

Transcript

of

**Seminar and Inter-regional Dialogue on the protection of
journalists**

*Towards an effective framework of protection for the work of
journalists and an end to impunity*

<http://www.inter-justice.org/>

Organised by

Council of Europe

UNESCO

Centre for Freedom of the Media (CFOM), University of Sheffield

European Lawyer's Union / Union des Avocats Européens (ELU/UAE)

European Court of Human Rights, Strasbourg (PRESS ROOM)

Monday 3 November, 2014

8.30 - 18.00

OPENING REMARKS

Participants: Guido Raimondi, Gabriella Battaini-Dragoni, Anne Brasseur, Nils Muižnieks, Guy Berger

Guido Raimondi, Vice-President of the European Court of Human Rights *(Translation from French by interpreters)*

Thank you! Ladies and gentlemen, president of the Parliamentary Assembly, Human Right Commissioner of the Council of Europe. Ladies and gentlemen, I am very delighted to be with you here on behalf of the European Court of Human Rights as participant of this seminar and inter-regional dialogue on the protection of journalists organized by the Council of Europe, UNESCO, the Centre for Freedom of media and the European Lawyer's Union. Holding this meeting at the headquarters of the Court has symbolic value. It shows the recognition of the value of the case law of the Court when it comes to the protection of journalists which the court is very much concerned. We are delighted to have with us Madame Anne Brasseur, and Madame Gabriella Battaini-Dragoni, deputy secretary general of the Council of Europe. Their presence shows how committed the Council of Europe is to this fundamental issue. Freedom of expression and its corollary, freedom of media, are not only protected by the Article 10 of the European Convention on Human Rights, but they are one of the pillars of a democratic state. We need to preserve them and develop them. This is indeed not just a priority, but the very *raison d'être* of the Council of Europe.

The judicial dimension is of course of crucial importance. Apart from the impressive case law which provides comprehensive protection for the function of providing information, including protection of journalist sources, the Court has developed leading principles when it comes to journalists in danger. It is indeed the case that the judgments of the Strasbourg Court and other regional courts when comes to protecting human rights transcends the framework of individual cases, they set up to establish codes of conduct, which are aimed among others to public officials.

So the discussion on the respective jurisprudences of regional courts, comparing them and the possibility of joint compendium and room for further improvement will be with no doubt a substantial part of the discussion that will take place in this seminar. Of course the judicial level does not suffice alone whenever courts are involved more often the harm has been done.

The European Court of Human Rights as I said a moment ago has already drawn up fundamental principles when it comes to the positive obligations on States when it comes in protecting journalists in danger, for example in the leading case of Dink against Turkey, but unfortunately this was only a judgement given after the murder of mister Dink.

So this conference sets up primarily to establish an inter-regional dialogue, at the judicial level in order to explore different practices in the case law, weaknesses in different legal frameworks and possible improvements in connection with the implementation of the UN Action Plan on "Safety of Journalists and the fight against impunity" of 2012.

So this will be an opportunity to have a critical debate which will also be constructive on past achievements, future challenges, lessons learned on the basis of experience and I am sure that all the participants will be keen to put forward suggestions and concrete recommendations in order to further enhance the implementation of the Action Plan.

The fact that we have Mrs Battaini-Dragoni with us shows how committed the Council of Europe is to this issue, a commitment that was recently reiterated by the Declaration of the 30th April 2014 at the Committee of Ministers inviting member states to respect the positive obligations with regard to the protection of journalists and the fight against impunity whilst making available the expertise of the organisation and that of other organisations.

I am sure we will have a rich debate and this indeed is what the European Court of Human Rights wishes which again is delighted to be hosting your discussion on this fundamental issue for human right and democracy.

Thank you!

Gabriella Battaini-Dragoni, Deputy-Secretary General, Council of Europe (*Translation from French by interpreters*)

Madame President, Mr Raimondi, dear friends, Vice president of the European Court of Human Rights, Human Rights Commissioner and Mr Berger.

Ladies and gentlemen,

First of all allow me to say that this I think is a very important day for the Council of Europe. It is important because we are inaugurating this meeting in this press room on the subject to which we are all committed namely the protection of journalists and the fight against impunity with respect to acts of violence against journalists. It is also an important day because as you all have seen today during the course of this afternoon we will be launching an activity which I hope will be more and more known worldwide, namely the World Forum for Democracy.

So this indeed is very important week for our organisation.

First of all I would like to thank the Court and the person of Vice President, Mr. Guido Raimondi, for inaugurating this seminar here, a seminar jointly organised by the Council of Europe. But also would like to thank our partners who are involved in organizing this seminar. UNESCO, we are delighted so that you have joined us today, but we would also like to thank the Centre for the Freedom of Media and Union of European Lawyers.

The issues of safety of journalists and the eradication of impunity for crimes committed against journalists, is one of the top priorities of the Council of Europe.

Today's seminar one of the series of previous activities we have undertaken in this field, organized by the Council of Europe. So this is a long term venture which will take place at different levels and various forms, standard setting work, political work, work involving cooperation to assist States and cooperation work with international institutions and with civil society in order to create the necessary synergies with our [respective] contributions.

So today the meeting is taking place in the headquarters of the Human Right Court and this is because back in 1976 in a case that has become very well-known 'Handyside against the United

Kingdom', it was stated that the right to freedom of expression is secured by Article 10 of the European Convention on Human Rights, is to be seen as one of the essential foundations of any democratic society.

So the three pillars of the Council of Europe, democracy, the rule of law and human rights cannot exist without freedom of expression and its corollary, as we were reminded by the Vice President of the European Court of Human Rights, freedom of the media. So this decisive connection works in both directions, media cannot be free when democracy is weak or where the rule of law and human rights are not respected.

In the Dink against Turkey case, and thank you Mr Raimondi for reminding us of the Dink case, I am sure this is a case you are all familiar with. There the European Court of Human Right restated that states are obliged to create an environment which is conducive to participation by all in public debate, so that all can express without fear the opinions and ideas. So it is in the light of this positive obligation in competent states that they must create a favourable environment and this is what has guided what we do. It is important to stress that all the work done by the Council of Europe should be seen in a broader context of the implementation at European level of the United Nations Action Plan on the safety of journalists and the issue of impunity.

Now we realize that this is a complex issue and we know that attacks against journalist are a matter of great contemporary concern. So these are attacks the public interests as well served by journalists and that is why we want to equip ourselves with necessary means to confront these challenges.

We are in a process of establishing an online platform that will collect process and disseminate information on serious issues concerning media freedom and the safety of journalists. We will be doing this in cooperation with associations of journalists. But we will of course be tapping in to the potential for other synergies in conjunction with international institutions.

The purpose behind this online platform would be to alert, on a systematic basis the Council of Europe bodies and institutions so that when necessary they can take swift and coordinated measures.

This platform will also ensure that the Council of Europe standards in the area of media freedoms and journalist safety will be given enhanced visibility, for example there will be relevant extracts from the case law of the European Court of Human Rights which will be published on the platform.

The Council of Europe, we are convinced that dialogue is a source of strength. We need dialogue at the level of Europe, but we also need a dialogue that goes beyond our continent.

The exact nature of violence against journalists and the root causes of this violence may vary. So we need to find solutions which are adapted to each particular case. The right to freedom of expression and freedom of the media are universal rights. Issues concerning the impact are of a common and worldwide concern and this means our responses should also be comprehensive worldwide.

We are convinced that the dialogue that you will be indicating today will be all the more relevant as it will encompass a variety of different stakeholders. By bringing together our strength to eradicate impunity for crimes against journalists, we will be involving courts, NGO's, international organisations, governments, media, and researchers. All these people have got to speak to one another.

Dear guests, we are delighted at all the commitment and efforts that you are putting in your various fields and we hope you will have a very constructive dialogue.

Thank you!

End: 0:14:55.4

Anne Brasseur, President of the Parliamentary Assembly of the Council of Europe (*translation from French by interpreters*)

Vice President of the Court,

Deputy Secretary General,

Human Right Commissioner

Director Berger,

Ladies and gentlemen

First of all, can I add my words of thanks to those of misses Battaini Dragoni. I would also like to thank each and every one of you for inviting the Parliamentary Assembly to attend the opening of this meeting.

You have been speaking about rights and resources but as the vice president of the Court stated a moment ago very often the court is only involved when it is too late.

As a political body we are responsible to ensure that the system can be established in order to prevent and avert, and that is why we also need to involve the Parliamentary dimension when protecting journalists.

I think that Reporters Without Borders has a well known slogan “Do not wait to be deprived of news or information to defend it”. So it is quite obvious to be deprived of information will seriously imperil democracy itself.

Journalists, because of their investigative work on political and social issues are movers of democracy and the rule of law.

Unfortunately we know too well that too many journalists put their lives on the line, risk death in defending this freedom. Perhaps I could just give you a few figures for 2014 from Reporters Without Borders:

So we have not yet reached the end of this year 2014 but already fifty six journalists were killed, 21 net citizens and citizen journalists were killed, one hundred seventy nine journalists were put in prison, and one hundred seventy four netcitizens were put in prison.

So I mean these are terrifying figures which show that the situation is in great urgency. Among the journalists who were killed, several were killed in member states of the Council of Europe, five in Ukraine.

So we can no longer wait to be deprived of the right to information to defend it and that means defending those in seeking this information put their lives on the line.

And indeed it was in reaction to the assassination the journalist, emblematic journalists, Anna Politkovskaya, that Reporters Without Borders awarded on the 15th of December 2005, to the President of the Parliamentary Assembly of the Council of Europe a petition signed by over twelve thousand persons calling for the opening of an international enquiry into this assassination. The tragic loss of this journalist who is a tremendously courageous person led to the adoption of Resolution 1535 of two thousand and seven by the Parliamentary Assembly, a resolution on threats against the lives and freedom of expression of journalists.

So this involves the responsibility of the parliamentarians. We need to defend freedom of expression. This resolution which was prepared by our former colleague and now much missed Andrew McIntosh, mentions an establishment of a facility to monitor, identify and analyze attacks against the lives and freedom of expression of journalists, as well as furthering investigations by the judicial and parliamentary authorities into these attacks.

The Assembly also invited, in Recommendation 1783 of 2007, invited the Committee of Ministers of the Council of Europe to establish (*I quote*) "a system to identify and analyze aggression against journalists and other serious attacks on freedom of media in Europe, in order to make political recommendations to member states on means to better protect journalists and the freedom of media". (*end of quote*)

Furthermore, the Committee of Ministers was invited to secure the implementation of these matters at the level of the United Nations.

So in opening the seminar today I am delighted, very satisfied to see that these seeds are now bearing fruit and leading to concrete action by the United Nations and the Council of Europe.

Of course, unfortunately, that is far from meaning that all these questions have been resolved.

An Action Plan by the United Nations on the Security and safety of journalists and impunity was approved on the twelfth of April 2012. An international day against impunity of crimes against journalists was established yesterday on the second of November 2014. This event was celebrated worldwide. Unfortunately, the media impact of this event was rather weak, so I think the media themselves need to step up the efforts to get this event more widely known because {BR} there is no point in reporting these matters only when journalists get killed and these murders make their way into the press.

We hold this event on freedom of journalists and safety of journalists once a year so I think it is up to the media to ensure that this event is much more widely known by the public at large.

So this seminar is part of this enhanced cooperation between the United Nations and the Council of Europe as part of the Action Plan.

The Committee of Ministers of the Council of Europe decided this year to establish an Internet platform and Madame Battaini-Dragoni has just mentioned it. We would like to thank the Secretary General of the Council of Europe, especially Madame Battaini-Dragoni who has spent a great deal of effort into promoting the various recommendations and the setting up of a platform.

This concrete initiative is a result of the determination of the Council of Europe to ensure that information needs to be defended otherwise we will lose it.

“An effective protection of the work of journalists also depends on journalists themselves and their professional associations.

International organisations can create political and diplomatic pressure as well as abstract legal frameworks; but the factual information about individual attacks on journalists, as well as about legislative or administrative obstacles to their work, must come from journalists.

Unfortunately, Europe and the world have recently seen a huge backlash on media freedom and the security of journalists. Freedom of expression in general is at risk in a number of countries.

It is shocking that journalists were victims of targeted attacks at Maidan Square in Kyiv, at Gezi Park in Istanbul, in the conflict zones in Ukraine as well as on the border of Syria and in Iraq. Attacks against the media and against freedom of expression are unfortunately not rare and let me add that I am most concerned about the situation in this respect in the Russian Federation, in Turkey, in Azerbaijan but also in Hungary. It is alarming that journalists are physically attacked in on political grounds and need police protection against organised crime. It is indeed worrying that journalists must fear for their employment in many countries, if their work angers those with political or economic power over the media. It cannot be accepted that many journalists are detained or in prison because of their work.

As long as we witness such acts against journalists and thus against media freedom and democracy, we must work to improve our legal standards and their practical application. Human rights are universal and must not be compromised.

As we all know - today more than ever - information cannot wait.

So let's not wait until we are deprived of it to stand up and fight for it!

Let's not keep journalists waiting to protect them." (Written speech, Anne Brasseur, 3 November 2014)

Thank you very much!

0:25:00.9

Nils Muižnieks, Commissioner for Human Rights, Council of Europe

Distinguished colleagues on the presidium, Excellencies, Ladies and Gentlemen,

It is a great pleasure for me to be here today.

Issues related to the protection of journalists both online and offline are important areas of my work.

In a number of my country visits, I have focused on the safety of journalists and media freedoms as one of the core issues, and I have also made regular media interventions on this subject, as appropriate and necessary. During a number of country visits I have visited journalists in detention and raised issues related to their imprisonment with the national authorities. If a situation in a country deteriorates rapidly, my mandate is flexible enough that I can quickly decide to go there to try and address the situation with the relevant authorities.

I have a number of different partners in my work, both within the Council of Europe and outside it. Associations of journalists and specialised NGOs are very important partners, as are international or regional organisations.

I would say that at the regional level, the OSCE representative on freedom of the media, Dunja Mijatovic, is probably my single most important partner. We profit from regular exchanges of information between our Offices. We have visited journalists in detention jointly and written joint op-eds to express our shared concern.

I believe that our message is strengthened when we join our voices to speak out together. Our work on this theme is complementary: I focus primarily on the root causes of the threats to journalists' safety; the media freedom representative can look more closely at individual cases, count how many are in jail, and raise their cases systematically with authorities.

In all cases of violence against journalists, harassments or threats, I think it is very important to look at the broader picture because these cases are often symptomatic of more general human rights problems that need to be addressed, such as: the conduct of law enforcement officials; the independence and impartiality of the judiciary; or the legal framework governing media freedoms.

In the case of Turkey, for example, the problem is closely linked to the functioning of the judiciary in general. In Azerbaijan, where journalists expressing critical views are often harassed with legal challenges, at least eleven journalists are in prison because of their reporting.

The lack of safety for journalists and impunity for crimes committed against journalists is a serious problem in Montenegro, as I observed during my visit there last March. Several cases, including the murder of Duško Jovanović, are still unsolved and new cases are accumulating on top of the old ones.

Among the most widespread threats to media freedom that I have encountered is police violence against journalists, especially those trying to cover demonstrations. This is quite a serious and preventable phenomenon. Police officers are agents of the state. The state is responsible for making sure that the police do their job well, and that they allow journalists to do their jobs as well.

This was an issue in Turkey. During the Gezi events, police used excessive force against demonstrators and journalists, many of whom were injured and had their equipment damaged.

When tensions erupted in Ukraine in February during demonstrations hundreds of journalists were attacked, including with stun grenades and rubber bullets. When I was there I heard stories of severe violence against journalists who had been shot in the eye, or the leg and then beaten. There were also many reports of security forces specifically targeting journalists, even though they were clearly identified as members of the press.

Policing of demonstrations has sometimes impinged on press freedom in Spain as well. At the end of March this year a group of journalists and photographers who identified themselves as members of the press were beaten by police.

Last year, my team actually noted that more than half of all the cases of journalists who were injured were injured by police. This is clearly unacceptable and should stop. The Council of Europe, the OSCE and others dealing with police problems - programmes, police training - must integrate this in our work, because I think we really need to help member states to overcome this problem.

Conflict zones.

Anne Brasseur mentioned conflict zones. They are also very dangerous places for journalists. The case of Crimea and now eastern Ukraine is emblematic. There we have seen press members being kidnapped, intimidated, denied access and having their material confiscated by armed individuals from various sides. I think the eastern part of Ukraine is now the single most dangerous place for a journalist to work in Europe. A number of journalists trying to do their job there have been killed.

However, even in calmer places we see some issues that affect a number of different countries, and that should be addressed, including the criminalisation of defamation. It is a widespread problem, even in so-called old democracies.

A second broad problem has to do with attempts to ban or restrict the so called propaganda of homosexuality.

Both of these have a chilling effect on journalistic freedom and must be addressed, and I would be very interested to see and hear how other regions in the world have been dealing with these two issues. Inter-regional dialogue is important for learning about best practices. This is why I am particularly glad that the UN and UNESCO are here - because they are my window to the rest of the world. This is my opportunity to learn what is going on elsewhere, outside of the countries covered by my mandate.

Thank you very much for your attention and I wish you a very successful and fruitful discussion today.

Thank you very much Mr Commissioner. Last intervention Guy Berger of UNESCO, Director of freedom of expression and media development.

Guy Berger (*text as provided*)

**Opening Remarks by
Mr Guy Berger, Director, Freedom of Expression and Media Development**

UNESCO
[3 minutes]

Good morning colleagues, ladies and gentlemen,

Thank you very much to esteemed colleagues from the European Court of Human Rights, the Council of Europe, and all partners in this event.

Yesterday, as we know, the international community commemorated the inaugural International Day to End Impunity for Crimes against Journalists.

We have heard of the numbers: **more than 700 journalists** have been killed because of their profession.

However, **nine out of ten** cases of such killings are never resolved. This unacceptably low rate of conviction feeds into a **vicious cycle of impunity** where perpetrators are emboldened to commit more crimes.

Later this month, UNESCO's Member States will be discussing the 2014 Report of the Director-General on the Safety of Journalists and the Danger of Impunity, in the forum of our Intergovernmental Council IPDC Council.

The Director-General's Report tracks the status of the investigation of **593 cases** of killings of journalists media workers, and social media producer of news from 2006-2013.

Allow me to share with you two key findings:

- Out of the total of 593 cases, UNESCO has received information about the resolution of only 38 cases, representing 6.4 percent of the total.
- 171 cases or 28.8 percent are still ongoing in various stages of judicial inquiry,

Further, and as our Director General, Irina Bokova, has said in an article published all around the world to mark Impunity Day:

“We have received no information from member states for more than 60% of the killings that I have condemned in public statements. This cannot go on.”

She has again encouraged all governments to show their commitment to justice in these unresolved cases, calling on them also to respond to UNESCO's mandated requests to voluntarily report on judicial follow-up.

Given the breadth and depth of the widespread issue of impunity, a holistic multi-stakeholder approach is crucial. The **UN Plan of Action on the Safety of Journalists and the Issue of Impunity** embodies this strategy by including Member States, UN agencies, NGOs, IGOs, academia and the media in concerted courses of action.

Tomorrow, many of these actors will also be holding the 3rd UN Inter-Agency Meeting with the precise aim to review the implementation of the UN Plan in the past two years and to refine our strategies on the issues.

Today, we are addressing one very crucial constituency in the fight to end impunity, that is the people who work in and for the justice system.

Why should such people care about impunity in the cases of attacks on journalists in particular?

One answer is evident in the emerging Sustainable Development Goals, which will next year update the world's Millennium Development Goals.

The UN's first draft of these new goals points to the need to significantly reduce all forms of violence and related death rates everywhere, to promote the rule of law, and to strengthen relevant national institutions to help prevent violence and combating terrorism and crime.

In short, for development, the world must tackle impunity for crimes. And why not begin with those who bring us the information needed for decision-making, and whose public role makes them highly visible actors?

For UNESCO, a key means of implementing these new goals is to foreground the fight to achieve justice for killed journalists. When the rule of law applies to those who kill journalists, the rest of society gets the very visible message that a line is being drawn in favour of the rule of law.

Today then, we can exchange views about the gaps in the justice system. We can examine how good practices in one region be replicated in another. We can explore what the international community, including the UN system, can do in collaboration with the judicial system to tackle impunity?

These then are some of the issues that will undoubtedly be raised throughout today's important seminar and I look forward to a fruitful discussion.

Thank you.

