COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS ET ORDONNANCES

AFFAIRE DU DROIT D'ASILE

(COLOMBIE / PÉROU)

ARRÊT DU 20 NOVEMBRE 1950

1950

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

ASYLUM CASE

(COLOMBIA / PERU)

JUDGMENT OF NOVEMBER 20th, 1950

Le présent arrêt doit être cité comme suit :

« *Affaire colombo-péruvienne relative au droit d'asile, Arrêt du 20 novembre 1950 : C. I. J. Recueil 1950, p. 266.* »

This Judgment should be cited as follows :

"*Colombian-Peruvian asylum case, Judgment of November 20th, 1950 : I.C.J. Reports 1950, p. 266.*"

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INTERNATIONAL COURT OF JUSTICE

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November 20th, 1950

ASYLUM CASE

(COLOMBIA / PERU)

Diplomatic asylum.—Right of qualification of the nature of the offence as political or ordinary; claim to unilateral and definitive qualification by the State granting asylum.—Lack of foundation of such a claim in the absence of agreement or of a customary rule to justify it.—Bolivarian Agreement of 1911 on Extradition; differences between territorial asylum (extradition) and diplomatic asylum.—The Havana Convention on Asylum of 1928, the Montevideo Convention on Political Asylum of 1933; custom, elements and proof of custom.—Guarantees for the free departure of the refugee; conditions required for the request for a safe-conduct.

Counter-claim.—Admissibility: direct connexion with the subject-matter of the Application (Article 63 of the Rules of Court).—Merits: interpretation of Article 1, paragraph 1, of the Havana Convention; interpretation of Article 2, paragraph 2, of the same Convention: notion of urgency, nature of the danger the imminence of which constitutes urgency, legal proceedings instituted by the territorial authorities prior to the grant of asylum, regular proceedings, proceedings manifestly of an arbitrary character; absence of urgency at the time of the grant of asylum; protection maintained against regular proceedings; prolongation of asylum contrary to Article 2, paragraph 2, of the Havana Convention.

JUDGMENT

Present: *President* BASDEVANT; *Vice-President* GUERRERO; *Judges* ALVAREZ, HACKWORTH, WINIARSKI, ZORIČIĆ, DE VISSCHER, Sir Arnold MCNAIR, KLAESTAD, BADAWI PASHA, KRYLOV, READ, HSU MO, AZEVEDO; M. ALAYZA Y PAZ SOLDÁN and M. CAICEDO CASTILLA, *Judges* ad hoc; M. GARNIER-COIGNET, *Deputy-Registrar.*

In the Asylum case,

between

the Republic of Colombia,

represented by :

M. J. M. Yepes, Professor, Minister Plenipotentiary, Legal Adviser to the Ministry for Foreign Affairs of Colombia, former Senator, as Agent ;

assisted by

M. Alfredo Vasquez, Minister Plenipotentiary, Secretary-General of the Ministry for Foreign Affairs of Colombia, as Advocate ;

and

the Republic of Peru,

represented by :

M. Carlos Sayán Alvarez, Barrister, Ambassador, former Minister, former President of the Peruvian Chamber of Deputies, as Agent ;

assisted by

M. Felipe Tudela y Barreda, Barrister, Professor of Constitutional Law at Lima,

M. Fernando Morales Macedo R., Parliamentary Interpreter,

M. Juan José Calle y Calle, Secretary of Embassy ;

and, as Counsel,

M. Georges Scelle, Honorary Professor of the University of Paris, and

M. Julio López Oliván, Ambassador,

THE COURT,

composed as above,

delivers the following Judgment :

On August 31st, 1949, an agreement called the "Act of Lima" was signed at Lima in the name of the Colombian Government and of the Peruvian Government. This Act is as follows :

> "His Excellency Monsieur Víctor Andrés Belaunde, Ambassador Extraordinary and Plenipotentiary *ad hoc* of the Peruvian Republic, and His Excellency Monsieur Eduardo Zuleta Angel, Ambassador Extraordinary and Plenipotentiary *ad hoc* of Colombia, duly designated by their respective Governments to negotiate and draw up the

terms of an agreement to refer to the International Court of Justice a dispute which arose following a request by the Colombian Embassy in Lima for delivery of a safe-conduct for Monsieur Víctor Raúl Haya de la Torre, have met in the Ministry of Foreign Affairs and Public Worship in Lima and, having exchanged their respective credentials, make the following declaration in the spirit of cordial friendship which characterizes the relations between the two countries :

First :

They have examined in a spirit of understanding the existing dispute which they agree to refer for decision to the International Court of Justice, in accordance with the agreement concluded by the two Governments.

Second :

The Plenipotentiaries of Peru and Colombia having been unable to reach an agreement on the terms in which they might refer the dispute jointly to the International Court of Justice, agree that proceedings before the recognized jurisdiction of the Court may be instituted on the application of either of the Parties without this being regarded as an unfriendly act toward the other, or as an act likely to affect the good relations between the two countries. The Party exercising this right shall, with reasonable advance notice, announce in a friendly way to the other Party the date on which the application is to be made.

Third :

They agree, here and now : *(a)* that the procedure in this case shall be the ordinary procedure ; *(b)* that, in accordance with Article 31, paragraph 3, of the Statute of the Court, each of the Parties may exercise its right to choose a judge of its nationality ; *(c)* that the case shall be conducted in French.

Fourth :

This document, after it has been signed, shall be communicated to the Court by the Parties."

On October 15th, 1949, an Application, referring to the Act of Lima of August 31st, 1949, was filed in the Registry of the Court in the name of the Colombian Government. After stating that 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 guarantees necessary for the departure of the refugee, with due regard to the inviolability of his person, from the country' ",

the Application concludes by requesting 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 guarantees necessary for the departure of the refugee from the country, with due regard to the inviolability of his person?"

Together with the Application, the Agent of the Colombian Government filed in the Registry a certified true copy of the original in Spanish, accompanied by a French translation, of the Act of Lima. By letter of October 15th, 1949, received by the Registry on the same day, the Agent of the Peruvian Government also deposited a certified true translation of the Act of Lima.

The Application was notified, under Article 40, paragraph 3, of the Statute of the Court, to the States entitled to appear before the Court. It was also transmitted to the Secretary-General of the United Nations.

As the Application was based upon the Convention on Asylum signed at Havana on February 20th, 1928, and upon the Agreement on Extradition signed at Caracas on July 18th, 1911, the notification prescribed by Article 63, paragraph 1, of the Statute of the Court was addressed to the States other than those concerned in the case which were parties to the foregoing Conventions.

The Pleadings having been deposited within the time-limits prescribed in the Order of October 20th, 1949, as extended by Orders of December 17th, 1949, and May 9th, 1950, the case was ready for hearing on June 15th, 1950.

As the Court did not include upon the Bench any judge of the nationality of the Parties, the latter availed themselves of the right provided by Article 31, paragraph 3, of the Statute. The Judges *ad hoc* designated were M. José Joaquín Caicedo Castilla, Doctor of Law, Professor, former Deputy and former President of the Senate, Ambassador, for the Government of Colombia, and M. Luis Alayza y Paz Soldán, Doctor of Law, Professor, former Minister, Ambassador, for the Government of Peru.

The opening of the oral proceedings was fixed for September 26th, 1950. Public sittings were held by the Court on September 26th, 27th, 28th and 29th and on October 2nd, 3rd, 6th and 9th, 1950.

In the course of the sittings, the Court heard statements by M. J. M. Yepes, Agent, and M. Alfredo Vasquez, Advocate, on behalf of the Republic of Colombia, and by M. Carlos Sayán Alvarez, Agent, and M. Georges Scelle, Counsel, on behalf of the Republic of Peru.

At the end of the written proceedings the Parties had presented the following submissions :

On behalf of Colombia (submissions contained in the Reply):

"MAY IT PLEASE THE COURT

To dismiss the submissions of the Government of the Republic of Peru,

TO ADJUDGE AND DECLARE :

In accordance with the submissions presented by the Government of the Republic of Colombia in its Memorial of January 10th, 1950, which was submitted to the Court on the same date, and

Rejecting all contrary submissions,

I. That the Republic of Colombia, as the country granting asylum, is competent to qualify the offence for the purpose of the said asylum, 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, and of American international law in general ;

II. That the Republic of Peru, as the territorial State, is bound in the case now before the Court to give the guarantees necessary for the departure of M. Víctor Raúl Haya de la Torre from the country, with due regard to the inviolability of his person."

