DISSENTING OPINION BY JUDGE READ

As I have concurred in the judgment of the Court on the claims presented by the Government of Colombia, and in a large part of the judgment on the counter-claim, it is possible for me to confine my separate opinion to one aspect of the case. I regret that I cannot agree with the majority of the Court on the question whether the grant of asylum by the Colombian Ambassador at Lima, on January 3rd, 1949, to Señor Haya de la Torre, could be justified as an urgent case within the meaning of the Havana Convention, 1928.

Before examining this question, it is necessary to make some preliminary explanations. In the pleadings, and in the course of the argument, there have been frequent references to "American international law", and the "American institution of asylum". As my conclusions in this case are largely based on my understanding of these expressions, it is necessary for me to indicate what they mean.

They use the word "American" in a special sense—as relating to a regional group of States, the twenty Latin-American Republics. The region covers the greater part of South and Central America, and extends to parts of North America south of the Rio Grande, including two of the Caribbean Islands. It does not, however, include the whole of either North, South, or Central America, and, in that sense, the use of the word "American" is misleading. To avoid confusion, it will be convenient to use quotation marks when it is used in this special sense.

With regard to "American international law", it is unnecessary to do more than confirm its existence—a body of conventional and customary law, complementary to universal international law, and governing inter-State relations in the Pan American world.

The "American institution of asylum" requires closer examination. There is—and there was, even before the first conventional regulation of diplomatic asylum by the Conference at Montevideo in 1889—an "American" institution of diplomatic asylum for political offenders. It has been suggested, in argument, that it would have been better if the institution had been concerned with ordinary people and not with politicians, that it is unfortunate that political offenders were protected from trial and punishment by courts of justice during the troubled periods which followed revolutionary outbreaks, and that it would have been a wiser course for the republics to have confined the institution to pro-

tection against mob violence. That is none of our business. The Court is concerned with the institution as it is. The facts, established by abundant evidence in the record of this case, show that the Latin-American Republics had taken a moribund institution of universal international law, breathed new life into it, and adapted it to meet the political and social needs of the Pan American world.

The institution was founded upon positive law, the immunity of the diplomatic mission, and it does not make any difference whether the theory of extraterritoriality is accepted or rejected.

Upon the reception of a fugitive in an embassy or legation, he enjoyed in fact, and as a result of the rules of international law, an absolute immunity from arrest or interference of any nature by the administrative or judicial authorities of the territorial State. The only course open to that State was diplomatic pressure. It could not force an entry and remove the fugitive. It could insist on the recall of the head of the mission ; and, as a last resort, it could break off diplomatic relations.

The record in this case discloses that revolutions were of frequent occurrence in the region under consideration, and that a practice developed of granting asylum to political offenders. This practice became so common that it was regarded as a normal part of the functions of diplomatic missions. During a period when the institution of diplomatic asylum was obsolescent in other parts of the world, it was in a stage of vigorous growth and development in Latin-America.

This practice had a profound effect upon the legal relationship resulting from the establishment of a diplomatic mission, or the presentation of Letters of Credence by a new head in the case of a mission already established. This legal relationship finds its origin in implied contract. Its terms are never expressed in the Letters of Credence or other formal documents. The understanding of the parties as to what constitutes the proper functions of a diplomatic mission was affected by this widespread practice of granting asylum to political offenders, and, in consequence, the legal relationship based on implied contract was altered. Within the region under consideration, a territorial State, in the event of the grant of asylum to a political offender, could no longer assert, with justification, that the ambassador had transgressed the limits of the proper functioning of a diplomatic mission. The territorial State, on receiving the ambassador, had consented to the exercise by him of all the ordinary diplomatic functions, and within the Latin-American world, as a result of the development of this practice, it was understood by everybody that "the ordinary diplomatic functions" included the grant of asylum to political offenders.

Having established the nature of the "American institution of asylum", it is possible to proceed to the examination of the special aspect of the counter-claim in which I am unable to concur in the judgment of the Court. The majority is of the opinion that the grant of asylum in the present case was made in violation of the "First" provision of Article 2 of the Havana Convention, on the ground that it was not an urgent case within the meaning of that provision. I am of the opinion that it was an urgent case, and that the counter-claim should be dismissed.

