

A Latin American
Guide to the
International Court
of Justice Case Law

Research Team

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A Latin American Guide to the International Court of Justice Case Law

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INTRODUCTION

Latin America prides itself in being a peaceful region. Historically resistant to any kind of external interference, Latin American states have tended toward the principles of national sovereignty, non-intervention, and peaceful settlement of disputes, which are deeply embedded in their political and juridical cultures. These principles were recognised in the agreements that established the Organization of American States (OAS) in 1948 and have also been codified in the OAS Charter. Moreover, they are strongly rooted in the region's diplomatic and legal cultures, as enshrined in many Latin American constitutions.

While Latin American states have always opted for the peaceful settlement of disputes, they have more generally contributed to the development of international law from this perspective. The universal presence of Latin American states at the 1907 Second Hague Peace Conference and their contribution to the work and outcome of the conference are well known: they encouraged the recourse to arbitration and non-use of force, the principle of juridical equality of states, the strengthening of international jurisdiction, and the direct access of individuals to international justice.¹ During the 1907 Hague Conference, these states advanced the idea that international courts should not operate on the exclusive basis of the consent of disputing states. This concept was further alluded to in a statement by the Colombian delegation before the Assembly of the League of Nations and Subsidiary Organs in 1920: "The principle of compulsory arbitration is not only a principle of international justice; it is a democratic principle, since it is the logical result of the legal equality of states. It is deeply rooted in the history, traditions and institutions of the American peoples."² The Peruvian delegation also

¹ TRINDADE, Antônio A. Cançado (2008) 'The presence and participation of Latin America at the Second Hague Peace Conference of 1907' in Yves DAUDET, *Topicality of the 1907 Hague Conference, The Second Hague Peace Conference*, Leiden/London: Martinus Nijhoff Publishers.

² Société des Nations/CPJI, 'Documents au sujet de mesures prises par le Conseil de la Société des Nations aux termes de l'article 14 du Pacte et de l'adoption par l'Assemblée du Statut de la Cour permanente,' Geneva, SDN/CPJI, 1920, p. 142. *Dissenting opinion of Judge Cançado Trindade, Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v.*

stressed that “Latin America, by a very great majority, perhaps unanimously, desires compulsory jurisdiction and the reign of peace.”³

The old debate regarding Latin American international law also demonstrates the region’s willingness to influence norms development in the field of international law.⁴ Concretely, Latin Americans have advanced recognition of the compulsory jurisdiction of the Permanent Court of International Justice (PCIJ) and the future International Court of Justice (ICJ). The ingenuous formula, known as “declarations recognizing the jurisdiction of the Court as compulsory,” was proposed by the Brazilian jurist Raul Fernandes in order to overcome a deadlock within the Advisory Committee of Jurists responsible for drafting the Statute of the PCIJ. The referred formula contributed to attracting the acceptance of compulsory jurisdiction of the PCIJ by a total of 45 states and was firmly supported by Latin American states. The same Latin American formulation of 1920 was maintained in the present Statute of the International Court of Justice due to the intransigent position of the more powerful states. This shows that Latin American states share a less traditional view of international adjudication and see the Court as an organ of a value-based international community, capable of more than just solving disputes between parties in a state-centered world order.⁵

It followed that after the Second World War, several international organizations were created in Latin America, such as the Organization of American States (OAS), the Central American Integration System (SICA), the Andean Community (CAN), the Common Market of South America (Mercosur) and, more recently, the Union of South American Nations (UNASUR). Most of these organizations (except UNASUR) developed their own dispute settlement mechanisms, enhancing the region’s tradition of peaceful settlement of disputes. The same rule applies to the United Nations (UN), under the auspices of which Latin American states have been strongly active. Indeed, these states have brought 21 cases since the creation of the ICJ. Most of the cases concern maritime and territorial

Russian Federation), *Preliminary Objections, Judgment, I.C.J. Reports 2011*, p. 70.

³ *Ibid*, p. 246-247.