On behalf of Peru (submissions contained in the Rejoinder) :

"MAY IT PLEASE THE COURT

To set aside the submissions of the Government of the Republic of Colombia ;

TO ADJUDGE AND DECLARE :

As a counter-claim, under Article 63 of the Rules of Court, and in the same decision, that the grant of asylum by the Colombian Ambassador at Lima to Víctor Raúl Haya de la Torre was made in violation of Article 1, paragraph 1, and Article 2, paragraph 2, item 1 *(inciso primero)*, of the Convention on Asylum signed at Havana in 1928."

At the end of the oral statements, the Agent for the Government of Peru having made an addition to the submissions in the Pleadings, the following final submissions were presented to the Court orally and confirmed in writing :

On behalf of Colombia :

(on the claim)

"MAY IT PLEASE THE COURT

TO ADJUDGE AND DECLARE :

I.—That the Republic of Colombia, as the country granting asylum, is competent to qualify the offence for the purpose of the said asylum, within the limits of the obligations resulting in particular from the Bolivarian Agreement on Extradition of July 18th, 1911, and the Havana Convention on Asylum of February 20th, 1928, and of American international law in general ;

II.—That the Republic of Peru, as the territorial State, is bound in the case now before the Court to give the guarantees necessary for the departure of M. Víctor Raúl Haya de la Torre from the country, with due regard to the inviolability of his person."

(on the counter-claim)

"1. That the counter-claim presented by the Peruvian Government on March 21st, 1950, is not admissible because of its lack of direct connexion with the Application of the Colombian Government ;

2. That the new counter-claim, irregularly presented on October 3rd, 1950, in the form of a submission upon allegations made during the oral debate, is not admissible on the grounds that :

(a) It was presented in violation of Article 63 of the Rules of Court ;

(b) The Court has no jurisdiction to take cognizance of it ;

(c) It has no direct connexion with the Application of the Colombian Government."

On behalf of Peru :

"MAY IT PLEASE THE COURT

To set aside submissions I and II of the Colombian Memorial.

To set aside the submissions which were presented by the Agent of the Colombian Government at the end of his oral statement on October 6th, 1950, in regard to the counter-claim of the Government of Peru, and which were repeated in his letter of October 7th, 1950.

TO ADJUDGE AND DECLARE,

As a counter-claim, under Article 63 of the Rules of Court and in the same decision, that the grant of asylum by the Colombian Ambassador at Lima to Víctor Raúl Haya de la Torre was made in violation of Article 1, paragraph 1, and of Article 2, paragraph 2, item 1 *(inciso primero)*, of the Convention on Asylum signed in 1928, and that in any case the maintenance of the asylum constitutes at the present time a violation of that treaty."

* * *

On October 3rd, 1948, a military rebellion broke out in Peru. It was suppressed on the same day and investigations were at once opened.

On October 4th, the President of the Republic issued a decree in the recitals of which a political party, the American People's Revolutionary Alliance, was charged with having organized and directed the rebellion. The decree consequently enacted that this party had placed itself outside the law, that it would henceforth not be permitted to exercise any kind of activity, and that its leaders would be brought to justice in the national courts as instigators of the rebellion. Simultaneously, the head of the Judicial Department of the Navy issued an order requiring the Examining Magistrate to open at once an enquiry as to the facts constituting the crime of military rebellion.

On October 5th, the Minister of the Interior addressed to the Minister for the Navy a "note of denunciation" against the leader of the American People's Revolutionary Alliance, Víctor Raúl Haya de la Torre, and other members of the party as responsible for the rebellion. This denunciation was approved on the same day by the Minister for the Navy and on October 10th by the Public Prosecutor, who stated that the subject-matter of the proceedings was the crime of military rebellion.

On October 11th, the Examining Magistrate issued an order for the opening of judicial proceedings against Haya de la Torre and others "in respect of the crime of military rebellion with which they are charged in the 'denunciation' ", and on October 25th he ordered the arrest of the persons "denounced" who had not yet been detained.

On October 27th, a Military Junta made a *coup d'état* and seized the supreme power. This Military Junta of the Government issued on November 4th a decree providing for Courts-Martial for summary procedure in cases of rebellion, sedition and rioting, fixing short time-limits and severe punishment without appeal.

This decree was not applied to the judicial proceedings against Haya de la Torre and others. These proceedings continued under the same jurisdiction as theretofore. This is shown by a note of November 8th from the Examining Magistrate requesting the production of certain documents, by a note of November 13th from the Head of the Investigation and Surveillance Service to the Examining Magistrate stating that Haya de la Torre and others were not arrested as they could not be found, and by an Order by the Examining Magistrate of the same date requiring the defaulters to be cited by public summons. On November 16th and the two subsequent days, the summons was published in the official gazette *El Peruano*, requiring "the accused persons who are in default" — Haya de la Torre and others—to report to the office of the Examining Magistrate to answer the accusation brought against

them "for the crime of military rebellion". Haya de la Torre did not report, and the facts brought to the knowledge of the Court do not show that any further measures were taken against him.

On October 4th, the day after the military rebellion, a state of siege was declared, suspending certain constitutional rights ; it was renewed on November 2nd and December 2nd, 1948, and on January 2nd, 1949.

On January 3rd, 1949, Haya de la Torre sought asylum in the Colombian Embassy in Lima. On the next day, the Colombian Ambassador sent the following note to the Peruvian Minister for Foreign Affairs and Public Worship :

> "I have the honour to inform Your Excellency, in accordance with what is provided in Article 2, paragraph 2, of the Convention on Asylum signed by our two countries in the city of Havana in the year 1928, that Señor Víctor Raúl Haya de la Torre has been given asylum at the seat of this mission as from 9 p.m. yesterday.
>
> In view of the foregoing, and in view of the desire of this Embassy that Señor Haya de la Torre should leave Peru as early as possible, I request Your Excellency to be good enough to give orders for the requisite safe-conduct to be issued, so that Señor Haya de la Torre may leave the country with the usual facilities attaching to the right of diplomatic asylum."

On January 14th, the Ambassador sent to the Minister a further note as follows :

> "Pursuant to instructions received from the Chancellery of my country, I have the honour to inform Your Excellency that the Government of Colombia, in accordance with the right conferred upon it by Article 2 of the Convention on Political Asylum signed by our two countries in the city of Montevideo on December 26th, 1933, has qualified Señor Víctor Raúl Haya de la Torre as a political refugee."

A diplomatic correspondence followed, leading up to the Act of Lima of August 31st, 1949, whereby the dispute which had arisen between the two Governments was referred to the Court.

* * *

The Colombian Government has presented two submissions, of which the first asks the Court to adjudge and declare

> "That the Republic of Colombia, as the country granting asylum, is competent to qualify the offence for the purpose of the said asylum, 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, and of American international law in general."

If the Colombian Government by this submission intended to allege that Colombia, as the State granting asylum, is competent

to qualify the offence only provisionally and without binding effect for Peru, the solution would not remain a matter of doubt. It is evident that the diplomatic representative who has to determine whether a refugee is to be granted asylum or not must have the competence to make such a provisional qualification of any offence alleged to have been committed by the refugee. He must in fact examine the question whether the conditions required for granting asylum are fulfilled. The territorial State would not thereby be deprived of its right to contest the qualification. In case of disagreement between the two States, a dispute would arise which might be settled by the methods provided by the Parties for the settlement of their disputes.

This is not, however, the meaning which the Colombian Government has put on its submission. It has not claimed the right of qualification for the sole purpose of determining its own conduct. The written and oral arguments submitted on behalf of that Government show that its claim must be understood in the sense that Colombia, as the State granting asylum, is competent to qualify the nature of the offence by a unilateral and definitive decision binding on Peru. Colombia has based this submission partly on rules resulting from agreement, partly on an alleged custom.

The Colombian Government has referred to the Bolivarian Agreement of 1911, Article 18, which is framed in the following terms :

> "Aside from the stipulations of the present Agreement, the signatory States recognize the institution of asylum in conformity with the principles of international law."

In recognizing "the institution of asylum", this article merely refers to the principles of international law. But the principles of international law do not recognize any rule of unilateral and definitive qualification by the State granting diplomatic asylum.

