COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS ET ORDONNANCES

DEMANDE D'INTERPRÉTATION DE L'ARRÊT DU 20 NOVEMBRE 1950 EN L'AFFAIRE DU DROIT D'ASILE

(COLOMBIE/PÉROU)

ARRÊT DU 27 NOVEMBRE 1950

1950

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

REQUEST FOR INTERPRETATION OF THE JUDGMENT OF NOVEMBER 20th, 1950, IN THE ASYLUM CASE

(COLOMBIA/PERU)

JUDGMENT OF NOVEMBER 27th, 1950

Le présent arrêt doit être cité comme suit :

« *Demande d'interprétation de l'Arrêt du 20 novembre 1950 en l'affaire du droit d'asile, Arrêt du 27 novembre 1950 : C.I.J. Recueil 1950, p. 395.* »

This Judgment should be cited as follows :

"*Request for interpretation of the Judgment of November 20th, 1950, in the asylum case, Judgment of November 27th, 1950 : I.C.J. Reports 1950, p. 395.*"

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REQUEST FOR INTERPRETATION OF THE JUDGMENT OF NOVEMBER 20th, 1950, IN THE ASYLUM CASE

(COLOMBIA / PERU)

JUDGMENT

Present: *President* BASDEVANT; *Vice-President* GUERRERO; *Judges* ALVAREZ, HACKWORTH, WINIARSKI, DE VISSCHER, Sir Arnold MCNAIR, KLAESTAD, KRYLOV, READ, HSU MO; MM. ALAYZA Y PAZ SOLDÁN and CAICEDO CASTILLA, *Judges* ad hoc; Mr. HAMBRO, *Registrar*.

In the case concerning the request for interpretation of the Judgment of November 20th, 1950,

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. Eduardo Zuleta Angel, former Minister for Foreign Affairs, Ambassador in Washington, as Counsel :

and, as Advocates,

M. Francisco Urratia Holguin, Ambassador, Delegate to the United Nations,

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

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. Raúl Miro Quezada Laos, Barrister,

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 November 20th, 1950, the Court delivered its Judgment in the asylum case between Colombia and Peru. On the very day on which the Judgment was delivered, the Agent of the Government of Colombia transmitted to the Registry of the Court a letter in which, under instructions of his Government, he informed the Court that the Colombian Government wished to obtain an interpretation of the said Judgment, in conformity with Articles 60 of the Statute and 79 and 80 of the Rules.

The letter of the Agent of the Colombian Government reads as follows :

[*Translation*]

"1. By order of my Government I have the honour to inform you of the following :

2. The Government of the Republic of Colombia, faithful to the international undertakings which it has signed and ratified and, in particular, the obligation which is laid upon it by Article 94, paragraph 1, of the Charter of the United Nations, declares its intention of complying with the decision of the International Court of Justice in the Colombian-Peruvian asylum case.

3. However, the manner in which the Court has ruled in its Judgment of November 20th, 1950, had led my Government to the conclusion that this decision, as has been notified, contains gaps of such a nature as to render its execution impossible. This conclusion is based on the following grounds :

I

4. In its Judgment the Court makes the following statement : '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' (Judgment, page 274).

5. In the present case it is beyond doubt that the Parties have in fact proceeded as the Court indicates in the above-mentioned text : the Colombian Ambassador in Lima qualified the offence attributed to the refugee ; the Government of Peru, for its part, contested this qualification and the dispute which arose on this point between the two States was brought before the International Court of Justice.

6. The Court has confirmed the qualification made by the Colombian Ambassador in a manner which is both clear and emphatic. It has, in fact, declared : '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' (Judgment, page 281). As a consequence of this declaration, the Court has rejected the counter-claim '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' (Judgment, page 288).

7. The qualification made by the Colombian Ambassador of the political character of the offence attributed to the refugee having thus been confirmed by the Court, the theoretical question of the

right appertaining to the State granting asylum may be left to one side because it ceases to have any practical effect. As is evident from the diplomatic correspondence between the Parties, if it is true that Colombia, from the very beginning of this dispute, has claimed the right of qualification, it is equally certain that she has always affirmed that, even if this right could be contested, the qualification was in fact correct and could not be disregarded because it had not been proved that M. Haya de la Torre was a common criminal.

8. In stating that the Government of Peru has not proved that the offence with which the refugee was charged was a common crime, the Court has admitted that the qualification made by Colombia was well founded. In the circumstances a question arises : must this qualification, which has been declared correct and approved by the Court, be considered nevertheless as null and void because a dispute has arisen on the preliminary and theoretical question of the right to qualification in matters of asylum ?

II

9. In deciding on the counter-claim of Peru, the Court has found, on the one hand, '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' [Convention of Havana] (Judgment, page 288).

10. The Court has declared, on the other hand, not only that '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', but that asylum 'is granted as long as the continued presence of the refugee in the embassy prolongs this protection'.

11. It would appear, consequently, that the idea of the Court, in deciding on one of the aspects of the counter-claim, is that Colombia might violate the provisions of Article 2, paragraph 2, of the Havana Convention if she does not surrender the refugee to the Peruvian authorities.

