

The institution of diplomatic asylum as the possibility of protecting human rights

Abstract

The institution of a diplomatic asylum is one of the issues of international law which divides European and Latin American lawyers. The first qualify the institution of asylum as a matter of violating the sovereignty of the host State, incompatible with the functions of a diplomatic mission. Others consider the asylum as the possibility of protecting the lives and freedoms of people persecuted for political views. There is no doubt that it is a regulated institution and it is primarily used in the countries of Latin America but rarely in other areas. Currently the institution of asylum is most commonly practiced in Latin America, especially in the circle of countries in the region. This institution plays an important role in protecting the freedom and lives of citizens who are at risk of losing them. The practice of giving asylum in countries on other continents that do not recognize this regulation in their law is noticeable. As a result, the doubts concerning the possibility of granting asylum in international law arise.

Key words: diplomatic asylum, Latin America, international law

Defining diplomatic asylum

The institution of diplomatic asylum in the international law has given a rise to controversy between European and Latin American laws. The former considers the right of asylum as an act against the sovereignty of the receiving state, which contradicts the functions of diplomatic law. On the other hand, the latter sees it as an opportunity to defend the lives and liberties of people who are prosecuted for their political views. It is undoubtedly though that this institution is regulated and applied in the countries of Latin America, yet rarely on other territories¹. However, it plays an important role in protecting the liberties and lives of Latin American citizens, who, otherwise, would risk losing them. The right of asylum can also be applied in the countries on other continents, even if they do not recognize such a regulation. Thus, there is a question about the possibility of providing a shelter in the light of international law².

Diplomatic asylum (from the Greek *asylon* is a shelter, whereas from Latin *asylum* is a refuge) is, according to J. Symonides, a procedure of providing a shelter in diplomatic establishments³.

¹ C. Chatterjee, *International law and diplomacy*, London 2007, p. 229; Sz. Zaręba, *Azyl dyplomatyczny w prawie i praktyce państw Ameryki Łacińskiej*, „Mishellanea” no 3 (7), January 2008, p.106. see also: A. McNair, *Extradition and Extraterritorial Asylum*, *British Year Book of International Law*, 1995; F. Morgenstern, *Extra-territorial Asylum*, *British Year Book of International Law*, 1948. McNair, *Extradition and Extraterritorial Asylum*, *British Year Book of International Law*, 1995; F. Morgenstern, *Extra-territorial Asylum*, *British Year Book of International Law*, 1948.

² L. Sosnowski, *Azyl dyplomatyczny we współczesnym prawie międzynarodowym*, Kraków 1980, p. 3.

³ *Encyklopedia prawa międzynarodowego i stosunków międzynarodowych* (red.) A. Klafkowski, Warszawa 1976, p. 29.

According to L. Antonowicz, diplomatic asylum is about giving a protection in the buildings of the diplomatic representatives in a foreign country⁴. A similar viewpoint shares L. Gelbert⁵ and L. Galenska⁶.

L. Ehrlich claims that in the past a right of asylum took place in Europe. It prevented the receiving state from deporting people, who were given a shelter in the embassy⁷.

B. Wierzbicki states that diplomatic asylum can be defined as an act of a state, whose legal consequence is exempting a person, granted this asylum, from receiving state's jurisdiction⁸. Diplomatic asylum is not an institution of a common international law. Most often it is defined as the institution of American regional international law. However, not everyone would agree on this. B. Wierzbicki supposes that legal grounds of the asylum can be formed by either international customary law in Latin American countries or treaties⁹. According to B. Wierzbicki, there is no term that would define the whole scale of the institution.

First of all, the phrase "providing a shelter" is not very appropriate. Secondly, it suggests that diplomatic asylum can be received in other, than embassy, establishments. The practice of Latin American countries and the necessary international agreements show that the right of diplomatic asylum can be realized also on board ships and military aircrafts as well as in military bases.

L. Sosnowski understands the term as a kind of a protection, given to a person by the embassy on the territory of a receiving state. Such people are politically persecuted in their own countries or have committed a political crime and, therefore, they are afraid of the possible consequences in those states¹⁰.

According to J. Sutor¹¹ diplomatic asylum is an act of giving a shelter to a person, who is persecuted because of their crimes, on the premises of diplomatic institutions, irrespective of their citizenship.