The Colombian Government has also relied on Article 4 of this Agreement concerning extradition of a criminal refugee from the territory of the State in which he has sought refuge. The arguments submitted in this respect reveal a confusion between territorial asylum (extradition), on the one hand, and diplomatic asylum, on the other.

In the case of extradition, the refugee is within the territory of the State of refuge. A decision with regard to extradition implies only the normal exercise of the territorial sovereignty. The refugee is outside the territory of the State where the offence was committed, and a decision to grant him asylum in no way derogates from the sovereignty of that State.

In the case of diplomatic asylum, the refugee is within the territory of the State where the offence was committed. A decision to grant diplomatic asylum involves a derogation from the

sovereignty of that State. It withdraws the offender from the jurisdiction of the territorial State and constitutes an intervention in matters which are exclusively within the competence of that State. Such a derogation from territorial sovereignty cannot be recognized unless its legal basis is established in each particular case.

For these reasons, it is not possible to deduce from the provisions of agreements concerning extradition any conclusion which would apply to the question now under consideration.

The Colombian Government further relies on the Havana Convention on Asylum of 1928. This Convention lays down certain rules relating to diplomatic asylum, but does not contain any provision conferring on the State granting asylum a unilateral competence to qualify the offence with definitive and binding force for the territorial State. The Colombian Government contends, however, that such a competence is implied in that Convention and is inherent in the institution of asylum.

A competence of this kind is of an exceptional character. It involves a derogation from the equal rights of qualification which, in the absence of any contrary rule, must be attributed to each of the States concerned; it thus aggravates the derogation from territorial sovereignty constituted by the exercise of asylum. Such a competence is not inherent in the institution of diplomatic asylum. This institution would perhaps be more effective if a rule of unilateral and definitive qualification were applied. But such a rule is not essential to the exercise of asylum.

These considerations show that the alleged right of unilateral and definitive qualification cannot be regarded as recognized by implication in the Havana Convention. Moreover, this Convention, in pursuance of the desire expressed in its preamble of "fixing the rules" which the Governments of the States of America must observe for the granting of asylum, was concluded with the manifest intention of preventing the abuses which had arisen in the previous practice, by limiting the grant of asylum. It did so in a number of ways and in terms which are unusually restrictive and emphatic ("It is not permissible for States...."; "Asylum may not be granted except in urgent cases and for the period of time strictly indispensable...", etc.).

The Colombian Government has invoked Article 2, paragraph 1, of the Havana Convention, which is framed in the following terms:

> "Asylum granted to political offenders in legations, warships, military camps or military aircraft, shall be respected to the extent in which allowed as a right or through humanitarian toleration, by the usages, the conventions or the laws of the country in which granted and in accordance with the following provisions:"

This provision has been interpreted by that Government in the sense that the usages, conventions and laws of Colombia relating to the qualification of the offence can be invoked against Peru. This interpretation, which would mean that the extent of the obligation of one of the signatory States would depend upon any modifications which might occur in the law of another, cannot be accepted. The provision must be regarded as a limitation of the extent to which asylum shall be respected. What the provision says in effect is that the State of refuge shall not exercise asylum to a larger extent than is warranted by its own usages, conventions or laws and that the asylum granted must be respected by the territorial State only where such asylum would be permitted according to the usages, conventions or laws of the State of refuge. Nothing therefore can be deduced from this provision in so far as qualification is concerned.

The Colombian Government has further referred to the Montevideo Convention on Political Asylum of 1933. It was in fact this Convention which was invoked in the note of January 14th, 1949, from the Colombian Ambassador to the Peruvian Minister for Foreign Affairs. It is argued that, by Article 2 of that Convention, the Havana Convention of 1928 is interpreted in the sense that the qualification of a political offence appertains to the State granting asylum. Articles 6 and 7 of the Montevideo Convention provide that it shall be ratified and will enter into force as and when the ratifications are deposited. The Montevideo Convention has not been ratified by Peru, and cannot be invoked against that State. The fact that it was considered necessary to incorporate in that Convention an article accepting the right of unilateral qualification, seems to indicate that this solution was regarded as a new rule not recognized by the Havana Convention. Moreover, the preamble of the Montevideo Convention states in its Spanish, French and Portuguese texts that it modifies the Havana Convention. It cannot therefore be considered as representing merely an interpretation of that Convention.

The Colombian Government has finally invoked "American international law in general". In addition to the rules arising from agreements which have already been considered, it has relied on an alleged regional or local custom peculiar to Latin-American States.

The Party which relies on a custom of this kind must prove that this custom is established in such a manner that it has become binding on the other Party. The Colombian Government must prove that the rule invoked by it is in accordance with a constant and uniform usage practised by the States in question, and that this usage is the expression of a right appertaining to the State granting asylum and a duty incumbent on the territorial State. This follows from Article 38 of the Statute of the Court, which refers to

international custom "as evidence of a general practice accepted as law".

In support of its contention concerning the existence of such a custom, the Colombian Government has referred to a large number of extradition treaties which, as already explained, can have no bearing on the question now under consideration. It has cited conventions and agreements which do not contain any provision concerning the alleged rule of unilateral and definitive qualification such as the Montevideo Convention of 1889 on international penal law, the Bolivarian Agreement of 1911 and the Havana Convention of 1928. It has invoked conventions which have not been ratified by Peru, such as the Montevideo Conventions of 1933 and 1939. The Convention of 1933 has, in fact, been ratified by not more than eleven States and the Convention of 1939 by two States only.

It is particularly the Montevideo Convention of 1933 which Counsel for the Colombian Government has also relied on in this connexion. It is contended that this Convention has merely codified principles which were already recognized by Latin-American custom, and that it is valid against Peru as a proof of customary law. The limited number of States which have ratified this Convention reveals the weakness of this argument, and furthermore, it is invalidated by the preamble which states that this Convention modifies the Havana Convention.

Finally, the Colombian Government has referred to a large number of particular cases in which diplomatic asylum was in fact granted and respected. But it has not shown that the alleged rule of unilateral and definitive qualification was invoked or—if in some cases it was in fact invoked—that it was, apart from conventional stipulations, exercised by the States granting asylum as a right appertaining to them and respected by the territorial States as a duty incumbent on them and not merely for reasons of political expediency. The facts brought to the knowledge of the Court disclose so much uncertainty and contradiction, so much fluctuation and discrepancy in the exercise of diplomatic asylum and in the official views expressed on various occasions, there has been so much inconsistency in the rapid succession of conventions on asylum, ratified by some States and rejected by others, and the practice has been so much influenced by considerations of political expediency in the various cases, that it is not possible to discern in all this any constant and uniform usage, accepted as law, with regard to the alleged rule of unilateral and definitive qualification of the offence.

The Court cannot therefore find that the Colombian Government has proved the existence of such a custom. But even if it could be supposed that such a custom existed between certain Latin-American States only, it could not be invoked against Peru which, far

from having by its attitude adhered to it, has, on the contrary, repudiated it by refraining from ratifying the Montevideo Conventions of 1933 and 1939, which were the first to include a rule concerning the qualification of the offence in matters of diplomatic asylum.

In the written Pleadings and during the oral proceedings, the Government of Colombia relied upon official communiqués published by the Peruvian Ministry of Foreign Affairs on October 13th and 26th, 1948, and the Government of Peru relied upon a Report of the Advisory Committee of the Ministry of Foreign Affairs of Colombia dated September 2nd, 1937; on the question of qualification, these documents state views which are contrary to those now maintained by these Governments. The Court, whose duty it is to apply international law in deciding the present case, cannot attach decisive importance to any of these documents.

For these reasons, the Court has arrived at the conclusion that Colombia, as the State granting asylum, is not competent to qualify the offence by a unilateral and definitive decision, binding on Peru.

* * *

In its second submission, the Colombian Government asks the Court to adjudge and declare:

> "That the Republic of Peru, as the territorial State, is bound in the case now before the Court, to give the guarantees necessary for the departure of M. Víctor Raúl Haya de la Torre from the country, with due regard to the inviolability of his person."

This alleged obligation of the Peruvian Government does not entirely depend on the answer given to the first Colombian submission relating to the unilateral and definitive qualification of the offence. It follows from the first two articles of the Havana Convention that, even if such a right of qualification is not admitted, the Colombian Government is entitled to request a safe-conduct under certain conditions.

The first condition is that asylum has been regularly granted and maintained. It can be granted only to political offenders who are not accused or condemned for common crimes and only in urgent cases and for the time strictly indispensable for the safety of the refugee. These points relate to the Peruvian counterclaim and will be considered later to the extent necessary for the decision of the present case.