The "First" provision of Article 2 reads as follows :

> *"First : Asylum may not be granted except in urgent cases and for the period of time strictly indispensable for the person who has sought asylum to ensure in some other way his safety."*

It is obvious that the expression "except in urgent cases .... safety" is not clear and unambiguous. Urgency has more than one ordinary and natural meaning, and it is capable of application to the problem of asylum in more than one way. In order to determine the meaning that the Parties to the Convention had in mind when they used this expression, it is necessary to look at the nature of the problem with which they were concerned, and at the context in which it is to be found.

The preamble shows that the Governments represented at the Sixth Pan American Conference at Havana in 1928 were "desirous of fixing the rules they must observe for the granting of asylum in their mutual relations". They dealt with asylum as an existing institution ; and, in Articles 1 and 2—the operative provisions of the Convention—they prescribed a series of restrictive conditions upon the grant of asylum, procedures which should be followed, and obligations which were for the most part incumbent upon the country of refuge. The only obligations imposed on the territorial State were the duty to recognize a grant of asylum made in compliance with the restrictive conditions, and the ancillary duty to furnish a safe-conduct in cases where the territorial State required that the refugee should be sent out of the country.

The principal provision in Article 2 imposes an obligation on the territorial State—the only primary obligation imposed on that State by the Convention. It is the obligation that asylum "shall be respected", and it imposes on the territorial State a legal obligation to respect any asylum which has been granted by a Party to the Convention, in conformity with the conditions clearly imposed under Articles 1 and 2, both precedent and subsequent. It is an obligation to respect not merely the grant but also the maintenance of asylum within the conventional limitations.

There are certain conditions arising under the 2nd, 4th, 5th and 6th provisions in Article 2 which are not unimportant, but which do not raise any difficulties in the present case. There are, however,

four essential conditions precedent, all of which had to be fulfilled in order to grant or maintain an asylum which the territorial State was bound to respect. They are :

(*a*) The refugee must not have been "accused or condemned for common crimes".
(*b*) The refugee must be a "political offender" within the meaning of the expression as used in the first paragraph of Article 2.
(*c*) Asylum shall be respected only "to the extent in which allowed, as a right or through humanitarian toleration, by the usage, the conventions or the laws" of the country of refuge.
(*d*) It must be an urgent case.

The first three conditions were fulfilled in this case, but the fourth requires special consideration. The fundamental problem is to determine what the Parties to the Havana Convention had in mind when they used the expression "in urgent cases". There are two possible interpretations, one which was put forward by the Peruvian Government at a relatively late stage in the controversy, namely, in the Counter-Memorial, and the other put forward by the Colombian Government at an even later stage, namely, the Reply. The reason for the delay in raising this issue can be readily understood. It had never occurred to anybody in Government circles in either Peru or Colombia that there was any doubt as to the existence of urgency in the present case.

The Governments of Peru and Colombia, in the months of February and March, 1949, were vigorously debating the question as to whether the asylum granted in the present case by the Colombian Ambassador could be justified, and whether the Peruvian Government was justified in refusing to recognize the asylum and grant a safe-conduct. If it had ever dawned on the consciousness of any person in authority in Lima that it was possible to place a construction on the expression "urgent cases" that would raise a doubt as to whether this was an urgent case, it is unthinkable that the point would not have been raised in the diplomatic correspondence. It was at a later stage that the Peruvian Agent thought it worth while to raise this point by way of counter-claim. It is now necessary to decide whether to adopt the position put forward by Peru, or the position put forward by Colombia, or a middle ground between two extremes.

To begin with, I do not think that it is possible to accept the extreme argument put forward on behalf of the Colombian Government. That argument was based upon an attempt to discredit the administration of justice in Peru, coupled with charges of administrative interference in judicial process. In this matter, it is sufficient to say that the Colombian Government has not proved its case,

and that there is no justification for discrediting the administration of justice or for any lack of confidence in that administration, whether in Peru or in any other State.

