Prof. Christine Kaufmann
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Asyl Fall

Haya de la Torre Case (Columbia v. Peru) Judgment of November 20th 1950: I.C. J. Reports 1950, p. 266.

Nach einer gescheiterten militärischen Revolte in Peru im Jahre 1948 sollte einer ihrer Führer, Haya de la Torre, ein Peruaner, strafrechtlich verfolgt werden. Er konnte sich jedoch der Verhaftung durch Flucht in die kolumbianische Botschaft in Lima entziehen, wo ihm Kolumbien (diplomatisches) Asyl gewährte. Kolumbien ersuchte Peru daraufhin, Haya de la Torre eine sichere Ausreise zu garantieren, da dieser unter diplomatischem Schutz stehe. Peru lehnte das Ansinnen ab. Kolumbien gelangte deshalb an den IGH und machte sein angebliches Recht geltend, einseitig über die Art der Straftat zu befinden, d.h. zu entscheiden, ob es sich um ein gewöhnliches Delikt oder einen politisch motivierten Akt handle.

Auszüge aus dem Urteil

Seite 276/277 "The Colombian Government has finally invoked 'American international law in general'. In addition to the rules arising from agreements which have already been considered, it has relied on an alleged regional or local custom peculiar to Latin-American States. The Party which relies on a custom of this kind must prove that this custom is established in such a manner that it has become binding on the other Party. The Colombian Government must prove that the rule invoked by it is in accordance with a constant and uniform usage practised by the States in question, and that this usage is the expression of a right appertaining to the State granting asylum and a duty incumbent on the territorial State. This follows from Article *38* of the Statute of the Court, which refers to international custom "as evidence of a general practice accepted as law". […]

Seite 277 "[…] the Colombian Government has referred to a large number of particular cases in which diplomatic asylum was in fact granted and respected. But it has not shown that the alleged rule of unilateral and definitive qualification was invoked or […] that it was, apart from conventional stipulations, exercised by the States granting asylum as a right appertaining to them and respected by the territorial States as a duty incumbent on them and not merely for reasons of political expediency. The facts brought to the knowledge of the Court disclose so much uncertainty and contradiction, so much fluctuation and discrepancy in the exercise of diplomatic asylum and in the officia1 views expressed on various occasions, there has been so much inconsistency in the rapid succession of conventions on asylum, ratified by some States and rejected by others, and the practice has been so much influenced by considerations of political expediency in the various cases, that it is not possible to discern in all this any constant and uniform usage, accepted as law, with regard to the alleged rule of unilateral and definitive qualification of the offence.

The Court cannot therefore find that the Colombian Government has proved the existence of such a custom. But even if it could be supposed that such a custom existed between certain Latin-American States only, it could not be invoked against Peru which, far from having by its attitude adhered to it, has, on the contrary, repudiated it by refraining from ratifying the Montevideo Conventions of 1933 and 1939, which were the first to include a rule concerning the qualification of the offence in matters of diplomatic asylum."