The second condition is laid down in Article 2 of the Havana Convention:

"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 asylum may in turn require the guarantees necessary for the departure of the refugee from the country with due regard to the inviolability of his person."

If regard is had, on the one hand, to the structure of this provision which indicates a successive order, and, on the other hand, to the natural and ordinary meaning of the words "in turn", this provision can only mean that the territorial State may require that the refugee be sent out of the country, and that only after such a demand can the State granting asylum require the necessary guarantees as a condition of his being sent out. The provision gives, in other words, the territorial State an option to require the departure of the refugee, and that State becomes bound to grant a safe-conduct only if it has exercised this option.

A contrary interpretation would lead, in the case now before the Court, to the conclusion that Colombia would be entitled to decide alone whether the conditions provided by Articles 1 and 2 of the Convention for the regularity of asylum are fulfilled. Such a consequence obviously would be incompatible with the legal situation created by the Convention.

There exists undoubtedly a practice whereby the diplomatic representative who grants asylum immediately requests a safe-conduct without awaiting a request from the territorial State for the departure of the refugee. This procedure meets certain requirements: the diplomatic agent is naturally desirous that the presence of the refugee on his premises should not be prolonged; and the government of the country, for its part, desires in a great number of cases that its political opponent who has obtained asylum should depart. This concordance of views suffices to explain the practice which has been noted in this connexion, but this practice does not and cannot mean that the State, to whom such a request for a safe-conduct has been addressed, is legally bound to accede to it.

In the present case, the Peruvian Government has not requested that Haya de la Torre should leave Peru. It has contested the legality of the asylum granted to him and has refused to deliver a safe-conduct. In such circumstances the Colombian Government is not entitled to claim that the Peruvian Government should give the guarantees necessary for the departure of Haya de la Torre from the country, with due regard to the inviolability of his person.

* * *

The counter-claim of the Government of Peru was stated in its final form during the oral statement of October 3rd, 1950, in the following terms:

"MAY IT PLEASE THE COURT:

To adjudge and declare as a counter-claim under Article 63 of the Rules of Court, and in the same decision, that the grant of asylum by the Colombian Ambassador at Lima to Víctor Raúl Haya de la Torre was made in violation of Article 1, paragraph 1, and Article 2, paragraph 2, item 1 *(inciso primero)*, of the Convention on Asylum signed in 1928, and that in any case the maintenance of the asylum constitutes at the present time a violation of that treaty."

As has already been pointed out, the last part of this sentence: "and that in any case the maintenance of the asylum constitutes at the present time a violation of that treaty", did not appear in the counter-claim presented by the Government of Peru in the Counter-Memorial. The addition was only made during the oral proceedings. The Court will first consider the counter-claim in its original form.

This counter-claim is intended, in substance, to put an end to the dispute by requesting the Court to declare that asylum was wrongfully given, the grant of asylum being contrary to certain provisions of the Havana Convention. The object of the counter-claim is simply to define for this purpose the legal relations which that Convention has established between Colombia and Peru. The Court observes in this connexion that the question of the possible surrender of the refugee to the territorial authorities is in no way raised in the counter-claim. It points out that the Havana Convention, which provides for the surrender to those authorities of persons accused of or condemned for common crimes, contains no similar provision in respect of political offenders. The Court notes, finally, that this question was not raised either in the diplomatic correspondence submitted by the Parties or at any moment in the proceedings before the Court, and in fact the Government of Peru has not requested that the refugee should be surrendered.

It results from the final submissions of the Government of Colombia, as formulated before the Court on October 6th, 1950, that that Government did not contest the jurisdiction of the Court in respect of the original counter-claim; it did so only in respect of the addition made during the oral proceedings. On the other hand, relying upon Article 63 of the Rules of Court, the Government of Colombia has disputed the admissibility of the counter-claim by arguing that it is not directly connected with the subject-matter of the Application. In its view, this lack of connexion results from the fact that the counter-claim raises new problems and thus tends to shift the grounds of the dispute.

The Court is unable to accept this view. It emerges clearly from the arguments of the Parties that the second submission of the Government of Colombia, which concerns the demand for a safe-conduct, rests largely on the alleged regularity of the asylum, which is precisely what is disputed by the counter-claim. The connexion is so direct that certain conditions which are required to exist before a safe-conduct can be demanded depend precisely on facts

which are raised by the counter-claim. The direct connexion being thus clearly established, the sole objection to the admissibility of the counter-claim in its original form is therefore removed.

Before examining the question whether the counter-claim is well founded, the Court must state in precise terms what meaning it attaches to the words "the grant of asylum" which are used therein. The grant of asylum is not an instantaneous act which terminates with the admission, at a given moment, of a refugee to an embassy or a legation. Any grant of asylum results in, and in consequence logically implies, a state of protection ; the asylum is granted as long as the continued presence of the refugee in the embassy prolongs this protection. This view, which results from the very nature of the institution of asylum, is further confirmed by the attitude of the Parties during this case. The counter-claim, as it appears in the Counter-Memorial of the Government of Peru, refers expressly to Article 2, paragraph 2, of the Havana Convention, which provides that asylum may not be granted except "for the period of time strictly indispensable". Such has also been the view of the Government of Colombia ; its Reply shows that, in its opinion, as in that of the Government of Peru, the reference to the above-mentioned provision of the Havana Convention raises the question of "the duration of the refuge".

The Government of Peru has based its counter-claim on two different grounds which correspond respectively to Article 1, paragraph 1, and Article 2, paragraph 2, of the Havana Convention.

Under Article 1, paragraph 1, "It is not permissible for States to grant asylum .... to persons accused or condemned for common crimes....". The onus of proving that Haya de la Torre had been accused or condemned for common crimes before the grant of asylum rested upon Peru.

The Court has no difficulty in finding, in the present case, that the refugee was an "accused person" within the meaning of the Havana Convention, inasmuch as the evidence presented by the Government of Peru appears conclusive in this connexion. It can hardly be agreed that the term "accused" occurring in a multilateral treaty such as that of Havana has a precise and technical connotation, which would have the effect of subordinating the definition of "accused" to the completion of certain strictly prescribed steps in procedure, which might differ from one legal system to another.

On the other hand, the Court considers that the Government of Peru has not proved that the acts of which the refugee was accused before January 3rd/4th, 1949, constitute common crimes. From the point of view of the application of the Havana Convention, it is the terms of the accusation, as formulated by the legal authorities before the grant of asylum, that must alone be considered. As has been shown in the recital of the facts, the sole accusation contained in all the documents emanating from the Peruvian legal authorities

is that of military rebellion, and the Government of Peru has not established that military rebellion in itself constitutes a common crime. Article 248 of the Peruvian Code of Military Justice of 1939 even tends to prove the contrary, for it makes a distinction between military rebellion and common crimes by providing that: "Common crimes committed during the course of, and in connexion with, a rebellion, shall be punishable in conformity with the laws, irrespective of the rebellion."

These considerations lead to the conclusion that the first objection made by the Government of Peru against the asylum is not justified and that on this point the counter-claim is not well founded and must be dismissed.

The Government of Peru relies, as a second basis for its counter-claim, upon the alleged disregard of Article 2, paragraph 2, of the Havana Convention, which provides as follows: "Asylum may not be granted except in urgent cases and for the period of time strictly indispensable for the person who has sought asylum to ensure in some other way his safety."

Before proceeding to an examination of this provision, the Court considers it necessary to make the following remark concerning the Havana Convention in general and Article 2 in particular.

The object of the Havana Convention, which is the only agreement relevant to the present case, was, as indicated in its preamble, to fix the rules which the signatory States must observe for the granting of asylum in their mutual relations. The intention was, as has been stated above, to put an end to the abuses which had arisen in the practice of asylum and which were likely to impair its credit and usefulness. This is borne out by the wording of Articles 1 and 2 of the Convention which is at times prohibitive and at times clearly restrictive.

Article 2 refers to asylum granted to political offenders and lays down in precise terms the conditions under which asylum granted to such offenders shall be respected by the territorial State. It is worthy of note that all these conditions are designed to give guarantees to the territorial State and appear, in the final analysis, as the consideration for the obligation which that State assumes to respect asylum, that is, to accept its principle and its consequences as long as it is regularly maintained.