0:39:43.5

PANEL I

Participants: William Horsley, Jane Connors, Ona Flores, James Stewart

Start: 0:40:49.6

William Horsley, International Director, Centre for Freedom of the Media, University of Sheffield

Good morning, ladies and gentlemen. I am William Horsley, international director of the Centre for Freedom of the Media, CFOM at the University of Sheffield. I should first thank the speakers so far, including the Vice President of the Court, and the President of the Court and for agreeing that this meeting should be held here symbolically in this building -- and of course the Council of Europe, UNESCO, the European Lawyers Union, the Open Society Foundations and our other partner organizations for working with CFOM extremely hard to make this a reality; and to the speakers who have come from far and wide to be with us.

We have an authoritative panel for this first session on international and regional frameworks of protection, whom I will introduce just in a moment. We have just about an hour and a quarter now.

First if I may make two important points hopefully setting the scene for our discussions today. First to stress that the core purpose of the seminar is not only to exchange information, but to intensify and strengthen as far as possible a concrete and action-oriented dialogue among the institutions, and the jurists and others whose task is to protect human rights around the world, especially the right of journalists to do their work without fear or violence or abuse -- with the practical goal of levelling up those protections in law and in practice.

Let's speak frankly.

Many in the international community, including nongovernmental organisations and journalists groups who are present here today, have reason to be shocked and dismayed at the stark contrast between on the one hand the adoption of a series of resolutions at the United Nations in which States have committed themselves to the highest standards of journalist protection and to end impunity, and the harsh reality of the high toll of deaths and injuries caused by attacks against journalists in dozens of countries across the world -- mostly as we have heard with a complete impunity.

I was encouraged by the words of Judge Raimondi just now, who recognized the role of the European Court of Human Rights in setting standards which have application beyond this region.

He spoke of drawing up perhaps a compendium, hopefully one with some means of application, and of the need for all to be engaged. So this gathering to me is a precious chance for us to reach for the stars, to consider what such an effective global framework of protection for the work of journalists and those who perform that function would look like, and to muster the determination to construct it.

We must ask what would it consist of? Should it necessarily contain a transnational human rights court with powers to issue legally binding rules, and an individual right to petition, powers to order interim measures or protective measures for those under serious threats of violence? All these I think will be considered during the day and the able moderators of the later sessions will lead that debate.

I am delighted that among them is David Kaye, the newly appointed UN Special Rapporteur on Freedom of Expression, who is mightily welcome.

Of course, the legal obligation to comply with norms of international law rests with States, who are jealous often of their sovereignty. But I would like to say we should not to be discouraged by the steep hill that has to be climbed.

We consider today that there are well over twenty international courts that help to enforce the rule of law and often to generate rights. Many of them were established since the cold war - - since the fall of the Berlin Wall. "The European Court of Human Rights has come to represent the idea of a pan-European rule of law, thanks to extraordinary efforts during the past decade by lawyers, judges, legal scholars and litigants."

That means compulsory jurisdiction and the ability to set legal precedence. Those words are borrowed from Professor Karen Alter in her recently published work, 'The new terrain of international law'. So we are asking if the time has come, with the backing of the Council of

Europe and its forty seven member states, and how we can show the imagination and leadership to fulfil those ideals.

One more point, quickly: I would like to suggest that the nongovernment representatives, the professionals, the civil society people here can be a vital ingredient, can be like yeast and can give a momentum to something that otherwise might not take place.

Four years ago -- if I may say it immodestly -- a few journalists and academics in my country, the United Kingdom, made a modest proposal to UNESCO. It was for what was called an "action oriented inter-agency meeting of UN bodies concerned with the safety of journalists". Just two years later that small seed was taken up, *with* the support of governments, and it's become what we know today as the UN Plan of Action on the Safety of Journalists and the Issue of Impunity.

But today our subject is protection through law, and our first panel speaker is Jane Connors, until very recently head of the Special Procedures branch in the office of the UN High Commission of Human Rights, and currently director of the Research and Right to Development Division.

After many years teaching law including at the School of Oriental and African Studies in London she has been with the UN since 2002 and is an acknowledged expert on the rights of women and on the complexities of the UN's treaty body systems.

So Jane will speak on the framework of legal protection at the universal level.

Thank you!

End: 0:47:06.3

Jane Connors

Seminar and Inter-regional Dialogue on the Protection of Journalists

Towards an effective framework of protection for the work of journalists and an end to impunity

Strasbourg, 3 November 2014

The framework of legal protection for journalists at global level

Jane Connors, Director OHCHR Research and Right to Development Division

Mr Chairperson, colleagues and friends,

I am delighted to address this important meeting on the global legal framework for the protection of journalists one day after the first annual International Day to End Impunity for Crimes against Journalists. OHCHR is very grateful to the organizers and the sponsors for arranging this event.

Let me start by saying that, on paper, this global framework is in place. International human rights law and international humanitarian law set out norms and standards to protect journalists and other media workers. Resolutions have also been adopted by the Security Council, the General Assembly, the Human Rights Council and several regional organizations. Thematic reports have been submitted to these bodies, including by the United Nations Secretary-General, Special Rapporteurs of the Human Rights Council, and the Office of the High Commissioner for Human Rights. The issues are well documented, and the legal obligations are clear.

The major challenge is to ensure compliance with this framework and guarantee that perpetrators are held accountable for attacks against journalists. Far too many States fail to implement binding international norms. In some, what appears to be perfect legislation, does not translate into effective protection on the ground. There are too many places where crimes against journalists are committed with absolute impunity. We must ask ourselves what can be done to close the profound gap between law and practice.

OHCHR, particularly through its field presences, encourages implementation by raising alerts when there are threats against journalists and intervening with authorities to underline their responsibility to investigate. OHCHR participates as an observer in protection programmes and holds consultations with journalists and others to discuss their rights. The High Commissioner addresses the issue in bilateral contacts with States, but also in press releases, statements and reports. For example, in June 2014, after the conviction of the Al Jazeera journalists in Egypt, the High Commissioner called for a review of Egyptian laws and judicial procedures, stating: "It is not a crime to carry a camera, or to try to report various points of views about events. It is not a crime to criticize the authorities, or to interview people who hold unpopular views. Journalists and civil society members should not be arrested, prosecuted, beaten up or sacked for reporting on sensitive issues. They should not be shot for trying to report or film things we, the public, have a right to know are happening."¹

At the request of the Human Rights Council, and in collaboration with the Special Rapporteur on the right to freedom of expression, OHCHR compiled good practices on the protection of journalists, the prevention of attacks committed against them and the fight against impunity for such attacks. This was presented to the Human Rights Council in September 2013, and the findings examined at a panel discussion convened by the Council last June. Based on inputs received from States, the report identifies good practices in four areas: political commitment, legislative framework, combating impunity, and protection. In his report to the 69th session of the General Assembly, the Secretary-General encourages States to share, examine, reinforce and replicate these good practices. Again, in a resolution adopted in September this year, the Human Rights Council encourages States to combat impunity by using these good practices. These reports and resolutions have led to concrete proposals on the type of measures

¹ <http://www.ohchr.org/EN/NewYork/Stories/Pages/Egyptjournalistsverdict.aspx>

States could consider to strengthen the protection of journalists in their jurisdictions. They include the creation of special investigative units or independent commissions; the appointment of a specialized prosecutor; the training of prosecutors and judiciary regarding the safety of journalists; and the establishment of an early warning and rapid response mechanism to give journalists, when threatened, immediate access to the authorities and protective measures.

The United Nations human rights system includes compliance mechanisms. The human rights treaty bodies, composed of independent experts, regularly address the rights of journalists in their concluding observations following the examination of State parties' reports. For example, in its concluding observations on Hong Kong (China), the Human Rights Committee called on the State 'to take vigorous measures to repeal any unreasonable direct or indirect restrictions on freedom of expression, in particular for the media and academia, to take effective steps including investigation of attacks on journalists and to implement the right of access to information by public bodies'.² Today you will hear from Michael O'Flaherty about the Committee's general comment 34 on article 19 of the International Covenant on Civil and Political Rights, which deals with freedom of opinion and expression, in which it makes clear that States should put in place effective measures to protect against attacks aimed at silencing those exercising their right of freedom of expression and that any attack, such as arbitrary arrest, torture or threats to life and killings should be vigorously investigated in a timely fashion, perpetrators prosecuted and victims provided with appropriate redress.

This Committee and other human rights treaty bodies also have competence to receive and examine individual complaints of the treaties they oversee. Two weeks ago, the Mexican journalist Lydia Cacho, winner of the World Press Freedom Prize, the victim of several threats and attacks, including arbitrary detention and torture, filed such a complaint. She seeks redress for the violations of her rights, committed in a context of systematic violence against journalists and human rights defenders and lacking State action to counter impunity. Several treaty bodies have competence to conduct suo moto inquiries into grave or systematic violations of their treaty in States parties. I encourage participants to highlight these procedures, which also allow for interim measures, as while their outcomes are not binding are very frequently complied with by States.

Special Procedures, mandate holders of the Human Rights Council, regularly address the situation of journalists with States through their confidential communications (urgent appeals, allegation letters), press releases, statements and thematic and country reports. The special rapporteurs on the right to freedom of expression, the situation of human rights defenders, extrajudicial, summary or arbitrary executions, torture, and the Working Groups on Arbitrary Detention and Enforced Disappearances have been particularly active. During 2012 and 2013, the Special Rapporteur on the right to freedom of expression transmitted communications on attacks against 171 journalists to 40 countries in all regions, most jointly with other mandate holders. Commissions of inquiry, investigations and fact-finding missions are increasingly established by the Security and Human Rights Councils and the High Commissioner to address country situations raising serious human rights concern. The victimization of journalists has been tracked in a number of these, in particular that relating to the Syrian Arab Republic.

Finally, the Universal Periodic Review of the Human Rights Council, whereby all Member States of the United Nations are reviewed by their peers, provides a forum in the security of journalists is regularly raised and States requested to take urgent protection measures. For instance, in their review of Ethiopia in 2014, several Member States raised the issue of restrictions imposed on civil society and journalists,

² 2 Concluding observations on the third periodic report of Hong Kong, China, adopted by the Committee at its 107th session (11 – 28 March 2013), para. 13.

including arbitrary detention, and recommended that Ethiopia end harassment of journalists, release those detained without valid grounds, and ensure that journalists and media workers can pursue their profession in an environment which guarantees the right to freedom of opinion and expression.³

At the regional level, the OSCE Representative on Freedom of the Media, the OAS special rapporteur for freedom of expression, and the Special Rapporteur on Freedom of Expression and Access to Information in Africa, the Inter-American Court on Human Rights and the European Court of Human Rights, have contributed to standard-setting, awareness-raising and addressing violations relating to the safety of journalists. These mechanisms play a key role in the promotion and protection of human rights as they are most familiar with the dynamics and sensitivities of a particular region. Regional mandates on freedom of expression should be created in all regions and existing mechanisms should be reinforced, for example through increased interaction with UN experts. In October, OHCHR organized a fourth International Workshop on Enhancing Cooperation between UN and Regional Human Rights Mechanisms. Interactions among mechanisms have resulted in joint initiatives, including joint visits and press releases.

In closing, let me reiterate that the standards and mechanisms exist, and we must encourage their use. It is tempting to consider new international conventions or declarations, or amending existing treaties which focus on the rights of journalists and media workers. We should be cautious however as we may find ourselves bogged down in long processes where long-established principles may be reopened. The results may also lead to the fragmentation, rather than strengthening of protection. What might be considered is the formulation of “principles and guidelines” on the safety of journalists, an authoritative document in which all relevant norms and standards are brought together.

Principles and guidelines have been developed in other human rights contexts by a number of the Special Rapporteurs and have proven to be influential. It goes without saying that existing international compliance mechanisms should be strengthened, and provided with capacity and resources to pay systematic attention to the safety of journalists.

Journalists are particularly vulnerable in societies where the rule of law is absent and human rights implementation weak. Corruption, intimidation and reprisals and weak judicial systems, all of which contribute to impunity, must be tackled. A culture of respect for human rights, the rule of law and democracy is essential. And this can only be achieved through a combination of political will and sustained efforts.

Thank you.

0:58:42.6

WH Jane, thank you very much indeed. I noted your point about elaborating principles and guidelines. One assumes that should necessarily be in a manner that was so to speak more applicable than the existing General Comment Number 34, which to my mind has really raised the bar quite considerably for member states. So I would like to make one comment and ask

³ 3 A/HRC/27/14

you one question which is very much on the theme. The comment is about the UN Security Council special debate on this issue in July of last year, where the deputy secretary general spoke about the UN Security Council itself, needing perhaps to be more proactive in this area, particularly in enforcement of Resolution 1738 on the safety of journalists.

You might want to touch on that. But my question is about the inter-regional aspect, because you in the High Commissioners Office you do have a formula for interregional dialogue, and you have thematic themes which you address, and I think you have something currently on your dossier concerning Africa which maybe is worth mentioning along the general line of dialogue - - constructive dialogue.

Would you like to say something?

JC Thank you very much! I think we should talk about the Security Council and its responsibilities in this regard later, during or throughout the meeting. But I think it is very very interesting in terms of the international mechanisms, they are all there, and indeed this week we are seeing a visit together of the Special Rapporteur on torture and the Special Rapporteur on extrajudicial, summary and arbitrary executions to the Gambia. And as you know Gambia is really up there when we are looking at the safety of journalists.

And I am very interested to see what will be the outcome to this. But what we found is very effective is if an international rapporteur and a regional rapporteur work together. And we have seen that in the OAS situation, and now we have developed with the Inter-African Human Rights mechanisms a roadmap for collaboration and cooperation among the special rapporteurs of the Human Rights Council and the special rapporteurs of the African system. And we have seen that they working together through press releases and indeed through visits - - together - - that has been very very effective because the special rapporteurs at the regional level have the local knowledge so to speak, the international rapporteur has the overview in terms of the international standards and together we have had very good outcomes.

I think the thing we have to do in all of this context is manage expectations. We do not have the international police force. We do - - have - - a system which relies on creating a culture of

human rights using I suppose - - using some sort of shame type process so that everybody moves to the same level.

I think we need to tell people,-when we talk about international, of course the regional have judicial systems, but if we talk about the international we have to really manage expectations.

It is to do with continual human rights dialogue that things change. I have been in the UN since much longer than that, since 1996, and I have seen things change. It is, you know, drip drip drip, but what we need to get is not drip drip drip but a sort of torrent of - - you know, some cross cutting measures.

With regards to principles and guidelines what would happen would be that perhaps the special rapporteur, as has been done in other cases, will begin in an informal non-intergovernmental way to develop such things and then present those to the Human Right Council in due course. And very frequently the Human Rights Council is happy with these, does not adopt them necessarily but is able to sanction them so they can go forward. And this might be an interesting way to pick up on the General Comment and move forward with something that does not require an enormous heavy intergovernmental and complicated and dangerous dialogue, but it pushes it forward as forward in another way.

WH Just quickly, is there something you are calling a roadmap for Africa under discussion?

JC We have the roadmap but it was developed several years ago. There is a roadmap that was developed by the Rapporteur's themselves of the African system and the international system and they are working in various areas in particular they are very interested LGBTI issues, and they are thinking of having an event together in the new year - - I mean we have - - everything has to be done in a sort of staged fashion, but it has been very exciting for me to see how they have been able to operate together on various levels and to create a dialogue in countries that you might have thought were far more complex than they have turned up to be.

WH Thank you very much! Now we return to the Americas where the Inter-American Commission and Court have an impressive record both in jurisprudence and in action in protective measures and the like.

This afternoon we are going to hear about the expectations from a dialogue the inter-regional dialogue from two authoritative figures judge Manuel Ventura Robles, judge at the Inter-American Court of Human Rights, and Catalina Botero, who recently completed her term as Special Rapporteur for Freedom of Expression of the Organisation of the Organization of American States. I must say Catalina was one of those whose powerful sense of purpose inspired today's event.

She has been succeeded in the post by Edison Lanza, who has already said he sets high priority on his agenda to protect journalists. His duties at the Commission involved hearings in Washington which prevented him from being here, but I am pleased to welcome in his place Ona Flores, senior lawyer and human rights specialist at the Special Rapporteur's office since last year. Ona studied law in Venezuela, graduated from the Columbia Law School in New York and worked for seven years at the secretariat of the Inter-American Court before taking up this position. She will speak on legal protection and protection mechanisms at regional level among the Organisation of American States.

Ona.

Start: 1:05:39.2

Ona Flores

Thank you William and thank you everybody for being here. We are - - As William mentioned the newly appointed Special Rapporteur for Freedom of Expression could not be here and he sends his - - he regrets not being here because of previous arrangements but the office of the

Special Rapporteur is very committed to this dialogue and that is why we made some time to be able to come here to this important meeting.

Well obviously the office of the Special Rapporteur of Freedom of Expression of the Inter-American Commission and Human Rights has paid special attention to the issue of safety of journalists and to the investigations or the lack of investigation of these crimes -- is not only a priority as have been said in the morning but is essential part of our work.

What I would like to do here in the ten minutes that I have is to give an overview what are the legal standards currently in place and go over to the mechanisms that we have. Just to show example what the Inter-American Commission through the Special Rapporteur of Freedom of Expression is doing to foster better compliance, that is - - and to seek a dialogue on how we can do this together.

Evidence collected by the office of the Special Rapporteur indicates that in the last decade violence against journalist has become the most serious challenge of freedom of expression in the Americas.

According to our data between January 2006 and 21 October 2014 at least 145 journalists have been killed in seventeen countries in the region for reasons related to their profession.

The statistics take only one part of the story. We know about a series - - increased number of threats, attacks and harassments that journalists face every day, Particularly in this year we have seen that in the context of social protest.

The reasons are complex. We have seen not only an increasing violence coming from state agents but also from organized crime, particularly in Mexico, Brazil, Honduras and Paraguay.

So since the reasons are complex the Special Rapporteur has worked strategically within the framework of the Inter-American Human Rights system to provide for clear legal standards so the States know better what to do and we help them in this pursuit.

So last year, during the mandate of Catalina Botero, the office issued a very important report regarding violence against journalism and media workers compiling the standards and even

compiling Inter-American standards, comparing best practices around the region and also provide- moving the standards a little bit up and formulate concrete ideas of how prevention, protection and investigation could be better done.

As you know the jurisprudence of the Inter-American court - - the case law of the Inter-American system -- has clearly said that violence against journalists violates the right to personal integrity, right and freedom of expression of journalists and society as a whole.

It has developed concrete positive and negative obligation. I would like just to talk a little bit more about these positive obligations because our office has indicated several times that in order to have a free robust and unrestricted democratic debate violence against journalists must be fought using a comprehensive policy for prevention, protection and administration of justice.

We do not want to wait until incidents occur; we want to help States to prevent them.

In terms of prevention we have recommended states concrete actions, adopt a language that would contribute to the safety of journalists that means reframe for making statements that stigmatize journalists and their work.

We have helped and work together with civil society and the State to help train police officers, judges and other to prevent and provide protection to journalists. And we have - - we have, sorry my English is not working right now...

We have to push for an agenda to respect and guarantee the right to protection of sources and we have encouraged states to keep statistics of the crimes being committed.

We also encourage states to provide special mechanisms for protection of journalists in places where there is a context of a pattern of, or high incidence of violence, and that has been the case. We have worked together with the government of Mexico and the government of Brazil and other governments to implement a mechanism, a robust mechanism to protect journalist when they are at imminent risk.

Instead translate the jurisprudence of the case law into practice and then also try to address the issue of impunity, and encourage the State to adapt strong measures to investigate, try and criminally punish all responsible.

And trying to understand, adopt these measures with the understanding what are the causes of impunity.

So we have especially addressed the issue of independence of the judiciary, which has been mentioned here and the protection of judges, witnesses and all involved in the investigation.

And also then we have encouraged states and civil society, States particularly to apply due diligence when it comes to exhaust lines of investigation related to the relationship between the crime and profession[of journalist].

So how do we come up with these standards? I mean what does - - why are we doing within the Inter-American Human Rights system doing is, particularly the Inter-American Human Rights Commission through the office of the Special Rapporteur.

Well, the Inter-American system's main task is to supervise and monitor the implementation of the American Convention on Human Rights and the American Declaration on the Rights and Duties of Man by OAS members.

In carrying out its supervisory mandate the Inter-American Commission has many responsibilities. It receives and examines individual petitions and at the same time monitors the situation ((it has onsite bi... 1:13:24.4)) in issues, thematic and geographic reports. It organizes seminars, lectures and capacity building, mechanisms...

And it also issues in serious and urgent cases precautionary measures, and I would like to talk a little bit more about that.

It submits cases to the consideration of the Inter-American Court and requests also the Inter-American Court advisory opinions.

So the office of the Special Rapporteur works within this framework, it is supposed to work with the Inter-American Commission and particularly with regard to the rights to the freedom of expression. So we have the office of the Special Rapporteur - - who advises the Inter-American Commission in the evaluation of particularly individual petitions with regard to violence against journalists; and we promote that these cases have come to the Inter-American Court of Human Rights. And most recently the Inter-American Court of Human Rights issued a decision on the case of Velez Restrepo against Colombia, which we regard as a landmark decision for setting the standards, clear legal standards on the protection of journalists.

