

PREMIÈRE PARTIE

REQUÊTE INTRODUCTIVE D'INSTANCE
ET PIÈCES DE LA PROCÉDURE ÉCRITE

PART I

APPLICATION INSTITUTING PROCEEDINGS
AND DOCUMENTS OF THE WRITTEN
PROCEEDINGS

SECTION A.—APPLICATION INSTITUTING PROCEEDINGS

TO THE PRESIDENT AND JUDGES OF THE
INTERNATIONAL COURT OF JUSTICE, THE HAGUE

[*Translation by the Registry*]

1.—The undersigned, Agent of the Government of the Republic of Colombia, duly authorized by the said Government, has the honour to submit to the International Court of Justice the following Application instituting proceedings in the dispute between the said Government and the Government of Peru.

SUBJECT OF THE DISPUTE

2.—On July 18th, 1911, during the Congress known as the Bolivarian Congress (*Congreso Bolivariano*), the Governments of Ecuador, Bolivia, Colombia, Peru and Venezuela signed at Caracas an Agreement on Extradition now in force between the signatory States, which, in its Article 18, recognizes the institution of asylum in conformity with the principles of international law.

3.—During the Sixth International Conference of American States held at Havana, the American Republics, on February 20th, 1928, signed a Convention on Asylum which has been duly ratified and is now in force in Colombia, Peru, Brazil, Costa Rica, Cuba, Ecuador, El Salvador, Guatemala, Mexico, Nicaragua, Panama, the Dominican Republic and Uruguay.

4.—Referring to the said conventions and to the principles of international law as applied in America, Colombia asserts:

(a) that she is entitled in the case of persons who have claimed asylum in her embassies, legations, warships, military camps or military aircraft, to qualify the refugees, either as offenders for common crimes or deserters from the army or navy, or as political offenders;

(b) that the territorial State, namely, in this case, Peru, is bound to give "the guaranties necessary for the departure of the refugee, with due regard to the inviolability of his person, from the country".

5.—The Government of Peru rejects the thesis of the Government of Colombia. The resulting difference, which is related to the interpretation of treaties and to the principles of American international law on asylum, is the object of the present dispute.

THE FACTS

6.—In the evening of January 3rd, 1949, Mr. Victor Raúl Haya de la Torre, Peruvian citizen, chief of a political group in that country, came to the Colombian Embassy and begged the Ambassador to grant him asylum in the Embassy.

7.—The Colombian Ambassador granted the protection sought by Mr. Haya de la Torre, who presented himself as a political refugee.

8.—The next day, on January 4th, the Colombian Ambassador sent to the Ministry of Foreign Affairs and Religion of Peru the written notification required by the Convention on Asylum of February 20th, 1928, and requested from the Peruvian Government the guaranties necessary for the departure of Mr. Haya de la Torre. In other words, the Colombian Ambassador requested the granting to Mr. Haya de la Torre of a safe-conduct, with the customary facilities.

9.—In a note dated February 12th, 1949, the Colombian Ambassador once more informed the Peruvian Minister of Foreign Affairs and Religion of the wish of the Colombian Government to obtain for Mr. Victor Raúl Haya de la Torre, whom the Colombian Government qualified as a political offender, "the guaranties to which he is entitled under the Havana Convention on Asylum".

10.—On February 22nd, 1949, the Peruvian Government replied to the Colombian Ambassador that, in strict application of the existing Convention between Peru and Colombia, it did not consider itself held to grant the requested safe-conduct.

11.—By a note dated March 4th, 1949, the Colombian Ambassador insisted on obtaining from the Peruvian Government the delivery of the requested document.

12.—The Peruvian Government, in its reply dated March 19th, 1949, asserted that Peru was not under any legal obligation to accept the unilateral interpretation of asylum given by the Colombian Ambassador.

13.—In his note of March 28th, the Colombian Ambassador, while objecting to the views of the Peruvian Government, declared that the Colombian Government deemed it useless to prolong the exchange of notes and believed it preferable to put an end to direct diplomatic negotiations. Consequently, the Ambassador added that the Colombian Government offered to the Peruvian Government

as a way out of the controversy the choice of any one of the legal actions open to Colombia and Peru as American States, namely: enquiry and conciliation, arbitration, judicial proceedings and a consultative conference of the Ministers of Foreign Affairs of these States.

14.—The Peruvian Government, in its note of April 6th, 1949, accepted the institution of judicial proceedings before the International Court of Justice.

15.—The two Governments attempted in vain to draw up a special agreement to submit their dispute to the Court. Finally, by an Act (*Acta*) signed at Lima on August 31st, 1949, they agreed that each party would have the right to submit its application unilaterally to the Court without this measure being considered as inimical by the other party.

THE LAW

16.—The present Application is based :

A.—On the general and special obligations arising for the Governments of Peru and Colombia from the following instruments :

- (a) the Bolivarian Agreement on Extradition of July 18th, 1911 ;
- (b) the Convention on Asylum adopted and signed at the Sixth International Conference of American States in 1928.

B.—On the special juridical nature of the American institution of asylum, as recognized by the law applied in American States and the practice followed by them since the last century.

C.—Generally, on the rules of international law and custom followed in America.

JURISDICTION OF THE COURT

17.—The Court's jurisdiction in the present dispute is based on the following texts :

- (a) Article 7 of the Protocol of Friendship and Co-operation between the Republic of Colombia and the Republic of Peru, signed at Rio de Janeiro, May 24th, 1934, which came into force in both States on September 27th, 1935 ;
- (b) on Article 36, paragraph 1, of the Statute of the Court ;
- (c) on Article 40 of the said Statute and Article 32 of the Rules of Court.

18.—For some aspects of the procedure, the attention of the Court is called to the provisions of the Act (*Acta*) of August 31st, 1949, which has been duly notified to the Court.

APPLICATION

19.—In view of the foregoing and subject to the subsequent presentation to the Court of any Memorials, Counter-Memorials and, in general, of any documents or evidence,

May it please the Court :

To pass judgment on and answer, whether the Government of the Republic of Peru enters an appearance or not, and after such time-limits as the Court may fix in the absence of an agreement between the Parties, the following questions :

First question.—Within the limits of the obligations resulting in particular from the Bolivarian Agreement on Extradition of July 18th, 1911, and the Convention on Asylum of February 20th, 1928, both in force between Colombia and Peru and in general from American international law, was Colombia competent, as the country granting asylum, to qualify the offence for the purposes of said asylum ?

Second question.—In the specific case under consideration, was Peru, as the territorial State, bound to give the guaranties necessary for the departure of the refugee from the country, with due regard to the inviolability of his person ?

20.—The Government of Colombia declares that for the purpose of all notifications and communications relating to the present case it selects for its address the Legation of Colombia at The Hague.

21.—Whereas the case submitted to the Court calls for the interpretation of two treaties to which other States than Colombia and Peru are parties, the undersigned, Agent of the Colombian Government, begs the Court to notify the present Application to the Governments of Ecuador, Bolivia, Venezuela, Brazil, Costa Rica, Cuba, El Salvador, Guatemala, Mexico, Nicaragua, Panama, Dominican Republic and Uruguay.

The Hague, October 15th, 1949.

(Signed) J. M. YEPES,
Agent of the Government of Colombia.

Certified true signature of Professor Jesús M. Yepes, Agent of the Government of Colombia to the International Court of Justice.

The Hague, October 15th, 1949.

(Signed) HERNÁN TOBAR,
Acting Chargé d'Affaires.

Seal :

Legation of Colombia.