At the head of the list of these conditions appears Article 2, paragraph 2, quoted above. It is certainly the most important of them, the essential justification for asylum being in the imminence or persistence of a danger for the person of the refugee. It was incumbent upon the Government of Colombia to submit proof of facts to show that the above-mentioned condition was fulfilled.

It has not been disputed by the Parties that asylum may be granted on humanitarian grounds in order to protect political offenders against the violent and disorderly action of irresponsible

sections of the population. It has not been contended by the Government of Colombia that Haya de la Torre was in such a situation at the time when he sought refuge in the Colombian Embassy at Lima. At that time, three months had elapsed since the military rebellion. This long interval gives the present case a very special character. During those three months, Haya de la Torre had apparently been in hiding in the country, refusing to obey the summons to appear of the legal authorities which was published on November 16th/18th, 1948, and refraining from seeking asylum in the foreign embassies where several of his co-accused had found refuge before these dates. It was only on January 3rd, 1949, that he sought refuge in the Colombian Embassy. The Court considers that, *prima facie*, such circumstances make it difficult to speak of urgency.

The diplomatic correspondence between the two Governments does not indicate the nature of the danger which was alleged to threaten the refugee. Likewise, the Memorial of the Government of Colombia confines itself to stating that the refugee begged the Ambassador to grant him the diplomatic protection of asylum as his freedom and life were in jeopardy. It is only in the written Reply that the Government of Colombia described in more precise terms the nature of the danger against which the refugee intended to request the protection of the Ambassador. It was then claimed that this danger resulted in particular from the abnormal political situation existing in Peru, following the state of siege proclaimed on October 4th, 1948, and renewed successively on November 2nd, December 2nd, 1948, and January 2nd, 1949; that it further resulted from the declaration of "a state of national crisis" made on October 25th, 1948, containing various statements against the American People's Revolutionary Alliance of which the refugee was the head; from the outlawing of this Party by the decree of October 4th, 1948; from the Order issued by the acting Examining Magistrate for the Navy on November 13th, 1948, requiring the defaulters to be cited by public summons; from the decree of November 4th, 1948, providing for Courts-Martial to judge summarily, with the option of increasing the penalties and without appeal, the authors, accomplices and others responsible for the offences of rebellion, sedition or mutiny.

From these facts regarded as a whole the nature of the danger now becomes clear, and it is upon the urgent character of such a danger that the Government of Colombia seeks to justify the asylum—the danger of political justice by reason of the subordination of the Peruvian judicial authorities to the instructions of the Executive.

It is therefore necessary to examine whether, and, if so, to what extent, a danger of this kind can serve as a basis for asylum.

In principle, it is inconceivable that the Havana Convention could have intended the term "urgent cases" to include the danger of regular prosecution to which the citizens of any country lay themselves open by attacking the institutions of that country ; nor can it be admitted that in referring to "the period of time strictly indispensable for the person who has sought asylum to ensure in some other way his safety", the Convention envisaged protection from the operation of regular legal proceedings.

It would be useless to seek an argument to the contrary in Article 1 of the Havana Convention which forbids the grant of asylum to persons "accused or condemned for common crimes" and directs that such persons shall be surrendered immediately upon request of the local government. It is not possible to infer from that provision that, because a person is accused of political offences and not of common crimes, he is, by that fact alone, entitled to asylum. It is clear that such an inference would disregard the requirements laid down by Article 2, paragraph 2, for the grant of asylum to political offenders.

In principle, therefore, asylum cannot be opposed to the operation of justice. An exception to this rule can occur only if, in the guise of justice, arbitrary action is substituted for the rule of law. Such would be the case if the administration of justice were corrupted by measures clearly prompted by political aims. Asylum protects the political offender against any measures of a manifestly extra-legal character which a government might take or attempt to take against its political opponents. The word "safety", which in Article 2, paragraph 2, determines the specific effect of asylum granted to political offenders, means that the refugee is protected against arbitrary action by the government, and that he enjoys the benefits of the law. On the other hand, the safety which arises out of asylum cannot be construed as a protection against the regular application of the laws and against the jurisdiction of legally constituted tribunals. Protection thus understood would authorize the diplomatic agent to obstruct the application of the laws of the country whereas it is his duty to respect them ; it would in fact become the equivalent of an immunity, which was evidently not within the intentions of the draftsmen of the Havana Convention.

It is true that successive decrees promulgated by the Government of Peru proclaimed and prolonged a state of siege in that country ; but it has not been shown that the existence of a state of siege implied the subordination of justice to the executive authority, or that the suspension of certain constitutional guarantees entailed the abolition of judicial guarantees. As for the decree of November 4th, 1948, providing for Courts-Martial, it contained no indication which might be taken to mean that the new provisions would apply retroactively to offences committed prior to the publication of the said decree. In fact, this decree was not applied to the legal proceedings against Haya de la Torre, as appears from the foregoing recital

of the facts. As regards the future, the Court places on record the following declaration made on behalf of the Peruvian Government :

> "The decree in question is dated November 4th, 1948, that is, it was enacted one month after the events which led to the institution of proceedings against Haya de la Torre. This decree was intended to apply to crimes occurring after its publication, and nobody in Peru would ever have dreamed of utilizing it in the case to which the Colombian Government clumsily refers, since the principle that laws have no retroactive effect, especially in penal matters, is broadly admitted in that decree. If the Colombian Government's statement on this point were true, the Peruvian Government would never have referred this case to the International Court of Justice."

This declaration, which appears in the Rejoinder, was confirmed by the Agent for the Government of Peru in his oral statement of October 2nd, 1950.

The Court cannot admit that the States signatory to the Havana Convention intended to substitute for the practice of the Latin-American republics, in which considerations of courtesy, good-neighbourliness and political expediency have always held a prominent place, a legal system which would guarantee to their own nationals accused of political offences the privilege of evading national jurisdiction. Such a conception, moreover, would come into conflict with one of the most firmly established traditions of Latin America, namely, non-intervention. It was at the Sixth Pan-American Conference of 1928, during which the Convention on Asylum was signed, that the States of Latin America declared their resolute opposition to any foreign political intervention. It would be difficult to conceive that these same States had consented, at the very same moment, to submit to intervention in its least acceptable form, one which implies foreign interference in the administration of domestic justice and which could not manifest itself without casting some doubt on the impartiality of that justice.

Indeed the diplomatic correspondence between the two Governments shows the constant anxiety of Colombia to remain, in this field as elsewhere, faithful to the tradition of non-intervention. Colombia did not depart from this attitude, even when she found herself confronted with an emphatic declaration by the Peruvian Minister for Foreign Affairs asserting that the tribunal before which Haya de la Torre had been summoned to appear was in conformity with the general and permanent organization of Peruvian judicial administration and under the control of the Supreme Court. This assertion met with no contradiction or reservation on the part of Colombia. It was only much later, following the presentation of the Peruvian counter-claim, that the Government of Colombia chose,

in the Reply and during the oral proceedings, to transfer the defence of asylum to a plane on which the Havana Convention, interpreted in the light of the most firmly established traditions of Latin America, could provide it with no foundation.

The foregoing considerations lead us to reject the argument that the Havana Convention was intended to afford a quite general protection of asylum to any person prosecuted for political offences, either in the course of revolutionary events, or in the more or less troubled times that follow, for the sole reason that it must be assumed that such events interfere with the administration of justice. It is clear that the adoption of such a criterion would lead to foreign interference of a particularly offensive nature in the domestic affairs of States; besides which, no confirmation of this criterion can be found in Latin-American practice, as this practice has been explained to the Court.

In thus expressing itself, the Court does not lose sight of the numerous cases of asylum which have been cited in the Reply of the Government of Colombia and during the oral statements. In this connexion, the following observations should be made:

In the absence of precise data, it is difficult to assess the value of such cases as precedents tending to establish the existence of a legal obligation upon a territorial State to recognize the validity of asylum which has been granted against proceedings instituted by local judicial authorities. The facts which have been laid before the Court show that in a number of cases the persons who have enjoyed asylum were not, at the moment at which asylum was granted, the object of any accusation on the part of the judicial authorities. In a more general way, considerations of convenience or simple political expediency seem to have led the territorial State to recognize asylum without that decision being dictated by any feeling of legal obligation.