So with the preparation and advancement of these cases, this is not the only one but we consider it a landmark when the office of the Special Rapporteur helps the Commission and the Inter-American Court on Human Rights to establish important case law, on the obligation to prevent, protect and punish violence against journalists.

The standards achieved lend a greater dynamism to the work of the bodies of the Inter-American system and make it possible to take on new challenges in the effort to make better possible better compliance.

We have precautionary measures. This will be explained further by Catalina Botero, but this a very important way to promote and protect journalist around the field and in this regard the Inter-American Commission has a history for about more than 20 years precautionary measures to protect journalists around the region and we work very closely, - - and this is an issue where we are working to create a space and dialogue for enforcement.

The other - - and I would like to close with that is public declarations in local visits reports.

We have worked very closely with the UN Office of the Special Rapporteur of the UN. Catalina Botero worked very closely with Frank La Rue previously, to issue statements, [and made] a very important visit in Mexico to promote the adoption of a legal framework for the protection of journalists and I think as we believe Edison also believe in the importance continuing that special dialogue as an example of how can we work together.

And perhaps using a more proactive media campaign, perhaps using a more proactive work on cases that have precautionary measures, and how the Special Rapporteur's can both work in these cases and also in cases of countries that have very structural problems right now.

Thank you!

1:16:41.1

WH Thank you very much Ona! Of course Latin America in particular has a number of regions or countries where there is a lawless, relatively lawless or violent environment, so your mention of the precautionary measure system in the American system, which I think is of special interest. The European Court of Human Rights has its own rule 39 for interim measures, and I think we will discuss more the cross referencing of this kind of case law and mandates between the two.

But let's move on now to welcome James Stewart, who is the deputy prosecutor of the International Criminal Court. As you know it was established under the Rome Statute to help to end impunity for the perpetrators of the most serious crimes of concern to the international community and it is independent, not part of the UN system.

However, I think it is fair to say it does not exist in isolation. Its existence, mandate and membership reflect the will of the governments of the world. Cases may be referred to the Court by individual states parties or else by the UN Security Council.

And importantly some UN member states including United States, China, Russia and Israel have chosen not to ratify the Rome Statute. Just in passing I will mention that there was a meeting in the last of month between the prosecutor of the International Criminal Court, Ms Bensouda, and the newly appointed UN High Commissioner for Human Rights, Mr Zeid Ra'ad Al Hussein, where they discussed what they called 'increased collaboration and synergies between their respective independent mandates'. But James here was elected deputy prosecutor of the ICC in November 2012; he was before that general council in the Law Office of the Attorney General in

Toronto. He served as senior trial attorney in the prosecutor office at the International Criminal Tribunal for Rwanda, and chief of prosecutions at the Tribunal for the former-Yugoslavia.

And James is going to talk about the protection of journalists in international criminal law.

Thank you

James Stewart (start 1:18:58.2) Speaking notes (TEXT AS PROVIDED)

The protection of journalists in international criminal law

James K. Stewart, Deputy Prosecutor, ICC

Protection of journalists under the Rome Statute

International criminal law extends the same protections to journalists as it does to civilians generally.

Journalists are civilian non-combatants and belligerent forces must treat them as such.

Targeting them, depending on the context, may constitute a war crime or a crime against humanity.

I have in mind the horrific events that have recently occurred in Syria.

I also bear in mind the tragic deaths of two Central African journalists and a French journalist in Central African Republic this year and the deaths of two French journalists in Mali last year, all in situation countries where the International Criminal Court is engaged.

Such individual murders may constitute the war crimes of wilful killing or violence to life, depending on whether the armed conflict is of an international or non-international character.

The murder of journalists may also constitute crimes against humanity, if they are committed as part of a widespread or systematic attack directed against a civilian population, pursuant to a State or organisational policy, by persons having knowledge of the attack.

Crimes against humanity targeting journalists may take other forms too: imprisonment or other severe deprivation of liberty, torture, persecution, enforced disappearance, or other inhumane acts – journalists have been the victims of such atrocities in the past and are so even today.

Returning to the law of armed conflict: under customary international law, as well as the Rome Statute, journalists are entitled to all the protections afforded to civilians – as long as they do not participate directly in hostilities and so lose their protected status.

This has been the case for many years: I would refer you to Articles 51 and 57 of Additional Protocol I to the Geneva Conventions and Geneva Convention IV, dating from 1977 and 1949, respectively.

Article 79 of Additional Protocol I specifically provides for measures of protection for journalists.

The protection of journalists, as civilians, from attacks applies in the context of both international armed conflicts and non-international armed conflicts.

In addition, Article 4 (A) (4) of Geneva Convention III confers a further level of protection to a limited category or class of journalists, namely, “war correspondents” accredited to armed forces.

This category covers such persons who accompany armed forces without actually being members of them as long as they have authorisation to do so, such official accreditation by the armed forces usually being proved by an identity card.

In addition to being entitled to all the rights granted to civilians, in case of capture, such persons are also entitled to prisoner of war status and treatment, that is, to the protections afforded by Geneva Convention III.

So-called “embedded journalists” will often fall within this special category of persons provided for under Geneva Convention III, since such journalists embedded in military units typically have the necessary authorisation and are under the protection of those military units which they accompany during operations in an armed conflict.

As a practice, this became more common during the 2003 war in Iraq.

Accordingly, under international humanitarian law, a distinction is drawn to some extent between journalists operating independently and war correspondents, a category that may include embedded journalists.

Such a distinction stems from the notion that, given the different nature of their work, which involves a close relationship with the armed forces and access to the frontlines of combat, war correspondents are generally more exposed to risks and threats of harm.

In reality, however, this may not always be the case: the daring nature of journalism today means that journalists who are not attached to armed forces or accompanying military units are also often at grave risk.

I note that the Geneva Convention provisions regarding prisoner-of-war status and treatment in case of capture or detention do not apply in situations of *non-international* armed conflict, because POW status only applies in the case of international armed conflict.

In situations of non-international armed conflict, the law treats all journalists in the same way, exclusively as civilians, and they have the same protections as do civilians.

If media facilities become legitimate military targets – for example, as centres of command and control – then the principle of proportionality comes into play to alleviate against unduly high injury to civilians.

I might also note, in passing, that journalists can themselves become the subjects of prosecution, if they incite genocide or other crimes, as happened in the so-called Media Case at the International Criminal Tribunal for Rwanda, or ICTR,

which arose out of media hate speech and incitement to genocide in Rwanda leading up to and during the genocide of 1994.

My focus, however, is what provision international criminal law makes for the protection of journalists and correspondents doing their work of reporting.

In sum, there is protection for journalists in international criminal law generally, and under the Rome Statute particularly – but they are generally not treated as a special category beyond their obvious character as civilian non-combatants or as members of a civilian population under attack.

Protection really comes down to effective enforcement of international criminal law: can the perpetrators of crimes be successfully investigated and prosecuted, either before national courts or, where national authorities are either unable or unwilling to act, before the International Criminal Court?

In the ICC Office of the Prosecutor we are striving to achieve positive results by improving the quality of our preliminary examinations, investigations and prosecutions.

This involves the intelligent application of limited resources and the development of a multi-faceted approach to investigations, so that we bring sound cases before the Chambers of the Court.

As you know, the ICC is a court of last resort, since national authorities have primary responsibility under the Rome Statute to investigate and prosecute international crimes.

Where national authorities fail to act, either because they lack the capacity to do so or because they are unwilling to assume their responsibilities, then the ICC may step in.

When the Prosecutor does act, however, she depends upon State cooperation in order to conduct her investigations.

This is how the Rome Statute is set up: we have to operate, generally speaking, through State legal mechanisms with the support of State authorities.

Generally speaking, we receive good cooperation and support from States, but this is not always the case and lack of cooperation can present us with serious challenges.

Another serious challenge we face is matching the resources we have available to the expectations victims, communities affected by mass atrocities and the international community have of us.

Journalists play an increasingly important role in the work of the ICC, from providing evidence, to explaining our work, to scrutinizing our performance.

Role of journalists in conflict zones

Journalists are the eyes and ears of the world in conflict zones: certainly for the general public, but also for government policy makers.

Reporting on mass atrocities raises awareness about the suffering of the individuals and communities affected by them.

It rouses the international community to action.

It even generates through publicity some measure of accountability for mass crimes.

In recognizing that war correspondents serve an important public interest, the ICTY Appeals Chamber observed:

In war zones, accurate information is often difficult to obtain and may be difficult to distribute or disseminate as well. The transmission of that information is essential to keeping the international public informed about matters of life and death. It may also be vital to assisting those who would prevent or punish the crimes under international humanitarian law... [See *Brdjanin*, Decision on Interlocutory Appeal, IT-99-36-AR73.9, 11 December 2002, para. 36.]

Journalists are often the first on the scene, almost in the role of “first responders”, although in most cases to observe and report rather than to become directly involved in events.

In this role, however, they record what is happening, meet witnesses, interview both victims and perpetrators, connect with affected communities, and expose atrocities and those responsible to the scrutiny of the world community.

In this way, although they may not set out to gather evidence, in the sense that investigators might do, they come into possession of evidence and information of value to later criminal investigations.

Indeed, I believe many journalists feel a responsibility to “bear witness” to events – not necessarily in the sense of becoming an eyewitness called to testify in court, but in the larger sense of reporting on events so that they cannot go unnoticed and unremembered, and with the sense that, if the public is made aware of what is happening, then it will rouse authorities within the international community to take action.

Journalists who are sensitively attuned to situations on the ground can become a sort of early warning system for the ICC – take, for example, the concern expressed by journalists that Central African Republic was on the brink of genocide.

Journalists play many other roles in relation to the ICC, of course, which I need not explore in detail here: they report on proceedings before the Court and so become interpreters of the Court’s work; they sometimes offer trenchant criticisms of the Court; they also, in some situations, unfortunately, lend themselves to ill-motivated propaganda against the Court and spread misinformation – it runs the gamut.

However, my focus is upon what I might call the forensic relationship of journalists with the ICC and the question of protection for journalists under international criminal law.

The active role that journalists play in conflict zones puts them in harm’s way, and may make them the target of reprisals.

This has to be a matter of concern for us all.

The protections that the Rome Statute extends to civilians in conflict zones thus become important for the security of journalists.

ICC experience with past investigations involving journalists

The ICC has had direct experience with journalists in several of its investigations.

Without getting into detail, I can say that journalists have been interviewed as eyewitnesses to events and for the photo and video records they have made.

A picture is worth a thousand words.

This was certainly the case in my experience prosecuting at the ICTR, where journalists provided invaluable testimony and a visual record of events in Rwanda in 1994 going to establish both the context and the crime base.

On occasion, journalists caught a suspect on camera and evidence of contemporaneous statements by individuals who were later accused of genocide and other crimes was highly incriminating.

As discerning eyewitnesses to events, journalists have a similar role in relation to ICC investigations.

Where journalists are targeted, violence directed against them is, of course, criminal and may form part of the broader evidence going to prove the commission of a war crime or a crime against humanity.

It may also be evidence of the intent of the perpetrators to cover up their actions, and thus be evidence of their intent to commit war crimes or crimes against humanity.

The reports journalists file may also support the crime pattern analysis that we do as part of our preliminary examination of situations and of our subsequent investigations.

Crime pattern analysis helps establish essential contextual elements of the crimes we prosecute, for example, the existence of a widespread or systematic attack

against a civilian population, which is necessary to the proof of crimes against humanity.

Video and photographic material is of obvious value to us, whether broadcast to the public or unedited and unused.

Journalists can also offer practical assistance: they may provide our investigators with leads, they may offer advice on conditions based on their knowledge of the country, and so on.

In some cases, of course, we may seek to have journalists testify in court.

On occasion, we have encountered resistance from corporate media organisations to providing material to us from archives.

The concern that is behind such resistance, if I am correct in my understanding, is one I encountered in the domestic criminal law context: in that case, resistance from a national news agency to provide to the police footage of a riot on the basis that the warrant to produce infringed freedom of the press, but essentially on the ground that their journalists and cameramen risked becoming targets when covering such events if rioters feared the images they recorded could be used to identify perpetrators and prove crimes.

In the domestic situation to which I refer the courts ruled in favour of law enforcement; we have not got so far.

If my experience with the use of journalists as witnesses at ICTR is anything to go by, the testimony of journalists, certainly to prove context and crime base, but perhaps more – some suspects love to hear the sound of their own voices! – will become a feature of the presentation of evidence in our prosecutions.

Will this increase the risk to journalists?

I expect not – but the risk is, unfortunately, already high enough.

IBA's eyeWitness project

We are aware of the IBA's *eyewitness* project, involving development of an app that can be installed on a smart phone and used to record events as they happen and upload them to the Internet.

We encourage the use of such technology, the only issue for us being authentication of the source and images of forensic interest to us.

Cyber investigations

This brings me now to what one might call the “democratisation” of reporting in the digital age, when all sorts of eyewitnesses to events record them and upload the images on to the Internet.

We see evidence of this every night on the television news, especially from combat zones such as those in Syria and Iraq right now.

Digital journalism – what we might call “open source” material – is of significant value for us.

Firms like Storyful have perfected methods of verifying the authenticity of video material appearing on the Internet and we have learned from them how to capture and authenticate such evidence ourselves.

Indeed, the collection, authentication, analysis, dissemination and use of such evidence fits within a larger cyber investigation project that we are successfully completing within the OTP and which now equips us to handle electronic or digital information and evidence in a highly competent and sophisticated way.

In addition, we have engaged with NGOs specialising in the analysis of information on the Internet to identify patterns of violence or crisis in the world and who are willing to assist us.

All of this is part of the effort we are making to diversify and strengthen our evidence collection and presentation in any given case.

It only serves to underscore, once again, the importance of the relationship between journalism and the ICC.

“Synergies” with UNHCHR

The Prosecutor has enjoyed a productive relationship with the High Commissioner for Human Rights and this will continue with the new incumbent, himself a former President of the ASP of the ICC, who is intimately familiar with the Court and is a strong proponent of international criminal justice.

However, the ICC and the UNHCHR have different missions and different methods of working.

UNHCHR commissions of inquiry operate differently than ICC investigations.

Investigations by the Prosecutor focus upon the questions of who did what to whom, when, where, why and by what means, with a view to determining whether there is evidence to establish that Rome Statute crimes have been committed and the identity of those most responsible for them.

This is a purely forensic mission.

We do our own investigations.

UNHCHR may have information that could help us develop leads and we communicate with them on that level.

Our relationship with UNHCHR is an important one, as is our relationship with a number of UN organisations.

Better protection for journalists?

The Rome Statute provides protection for journalists in their status as civilians and non-combatants.

Whether specific provision should be made for the protection of journalists under the Rome Statute is a debate I will leave to others.

Certainly, with adequate resources, increasing skill and experience, and the cooperation of States and others, we can make effective use of the existing provisions of the law to protect journalists.

The ICC's jurisdiction will be attracted in situations where war crimes and crimes against humanity, even genocide, are being committed.

In such cases, involving mass atrocities, the fate of journalists is for us a matter of vital concern, not only because of the special role journalists perform in upholding fundamental values of free societies, but because their victimisation fits within the broader context of violence that must be the occasion for the ICC's intervention to investigate and prosecute.

JKS

PANEL I DISCUSSION AND INTERVENTIONS

Participants: Harry Roque, Andrey Rikhter, Ernest Sagaga, Sejal Parmar

Start: 1:38:34.5

WH Thank you very much indeed. I would like very much to open the floor and get questions and points and the dialogue going.

Time is against us, so interventions please be brief and raise your hand, so I know that you want to speak... we have two or three and I have promised an intervention to Dr Sejal Parmar, who wrote the very valuable overview of regional and international protection systems, during this session.

But I saw you first Sir, please.

Harry Roque

My name is Harry Roque. I am from the Philippines, Centre for International Law at the University of the Philippines.

Now Ms Connors, we have been availing of UN, UN human rights procedures and in many circumstances we have gotten very good views. The problem is number one governments never

comply with them. It is as they ignore them. And number two is as far as it is expressed by special working groups they are equally ignored. So I think what is happening now we come up now with very good views, which we codify, but very little in terms of actual implementation.

Andrey Rikhter

My name is Andrey Rikhter. I represent the Office of the Representative on Freedom of the Media of the OSCE and I would like to give a couple of comments because the organisation, the office was mentioned several times by several speakers.

Indeed the OSCE is a quite important regional organisation of 57 states, stretching from the name is a little bit misleading, from Mongolia to Canada. But it is different from other intergovernmental organizations because it is - - it does not have, its decisions do not have legal implications. It is more of a political nature on the one hand.

On the other hand, all the decisions are taken by consensus -- meaning that no state says no -- for the decision to be adopted.

We have struggled for several years to adopt a general resolution of the Committee of Ministers which refers to actually body of the OSCE on safety of journalists. There were efforts by many chairmanships of the Organisation for Security and Cooperation in Europe in this regard.

One of my first personal lessons of democracy was 2011 when Lithuania was trying to push for the resolution on safety of journalists in the OSCE region and it was blocked by a few delegations. One of them making such comments to the text as - - it said in the first sentence participating states will protect safety of journalists, and the delegation said just to add after "journalist" 'comma citizens, comma stateless persons...'; saying we cannot protect journalists as a class and it is the obligation of all the participating States to protect everybody and not to single out journalists in particular.

Later these efforts to adopt such a general resolution were made by Ukraine, most notably in December of last year at the ministerial council in Kiev. Again it failed at the last moment; it was

like a [twelfth] hour decision not to adopt such a resolution, and despite the efforts of Ukraine to push for it.

In the meantime, the mandate of the Representative on Freedom of the Media allows to work on individual cases indeed, as Nils Muiznieks has mentioned it. And we - - she actually did a number of interventions in Belarus, in Russia, in Azerbaijan, in Serbia, but also in the western countries like the United States, Italy and Switzerland.

And we believe such efforts do help individual journalists a lot. They do help them to get out of prison, they do help them to get protection from the state including individual protection, but they also - - we also try to change the climate of impunity in participating states.

For that matter we do quite a number of trainings and other events.

And William, last but not least, we just recently published a book on safety - - a Guidebook on the Safety of Journalists and because it was authored by William Horsley, that is a form of saying thank you to you William. {LG}

Thank you!

WH [Thankyou]...We should get the antimonopoly, antitrust people involved with this..!

There was one gentleman there, and if I may I am just going to ask Sejal Parmar to say some words and then we will have some comments from the panel.

So the gentleman at the back and then Doctor Parmar.

Ernest Sagaga Thank you very much!

My name is Ernest Sagaga. I am from the International Federation of Journalists and formerly I worked as special official spokesperson of the ICC.

And I just like to agree with the deputy prosecutor. I have been arguing for a long time now that the venue that should be considering in terms of addressing the impunity for violence against journalists should not be the ICC.

The ICC is not a human rights court. The prosecutor said it is a court designed to address mass atrocities.

There are two reasons why I think we should not even contemplate that.

Reason number one is of course as the prosecutor said, the threshold is very high, be it for war crimes, crimes against humanity, you really need a very high threshold for the case to be admissible.

The second reason is more practical. If you decide to go down the road with the ICC, it is basically a [copout] for governments, because as was said again, the ICC is a court of last resort.

The government will simply say if you want to go to ICC, very good. Nothing to do with us, go to The Hague.

So we should keep these crimes under the human rights law as Madame Connors said in - - not the question was___, but I think she's got a point. There are standards and mechanisms which - - if they are implemented, they can actually address in a very efficient way the impunity we are trying to combat today.

Thanks!

Sejal Parmar So I just have three points to make.

The first is that -- as the paper for this conference and the various presentations have shown particularly Jane Connors' presentation --there is already existing a significant corpus of hard and soft law sources on the protection of journalists. And its _[-]_ with more resolutions and initiatives emanating from various intergovernmental bodies and they are expected to continue.

I think the focus should really be on the effective implementation of this existing law and related policy recommendations. And this depends on the understanding of key actors, particularly investigated authorities, prosecutors, judges and the media itself in term what these sources mean for legal and policy measures.

While the UN Plan of Action provides a positive overall framework of practical actions, I think it is also important that state actors are aware of the continuum of the human right obligations. At various stages along the story from the point where a journalist has been threatened to when she or he is actually attacked. They should understand the obligations identified in the paper and also recalled by Ms Flores in the Inter-American context.

Namely their duty is to investigate, prosecute and punish. To protect, and also to prevent. And these obligations should be understood as co-dependent rather than compartmentalized.

They should also view their obligations under humanitarian law and human rights law on this issue as mutually complementary and reinforcing.

