

HAYA DE LA TORRE (COLUMBIA V. PERU) 1951: A CASE COMMENT

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HISTORY (THE ASYLUM CASE)

The Haya de la Torre case goes back to a couple of years before the International Court of Justice (ICJ) passed the judgment. The history of the case deals with various approaches to interpreting international treaties and law along with a prior decision of the ICJ, well known as "The Asylum Judgment". The case is set in the politically turbulent nation of Peru in 1948. A robust military influence, social and economic instability and border disputes with neighbouring countries like Ecuador and Columbia¹ marked this period in Peru. There were frequent changes in political leadership, with different leaders coming to power and being ousted. These changes contributed to a sense of uncertainty and undermined the establishment of stable governance². On January 3, 1948, a military uprising in Peru led by the political party "American People's Revolutionary Alliance". The Peruvian authorities sought legal proceedings against those involved in the rebellion by charging them with the crime of causing a military rebellion. The head of the party, Victor Raúl Haya de la Torre, was responsible for directing and instigating the uprising. As he had absconded and was not to be found, the Peruvian authorities issued a summons on November 16, 1948, requesting Haya de la Torre's presence before the Examining Magistrate and for conducting a trial³.

The Colombian Embassy in Lima granted diplomatic refuge to Victor Raúl Haya de la Torre on January 3, 1949. A day later, the Colombian Ambassador in Lima informed the Peruvian Government of the asylum and asked the territorial state (here, Peru) to provide safe conduct to enable the refugee to leave the country. On January 14, 1949, the Colombian Embassy further informed the Peruvian Government that the refugee (here, Haya de la Torre) had been qualified as a political offender⁴. The Peruvian Government, in response, refused to grant safe conduct and rejected the status given to the refugee by the Colombian Embassy. After months of deliberations, the neighbouring nations reached diplomatic correspondence⁵. An agreement

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¹ Meade, T. A. (2010). *A history of modern Latin america: 1800 to the present*. Wiley.

² Meade, T. A. (2010). *A history of modern Latin america: 1800 to the present*. Wiley.

³ *Colombian-Peruvian asylum case, Judgment of November 20th 1950 : I.C.J. Reports 1950, fi. 266.*

⁴ *Colombian-Peruvian asylum case, Judgment of November 20th 1950 : I.C.J. Reports 1950, fi. 266.*

⁵ *Colombian-Peruvian asylum case, Judgment of November 20th 1950 : I.C.J. Reports 1950, fi. 266.*

was signed between Peru and Columbia on August 31, 1949, to submit the case to the International Court of Justice⁶.

Columbia made the application at the registry of ICJ with the claims that they have acted in compliance with the Pan-American Havana Convention on Asylum of 1928⁷, the Bolivarian Agreement of 1911⁸, the Convention of Montevideo and American International Law⁹, which gave the Colombian Embassy the power to unilaterally qualify the refugee as either a political offender or a common criminal. Columbia also claimed that Peru is obligated to provide a safe-conduct to the refugee as he was granted asylum in Columbia. Peru's counterclaim included that Haya de la Torre was not a political offender but a common criminal instead and that the urgency requirement under the Havana Convention was not complied with. Given these claims, the ICJ found Columbia's arguments to contradict and rejected both their claims. The Court found the claims of Haya de la Torre being a common criminal made by Peru to be ill-founded and dismissed it as well. However, the Court agreed with the Peruvian argument that Columbia did not adhere to the urgency of protecting the rights of refugees that the Havana Conventions aimed at safeguarding. The Court found the asylum to be irregular¹⁰.

THE HAYA DE LA TORRE CASE

The Haya de la Torre case¹¹, although a continuation of the Asylum case, deals with the intricacies of the interpretation of International Treaties and Judgments. After the ICJ judgment of 1950, the Peruvian Government demanded that the Colombian Embassy execute the judgment by putting an end to the asylum and surrendering the refugees. Columbia, in response, claimed that ending the asylum would be an infringement of the 1950 judgment (as it had not mentioned termination of asylum) and also of the Havana Convention of 1928. This led to Columbia filing an application in the International Court of Justice once again asking the Court to state how the execution of the judgment shall be carried on and to declare that handing over of Haya de la Torre would not come under execution of the judgment. Peru filed its counterclaims asking how Colombia was meant to execute the judgment and urged the Court

⁶ *Colombian-Peruvian asylum case, Judgment of November 20th 1950 : I.C.J. Reports 1950, fi. 266.*

⁷ D.Schindler and J.Toman, *The Laws of Armed Conflicts*, Martinus Nijhoff Publishers, 1988, pp.962-967.