If these remarks tend to reduce considerably the value as precedents of the cases of asylum cited by the Government of Colombia, they show, none the less, that asylum as practised in Latin America is an institution which, to a very great extent, owes its development to extra-legal factors. The good-neighbour relations between the republics, the different political interests of the governments, have favoured the mutual recognition of asylum apart from any clearly defined juridical system. Even if the Havana Convention, in particular, represents an indisputable reaction against certain abuses in practice, it in no way tends to limit the practice of asylum as it may arise from agreements between interested governments inspired by mutual feelings of toleration and goodwill.

In conclusion, on the basis of the foregoing observations and considerations, the Court considers that on January 3rd/4th, 1949, there did not exist a danger constituting a case of urgency within the meaning of Article 2, paragraph 2, of the Havana Convention.

This finding implies no criticism of the Ambassador of Colombia. His decision to receive the refugee on the evening of January 3rd, 1949, may have been taken without the opportunity of lengthy reflection; it may have been influenced as much by the previous grant of safe-conducts to persons accused together with Haya de la Torre as by the more general consideration of recent events in Peru; these events may have led him to believe in the existence of urgency. But this subjective appreciation is not the relevant element in the decision which the Court is called upon to take concerning the validity of the asylum; the only important question to be considered here is the objective existence of the facts, and it is this which must determine the decision of the Court.

The notes of the Ambassador of Colombia of January 14th and February 12th, 1949, reflect the attitude of the Government towards the asylum granted by its Ambassador. The first of these confirms the asylum and claims to justify its grant by a unilateral qualification of the refugee. The second formulates a demand for a safe-conduct with a view to permitting the departure of the refugee, and has based this demand expressly on the "international obligations" alleged to be binding on the Government of Peru. In thus expressing itself, the Government of Colombia definitively proclaimed its intention of protecting Haya de la Torre, in spite of the existence of proceedings instituted against him for military rebellion. It has maintained this attitude and this protection by continuing to insist on the grant of a safe-conduct, even when the Minister for Foreign Affairs of Peru referred to the existence of "a judicial prosecution, instituted by the sovereign power of the State" against the refugee (notes of the Minister for Foreign Affairs of Peru of March 19th, 1949; of the Ambassador of Colombia of March 28th, 1949).

Thus, it is clearly apparent from this correspondence that the Court, in its appraisal of the asylum, cannot be confined to the date of January 3rd/4th, 1949, as the date on which it was granted. The grant, as has been stated above, is inseparable from the protection to which it gives rise—a protection which has here assumed the form of a defence against legal proceedings. It therefore results that asylum has been granted for as long as the Government of Colombia has relied upon it in support of its request for a safe-conduct.

The Court is thus led to find that the grant of asylum from January 3rd/4th, 1949, until the time when the two Governments agreed to submit the dispute to its jurisdiction, has been prolonged for a reason which is not recognized by Article 2, paragraph 2, of the Havana Convention.

This finding renders superfluous the addition to the counter-claim submitted during the oral proceedings and worded as follows : "and that in any case the maintenance of the asylum constitutes at the present time a violation of that treaty". This part of the submission, as finally worded by the Government of Peru, was intended as a substitution for the counter-claim in its original form if the latter were rejected : it disappears with the allowance of this counter-claim. Hence it will not be necessary for the Court to consider either the objection on the ground of lack of jurisdiction or the objections on the grounds of inadmissibility which the Government of Colombia has based on an alleged disregard of Article 63 of the Rules of Court or to consider the merits of the claim thus submitted by the Government of Peru.

FOR THESE REASONS,

THE COURT,

on the submissions of the Government of Colombia,

by fourteen votes to two,

Rejects the first submission in so far as it involves a right for Colombia, as the country granting asylum, to qualify the nature of the offence by a unilateral and definitive decision, binding on Peru ;

by fifteen votes to one,

Rejects the second submission ;

on the counter-claim of the Government of Peru,

by fifteen votes to one,

Rejects it in so far as it is founded on a violation of Article 1, paragraph 1, of the Convention on Asylum signed at Havana in 1928 ;

by ten votes to six,

Finds that the grant of asylum by the Colombian Government to Víctor Raúl Haya de la Torre was not made in conformity with Article 2, paragraph 2 ("First"), of that Convention.

Done in French and English, the French text being authoritative, at the Peace Palace, The Hague, this twentieth day of November, one thousand nine hundred and fifty, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Governments of the Republic of Colombia and of the Republic of Peru respectively.

(Signed) BASDEVANT,
President.

(Signed) GARNIER-COIGNET,
Deputy-Registrar.

Judges ALVAREZ, BADAWI PASHA, READ and AZEVEDO, and M. CAICEDO, Judge *ad hoc*, declaring that they are unable to concur in certain points of the Judgment of the Court, have availed themselves of the right conferred on them by Article 57 of the Statute and appended to the Judgment statements of their dissenting opinions.

Judge ZORIČIĆ, whilst accepting the first three points of the operative part of the Judgment and the reasons given in support, regrets to state that he is unable to agree with the last point of the operative part, as he considers that asylum was granted in conformity with Article 2, paragraph 2, of the Havana Convention. On this point he shares the views expressed by Judge Read in his dissenting opinion.

(Initialled) J. B.
(Initialled) G.-C.

ANNEX

LIST OF DOCUMENTS SUBMITTED TO THE COURT

I.—ANNEXES DEPOSITED DURING THE WRITTEN PROCEEDINGS

A.—BY THE GOVERNMENT OF COLOMBIA

(a) *Annexes to the Memorial:*

1.—1949, January 4th. No. 2/1. Letter from the Ambassador of Colombia at Lima to the Peruvian Minister for Foreign Affairs and Religion.

2.—1949, January 14th. No. 8/2. Letter from the Ambassador of Colombia at Lima to the Peruvian Minister for Foreign Affairs and Religion.

3.—1949, February 12th. No. 2/64. Letter from the Ambassador of Colombia at Lima to the Peruvian Minister for Foreign Affairs and Religion.

4.—1949, February 22nd. No. (D) 6-8/2. Letter from the Peruvian Minister for Foreign Affairs and Religion to the Ambassador of Colombia at Lima.

5.—1949, March 4th. No. 40/6. Letter from the Ambassador of Colombia at Lima to the Peruvian Minister for Foreign Affairs and Religion.

6.—1949, March 19th. No. (D) 6-8/4. Letter from the Peruvian Minister for Foreign Affairs and Religion to the Ambassador of Colombia at Lima.

7.—1949, March 28th. No. 73/9. Letter from the Ambassador of Colombia at Lima to the Peruvian Minister for Foreign Affairs and Religion.

8.—1949, April 6th. No. (D) 6-8/6. Letter from the Peruvian Minister for Foreign Affairs and Religion to the Ambassador of Colombia at Lima.

9.—1949. April 7th. Statements given to the press by the Colombian Minister for Foreign Affairs.

10.—1949, April 29th. No. (S) 6-8/7. Letter from the Peruvian Minister for Foreign Affairs and Religion to the Ambassador of Colombia at Lima.

11.—The Act of Lima, dated August 31st, 1949.

12.—1949, August 31st. Letter from the Special Plenipotentiary of Colombia at Lima to the Peruvian Special Plenipotentiary.

13.—1949, August 31st. No. (D) 6-8/14. Letter from the Peruvian Special Plenipotentiary to the Special Plenipotentiary of Colombia at Lima.

14.—1949, August 31st. No. 300/36. Letter from the Ambassador of Colombia to the Peruvian Minister for Foreign Affairs and Religion.

15.—1949, September 1st. Letter from the Peruvian Minister for Foreign Affairs and Religion to the Ambassador of Colombia at Lima.

16.—1944, October 20th. Letter from the Peruvian Legation at Guatemala to the Military Junta of the Government.

17.—1948, October 28th. No. 5-20 M/34. Letter from the Peruvian Legation at Panama to the Minister for Foreign Affairs.

18.—Extract from the Treaty on Private International Law, signed at the Junta of American jurists which met at Lima in 1879.

19.—Extract from the Treaty on International Penal Law, signed at the 1st South-American Congress on Private International Law which met at Montevideo in 1889.

20.—Bolivarian Agreement on Extradition, signed at Caracas on July 18th, 1911.

21.—Convention on Asylum, signed at the VIth Pan-American Conference.

22.—Convention on Political Asylum, signed at the VIIth Pan-American Conference.

23.—Extract from the Treaty on Asylum and Political Refuge, signed at the IInd South-American International Law Congress which met at Montevideo in 1939.