Second, given our location today in this building it seems opt to highlight a key shortfall which is a sense of imbalance in judicial approaches. In particular there appears significantly more binding law in the way of regional jurisprudence particularly in Europe on the various dimensions of the duties to investigate, prosecute and punish than the duties to protect and prevent.

With respect to the duty to protect journalists at risk, regional courts should be willing to accord standing to individuals who have been threatened or intimidated, but who have not or not yet have been named or fatally attacked. After all, there should not need to be a murder like in the cases of *Kilic* and *Dink* at the European Court of Human Rights for example for finding that there has been a violation of the positive obligations under the right to life and freedom of expression.

And finally given that this is an inter-regional dialogue, I think it is also important to recognize the transnational dimension of attacks on journalists. As states, laws, policies and practices, as well the high level officials concerning the media and media freedom in one state, in one region

may serve to undermine the implementation of other states positive duties to take preventive measures and protective measures against attacks on journalists, in particular in relation to their obligations concerning fostering a climate for media freedom.

So consider- how for example the mass surveillance policies of the UK which compromise the European Convention on protection of journalists sources, and the associated intimidation of The Guardian, may ultimately be used to diminish the possibilities for promoting and enabling environment for the media in other states in the region such as Turkey or Azerbaijan, or in the common law world where violence against journalists persists -- or other states who would like to highlight the hypocrisy of the UK on freedom of media issues.

So [there is] this inter-connectedness of States in terms of the problems, but also the solutions mean that responses to attacks on journalists can only really be effective if there is concerted action against attacks on journalists, as well as the meaningful promotion of media freedom across States in fulfilment of state duties to prevent

Thank you!

WH I pick up two very concrete things. One is your point about the relative strength of the European Court in effective investigations and its relative weakness in prevention, which is something that perhaps we might ask Ona to comment on since there is a lot of strength in the Inter-American system and we are discussing the potential of cross-referencing and sharing of best practice.

Jane, there was a question about the lack of responsiveness of governments to principles and working groups in Asia. Perhaps you would like to respond to that first.

JC thank you very much and thank you. Please do not lose faith. {LG}

Keep up the fight.

This is the fundamental difficulty, it is all about national implementation - - and we do see - - have a problem with regard to the Asian region with regard to a regional mechanism also. There is one, but it probably needs to be far stronger.

This is to do with the culture of human right. And in essence what we need to do is relay on the advocacy of the High Commissioner and others to try to bring about change and maybe we have some more hope because he is from the region and he may be able to push a bit further.

It may not work - - I mean you may not have had - - and I know a number of the cases that have been presented with regard to the Philippines in particular with regard to the judgement the Vertido case in CEDAW (Convention on the Elimination of All Forms of Discrimination against Women), which is a very strong judgement... set views which has affected others states with regards to their implementation, but there has been as you know little feedback and in fact no feedback.

All we can say is that is up to us to continue to pressurize and hope that other states by their example will be able to affect the approach of your state.

I just wanted to make one point with regards to the different approaches with respect to human rights and the international criminal - - they are linked the International Criminal Court and the international criminal law generally. One of the issues that you have to be alert to and this is what commissions of inquiry and fact finding missions, the special rapporteur's and others were alert to in their work in respect to victims of human rights is the high number of levels of intimidation and the large number of reprisals that occur with regard to victims, their relatives and so on and so forth.

We have an ongoing investigation where has been just terrorizing of relatives and others of those who might be giving information to - - in this particular investigation and this is not unusual. So in that case we have seen that the commissions of inquiry see that the victims wish to give their stories, but they are terrified of their stories resulting in prosecution at international level because of the implications for their relatives.

So I think there are other issues to take into account. Obviously international criminal justice is very, very important, but in the human rights world we are seeing more and more these awful reprisals and of journalists and journalists families.

WH Thank you Jane. I would like before this end just to recall the report by the Secretary General of the Council of Europe in the summer of this year where he described the human rights situation in Europe as having its biggest crisis since the Cold War and he pointed in particular to the lack of media freedom and protections for journalists, as well as the lack of independent judiciary.

But only we have got a couple of moments. I would like to ask James as well whether he has a final word.

Ona, What do you think you can say about the new Rapporteur Edison Lanza's view about the potential for taking further the dialogue with the Europeans and others on these areas of better protection, particularly for example what Sejal mentioned the improvement - - the protection and the prevention side where the Latin American system - - the Inter-American system appears to have made perhaps more progress?

Ona Flores The office of the Special Rapporteur both Catalina and then Edison Lanza now is committed to improving the protection of journalists through the individual petition system and the precautionary measure system.

We are encouraging and advising the Commission and issue other cases - - report of cases that address decision with different specialities and specifics. Some of them have not yet been published because of the procedure, but we can say with firmness that the jurisprudence in the Inter-American system on this regard is pretty solid.

And with the protection and the precautionary measure system we are just trying to devise mechanisms for better compliance. That means deal with the States and other actors, and

identifying what are the root causes of the and obstacles for better compliance, like building capacity, providing help with the legal framework. But we can actually say that Edison Lanza and the rapporteurs working proactively with the states and civil society to improve these measures.

WH Could you say a sentence about the responsiveness of the member states of the Inter-American system to preventive measures, precautionary measures and so on? Just briefly?

OF The majority of cases of States do support and are willing to apply precautionary measures. I think there is [an] exception currently, but in general they are, and that is why we are working proactively with them to implement them. There is positive reaction to them.

WH And of course the Secretary General of the Council of Europe's catch phrase now is implementation. So that now might be an area of quick progress.

I think time is against us. I gather there is at least one more question, but there will be time in the later sessions.

James, there was one comment about journalists and ICC. Perhaps you only need to concur, but perhaps you respond if you would like to.

JS Well, I might just close, William, by saying that the whole area of human rights initiatives and criminal prosecution are complementary. The criminal prosecution of course is what I think is of as the hard edge of the enforcement of human rights and it is absolutely right it occurs at different levels and the national level is extremely important.

The ICC is court of last resort and we are involved in cases we have to satisfy ourselves as to the level of gravity and we are dealing generally speaking with mass atrocities which may make

focusing down on the particular plate of journalists not as obvious, but is a matter of concern to us and as I have said it does fit within the broader picture. But I think the comment that was made about the ICC as the forum of last resort has a great deal of truth, because of the nature of work that we do, but it is part of the enforcement of human rights generally and I think in that way can contribute mightily to better a world if you will - - a better environment for all of us.

WH Thank you! I hope this session has helped to set the agenda for the later discussion and later we will be discussing issues of strategic litigation, the focus for making effective the authorities that do exist by the courts.

I am reminded of the meeting of the Committee of Ministers in December last year here in Strasbourg where a senior member of the registry - - the proceedings are on the Council of Europe website -- was asked how he foresaw the development of the jurisprudence. And he mentioned in particular the application of Rule 39, the interim measures provision with regard to journalists under threat.

So that does seem to me to be a very central area.

Now we will be talking in the afternoon about areas of the world where protections are less developed. We have Maureen Kondowe from the Pan African Lawyers Union; we have Professor Harry Roque from the Philippines, who will be talking to us later.

But now we have a coffee break. We give you twenty minutes, no more, please. And we will come back and the topic then will be the *Perspectives of human rights lawyers, media and civil society* of the theme.

Thanks to the speakers and thank you all very much.

End: 1:59:20.3

PANEL II

Participants: *Grégory Thuan dit Dieudonné, Loïck Berrou, Karinna Moskalenko, Maria Teresa Ronderos, Barbora Bukovska*

Start: 0:00:33.6

Grégory Thuan dit Dieudonné (from interpreters)

Ladies and Gentlemen,

Kindly take your seats.

Excellencies, ladies and gentleman, judges, colleagues,

Ladies and gentlemen, dear friends,

I am quite moved to have this honor of opening the second panel session, and here will be listening to what civil society has to say. I also need to thank most sincerely the European Court of Human Rights and its representatives who are hosting this seminar and who have co-organized it along with the Council of Europe, in particular with the Media Division, UNESCO, the Centre for Freedom of the Media of the University of Sheffield, the Union of European Lawyers which I represent here, as well as the Open Society Foundation which has contributed financially to the holding of this seminar along the Council of Europe. So it is an honor for me to open the second panel session this morning and this time we are going to be listening to civil society.

We were very much concerned to involve them and have them with us to hear what they have to say, they are very likely in the front line, they are the ones who are primarily concerned with issues relating to protection or should I say the different forms of protection of reporters and reporting.

So the shortcomings, the advancing in this area of protection will be illustrated. The various panelists will talk about that and then we will have questions and answers which will touch on the various issues. So we have with us now representatives and experts who are hands-on journalists, lawyers as well, who find themselves in rather similar situations as journalists as well as representatives of nongovernmental organizations who are actively involved in this work as the Commission of Human Rights told us this morning, who play a fundamental role.

The first presentation will come from Mister Loïck Berrou, who is the Assignments Editor for France 24. He has been working there since October 2010. He was editor in chief responsible for the special operations in France 24 and also a leading reporter for a great many years where he went on reporting missions in Bosnia, in the Comoros, in Burundi and in Algeria among other places.

So he will be telling us about very concrete issues arising concerning media operators. He will be telling us about protecting journalists, risk management and when you decide whether you want to send someone into the field or not.

You have the floor Sir.

Loïck Berrou

Thank you!

Thank you for having me.

I am going to be giving you a very practical rather pedestrian viewpoint of what we do - - we are protected in Paris!

We are going to be hearing obviously a different perspective from the Philippines, from Colombia, but I am very fortunate in that I manage people who are operating in the field.

Now November is a meaningful date. It was on 2 November 2013 that two of our colleagues Ghislaine Dupont and Claude Verlon were killed [in Mali] and indeed very recently we have awarded the very first ever bursary in their names to young journalists or young technicians under the age of thirty who come to learn the trade in Paris. So this is a meaningful date.

The Media Monde Consortium runs France 24 which is a French and Arab speaking radio broadcasting worldwide. So according to Reporters Without Borders, Ghislaine Dupont and Claude Verlon were respectively the 79th and 80 reporters who were killed in the exercise of their job in 2013. Among the last ten of the last year, - - so clearly the statistics are chilling.

It is not just because mainstream companies are sending less people abroad or more people abroad. What is happening is that for reasons of economy, or dropping audience numbers journalists are being sent abroad less by professional companies-- because we have increasing number of media workers -- indeed fifty five (55) of these people including interpreters died in 2013.

When I left TF1 in 2007 after working for them for twenty years, 3 studios bore the name of reporters who had died on the job.

One, Yvan Skopan, died in 1993 during the siege of Ostankino, television TV Company (in Moscow), killed by a stray bullet.

Another one was killed during an ambush at the airport leading to the city of Mogadishu, and in 2002 the journalist Patick Bourrat died so-called in an accident during manoeuvres preparing the second Kuwait war.

So these people died, as we said in accidental circumstances, they did not die because they were reporters.

That is not the case in Mexico, in Indonesia or in Russia.

So people are being killed now because they are journalists. That was the case for Ghislaine Dupont and Claude Verlon. James Foley and Steven Sotloff also died.

In the old day in 1990's, if you had a "press" badge you were fairly safe.

That is no longer the case today.

I think people tend to hide their press badges because that often means that you are a target.

We have been in business for seven years now. We have not actually lost any journalists yet, but we have had four minor episodes I would like to mention because this is connected to the way in which we need to exercise judicial supervision.

In March 2011, one of our correspondents was injured by a bullet during an ambush in Libya.

In April 2012, our correspondent in Bogota was shot and detained by the FARC for 33 days in the jungle in Colombia. He was invited so-called by the FARC.

In October 2012 our correspondent in Egypt, a lady colleague was sexually attacked in Tahrir Square. This is a new development that we need to be concerned about. As I say how can we ensure a better protection for our women reporters? I mean it was well know that Tahrir Square was an area where there was a lot of sexual aggression going on and for the first time in Egypt sexual attacks have now become a criminal offence. But of course when you are dealing with a hostile mob turned against women.

The most recent example was in December 2012 our correspondent in Tunisia was injured by a pellet gun fired by police during a demonstration in Siliana. So this was the official police which fired into the crowd and we were able to - - we would have been able to complain about the police behavior, but it has not actually happened because it was very difficult for us to evacuate the casualties and also ensure psychological support for our colleagues who have been injured.

Sorry for this rather long introduction. But you see that the very few jobs which are as exposed today as the job of reporter.

So we have a huge responsibility, responsibility for the entire media system. It may well be that the media have shared responsibility for journalists becoming casualties as well as their bosses. I do not think we can elude our responsibility so this a special responsibility in this face of this human toll and the new risks of being taken hostage, or being attacked sexually if you are a women.

I do not think we could simply make do with the empirical approach we had back in the 1990's. We were a small circle of hardened reporters, everybody knew everybody, everybody trusted their lucky star: 'let's go for it', you know, we do not need a bulletproof vest. We were a small circle, now the circle has become much bigger and indeed the risks have changed tremendously since then.

So if you think about IS, Boko Haram, Abu Sayyaf, you can no longer simply trust in your lucky star.

In France Medias Monde and throughout the media world we now have to increase and rationalize the process involving sending people into the field. And when you are a reporter this may strike as rather odd, but we need to establish protocols, rules, basic rules. Of course we cannot stop reporting events in dangerous areas.

Yesterday in Ouagadougou for example there were dozens of journalists in front of the radio headquarters. The army opened fire. You do not expect this to happen, but this is what viewers are and listeners expect us to do. But we need to gauge the risks, take tremendous precautions and establish on a daily basis.

You know during the previous part of this conference I established ... I got news from Yemen and Mogadishu. You have to establish a ratio between the risk on the one hand and the reporting value on the other.

It is not easy to decide, sometime it is rather painful; you have to make sacrifices.

In the summer of 2013, I had a reporter coming back from Damascus. He was reporting on the ALS. It took him nine days on a back of a donkey on a moped to get there, and he spends the whole time locked into a bunker. He brought back rather poor footage, so it was not really worth it. You know, he was almost killed at an army checkpoint near the airport. And he was a hardened experienced reporter, he said "No, I should have not gone, it was a mistake. I made an objective mistake. My fixer, my translator almost lost their lives as well". So this is something they have to decide day and day out.

No single piece of footage, no story is worth losing a man or woman reporter.

So first question:

Where do you have to go?

How?

With whom

And to do what?

So since the deaths of our colleagues in France Medias Monde, we have been thinking about this, in BBC and Al Jazeera, all the major media players facing these risks have had to decide to do this.

So where do we send people? After the death of our colleagues last year, we withdrew -- to put it euphemistically -- our colleagues in Libya, Mauritania and the Yemen.

It does not mean we are not going there anymore, we are still sending reporters now and then for short terms in Tripoli or Benghazi., or in Yemen. But we thought it is no longer reasonable to expose European reporters to such a high degree of risk or the risk of being abducted.

We still have our Arab speaking media who recruit Yemenites and Mauritians. They have been living over there, they are familiar with the risks, but we no longer have permanent correspondents out there. We hope that we will be back there one day.

Quite frankly, this was very reassuring for the Foreign Ministry in France, but they did not pressure us into doing this. Had we followed the map of high risk areas a lot of them we would never have gone at all. So whenever a French reporter is in danger, improperly accused or detained or threatened, the special department in the French Foreign Ministry intervenes with fairly important resources. In Mali for example to evacuate these journalists and they also apply to the fullest extent the principle of precaution, they can be proactive in a case of an emergency.

Now if you are going to go to Syria, Kurdistan, Yemen or Central Africa, it is the better safe than sorry principle that prevails. It is difficult to decide on, we prefer to arrive 24 hours after all of our colleagues in Benghazi or Donetsk and take all the necessary security measures.

The second virtuous, but difficult choice which is a bit more complicated is we do not want to encourage part timers or freelancers to take risks because they just want to sell copy in countries where we think the safety of our journalists might be impaired. And this happens every day. In Kobane we had a couple of freelancers who tried to sell us footage. We say we are not going to buy that.

And indeed when they lead on mission we used to say well we will see what you bring back. But we explain to them 'you will not have cover, you will not have protection from France 24...'

That is a huge subject that needs to be explored within the media companies. There was a report in the New York Times last week about the number of hostages past and present in Syria, after twelve taken hostage in Syria there were those from periodical Le Monde, RFI, other were

freelancers. So I think when it comes to hiring freelancers, that is a big responsibility, but the profession that really suffered the most is that of the professional photographer.

Time or Newsweek no longer have salaried photographers on assignment with a guaranteed income when they come safe and sound. So the only way for a photographer to go on mission is as a freelance without a bulletproof protection. So I think the profession needs to look at net journalists, citizen journalists and so on.

We realized that in warzones which are economically affordable for example the green revolution, Libya, Tunisia, Egypt, they are not very far, not very expensive, [or] Ukraine, the Maidan Square. Mali has been more complicated because now we send less freelancers out there, but there are lots of people out there all the same.

The second question is how do we go about this?

Now of course in the past we were concerned with keeping our journalists safe, but have made the process more formal now -- necessary safety equipment, first aid kit, special facilities for women colleagues. We also have run docking meeting, briefing where we ensure that they leave us with their contact numbers, their satellite contact numbers.

So what about bodyguards? A lot of insurance companies, if you go to Baghdad, Mogadishu indeed to the Turkish-Syrian border, near Kobane, insist on private bodyguard facilities been made available often by former military personnel and we feel this type of protection, bodyguard type of protection turns the reporter into an obvious target.

So in France 24 we have a multinational team. We try to avoid danger, we try to be discreet rather than sending in huge teams of 20 security people because everybody chooses what they think is the most appropriate.

Anyway in these dangerous areas the basic rule is clear, don't stay more than 48 hours, sometimes not more than 24 hours in the same hotel, same accommodation, not more than 2 hours in Baghdad. After two hour you can be abducted. I know that James Foley was kidnapped from an internet café after being there for only two hours. The news gets around very quickly.

Second question, with whom to go?

Now it is not easy to decide. If you send a Muslim reporter or a woman reporter to an Islamic state that might make them less obvious targets, but it is not always the case. It depends on hard evidence.

Two basic principles we apply:

- One is that the journalist has to volunteer , we never force anyone to go to a dangerous area and
- Secondly the need to be trained in risk management.

Now we had a big challenge. If I can think back to when I was a reporter in US, UK, it is very often the military who you know offer training in how to dodge a hand grenade or take cover. This type of training proposed by the military is no longer sufficient, but now risks like those to communications, how can you be spotted. We know that the Syrians have been using GPS relays to indicate all the 33, 44 [code] phone calls to identify French, American reporters or others. There are also risks of sexual aggression and the psychological post-traumatic risks which we considered was a minor problem before. We thought that 24 hours in the field could not leave you with any lasting damage.

Now this type of training is available in London with this global academy. We have been now running various training courses for participants.

We need former military people to tell us about direct risks -- gunfire injuries especially, communications, simulations of checkpoints and firing sensory deprivation, and of course stress management -- during residential courses. All that is available now.

So all the people who work for us in France 24, [MCD?], can be involved in these training courses and indeed we have support from the Foreign Office.

This leads me to the final point. I am sorry to have been speaking at some length.

So what's the point behind all this? Well that is the real decider, are the risks worth the news, the news gathering? There we have tried to establish some basic rules thanks to a document that our reporters have to fill in before leaving, we have introduced a new acronym "SACRE", a sort of a check-list of the basic criteria. Now it might seem rather tiresome to try to standardize or regulate missions to that extent, but reporters themselves are very much in favor of taking extra precautions and receiving proper training and indeed we are finding it very hard to keep pace with demand for this training.

Now today is one year and one day after of the death of Ghislaine and Claude, so by definition the radio and TV companies involving international news have to be present in these war zones. But it is a terribly difficult choice, we do not want more names of reporters to be added to the commemorative plaques in Bayeux or the Newseum in Washington.

And I do not want to end up with my name in these plaques.

Now I think that reporters have really got to make a convincing case to be sent to Maiduguri, to Aleppo or the El Salvador pas, in the south of Libya, or in - - Nigeria. So we have had to abandon quite frankly a certain number of territories, provisionally we hope. We have come back to Libya - - we are coming back to Yemen, to the South Sudan, but Syria, the southern Algerian areas have very few western reporters on the ground now.

To paraphrase Marie Christine Saragosse (the president of France Medias Monde), no piece of reporting is worth a human life, but there is no zero risk. Lots of young, inexperienced freelances without bulletproof vests have died in the field along with a lot of experienced hardened professionals. So there is no absolute rule, but we try to avoid and avert risks as far as possible.

Thank you very much!

End: 0:24:30.9

GTD Thank you very much Mr Berrou. Well, basically you mentioned some issues which will probably touch on during the questions and answer sessions. For example, the bloggers, the so-called net journalists and how to protect them. Not just protecting people who have a press card. Then access to justice. By definition if you are in a war zone there is no local judiciary operating and of course I have in mind James Stewart who spoke to us this morning about access to international criminal justice.