⁸ *Colombian-Peruvian asylum case, Judgment of November 20th 1950 : I.C.J. Reports 1950, fi. 266.*

⁹ *Colombian-Peruvian asylum case, Judgment of November 20th 1950 : I.C.J. Reports 1950, fi. 266.*

¹⁰ *Colombian-Peruvian asylum case, Judgment of November 20th 1950 : I.C.J. Reports 1950, fi. 266.*

¹¹ *Haya de la Torre case, Judgment of June 13th 1951 : I.C.J. Reports 1951, fi. 71.*

to reject the claims of Colombia and declare that the asylum should have ceased to exist right after the 1950 judgment¹².

During the case proceedings, the Government of Cuba declared an intervention to the ICJ, which listed its interpretation of the Havana Convention of 1928. The Cuban Government had argued that its intervention was valid because they were a member of the Havana Convention. The Peruvian Government argued that this intervention was inadmissible as the Government of Cuba was not a party to the case. The Court held a hearing to decide the admissibility of the intervention. It concluded that any intervention is ancillary to the proceedings and can be considered relevant only if it relates to the subject matter of the pending proceedings¹³. Unlike the previous case, where the issue was whether Columbia could unilaterally decide whether the refugee was a common criminal or political offender, this case dealt with the problem of whether the asylum of Victor Raúl Haya de la Torre shall be terminated or not. The submissions of the parties (here, Colombia and Peru), along with the judgment of 1950, did not shed light on this issue. The Court also believed that the issue of surrendering the refugee could be better understood if the Havana Convention of 1928 could be interpreted better, based on which the Declaration of Intervention by the Cuban Government was allowed¹⁴.

While analyzing the case's merits, the Court observed that both parties were seeking a proper execution of the judgment of 1950, whereas the judgment stood unclear regarding this. The judgment merely cleared the position of each country and created a *faux* obligation against one another without any straightforward procedure that needed to be entailed. However, the parties' submissions were presented to receive a definite answer as to the termination of asylum and the course to be adopted¹⁵. The Court denied providing a course of action as doing so is out of the Court's judicial functions. The Court took a different approach to interpretation. It held that it was not proven that Mr Haya de la Torre had committed common crimes and that the asylum granted did not comply with the Havana Convention. Considering all the relevant facts and laws in place, the International Court of Justice believed that Columbia was not obliged to surrender the refugee to the Peruvian authorities. However, while analyzing the claims of Peru, the Court held that Peru is legally entitled to claim for the termination of asylum but not the

¹² *Haya de la Torre case, Judgment of June 13th 1951 : I.C.J. Reports 1951, fi. 71.*

¹³ *Haya de la Torre case, Judgment of June 13th 1951 : I.C.J. Reports 1951, fi. 71.*

¹⁴ *Haya de la Torre case, Judgment of June 13th 1951 : I.C.J. Reports 1951, fi. 71.*

¹⁵ *Haya de la Torre case, Judgment of June 13th 1951 : I.C.J. Reports 1951, fi. 71.*

surrender of the refugee. Although it seems contradictory, the Court passed this order as surrendering refugees is not the only course to terminate asylum¹⁶.

APPLICATION OF LAW AND REASONING

The International Court of Justice in The Hague, Netherlands, was set up under the Charter of the United Nations in 1945. The Court's responsibilities include providing advisory opinions on legal matters presented to it by specialized agencies and authorized United Nations entities, as well as resolving legal disputes that States submit to it in conformity with international law. The Court cannot issue judgements or orders that are binding on countries as it lacks any jurisdiction and can merely give opinions according to Article 96 of the UN Charter - "*Other organs of the United Nations and specialized agencies, which may at any time be so authorized by the General Assembly, may also request advisory opinions of the Court on legal questions arising within the scope of their activities*"¹⁷. The advisory opinion of the Court ensures that parties are merely guided by International Law whilst arriving at a settlement. This was the *ratio decidendi* used by the Court in the case of Haya de la Torre for not giving a definite course of action for the execution of the Asylum judgment. The parties (here, Peru and Columbia) were informed of their rights and duties towards one another and the refugees without creating any obligation. However, as of November 2021, 73 countries have considered ICJ to have compulsory jurisdiction, which makes their orders and judgments binding on the parties involved. This shift in the jurisdiction of the International Court of Justice will ensure more finality in their adjudication and will promote efficient execution of the judgment¹⁸.