Latin American authors understand the term in a very wide sense. They include there an asylum on warships, aircrafts and military bases. What is very significant, according to them, is providing a defense for people, who are looking for it because of political reasons and are afraid for their life and health¹².

Diplomatic asylum institution has undergone substantial changes. In the beginning, it developed in Europe and was based on the "sanctity" of some places, like churches or embassies. However, later, it was based on the extritoriality of diplomatic missions, which were considered as parts of a sending state territory¹³.

Since countries started to establish diplomatic institutions, there appeared a need for inviolability of ambassador's premises. At the beginning, such inviolability concerned only the residence, occupied by the deputy, yet in some time it was expanded to the neighboring houses, creating the so called "district". That territory was then considered not only the district excluded from the state's jurisdiction, but also as a part of a territory of a sending state. A criminal, who ran away and was sheltered in the district, became inviolable. Nevertheless, very often such regulations were broken, resulting in diplomatic conflicts. Not surprisingly, that caused numerous argues and desires to change the laws¹⁴.

⁴ L. Antonowicz, *Podręcznik prawa międzynarodowego*, Warszawa 2011, p. 120.

⁵ L. Gelberg, *Zarys prawa międzynarodowego*, Warszawa 1977, p. 153.

⁶ B. Wierzbicki following L. Galenska, op. cit., p. 23.

⁷ L. Ehrlich, *Prawo międzynarodowe*, Warszawa 1958, p. 207.

⁸ B. Wierzbicki, *Prawo międzynarodowe publiczne*, Białystok 2011, p. 98.

⁹ Ibidem.

¹⁰ L. Sosnowski, op. cit., pp. 9-10.

¹¹ J. Sutor, *Prawo dyplomatyczne i konsularne*, Warszawa 1977, p. 184.

¹² See: P. Cahier, *Le droit diplomatique contemporain*, Paris 1962; M. Gamboa: *Elements of Diplomatic and Consular Practice. A glossary*, Manila 1966; Villagran Kramer, *L'asile diplomatique d'après la pratique des Etats latino-américains*, Bruxelles 1958; A. Raestad, *Le droit d'asile*, 1938; L. Moreno Quintana, *Derecho de asilo*, Buenos Aires 1953; J. Caicedo Perdomo, J. Garzon Diaz, *Derecho Internacional Publico*, Bogota 1991.

¹³ L. Sosnowski, op. cit., p. 6.

¹⁴ Sz. Zaręba, op. cit., p. 106.

Initially, asylum, which was granted in embassies, was given only to people, prosecuted for criminal or common offences or for their political or religious viewpoints. However, the institution did not spread on individuals accused in political crimes. Such a tradition would appear only in the end of 18cent. The right of asylum, which at its beginning was very welcome in Europe, would be more and more rejected in both law and practice. That was approved by the practice of many countries, as well as claims of contemporary lawyers¹⁵. The decrease of the popularity of the institution took place in Europe as well. In the 19cent it was claimed to have nothing in common with the concept of international community, state`s sovereignty and responsibilities.

At that time asylum appeared in Latin America, where new independent countries, liberated from the rule of Spain and Portugal, began to arise. The fast development of the asylum in the area was caused by the unstable political situation in the ‘new-born’ countries. Diplomatic asylum, due to that instability was treated as an opportunity to defend those, who were afraid of prosecution for their political activity. In the beginning, it was not planned to grant the right to political criminals or those, willing to avoid the civil responsibility¹⁶.

It should be pointed out that in the 19cent the asylum institution was mostly practiced by the countries such as France, Germany, Portugal, Spain and also United States. In Latin American countries the asylum started to gain popularity only in the late 19 early 20cent. After having come into use on the continent, the institution became a means of regulating regional international law in Latin America.

International Court of Justice in its decision of 1950, concerning the dispute between Columbia and Peru, defined the diplomatic asylum. It claimed that applying for the diplomatic asylum a refugee stays inside the country where he committed a crime. If he was granted a right of diplomatic asylum, he was deprived of the state`s jurisdiction.

On the grounds of Latin America and the position of majority current doctrines, the main principle of the diplomatic asylum was providing an individual with protection before the risk of losing one`s life or liberties or health breakdown. The protection can be given to the citizens of a receiving country as well as citizens from the third countries¹⁷.