⁴ LORCA, A. B. (2006) ‘International Law in Latin America or Latin American International Law? Rise, Fall, and Retrieval of a Tradition of Legal Thinking and Political Imagination,’ *Harvard International Law Journal*, 47-1.

⁵ VON BOGDANDY, Armin and Venzke, Ingo (2012) ‘On the Functions of International Courts: An Appraisal of Their Burgeoning Public Authority,’ *ACIL Research Paper* No 2012-10: 1-29. According to the authors, the term organ is used in a non-technical way (p. 61).

disputes, such as the ones recently being judged and currently pending before the Court: *Territorial and Maritime Dispute* (Nicaragua v. Colombia), *Maritime Dispute* (Peru v. Chile), *Certain Activities Carried out by Nicaragua in the Border Area* (Costa Rica v. Nicaragua) and, most recently, *Dispute concerning Maritime Delimitation in the Caribbean Sea and the Pacific Ocean* (Costa Rica v. Nicaragua).

In context, this project focuses on the contribution of Latin America to the ICJ since these states tend to submit their disputes to the World Court even though other regional or sub-regional dispute settlement systems are eminently capable of solving matters. The fact that Latin American states are currently the most active litigants before the Court shows their belief in it as a legitimate public authority that not only resolves disputes but also, more generally, contributes to the development of international law.⁶

Disclaimer:

This project consists on a systematic analysis of Latin America's participation before the ICJ. It resulted from the authors' long-term dedication and research, which aimed to incorporate to this study all cases involving this region before its publication. However, in spite of this effort, due to editing and publishing process, readers shall acknowledge that the present book data has only been updated until 16 December 2015.

⁶ For an assessment of the idea of international public authority, see VON BOGDANDY, Armin, and VENZKE, Ingo (2012), 'In Whose Name? An Investigational of International Court's Public Authority and Its Democracy Justification,' *The European Journal of International Law*, 23.1: 7-41; VON BOGDANDY, Armin and VENZKE, Ingo (2012) 'On the Functions of International Courts: An Appraisal of Their Burgeoning Public Authority,' *ACIL Research Paper* No 2012-10: 1-29; VON BOGDANDY, Armin and VENZKE, Ingo (eds.) (2011), 'Beyond Dispute: International Judicial Institutions as Lawmakers,' Special Issue, *German Law Journal* 979: 12; VON BOGDANDY, Armin, DANN, Philipp, GOLDMANN (2008) 'Developing the Publicness of Public International Law: Towards a Legal Framework for Global Governance Activities,' *German Law Journal*, 9:1375.

CHAPTER I

DIPLOMATIC AND CONSULAR PROTECTION

1. VIENNA CONVENTION ON CONSULAR RELATIONS (PARAGUAY V. UNITED STATES OF AMERICA), 1998

1.1 Summary

This case concerns the violation of the Vienna Convention on Consular Relations of 1963¹ (hereinafter “Vienna Convention”) by the government of the United States of America (hereinafter “United States”), which occurred due to the lack of notification of the arrest of Paraguayan Angel Francisco Breard to the government of the Republic of Paraguay (hereinafter “Paraguay”).

I. Facts

On 1 September 1992, Mr. Breard was arrested by the local authorities of Virginia, United States, as a suspect of murder. Because the United States was party to the Vienna Convention, the proper procedure would be to inform Mr. Breard of his right to consular assistance as well as to notify Paraguay’s consular office of his arrest. However, the legal authorities neglected such rights and provided themselves with a court-appointed counsel.

Since the chosen legal counselor was not culturally prepared to advise Mr. Breard, the latter made a series of unfavorable decisions. One of these decisions was to reject the offer of life in prison in exchange for pleading guilty. Instead, Mr. Breard, unaware of the cultural difference between the American and Paraguayan courts, relied on the Court’s mercy and confessed, hoping to be acquitted. Such decisions resulted in his conviction of murder on 24 June 1993, and on 22 August 1993, the death penalty. Mr. Breard’s appeals were denied, as well as his petition for a writ of *habeas corpus*.