Having disposed of the extreme Colombian position, it is necessary to look at the extreme Peruvian position. It has been contended that the use of the expression "urgent cases" limits the grant of asylum to incidents in which the fugitive is being pursued by an angry mob or perhaps by a partially organized force meting out a form of crude and popular pseudo-justice in a period intervening between a successful revolution and the formation of a new organized judicial system. The basis of this view is that it is inconceivable that the Governments represented at the Panamerican Conference at Havana in 1928 could possibly have had in mind a system which would protect political offenders from police measures and prosecution and punishment under the laws of the country in which their offences had been committed.

I find it impossible to accept this extreme position, advanced by the Peruvian Government during the later stages of this dispute.

From the point of view of the regions of the world with which I have had close contact, it would be inconceivable, in principle, that governments could have intended "urgent cases" to include the protection of political offenders from the local justice. It would be unthinkable that a treaty provision should, in the absence of express words, be construed so as to frustrate the administration of justice.

There is, however, a principle of international law which is truly universal. It is given equal recognition in Lima and in London, in Bogota and in Belgrade, in Rio and in Rome. It is the principle that, in matters of treaty interpretation, the intention of the parties must prevail.

To apply this principle to the Havana Convention, I am compelled to disregard regional principles, and personal prejudices and points of view, which are not accepted and shared by the peoples and governments of the "American" region. I am compelled to look at the problem from the point of view of the twenty Latin-American Republics, the signatories of the Havana Convention. The United States of America contracted out of the Convention, by reservation before signature, and its special position does not need to be considered.

It is, therefore, necessary to examine the question, taking into account the principles of international law which are of universal application, and, also, the point of view and manner of thinking of the Parties to the Convention as indicated by the record. The real issue is: whether the Conference at Havana in 1928 had in mind the limitation of asylum to cases of mob violence, and whether

such an interpretation is confirmed or contradicted by the context. For this purpose, principles of international law which are universally accepted would justify consideration of the following points :

1st. the nature of the institution with which the Conference was dealing ;

2nd. the context and the economy of the treaty regarded as a whole ; and

3rd. the understanding of the parties to the treaty as to its meaning, as reflected by their subsequent action.

To my mind, the Peruvian interpretation, when subjected to these three tests, meets three insuperable obstacles, and must be discarded. They may be considered in turn.

The *first test* relates to the nature of the institution of asylum. While I have concurred in the view of the majority of my colleagues that Colombia has not established that there is a right of unilateral qualification or a right to safe-conduct based on customary law, there can be no doubt about the existence of an "American" institution of asylum, an extensive and persistent practice, based on positive law, on convention and on custom.

The record in this case discloses that over a period of more than a century there were numerous instances in which asylum was granted and made effective in the Latin-American republics. The wide spread of the practice is indicated by the citation, in the Reply, of more than fifty separate instances in which asylum was granted and made good, covering two hundred and forty-four enumerated individuals, as well as a number of groupings in which precise numbers are not given. At least seventeen Latin-American States were concerned. While the information available is by no means complete, the dates and such details as are given make it possible to tie in the instances in which asylum was granted to political revolutions and the periods of disturbed conditions which followed both successful and unsuccessful revolts. There is no instance anywhere in the record in which a country of refuge, of the Pan American world, acceded to a request by a territorial State to surrender a political offender to the local justice. There is nothing in the record to suggest that the granting of asylum was limited to cases in which the fugitive was being pursued by angry mobs. The evidence shows that asylum was granted, as a matter of course, to political offenders who were seeking to escape from ordinary judicial process under the laws of the territorial State. There can be no doubt that the institution of asylum, which the Pan American Conference was seeking to regulate in 1928, was one in which asylum was freely granted to political offenders during periods of disturbed conditions following revolutions. The Governments represented at the Conference made their intention abundantly clear in the preamble. They were "desirous of fixing the rules they

must observe for the granting of asylum". They gave no indication of any intention to change the essential character of the institution. Taking into account the points of view and manner of thinking of the twenty Latin-American republics, as disclosed by the evidence as to tradition and practice in the record, it is inconceivable that they could have intended to limit the grant of asylum for political offenders to cases in which they were being pursued by angry mobs. It is unthinkable that, in using an ambiguous expression "urgent cases", they were intending to bring to an end an "American" institution, based on ninety years of tradition, and to prevent the grant of asylum to political offenders "in times of political disturbance". To apply such a construction would be to revise, and not to interpret the Havana Convention; a course which I am precluded from adopting by the rule laid down by this Court when it stated: "It is the duty of the Court to interpret the Treaties, not to revise them." "*Interpretation of Peace Treaties (second phase), Advisory Opinion: I.C.J. Reports 1950, p. 229.*"

Accordingly, the Peruvian contention fails to meet the test of the first obstacle, and must be rejected.