Diplomatic versus territorial asylum

Diplomatic and territorial asylum should be differentiated. Territorial asylum is about giving permission for foreigners to enter and stay in the country, since they are prosecuted and discriminated for their religious, political or cultural views or activities. A person is guaranteed that he or she would not be handed back at a request of the state of their citizenship. If an individual is granted asylum, it means that extradition cannot anymore be used toward him¹⁸.

Latin America is the only continent where the two institutions are regulated and utilized according to the law¹⁹. The main difference between both of them is that in the case of territorial asylum a state provides a protection on its own territory, whereas in the case of diplomatic asylum

¹⁵ Sz. Zaręba following S. Nahlik, *Narodziny nowożytnej dyplomacji*, Wrocław 1971, pp. 183-185.

¹⁶ L. Sosnowski, op. cit., p. 7.

¹⁷ Ibidem, p. 8-9.

¹⁸ R. Bierzanek, J. Symonides, *Prawo międzynarodowe publiczne*, Warszawa 2000, p. 267. Zob. C. Sepúlveda, *El asilo territorial en el sistema interamericano. Problemas capitales, en Asilo y protección internacional de refugiados en América Latina*, México, Universidad Autónoma de México, 1982, pp. 84-87; C. W. San Juan y M. Manly, *El asilo y la protección internacional de los refugiados en América Latina: Análisis crítico del dualismo “asilo – refugiado” a la luz del Derecho Internacional de los Derechos Humanos*, en L. Franco (coord.), *El asilo y la protección internacional de los refugiados en Latino América*, Buenos Aires: UNHCR-UNLA-Siglo XXI ed., 2003, pp. 39-44, 67-73.

¹⁹ H. Gros Espiell, *El derecho internacional americano sobre asilo territorial y extradición en sus relaciones con la Convención de 1951 y el Protocolo de 1967 sobre estatuto de los refugiados*, en *Asilo y protección internacional de refugiados en América Latina relación J. Carpizo*, Mexico 1982, pp. 36. [URL-http://www.acnur.org/paginas/index.php?id_pag=69611], (28.05.2012).

in diplomatic representative institutions. In other words, they realize the right not on their own territory, yet in the area of a host country²⁰.

According to B. Wierzbicki, the difference between territorial and diplomatic asylum concerns the legal basis and the place of a granting procedure. A category of people who can apply for asylum is other basis for differentiating the two terms.

ICJ in its verdict in 1950 about the disagreement between Columbia and Peru pointed out the difference between territorial and diplomatic asylum. In the second case a person who applies for the asylum stays outside the country, where he or she committed a crime or is prosecuted because of racism or his/her political and religious views. Granting the asylum does not mean excluding an individual from the jurisdiction of the state, because at that moment he stays on the territory of a country that gives it²¹.

To underline the differences between the two institutions some authors describe diplomatic asylum as non-territorial, extraterritorial or internal²². Diplomatic asylum is treated here as a form of non-territorial asylum, to which we can include asylum on warships, aircrafts, military bases and consulates. Very frequently the diplomatic asylum is used for defining all of those forms. Such a viewpoint is particularly common in Latin America. As well as there are followers of such a doctrine, there are also those, who consider that we should restrict only to the asylum granted in the diplomatic missions²³. Contemporary practitioners try to limit granting the asylum to diplomatic purposes.

Diplomatic asylum institutions do not regulate the norms of international public law. Therefore, the countries have more liberties toward the prosecuted foreigner. According to the article 14 in the Universal Declaration of Human Rights, an alien has the right to apply for asylum in other states, if only he did not commit common crimes or acted in a way that is against the norms or aims of the United Nations. However, those are not a guarantee that he/she will get it²⁴.

Historically, the first act that mentioned the existence of the asylum was the declaration of the National Assembly of France in 29 Dec 1791. On the other hand, the Constitution of 1973 stated that France would grant the asylum to foreigners, who were forced to leave their homelands, to protect their liberties, while the tyrants were refused such a privilege.

In 1967 United Nations General Assembly (UNGA/GA) approved a resolution concerning the territorial asylum. It was stated there that granting the right of asylum was a peaceful and humanitarian act, which should be respected by foreign countries. Nevertheless, the right does not serve people who committed the war crimes, the crimes against humanity or the crimes against peace. In 1977 the conference aimed at preparing the territorial asylum convention was convened, but the project had not been developed. Last years the procedure of granting asylum in European countries has become much stricter.

