

COUR INTERNATIONALE DE JUSTICE

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MÉMOIRES, PLAIDOIRIÉS ET DOCUMENTS

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AFFAIRE  
HAYA DE LA TORRE

(COLOMBIE c. PÉROU)

ARRÊT DU 13 JUIN 1951



INTERNATIONAL COURT OF JUSTICE

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PLEADINGS, ORAL ARGUMENTS, DOCUMENTS

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# HAYA DE LA TORRE CASE

(COLOMBIA *v.* PERU)

JUDGMENT OF JUNE 13th, 1951



PREMIÈRE PARTIE

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REQUÊTE INTRODUCTIVE  
D'INSTANCE ET PIÈCES DE LA  
PROCÉDURE ÉCRITE

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PART I

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APPLICATION INSTITUTING  
PROCEEDINGS AND DOCUMENTS OF  
THE WRITTEN PROCEEDINGS

## SECTION A.—APPLICATION INSTITUTING PROCEEDINGS

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THE MINISTER OF COLOMBIA IN THE NETHERLANDS  
TO THE REGISTRAR OF THE COURT

[*Translation by the Registry*]

The Hague, December 13th, 1950.

Sir,

In accordance with Article 40, paragraph 1, of the Statute and Article 32, paragraph 1, of the Rules of Court, I have the honour to inform you, and request you to transmit the fact to the President and Members of the International Court of Justice, that the Government of Colombia has decided to institute the present proceedings.

### FACTS AND GROUNDS

I.—On October 15th, 1949, the Government of Colombia submitted an Application to the International Court of Justice against the Government of Peru concerning the dispute which had arisen between the two countries in connection with the asylum granted to M. Víctor Raúl Haya de la Torre in the Colombian Embassy at Lima. The Court accepted that Application and rendered its decision on November 20th, 1950, in accordance with the appropriate procedure.

II.—Confronted with the Judgment of the Court, the Government of Colombia, on the basis of Articles 60 of the Statute and 79 and 80 of the Rules of Court, requested an interpretation of the Judgment.

On November 27th, 1950, the Court pronounced on this request for interpretation.

III.—On the day after the delivery of the latter Judgment, the Government of Peru approached the Government of Colombia and requested, for the first time since the beginning of this diplomatic and legal dispute, the immediate delivery of the refugee M. Víctor Raúl Haya de la Torre, invoking as a basis for its claim the Judgment of the International Court of Justice of November 20th, 1950.

IV.—The Government of Colombia, after careful study of the two Judgments referred to, not only cannot find therein any reason obliging it to accede to the Peruvian demand concerning the delivery of the refugee, but, on the contrary, it finds in those Judgments formal and repeated declarations to the effect that the

question of the delivery of the refugee "was completely left outside the submissions of the Parties", and that the Court "in no way decided it, nor could it do so".

V.—Indeed, the relevant passages of the two Judgments read as follows: "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." (International Court of Justice, *Reports of Judgments, Advisory Opinions and Orders*. Asylum Case (Colombia/Peru). Judgment of November 20th, 1950, page 280.)

Furthermore, the Court has held "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 connection 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." (*Ibidem*, page 282.)

"As regards that part of the counter-claim of the Peruvian Government which was based on a violation of Article 1, paragraph 1, of the Havana Convention of 1928, it is to be noted that, in order to decide this question, it was sufficient for the Court to examine whether the Peruvian Government had proved that Haya de la Torre was accused of common crimes prior to the granting of asylum, namely, January 3rd, 1949. The Court found that this had not been proved by the Peruvian Government. The Court did not decide any other question on this point.

"Questions 2 and 3 are submitted as alternatives, and may be dealt with together. Both concern the surrender of the refugee to the Peruvian Government and the possible obligations resulting in this connection, for Colombia, from the Judgment of November 20th,

1950. The Court can only refer to what it declared in its Judgment in perfectly definite terms : this question was completely left outside the submissions of the Parties. The Judgment in no way decided it, nor could it do so." (Judgment of November 27th, 1950. I.C.J., *Reports 1950*, pages 402-403.)

