

SECTION C. — DÉCLARATION D'INTERVENTION
DU GOUVERNEMENT DE CUBA

TRANSMISE A LA COUR LE 13 MARS 1951

SECTION C.—DECLARATION OF INTERVENTION
BY THE GOVERNMENT OF CUBA

TRANSMITTED TO THE COURT ON MARCH 13th, 1951

1. LETTER FROM THE MINISTER OF STATE
OF CUBA TO THE REGISTRAR OF THE COURT

Havana, Cuba,
February 15, 1951.

Mr. Secretary,

I have the honour to acknowledge the receipt of Your Excellency's note No. 12668, dated the 26th of last January, with reference to the claim submitted to the Court, under date of December 19th, 1950, by the Government of Colombia against the Government of Peru, concerning the Haya de la Torre case.

Your Excellency reports that, as Colombia's claim is predicated on the Asylum Convention, signed in Havana the 20th of February, 1928, and since the Cuban Government was a party to said Convention, Article 63 of the Court's Statute, which grants the right of the States, parties to a convention, to intervene in the litigations by reason of the same, is applicable, with the understanding that if said right is exercised, the construction given by the judgement will be equally binding for the State intervening in the procedure.

As a reply, I am sending Your Excellency, as an annex to this note, a Memorandum¹ addressed to the International Court of Justice, which contains the views of the Government of Cuba concerning the construction of the 1928 Convention of Havana, as well as this Government's general criterion in regard to the right of asylum.

My Government hopes that the principles set forth in said Memorandum may help the International Court of Justice to form a definite criterion in regard to the right of asylum in America and the importance that its true interpretation and efficient maintenance has in the Inter-American regional system.

I avail myself of this opportunity, etc.

(Signed) ERNESTO DIHIGO,
Minister of State of Cuba.

¹ See p. 118.

*Annex*STATEMENT SUBMITTED BY THE CUBAN GOVERNMENT
TO THE INTERNATIONAL COURT OF JUSTICE

SUBJECT : *Claim submitted by the Government of Colombia concerning the Haya de la Torre case and construction of the 1928 Convention on Asylum of Havana*

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(1) *General principles.* The right of asylum in America constitutes a procedure, inspired by a high humanitarian sentiment, tending to solve difficulties in the political life of the peoples and to eliminate harshness and passions which, otherwise, would lead to violence and disorder.

This humanitarian tradition, inspired by broad liberal principles, was incorporated in the juridical life of America through practice and custom, being recognized initially by common law and, later, submitted to American international organizations, who determined its juridical structure.

Consequently, a humanitarian and juridical tradition in the matter of asylum has existed for many years in America, predicated on certain principles which should be considered fundamental and immovable. Those principles, which have been practised and upheld by Cuba and the majority of the countries of America at all times, are the following :

- (a) The judgement of the political delinquency concerns, in all cases, the State granting the asylum ;
- (b) the delivery of the proper safe-conducts, by the territorial State, is the inevitable consequence and natural solution of the asylum granted.

(2) *Cuba's attitude in cases of asylum.* The Cuban Government, for the purpose that its position in the cases of asylum granted within its territory be known to the International Court of Justice, sets forth below a brief account of said cases and the procedure followed to terminate them in accordance with the principles upheld by Cuba.

First : Whenever a Cuban citizen has received asylum in any diplomatic mission accredited in Cuba, the Cuban Government has honored the asylum since, in all cases, the condition of persecuted politician has been invoked in favor of the refugee and at the time of granting the asylum no court proceedings for a common crime existed against the refugee. The main cases in which the asylum of Cuban citizens in embassies or legations accredited in Havana

have occurred, have been in the diplomatic missions of Panama, Brazil and Mexico.

Second: As to the form of terminating the asylum, Cuba has deemed that, in accordance with American international law, no American State has the right to demand the surrender of a political refugee who has found himself in the judicial conditions set forth in the foregoing paragraph, even in cases in which the urgency of asylum has not been fully demonstrated and, consequently, it is of the opinion that the manner of terminating the asylum—should there be no voluntary act of desisting on the part of the refugee—is the issuance of the proper safe-conduct for said refugee to leave the territory.

Third: It has so happened in Cuba in the following cases: (a) Jorge Alfredo Belt y Ramírez; (b) Pedro Cue Abreu and Carlos Manuel de la Cruz; (c) Domingo Ramos and Gustavo Cuervo Rubio; (d) Martín Menocal and Pedro Martínez Fraga; and (e) Fausto Menocal, Elicio Argüelles and Ricardo Dolz. In the cases enumerated, the Cuban government at the time in power, although considering that the refugees ran no risk of being the object of unjust or arbitrary persecutions, honored, for the reasons set forth in the foregoing paragraphs, each and all cases of asylum.