It was only in 1996 that Paraguayan authorities became aware of Mr. Breard’s situation, still without any form of notification from American

¹ Vienna Convention on Consular Relations (Vienna Convention) (Vienna, 24 April 1963, 596 U.N.T.S. 261).

authorities. On 30 August 1996, Mr. Breard, assisted by the Paraguayan consular office, filed a petition to the Federal Court of first instance for a writ of *habeas corpus*, as his last possibility of appeal, and for the first time mentioning the violation of the Vienna Convention. This claim was dismissed by the Court, who alleged that, according to a municipal law doctrine, if the violation of the convention was not mentioned in the initial proceedings, it could not be brought up in a federal *habeas* proceeding. Since the Federal Court denied the *habeas corpus*, Virginia's Court set the execution date for 14 April 1998.

In his last attempt to avoid execution, using a petition for a writ of *certiorari*, Mr. Breard demanded that the American Supreme Court reevaluate the lower instance's judgments and prevent his execution until it delivered a decision. Statistically, however, it was not likely that the Supreme Court would take the case, and even if it did, it would be shortly before the scheduled execution.

Therefore, Paraguay itself decided to file a lawsuit in a Federal Court of first instance against the local authorities of Virginia, on 16 September 1996. On 27 November 1996, the Court rejected the case arguing that it did not have jurisdiction on it, based on a municipal doctrine. The United States alleged, later in the appeals, that American courts could not judge cases in which it is accused of violating an international treaty by another party.

In light of such a turnout, Paraguay attempted to file a petition for a writ of *certiorari* as well. However, as mentioned previously, the chances that the Supreme Court would accept the case were next to none, so Paraguay also tried to start diplomatic negotiations in order to achieve the United States' support. On 3 June 1997, the Department of State stated its disagreement with Paraguay's legal views on the situation, and denied any kind of support for the Paraguayan exercise of its international rights.

Having exhausted all legal remedies, Paraguay decided to refer the dispute to the International Court of Justice (hereinafter "ICJ") by filing an application instituting proceedings against the United States.

II. Jurisdiction

The jurisdiction of the ICJ rests upon Article 36, Paragraph 1 of the Statute of the Court² together with Article 1 of the Optional Protocol concerning

² Article 36, Paragraph 1 of the Statute of the Court provides that: "The jurisdiction of the Court comprises all cases which the parties refer to it and all matters

the Compulsory Settlement of Disputes.³ Together, these provisions establish compulsory jurisdiction of the ICJ in cases concerning the violation of treaties to which both states are parties. Since both Paraguay and the United States are parties to the Vienna Convention, the dispute at hand lies in the compulsory jurisdiction of the Court.

III. Merits

Paraguay's Arguments

The first claim regards the violation of Article 36, Subparagraph (*b*) of the Vienna Convention⁴ by the United States, once the lack of notification to Paraguayan authorities prevented Mr. Breard from exercising his international rights such as legal and non-legal assistance from the consular offices.

The second claim also involves Article 36, but from a different perspective. With the violation of Article 36 of the Vienna Convention, the United States made it impossible for Paraguay to perform its consular functions comprised in Article 5⁵ and Article 36 of the Vienna Convention.

specially provided for in the Charter of the United Nations or in treaties and conventions in force.”

³ Article 1 of the Optional Protocol states that: “Disputes arising out of the interpretation or application of the Convention shall lie within the compulsory jurisdiction of the International Court of Justice and may accordingly be brought before the Court by an application made by any party to the dispute being a party to the present protocol.”

⁴ Article 36, Subparagraph (*b*) of the Vienna Convention rules as follows: “If he so requests, the competent authorities of the receiving state shall, without delay, inform the consular post of the sending state if, within its consular district, a national of that state is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall also be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this sub-paragraph.”