In Polish law, according to a Constitution of 1952, the territorial asylum was granted to aliens fighting for the national independence, working as scientists or acting to protect the peace. According to the Aliens Act of 1963, a Minister of Home Affairs could issue the granting of asylum, but this right could be delegated by lower authorities with an agreement of a Minister of Foreign Affairs²⁵. Polish Constitution of 1997 does not formulate the principles of receiving the territorial asylum, but it refers to the act.

²⁰J. Symonides, *Azyl...*, p.22.

²¹L. Sosnowski, *op. cit.*, p. 8. Zob. T. B. de Maekelt, *Instrumentos regionales en materia de asilo. Asilo territorial y extradición. La cuestión de los refugiados ante la posibilidad de una nueva codificación interamericana, en Asilo y protección internacional de los refugiados en América Latina México: Universidad Nacional Autónoma de México*, 1982, pp. 142-160;

²²L. Sosnowski following N. Bailey, *Asylum and Haya de la Torre*, 1955, C. Barcia Trelles, *El derecho de asilo diplomatico y el Caso Haya de la Torre*, 1950, C Berezowski, *Prawo międzynarodowe publiczne*, Warszawa 1967.

²³L. Sosnowski following C. Bolini Shaw, *Derecho de asilo*, Buenos Aires 1937.

²⁴R. Bierzanek, J. Symonides, *op. cit.*, p. 267.

²⁵*Ibidem*.

The Act of 18 Oct 1991 stated that stateless people or citizens of other foreign countries could benefit from the right of territorial asylum on the basis, given in the act. In its article 50 the Aliens Act of 25 June 1997²⁶ stated that an alien could be granted the right of asylum in Polish Republic if “it is necessary to provide them with protection or when Polish Republic has a special interest in it”²⁷. The next article 51 states that “a foreigner can be deprived of asylum for two reasons, if the reasons for its granting are no longer appropriate or if his/her activity is focused against the country’s safety or public order”²⁸. A decision of granting or depriving of asylum status is made by a Head of the Office for Foreigners after an approval of a Minister of Foreign Affairs. In a similar way the Act of 13 June 2003 in its article 90 regulates the matter of providing aliens with defence on the territory of Polish Republic²⁹.

We should also mention an institution of temporary shelter. The reasons for searching a shelter in foreign states can be various. It is usually provided by a foreign diplomatic mission, if in a country of origin certain disorders take place, or when the authorities of the state are unable to ensure their citizens of safety. The basic difference between those two cases is that in the first one the state representation, that gives a shelter, is obliged to hand back an individual at a request of the competent authorities of the state or remove a person from the embassy when the reasons for its granting are no longer appropriate. When it concerns the case of granting the diplomatic asylum, embassy that grants it cannot hand back an individual benefiting from the diplomatic asylum institution, yet it tries to take needed actions for his safe transportation outside the country³⁰.

As an example, in 1970 Polish embassy in Phnom-Penh gave a shelter to Northern Vietnamese diplomats and the representatives of the Provisional Revolutionary Government of the Republic of South Vietnam. It happened after the attack of Cambodians on Vietnamese missions. There are also cases in which diplomatic missions give shelters for humanitarian reasons to aliens who are in danger in the receiving state because of the internal situation there. They do not have the legal ground, yet they are justified. Such a situation took place in Grenada in 1983 after the invasion of American troops, when foreigners from North Korea, Cuba, Bulgaria and GDR were sheltered in the soviet embassy³¹.

Application of diplomatic asylum in Latin America

As it was mentioned above, the institution of diplomatic asylum began and developed on the Latin American continent in 19cent, when new independent countries started to appear³². Because of frequent political turmoil people were in search for shelters to defend themselves before the prosecutions.

In the process of granting the right of asylum, political reasons play very, if not the most, significant role, especially when a legal situation is not completely clear. Nowadays, with a considerable number of independent countries with different systems and contradictory interests, the existence of asylum is inevitable³³. It is worth mentioning that granting the right can cause

²⁶ Aliens Act of 25 June 1997, Dz. U. z dnia 26 września 1997 r. (Dz.U.1997.114.739).