On the positive side the application of this test would strongly support and confirm an interpretation of the expression "urgent cases" as covering cases in which asylum was granted during a period of disturbed conditions following a revolution, and as excluding asylum during periods of political tranquillity.

The *second test* arises out of the context and the general economy of the Convention. I have already reviewed the general economy of the treaty and shall confine myself to two aspects of the context.

The argument that asylum cannot be granted to protect the political offender from prosecution and possible conviction by the local courts, which is at the basis of the Peruvian interpretation of "urgent cases", encounters an insuperable obstacle in the text of Article 1.

The first paragraph of this article provides that "it is not permissible for States to grant asylum .... to persons accused or condemned for common crimes....". The second paragraph provides that "persons accused of or condemned for common crimes taking refuge .... shall be surrendered upon request of the local government". Accordingly, it is clear that a person accused, or even condemned, for a political offence was regarded by the Governments represented at the Conference as a proper subject for asylum. It is equally clear that a refugee accused or condemned for a political offence alone need not be surrendered to the local government. In the case before the Court, Peru has no right,

under the Havana Convention, to demand the surrender of the fugitive.

There is another aspect of the context. An examination of Articles 1 and 2 of the Convention shows that the parties intended to draw a clear-cut line between common criminals and political offenders. An interpretation, limiting asylum for political offenders to cases in which mob violence or revolutionary tribunals were involved, would eliminate this distinction and leave Article 2 to serve no useful purpose. I am precluded from accepting such an interpretation by the rule laid down by this Court when it stated: "It would indeed be incompatible with the generally accepted rules of interpretation to admit that a provision of this sort occurring in a special agreement should be devoid of purport or effect." "*Corfu Channel Case, Judgment of April 9th, 1949, I.C.J. Reports 1949, p. 24.*"

This Convention, in paragraph 1 of Article 2, deals with "asylum granted to political offenders". A political offender is a person who has committed a political offence against the laws of the territorial State. Asylum cannot, by its very nature, be granted to a political offender without protecting him from local prosecution, and without frustrating the administration of justice in the territorial State. An interpretation limiting the grant of asylum under Article 2 to cases in which political offenders were pursued by angry mobs, coupled with the duty to turn the fugitive over to the local police to be prosecuted for his political offence, would put the political offender on exactly the same footing as the common criminal. It is conceded that the latter can be given temporary shelter from mob violence or lynch law, on humanitarian grounds, and handed over to the local police for prosecution. Such an interpretation would, in effect, delete the word asylum from the first paragraph of the article, substitute temporary shelter on humanitarian grounds, and create a position in which the provisions of Article 2 would "be devoid of purport or effect".

Any attempt to interpret the expression "urgent cases" as limiting diplomatic asylum to protection from mob violence encounters the insuperable obstacle presented by these provisions of the Convention, and must be rejected.

On the positive side, the application of this test would support an interpretation of the expression as covering cases of asylum during periods of revolutionary disturbance, and as excluding it during periods of tranquillity, and would bring the provisions of Articles 1 and 2 into close harmony.

The *third test* relates to the understanding of the parties to the treaty as to its meaning, reflected by their subsequent action. It may be observed that this Court relied upon an examination of the

subsequent attitude of the Parties with a view to ascertaining their intention, when interpreting an international agreement, stating: "The subsequent attitude of the Parties shows that it was not their intention, by entering into the Special Agreement, to preclude the Court from fixing the amount of the compensation." "*Corfu Channel Case, Judgment of April 9th, 1949: I.C.J. Reports 1949, p. 25.*"

In the present case, if the Parties had meant that asylum was to be restricted to cases where offenders were seeking to escape from angry mobs, or from improvised revolutionary tribunals, it is certain that there would have been a fundamental change in the practice of the Latin-American States. There is sufficient evidence in the record to convince me that there was no change in practice in granting or recognizing diplomatic asylum, in the years following the coming into force of the Havana Convention.