One point of commonality between the Asylum case and the Haya de la Torre case is that both cases deal with the interpretation of the Pan-American Havana Convention on Asylum of 1928. The Havana Convention on Asylum of 1928 laid down rules for member countries regarding the grant of asylum. The convention established rules under which asylum can be provided in a foreign embassy to a political offender who is a national of another country, referred to as the territorial state. The convention is obvious that asylum can only be provided to political offenders and not to common criminals, as mentioned in Article 1 of the convention - "*It is not permissible for States to grant asylum in legations, warships, military camps or military*

¹⁶ *Haya de la Torre case, Judgment of June 13th 1951 : I.C.J. Reports 1951, fi. 71.*

¹⁷ "Chapter XIV: The International Court of Justice (Articles 92-96)." *United Nations*, United Nations, <https://www.un.org/en/about-us/un-charter/chapter-14>. Accessed 11 June 2024.

¹⁸ Basis of the Court's Jurisdiction, International Court of Justice, (<https://www.icj-cij.org/Basis-of-Jurisdiction#:~:text=By%20virtue%20of%20the%20article,the%20International%20Court%20of%20Justice.&text=The%20Statute%20provides%20that%20a,the%20Court%20in%20legal%20disputes>).

aircraft, to persons accused or condemned for common crimes, or to deserters from the army or navy"¹⁹. In the Asylum case, Peru failed to prove that Mr Victor Raúl Haya de la Torre was a common criminal, and the Court instead found him to be a political offender as he had led a military rebellion in the territorial state of Peru. Due to this, the asylum granted by the Embassy of Columbia was held valid in the 1950 judgment.

When it came to the 1951 case of whether the termination of Haya de la Torre shall be ended or not, the interpretation of the convention was done differently. The Court identified asylum under the Havana Convention as a provisional measure for political offenders, in turn establishing the fact that the asylum needs to be terminated. In the case of a common criminal, the convention states that they shall be handed over to the territorial state only through the mode of extradition as mentioned in Article 1 of the convention - "*Persons accused of or condemned for common crimes taking refuge in any of the places mentioned in the preceding paragraph shall be surrendered upon request of the local Government. Should said persons take refuge in foreign territory, surrender shall be brought about through extradition, but only in such cases and in the form established by the respective treaties and conventions or by the constitution and laws of the country of refuge*"²⁰. However, the convention remains silent as to the procedure for termination of asylum granted to political offenders. The Court also identified that asylum should be granted in urgent cases till the safety of the refugee can be guaranteed, as mentioned in Article 2 of the convention - "*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*"²¹. When considering the case of Haya de la Torre, there was no imminent threat or urgency in his case as he was merely going to face a trial in his home country. Additionally, safe conduct in an asylum can be provided if the territorial state (here, Peru) has required the refugee to be sent out of the country. However, Peru had not ordered it, making the asylum irregular. The convention remains ambiguous in many aspects of terminating asylum and granting asylum under irregular circumstances. The Court held that the silence of the convention does not create any obligation against any country in any matter (here, in the case of Haya de la Torre, the surrendering of the refugee). The ICJ interpreted the silence

¹⁹ Article 1, Pan-American Havana Convention on Asylum of 1928.

²⁰ Article 1, Pan-American Havana Convention on Asylum of 1928.

²¹ Article 2, Pan-American Havana Convention on Asylum of 1928.

as a way for countries to make decisions after taking into consideration all relevant facts, political ties, inter-border relations and political expediency²².

CONCLUSION

In conclusion, the Haya de la Torre case clearly depicts the functions of the International Court of Justice. The advisory function of the ICJ was practised efficiently in this case, although it was not in the best interest of what both parties wanted. The advisory opinions of the ICJ undermine the value of its views as they have no binding value. The change that countries have adopted in considering ICJ to have compulsory jurisdiction will lead to more conclusiveness in the orders granted by the Court.

The ICJ, by accepting both parties' claims, created uncertainty in the execution of the judgment as both claims were contradicting in nature. However, this was done to ensure that the Court did not go against the spirit of the Havana Convention of 1928. This was seen in the ICJ's approach while adjudicating this case. The approach was to not create any obligation towards any of the parties as that was against the spirit of the convention. The Court interpreted the silence and the ambiguity in the convention as the spirit of the convention that aimed at countries being able to formulate their own decisions and execute them whilst considering political expediency and relevant facts in decision-making. By doing this, the Court also gave importance to customs that are followed by countries.

The International Court of Justice (ICJ) highlighted the value of diplomatic resolutions informed by humanity and good neighbourly behaviour as it concluded its work in these cases. The Haya de la Torre legal conflict is a significant chapter in the history of international law, highlighting the dynamic relationship between legal concepts, historical settings, and the global pursuit of justice.

²² *Haya de la Torre case, Judgment of June 13th 1951 : I.C.J. Reports 1951, fi. 71.*