²⁷ Ibidem.

²⁸ Ibidem.

²⁹ Dz.U.03.128.1176.

³⁰ L. Sosnowski, op. cit., p. 9.

³¹ W. Malednowski, definition: Diplomatic asylum [in:] *Leksykon współczesnych międzynarodowych stosunków politycznych*, Wrocław 1998; definition: „diplomatic asylum” [URL- <http://www.stosunki.pl/?q=node/1128>], [19.05.2012].

³² “diplomatic asylum” [URL- <http://www.americanforeignrelations.com/A-D/Asylum-Diplomatic-asylum.html>], (29.05.2012).

³³ J. H. Fischer de Andrade, *Regionalización y armonización del derecho de los refugiados: una perspectiva latinoamericana, en Derechos Humanos y Refugiados en las Américas: Lecturas Seleccionadas*, Costa Rica: ACNUR, 2001, p. 89.

negative presumptions of social and political relations in the country. M. Garcia-Mora notices the relation between the content of diplomatic asylum and political and economic context.

There is a statement that humanitarian views constitute the ground for granting the diplomatic asylum. The evidence of this can be found in the article 3 of the Convention on political asylum of 1933. The importance of humanitarian views would mostly be mentioned in the categories of people who can benefit from territorial asylum. Political character of diplomatic asylum can be proved by the fact that in the United States this right³⁴, not being considered an institution of international common law, is refused, whereas in Latin America the practice is fully used and recognised. C. Ronning notices that if the validity of a customary rule of international law cannot be proved then the practice of granting the right of asylum could be explained from the points of view of political opportunism or humanitarian views. A similar viewpoint shares A. Evans, who claims that the procedure of granting asylum is subjective and most often politically-based. Diplomatic asylum is believed to have two functions. First of all, it is a means of realising political interests. On the other hand, it is an instrument for defending human rights.

As practice shows, the institution still exists even though the conventions, regulating it (Convention on asylum in Havana, Convention on asylum in Montevideo, Treaty on Political Asylum and Refuge in Montevideo and Convention on diplomatic asylum in Caracas) started in the early 20cent³⁵. The events of the last three years, namely the cases of the ex-president of Honduras M. Zelaya and J. Assange, show the extent to which the institution may be controversial. The most concerns are raised by the fact that not all the countries ratified the mentioned conventions, yet the institution of diplomatic asylum functioned on their territories. It became arguable then whether the realisation of the institution was legally justified. Most often in such cases the international customary law is applied.

The institution of diplomatic asylum in Latin America is treated as a state law and it depends on the country's decision making whether the asylum will be granted or rejected. Local decisions, applied on the continent, state that asylum should be granted only in urgent situations. An example of such a situation would be the case when a person is prosecuted by an uncontrolled and unruly crowd and is at risk of losing his/her liberty or life because of political prosecution, and he or she cannot be safe in any other way.

According to the acts, applied on the American continent, diplomatic asylum can be granted in the embassies, on board ships, in aircrafts, military bases and in private premises of ambassadors. If the number of people is considerable, then some other places can serve as a shelter too³⁶.

The acts in this region point out two groups of individuals who can apply for the right of political asylum. The first contains political criminals and the second includes people prosecuted for political views. Asylum should not be granted to those convicted or accused of common crimes. It should be mentioned that none of the acts clearly defines the term 'political criminal' or prosecuted for political views.

Analysing the cases of granting diplomatic asylum in Latin America we can draw a conclusion that the question was not investigated in details. However, not always a diplomat has an opportunity to deeply study that case. Most frequently diplomatic asylum is granted if there is confidence in individual's relation to the opposition or revolutionary movement. As a result of that they are at risk and should not expect a fair judgement³⁷.

Individuals who benefit from asylum in Latin America will still be under protection even if the diplomatic relations break. In the situation when ambassador has to leave the host country, asylum seekers should leave as well. If this would not be possible, they can be sent to the third country institution together with all their privileges.

³⁴ See: I. Salehyan, M. R. Rosenblum, op.cit.

³⁵ J. Mondelli, *El asilo como derecho humano en el derecho argentino*, Buenos Aires 2008, p. 8.

³⁶ B. Wierzbicki, op. cit. p. 97.