⁵ Article 5 of the Vienna Convention provides that: “Consular functions consist in: (*a*) protecting in the receiving state the interests of the sending state and of its nationals, both individuals and bodies corporate, within the limits permitted by international law; (*b*) furthering the development of commercial, economic, cultural and scientific relations between the sending state and the receiving state and otherwise promoting friendly relations between them in accordance with the provisions of the present Convention; (*c*) ascertaining by all lawful means

The third claim concerns both Article 36, Paragraph 2⁶ of the Vienna Convention and Article 26⁷ of the Vienna Convention on the Law of

conditions and developments in the commercial, economic, cultural and scientific life of the receiving state, reporting thereon to the government of the sending state and giving information to persons interested; (d) issuing passports and travel documents to nationals of the sending state, and visas or appropriate documents to persons wishing to travel to the sending state; (e) helping and assisting nationals, both individuals and bodies corporate, of the sending state; (f) acting as notary and civil registrar and in capacities of a similar kind, and performing certain functions of an administrative nature, provided that there is nothing contrary thereto in the laws and regulations of the receiving state; (g) safeguarding the interests of nationals, both individuals and bodies corporate, of the sending states in cases of succession *mortis causa* in the territory of the receiving state, in accordance with the laws and regulations of the receiving state; (h) safeguarding, within the limits imposed by the laws and regulations of the receiving state, the interests of minors and other persons lacking full capacity who are nationals of the sending state, particularly where any guardianship or trusteeship is required with respect to such persons; (i) subject to the practices and procedures obtaining in the receiving state, representing or arranging appropriate representation for nationals of the sending state before the tribunals and other authorities of the receiving state, for the purpose of obtaining, in accordance with the laws and regulations of the receiving state, provisional measures for the preservation of the rights and interests of these nationals, where, because of absence or any other reason, such nationals are unable at the proper time to assume the defence of their rights and interests; (j) transmitting judicial and extrajudicial documents or executing letters rogatory or commissions to take evidence for the courts of the sending state in accordance with international agreements in force or, in the absence of such international agreements, in any other manner compatible with the laws and regulations of the receiving state; (k) exercising rights of supervision and inspection provided for in the laws and regulations of the sending state in respect of vessels having the nationality of the sending state, and of aircraft registered in that state, and in respect of their crews; (l) extending assistance to vessels and aircraft mentioned in subparagraph (m) of this article, and to their crews, taking statements regarding the voyage of a vessel, examining and stamping the ship's papers, and, without prejudice to the powers of the authorities of the receiving state, conducting investigations into any incidents which occurred during the voyage, and settling disputes of any kind between the master, the officers and the seamen insofar as this may be authorized by the laws and regulations of the sending state; (n) performing any other functions entrusted to a consular post by the sending state which are not prohibited by the laws and regulations of the receiving state or to which no objection is taken by the receiving state or which are referred to in the international agreements in force between the sending state and the receiving state."

⁶ Article 36, Paragraph 2, reads as follows: "The rights referred to in paragraph 1 of this Article shall be exercised in conformity with the laws and regulations of the receiving state, subject to the proviso, however, that the said laws and regulations

Treaties of 1969 (hereinafter “VCLT”).⁸ Paraguay argued that the United States violated these provisions by keeping the treaty from having full effect in reason of municipal doctrines. Finally, for the same reason as the last claim, Paraguay invoked Article 27⁹ of the VCLT.

IV. Judgment Requested

Based on the claims above exposed, Paraguay asked the ICJ to adjudge and declare:

“(1) [T]hat the United States, in arresting, detaining, trying, convicting, and sentencing Angel Francisco Breard, as described in the preceding statement of facts, violated its international legal obligations to Paraguay, in its own right and in the exercise of its right of diplomatic protection of its national, as provided by Articles 5 and 36 of the Vienna Convention;

(2) [T]hat Paraguay is therefore entitled to *restitutio in integrum*;

(3) [T]hat the United States is under an international legal obligation not to apply the doctrine of “procedural default” or any other doctrine of its internal law, so as to preclude the exercise of the rights accorded under Article 36 of the Vienna Convention; and

(4) [T]hat the United States is under an international legal obligation to carry out in conformity with the foregoing international legal obligations any future detention of or criminal proceedings against Angel Francisco Breard or any other Paraguayan national in its territory, whether by a constituent, legislative, executive, judicial or other power, whether that power holds a superior or a subordinate position in the organization of the United States, and whether that power's functions are of an international or internal character; and that, pursuant to the foregoing international legal obligations,

(1) [A]ny criminal liability imposed on Angel Francisco Breard in violation of international legal obligations is void, and should be recognized as void by the legal authorities of the United States;

(2) [T]he United States should restore the *status quo ante*, that is, re-establish the situation that existed before the detention of, proceedings

must enable full effect to be given to the purposes for which the rights accorded under this Article are intended.”

