

Landmark Judgement

Case Study: Colombia v. Peru Asylum Case, [1950] ICJ 6



COLOMBIA VS PERU, (1950)

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For a number of reasons, including the development of customary international law, the concept of sovereignty in international law, and the growth of laws on extradition and political asylum, the *Colombia v. Peru* case—also referred to as the Asylum case—is a landmark in public international law.

The decision, which was resolved as early as the 1950s [Judgment on November 20, 1950], has been crucial in shaping international law and giving it its current form.

I. The Asylum Case's Historical Context

Peru is a nation in South America or Latin America, with Lima serving as its capital. During a difficult period in 1948, a protracted struggle for political authority and governance erupted in Lima.

The American Citizens' Revolutionary Alliance, which immediately became the opposition party, was defeated by the Military Junta Government after a protracted battle and siege.

Victor Raul, the head of the opposition, launched an uprising against the Junta administration in Peru with the goal of overthrowing him as a result of this loss of authority. However, the uprising was put down in less than a day because of the government's enormous political strength. Raul was also charged with sedition and inciting the revolt by the main party. Raul was forced to flee for his life as a result, and he applied for refuge at a Colombian embassy in Lima, the capital of Peru.

When the Peruvian authorities learned about his asylum on January 4, 1949, three months after his escape, they promptly demanded custody of him. However, the Colombian embassy asserted that Victor had a right to travel and asked for safe passage so he could depart the nation. Furthermore, without consulting the Peruvian government, the Colombian government unilaterally classified Victor's crime as a political infraction and granted him political asylum. The already furious Peruvian government flatly rejected Raul's request for safe passage, claiming that he had no right to political or diplomatic asylum because he was responsible for the uprising, or in legalese, common crimes.

The issue reached a diplomatic deadlock as a result of the States of Peru and Colombia's inability to come to an agreement, and neither party was able to move an independent authority. As a result, the two States signed an agreement stating that the ICJ would resolve the case and that both parties would accept the ruling.

II. Concerns before the ICJ

Does any international treaty, customary international law, or fundamental principles of international law grant the State of Colombia the authority to unilaterally classify Victor Raul's offense as a political offense?

Was it required by international law for the Peruvian government to allow Raul to leave the country safely?

Is it possible that the Colombian government and ambassador violated the 1928 Havana Convention on shelter by granting and maintaining shelter to the offender?

III. Applicable Laws

Articles 1 and 2 of the Havana Convention on Asylum, 1928; Article 18 of the Bolivarian Agreement on Extradition, 1911

1933 Montevideo Convention on Political Asylum

International Customary Law

IV. Justifications for the Colombian Government

In order to support its actions, the Colombian government presented the court with three arguments. Before we get into the arguments, it is important to remember that Colombia has petitioned the court to uphold the validity of its asylum claim and provide Victor Raul safe transit out of the country. Conversely, Peru has filed a counterclaim to invalidate the asylum, repatriate the perpetrator to the Peruvian authorities, and deny the offender safe passage. As a result, both sides attempted to use persuasive arguments to defend their positions.

The Colombian government's three points of contention can be explained as follows:

Every government has the right, in compliance with international law, to give **political asylum to any political refugee per Article 18 of the Bolivarian Agreement, 1911**. The Montevideo Convention of 1933 further reaffirmed this. Colombia and Peru both signed and ratified the agreements. Colombia cited these clauses to support its claim that no law had been broken because it had every right to offer sanctuary to the political criminal in accordance with its duties under the treaty.

Colombia further contended that South American nations have a long-standing, historical custom that gives them the authority to grant shelter to anyone who requests it. Colombia

further asserted that any unilateral qualification of a criminal as a political offender for the purpose of providing asylum is not prohibited by custom. Colombia therefore requested that since the State has the authority to unilaterally designate anyone as a political offender, it is the responsibility of other States to accept this designation and grant refugees or asylum seekers safe passage.

Last but not least, **Colombia contended that Peru was required under Article 2(2)** of the Havana Convention to grant the asylum seeker free and safe passage so they might depart the nation without suffering any harm. Furthermore, it was argued that this convention's provisions fit with American custom, which requires respect for such rights; as a result, Peru is obligated to grant Raul entry.

V. Justifications for the Peruvian Government

As previously stated, the Peruvian authorities filed a counterclaim to demand Kaul's extradition and hold Colombia accountable for concealing a criminal. The Peruvian government made two claims:

First off, asylum is not covered by the Bolivarian agreement; rather, it is an extradition pact. Furthermore, only political offenders are eligible for political refuge under the Havana Convention on refuge. Any individual who has done something harmful to the state and attempted to undermine its integrity and sovereignty is considered a political offender. Asylums are granted to political offenders because, in many cases, these individuals are rebels fighting against their oppressive government or a dictator's authority and are hidden from detection so they can be eliminated. In this instance, Peru contended that Victor was not a political criminal and that the Colombian government's unilateral designation of Victor as such was unlawful.

Second, the Peruvian government contended that refuge should be provided in situations of extreme need or emergency in accordance with Article 2 of the Havana Convention. For example, when the asylum seeker faces an immediate threat of persecution or annihilation. The Peruvian government has not demonstrated any such desire to persecute Raul in this instance. In contrast, the Peruvian court has started a legal trial against him. As a result, the asylum is unlawful and violates international law.

VI. ICJ ruling | Colombia v. Peru asylum case, [1950] ICJ 6

Regarding the unilateral qualification of Raul's offense as a political offense, the International

Court of Justice (ICJ) noted that in a typical situation, the territorial State is entitled to consent to the asylum-granting State's right to temporarily qualify an offense as a political offense. In this instance, the Colombian embassy declared the qualification absolute even in the absence of the Peruvian government's denial of consent.

Additionally, the court noted that no State has any right or entitlement under the Havana Convention to unilaterally classify an offense as a political offense. Therefore, it would be incorrect to claim that Colombia was entitled to make such a qualification.

The Montevideo Convention of 1933, which grants the State such authority, was heavily relied upon by the Colombian administration. The court noted that Peru has never ratified nor signed the Montevideo Convention. Furthermore, not many states have ratified the treaty, and its rules are hardly ever used. As a result, it is not enforceable as a general concept of international law or as a treaty.

In addition to the question of unilateral qualification, the court ruled that the Colombian government's claim that granting refuge is typical in Latin American states is also pointless. This is due to the fact that "consistent and uniform usage" is a necessary component of a legitimate custom. The technique has always emerged in the situation of South American states, taking into account some unanticipated emergencies and urgent needs. Since there isn't any consistent practice, there isn't any customary international law either.

Final Thoughts and Analysis

In addition to adding two crucial components—consistent and uniform usage—this case advanced the idea of customary international law. Now, in order to differentiate a practice from a custom, it is necessary to demonstrate that the practice has been carried out in the same manner for centuries and continues to be popular, directing the State's course. Therefore, the court correctly determined that Peru is entitled to Victor Raul's custody.