24.—Excerpt from the American Declaration on the Rights and Duties of Man, adopted at the IXth Pan-American Conference.

25.—Extract from the Universal Declaration on Human Rights, adopted by the General Assembly of the U.N. on December 10th, 1948.

(b) *Annexes to the Reply:*

1.—Documents concerning the asylum of MM. Manuel Gutiérrez Aliaga and Luis Felipe Rodriguez in the Uruguayan Embassy at Lima and the safe-conducts granted to them by the Peruvian Government (five notes listed from A to E).

2.—Decree No. 4 of November 4th, 1948, creating a Court Martial for the summary judgment of authors, accomplices and other persons responsible for rebellion, sedition or rioting.

B.—By the Government of Peru

(a) *Annexes to the Counter-Memorial:*

1.—The Lima Act of August 31st, 1949 (cf. Annex No. 1).

2.—The Public Prosecutor's indictment, dated September 7th, 1949, in the proceedings concerning the crime of military rebellion and other crimes (cf. Annexes Nos. 2, 4, 25).

3.—Folios 105 to 145 of Folder 8-A in the proceedings concerning the crime of military rebellion and other crimes, containing the report of the Deputy-Inspector, head of the Bureau for special cases, on the malicious damage caused to the Central Telephone Exchange (cf. Annex No. 3).

4.—Copy of *El Peruano*, the Peruvian official gazette, of October 4th, 1948 (cf. Annexes Nos. 4 and 32).

5.—Folios 27, 31 and 196 of Folder 10-A in the proceedings concerning the crime of military rebellion and other crimes, containing the indictment, the inspection by eye-witnesses and the experts' report on the explosives found at San Isidro (cf. Annex No. 5).

6.—Folio 708 of Folder 10-B of the proceedings concerning the crime of military rebellion and other crimes, containing note No. 290, of October 3rd, 1948, to the Inspector-General, head of the Investigations and Surveillance Service, on the bombs found in a taxi (cf. Annex No. 6).

7.—Note of October 4th, 1948, to the Inspector-General, head of the Investigations and Surveillance Service, concerning a dynamite bomb found in the garden of the house of the secretary of the Telephone Company; Folder 10-A in the proceedings concerning the crime of military rebellion and other crimes (cf. Annex No. 7).

8.—Folios 219 *et sqq.* of Folder 10-A in the proceedings concerning the crime of military rebellion and other crimes, containing Report No. 312, of October 5th, 1948, to the Deputy-Inspector, head of the Secretariat, on the explosion of bombs on the roofs of buildings (cf. Annex No. 8).

9.—Folio 501 of Folder 10-B in the proceedings concerning the crime of military rebellion and other crimes, containing communiqué No. 201, of October 4th, 1948, addressed to the Inspector-General, head of the Investigations and Surveillance Service, on the damage caused to a branch of the People's Bank of Peru (cf. Annex No. 9).

10.—Folios 215 to 217 of Folder 10-A in the proceedings concerning the crime of military rebellion and other crimes, containing note No. 465, of October 4th, 1948, and the report No. 1309, of October 14th, 1948, addressed to the Inspector-General, head of the Investigations and Surveillance Service, on the dynamite cartridges placed near a petrol pump (cf. Annex No. 10), and note No. 211-R/Ia, addressed to the said inspector-general in regard to bombs found near a barracks (cf. Annex No. 24).

11.—Folios 516 *et sqq.* of Folder 10-B in the proceedings concerning the crime of military rebellion and other crimes, containing the documents relating to the bombs placed in the party wall of a glass factory (cf. Annex No. 11).

12.—Folios 509 *et sqq.* of Folder 10-B in the proceedings concerning the crime of military rebellion and other crimes, containing documents relating to the dynamite bombs found in the garden of a house at Miraflores (cf. Annex No. 12).

13.—Folios 523 *et sqq.* of Folder 10-B in the proceedings concerning the crime of military rebellion and other crimes, containing various documents relating to the bombs which exploded on the public highway, injuring passers-by (cf. Annex No. 13).

14.—Folio 703 of Folder 10-B in the proceedings concerning the crime of military rebellion and other crimes, containing various documents relating to the bomb and the incendiary bottle placed in the doorway of a grocer's shop (cf. Annex No. 14).

15.—Folios 221 to 223 of Folder 10-A in the proceedings concerning the crime of military rebellion and other crimes, containing various documents relating to the bomb found near the printing works of the newspaper *El Comercio* (cf. Annex No. 15).

16.—Folios 512 *et sqq.* of Folder 10-B in the proceedings concerning the crime of military rebellion and other crimes, containing various documents relating to the bombs thrown at a house (cf. Annex No. 16), and the bomb found at the foot of the wall of a barracks (cf. Annex No. 22).

17.—Folios 203 to 205, and overleaf, of Folder 10-A in the proceedings concerning the crime of military rebellion and other crimes, containing various documents relating to a bomb placed on the tramway (cf. Annex No. 17).

18.—Folder 210 of Folder 10-A in the proceedings concerning the crime of military rebellion and other crimes, containing documents relating to the bomb found in a motor bus (cf. Annex No. 18).

19.—Folio 229 of Folder 10-A in the proceedings concerning the crime of military rebellion and other crimes, containing documents relating to the gelignite cartridge found in the premises of the daily paper *La Prensa* (cf. Annex No. 19).

20.—Folios 201 and 202 of Folder 10-A in the proceedings concerning the crime of military rebellion and other crimes, containing various documents relating to the twenty-eight dynamite bombs found on the roof of an hotel (cf. Annex No. 20).

21.—Folios 740 *et sqq.* of Folder 10-B in the proceedings concerning the crime of military rebellion and other crimes, containing various documents concerning the bomb, hidden in the coal, which exploded in a kitchen range (cf. Annex No. 21).

22.—Folio 700 of Folder 10-B in the proceedings concerning the crime of military rebellion and other crimes, containing various documents relating to bombs found on the roof of a house adjoining the workshops of the Telephone Company (cf. Annex No. 23).

23.—Folios 21 and 22 of Folder 11-A in the proceedings concerning the crime of military rebellion and other crimes, containing a list of documents and exhibits transmitted by the Prefecture to the judicial department of the Navy with a view to their being attached to the prosecution opened in regard to the subversive movement of October 3rd, 1948 (cf. Annexes Nos. 25 and 57).

24.—Folios 96 to 98 of Folio 8-A in the proceedings concerning the crime of military rebellion and other crimes, containing Report No. 55 of October 8th, 1948, on the manufacture of explosives in a kitchen stove factory (cf. Annex No. 26).

25.—Folios 90 *et sqq.* of Folder 8-A in the proceedings concerning the crime of military rebellion and other crimes, containing the report of the assistant chief of the Investigations and Surveillance Service to the Inspector-General, chief of the Service, on the manufacture of bombs by the Aprist Party (cf. Annex No. 27).

26.—Report by the examining magistrate on the malicious damage caused to the Central Telephone Exchange and the manufacture

of explosive bombs by the members of the Aprist Party; this report is contained in Folios 300 *et sqq.* of Folder 8-A in the proceedings concerning the crime of military rebellion and other crimes (cf. Annex No. 28).

27.—Folio 847, and overleaf, of Folder 10-B in the proceedings concerning the crime of military rebellion and other crimes, containing the deposition of M. Alberto Benavides, who was asked by the Aprist leaders to cast shells for explosive bombs (cf. Annex No. 29).

28.—Five photographic reproductions of leaflets used by Apra in its campaign of incitement preceding the rebellion of October 3rd, 1948 (cf. Annex No. 30).

29.—Copies of the Lima newspapers containing information published after the rising on October 3rd, 1948 (cf. Annex No. 31).

30.—Volume containing the record of the prosecution for trade in drugs instituted in a court of the United States of America (district of Southern New York), against Edward Tampa, Miguel E. Gonzales and Eduardo Balarezo, showing the connexion which existed between the latter and the revolutionary movement of October 3rd, 1948, and also his connexion with Víctor Raúl Haya de la Torre, the leader of Apra. This document is authenticated by the United States authorities (cf. Annex No. 33).

31.—Photographic copies of documents communicated to the Peruvian Ambassador at Washington by the Bureau of Narcotics of the United States of America (cf. Annex No. 34).