(3) *Interpretation of the Convention of Havana, 1928, in the light of these principles*: (a) The 1928 Convention of Havana clearly establishes the legitimacy of the asylum granted to political delinquents, and does not contain in any of its rules or provisions any reference that may impair the fundamental argument that the judgement of the political delinquency should be made by the country granting the asylum. On the contrary, this *modus operandi* is unavoidable in order that the asylum may proceed normally, since it is not logical to entrust to the territorial State, at times interested in circumstances of political excitement, the right to decide as to the judgement of the political delinquency.

This was the interpretation which the American jurists, who were charged with the preparatory work for the Convention on Political Asylum, signed in Montevideo in 1933, bore in mind to determine expressly in said Convention that "the judgement of political delinquency concerns the State which offers asylum".

In effect, the Sub-Commission appointed to consider the right of asylum and draft the Montevideo Convention deemed that the spirit of the Havana Convention might be misrepresented as said Convention did not contain explicitly the provision which was implicit in it concerning the right to judge the character of the delinquency. Consequently, the territorial State in many cases seeking to frustrate the purpose of the asylum, might charge the refugee with pre-existing common crimes, knowing, as asserted by the Sub-Commission itself, that the refugee then would have to remain

indefinitely in the legation that sheltered him, transforming it thereby into a real prison.

On the other hand, upon effecting the amendments to the Convention of Havana, in Montevideo, in 1933, the eminent Peruvian internationalist, Victor M. Maurtua, at the time Secretary of the Inter-American Institute of International Law, prepared a report, which was forwarded by the Pan-American Union to the Montevideo Conference, and which served as an inspiration and basis for the said amendments to the 1928 Convention. This report, in its pertinent part, expresses that the Inter-American Institute of International Law believes that said report might serve to clarify in a healthy manner the Convention of Havana, and that the judgement of the political delinquency corresponds to the State which offers the asylum.

It may be inferred from the above statement that the principle that the judgement corresponds to the country that offers the asylum was incorporated in the nature of the right of asylum itself before it was expressly taken to the 1933 Montevideo Convention, and that it was so acknowledged by the jurists of America who participated in the drafting of the new convention. Consequently, the Cuban Government deems that the judgement of the character of the delinquency by the State granting the asylum is a principle of such fundamental nature that its non-observance would make the juridical institution of asylum, which enjoys the highest moral and human values, inoperative and useless, and that the 1928 Convention of Havana should be construed in the sense that it implicitly bestows on the State offering the asylum the right to judge the nature of the delinquency.

(b) In connection with the delivery of the safe-conducts, which the Cuban Government deems an unavoidable consequence and natural solution of the asylum granted, it is interesting to invite the Court's attention to Section Third of Article 2 of the 1928 Convention of Havana, which reads as follows :

Third : The government of the State may require that the refugee be sent out of the national territory within the shortest time possible ; and the diplomatic agent of the country who has granted the asylum may in turn require the guaranties necessary for the departure of the refugee, with due regard to the inviolability of his person, from the country.

The separation existing between the two paragraphs of the aforesaid section, by virtue of the semicolon, represents the existence of two different rights which the writers of said juridical document bore in mind, and which are the following :

- (1) The right of the territorial State to require that the refugee be sent out of the national territory within the shortest time possible.

- (2) The right of the diplomatic agent of the country granting the asylum to require the guaranties necessary in order that the refugee may leave the territorial State with due regard to his inviolability, or in other words, the duty of the territorial State to issue the proper safe-conducts.

Aside from the foregoing legal technical reasons, the Cuban Government considers that to admit the opposite thesis, namely, that the territorial State is not bound, as a consequence of the asylum, to issue the safe-conduct in favor of the refugee, would practically carry with it the annulment of said institution of asylum, inasmuch as, in that case, a procedure of an exceptional character would be started, the termination of which would be at the will of only one of the parties thereto and precisely the one probably less interested in terminating it.

On the other hand, the indefinite permanence of the refugee in a diplomatic mission, which might be drawn from the territorial State's non-recognition of its obligation to issue the safe-conducts, might cause the transformation of the legation's or embassy's seat into a real prison, with all the serious implications which such fact means in the international relations. Furthermore, inter-American practice has confirmed that the delivery of the safe-conduct, in cases of asylum granted in accordance with the 1928 Convention, is in order.

These arguments show, in the opinion of the Cuban Government, that the territorial State has the juridical obligation to issue the safe-conducts applied for by the State granting the asylum, within a discreet term, inasmuch as this is the only legal, logical and moral solution of the asylum granted.

Havana, February 15, 1951.

(Signed) ERNESTO DIHIGO,
Minister of State