VI.—The Government of Colombia, by a note dated December 6th current, informed the Government of Peru that it did not consider itself bound to deliver M. Víctor Raúl Haya de la Torre to it. It believes that this precise point must be the object of a settlement binding on the Parties.

#### SUBJECT OF THE DISPUTE

VII.—There is, therefore, a dispute between the Governments of Colombia and Peru, as emerges from the notes of which copies are appended hereto.

#### JURISDICTION OF THE COURT

VIII.—The jurisdiction of the Court is founded on :

(a) the Protocol of Friendship and Co-operation between the Republic of Colombia and the Republic of Peru, signed at Rio de Janeiro on May 24th, 1934, which entered into force between these countries on September 27th, 1935.

(b) Articles 36 and 37 of the Statute of the Court.

IX.—On the basis of the facts and grounds recited above, the Government of Colombia, as

#### PRINCIPAL CLAIM,

Requests the Court to adjudge and declare, whether the Government of the Republic of Peru enters an appearance or not, after such time-limits as the Court may fix in the absence of an agreement between the Parties :

In pursuance of the provisions of Article 7 of the Protocol of Friendship and Co-operation between the Republic of Colombia and the Republic of Peru signed on May 24th, 1934, to determine the manner in which effect shall be given to the Judgment of November 20th, 1950 ;

And, furthermore, to state in this connection, particularly :

Whether Colombia is, or is not, bound to deliver to the Government of Peru M. Víctor Raúl Haya de la Torre, a refugee in the Colombian Embassy at Lima.

## ALTERNATIVE CLAIM

In the event of the above-mentioned claim being dismissed,

May it please the Court, in the exercise of its ordinary competence, whether the Government 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, to adjudge and declare whether, in accordance with the law in force between the Parties and particularly American international law, the Government of Colombia is, or is not, bound to deliver M. Víctor Raúl Haya de la Torre to the Government of Peru.

X.—The Colombian Government declares that it would be prepared to accept a decision by the Court *ex æquo et bono* in accordance with Article 38 of the Statute, if, for its part, the Government of Peru was in agreement on this point. Colombia cannot request this solution unilaterally for, in its opinion, Article 7 of the Protocol of Rio de Janeiro does not provide for jurisdiction *ex æquo et bono*.

XI.—The Government of Colombia gives as its address for service in the present case the seat of its Legation at The Hague.

XII.—This Application is signed by the Envoy Extraordinary and Minister Plenipotentiary of Colombia to the Royal Court of the Netherlands, in accordance with Article 32, paragraph 3, of the Rules of the International Court of Justice.

XIII.—The undersigned, Envoy Extraordinary and Minister Plenipotentiary of Colombia to the Royal Court of the Netherlands, declares, in accordance with Article 35, paragraph 2, of the Rules, that he will continue to act as Agent of his Government in these proceedings, pursuant to instructions which he has received from that Government.

Done at The Hague, December 13th, 1950.

(Signed) J. G. DE LA VEGA,

Envoy Extraordinary and Minister Plenipotentiary  
of the Government of Colombia to the Royal Court  
of the Netherlands.

[L.S.]

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## Annexes

[*Translation*<sup>1</sup>]

I.—[FRENCH] TRANSLATION OF ARTICLE 7 OF THE PROTOCOL OF FRIENDSHIP AND CO-OPERATION BETWEEN THE REPUBLIC OF COLOMBIA AND THE REPUBLIC OF PERU, SIGNED AT RIO DE JANEIRO, MAY 24th, 1934

## ARTICLE 7

Colombia and Peru solemnly bind themselves not to make war on each other nor to employ force, directly or indirectly, as a means of solving their present problems or any others that may arise hereafter. If in any eventuality they fail to solve such problems by direct diplomatic negotiations, either of the High Contracting Parties may have recourse to the procedure established by Article 36 of the Statute of the Permanent Court of International Justice, nor may the jurisdiction of the Court be excluded or limited by any reservations that either Party may have made when subscribing to the optional clause.