Considerations of time and space, and the lack of information regarding the course followed by all of the Parties to the Convention, prevent a comprehensive examination of all aspects of this test. It will be sufficient to examine the course followed by Colombia and Peru in granting asylum, and in recognizing the grant of asylum by other countries, during the last twenty-two years.

With regard to Colombia, it is sufficient to note that there was no break in Colombian practice in the matter of the grant of asylum by Colombian diplomatic missions, or in the recognition of asylum granted in Colombia by the diplomatic missions of other Latin-American States. There was no indication of any tendency to restrict the grant or recognition of asylum to cases in which a political offender was *not* seeking protection from arrest, prosecution and punishment by the local authorities.

With regard to Peru, it is equally clear that, prior to March 21st, 1950, there was no change in practice. Disregarding the Spanish Civil War cases which were of a special character, Peru recognized the grant of asylum by the Bolivian Legation in 1930, granted asylum in Guatemala in 1944, in Bolivia in 1946, and in Panama in 1948, and recognized grants of asylum by the Brazilian, Paraguayan, Colombian, Chilean, Uruguayan and Venezuelan Embassies in Lima in 1948 and 1949. Even the course followed in the case of Señor Haya de la Torre did not indicate any change in practice. Throughout the diplomatic correspondence, Peru strongly contended that Colombia was not entitled to grant the asylum because the refugee had been accused of a common crime. It was urged, with equal vigour, that Peru was not bound to give a safe-conduct, and that Colombia did not have a right of unilateral qualification. It was not contended that the grant of asylum was invalid, on the ground that it had not been an "urgent case". It was not argued that asylum

could not be accorded when its purpose was to enable a refugee to escape from prosecution or imprisonment by the local judicial authorities. There is only one possible explanation for this omission ; namely, that, at that time, the Peruvian Government considered that the conditions of urgency contemplated by the Havana Convention existed in Lima in January 1949.

There is the strongest possible confirmation of this explanation in the "Official information from the Ministry for Foreign Affairs" published in the Official Bulletin of the Government of Peru, *El Peruano*, October 26th, 1948, and cited in the Memorial, paragraph 39. An attempt was made by Colombia to treat this document as committing the Government of Peru to acceptance of the doctrine of unilateral qualification upon which it was largely based. I do not dissent from the action of the Court in rejecting this extreme view of the nature and significance of the document. But that does not mean that the document has no significance. While it may not have conformed to the view of the Military Junta, it remains an official statement of the views of the constitutional Peruvian Government as to the nature and scope of diplomatic asylum. It is the strongest possible evidence that the Peruvian Government, on October 26th, 1948, did not consider that the "First" provision in Article 2 of the Havana Convention, in using the expression "urgent cases" could be regarded as restricting asylum to refugees fleeing from angry mobs or revolutionary tribunals. All of the "asylees" whose position was explained in this document were political offenders, fugitives from the ordinary administration of justice in Peru.

While it is impossible to review the practice in all of the Republics which were Parties to the Convention, and while the references to the attitude adopted by Bolivia, Guatemala, Panama, Brazil, Paraguay, Chile, Uruguay and Venezuela are incomplete, there is one fact that emerges from the state of the record in this case. There is not one instance, cited by either Colombia or Peru, in which a Party to the Convention has refused to grant or to recognize diplomatic asylum to a political offender "in times of political disturbance" on the ground that he was seeking to escape from arrest, prosecution or imprisonment, for a political offence, by the judicial authorities of the territorial State. If there had been such an instance, it is inconceivable that it would not have been included in the voluminous documentation of this case.

It is impossible to escape the conclusion that the Parties to the Convention have acted over a period of twenty-two years upon the understanding that the use of the expression "urgent cases" was not intended to be a bar to the grant of asylum to

political offenders, seeking to escape from prosecution for a political offence by the local judicial authorities, "in times of political disturbance". Accordingly, the Peruvian interpretation fails to meet the third test.