12. The Court declares, however, that M. Haya de la Torre is a political refugee and not a common criminal. It declares at the same time that the Havana Convention, which is the only agreement regulating the relations between Colombia and Peru in matters of asylum, contains no clause providing for the surrender of a political refugee.

13. It follows from the foregoing consideration that Colombia has no obligation to surrender the refugee to the Peruvian authorities and that, if she abstains from doing so, she in no way violates the Havana Convention.

14. Furthermore, the Court expressly states 'that the question of the possible surrender of the refugee to the territorial authorities

is in no way raised in the counter-claim' and adds 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' (Judgment, page 280).

15. On the basis of the foregoing considerations, it does not seem possible to suppose that the Court, in deciding that the grant of asylum was not made in conformity with Article 2, paragraph 2, of the Havana Convention, intended to order, even in an indirect manner, that the refugee should be surrendered, or even less that it intended to declare that Colombia would violate an international undertaking if she abstained from making the surrender which has not been ordered by the Court.

III

16. Consequently, the Government of the Republic of Colombia has the honour to make a request for an interpretation of the Judgment of November 20th, 1950, as follows :

MAY IT PLEASE THE COURT,

In accordance with Articles 60 of the Statute and 79 and 80 of the Rules of Court, to answer the following questions :

First.—Must the Judgment of November 20th, 1950, be interpreted in the sense that the qualification made by the Colombian Ambassador of the offence attributed to M. Haya de la Torre, was correct, and that, consequently, it is necessary to attribute legal effect to the above-mentioned qualification, in so far as it has been confirmed by the Court ?

Second.—Must the Judgment of November 20th, 1950, be interpreted in the sense that the Government of Peru is not entitled to demand the surrender of the political refugee M. Haya de la Torre, and that, consequently, the Government of Colombia is not bound to surrender him even in the event of this surrender being requested ?

Third.—Or, on the contrary, does the Court's decision on the counter-claim of Peru imply that Colombia is bound to surrender the refugee Víctor Raúl Haya de la Torre to the Peruvian authorities, even if the latter do not so demand, in spite of the fact that he is a political offender and not a common criminal, and that the only convention applicable to the present case does not order the surrender of political offenders ?"

As the Court dit 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. These Judges made the solemn declaration provided in Article 20 of the Statute in a public meeting held on November 23rd, 1950.

The letter of the Agent of the Colombian Government of November 20th, 1950, was communicated on the same day to the Agent of the Government of Peru, who submitted his observations in the following letter, dated November 22nd :

[*Translation*]

"In reply to your letter of November 22nd, 1950, No. 12125, following your communication of November 20th, No. 12084, I have the honour to inform you that it was not my intention to present observations on the request of the Colombian Agent because that request is clearly inadmissible.

However, in deference to the implied invitation contained in your second letter, I shall make the following statements :

1.—The Judgment of November 20th, 1950, is perfectly clear, except for those who would have made up their minds beforehand not to understand it. It gives a decision in the clearest way possible on all submissions presented by both Parties. Therefore, we consider that the Judgment does not call for interpretation.

2.—Moreover the request of the Colombian Agent is inadmissible for legal reasons :

(a) because it is not a request for interpretation. In wrongly alleging that the Judgment contains 'gaps', it seeks, in fact, to obtain a new decision, supplementing the first ;

(b) because the conditions laid down in Article 60 of the Statute of the Court concerning a request for interpretation have thereby been disregarded. In fact, the Colombian request is an attempt to disregard the statutory provision of Article 60, whereby the Court's judgments are final and without appeal.

3.—In those conditions, the hidden purpose of the Colombian Agent's request is obviously an attempt to escape the legal consequences necessarily deriving from the Judgment.

4.—This intention seems all the more probable because, in a case of this importance, it would have seemed logical and natural for the two Governments concerned to take time for careful study of the text of the decision, whereas the request of the Colombian Agent came only a few hours after the public hearing, and its contents had even been communicated to the press beforehand. Personally, I would not have been in a position to take such responsibilities before my own Government.

Asking you to transmit to the Court the foregoing observations, I have, etc."

The observations of the Agent of the Peruvian Government were communicated to the Agent of the Government of Colombia. The

latter, by a letter dated November 24th, 1950, replied in the following terms :

[*Translation*]

"I have the honour to acknowledge receipt of your communication No. 12114 of 23rd instant, transmitting to me a certified true copy of the letter from the Agent of the Peruvian Government, dated November 22nd, 1950.

I shall disregard certain remarks and insinuations contained in this letter, because, out of respect for the Court, I consider that it should not be made use of for the transmission of disparaging remarks concerning any government.

The Peruvian Agent declares that the Judgment of November 20th, 1950, is 'perfectly clear'. The Colombian Government, on the contrary, as indicated in the request for interpretation, declares that it is not. Therefore, there is a manifest dispute between the Parties as to the meaning and scope of the Judgment.