So pressure from the state authorities -- that would be the Quai d'Orsay, the French Foreign Ministry in France, their responsibilities and obligations when it comes to averting kidnapping and abductions. Then when it comes to the need for an institutional dialogue, but also dialogue with civil society we need to establish, a general international set of rules through international cooperation.

Well now we are going to hear from a lady colleague, Karinna Moskalenko, who works for the Moscow Bar Association. She is above all a friend and has been spearheading the protection of fundamental and human rights in Russia.

She has actually lodged the first successful application at the European Court of Human Rights and she works for the Strasbourg and Moscow based National Protection Agency, and she has been a lawyer for hundreds of Chechen applicants, but also personalities like Mikhail Khodorkovsky. She also represents the family of the deceased Anna Politkovskaya and she was also involved in the defence of the family of Madame Estemirova.

And she will be telling us something about impunity and the fight against impunity when it comes to crimes against reporters, and where she stands on that.

Karinna Moskalenko

start0:27:13.5

Gregory ... as I prepared my notes in English.

And speaking after so many distinguished and high officials and professors and scholars, I want from my side to express my thank to the organizers that they gave me the opportunity to speak in this Court with audience and to raise those points which are so important for Russia for the last decades and especially today.

And I am representing the organization which litigates cases on behalf of the journalists who were intimidated, arrested or are victims of harassment, physical violence and particularly police violence against journalists. And sometime we represent if I am allowed to say like this, killed journalists – or better to say their families after it is too late to help themselves.

Madame President of the Parliamentary Assembly of the Council of Europe, in her remarks she said literally like this “the Court (meaning the European Court of Human Rights) is involved when it is too late”.

In some of the cases I personally represented those cases where the journalists were already killed, but I disagree that it is too late.

No, no and no.

In many of these cases the domestic authorities have failed to conduct the proper investigation, but still it was not too late.

When the authorities are reluctant to conduct the investigation it is quite disappointing, but still we rely on some other possibilities.

First of all, the last resort of our activity is the European Court of Human Rights. What really hurts us when this Court is reluctant to do something which can be done and because of that, because of this disappointment ... I will skip all formal part of my presentation and I would like to demonstrate with some cases when this Court could be of some kind of assistance, but was reluctant in conducting urgent or timely actions against the State perpetrators.

First of all I would concentrate on three cases although our centre was involved on many of them: three murders.

In each of these murders the state authorities have not conducted a proper investigation from the very beginning and these case are very significant.

I will start with Mr Dmitry Kholodov murder case. Exactly twenty years ago Dmitry Kholodov was killed. He was a big critic of the military authorities of the Russian Federation. His murder is until now not investigated. Unfortunately the European Court, [it is quite justified?], avoided any judgement on the matter because they said 1994 was a time when Russia had not ratified yet the European Convention although in our complaint we mostly were speaking about the non investigation which lasted many years, and which by the way is lasting until now; twenty years nobody was found as being responsible for this murder.

Three years ago, the Human Rights Committee of the United Nations, - - because since 1992 Russia was part of the treaty, the ICCPR and the optional protocol, they took this case and finally they decided, they found Russia in violation on right to life in Dmitry Kholodov case.

Almost three years passed: no implementation, no any actions from Russian side. Even Russian people do not know about this judgement, this judgement or view as a human rights [committee] court decisions have not been published in Russian Federation. And the investigation has not been started again.

This murder opened the era of political murders of journalists. That is why it is so important.

Next, two cases of killing of Anna Politkovskaya and Yuri Shchekochikhin. In both these cases the state authorities again were very reluctant to take any effective measures to investigate properly the case.

In case of murder of Yuri Schekochikhin -- and I insist that was a murder -- he was poisoned, and very strange diagnosis and very strange symptoms [of his]... before his death showed that, demonstrated that.

The Russian authorities refused to initiate the criminal case, refused to give all the medical documentation to the ...to his family. And finally after five years of non investigation, the case has been investigated...started investigation.

By definition it is already not an effective investigation. And three times the investigative authorities closed the case and reopened again after the complaint of Novaya Gazeta and the members of family.

But finally they closed the investigation this year. This year we have filed the complaint with the European Court of Human Rights saying that the effective investigation has never been carried out. And finally, this was a political scale case, I am going to criticize the Court, which I love more than anything else because sometimes it is really the last resort of the Russian people.

We have filed the complaint with the European Court maybe too early, . in six month period after the ...his murder, because the first six months of the investigation already showed that nobody is going to be punished for ordering these murder, for financing this murder and probably for committing the concrete things to murder this journalist.

In this audience thankfully there is no need to say who is on a political scale, who was and I would say who is on a political scale until now fighting for free media.

The case from the very beginning was not conducted properly. That was clear. The victim side was not allowed to be part of the investigation. We proposed our versions, we put a lot of motions how to properly investigate this case, but finally we were refused on all our motions.

We complained to the domestic court on the matter of effective investigation. The domestic court said and confirmed on the second instance that everything is going OK, no matter for concern. And four years ago all those who were somehow incriminated with some of the participation in this crime all were acquitted.

I would say that the same happened in Dmitry Kholodov case. All accused were acquitted. But why? Because of many violations of the right of defence and the accused happened during the investigation.

But who is responsible for these violations?

Finally those perpetrators or innocent people were paid great compensations; [but] not one pound, or Euro have been paid to the family.

But those who were [witnesses?] were fully paid.

In the political scale cases you can see the same things.

Many violations of due process are the major - - now he is the main accused, but in the initial case he was the initial witness of the prosecution.

There is nothing strange that juries acquitted all the accused, because that was a very strange picture of murder.

I would say today when we just have finished the second trial; there are a lot of things. These people who were accused were not acquitted, but they have a good chance to demonstrate that this case was not - - has not been properly conducted both during the investigation and during the court. The Court committed a record number of violations of due process.

Who is interested in conducting the cases like this? The State officials! The State authorities and concrete state agents were spying [on] Anna. They have discovered her address factual and official; they have followed her all last months, but no one of them were incriminated, because they were so naive they could not... even after her mother they could not recognize the person who was spying on.

The only person -- former best witness of the prosecution and now the accused -- have been punished, but in a closed trial [it] was a special environment and things like that.

And I do not know if this judgement will come into force, but even if it will come into force still we do not know in this case and in other demonstrated cases who murdered, who was ordering these murders, who was financing that, who organized that murder and it is the way how the authorities of my country investigated and conducted this case.

After this you do not need to intimidate journalists anymore. The chilling effect which the European Court so often [speaks of] in their judgements is doing the consequences - - the consequences are that journalists even do not need to be [censored].

They have their own selves' censorship. And in such type of an environment journalist cannot work independently and be protected by the reality - - existing in the country.

Ah, I have a lot of other remarks, but maybe later in questions which you probably want to put.

Thank you, Gregory and sorry!

GTD Merci! Merci Karinna!

Thank you! I think that you have raised a rather painful point in the investigation of cases at court which is the length of proceedings, which can be very long -- too long, indeed, which makes me think and we might look at this, this afternoon in greater detail. Which makes me think of the possibility possibly of drawing the States attention by calling for provisional measures, article rule 39 that the Court may have recalled in certain circumstances?

The priority of processing of this type of case which I think is fundamental and recalls Article 40, to communicate the introduction of the application to the defendant government in order immediately to draw its attention to that sort of situation.

Well I see that we are behind hand on our schedule so I actually now call upon Mrs Maria Teresa Ronderos Torres, who is a Colombian journalist. She is head of the Program on Independence of Journalism within the Open Society Foundation since August 2014.

Before that she was chief editor of the VerdadAbierta dot com portal and also investigative reporter, and she is also a member of the Colombian foundation on freedom of the press {FLIP}.

So you are going to talk about the setting up in Columbia of a joint programme with the government on the protection of journalists.

So this is the link between civil society and the state authorities, and you will evoke the progress achieved and also the gaps.

María Teresa Ronderos Torres

Start: 0:44:24.2

I will talk right now with my hat of journalist. I have been in this new job at the Open Society Foundation for three months, so we wanted to share with you the experience of the creation of this mechanism in Colombia, how it has been evolving. I have been a reporter and editor for many, many years in Colombia. I have covered many years of the war, of the internal conflict that we have had. So since 1997 a hundred and forty journalists have been killed in Colombia due to their work as far as we have been able to investigate.

The darkest hour was between 2000 and 2001. So a group of us who have just started a foundation called the Foundation for the Freedom of the Press - FLIP, who has played a very important role throughout these years. We went to see the president of Colombia because the president had been an anchor of one of the large television, news stations. So we thought he could be sensitive on this issue on protecting journalists.

So very very fast, he reacted in a very positive way. He himself had been abducted, had been kidnapped by Pablo Escobar in his terrible years. So we were able to come out of that meeting practically with a decree that was written almost by hand there by us and the government and this decree called 5092 created or not - - there was a lot that had created a protection mechanism for human rights defenders and other politicians and other groups in the society that were targeted by armed groups. But with this decree the journalists were included into that program and there was a team specially created to protect these journalists. And it became very very agile, more or less worked quite well in terms of protecting the journalist. It created a committee when some of the main representatives of the journalism world and the press world were sitting there with the government, with the justice - - with the prosecutor, the office of the prosecutor, with the police the division of the human rights of the police and the cases were reviewed very fast and there was a somebody in danger there were communication, radios or cell phones that were given to these persons or in cases it was more difficult they would give

him bodyguards or armed cars or bullet vest, bulletproof vests and even sometimes when the situation was really really dire they would take the journalist from that point or place where he or she was having a real big trouble and place them somewhere else until things go back to normal or sometime even help them get out of the country if that was the case in some of the cases.

For fourteen years these mechanism has been in place. We cannot say that because of this that the journalists have not as killed as much as they used to be killed, but actually the numbers show us really decrease between 1995 and 2005 we had seventy five journalists killed because of what they were publishing or saying and between 2006 and 2014 we have had fifteen. So the numbers have really dropped.

Since 2013 the new government created a special unity which is called Unidad de Protection for very vulnerable groups.

Now there are sixteen groups in Colombia being protected by the government with these special measures. Of these sixteen groups are trade union leaders, peasant leaders, indigenous communities, human rights defenders and of course journalists.

At October this year, so until last month this unity was protecting 7,529 people and it was spending about two hundred and four million dollars in this protection program.

And it was spending about seven million dollars in journalists and up to day hundred journalists have some kind of measurement of protection. This year four journalists had to flee their own region where they live and they are now in another city inside the country, and one very badly threatened journalist had to leave the country and is now in exile.

So what worked in this mechanism which is what is really nice to share.

First it was legitimate to the eyes of the journalists and I think this is the most important thing. It had the trust of the journalists. If you do not get that it is very difficult for this to work. It protects -- of course it protects the journalists, it gets much better information; it is both

journalists and government are creating this space so that they can actually see if what the information is.

It is clear for both sides that this mechanism cannot be abused by government. Government cannot use this mechanism to manipulate the journalist. Because I am giving you protection then you cannot speak against me. This is not something that government does in the name of government, but does it in the name of the state. This is right of a journalist and this is very clear for all parties.

I think the other thing that is very important is that journalists in very dangerous places -- and I have been in many of these dangerous places, I have done reporting until this year -- I was visiting some of these very dangerous places and journalists feel very lonely. They feel abandoned. Society does not care. They are playing this role that is so difficult to keep bringing the information of what is going on in very difficult places and nobody cares. So this mechanism actually makes them feel empowered, that they can keep informing.

But it has several flaws this mechanism tool.

I think the first one right now, specially because it became a big bureaucratic thing: it is not fast enough, it is not reacting fast enough. And this year for the first time in August there was a journalist who asked for the protection measures and the government did not react on time and he was killed before - - when the government was going just through the bureaucratic motion, and Luis Carlos Cervantes was killed in August 12th 2014.

Also in short period of time during one specific government the bodyguards that the government was sending to protect the journalists were actually spying the journalists and they were informing security agencies what the journalists were doing so that was not very nice use of the mechanism.

And then the big flaw of the mechanism is that they protect the journalist that there is no investigation about the threats. There is no really a good results in terms of who is threatening that the state knows. It is complete contradiction that the government with one pocket is actually spending lots of money in protecting these journalists and then when you see the other

hand sometimes it is government officials who are actually attacking and threatening these journalists. Because sometimes is the security forces in conspiracy with drug lords or with the war lords or what not.

So the few that have actually convicted in Colombia because of murdering a journalist has been because we had a very - - not very but somewhat successful transitional justice process by which the paramilitary came into... handed in the weapons and they confessed their crimes. And now they have confessed of killing two journalists. One of them in conspiracy with the mayor of a big city and the other one in conspiracy with the governor of a whole state. So now we are knowing more why they killed these journalists.

This mechanism has inspired authorities and civil society of Mexico, and in 2012 they approved a law to protect human rights defenders and journalists too. I personally have been talking many times with the Mexicans and I think there has been a lot of interexchange of ideas and the two mechanisms. As far as I can tell, of course there is person here that is the one who runs this mechanism: Laura! And so she will probably want to tell you more if you need to know more about it.

It has received one hundred and five requests until 2013, and of these were of forty journalists. It had a budget of twelve million dollars.

It had some challenges, especially in terms of representation of the civil society and acceptance of the legitimacy of mechanism by journalists.

I heard a lot of journalists of very big organisations sort of saying they do not trust the mechanism. They also have lots of problems. The federal government is trying to have the local government because it is a federal country, protect the journalists and the local police is not always trust - - trustable because sometimes it is involved also in the violence.

Others like Brazil, Honduras, Pakistan are thinking of similar - - putting in place similar mechanisms of course after the United Nations Plan of Action.

So I think I would - - what I have seen in the experience of these fourteen years in Colombia give us a small agile group that has high legitimacy in front of the vis a vis the journalism support and can respond fast.

Second, clarity of the society of why we have to protect journalists. Because in many societies, I was talking to one of the colleagues from Pakistan, he said 'in this society it was not admissible'[not admitted]. Because they would say 'why journalists, what do they have so special that they have to be protected?'

And I think that if we do not have it very clear that journalists are the [symptoms of] the fever of a sick society. Journalists are the ones that actually tell what is wrong with society. We had all regions turned off because the journalists were silenced and we did not know what was happening there. And they were captured by criminal gangs. And that happened in also in Mexico. There are regions that had been captured by regional gangs and nobody knows really what is going on because they are off. Because journalists are no longer talking.

And to finalize now with my hat of the Open Society, I just wanted to say that, and this I will say in Spanish:

"We want to promote the protection of journalists and combat impunity because when they killed my friend Orlando Sierra for example it is an attack against the rights of the society to be informed of what is going on. But if these assassins have impunity, if there is no investigation it is a two-fold attack on freedom of expression, because nobody knows who prevented this from happening".

(translation from Spanish)

Thank you very much.

End: 0:58:19.2

GTD We are really very much behind time on our program now. So I would ask you to excuse us. Now we are going to try to hurry up a little bit.

I would like to give the floor now to Ms Barbara Bukovska, who is senior director for Article 19 NGO. Article 19 of the Covenant of Civil and Political Rights which is precisely on freedom of expression. She is a director in that NGO, of the law and policy division. She has a lot of experience on international human right law, having worked for different NGO's and intergovernmental organisations in different subject matters, including discrimination, access to courts, deprivation of liberty and freedom of expression which is the topic of our interest today.

She is going to talk about the use or exploitation of treaty law, human rights treaties as a living instrument in order to strengthen different forms of protection of journalists from universal point of view because Article 19 covers the entire world.

So the floor is yours Madame.

Barbora Bukovska

Start: 0:59:51.3

Thank you.

Thank you Gregory and thank you to the organizers and UNESCO for including Article 19 in this important dialogue and event.

As was said in the introduction I represent Article 19 which is an international freedom of expression organization. And the issue of protection of journalists and fight against impunity is one of the key issues that we are addressing in our work.

Article 19 offices in different regions, especially in Mexico, Brazil, East Africa, Tunisia and Bangladesh are dealing with reality of violence against journalists on daily basis. And also

through their work are protecting - - providing practical protections to those who are at risk and those whose lives are threatened.

What I want to do in my presentation today, I want to focus on three issues.

The first is to highlight some recent trends or violations against some specific groups that have not been yet mentioned in detail in this conversation. And these groups are facing particular challenges that have not been sufficiently addressed in the protection mechanisms.

The second I also want to discuss the basis for the expansion of the protection to those groups and then mention some Article 19 recommendations in this area.

So in terms of some groups that are facing increased risk I would like to mention three issues.

The first is the violence against so-called citizen journalists. But you know this term is now probably a bit obsolete, but it is basically those groups who are not associated with legacy or tradition media, but who engage in informing public via blogs and increasingly through the social media. And the protection of these individuals is specially important in those countries where legacy media or traditional are severely restricted through various source of censorship.

And unfortunately the bloggers, and social media users and citizen journalists are increasingly target of various physical attacks, threats, murders and other forms of violence.

We have as compared to the violence against new traditional journalists, the journalists associated with legacy media. We have less data about the scope and extent of this violence, nonetheless some data exist. So for example in 2012 alone CPJ reported that forty eight citizen journalists were killed compared to only four in the previous years.

During the same year according to Freedom House at least in nineteen countries blogger or internet user was tortured, disappeared, beaten or assaulted as a result of their online activity.

We also have monitored and identified some individual cases through our work, so for example in Mexico our office has been working on a case where a Twitter user, a man and a woman who were reporting about the work of drug cartels, were tortured and then found hanging from a

pedestrian bridge in Nuevo Laredo, in Mexican state of Tamaulipas. And a note was attached to these bodies saying that this will happen to those who are using Twitter to report about organized crime and organized crime identified themselves for this violence.

So we need to expand the protection of the protection mechanisms and of the reports which we are going to discuss tomorrow to these groups.

The second area of groups of journalists at risk and it also concerns those who are not associated with traditional media is the violence against those who report about the protests.

So through our work, but also through other reports, we have found an increased violence against journalists who are covering protests and these forms do not include only physical attacks but also confiscation and destruction of their journalistic equipment. And such cases have been reported in many countries such as Angola, Belarus, Egypt, Georgia, Iraq, Kazakhstan, Malaysia, Mexico, Russian Federation, Syria, Tunisia, Brazil and Mexico as well. And all the available report show that journalists and those who are specifically covering the human rights violations and actions of police and what is happening during protests are deliberately targeted when they cover these issues and when they carry equipment which shows that they are engaged in reporting activities.

Our organization in Mexico, for example, last year found that in October alone in Mexico City there were sixty four recorded cases of violence against journalists in one month alone in October 2013. So this is a very serious trend which requires protection.

Similar cases were covered in Brazil, especially around big events and big protests. This year most recently the protests in relation to World Cup. And when the violence happens, we also found that the courts are very reluctant to offer protection. So we have been working on a case of one journalist Alex Silva who was attacked during the protests in Sao Paulo and he lost 85 percent of his sight and then when he was suing for damaging in civil courts, the courts denied compensation claiming that he was responsible for his injuries himself.

The third area of groups is that there are those who cover the - - or those who are attacked by private companies. So there is a form of sort of private censorship, but who expose the doings of private companies often associated with corruption in the state.

And the most prominent example of this sort of violations is violence against those who cover environmental issues or environmental reporting.

And again Article 19 in this year in report showed the growing trend of such attacks in Central Asia and Europe where those who reported about environmental issues are attacked or their families are attacked.

As a way of example I can tell you a case from Russia of Mikhail Beketov who was reporting about - or who was covering a campaign against the building of a Moscow - Saint Petersburg motorway, and he also highlighted the corruption in this construction. He suffered several attacks. His car was burned. He was sued for libel, all of which finally resulted in an attack; and then he died in April 2013 as a result of a injuries and no perpetrators in this case have so far been identified or punished. And similar cases. Obviously Russia is not the only example of such trends. Similar cases have been identified by our organisation in Cambodia in relation to reporting about land grabbing and related environmental degradation or in Brazil in Amazon area.

Although in many of these cases the implication of private companies or private actors is clear the state is obliged to guarantee protection to these individuals and carry out effective and impartial investigations of those attacks which unfortunately has not been the case.

Also very unfortunately these attacks are happening in the growing context of restrictions of the independence forms of reporting through online, through online activism. And we have also seen the adoption of restricted legislation such as in Russia against bloggers and internet users who are reporting about issues of public interest, but also on the crackdown on bloggers through legal action such as sued and imprisonment. An example of this situation can be mentioned in Ethiopia of so-called Zone 9 bloggers.