⁷ Article 26 of the Vienna Convention on the Law of Treaties of 1969 states that: “Every treaty in force is binding upon the parties to it and must be performed by them in good faith.”

⁸ Vienna Convention on the Law of Treaties of 1969 (VCLT) (Vienna, 23 May 1969, 1155 UNTS 331).

⁹ Article 27 of the Vienna Convention on the Law of Treaties of 1969 provides that: “A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to article 46.”

against, and conviction and sentencing of Paraguay's national in violation of the United States' international legal obligations took place; and (3) [T]he United States should provide Paraguay a guarantee of the non-repetition of the illegal acts."¹⁰

V. Final Considerations

This case does not present the United States' view since the case itself was closed before the party was able to present its Counter-Memorial, and therefore, its arguments. The timeline with a brief history of the proceedings as far as they were carried out can be found in the timeline below.

1.2. Timeline

DATE	DOCUMENT	CONTENT
3 April 1998	Press Release No. 1998/13	Informs that Paraguay submitted the application instituting proceedings against the United States for their violations of the Vienna Convention on Consular Relations. According to the plaintiff, the United States failed to complete some of the necessary procedures in regards to a Paraguayan convicted of murder and sentenced to death in the United States. His execution was set to occur on 14 April 1998. In the application Paraguay requested interim measures so as to prevent the execution until the case was resolved. The Court scheduled Public Hearings for 7 April 1998.

¹⁰ *Vienna Convention on Consular Relations (Paraguay v. United States of America), application instituting proceedings, ICJ, 1998, p. 6 -7.*

7 April 1998	Press Release No. 1998/15	Sets forth information about the Public Hearings, in which both Paraguay and the United States provided their views on the provisional measures. The Court set a date to decide this issue in an Order on 9 April 1998.
8 April 1998	Press Release No. 1998/16	Sets the public sitting to the hearing of the Order for 9 April 1998 at 2 p.m. It also notifies the press about the procedures in this sitting.
9 April 1998	Order and Press Release No. 1998/17	Relays the decision of the Court on the provisional measures requested by Paraguay. The Court ruled unanimously that the United States should do everything to stop and prevent the execution of the Paraguayan convict until the case came to an end. The country also had to inform the Court about the actions they would take to implement this Order. The document also includes declarations of the judges about the provisional measures.
9 April 1998	Order and Press Release No. 1998/18	Sets the time limits for Paraguay's Memorial and the United States' Counter-Memorial. Paraguay could write its Memorial until 9 June 1998, since the United States had until 9 September 1998 to give its Counter-Memorial to the Court.
8 June 1998 and 9 June 1998	Order and Press Release No. 1998/22	The Court decides to extend the time limits. Paraguay had until 9 October 1998 to write the Memorial and the United States had until 9 April 1999.

<p style="text-align: center;">10 November 1998 and 11 November 1998</p>	<p style="text-align: center;">Order and Press Release No. 1998/36</p>	<p>Determines the removal of the case from the Court's list. Even though Paraguay filed the Memorial of the case, the country decided to not go further with the proceedings. Since the United States agreed with the discontinuance, the case was interrupted and removed from the Court's list.</p>
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2. HAYA DE LA TORRE (COLOMBIA V. PERU), 1950

2.1. Summary

This case concerns the effects of the judgments of the *Asylum Case (Colombia v. Peru)*¹ and its request for interpretation² with respect to the refugee Víctor Raúl Haya de la Torre, asylee at the Embassy of the Republic of Colombia (hereinafter “Colombia”) in the Republic of Peru (hereinafter “Peru”), where he was accused of committing political crimes.