*Sole sub-section.*—In this case, when judgment has been delivered, the High Contracting Parties undertake to concert means of putting it into effect. Should they fail to reach an agreement, the necessary powers shall be conferred upon the Permanent Court, in addition to its ordinary competence, to make effective the judgment in which it has declared one of the High Contracting Parties to be in the right.

The undersigned certifies that this [French] translation conforms to the text which was sent to him by his Government.

The Hague, December 9th, 1950.

(Signed) J. G. DE LA VEGA,  
Minister of Colombia.

[L.S.]

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<sup>1</sup> Translated by the Secretariat of the League of Nations, for information. League of Nations, *Treaty Series*, Vol. CLXIV, 1935-1936, No. 3786, page 35. [*Note by the Registry.*]



[*Translation by the Registry*]

2.—[FRENCH] TRANSLATION OF THE NOTE DATED NOVEMBER 28th, 1950, FROM HIS EXCELLENCY THE MINISTER FOR FOREIGN AFFAIRS AND PUBLIC WORSHIP OF THE REPUBLIC OF PERU TO THE CHARGÉ D'AFFAIRES OF THE GOVERNMENT OF COLOMBIA AT LIMA

Sir,

On 20th of the present month, the International Court of Justice delivered its Judgment, deciding the asylum case between Peru and Colombia. Colombia having presented a request for interpretation on the same day the Judgment was delivered, Peru considered it necessary to await the result of this request. In the Judgment delivered yesterday, the Court declared the request for an interpretation inadmissible and the Judgment of the 20th, as delivered by the Court, thus stands as a definitive judgment.

The Court has declared that the qualification of the offence attributed to the refugee cannot be made by Colombia in a unilateral manner which is binding on Peru, that Peru is not bound to grant a safe-conduct permitting the refugee to leave the country, and that the grant and maintenance of asylum was not in conformity with the provisions of the Convention signed at Havana in 1928, a legal instrument which, in respect of diplomatic asylum, is binding on Peru and Colombia.

The indisputable result of the Judgment is that the asylum must be terminated, and, since there is no need to deliver a safe-conduct, which Peru has refused to grant—which refusal the Court has declared to be justified—there remains no other means of terminating the asylum than the delivery of the refugee, who has been cited, and for whose arrest a warrant has been issued by the national legal authorities.

The Examining Magistrate of the Navy for the Naval District of Callao, by an Order dated October 25th, 1948, instructed the police to proceed to the arrest of the accused persons who had not yet been apprehended, including Víctor Raúl Haya de la Torre; this Order was delivered during the proceedings for military rebellion which had broken out in Callao on October 3rd of the same year. Subsequently, by Order of November 13th, 1948, the same judge issued a summons against the accused in default, which was published in the edition of November 16th of the official gazette *El Peruano*, which included, among others, the accused Víctor Raúl Haya de la Torre. The police did not succeed in apprehending the said accused, and it was only on January 4th, 1949, that the Government learned that he had sought refuge in the Embassy of Colombia on the night of the 3rd of the same month, as is evident from the note which His Excellency the Colombian Ambassador addressed to this Chancellery on January 4th, under No. 2/19. The moment has come to carry out the Judgment delivered by the International Court of Justice by terminating the protection which that Embassy is improperly granting to Víctor Raúl Haya de la Torre. It is no longer possible further to prolong an asylum which is being maintained in open contradiction to the Judgment which has been delivered. *The Embassy of Colombia cannot continue to protect the refugee, thus barring the action of the national courts.*

You must take the necessary steps, Sir, with a view to terminating this protection, which is being improperly granted, by delivering the refugee Victor Raúl de la Torre, so that he may be placed at the disposal of the Examining Magistrate who summoned him to appear for judgment, in accordance with what I have recited above.

I hope that you will be good enough to proceed, in agreement with my Government, to the delivery of the refugee, which I hereby formally request.

I have, etc.

(Signed) MANUEL G. GALLAGHER.