Article 19 believes that the protection mechanism, then also the UNESCO plan and any activities that are aimed at protection of journalists should expand in their definition, understanding of who is a journalist and should be protected in this sense. We argue that is due to the fact that the object and purpose of international human rights protection is often understood as a protection of individual human rights and the maintenance and the promotion of ideals and values of democratic society. And we encourage the evaluative interpretation of the provisions of international mechanisms and human rights instruments, that should reflect the dynamic developments in society over the time. And that is why in this respect the International Covenant on Civil and Political Rights, but also other regional human rights treaties are described as 'living instruments' that must be interpreted in the light of present conditions, and they cannot be viewed just a contract between when they were adopted and what was the actual wording at that time.

So we call for their interpretation to be done generously to give effect to their full realization. And it is very good that the recent mechanisms have acknowledged such a functional expansive definition and understanding of journalists, such as reports of the Office of the High Commissioner [for Human Rights] of the UN, but also the General Comment number 34, and the recommendations that were adopted by the Council of Europe.

So Article 19 believes that these international standards should provide protections to those groups and also the states are obliged to carry out investigation in the attacks if they happen.

We have several recommendations in this respect which I will just very briefly mention.

First, that we call that states should not just focus on the protection of journalists, but they should prohibit crimes against freedom of expression in their domestic legislations. And they should include the instances of violence and other forms of attacks against broader set of communicators who are targeted for exercising the right to freedom of expression. And by the way this recommendation has been also acknowledging the joint declaration of the special mandates [of the UN] two years ago.

We also call on the states to denounce their attacks against the broader group of social communicators as direct attack on freedom of expression. And the state officials must publicly refuse any attempts to silence critical and different voices in the society. They should also recognize that non legacy media, journalists or citizen journalists are also vulnerable to violence and other forms of attacks because they are exercising the right to freedom of expression.

We also believe that it is absolutely crucial that the states pay special attention to responsibilities of non state actors and focus on the violations they carry out. And this is in particularly important in countries where non state actors such as organized crime, but also private companies emerge as violators.

We also believe that it is absolutely necessary that the states expand the protection mechanisms to broader groups. And I think we have heard from an example in Colombia that such broader understanding of the role of these mechanisms is possible and also works in practice. And they are also in any cases of violations that the states must carry the effective prompt and independent investigations in the violence.

There is also a greater role for international community, UNESCO and other regional bodies to include the violence against non legacy media or citizen journalists and groups at risk in the reporting, data statistics and discuss how protection mechanisms should be applied into those groups. And I would be very happy to discuss these issues further in discussion.

Thank you.

PANEL II DISCUSSION AND INTERVENTIONS

Participants: Andrey Rikhter, (unidentified), Mehdi Benchelah, Harry Roque

GTD

Merci!

Thank you for having been so concise and precise too.

Well I do not really know whether we will have much time for questions.

I propose we have seven to eight minutes questions and answers time. So much has been said, we could devote an entire day on justice - - one session.

The point of view of civil society, there is one fundamental question we have not tackled, which is the protection of secrecy or confidentiality of sources in regional human rights law, in domestic law. Is there a dialogue to be established here? and I see Mme Parmar, we could refer to your excellent report on that subject matter.

So about the definition of what a journalist is or rather how a journalist should be considered as a citizen and this also brings in mind the connection that may exist between the whistleblower and the journalist.

And finally the taking into consideration in Europe of protection programs which have been initiated with success. There are both positive and negative aspects, but globally, in America, Latin America because if I am not mistaken there is no protection of such kind in Europe, however.

So I call upon you to intervene.

We just have a few minutes.

Andrey Rikhter

Well I would like first of all to confirm what was said by Mr Berrou about the growing trend that journalistic insignia does not necessary lead to more protection of journalists, and journalists are actually targeted sometimes more often than not are in violent clashes during different source of conflicts.

So my question to the panel is, is it of concerns to others as well? Are you going - - do you have any solution to this problem? And what would be the recommendation in this regard, regarding the insignia of journalists?

Thank you!

(unidentified)

It also seems that Red Cross is not as much protection as it used to be, and I have no I have no solution in that regard. I do not know about the panel.

Barbora Bukovska: At Article 19 we do not support the insignia and I agree with you that it does not give protection. And moreover there is a lot of restriction on those who can get protection as a journalist and sometimes there are restrictions to meet these criteria.

So the insignia does not really help you. But I have heard that one of the solutions is to highlight the responsibility of the police, not to target such person who are carrying equipment which can identify them as journalists or those who are reporting. And this is especially important in the context of protest, but we have seen that they are actually specifically targeted. So the importance of training the police, training those who are policing the events where the clear identification via carrying the equipment is a possible... can be one of the solutions.

MTRT ((la numerica))

The main problem is that the governments, many governments actually have a very strong speech against some journalists that oppose them.

So this drives mobs to attack them when they are on the road covering, whatever - -

So I think one of the things is what the Special Rapporteur recommended is to make governments aware that they can not target in their speech journalists, because this puts them in great danger when they go out with their signs [of Press].

Mehdi Benchelah

Mehdi Benchelah, UNESCO programme specialist.

This is a question to Mister Berrou and possibly also to the other members of the panel.

The question of having somebody within media group who is devoted to security matters, because I think in the Anglo-Saxon countries you have got this culture of having specialists in the BBC or NGO's like Human Rights Watch, who have a sort of focal person and people doing research in NGO's or journalists do not go on a mission without the green light of this specialized person who can assist the situation together with the management.

So I would like to know why this sort of mechanism does not seem to exist outside the Anglo-Saxon world. Is it because of costs or is it a cultural question or is it something that should be added by a way of a practical recommendation?

LB Well I will answer very briefly. This is pretty much an Anglo-Saxon culture, in fact the advantage and the limitation of this system is that often it is former military or secret service people and of course threats are much broader nowadays. You need a panel of psychologists and doctors and communication specialists and we have not found 'the person' that brings together all this know-how.

In the BBC and other media they are usually former military. We have somebody who is responsible for security, who is a former soldier, but he says that his field of experience is limited when you think of the sort of dangers that obtain today.

GTD Gentlemen over there!

Harry Roque

So I had ...with Maira and I express curiosity over the particular system they have in Colombia, now, which seems ad hoc for countries like the Philippines.

But my question is, how do you trust the same institution that will provide the protection when in the first place they are the ones who violate the right to life. Now I mean in the Philippines whether be the warlord ((who are the journalists killed)) or the armed forces killing a journalist who they think is empathetic to the left, it is ultimately the state agents who will pull the trigger.

So what is the experience of Colombia? How do you trust state agents who are the source of the threat in the first place?

MTRT Well we have a centralized government, so there is no local police. So that makes it a little easier in terms of control from central government to what the police is doing.

So if there is there is [a denunciation] against these police they can change it. But lately what happened is the whole protection system is done by private guards. It is not one by security agents because of the experience of security agents spying on journalists.

GTD Well ladies and gentlemen! I am going to close this session now. I would invite you to -- you all have a badge with different dots...

End: 1:22:35.3

PANEL III

Participants: Peter Noorlander (moderator), Michael O'Flaherty, Maureen Kondowe, Wendy Betts

Peter Noorlander

Good afternoon everybody! Welcome back from lunch

My name is Peter Noorlander and I will be the moderator for the next session on 'Judicial and national cooperation to improve standards of protection, prevention and prosecution in cases relating to journalists and freedom of expression'.

Sorry, I had to read that out because it is a very long sentence and I could not memorize it.

We have a really good panel for you right after lunch. On my far left is professor Michael O'Flaherty who is currently a professor of human rights law at the National University of Ireland Galway and former vice Chairman of the UN Human Rights Committee.

And who is going to be talking to us about national jurisdictions and relationship to the global system of human rights protection and I hope I am not taken by surprise by announcing that. And he is going to be putting a lot of sort flesh and detail on the presentation that was given by Jane Connors this morning.

Then we have Maureen Kondowe, who is the Vice-President of the Pan African Lawyers Union and she is a practicing lawyer from the Malawi and she is going to be giving us her experience of the African Human rights system. She is going to be talking about a couple of cases at the African Court of Human Rights as well as other cases to show how these beautiful international norms work in actual practice and also analyze the imperfections of these systems.

And to my right we have Wendy Betts, who is the director of eyeWitness project at the International Bar Association.

The eyeWitness project, somebody gave it a plug already this morning which is an excellent way of setting you up, and your project is about contributing to the prosecution of cases against

human rights defenders by allowing people to capture actual evidence of human rights violations on their phones and other mobile applications in a way that is admissible as evidence. It is authenticated absolutely.

But I won't say anything more about it because I will leave you to all of that.

I will dispense with any further opening remarks other than to say that as we have heard this morning obviously this topic is of huge importance to everyday, you know, working life of journalists, but also of bloggers and other social communicators who report on issues of public interest.

My organisation deals with cases of journalists who get into legal trouble. We try to help them and often when things do not work out we will prosecute their cases up until various international human rights tribunals -- be it the African Court of Human Rights or the European Court of Human Rights, and that is always a long haul, but these are always extremely important mechanisms. So I am really happy to have such a distinguished panel here covering everything from the global system to the African to the very practical on the ground overview of what needs to be done.

So with all of that I will hand over to Professor O'Flaherty to share his talk with us.

I believe you just push that and it happens, there you go.

Michael O'Flaherty

It is very posh system!

Good afternoon! It is a really great pleasure to be with you. I am honoured to have been invited. The topic is critical I have so many times been confronted by the absolute importance of journalism in the context of human right abuse and the need to have a complementary protection for journalists.

I first did work for the UN human rights monitoring in Bosnia during the conflict there and quite honestly back there in the 1990s we as UN monitors could not have done our jobs if it was not for the information shared with us by journalists who were putting their lives at risk in order to do the job.

A few years later in Sierra Leone was the same, and there we had all grown up a little bit in terms of how we work with each other, and time and time again I found the partnership with journalists was what able to bring about the human rights goals that we were seeking to achieve. And many of those partners died.

And so forgive me for this anecdotal beginning, but I simply want to convey how passionately believe on the importance of today's meeting and of the all of the effort to protect journalists in their most vital function. But in any case, what I have been asked about a number of dimensions today.

But to set a context I would have to begin with a task I was given in 2009. I was then a member of the UN Human Rights Committee and I was asked by the Committee to be the Rapporteur or the drafter for a new General Comment on freedom of expression.

A general comment, for those of you who do not know the terminology is a detailed elaborate exposition of the application of the human rights standards to give in fact situations. You do not have anything like it at the European Court of Human Rights, it is quite unique at the UN system, but it generates... it results in these very substantial legal analyses which hopefully will engage all of the key issues out there in the real world when you need to invoke those human rights.

And so I was asked to draft the new comment on freedom of expression and in order to do it I had to take on a big project that summer which was that I had to read everything that the Human Rights Committee has ever said about any country on the issue of freedom of expression since the beginning of its work, thirty something years before.

This is for two reasons and I will get to my point if you bear with me in a moment.

Two reasons, the first is because it generates the legal analysis, the jurisprudence. You harvest the cases, the findings. You need that to write that document.

But secondly you also get a sense what is happening out there in terms of freedom of expression across the world, across the regions and overtime.

And the result of that exercise was directly relevant to what we are doing today because I can tell you that the plight of the media was the dominant story across every region and over all thirty something years of review of the work of Human Rights Committee.

And so you will not find this in the document of the general comment, but you could actually give it a subtitle, General Comment on freedom of expression, which is mainly a story about the media and attacks on journalists.

And this is the first opportunity I have ever had actually, to speak to that dimension of the General Comment. But it is for example the context for -- and only just one sentence... In the middle of the General Comment there is a line which reads: 'Under no circumstance can an attack on a person because of the exercise of his or her freedom of opinion or expression including such forms of attack as arbitrary arrest, torture, threat to life and killing...can this ever be compatible with Article 19'

Now that generalized statement is really a statement about journalism and attacks on journalism.

It is those stories that generated that very strong statement.

That was ultimately adopted by the Human Right Committee.

There are many other specific references to our topic, the topic of attacks on journalism and journalists throughout the General Comment.

Now I am just going to pick out a tiny handful of them, for example there is an explicit indication of a prohibition on penalizing media just for being critical of the State.

You will find at the General Comment in addition a prohibition on generic bans on websites. A prohibition on generalized bans on freedom of movement including access into and out of conflict zones and the locations of humanitarian catastrophes. There is a reaffirmation of limited journalistic privilege. I can give you ten more examples of where the General Comment speaks to as informed by and hopefully engages the plight of journalists. It is explicit.

But it is equally implicit in many other parts of the text and I was struck this morning when the examples were given by the Council of Europe Human Rights Commissioner, of the extent which the areas which he focused on are indeed in this General Comment. And they are there large part because of attacks on journalists. For example, the excessive invocation of counterterrorism as an excuse to limit media in so many states; for example an excessive reliance on criminal defamation.

And finally by way of one last example the way in which blasphemy laws are used to such an abusive effect for the muzzling of journalists across the world.

That is the first point I wish to make today -- that this output of the UN Human Rights Committee that was referred to a number of times this morning that I am speaking off now, General Comment number 34 is not some generalized statement of ideas around free speech widely. It is directly applicable in large parts speaks to the advocacy that we are focusing on today.

I want to be a bit more relevant to 2014. Then I would have been, if I had just left my Comments when they were there. So I actually spent few days of the last week catching up with the story from when the General Comment was completed in 2011 and the situation today. I wanted to see was the Human Right Committee finding that the situation is changed, unchanged better or worse. And I can tell you that the situation is getting worse and worse every year.

I looked at the review by the Human Rights Committee of the situation across countries which would come before it presenting their reports in 2012, 2013 and 2014. And in every year there has been a rising of the level of attacks on journalists and on the media.

To take the example of this year, the Human Rights Committee this year reviewed reports from nineteen countries. With regard to sixteen of those nineteen countries, it raised concerns over freedom of expression in the countries in review. And with regard to fourteen of those, the freedom of expression problem was a problem with regard to the media.

And then of fourteen that were predominantly about the media, twelve were not about mild problems, excessive limitations, inappropriate legislation. They were about attacks, intimidation and killing in twelve out of the nineteen countries reviewed by the Human Rights Committee this year.

I would suggest you that that figure which is worse than 2013 and worse than 2012, is an indication of a very grave problem.

It is just not a generalized problem or a problem local to anyone place, it crosses all the regions. Of those twelve countries where the issue was attacks, killings, intimidation, four were in Africa, one in the Americas, two in Europe and five the Asia Pacific region.

So this is not unique to any part of the world. We are addressing and engaging today with a global problem.

And so, turning then from the problem to what we can do about it, many very helpful suggestions were made this morning. Allow me just by way of wrapping up my own observations to add to those ever so slightly.

And the first will very much build on what Jane said to us in her presentation of the UN system early on this morning and that is 'if we have it lets use it'. It is not a magic wand, it is not going to transform society.

We heard Jane's speak this morning of inappropriate exaggerated expectations. But understanding its limits, understanding its weakness, well then we need to use it. We are not using it enough!

General Comment 34 needs to be used much more vigorously as an advocacy tool than it currently is:the findings of the treaty monitoring bodies. 'I am just there for the government...'

An elegant little diplomatic phrase. You heard the strong paragraph that was adopted in regards to Hong Kong just a few weeks back. But these are largely just wasted ink on paper if they are not used for advocacy at the national level to bring about a change, and it needs to be sophisticated advocacy of cross referencing.

Again I think it was Jane who spoke about the trickle effect of international human rights pressure which has to be trickled across all the spaces with as much interlinking as possible so that it becomes a cascade.

And so I have urged that we use these roots more vigorously than at present.

And by the way, an interesting thing about not using them that I came across was that of those countries that were reviewed this year --of the nineteen -- there were two countries with regard to which no problem was expressed with regard to the situation of free speech or of the media. No problem whatsoever.

And those two countries were Georgia and Sierra Leone. Now I do not know Georgia, but I can imagine things.

But I do know Sierra Leone very well, having lived there for a number of years. And it is unconceivable to say that there are no serious intimidations of media problems in Sierra Leone and it does not get mentioned. Why? Because nobody advocated for it. Nobody put the information to the Human Rights Committee to allow it to do its job with regard to the review of that country. Missed opportunity!

A second and a final suggestion with regard to international mechanisms and that is to the extent they are being used to put pressure to bring about changes to make journalism safer we are not using all of the mechanisms.

I have spoken entirely so far about this mechanism or procedure called the state review procedure. Countries submit reports, committee's debate about the reports, they produce outcomes. That is what I have been talking entirely. I have not mentioned the procedure that our colleague from Russia spoke to, which is the individual complaint mechanism. And that is

woefully underused, this capacity to bring individual complaints to the United Nations to find findings specific to the particular person that makes the complaint.

And I am not suggesting that this be done just so that you get an outcome in three year time that nobody pays attention to. But there are elements of those procedures which do save lives.

There is an element of the individual complaint procedure for example called the interim measures procedure. This is where a case is brought, you demonstrate to the UN that somebody's life is in danger. And the UN or the Human Rights Committee of the UN issues a specific request to the State to protect the individual until the case can be considered.

I did a review of these interim measures, the effectiveness of these procedures last year and I found a very high compliance rate.

States ultimately may not respect the finding, but they typically tend to respect the request for interim measures. So there is a protection tool that I would suggest is not being used.

Let me leave the UN and go to the national level. There is a protection tool that was not mentioned once this morning. And I am disappointed.

And that is the protection tool of national human rights institutions, human rights commissions. I have a bias here; I used to be a chief commissioner of one of these, the Northern Ireland Human Rights Commission. And it was in the doing of that job that I learned the possibilities to help colleagues in the media when they were under attack. I visited the offices of every editor in Belfast, the capital of Northern Ireland. I attempted to strike up a relationship of collaboration to protect the journalistic space. The journalists at first were very suspicious of me, but I think ultimately we did some good together. We learned new ways to relate.

The journalists I dealt with - - really it had not occurred to them that there was a partner out there in the human rights world with whom they could collaborate to make a safer space for the media.

Now there is a tiny bit of this work going on around the world, but nothing like enough. The consortium of human rights commissions in Asia Pacific -- it is called the Asia Pacific Forum -- did

bring out a manual on how commissions can work with the media, not just to get the message of the commission out there, but in order to also protect the media. It is a good manual. Download it from the Asia Pacific Forum website. But it has not been implemented much. A little bit of the tentative stuff in the Maldives, tentative stuff in Malaysia, tentative stuff in Nepal and that is all.

And so I would strongly encourage that the potential of working with commissions be explored much more vigorously.

And finally because our time is so limited I would like to pick up on - what our colleague from France 24 spoke of this morning and that is the role of media business itself.

I do think we need to make it more visible as a protagonist and as a key actor out of our discussions today.

It is all of the points he raised this morning. It is the issues of excessive conditions of insurance, massive premium policies; the way the media is working today with outsourcing, where independent contractors are expected to do the work without the safeties and the precautions that you would give your own core staff in the past.

And so pressure has got to be put on the media as a business to provide a better protective space for its staff and its collaborators.

And in this context, and if I say to Peter this is my very last point.

To the extent that today we are trying to frame these issues as human rights issues might I suggest that we have a new tool with which we can engage with private sector much more effectively around enhancing the protection of human rights? And that is the relatively recently adopted United Nations guiding principles on human rights and business.

These provide a space in which we can insist on certain standards of behaviour from the private sector which would have been all more difficult without these principles and in the past.

So let me leave it there.

I look forward to picking up any of these and other ideas in our discussion.

Thank you!

PN Thank you very much for those four very concrete suggestions to take things forward, including some original and out of the box suggestions.

I am going to hand over straight away to Maureen for your presentation.

You have the floor Maureen!

Maureen Kondowe (TEXT AS PROVIDED)

1. INTRODUCTION

This presentation deals with the following issues, namely:

- (a) It outlines the African instruments that are most relevant and applicable to freedom of expression and attacks on journalists on the African continent. Some constitutions such as those of Malawi and Kenya for example expressly provide for freedom of expression.
- (b) It asks whether or not there are any human rights violations that have been committed against journalists on the African continent and discusses their nature.
- (c) It discusses how some allegations of the violation of journalists' human rights have been dealt with in some selected jurisdictions on the African continent.
- (d) It finally speaks to judicial and national cooperation matters that relate to the key issues that this presentation is intended to deal with.

2. RELEVANT AFRICAN INSTRUMENTS ON FREEDOM OF EXPRESSION

2.1 African Commission on Human and Peoples' Rights Instruments

- 2.1.1 Resolution on the Adoption of a Declaration on Freedom of Expression
- 2.1.2 Declaration of Principles on Freedom of Expression in Africa (23 October 2002, Banjul)

Article XI of this Declaration provides for attacks on media practitioners. These attacks include murder, kidnapping, intimidation, and material destruction of communication facilities. It is categorically stated that these attacks undermine independent journalism, freedom of expression and the free flow of information to the public. States are obliged to take effective measures to investigate such attacks, punish their perpetrators and ensure that victims get effective remedies.