³⁷ Ibidem, p. 98.

The receiving country has the right to demand that people, granted diplomatic asylum, leave the territory of that state as soon as possible. If such a situation takes place, a head of diplomatic institution may require for a guarantee of safety for his asylum seekers³⁸.

As a result of a Columbian-Peruvian dispute new rules concerning asylum in Latin America were created. They were signed in Caracas in 1954 during the Convention on diplomatic asylum. Nevertheless, can the institution of diplomatic asylum be considered as a norm of Latin American customary law? First of all, we should distinguish the norms that belong to the customary law. As the article 38 in the Statute of the International Court of Justice goes, in order to recognise a certain norm as a customary law we need two elements. Those are the widespread practice and experience of the countries in the issue and the persuasion that the custom has a value of an applicable law. The decision of the ICJ in 1950 showed that the right of diplomatic asylum is not disputed by Latin American countries³⁹ and that it is the lack of agreement as for its application that makes its realisation impossible. The universal practice of its application is very diversified, which was claimed by Columbia when it presented the historical examples of the realisation of diplomatic asylum⁴⁰.

The usage of diplomatic asylum is provided by the norms contained in numerous treaties. However, none of them was ratified by all Latin American countries. Diplomatic asylum, practiced in Latin America, is a regulation whose existence can be owed to extra legal issues. It was the warm relations between neighbouring countries as well as differing political interests that contributed to the mutual recognition of asylum on the basis of courtesy⁴¹. Nevertheless, even today this institution creates numerous controversies. A good example would be the event that took place in Honduras. There were a lot of debates on TV about the possibility for M. Zelaya⁴² to be granted the right of asylum. Undoubtedly, the application of the institution of diplomatic asylum is, above all, a political decision. It is mainly a decision of a country to grant a prosecuted politician or a person, suspected in a political crime.

Application of diplomatic asylum outside Latin America

Institution of diplomatic asylum is not very popular outside Latin America, since it limits the territorial supremacy of a state. Nevertheless, it is sometimes used. One of the interesting cases that lately took place happened in June in 2012. It was a case of J. Assange, who sheltered in the Embassy of Ecuador in London. The founder of WikiLeaks is known because he published thousands of American diplomatic notes of secret content. For some time Assange had been in Great Britain. Sweden authorities suspect him of sexual offences and, therefore, he is wanted. In June 2012, being afraid of judgement, he sheltered in the embassy and applied for asylum. Ecuador made a decision in June 2012. The statement of the authorities enumerated the reasons for granting Assange asylum. They refer to the humanitarian law and the protection of an individual. The statement, however, does not focus on legal aspects and does not specify the conditions needed to grant Assange. The Latin Americans were very enthusiastic about the matter, especially those belonging to the ALBA organisation, headed by H. Chavez⁴³.

³⁸ Ibidem.

³⁹ See: S. Prakash Sinha, *Asylum and international law*, The Hague, Netherlands 1971

⁴⁰ Sz. Zaręba, op. cit. p. 111

⁴¹ Ibidem.

⁴² R. Carroll, *Manuel Zelaya refuses to leave Honduras as asylum seeker*, "The Guardian", [URL- <http://www.guardian.co.uk/world/2009/dec/10/manuel-zelaya-honduras-asylum-mexico>], 10.12.2009; *Manuel Zelaya exile move from Honduras "postponed"*, BBC News, [URL- <http://news.bbc.co.uk/2/hi/8405133.stm>], 10.12.2009; M. Canavarró, *Reactions to Ousted Honduran President Zelaya asylum in Brazil*, "The Rio Times" [URL- <http://riotimesonline.com/brazil-news/rio-politics/internet-reacts-to-zelaya-latest/>], 22.09.2009.