I. Facts

The International Court of Justice (hereinafter “ICJ”) adjudged the *Asylum Case* in 1950, concerning the legal relation between the parties with respect to the Havana Convention and the asylum of Mr. Haya de la Torre in the Colombian Embassy at Lima, Peru. On 27 November of the same year, Colombia filed a request for interpretation of the case, but the Court found it to be inadmissible. On 28 November 1950, the Minister for Foreign Affairs and Public Worship of Peru contacted the Colombian Embassy, affirming that the judgment had made clear that the asylum was irregular and, therefore, that the refugee should be surrendered to Peruvian authorities. The Colombian Minister denied such a request, claiming that surrender would not only be adverse to the referred judgment, but also to the Havana Convention.³

With no agreement on the effect of the judgment, Colombia presented an application instituting proceedings on 13 December 1950. The parties consented to limit the written proceedings to a Memorial and Counter-Memorial and indicated their judges *ad hoc*.

¹ *Asylum Case (Colombia v. Peru)*, Judgment, I.C.J. Reports 1950, p. 266.

² *Request for Interpretation of the Judgment of 20 November 1950 in the Asylum Case (Colombia v. Peru)*, I.C.J. Reports 1950, p. 395.

³ Convention of Havana on Right of Asylum (Havana Convention on asylum of 1928) (Havana, 20 February 1928, 132 L.N.T.S. 323).

The proceedings were communicated to other states, as provided by Article 66⁴ of the Rules of Court and, on 15 February 1951, the Minister of Cuba sent a memorandum regarding its views on the Havana Convention and the specific asylum of Mr. Haya de la Torre. Such a memorandum was interpreted as a Declaration of Intervention, according to Article 66, Paragraph 1 of the Rules of Court. The parties were consulted and, since Peru objected to the intervention, the Court opened a Public Hearing on 15 May 1951. Thereafter, attending to Article 63⁵ of its Statute, the Court decided to maintain the intervention since, in spite of the allegations that it was *res judicata*, there were interpretations of matters not yet considered by the ICJ. Peru contended that the situation was not an intervention but an appeal by a third state and out of time, to which the Court responded that every intervention is incidental and must be related to the subject matter at hand. Consequently, it admitted the intervention based on Article 66, Paragraph 2 of the Rules of Court.

II. Jurisdiction

According to the Court, the conduct of parties during the proceedings was enough to, in this case, establish the jurisdiction. There was no objection by the parties involved and all procedures were made in Court.

III. Matters of Dispute

The question of this case is whether the refugee ought to be surrendered or not. In its submissions, Colombia asked to Court to:

“[...] [S]tate in what manner the judgment of November 20th, 1950, shall be executed by Colombia and Peru, and furthermore, to adjudge and declare that Colombia is not bound, in execution of the said judgment of November 20th, 1950, to deliver M. Víctor Raúl Haya de la Torre to the Peruvian authorities. In the event of the Court not delivering judgment on the foregoing submission, may it please the Court to adjudge and declare, in the exercise of its ordinary competence, that Colombia is not bound to

⁴ This Article refers to the previous version of the Rules of Court. The current version was adopted on 14 April 1978 and entered into force on 1 July 1978.

⁵ Article 63 of the Statute of the Court states that: “1. Whenever the construction of a convention to which states other than those concerned in the case are parties is in question, the Registrar shall notify all such states forthwith. 2. Every state so notified has the right to intervene in the proceedings; but if it uses this right, the construction given by the Judgment will be equally binding upon it.”

deliver the politically accused M. Víctor Raúl Haya de la Torre to the Peruvian authorities.⁷⁶

For its part, Peru asked the Court:

“I. To state in what manner the judgment of November 20th, 1950, shall be executed by Colombia; II. To dismiss the submissions of Colombia by which the Court is asked to state solely [“sans plus”] that Colombia is not bound to deliver Víctor Raúl Haya de la Torre to the Peruvian authorities; III. In the event of the Court not delivering judgment on submission No. 1, to adjudge and declare that the asylum granted to *Señor* Víctor Raul Haya de la Torre on January 3rd, 1949, and maintained since that date, having been judged to be contrary to Article 2, Paragraph 2, of the Havana Convention of 1928, ought to have ceased immediately after the delivery of the judgment of November 20th, 1950, and must in any case cease forthwith in order that Peruvian justice may resume its normal course which has been suspended.”⁷⁷

Cuba, finally, presented some interpretations on the Havana Convention as far as the surrender of Mr. Haya de la Torre was concerned.⁸

IV. Judgment

The Court began by affirming that, in fact, there was no approach to how the asylum should be terminated in the previous judgments. It explained, nevertheless, that it was not in a position to indicate a solution itself, since it would then be leaving its judicial role.

The Court responded directly to the states’ submissions. Regarding Colombia’s request to conclude that it not be obligated to surrender the refugee, according to the mentioned judgments, the Court explained that it could not reach such a conclusion, since the matter was not observed at the time of these previous judgments.

Regarding Colombia’s second request, that is, that the Court adjudge the case with ordinary competence – to which Peru responded that the decision of the previous case should be maintained – the ICJ explained that there was no *res judicata* on the matter and that it showed up only when Peru asked Colombia for the surrender of Mr. Haya de la Torre. The Court

⁶ *Haya de la Torre (Colombia v. Peru), Judgment, I.C.J. Reports 1951*, p. 75.

⁷ *Haya de la Torre (Colombia v. Peru), Judgment, I.C.J. Reports 1951*, p. 75.

⁸ Since the Court responded directly to the parties’ submissions, the presentation of this case will focus on the judgment rendered by the Court, which indirectly mentions the matters in dispute.

emphasized that, though the Havana Convention mentions asylum as a provisory situation that must not be prolonged for an indeterminate period (Article 2, Paragraph 1⁹), it does not define this period or the way in which the asylum should be terminated. It judged that Article 1¹⁰ could not be applied since the case did not correspond to the criteria it established, according to the asylum case judgment. As for Paragraph 2, it could not be applied either, since the situation involved a political crime, and not a common one, as found in the referred judgment. The Court concluded therefore that the absence of provision in the Convention could not be interpreted as establishing an obligation to surrender the refugee in the case of irregular asylum. It would be against the Latin American tradition of political asylum that considers that in such situations refugees must not be surrendered. Moreover, it found such lack of juridical rule to be an option made by the parties of the Convention, indicating their wish to keep the discussion in a political sphere.

Next, the Court justified that, although it found in previous judgments that asylum should not be used to obstruct justice, this did not mean that the state that grants irregular asylum must surrender the refugee. If it did, claimed the Court, the Convention would have expressly addressed the case, instead of providing only a general rule. In Peru's last submission, the Court observed that the state was entitled to ask for the conclusion of the refugee, due to the decisions of the asylum case. This did not mean, however, that it was in a position to require surrender.

Finally, the Court concluded that asylum should be terminated, but that there were different ways to do this and it was up to the states involved to decide, since any observation by the Court on the matter would exceed its judicial function. The final decision was as follows:

⁹ Article 2, Paragraph 1 of the Havana Convention provides that: "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."

¹⁰ Article 1 of the Havana Convention on Asylum states that: "It is not permissible for states to grant asylum in legations, warships, military camps or military aircraft, to persons accused or condemned for common crimes, or to deserters from the army or navy. 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."