The undersigned certifies that this [French] translation conforms to the text which was sent to him by his Government.

The Hague, December 9th, 1950.

(Signed) J. G. DE LA VEGA,  
Minister of Colombia.

[L.S.]

[Translation by the Registry]

3.—[FRENCH] TRANSLATION OF THE NOTE DATED  
DECEMBER 6th, 1950, FROM HIS EXCELLENCY THE  
MINISTER FOR FOREIGN AFFAIRS OF THE REPUBLIC OF  
COLOMBIA TO HIS EXCELLENCY THE MINISTER FOR  
FOREIGN AFFAIRS AND PUBLIC WORSHIP OF THE  
REPUBLIC OF PERU

Bogota, December 6th, 1950.

Sir,

I have the honour to refer to Your Excellency's note No. SM/6-8/23 of November 28th, 1950, to the Chargé d'Affaires of Colombia at Lima, a copy of which was personally delivered to this Chancellery by the Chargé d'Affaires of Peru at Bogota, with his note No. 5-8-M/47 of November 29th.

Your Excellency relies upon the Judgments delivered by the International Court of Justice on the 20th and 27th ultimo in the Colombian-Peruvian asylum case, in requesting, for the first time, the delivery of Dr. Víctor Raúl Haya de la Torre, a refugee in the Colombian Embassy at Lima.

Having gone into this question in detail, my Government ventures to point out that in certain passages of the Judgments, the Court makes the following statement: "the question of the possible surrender of the refugee to the territorial authorities is in no way raised in the counterclaim. 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" (International Court of Justice, *Reports of Judgments, Advisory Opinions and Orders*. Asylum Case (Colombia/Peru). Judgment of November 20th, 1950, page 280). Elsewhere, the Court states: "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 connection 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." (*Ibidem*, page 282.)

In its Judgment of November 27th, 1950, the Court expressly confirmed what it had already stated in its previous Judgment, and it did so in the following terms: "As regards that part of the counter-claim of the Peruvian Government which was based on a violation of Article 1, paragraph 1, of the Havana Convention of 1928, it is to be noted that, in order to decide this question, it was sufficient for the Court to examine whether the Peruvian Government had proved that Haya de la Torre was accused of common crimes prior to the granting of asylum, namely, January 3rd, 1949. The Court found that this had not been proved by the Peruvian Government. The Court did not decide any other question on this point.

"Questions 2 and 3 are submitted as alternatives, and may be dealt with together. Both concern the surrender of the refugee to the Peruvian Government and the possible obligations resulting in this connection, for Colombia, from the Judgment of November 20th, 1950. The Court can only refer to what it declared in its Judgment in perfectly definite terms: this question was completely left outside the submissions of the Parties. The Judgment in no way decided it, nor could it do so." (Judgment of November 27th, 1950, International Court of Justice, *Reports 1950*, pages 402-403.)

Consequently, the Court formally rejected the complaint made against the Government of Colombia in the counter-claim of the Government of Peru, namely, that it had granted asylum to persons accused of or condemned for common crimes. Should Colombia proceed to the delivery of the refugee, as requested by Your Excellency, she would not only disregard the Judgment to which we are now referring, but would also violate Article 1, paragraph 2, of the Havana Convention, which provides that: "Persons accused of or condemned for common crimes taking refuge in any [legation] .... shall be surrendered upon request of the local government."

The Court itself declared in its Judgments that it has not been proved that the person whose delivery is requested by Your Excellency was accused of or condemned for common crimes, and consequently my Government cannot agree to deliver him.

This question would doubtless not have given rise to any dispute between Colombia and Peru if the Court, in its Judgment of November 20th, had defined clearly and emphatically the status of M. Haya de la Torre, which was and continues to be the earnest desire of the two Parties and which was the essential purpose of the proceedings introduced before the Court. Since the Court did not do so, Colombia found herself compelled to ask the Court, on the basis of the precise provisions of the Statute and Rules, for an interpretation of its own Judgment concerning the concrete question of the delivery of the refugee in the event of the territorial government so requesting ; this has been the crux of this dispute.