On the positive side, the application of this test supports an interpretation of the expression "urgent cases" as covering cases of asylum granted to political offenders "in times of political disturbance", and as excluding it during periods of tranquillity.

The three tests lead to the same results. They lead to the rejection of the new Peruvian interpretation of "urgent cases"; and they lead, with equal force, to the acceptance of the view put forward by the Peruvian Foreign Ministry on October 26th, 1948. This is a clear and unequivocal statement of the views of the Government as to the nature and extent of the obligations imposed on Peru by the conventional and customary rules binding on that country. It is also noteworthy that it contains a clear statement on the point which is under immediate consideration. It reads as follows:

> "Diplomatic asylum is based on a desire for humanitarian protection in times of political disturbance and on the recognized inviolability of the seats of diplomatic missions. Therefore, it must be recognized in favor of persons prosecuted for political reasons."

In stating that diplomatic asylum "must be recognized in favor of persons prosecuted for political reasons", the Government was taking the position that a person seeking to escape from prosecution by the local judicial authorities could be an "urgent case" within the meaning of Article 2 of the Havana Convention. In saying that "diplomatic asylum is based on a desire for humanitarian protection in times of political disturbance", the Government of Peru was furnishing the key to the solution of the problem. Nowhere in the extensive documentation of this case can we find a clearer or more convincing interpretation of the expression "urgent case". Nowhere can we find any other interpretation which will satisfy the three tests set forth above, as well as any other tests which would be permissible under the rules of international law governing the interpretation of treaties.

Accordingly, I am compelled to reach the conclusion that the expression "urgent cases" must be construed as restricting the grant of diplomatic asylum, as regards political offenders, to cases in which the grant is made "in times of political disturbance" of a revolutionary character, and as preventing the grant of asylum during periods of tranquillity.

The question remains whether the third day of January, 1949, has been proved to have been a time of political disturbance of a

revolutionary character. This is a matter peculiarly within the knowledge of the territorial State, and, in my opinion, Colombia was not bound to establish more than a *prima facie* case. There can be no doubt that Colombia has discharged the burden of proof to this extent. On the other hand, Peru has not furnished a scintilla of evidence with regard to political conditions obtaining in Lima at the beginning of January, 1949. The Agent for Peru in the Rejoinder stated: "We do not propose to describe the internal situation of Peru which justified the promulgation of the decrees mentioned by Colombia" (the decrees mentioned included that under which a state of siege was proclaimed on January 2nd, 1949). Certain assertions were made on behalf of the Peruvian Government as to conditions obtaining at that time, but they were incomplete and, even if accepted in the absence of proof, they did not cover all relevant phases of the conditions existing at the date in question. In these circumstances, I am of the opinion that it is necessary to make a finding in favor of the Colombian contention in this respect, namely, that January 3rd, 1949, was a time of political disturbance in which a request from a political offender for protection against prosecution by the local authorities could be regarded as an "urgent case" within the meaning of the Convention.

It is unnecessary at this stage to do more than indicate the extent of the *prima facie* evidence submitted by Colombia to prove the existence of a period of political disturbance at that time. It is sufficient to indicate that the period of disturbance lasted until February 17th, 1949. Beyond that date, there is nothing in the record to justify an assumption that disturbed conditions continued or disappeared. The evidence is as follows:

1. The state of siege proclaimed by the Government of Peru on January 2nd, 1949, and extending for a period of 30 days. It is true that under the Peruvian Constitution the proclamation of a state of siege did not prevent the functioning of the ordinary courts of justice. On the other hand, it is conclusive evidence of the fact that the Government of Peru was at that date of the opinion that a period of political tranquillity had not been reached, but that political conditions were so disturbed that it was necessary to continue the state of siege and the suspension of the constitutional guarantees.
2. Apart altogether from the proclamation of a state of siege, there is unmistakable evidence that the Peruvian Government was of the opinion that the conditions up to the 17th February, 1949, were such that a grant of asylum in Lima could be regarded as an "urgent case" within the meaning of the Havana Convention. During this period the Peruvian Government acted on this assumption, and as late as February 17th, 1949, delivered safe-conducts to the Uruguayan Ambassador (Reply, Annex 1).