⁴³ J. Kurbalija, *Frequently asked question about diplomatic asylum*, 20.08.2012, [URL- www.diplomacy.edu]; *U.S. refuses to recognize diplomatic asylum of WikiLeaks founder*, 16.08.2012, [URL- <http://english.peopledaily.com.cn/90777/7915342.html>]; M. Castillo, *Assange and diplomatic asylum: A primer*,

A lot of countries outside Latin America deny the existence of diplomatic asylum. A Minister of Foreign Affairs in Great Britain W. Hague denied its existence in his statement in 16 June 2012. The problem between Ecuador and Great Britain should then be analyzed outside the regulations of diplomatic asylum. Yet there is still the question about the status of Assange. He is not an asylum seeker, as he benefits from the protection of Ecuadorian embassy in London. The effectiveness of such a protection is rather controversial. Initially, Great Britain planned to attack embassy of Ecuador, referring to the British court decision⁴⁴. The reason for the reaction could be, as A. Styrna claims, violation of British sovereignty by the incompatible act of providing him with illegal asylum, which denies the functions of diplomatic mission. Great Britain gave up the idea after all. Attacking the diplomatic mission would not be legal either. Inviolability of diplomatic mission is undeniable. Only after the permission of a head of the embassy can you enter its territory. Entering the area could not be even justified as an act of retorsion, which is mentioned in the article 22 of the Vienna Convention on Diplomatic Relations⁴⁵.

The fact that asylum was granted illegally could not justify such actions as well. However, if Assange would like to leave the territory of Great Britain he could be arrested at any moment of his trip.

The current state of the law cannot say if granting asylum in this case was assigned successfully and according to the international law. Hopefully, the case will initiate further regulations of asylum as an institution of the international law⁴⁶.

Another very known example of granting the diplomatic asylum could be the case of providing a shelter to cardinal Mindszenty, who spent more than 15 years in the US embassy (1956-1971). Polish diplomatic embassy in Jakarta granted asylum to refugees from East Timor. The mission of Chile in Moscow in 1991 provided a shelter to Erich Honecker.

As it was mentioned above, granting diplomatic asylum by countries outside Latin America has no legal grounds. Therefore, it seems that such states should restrict the practice. On the other hand, we should allow it in cases of humanitarian help. Despite the lack of relevant legal regulations, countries outside the region still grant diplomatic asylum.

Concluding remarks

The issue of diplomatic asylum is very complicated. Undoubtedly, diplomatic asylum is an institution of regional international law in Latin America. The necessary prerequisite for its application is an urgent situation which poses a threat to an individual. The status of asylum seekers can be granted only to those suspected or accused of political crimes, not of common ones. What is also important is the place of giving asylum which is the diplomatic mission, although the relevant conventions allow other places too.

Undoubtedly, it is an institution which provides protection of health and life of an individual, prosecuted for political reasons. He or she is the subject of it. The doctrine has no hesitations as for the humanitarian usage of asylum. However, referring to other principles such as the principle of extritoriality, the inviolability of the diplomatic mission and the agreement of a receiving country can cause some doubts.

Nevertheless, it is unknown whether there is a sense or possibility to regulate institution of diplomatic asylum. The experience of many countries has shown that they granted such asylum

17.08.2012, CNN, [URL- articles.cnn.com]; D. Casciani, *Julian Assange and asylum*, 16.08.2012, BBC News, [URL- www.bbc.co.uk]; *When diplomatic asylum is an undiplomatic snub: Ecuador gives sanctuary to WikiLeaks' founder and risks the wrath of the United States and other nations*, "Pittsburgh Post-Gazette" 22.08.2012, [URL- www.post-gazette.com], J. Adetunji, L. Davies, *Julian Assange granted asylum by Ecuador- as it happened*, "The guardian" 16.08.2012, [URL- www.guardian.co.uk].

⁴⁴ P. Zerka, *Ekwadorski blef*, 21.08.2012, [URL- www.psz.pl].

⁴⁵ A. Styrna, *Dyplomatyczny klinz nad Tamizą*, „Gazeta Prawna” 5.09.2012, no 172, p. D8.

⁴⁶ *Ibidem*.

even though they were not connected by any treaties. The majority of such cases took place in Latin America, of course, where the receiving state recognized the diplomatic asylum. Outside the region the agreement of both countries is required.

There are two possible solutions to such problems. The first could concern not granting asylum in the countries not connected by any norms of this regulation. However, a lot of them practice it without legal justifications. The second option would be organizing an international convention on diplomatic asylum where all the interested candidate states could appear. As for the possibility of realizing such convention in the near future, it is important to know the positions of the states towards the institution. Actually, the main difficulty is their negative attitude. It threatens the sovereignty of smaller states. For the above mentioned aspects, such regulations cannot take place in the near future.