2.2 African Charter on Human and Peoples' Rights ("the Charter")

Article 9(1) guarantees the right to receive information

Article 9(2) guarantees the right to express oneself and disseminate one's opinion within the law.

Article 26 provides for the duty of Member States to the Charter to establish and strengthen national institutions that promote and protect these rights. The independence of the judiciary is also included here.

3. NATURE OF SOME HUMAN RIGHTS VIOLATIONS COMMITTED AGAINST JOURNALISTS IN SOME AFRICAN JURISDICTIONS

3.1. Violation of the Right to Life

(a) **Application No. 013/2011: Claimants of Late Norbert Zongo, Abdoulaye Nikiema alias Ablasse, Blaise Llobouo, Ernest Zongo and the Burkinabe Human and Peoples' Rights Movement v. Burkina Faso** (accessible on <http://www.african-court.org>).

This matter arose out of the alleged assassination of Norbert Zongo, an investigating journalist and director of a weekly newspaper called *l'Independant* and his three companions on December 13, 1998. It was alleged that their burnt corpses were found in a car in which they had been travelling a few kilometers from a place called Sapouy, on the road to Leo in Southern Burkina Faso.

In their application to the court the Applicants alleged the violation of article 9 of the Charter by Burkina Faso among others. Burkina Faso refuted the Applicants' allegations arguing instead that the Applicants had come to the African Court ("the African Court") on Human and Peoples' Rights without first of all exhausting domestic remedies. They argued that the matter had been given considerable media coverage within the judiciary of Burkina Faso, it had been investigated and witnesses had been heard.

In its ruling the African Court held that Burkina Faso had failed in its obligation to take measures, other than legislative ones, to ensure that the rights of the

Applicants to have their case heard by competent national courts were respected. Burkina Faso was held to have violated article 9(2) of the Charter as read with article 66(2) of the Revised Economic Community of West African States (“ECOWAS”) Treaty due to its failure to have acted with due diligence in seeking, trying and judging those who had assassinated Norbert Zongo and his companions.

The court’s decision on the issue of reparations was deferred for argument. The Applicants and Burkina Faso were directed to draft and present their arguments on this outstanding issue.

(b) Case No. ECW/CCJ/APP/30/11 **Deyda Hydara Jr., Ismaila Hydara and International Federation of Journalists** (Africa Chapter) **v. Republic of the Gambia** (accessible on <http://www.foroyaa.gm>)

This case is mainly concerned with the continued failure by the state authorities of the Gambia to conduct an effective investigation into the killing of Deyda Hydara in Banjul on December 16, 2004 in violation of his right to life, freedom of expression and press freedom as guaranteed by articles 1, 4 and 9 of the Charter and article 66 of the Revised ECOWAS Treaty. The Plaintiffs argued that the Defendant had failed to conduct a thorough, rigorous and independent investigation into the violent death of Deyda Hydara so as to ascertain its circumstances, identify and punish its intellectual and material perpetrators. The Plaintiffs further argued that the Defendant had contributed to this death because it tolerated attacks on journalists and caused a climate of impunity to prevail in the country due to its systematic failure to condemn such attacks, effectively investigate them and secure a conviction. The Plaintiffs finally argued that the death of Deyda Hydara was a violation of freedom of expression. The Defendant was alleged to have also failed to provide redress for this death.

The Plaintiffs sought a declaration that the failure by the Defendant to effectively investigate, and hold accountable those responsible for Deyda Hydara’s death was a violation of his right to life as guaranteed in articles 1 and 4 of the Charter. They also sought a declaration to the effect that the Defendant’s failure to effectively investigate this death was a violation of the right to freedom of expression of the deceased and the press as guaranteed by article 9 of the Charter and article 66 of the Revised ECOWAS Treaty. The Plaintiffs sought general and special damages for pecuniary and non-pecuniary loss payable to them and other heirs of the deceased as compensation for the violation of the rights of the deceased to life and freedom of expression to be quantified at a later stage of the proceedings. The Plaintiffs finally sought costs of the proceedings from the Defendant.

In its defence the Defendant averred that it had carried out an effective and diligent investigation. It argued that the deceased had not made any material disclosure to it about any threats to his life let alone sought protection from it. The Defendant denied that it had contributed to the death of Deyda Hydara and argued further that

it did not tolerate any culture or climate of impunity as the Plaintiffs alleged. It was further argued that those who killed the deceased were still at large and unknown.

Having considered these all arguments before it the ECOWAS Court of Justice the court stated that the right to life imposes an obligation on states to investigate all criminal acts and bring their perpetrators to book. It emphasized that a state neglects its obligation if it does not carry out an effective investigation into crimes that are committed on its territory. A state was also held to be in breach of treaty obligations if it failed to protect media practitioners including those that criticized the regime.

The court decided that the Plaintiffs had proved their allegations, granted them all reliefs and orders sought except that for special damages on the ground of want of proof. The Plaintiffs were awarded the sum of \$50, 000.00 as compensation for the prejudice they suffered as a result of the Defendant's failure to investigate the alleged assassination of Deyda Hydera. They were also awarded the sum of \$10, 000 in costs.

3.2 Violation of the Right to Liberty, Security of the Person and to a Fair Trial

(a) The case of Peter Greste, Mohamed Fahmy and Baher Fadel Mohamed (The Al Jazeera Three, Egypt) (as reported on <http://www.telegraph.co.uk>

These journalists were charged with and convicted for allegedly publishing false news that had an alleged damaging effect on the national security of Egypt, supporting a terrorist group called Muslim Brotherhood and working without a permit. There were some alleged flaws in the procedure that led to their arrests and inconsistencies between the charges preferred against them and the evidence tendered in court to prove them. It was alleged that the prosecution presented evidence that included videos of a trotting horse, and images retrieved from Al Jazeera hard drives that were in use before these three journalists came to work for the channel. These are some factors that make it clear that the right of these journalists to a fair trial was not respected by the court.

3.3 Violation of the Right to Freedom from Torture

Article 5 of the Charter prohibits torture. Some African countries that have been notorious for the torture of journalists include the following:

- (a) Somalia in the case of the Radio Shabelle owner Abdimalik Yusuf Mohamud, Sky FM director Mohamud Mohamed Dahir and Shabelle deputy news editor Ahmed Abdi Hassan as reported on <http://www.theeastafrican.co.ke>

- (b) Zimbabwe in the case of Ray Choto and Mark Chavunduka as reported on 22 January 1999 by the British Broadcasting Corporation accessible on <http://www.news.bbc.co.uk>
- (c) Egypt in the case of the Al Jazeera journalist Abdullah Elshamy who alleged following his release from prison that he had been tortured by the Egyptian authorities as reported on <http://www.middleeastmonitor.com>.

4. JUDICIAL AND NATIONAL COOPERATION TO IMPROVE STANDARDS OF PROTECTION, PREVENTION AND PROSECUTION

4.1 Judicial Cooperation between France and Ivory Coast in the Case of the Disappearance of Guy Andre Kieffer (as reported on <http://www.cpj.org>)

France opened a judicial inquiry into the disappearance of Guy Andre Kieffer in May 2004 after his wife filed a complaint in a Paris court. A French investigating judge, Patrick Ramael was tasked to carry out a judicial inquiry into this case. He travelled to Ibadjan to begin his probe and questioned Legre the brother-in-law of then Ivorian First Lady Simone Gbagbo and a regular source for Guy Andre Kieffer. Shortly after the launch of this judicial inquiry in France the Ivorian authorities began their own inquiry. They arrested Legre and charged him as an accessory in the kidnapping, confinement and although no remains were produced the murder of Guy Andre Kieffer. The French judge also charged Legre with complicity in the kidnap and confinement of Guy Andre Kieffer.

4.2 Protocol on the Safety and Protection of Journalists (Kenya)

This was launched on August 18, 2014 by the Media Council of Kenya and the Media Owners Association as reported on <http://www.protectioninternational.org>

Its main objectives are as follows:

- (a) To provide guidelines for the development of a training manual for the safety and protection of journalists.
- (b) To influence public policy for the safety and protection of journalists.

The development of this protocol was motivated mainly by the inadequate investment in the safety and protection of journalists by media and non-media

actors as well as the alleged high degree of impunity that alleged perpetrators of attacks on journalists enjoy.

4.3 Protocol on Judicial Cooperation (The Great Lakes Region) (dated December 1, 2006)

Through article 2 of this Protocol Member States have extended reciprocal judicial assistance to each other with respect to the extradition of fugitives or accused persons.

Article 3 of this Protocol makes any offence that is punishable by a term of imprisonment for six months in the domestic laws of the Member States extraditable. Political refugees are exempted from extradition.

Article 4(3) of this Protocol makes it clear that common law criminal offences such as grievous bodily harm, assassination, murder, poisoning or attempts to commit any of these crimes are not political offences for the purpose of providing immunity from extradition.

Article 5 of this Protocol states that with regard to an accused person extradition is granted if the commission of the concerned offence is such that the laws of the Member State in which the accused is found would justify their arrest or imprisonment as if the offence had been committed in the territory of such a Member State.

Through article 16(1) of the Protocol Member States assist each other by dealing with requests from competent authorities and apply necessary measure to facilitate procedures and formalities relating to investigation and prosecution of offences.

Through article 16(2) of the Protocol Member States cooperate in police investigations carried out in the territory of a Member State.

Through article 16(3) of the Protocol Member States render mutual legal assistance to each other in criminal investigations with a view to strengthening measures necessary to prevent, investigate and prosecute crimes.

5. CONCLUSION

In conclusion, it is clear that there is a lot of ongoing advocacy around the safety and protection of journalists on the African continent. Various attacks that journalists have suffered in some jurisdictions of the African continent in the course of their work and the impunity that the alleged and sometimes identifiable perpetrators of these alleged attacks enjoy have motivated this advocacy.

States are obliged and being called upon to investigate allegations of such attacks better, ensure that their alleged perpetrators are prosecuted and guarantee effective remedies to those who suffer such attacks or their consequences. Various

Judicial and national initiatives that are being used in this context on the African continent have been highlighted in this presentation.

Wendy Betts (FROM THE PRESENTATION)

Documenting Violations: Citizen Video as Evidence

My name is Wendy Betts. I'm the Director of the eyeWitness to Atrocities project at the International Bar Association.

I'll be speaking today about a tool we are developing to facilitate the use of citizen captured video of human rights violations as evidence in investigations or trials.

Citizen Video

- Citizen video is increasingly prevalent
- But, suffers from serious shortcomings
 - Date/location misrepresented
 - Digitally altered
 - Scene staged
- Current approach to verification
 - Provenance - is the version the original?
 - Source - who filmed it?
 - Date/Location - accurate?

Activists, investigators, journalists, and regular citizens around the world risk their lives every day to capture footage bringing to light the violent and oppressive conduct of abusive regimes or organizations.

The amount of footage captured continues to grow

- 1.5 billion smart phones globally, steadily increasing
- One in four people in the world use social media
- Estimated that more than 1 million videos about Syria alone have been uploaded to YouTube

Types of human rights footage captured include:

Abuses as they occur

Aftermath of abuses

Context in which abuses occur (e.g. armed conflict)

Witness accounts

As journalists, you are well aware of the risk that this footage may be falsified.

- Date or location may be misrepresented
- The footage may be digitally altered or "photoshopped"
- The scene may be staged

Currently, footage that is shared on social media or elsewhere must undergo a verification process, to confirm the provenance, source, and date and location to ensure it is authentic.



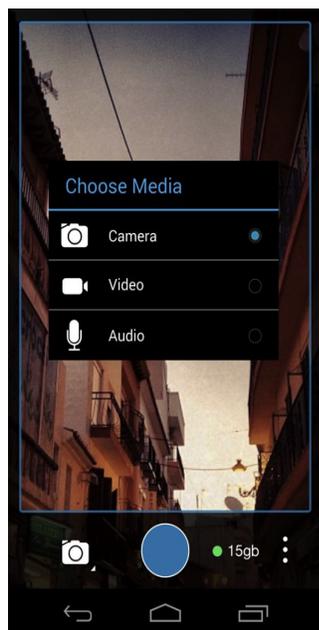
The eyeWitness Project is an initiative of the International Bar Association.

The purpose of the project is to leverage the citizen video movement by providing a tool that can be used to enhance the impact of the footage that is collected.

eyeWitness is a mobile camera app that records and embeds key information at the point the image is captured to facilitate the authentication of footage and its use in court.

I'll now walk through how the app works.

eyeWitness: Capturing Footage



To begin, the User simply activates the camera and swipes to the secure camera. The User need not enter a password prior to capturing footage.

A white border around the frame denotes the User is in the standard camera. A blue border denotes the User is in the App's secure camera. The User uses a simple gesture to toggle between the two.

The User may then choose to take a photograph, record a video, or record audio.

The user begins with a brief installation process, in which the user registers the digital signature of the app that is verified each time an image is submitted and creates a passcode for entering the secure gallery.

Once registered, the user simply activates the camera to begin recording.

The app is built with two modes, a standard camera that appears when the app is first opened in case the phone is inspected and a secure camera that is triggered by a simple gesture.

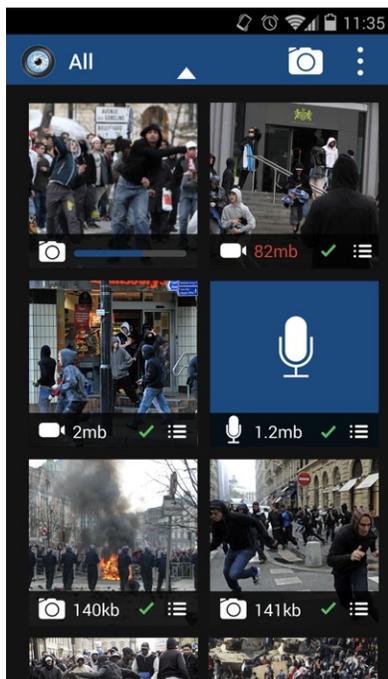
All images taken with the secure camera are stored encrypted in a secured gallery that can only be accessed by the user's passcode.

The user can take photos or record video or audio.

- When media is captured, the App engages the device sensors to record and bundle the following data with the image:
 - GPS coordinates
 - Date/time stamp (as well as source of date/time)
 - Camera movements
 - Device Type
 - Nearby Cell Towers
 - Nearby WIFI Addresses

- Nearby Bluetooth Devices

eyeWitness: Secure Gallery



The App stores all captured footage in a secure gallery within the App.

The User enters a passcode swipe, created at registration, on a keypad hidden within one of the camera setting screens to access the secure gallery.

The images in the secure gallery do not appear in the device's standard photo gallery.

From here, the User can select images to annotate and submit.

Analysis of the Footage

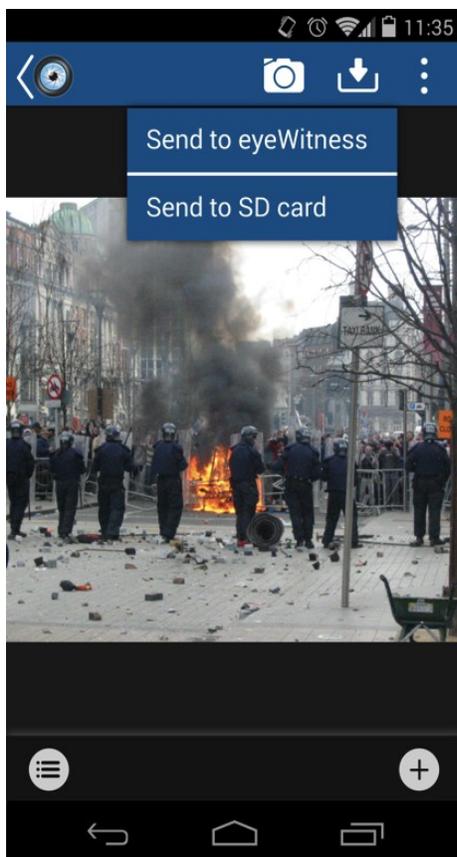


App allows Users to annotate the images to provide information about the context

Specifically, the User can:

- Add general notes
- Tag individuals/objects

eyeWitness: Submitting Footage

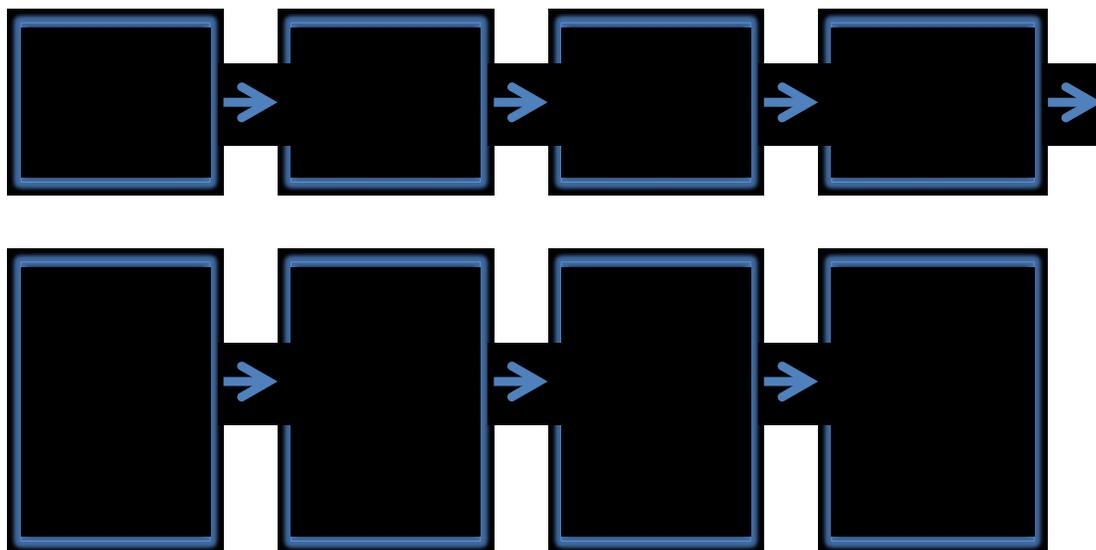


The User may then submit the encrypted image and metadata to a secure repository that eyeWitness will maintain.

The User may select to transmit the image via standard internet or save the image to an SD card for hand delivery when internet transmission is unavailable or insecure.

Once the image is sent to eyeWitness, the User will have the option to share a copy, without metadata, to social media or other organizations.

Verification: Provenance/Source



Reverting back to my earlier comments about verification of citizen video, you'll recall it involved confirming the provenance, source, date, and location.

Regarding the provenance and source, this chart shows how the eyeWitness app creates a trusted chain of custody ensuring the image came from the app and has not been altered.

The key features include:

- the image is stored encrypted on the user's device so that the users themselves cannot access or alter it

- the transmission is sent encrypted, safeguarding it from interception and manipulation

- the app creates a hash value of the pixel count at the point of capture and the eyeWitness repository confirms the pixel count upon receipt to verify that the image has not been altered

- the repository also confirms that the image came from a registered instance of the app using the app signature that was established when the app was installed

Verification: Date/Location

Image captured with the eyeWitness app



Street view image of the recorded GPS

As I mentioned, the app collects GPS coordinates, a date and time stamp, and other corroborating information.

Here is an example showing how the metadata can confirm that the image was taken where it was claimed to be.

The top photo was taken with the eyeWitness app.

When the recorded GPS coordinates are mapped, they elicit the street view image shown in the bottom photo.

As you can see, the app quite accurately pinpointed the user's location.

Protecting Journalists



The app is currently undergoing field trials before a broader public dissemination effort anticipated early next year.

In relation to the topic of this conference, the primary purpose of the app is to collect credible information about the commission of human rights abuses, particularly those involving serious violations of international criminal law.

As such, the app can be an important tool to promote the human rights framework outlined by the other panelists, by capturing verifiable footage of violations of journalists' rights.

The app can also collect footage that can help corroborate the stories that journalists are risking their personal safety to tell.

I would be interested, either during the discussion or in a separate conversation, to hear your thoughts on other ways the app might benefit and protect journalists.

PANEL III - DISCUSSION AND INTERVENTIONS

Participants: Elisabeth Witchel, David Kaye, Harry Roque, Stewart Chisholm, Nicholas Tsagourias, Ernest Sagaga, Prisca Orsibbeau

PN Thank you very much and that is very interesting. So we have got an example here of how a kind of evidence can be captured, can be gathered that can help prosecute cases using the domestic systems as well as potentially internationally and some of the underutilized mechanisms that Michael you were talking about.

I have quite few questions of my own, but in order - - there is people in the audience that have questions as well and I have been told that Elisabeth Witchel from the Committee to Protect Journalists, who have just launched their impunity report.

The microphone is coming to you now --it is in the back there,sorry...has a few remarks to make. So Elisabeth the floor is yours.