3. In addition to the appraisal of the situation made by the Peruvian Foreign Office and by the Colombian Ambassador, it has been established that the Ambassadors of Bolivia, Guatemala, Panama, Brazil, Paraguay, Uruguay, Chile and Venezuela considered that the political situation in Lima was so disturbed that grants of asylum to political offenders could be justified as "urgent cases" within the meaning of the Convention. These transactions took place at varying dates extending beyond the middle of February, 1949, and none of the cases seemed to be grants of asylum for the purpose of escaping from angry mobs. The action of these Ambassadors is not conclusive, but it is difficult to believe that they could all have been wrong in this respect, and that their error could have been shared by the Peruvian Ministry for Foreign Affairs.

4. This was not a case of conflict between a lawfully established constitutional government and a person alleged to be a leader of a revolutionary party. It was a conflict between two revolutionary groups. The record shows that the successful group had staged a revolution in August, 1948, which had failed; and a second revolution on October 27th, which had succeeded. This group, which described itself as "The Military Junta of the Government", was exercising supreme legislative and executive powers in Peru.

   This Military Junta, which had gained power by unconstitutional means, as its fourth official act, made a Decree-Law, dated November 4th, 1948, and published in *El Peruano* on the following day, with harsh measures directed against rebels. The provisions of this Law were in striking contrast to those of the Peruvian Constitution and Codes which have been brought to the attention of the Court.

   I do not think that it has been established that the provisions of this Law could have been invoked against Señor Haya de la Torre. On the other hand, they demonstrate the extreme nature of the legislative and executive powers which were, in fact, being exercised by an unconstitutional military junta. They point to the fact that orderly government had not been restored in Peru.

It seems clear, therefore, that Colombia has established considerably more than a *prima facie* case, and that the Court should find that the grant of asylum to Señor de la Torre was an "urgent case" within the meaning of the Convention.

Before stating my final conclusions on the counter-claim, I must deal with some other points which affect the case.

It has been contended that urgency is lacking in this case because the grant of asylum on January 3rd, 1949, by the Colombian Ambassador was three months after the second rebellion, two months after the third and successful rebellion by the Military Junta, and 48 days after the summons of November 16th, 1948. It must not be overlooked that the fugitive was a political leader, well known in Peru, and if he had remained in hiding for three months and if he had refused to comply with the summons, which has not been proved in these proceedings, there may have been good and sufficient reasons entirely consistent with urgency. It was undoubtedly necessary for him to remain hidden until the hue and cry had diminished to the point where he could reach an embassy in safety. If a right to grant the asylum existed, a delay reasonably necessary to take advantage of this right under the treaty could not impair the validity of the grant.

Further, the suggestion that 48 days or even three months was an unreasonably long time seems somewhat unrealistic to any person who possesses any knowledge of the history of revolutions, whether in Latin-America or in other parts of the world. It should not be overlooked that the contention, if accepted, would destroy the foundation of the case presented by the Government of Peru. It implies that if the fugitive had arrived at the Colombian Embassy at an earlier date, say Christmas or Thanksgiving Day, there would have been urgency and the grant by the Ambassador would have been valid, but even at the earlier dates the effect of asylum would have been to protect the fugitive from prosecution by the local authorities.

There is another point of greater importance. This opinion has been confined to the question of the grant of asylum ; and, apart from an incidental remark, maintenance has not been mentioned. Further, the case has been discussed in the light of the circumstances when the Colombian Ambassador granted the asylum ; and facts intervening during the diplomatic negotiations or pending the proceedings before this Court have been treated as irrelevant.

Beginning with the first point, maintenance, it would be improper for me, as a judge, to pass on the matter. The Peruvian Government has made its request to the Court in precise terms. It has confined the issue to the question of grant *("l'octroi")*. My reasons for adopting this view may be stated shortly :

(*a*) What did Peru ask the Court to decide ? Peru asked the Court to adjudge and declare "that the grant *(l'octroi)* of asylum by the Colombian Ambassador at Lima to Víctor Raúl Haya de la Torre was made in violation of Article 1", etc.