The Peruvian Agent also says that 'the hidden purpose of the Colombian Agent's request is obviously an attempt to escape the legal consequences necessarily deriving from the Judgment'. If the Peruvian Agent means by this that the legal consequences which Colombia is trying to evade consist in the obligation to surrender M. Haya de la Torre, the opposition between the two Governments could not be indicated more clearly, because Colombia considers that no such conclusion can be drawn from the Judgment. If, on the other hand, the Peruvian Agent believes that Colombia is not under the obligation to surrender the refugee, he must say so clearly and indicate what would then be 'the necessary legal consequences' which Colombia is trying to evade.

I take the liberty of pointing out that the main purpose of the request for interpretation is to obtain a declaration stating whether, in rejecting the Peruvian counter-claim 'as far as it is founded on a violation of Article 1, paragraph 1, of the Convention on Asylum signed at Havana in 1928', it was the Court's intention to say that Colombia is not bound to surrender M. Haya de la Torre to the Peruvian authorities.

I further point out that the request for interpretation also endeavours to obtain a declaration as to whether the Court, when it 'found 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', meant that the Government of Peru has the right to demand the surrender of M. Haya de la Torre.

This is a divergence of views, a difference of opinion, a dispute as to the meaning and scope of the Judgment of November 20th, the binding force of which I have asked the Court to define."

* * *

The request for interpretation now before the Court is based on Article 60 of the Statute which reads as follows :

"The judgment is final and without appeal. In the event of dispute as to the meaning or scope of the judgment, the Court shall contrue it upon the request of any party."

Thus it lays down two conditions for the admissibility of such a request :

(1) The real purpose of the request must be to obtain an interpretation of the judgment. This signifies that its object must be solely to obtain clarification of the meaning and the scope of what the Court has decided with binding force, and not to obtain an answer to questions not so decided. Any other construction of Article 60 of the Statute would nullify the provision of the article that the judgment is final and without appeal.

(2) In addition, it is necessary that there should exist a dispute as to the meaning or scope of the judgment.

To decide whether the first requirement stated above is fulfilled, one must bear in mind the principle that it is the duty of the Court not only to reply to the questions as stated in the final submissions of the parties, but also to abstain from deciding points not included in those submissions.

The three questions raised in this proceeding by the Colombian Government must be considered in the light of this principle.

The first question concerns the qualification which was in fact made by the Colombian Ambassador at Lima of the offence imputed to the refugee. It seeks to obtain from the Court a declaration that this qualification was correct and that legal effect should be attributed to it. The Court finds that this point was not raised in the submissions of the Colombian Government in the proceedings leading up to the Judgment of November 20th, 1950. In those submissions, the Court was asked to pronounce only on the claim expressed in abstract and general terms, that Colombia as the country granting asylum, was competent to qualify the offence by a unilateral and final decision binding on Peru.

The circumstance that, before the proceedings in Court in the principal case, the qualification which was in fact made by the Colombian Ambassador had given rise to discussions between the two Governments through a diplomatic correspondence is irrelevant. 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 connexion, 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. It was for the Parties to present their respective claims on this point. The Court finds that they did nothing of the kind.

The "gaps" which the Colombian Government claims to have discovered in the Court's Judgment in reality are new questions, which cannot be decided by means of interpretation. Interpretation can in no way go beyond the limits of the Judgment, fixed in advance by the Parties themselves in their submissions.

In reality, the object of the questions submitted by the Colombian Government is to obtain, by the indirect means of interpretation, a decision on questions which the Court was not called upon by the Parties to answer.

Article 60 of the Statute provides, moreover, that interpretation may be asked only if there is a "dispute as to the meaning or scope of the judgment". Obviously, one cannot treat as a dispute, in the sense of that provision, the mere fact that one Party finds the judgment obscure when the other considers it to be perfectly clear. A dispute requires a divergence of views between the parties on definite points ; Article 79, paragraph 2, of the Rules confirms this condition by stating that the application for interpretation "shall specify the precise point or points in dispute".

It is evident that this condition does not exist in the present case. Not only has the existence of a dispute between the Parties not been brought to the attention of the Court, but the very date of the Colombian Government's request for interpretation shows that such a dispute could not possibly have arisen in any way whatever.

The Court thus finds that the requirements of Article 60 of the Statute and of Article 79, paragraph 2, of the Rules of Court, have not been satisfied.

FOR THESE REASONS,

THE COURT,

by twelve votes to one,

Declares the request for interpretation of the Judgment of November 20th, 1950, presented on the same day by the Government of the Republic of Colombia, to be inadmissible.

Done in French and English, the French text being authoritative, at the Peace Palace, The Hague, this twenty-seventh 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) E. HAMBRO,
Registrar.

M. CAICEDO CASTILLA, Judge *ad hoc*, declares that he is unable to concur in the Judgment of the Court because, in his opinion, Article 60 of the Statute can be interpreted more liberally, as shown by the Permanent Court of International Justice in the Chorzów Factory case. He recognizes, however, that it is open to the Parties to come before the Court if a divergence of views satisfying the precise conditions required by this Judgment were to be submitted to it.

(Initialled) J. B.

(Initialled) E. H.