorial application of human rights obligations.