(*b*) What did Peru mean when its Agent used this language? Ordinarily, it would be enough to say that the Peruvian Government meant what it said. The words used "l'octroi de l'asile" mean the grant of asylum—and do not mean "grant and maintenance".

In this case, however, the meaning of "*l'octroi*" has been given a double demonstration by Peru. The fact that Peru made a fruitless effort to bring the question of "maintenance" into the case, by putting forward a new counter-claim based on "maintenance" during the oral proceedings, is proof that Peru did not think that it had already been brought before the Court by the language used in the original counter-claim.

Further, the Peruvian Government has explained, in unequivocal language, what its Agent meant when he made the counter-claim. The statement was made in the course of the oral proceedings:

> "The *essential* reason for the presentation of the counter-claim was to induce the Court to declare that, at the moment when the asylum was granted, the accused man was not exposed to any physical and transient danger such as would result from the action of an angry mob, rioting, the impotence of the government, or even from the constitution of an extraordinary tribunal, a tribunal of vengeance. That is the *essential* basis of our counter-claim. If that danger did not exist, and *a fortiori* if it did not persist, there was no reason for granting asylum. Accordingly, it is only as a quite *subsidiary* and secondary issue that we have discussed the point whether it was a question of a common crime or of a political delinquency, or whether M. Haya de la Torre was guilty or innocent. That point is entirely, or almost entirely, outside the debate. We might have argued that you had no jurisdiction to decide on it, and that the only question we were asking you to answer was whether at the moment when the asylum was granted, and at the present time, the refugee was exposed to any danger, and whether, in consequence, the asylum was legitimate or otherwise."

The first sentence in the quotation takes in the original counter-claim, and shows that Peru meant to ask the Court to decide on the grant and not the maintenance of the asylum. The last sentence takes in both the original and the new counter-claim made on October 3rd, and repeated on October 9th in the course of the oral proceedings. It shows that Peru meant to ask the Court to decide on the grant and also on the maintenance *at the present time ("l'heure actuelle")*; but not on the question of maintenance between this original grant and the date of the judgment of the Court.

(*c*) My third reason for refusing to interpret "grant" as including "maintenance" is to be found in the attitude of the Parties in this case.

Peru has not—either in the diplomatic correspondence, in the pleadings or in the oral proceedings—called on Colombia to surrender the fugitive. This attitude was fully explained in the Counter-Memorial. The explanation given reserved the right to demand surrender ; but it also showed that Peru recognized that there were political as well as legal factors involved, and that there was no desire to raise the question of surrender (and maintenance is inseparably connected with surrender) pending the settlement of the legal questions put to the Court in the counter-claim.

In fact, apart from the original grant of asylum, there has been no actual issue of maintenance between the Parties. It was necessary to keep the fugitive in the Embassy to preserve the matter in *status quo* during the period of diplomatic negotiation. It was equally necessary to retain him while the case was pending before this Court. In the absence of a demand for his surrender, his retention was with the concurrence of the Peruvian Government.

It is necessary to emphasize that I must confine my opinion to the counter-claim as presented in the final submission of the Peruvian Government made on October 9th, 1950. The request that the Court should adjudge and declare "that in any case the maintenance of the asylum constitutes at the present time a violation of that treaty" must be rejected, because it was made in the course of the oral proceedings contrary to the provision of Article 63 of the Rules of Court. Its acceptance would deprive the Colombian Government of its procedural right to answer this new counter-claim in the Reply, and to present evidence in respect of it. With regard to the original counter-claim, I am bound to limit my opinion to the question as to whether "the grant of asylum by the Colombian Ambassador .... was made in violation of" the provisions of the Convention.

For all of these reasons, I am compelled to reach the conclusion that it has been established that the asylum was granted by the Colombian Ambassador to a political offender "in times of political disturbance" between a successful revolution and the restoration of settled conditions in Peru. It follows that this was an urgent case and that the grant of asylum by the Ambassador was not made in violation of the provisions of Article 2 of the Havana Convention.

(Signed) J. E. READ.