ARCHIVES

I.C.J.

Communiqué No. 50/43.
(Unofficial)

The following information from the Registry of the International Court of Justice has been communicated to the Press :

To-day, Monday, November 20th, 1950, the Court delivered its judgment in the Colombian-Peruvian Asylum Case.

The origin of this case lies in the asylum granted on January 3rd, 1949, by the Colombian Ambassador in Lima to M. Victor Raúl Haya de la Torre, head of a political party in Peru, the American People's Revolutionary Alliance. On October 3rd, 1948, a military rebellion broke out in Peru and proceedings were instituted against Haya de la Torre for the instigation and direction of that rebellion. He was sought out by the Peruvian authorities, but without success; and after asylum had been granted to the refugee, the Colombian Ambassador in Lima requested a safe-conduct to enable Haya de la Torre, whom he qualified as a political offender, to leave the country. The Government of Peru refused, claiming that Haya de la Torre had committed common crimes and was not entitled to enjoy the benefits of asylum. Being unable to reach an agreement, the two Governments submitted to the Court certain questions concerning their dispute; these questions were set out in an Application submitted by Colombia and in a Counter-Claim submitted by Peru.

In to-day's Judgment, the Court, by fourteen votes to two, declared that Colombia was not entitled to qualify unilaterally and in a manner binding upon Peru the nature of the offence; by fifteen votes to one, it declared that the Government of Peru was not bound to deliver a safe-conduct to the refugee. On the other hand, the Court rejected by fifteen votes to one the Peruvian contention that Haya de la Torre was accused of common crimes; the Court noted that the only count against Haya de la Torre was that of military rebellion and military rebellion was not, in itself, a common crime. Lastly, by ten votes to six, the Court, without criticising the attitude of the Colombian Ambassador in Lima, considered that the requirements for asylum to be granted in conformity with the relevant treaties were not fulfilled at the time when he received Haya de la Torre. Indeed, according to the interpretation which the Court put upon the Convention of Havana, asylum could not be an obstacle to proceedings instituted by legal authorities operating in accordance with the law.

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The facts following which the case was brought before the Court are set out in the Judgment :

On October 3rd, 1948, a military rebellion broke out in Peru; it was suppressed the same day. On the following day, a decree was published charging a political party, the American People's Revolutionary Party, with having prepared and directed the rebellion. The head of the Party, Víctor Raúl Haya de la Torre, was denounced as being responsible. With other members of the party, he was prosecuted on a charge of military rebellion. As he was still at liberty on November 16th, summonses were published ordering him to appear before the Examining Magistrate. On January 3rd, 1949, he was granted asylum in the Colombian Embassy in Lima. Meanwhile, on October 27th, 1948, a Military Junta had assumed power in Peru and had published a decree providing for Courts-martial for summary judgment in cases of rebellion, sedition and rioting; but this decree was not applied to the legal proceedings against Haya de la Torre and others, and it has been declared before the Court that this Decree was not applicable to the said proceedings. Furthermore, during the period from October 4th to the beginning of February, 1949, Peru was in a state of siege.

On January 4th, 1949, the Colombian Ambassador in Lima informed the Peruvian Government of the asylum granted to Haya de la Torre; at the same time he asked that a safe-conduct be issued to enable the refugee to leave

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the country. On January 14th, he further stated that the refugee had been qualified as a political refugee. The Peruvian Government disputed this qualification and refused to grant a safe-conduct. A diplomatic correspondence ensued which terminated in the signature, in Lima, on August 31st, 1949, of an Act by which the two Governments agreed to submit the case to the International Court of Justice.

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Colombia has maintained before the Court that, according to the Conventions in force - the Bolivarian Agreement of 1911 on Extradition, the Havana Convention of 1928 on Asylum, the Montevideo Convention of 1933 on Political Asylum - and according to American International Law, she was entitled to qualify the nature of the offence for the purposes of the asylum. In this connection, the Court considered that, if the qualification in question were provisional, there could be no doubt on that point: the diplomatic representative would consider whether the required conditions had been satisfied, he would pronounce his opinion and if that opinion were contested, a controversy would then arise which might be settled according to the methods provided by the Parties.

But it resulted from the proceedings in the case that Colombia claimed the right of unilateral and definitive qualification binding upon Peru. The first of the Treaties which it invoked - the Bolivarian Agreement - which is the Treaty on extradition, confined itself in one Article to recognizing the institution of asylum in accordance with the principles of international law. But these principles do not entail the right of unilateral qualification. On the other hand, when the Bolivarian Agreement laid down rules for extradition, it was not possible to deduce from them conclusions concerning diplomatic asylum. In the case of extradition, the refugee was on the territory of the State of refuge: if asylum were granted to him, such decision would not derogate from the sovereignty of the States in which the offence was committed. On the contrary, in the case of diplomatic asylum, the refugee was on the territory of the State in which he had committed the offence: the decision to grant asylum derogated from the sovereignty of the territorial State and removed the offender from the jurisdiction of that State.