“[...] [O]n the principal submission of the government of Colombia and the first submission of the government of Peru, unanimously, finds that it cannot give effect to these submissions and consequently rejects them; [O]n the alternative Submission of the government of Colombia and the second Submission of the government of Peru, by thirteen votes to one, finds that Colombia is under no obligation to surrender Victor Raúl Haya de la Torre to the Peruvian authorities; [O]n the third Submission of the government of Peru, unanimously, finds that the asylum granted to Victor Raúl Haya de la Torre on January 3rd-4th, 1949, and maintained since that time, ought to have ceased after the delivery of the judgment of November 20th, 1950, and should terminate.”¹¹

2.2. Timeline

DATE	DOCUMENT	CONTENT
13 December 1950	Press Release No. 1950/48	Communicates the filing of an application instituting proceedings by Colombia against Peru.
3 January 1951 and 4 January 1951	Order and Press Release No. 1951/1	Establishes and notifies that the President of the Court, as well as the representatives of Colombia and Peru have decided to limit the filing of written proceedings to: 7 February 1951 for Colombia's Memorial and 15 March 1951 for Peru's Counter-Memorial.
9 February 1951	Press Release No. 1951/3	Communicates that the parties involved have chosen as judges <i>ad hoc</i> : José Joaquín Caicedo Castilla (Colombia) and Luis Alayza y Paz Soldán (Peru). Also lists the agents indicated by the states involved and notes that Colombia has delivered its Memorial in time.

¹¹ *Haya de la Torre (Colombia v. Peru), Judgment, I.C.J. Reports 1951*, p.83.

15 March 1951	Press Release No. 1951/4	Announces that, on 13 March 1951, the ICJ received a letter from the government of Cuba, presenting its views on the Havana Convention and on the case.
14 April 1951	Press Release No. 1951/11	States that the Court will hold Public Hearings on the case on 8 May 1951.
8 May 1951	Press Release No. 1951/15	Communicates that Public Hearings will begin on 15 May 1951.
15 May 1951	Press Release No. 1951/16	Informs that the <i>ad hoc</i> judges were installed and made their solemn declarations.
16 May 1951	Press Release No. 1951/17	Notifies that the Court found the Cuban intervention to be admissible and opened the oral proceedings on the merits of the case, hearing the representatives of the parties involved.
17 May 1951	Press Release No. 1951/18	Reports the conclusion of oral proceedings.
11 June 1951	Press Release No. 1951/23	Communicates that on 13 June 1951 the Court will hold a Public Hearing to read its judgment on the case.
13 June 1951	Press Release No. 1951/24	Informs that the Court delivered its judgment on the case.

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3. ASYLUM (COLOMBIA V. PERU), 1949

3.1. Summary

This case concerns the dispute between the Republic of Colombia (hereinafter “Colombia”) and the Republic of Peru (hereinafter “Peru”) on matters related to the asylum granted by the Colombian Embassy in Lima to the Peruvian citizen Víctor Raúl Haya de la Torre.

I. Facts

On 3 October 1948 a rebellion against Peru’s government took place in Lima. This rebellion was immediately associated with the political party named the American People’s Revolutionary Alliance by a decree from the President of the Republic on 4 October 1948. On that same day, a state of siege was enforced in Peru.

On the following day, 5 October 1948, the leader of the party, Mr. Haya de la Torre, as well as other members, was denounced. On 10 October 1948, the public prosecutor responsible for the case declared that the crime for which they were being charged concerned military rebellion.

As the political scenario grew more intense, the examining magistrate ordered the arrest, on 25 October 1948, of those who were accused of the military rebellion and were not yet detained. Afterwards, on 27 October 1948, following this political crisis, the government’s military junta took over the country. The result of such events was a decree on 4 November 1948 enforcing severe procedures on cases of rebellion, among others. These procedures, however, did not apply specifically to the case concerning Mr. Haya de la Torre and the other members of the political party, as shown in several official government documents.

Given the circumstances, on 3 January 1949, Mr. Haya de la Torre sought asylum at the Colombian Embassy in Lima. The Colombian Ambassador notified the Peruvian Minister of Foreign Affairs and Public Worship the next day that Mr. Haya de la Torre was given asylum based on the Havana Convention on Right of Asylum of 1928,¹ signed by both

¹ Convention of Havana on Right of Asylum (Havana Convention on asylum of 1928) (Havana, 20 February 1928, 132 *L.N.T.S.* 323).