

Colombia v. Peru | 25 Jul 2024

Introduction

The Asylum Case (Colombia v. Peru) at the International Court of Justice (ICJ) centered on the legality of asylum granted by Colombia to Victor Raúl Haya de la Torre, amidst a political rebellion in Peru in 1948-1949, and Peru's obligations under the Havana Convention.

Facts

- On 3rd October 1948, a military rebellion broke out in Peru.
- Victor Raúl Haya de la Torre, leader of the American People's Revolutionary Alliance, was accused of organizing the rebellion.
- On 3 and 4th January, 1949, Haya de la Torre sought and was granted asylum in the Colombian Embassy in Lima, Peru.
- Colombia claimed the right to unilaterally qualify Haya de la Torre's offense as political.
- Colombia requested Peru to grant safe passage for Haya de la Torre to leave the country.
- Peru contested the legality of the asylum and refused to grant safe passage.
- On 31st August, 1949, Colombia and Peru signed the "Act of Lima," agreeing to refer the dispute to the International Court of Justice (ICJ).
- On 15th October, 1949, Colombia filed an application to the ICJ, asserting its right to qualify refugees and claiming Peru's obligation to provide safe departure.
- The legal basis for the case included:
 - Bolivarian Agreement on Extradition (1911)
 - Havana Convention on Asylum (1928)
 - Montevideo Convention on Political Asylum (1933) - not ratified by Peru d. American international law in general
- Colombia's main arguments were:
 - Competence to unilaterally qualify the offense as political.
 - Peru's obligation to grant safe passage.
 - Treaty obligations and alleged Latin American custom
- Peru's counterclaim argued:
 - The grant of asylum violated the Havana Convention
 - Asylum was not granted in an "urgent case" as required by the Convention
 - Colombia had no right to unilaterally qualify the offense
- Written pleadings were exchanged between the parties and Oral Proceedings took place.

Issue Involved

- Was Colombia competent to unilaterally qualify the offense for asylum purposes?
- Was Peru obligated to provide guarantees for the refugee's safe departure?
- Did the grant of asylum violate the Havana Convention?
- Was asylum granted in an "urgent case" as required by the Havana Convention?

- Was the prolonged asylum in conformity with Article 2, paragraph 2, of the Havana Convention?

Court Observation

- The Court examined whether Colombia had the right to unilaterally qualify Haya de la Torre's offense as political.
 - It found that such a right of unilateral qualification was not inherent in diplomatic asylum or supported by the Havana Convention.
 - The Court rejected Colombia's claim that there was a Latin American custom allowing unilateral qualification, finding insufficient evidence of such a custom.
- Regarding Peru's obligation to grant safe-conduct, the Court ruled that this obligation only arises if the territorial state (Peru) first requests the refugee's departure.
 - The Court then considered Peru's counterclaim that the asylum was granted in violation of the Havana Convention.
 - It rejected Peru's argument that Haya de la Torre was accused of common crimes, finding insufficient evidence for this claim.
- The Court examined whether the asylum was granted in an "urgent case" as required by the Convention.
 - It found that the three-month gap between the rebellion and Haya de la Torre seeking asylum made it difficult to claim urgency.
- The Court ruled that asylum cannot generally be used to oppose the regular application of justice in the territorial state.
- It determined that Peru's state of siege and other measures did not necessarily imply a subordination of justice to executive authority.
- The Court emphasized that the Havana Convention was not intended to allow political offenders to evade national jurisdiction.
- It noted that asylum in Latin America often relied on extra-legal factors like courtesy and political expediency.
- The Court concluded that on 3-4th January 1949, there did not exist a danger constituting an "urgent case" under the Havana Convention.
- It found that Colombia's continued insistence on safe-conduct extended the asylum beyond its initial grant.
- The Court ruled that the grant of asylum from January 3-4, 1949, until the case was submitted to the Court, was prolonged for reasons not recognized by the Havana Convention.
- **Final Judgment:**
 - The Court rejected Colombia's claim to a right of unilateral qualification of the offense.
 - It rejected Colombia's claim that Peru was obligated to grant safe-conduct.
 - The Court rejected Peru's counterclaim that the asylum violated Article 1, paragraph 1 of the Havana Convention.
 - However, it upheld Peru's claim that the grant of asylum was not in conformity with Article 2, paragraph 2 of the Havana Convention.

Conclusion

In the Asylum Case (Colombia v. Peru), the ICJ concluded that Colombia does not have the unilateral right to qualify Haya de la Torre's offense as political for asylum purposes. It ruled that Peru was not obligated to grant safe passage as the conditions for an "urgent case" under the Havana Convention were not met. The Court upheld Peru's argument that the prolonged asylum violated specific provisions of the Havana Convention.