32.—Letter addressed to M. Haya de la Torre by Major Aguila Pardo, Folio 624 of Folder 10-B in the proceedings concerning the crime of military rebellion and other crimes. Photographic reproduction of the document and authenticated copy (cf. Annex No. 35).

33.—Decree No. 23 of October 4th, 1948, by the Executive Power, outlawing Apra (cf. Annex No. 36).

34.—Copy of the Penal Code of the Republic of Peru; law No. 4868 of January 10th, 1924 (cf. Annex No. 37).

35.—Copy of the Code of Military Justice of the Republic of Peru; law No. 8991 of October 16th, 1939 (cf. Annex No. 37).

36.—Order made by the head of the Naval Judicial Department, dated October 3rd, 1948, giving instructions for the opening of investigations by the Permanent Examining Magistrate of the Navy, Folio 1, and overleaf, in the proceedings concerning the crime of military rebellion and other crimes (cf. Annex No. 38).

37.—Folios 8 and 9 of Folder 1 in the proceedings concerning the crime of military rebellion and other crimes, containing a request by the prosecutor to the Directorate of the Judicial Department of the Navy for the issue of a formal order for the opening of the proceedings, and an order dated October 4th, 1948, for the opening of a military prosecution in accordance with the opinion given by the prosecutor on the same date (cf. Annex No. 39).

38.—Folios 22 to 24 of Folder 1 in the proceedings concerning the crime of military rebellion and other crimes, containing the institution of the prosecution of the persons responsible, the perpetrators and accomplices (cf. Annex No. 40).

39.—Accusation by the Minister of the Interior, transmitted by the Minister of the Navy to the head of the Judicial Department of the Navy; this accusation appears in Folios 1 to 5, and on the reverse of Folios 5, 10 and 11, and on the reverse of Folder 10-A of the proceedings concerning the crime of military rebellion and other crimes (cf. Annex No. 41).

40.—Folios 16 to 23 of Folder 10-A concerning the crime of military rebellion and other crimes, containing a certified true copy of the examining magistrate's report (cf. Annex No. 42).

41.—Folio 170, and overleaf, of Folder 10-A in the proceedings concerning the crime of military rebellion and other crimes, containing the judicial order for the arrest of the accused persons who are not yet in custody (cf. Annex No. 43).

42.—Folio 346, and overleaf, of Folder 10-A in the proceedings concerning the crime of military rebellion and other crimes, containing the note requesting the delivery of the documents found at the headquarters of the Aprist Party, in the premises of *La Tribuna*, and in Haya de la Torre's private house, with a renewed order for the arrest of the accused persons who have defaulted (cf. Annex No. 44).

43.—Folio 421, and overleaf, of Folder 10-A in the proceedings concerning the crime of military rebellion and other crimes, containing the note from the Inspector-General of the Investigations and Surveillance Service to the judicial authority, informing the latter that Haya de la Torre and other accused persons had not been found (cf. Annex No. 45).

44.—Folio 414, and overleaf, of Folder 10-A in the proceedings concerning the crime of military rebellion and other crimes, containing the judge's order for the citation, by public summons, in accordance with the law, of the accused persons who have defaulted (cf. Annex No. 46).

45.—Copy of the Peruvian official gazette *El Peruano*, of November 16th, 1948, containing the first of the citations summoning the accused persons to appear (cf. Annex No. 47).

46.—Note dated January 4th, 1949, from the Colombian Ambassador in Lima to the Peruvian Minister for Foreign Affairs (cf. Annex No. 48.)

47.—Note dated January 14th, 1949, from the Colombian Ambassador in Lima to the Peruvian Minister for Foreign Affairs (cf. Annex No. 48.)

48.—Note dated February 12th, 1949, from the Colombian Ambassador in Lima to the Peruvian Minister for Foreign Affairs (cf. Annex No. 48).

49.—Official publication containing the note No. (D) 6-8/2, dated February 22nd, 1949, from the Peruvian Minister for Foreign Affairs to the Colombian Ambassador in Lima (cf. Annex No. 49).

50.—Official publication containing the note No. (D) 6-8/4, dated March 19th, 1949, from the Peruvian Minister for Foreign Affairs to the Colombian Ambassador in Lima (cf. Annex No. 49).

51.—Official publication containing the note No. (D) 6-8/6, dated April 6th, 1949, from the Peruvian Minister for Foreign Affairs to the Colombian Ambassador in Lima (cf. Annex No. 49).

52.—Photographic copy of the pages of the *Revista colombiana de Derecho internacional*, containing a report by the advisory commission of the Colombian Ministry of Foreign Affairs (cf. Annex No. 50).

53.—Photographic copy of a page of the year-book of Peruvian legislation, containing the text of law No. 9048 (cf. Annex No. 54).

54.—Photographic copy contained in Folder 10-B in the proceedings concerning the crime of military rebellion and other crimes, of the Disciplinary Statute of the People's Party, together with an authenticated copy of the same document (cf. Annex No. 55).

55.—Photographic copy contained in Folder 10-B in the proceedings concerning the crime of military rebellion and other crimes, of the Code of Justice of the Aprist Advanced Guard, together with an authenticated copy of that document (cf. Annex No. 56).

56.—Text of a cable from President Benavides, dated December 26th, 1938 (cf. Annex No. 58).

57.—Official publication by the Peruvian Ministry of the Interior containing President Bustamante y Rivero's message dated February 29th, 1948 (cf. Annex No. 59).

58.—Judgment delivered on December 5th, 1949, in the trial of Alfredo Tello Salavarría and other persons for the murder of M. Francisco Graña Garland, in which orders were given for the institution of proceedings against Víctor Raúl Haya de la Torre and Carlos Boado for the crime which was the subject of that trial (cf. Annex No. 60).

59.—The public prosecutor's indictment of Haya de la Torre and other persons for the crime of usurpation of authority (cf. Annex No. 61).

60.—Order for the institution of proceedings against Víctor Raúl Haya de la Torre and other persons for the crime of usurpation of functions to the prejudice of the State (cf. Annex No. 62).

(b) *Annexes to the Rejoinder:*

1.—Extracts from the Peruvian Code of Military Law (document transmitted with the Counter-Memorial).

2.—Extracts from the resolution of the head of the Judicial Department of the Navy which declares Mr. Haya de la Torre, among others, a defaulting criminal. (Folios 24 to 54 of Folder 11-C in the proceedings concerning the crime of military rebellion and other crimes.)

3.—Extracts from the sentence pronounced on March 22nd, 1950, by the tribunal which tried the persons responsible for rebellion and other crimes.

4.—Articles from the Military Penal Code of Colombia.

5.—Colombian decree extending the jurisdiction of the Courts Martial.

6.—Colombian decree increasing the penalties under the Penal Code.

7.—Extracts from the report of the examining magistrate in the proceedings against Víctor Raúl Haya de la Torre and others concerning the crime of usurpation of authority.

(c) *Documents submitted to the Registry of the International Court of Justice with the Rejoinder:*

1.—Folios 24 to 54 of Folder 11-C in the proceedings concerning military rebellion and other crimes, containing the resolution of the head of the Judicial Department of the Navy, which declares M. Haya de la Torre, among others, a defaulting criminal.

2.—Certified copy of the sentence pronounced on March 22nd, 1950, by the tribunal which tried the persons responsible for rebellion and other crimes.

3.—Copy of the Military Penal Code of Colombia (law 3 *a* of 1945).

4.—Cutting from the Official Journal of Colombia containing decree No. 3562 of 1949.

5.—Copy of the Official Journal of Colombia containing decree No. 957 of 1950.

6.—Certified copy of the report of the examining magistrate in the proceedings against Víctor Raúl Haya de la Torre and others concerning the crime of usurpation of authority.

II.—ANNEXES DEPOSITED DURING ORAL PROCEEDINGS

BY THE GOVERNMENT OF COLOMBIA:

1.—Authentication of the signature of the Notary Public for the District of Columbia by the Secretary of the Bureau des Commissaires of that district.

2.—Letter from M. Serafino Romualdi to M. Francisco Urrutia, signed before a notary at New York on 6th September, 1950.

3.—Copy of a letter from M. Serafino Romualdi to M. Edward G. Miller Jr., dated 11th April, 1950.

4.—Photocopy of a letter from Mr. Edward G. Miller Jr., dated 1st May, 1950, in answer to M. Serafino Romualdi's letter.

5.—Photocopy of M. Víctor Raúl Haya de la Torre's passport.
