SECTION C.—REQUEST FOR THE INTERPRETATION OF THE JUDGMENT OF NOVEMBER 20th, 1950

THE AGENT OF THE GOVERNMENT OF COLOMBIA BEFORE THE INTERNATIONAL COURT OF JUSTICE TO THE REGISTRAR OF THE COURT

[*Translation by the Registry*]

No. D.125. C/48. The Hague, November 20th, 1950.

Sir,

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, has 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 [1], 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,

[1] See Court's publications : *Reports of Judgments, Advisory Opinions and Orders 1950.*

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 recognize that the above-mentioned qualification, in so far as it has been confirmed by the Court, has legal effects ?

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 ?

I have, etc.

(Signed) Prof. J. M. YEPES,
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before the International Court of Justice,
Legal Adviser to the Ministry
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