As for the second treaty invoked by Colombia - the Havana Convention - it did not recognize the right of unilateral qualification either explicitly or implicitly. The third treaty - the Convention of Montevideo - had not been ratified by Peru and could be invoked against that country.

Finally, as regarded American international law, Colombia had not proved the existence, either regionally or locally, of a constant and uniform practice of unilateral qualification as a right of the State of refuge and an obligation upon the territorial State. The facts submitted to the Court disclosed too much contradiction and fluctuation to make it possible to discern therein a usage peculiar to Latin-America and accepted as law.

It therefore followed that Colombia, as the State granting asylum, was not competent to qualify the nature of the offence by a unilateral and definitive decision binding on Peru.

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Colombia also maintained that Peru was under the obligation to issue a safe-conduct to enable the refugee to leave the country in safety. The Court, setting aside for the time being the question of whether asylum was regularly granted and maintained, noted that the clause in the Havana Convention which provided guaranties for the refugee was applicable solely to a case where the territorial State demanded the departure of the refugee from its territory: it was only after such a demand that the diplomatic Agent who granted asylum could, in turn, require a safe-conduct. There was, of course, a practice according to which the diplomatic Agent immediately requested a safe-conduct, which was granted ...

granted to him: but this practice, which was to be explained by reasons of expediency, laid no obligation upon the territorial State.

In the present case, Peru had not demanded the departure of the refugee and was therefore not bound to deliver a safe-conduct.

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In a counter-claim, Peru had asked the Court to declare that asylum had been granted to Haya de la Torre in violation of the Havana Convention, first, because Haya de la Torre was accused, not of a political offence but of a common crime and, secondly, because the urgency which was required under the Havana Convention in order to justify asylum, was absent in that case.

Having observed that Peru had at no time asked for the surrender of the refugee, the Court examined the first point. In this connection, the Court noted that the only charge against the refugee was that of military rebellion, which was not a common crime. Consequently, the Court rejected the counter-claim of Peru on that point, declaring it to be ill-founded.

On the question of urgency, the Court, having observed that the essential justification of asylum lay in the imminence or persistence of a danger to the person of the refugee, analysed the facts of the case.

Three months had elapsed between the military rebellion and the grant of asylum. There was no question of protecting Haya de la Torre for humanitarian considerations against the violent and uncontrolled action of irresponsible elements of the population; the danger which confronted Haya de la Torre was that of having to face legal proceedings. The Havana Convention was not intended to protect a citizen who had plotted against the institutions of his country from regular legal proceedings. It was not sufficient to be accused of a political offence in order to be entitled to receive asylum; asylum could only intervene against the action of justice in cases where arbitrary action was substituted for the rule of law. It had not been proved that the situation in Peru at the time implied the subordination of justice to the Executive or the abolition of judicial guarantees.

Besides, the Havana Convention was unable to establish a legal system which would guarantee to persons accused of political offences the privilege of evading their national jurisdiction. Such a conception would come into conflict with one of the oldest traditions of Latin-America, that of non-intervention. For if the Havana Convention had wished to ensure general protection to all persons prosecuted for political crimes in the course of revolutionary events, for the sole reason that it should be presumed that such events interfere with the administration of justice, this would lead to foreign interference of a particularly offensive nature in the domestic affairs of States.

As for the numerous cases cited by Colombia, the Court was of opinion that considerations of convenience or political expediency seemed to have prompted the territorial State to recognize asylum without such a decision being dictated by any feeling of legal obligation. Asylum in Latin-America was an institution which owed its development largely to extra-legal factors.

Whilst declaring that at the time at which asylum was granted, on January 3rd, 1949, there was no case of urgency within the meaning of the Havana Convention, the Judgment declared that this in no way constituted a criticism of the Colombian Ambassador. His appreciation of the case was not a relevant factor to the question of the validity of the asylum: only the objective reality of the facts was of importance.

The Court therefore came to the conclusion that the grant of asylum

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was not in conformity with Article 2, paragraph 2, of the Havana Convention.

The two submissions of Colombia were rejected, the first by fourteen votes to two (Judge Azevedo and M. Caicedo, Judge ad hoc), the second by fifteen votes to one (Judge Caicedo). As for the counter-claim of the Government of Peru, it was rejected by fifteen votes to one in so far as it was founded on a violation of the Article of the Havana Convention providing that asylum shall not be granted to persons accused of common crimes. But on the second point, the counter-claim was allowed by ten votes to six.(Judges Alvarez, Zoricic, Badawi Pasha, Read and Azevedo and M. Caicedo, Judge ad hoc.)

The dissenting opinions of Judges Alvarez, Badawi Pasha, Read, Azevedo, and M. Caicedo, Judge ad hoc, were appended to the Judgment. In respect of the second point of the Counter-Claim, Judge Zoricic subscribed to the opinion of Judge Read.

The Hague, November 20th, 1950.