I must declare to Your Excellency that the sole motive which impelled Colombia to request an interpretation of the Judgment has been its determined will to conform to it ; this feeling, which has inspired Colombia in the past, still does so and will continue to do so in the future. Should the Court decide that my Government is under an obligation to deliver the refugee, Colombia shall deliver him, for my Government considers that the strict compliance with the terms of the Judgment is an act of good faith and a fundamental principle of its policy.

But it so happens in the present case that the declarations and citations of the Court, and particularly the decisive statement to the effect that "*the question of the possible surrender of the refugee to the territorial authority is in no way raised in the counter-claim*", make it impossible for Colombia to deliver him without loss of honour.

How can the Judgment be invoked as obliging Colombia to deliver the refugee if the Court itself which rendered the Judgment states that this delivery "*was completely left outside the submissions of the Parties*" and that the Court "*in no way decided it, nor could it do so*" ?

On the other hand, the Government of Peru claims that it can infer from these Judgments of the Court the inescapable obligation for the Government of Colombia to deliver the refugee.

This view is not shared by the Government of Colombia.

Consequently, a fundamental dispute has arisen between the two Governments concerning the execution of the Judgments of the International Court of Justice.

The Government of Colombia, faithful to its determined will to find a solution for any dispute with the Government of Peru, within the limits of treaties in force between the two countries and in order to prevent disputes from arising between them, signed at Rio de Janeiro, on May 24th, 1934, the Protocol of Friendship and Co-operation between the two Republics, an instrument which is now in force. Under Article 7 of the Protocol, the two Governments, after solemnly binding themselves not to make war on each other, nor to employ force, directly or indirectly, as a means of solving their present problems or any others that might arise in the future, accepted the compulsory jurisdiction of the Permanent Court of International Justice in any eventuality in which they failed to solve the problems by direct diplomatic negotiations.

The Statute of the International Court of Justice, which has also been ratified by the two Governments, provides that the new International

Court of Justice shall for this purpose be substituted for the Permanent Court of International Justice, and that its jurisdiction comprises all matters specially provided for in treaties and conventions in force. (Article 36, paragraph 1, and Article 37.)

The foresight of the two Governments and their confidence in this organ were so great that in the sole sub-section of Article 7 of the Protocol of Rio de Janeiro, they laid down the following: "In this case, when judgment has been delivered, the High Contracting Parties undertake to concert means of putting it into effect. Should they fail to reach an agreement, the necessary powers shall be conferred upon the Permanent Court, in addition to its ordinary competence, to make effective the judgment in which it has declared one of the High Contracting Parties to be in the right."

As it is perfectly obvious that there exists a fundamental disagreement between Colombia and Peru on the concrete point of the delivery of the refugee, Colombia has decided to resort to the International Court of Justice and to ask this high tribunal to proceed, in accordance with the sole sub-section of Article 7 of the Protocol of Rio de Janeiro, to make effective its Judgment.

The Colombian Government wishes to repeat to Your Excellency that, in so doing, it is acting in accordance with the desire expressed by Colombia and Peru when they signed the "Act of Lima", namely: "without this being regarded as an unfriendly act toward the other [Party] or as an act likely to affect the good relations between the two countries".

As proof of the foregoing and in the hope that the present dispute will continue to be settled on the basis of mutual goodwill and understanding, my Government is prepared to seek a solution to this problem not only through the Protocol of Rio de Janeiro, but also by any other means that is acceptable to the Parties and that may bring to a successful termination a situation which, I am sure, the two countries wish to resolve as soon as possible without affecting the good relations between the two countries.

I have, etc.

(Signed) GONZALO RESTREPO JARAMILLO,  
Minister for Foreign Affairs.

The undersigned certifies that this [French] translation conforms to the text which was sent to him by his Government.

The Hague, December 9th, 1950.

(Signed) J. G. DE LA VEGA,  
Minister of Colombia.

[L.S.]