HAYA DE LA TORRE CASE

Judgment of 13 June 1951

The Haya de la Torre case between Colombia and Peru, with Cuba as intervening Party, was brought before the Court under the following circumstances:

In a Judgment delivered on November 20th, 1950, the Court had defined the legal relations between Colombia and Peru in regard to questions which those States had submitted to it, concerning diplomatic asylum in general and, in particular, the asylum granted on January 3rd/4th, 1949, by the Colombian Ambassador at Lima to Victor Raul Haya de la Torre; the Court had found that, in this case, the asylum had not been granted in conformity with the Convention on Asylum signed at Havana in 1928. After the Judgment had been delivered, Peru requested Colombia to execute it, and called upon her to put an end to a protection improperly granted by surrendering the refugee. Colombia replied that to deliver the refugee would be not only to disregard the Judgment of November 20th, but also to violate the Havana Convention; and she instituted proceedings before the Court by an Application which was filed on December 13th, 1950.

In her Application, and during the procedure, Colombia asked the Court to state in what manner the Judgment of November 20th, 1950, was to be executed, and, furthermore, to declare that, in executing that Judgment, she was not bound to surrender Haya de la Torre. Peru, for her part, also asked the Court to state in what manner Colombia should execute the Judgment. She further asked, first, the rejection of the Colombian Submission requesting the Court to state, solely, that she was not bound to surrender Haya de la Torre, and, secondly, for a declaration that the asylum ought to have ceased immediately after the delivery of the Judgment of November 20th, 1950, and that it must in any case cease forthwith, in order that Peruvian justice might resume its normal course which had been suspended.

In its Haya de la Torre judgment the Court declared:

by a unanimous vote that it is not part of the Court's judicial functions to make a choice among the different ways in which the asylum may be brought to an end;

by thirteen votes against one, that Colombia is under no obligation to surrender Haya de la Torre to the Peruvian authorities;

by a unanimous vote that the asylum ought to have ceased after the delivery of the Judgment of November 20th, 1950, and must be brought to an end.

In its Judgment, the Court examines, in the first place, the admissibility of the Cuban Government's intervention. That Government, availing itself of the right which the Statute of the Court confers on States parties to a convention, the interpretation of which is in issue, had filed a Declaration of Intervention in which it set forth its views concerning the interpretation of the Havana Convention. The Government of Peru contended that the Intervention was inadmissible: that it was out of time, and was really in the nature of an attempt by a third State to appeal against the Judgment of November 20th. In regard to that point, the Court observes that every intervention is incidental to the proceedings in a case, that, consequently, a declaration filed as an intervention only acquires that character if it actually relates to the subject-matter of the pending proceedings. The subject matter of the present case relates to a new question—the surrender of Haya de la Torre to the Peruvian authorities—which was completely outside the Submissions of the parties and was in consequence not decided by the Judgment of November 20th. In these circumstances, the point which it is necessary to ascertain is whether the object of the intervention is the interpretation of the Havana Convention in regard to the question whether Colombia is under an obligation to surrender the refugee: as, according to the representative of the Government of Cuba, the intervention was based on the fact that it was necessary to interpret a new aspect of the Havana Convention, the Court decided to admit it.

The Court goes on to discuss the merits. It observes that both parties are seeking to obtain a decision as to the manner in which the Judgment of November 20th is to be executed. That Judgment, in deciding on the regularity of the asylum, confined itself to defining the legal relations which the Havana Convention had established, in regard to this matter, between the parties; it did not give any directions to the parties, and only entailed for them the obligation of compliance with the Judgment. However, the form in which the parties have formulated their submissions shows that they desire that the Court should make a choice among the various courses by which the asylum might be terminated. These courses are conditioned by facts and possibilities which, to a very large extent, the parties are alone in a position to appreciate. A choice among them could not be based on legal considerations, but only on grounds of practicability or of political expediency. Consequently, it is not part of the Court's judicial function to make such a choice, and it is impossible

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for it to give effect to the submissions of the parties in this respect.

As regards the surrender of the refugee, this is a new question, which was only brought before the Court by the Application of December 13th, 1950, and which was not decided by the Judgment of November 20th. According to the Havana Convention, diplomatic asylum, which is a provisional measure for the temporary protection of political offenders, must be terminated as soon as possible. However, the Convention does not give a complete answer to the question of the manner in which an asylum must be terminated. As to persons guilty of common crimes, it expressly requires that they be surrendered to the local authorities. For political offenders it prescribes the grant of a safe-conduct for the departure from the country. But a safe-conduct can only be claimed if the asylum has been regularly granted and maintained and if the territorial State has required that the refugee should be sent out of the country. For cases in which the asylum has not been regularly granted and where the territorial State has made no such demand, the Convention makes no provision. To interpret this silence as imposing an obligation to surrender the refugee would be repugnant to the spirit which animated the Convention in conformity with the Latin American tradition in regard to asylum, a tradition in accordance with which a political refugee ought not to be surrendered. There is nothing in that tradition to indicate that an exception should be made in case of an irregular asylum. If it had been intended to abandon that tradition, an express provision to that effect would have been needed. The silence of the Convention implies that it was intended to leave the adjustment of the consequences of such situations to decisions inspired by considerations of convenience or simple political expediency.

It is true that, in principle, asylum cannot be opposed to the operation of the national justice, and the safety which arises from asylum cannot be construed as a protection against the laws and the jurisdiction of the legally constituted tribunals. The Court declared this in its Judgment of November 20th. But it would be an entirely different thing to say that there is an obligation to surrender a person accused of a political offence because the asylum was irregular. That would amount to rendering positive assistance to the local authorities in their prosecution of a political refugee, and would be greatly exceeding the findings of the Court in its Judgment of November 20th; such assistance could not be admitted without an express provision to that effect in the Convention. As concerns Haya de la Torre, the Court declared in its Judgment of November 20th, on the one hand, that it had not been proved that, before asylum was granted, he had been accused of common crimes; on the other hand, it found that the asylum had not been granted to him in conformity with the Convention. Consequently, and in view of the foregoing considerations, Colombia is not obliged to surrender him to the Peruvian authorities.

Finally, the Court examines the Peruvian submissions which Colombia asked it to dismiss, concerning the termination of the asylum. The Court states that the Judgment of November 20th, declaring that the asylum was irregularly granted entails a legal consequence, namely, that of putting an end to this irregularity by terminating the asylum. Peru is therefore legally entitled to claim that the asylum should cease. However, Peru has added that the asylum should cease "in order that Peruvian justice may resume its normal course which has been suspended." This addition, which appears to involve the indirect claim for the surrender of the refugee, cannot be accepted by the Court.

The Court thus arrives at the conclusion that the asylum must cease, but that Colombia is not bound to discharge her obligation by surrendering the refugee. There is no contradiction between these two findings, since surrender is not the only manner in which asylum may be terminated.

Having thus defined, in accordance with the Havana Convention, the legal relations between the parties with regard to the matters referred to it, the Court declares that it has completed its task. It is unable to give any practical advice as to the various courses which might be followed with a view to terminating the asylum, since, by so doing, it would depart from its judicial function. But it can be assumed that the parties, now that their mutual legal relations have been made clear, will be able to find a practical and satisfactory solution, seeking guidance from those considerations of courtesy and good neighbourliness which, in matters of asylum, have always held a prominent place in the relations between the Latin American Republics.