Elisabeth Witchel

Thank you Peter and to the panellists for sharing their immense experience and interesting insights.

So yes, CPJ just launched the report called 'Road to Justice: Breaking the Cycle of Impunity in the killings of the journalists'. And in there we looked at some of the regional national mechanisms and the challenges that the journalists - - that we face and see in justice and the murders of journalists. And we have found on the positive side that Yes, there has been some very compelling and strong verdicts from some of the regional courts including the two cases in Africa of Deyda Hydara in the Gambia and Norbert Zongo from Burkina Faso, as well as the

European cases brought up earlier... Dink was brought earlier and I do not think Georgy Gongadze was, but that is another verdict.

And these rulings are very strong, calling for compensation and demanding investigations and in some cases, I know in the Hydera case even stating that there is a systemic condition of impunity that the country should address. But one of the things that we find are two problems.

In looking at some of these international and regional mechanisms is that the compliance rate is really, you know, very low.

And there is a sort of minimal compliance in some of the easier issues of compensation, but when it comes to actually reinvestigating or, or making any changes within the judicial environment, those are not carried out. And and there is really not much political pressure around that.

Certainly I feel in the case of ECOWAS, [in] the neighbouring states I do not see much evidence of any effort to push the Gambia to follow through and implement those rulings.

I would also say that it is just extremely difficult for the plaintiffs. I know some people who have brought these cases -- for example I know one Russian journalist -- the mother of a killed journalist just destroyed her health spending seven years trying to exhaust the domestic resources and bring a case to the European Court that still has not been heard. And if there is some way that there can be kind of an early intervention on an international level I think that would be very important.

On a national level I think it is very difficult for a lot of families of victims or even their colleagues. They are in province areas, they have very few resources so I think to engage in those mechanisms is highly challenging, and there is very little means for them to fall back on -- to challenge their own systems when they are confronted with impunity.

And then I also just wanted to bring up, this is a little bit different from what was talked about here, but some of the national mechanisms that have come about including in Mexico the legislation to enable federal resources in the investigation of attacks against journalists. Even

those receiving different kind of obstacle to accessing them in the sense that so far very few of any cases have actually met the criteria to be adopted on the federal level. And I think that is something that maybe we can talk about -- ways to improve the structures that are in place in some of the mechanisms that have been established.

And that is all. I do not want to monopolize the audience.

But I would also be interested just on this question of when a verdict does state that there is a systemic problem with impunity, that I would also be interested as an advocate to hear how we could use that better moving forward, because it is not something I think you hear about very often and I think it could be a very useful tool.

PN Well Maureen, I think that is a very direct question for you and it is true of course that the Gambia which the Hydera case was taken against has now had I think three or four judgements against it and received very little by way of implementation. What do make of that? What do we do about it?

MK I would say that typically that is an African problem, you know. But then I think the advocates around that need not stop as a beginning simply because if the advocates shut up then worsen the situation in my view.

But it is an issues that even I think at the Pan African Lawyers Union level we have not discussed. Perhaps we should begin from there to see how best we can move the advocates beyond advocacy so whether or not you know beyond the handing down of the judgement in the various cases would be able to challenge the fact that there is no implementation, you know some kind of content of code who do we pursue. We are not binding jurisdiction to jurisdiction.

Thank you

PN Yeah, I agree. And this is what a lot of lawyers are doing now. I mean it is no longer just sort of we got a judgement here, you got clients, good luck.

You know the judgement is only step one. It is like advocating for law reform. You get freedom of information law. You then have to work on the implementation. It is the same with the judgement and you got to make it work.

Michael, I thought you might want to react to some of the criticism about how long everything takes. Because it is great saying you know that we should use underutilized mechanisms, but it takes years and people expend a lot of resources.

MO Sure. I know, I entirely take the point and I would not want to be even perceived to be disagreeing with what was just said. I accept every dimension of it with regards to the difficulty that lent - - and then the sense of utility in so many cases that you work so hard and you have destroy your health, your finances and you have achieved perhaps nothing at all. So entirely respect that.

I just had a few thoughts not on any particular chronological order, but how come we increase pressure to ensure the delivery of justice.

And it occurs to me that at least in context of states in receipt of development assistance that there is tool under there that has been underutilized. The European Union has adopted guidelines on the safety of journalists. Is it using the in its external relations sufficiently? Is it an attaching conditionality to the various programs?

I know this a complex area. It can look like neo-colonialist model, but all I am saying is we should be exploring this relationship of aid, trade and justice.

The second thing very specific to the United Nations is I mentioned a whole lot of different roots in the United Nations. One of which, the report review procedure, does not really take terribly long time at all.

You know, you are in and out in a course of a year. And it produces recommendations which have advocacy value and I do not think that they suffer from a lot of the concerns that were indicated just now and so they should be used.

With regard to the judgements, the findings, the decisions and violation, particularly in the United Nations context -- what you consider failure to implement --

Open Society did a study. The [Open Society] Justice Initiative did a study. I do not know if there is somebody here from that organisation? But if there is lets speak to this.

The Justice Initiative did a study few years back of the impact of the views of the Human Rights Committee, and I argued at the time that the dismal results that they produced were as much a measure of how they measured the actual reality. In other words, there were partial levels of implementation which their measurement tool failed to capture, and that then resulted in their very very shocking results. And I found when you study the implementation of a set of view and views, that in many cases you will find that some elements of the view have been implemented whereas others have not. But because there has not been a hundred percent completion it registers as a zero on the scales by which most organisations do the measurement. So it is a mixed story, but I do not want to diminish one iota the significance of what was said on that comment, from the speaker.

PN We have got a lot of hands up. I am going just to do round and collect four or five starting on the right hand of the room.

If you can all identify yourselves and remind everybody who you are.

David Kaye

You want me to identify everybody!

PN No, just yourself!

DK

So I am David Kaye, Special Rapporteur and freedom of expression and wanted to... -I think Michael's presentation was particularly important, maybe the beginning of a strategy in some way around the subject of transmitting the international jurisprudence... and in the General Comment and other mechanisms translating those into the national level. That that is one of the most important things that we might be able to take away from the panel, in which I found all of the presentations very interesting and important.

And I am wondering if you could maybe each of you, including you Peter because MLDI did so much litigation at the national levels. How is it that advocates can take the important work of the General Comment of the treaty body mechanisms, of other international mechanisms and actually embed them in national processes?

I think there is obviously serious variation from state to state as to how we might do that, but I am wondering if we might gather from your presentations today a way of thinking about how do we take the international and bring it down to the domestic? Thank you

HR Well, em...We got the view from the Human Rights Committee.

Yeah, my name is Harry from the Philippines again, from the University of the Philippines.

My question is for Michael. We got a view from the Human Rights Committee citing the General Comment number 34. We tried enforcing it in the Philippines Supreme Court, they rejected it as being non binding. So as - - a tool of international law I think the only way by which General Comment 34 it could become binding is if it is accepted as evidence for customary norm or general principle of law, and I am lazy about that...!

Dothey have like a list of courtiers that have applied General Comment number 34? because that would facilitate advocacy work that if it is not customary at least it is general principle of law.

PN Thank you very much. Let's go to the back of the room in the middle.

Stewart Chisholm

Hello. Yeah, I am Stewart Chisholm from the Open Society Foundation.

Alright.

Actually I have a question for Michael because you mentioned some of the work you were doing in Northern Ireland about sensitising journalist about the need - - about the awareness of mechanisms that exist, right?

And I am just wondering if you might be able to expand on that a little bit, just to talk a bit more about how much background did journalists have about these mechanisms and in general in regards to what are maybe globally, I mean it seems there is a huge need to sensitise journalists about the awareness of these mechanisms; and what would you suggest in terms of how that could be carried out.

PN Thank you. And then across to the, so you have to walk all the way around.

Nicholas Tsagourias

Nicholas Tsagourias. - - Ok - - CFOM...

One issue that has not been mentioned and I think is very important and perhaps they should have asked this question to all the panels --is whether there is any legal protection against acts by independent non state actors, actors that are not controlled by the state. Because we are talking about obligations of the State or breaches of those obligations by the state and then we have all these mechanisms. So I am not talking about ISIS, but [it] can be drug barons or mafia bosses etc.

So the question is whether the Human Right Committee can offer any mechanism to address attacks against journalists or whether in Africa, African mechanisms can address these attacks?

Thank you.

PN Thank you very much. So we have had a quite few questions and a quite few issues already.

The first one was a question for the entire panel.

So why do not we start with you Wendy. I mean, what could be done to translate international jurisprudence down to the national level and make sure that advocates that lawyers are using that?

WB That is a good question and that is probably a better question for my colleague in our Human Rights Institute at IBA. I know they have been doing a lot of work with this idea of the freedom of expression and particularly impact litigation and strategic litigation, to try and set standards that can then be taken back to national jurisdictions and that they could advocate and lobby for.

But if I am not mistaken they are doing that with you. Aren't they, Peter?

PN Yeah we

WB so maybe I will let you speak to that in more detail.

PN But I am going to speak to your colleagues.

WB OK, fair enough.

PN Maureen, can I pass that to you the same question as well as the question about, you know, what can African enforcement mechanisms for human rights of...as regards violations by non state actors, you know, thugs essentially?

When I say thugs you know exactly what I really mean, right?

MK Yes, of course sure. I think looking at the issue that raised, I am sorry I did not hear your name...

But looking at the issue that you raised from the African perspective, I think in that context probably the challenges speak in the sense that we [deal] with domestication itself -- you know, people are quick to sign up to all sorts of things. But in terms of implementing them that is a challenge. And then of course -- it depends on the legal status that the General Comment have, jurisdiction to jurisdiction. But I would say that as a beginning they are a good advocacy tool, and then depending on how international law becomes part of domestic law in any jurisdiction, you then take it from there. Like speaking for my country Malawi is definitely jurist, you know, you cannot just get anything and make it part of, you know, the law of Malawi. You have to get an act of parliaments all sorts of...

But then having said that when you are an advocate, you know, for a good cause, it does not stop you from actually using this as an effective advocacy to favour the cause that we are speaking about at the moment.

And then moving on to the issue of non-state actors, I think one thing that we have not used very well, you know speaking for Africa, being a lawyer who comes from Africa, is the opportunity that we have in our laws to apply to our directors of public prosecution for consent to privately prosecute the perpetrator when we know that it is about a criminal case.

Apart from that, why not pursue civil remedy if it possible in the domestic jurisdiction. Thank you.

PN Thank you Maureen. Can I ask - - can I take the liberty to ask a follow up question on that because there is a General Comment 34 which is obviously you know great, no question about that.

There is also the African Declaration of Principles on Freedom of Expression which you mentioned at the beginning of your declaration... of your speech, [which] was adopted in 2002 and which covers a lot of the same ground.

I mean has that Declaration as an African indigenous, you know, instrument, is that being used at all?

MK Not that much, you know, not that much.

PN Hm, so that needs to be encouraged.

MK Yes, of course. So people become aware that it is something that is there like I have mentioned it. There is no harm in actually using it. And remind you when it comes to the African Commission on Human Rights, on the Human and People's Rights as well as the African Court, their mandate is actually complementary so you can use it in either context

PN Hm, yeah, absolutely and it is all about using instruments, right? Because otherwise it become dead letters and a waste of ink - - virtual ink.

Michael, there were a couple of questions tot you about the use of General Comment 34 at the national level as well as very specific questions from Harry Roque who was being 'lazy' and wanted you to make a list for him, of which countries have actually done this?

MO Yeah, there were a number of points raised there. How do you bed the standards down, how do you introduce these UN standards, UN findings at the local level to make a difference?

Well in the first place you got to make them visible. They are still to a very large extent utterly invisible.

If you stop somebody on the street in Europe and ask them about the UN Human Rights Committee, there is a very high probability of 99 out of the 100 cases that the individual would not have a clue what you are talking about.

It is maybe only in Strasbourg that you will know at some conference that they have heard of the European Court of Human Rights.

We desperately need visibility and again there I do not want to repeat myself, but not only civil society, but also the national human rights commissions of which now there are so many across the world are playing a role. Whether it is good or bad it is to be judged in a case by case basis. But have an obvious role to play in building local knowledge of the systems and of their findings and of the relevance of the findings to the places.

And the webcasting of the international procedures is actually working very well. These days typically the review by UN monitoring body of a country will be webcast and can be and is watched live by increasingly large number groups of people who repeatedly tell us they find it very empowering.

Curiously one of the most - - it is ironic even the nature of meeting, but one of the most important tools to build up local awareness of the international finding and standards is the media itself.

The media has got to play an enormous role here in promoting the levels of knowledge and that brings me then to quest the issue of what level of knowledge is there in the media as it is traditionally understood? I will not get into the new media variant right now. I would say it is very mixed. I met plenty of journalists who know the system inside out and have been following it for years and are using it as a platform for all manner of reporting and very effectively.

So it is not - - I would not say it is a global disaster zone in terms levels of knowledge and awareness.

But clearly there is far more that could be done. To get to the specifics of your questions, when I met with every last media leader in Northern Ireland it was not so much that they did not know anything about the system. They did not. But it was more that they did not see the point of me coming to say 'can I help you?'

They did not understand why the national Human Rights Commission would see it as its business to go into the room of the journalists and say you know, you are in trouble here, we can cooperate to protect your space.

But it was only when I did some op-eds, that I went on broadcast media to speak about the importance of journalism and there was a little bit of reaction from politicians that these same editors came back to me and said we need to work together more.

So that was more what I was speaking of, if there are any technical, formal knowledge.

Harry, your question, from the Philippines. I frankly have no idea how many domestic courts have invoked General Comment 34. But do know - - what I am really encouraged by is the recent... just a few month ago the decision of the European Court of Human Rights which strongly endorsed elements of General Comment 34 in a Serbian case with regard to that bit of the General Comment that speaks to freedom of access to information. Which seems in part

and I, you know, I am wise to interpret the European Court judgements in its own building(!), but it does seem in part that the Court was invoking the General Comment in order to better establish a principle for application in Europe. And that means that if it is now part of the jurisprudence of the Court under the Convention, than it is part of the domestic law of almost every country in Europe. So that is quite a remarkable achievement just in recent months, but for the rest of your question you will have to do the study and let us know.

Non state actors, if I may, just briefly on that.

Look - - the question of how you get thugs to comply is one that gets a lot of attention in lots of places and there are some efforts to conscientise rebel groups with regards to human rights standards, but it is a big area, not time to go into it now. But could I just come back to the issue of non state actors who is not a thug but it is a private enterprise. And really, there is scope. There is scope to better insist that the state protect your rights from abuses by the private sector and also to encourage the private sector directly to become more human rights compliant on how it carries out its work.

PN Thank you very much.

I got two questions from there. Two from here and now I am going to be very fair because it is only a minute left, and take two from that side of the room.

If we can start with Ernest Sagaga and you will have to introduce yourself again just to be fair to everybody else.

ES Thank you very much! My name is Ernest Sagaga from the IFJ.

I just want to touch on two issues very quickly.

The first is to do with the implementation. You talked about, Maureen, the two African cases. On Friday when I was watching the events unfolding Ouagadougou I thought for a moment that very soon our friend Norbert Zongo will get justice.

If the boys from Compaore get to take over, we may have to wait a little bit longer.

In the case of Gambia we have actually a joint applicant to that case. Now we do not expect to see the [equal? of that...from brother Jamal]).

He may probably prefer to hand over to (?), and not do the investigation. But I was wondering in your experience and mandate, do you think that there is a role for a Special Rapporteur, probably to raise these issues with governments as well as the Summit of the African heads of states and governments.

We are trying to push very hard for some kind of binding commitment for the protection of journalists. Would you advise us to continue on that regard?

And finally to Wendy: I thought your presentation was really good. I can see that the application is (?) from the point of view of the law of evidence, but it might have particular issues for instance - - unless our colleagues go around wearing cameras to take pictures.

These days the attackers are very smart. They do not strike on daylight, they probably chose a very smart way. But what I wanted to ask you - - this is an idea which came to me when I see this wonderful opportunity, is there a case to be made in your view that journalists and legal community can come together and form the version of (?) Tribunal if you like, where it can meet and actually assess evidence on particular cases which we can then submit to local courts or regional courts, if need be?

Because in some cases the journalists are, what somebody said this morning, are the first on the scene. There are many situations in which we gather the evidence. The problem is could we then have a local [person] to present that evidence to court? Thank you.

PN Thank you very much. One - - I think there was one more hand up. Is it going to go - - yes it is.

Prsica Orsonneau Prsica Orsonneau from the Reporters Without Borders.

Maureen, you were speaking about ((Guy Andre Kieffer)) and the cooperation between the Ivory Coast and the French government.

And I just have one intervention on this case because I think it shows all the difficulties we have to fight against impunity because there is a cooperation, but Guy Andre Kieffer was abducted in 2004 and the family launched a complaint few days after.

During ten years we have the legal implication, the complaint. French ((*Juris'Traduction*))was in the case. We had the media, because really during ten years the case was really in the media, French media and international media.

We did at the Reporters Without Borders a lot of manifestation, demonstration in France and in Ivory Coast and nothing changed. And we thought that they are going to have an improvement and at the end the case is still... even threatened of being closed. Because after ten years the judge does not know what to do now, and so my question is what are we going to do to keep the memory of this case?

We are speaking about the case about three months ago, about - - also what's happened last year for ((Ghislaine Dupont)), Claude Verlon, *Camille* Lepage, - - to speak only about the French ones, but we have got many other case.

In ten years are we going to speak also about them or the new ones? And so that is why at Reporters Without Borders, we ask for the creation of the position of a special advisor to the UN Secretary General for the safety of journalists and we want - - we would like that this person could provide help for the memory of the case.

And being able to follow the cases and when the judiciary, when the NGO just forgot the case because we are in charge of a new one. So I wanted to know what you think about that?

PN Thank you very much Prisca. ‘

Wendy, can I ask you to take on this question?

WB Actually, some of the thinking behind this app is that the journalists and lawyers could work together for the very reasons you mentioned. The journalists are often the first ones on the ground and even if they are not, they can have connections with people that are the first ones on the ground. So if we can get this footage or this tool in their hand to collect the footage, the journalist can also provide contacts around what is going on, that the lawyers outside the country may not know.

But then the idea is that then we would have lawyers on staff permanently to serve as analysts. So given the context that you provided, given the footage that you have provided, just the conduct appear criminal is probative of some type of crime -- that could be addressed and then advocate on behalf of that piece of footage to an appropriate legal forum. So having connections with the national investigators, with national courts, with international investigators and international courts, to say ‘look we have this you are currently investigating this, can this help you’. Or you are not investigation this, but this falls in your jurisdiction, you know can you do something with this. So that is really the ideas to coordinate.

PN Maureen, there is a set of questions for you. You know, is there a specific role for a special Rapporteur here?

MK Definitely I would say, and you must carry out that compensation. But then of course, because we are dealing with African politicians, sorry to say, I think we need to explore other avenues because I am going to give an example of my country Malawi. If we have a judgement against the Malawi government, they are going to pay through the Ministry of Justice, but it is the Attorney General who makes the final decision regarding who gets paid. So it would be good to also know the attorney general for the country that you are dealing with, the ministry of justice. And on the African continent the ministers of justice, the attorneys general have (?) when they meet. So it will be good to link up with African lawyers who are able to take you (?) of which country, whichever ministry of justice ...

Moving on to Prisca's question, perhaps we should begin by posing another question. Who among us here have seen the agreement I was speaking about that was signed? Perhaps that is the starting point.

We need to, you know, have a copy of this agreement, you know, understand its exact terms, its exact conditions: what does it say about the failure about the government of Cote d'Ivoire to comply with whatever? Maybe that is a good beginning, but otherwise of course you are dead right to mention that it takes forever to resolve these things.

Thank you

PN Thank you all very much. I know that there is lots more questions in the room, but they are going to have to be asked over coffee because now we are going to have a coffee break. Right?

I would like to thank the panellists. The panel has been wonderful. It has been a great privilege moderating all of you.

We are coming back at ten minutes past four for the session on Agendas for an Inter-Regional Dialogue which is going to be moderated by Professor Dirk Voorhoof.

Thank you very much.

PANEL IV

PARTICIPANTS: Dirk Voorhoof, Catalina Botero, Lawrence Early, Harry Roque

Dirk Voorhoof

Welcome. Welcome for this session of panel number four, 'Agendas for an interregional dialogue to strengthen protections and eradicate impunity'.

In this panel we will learn from each other experiences in different regions in the world from Latin America, over Europe and we will land in the Philippines.

The organizers did not forget Africa. Maureen was in the first panel in the afternoon, highlighting already some developments and practices in the African region.

Today again I think it has been confirmed that there is not so much a lack of legal instruments, monitoring bodies and awareness of society on the issue of safety of journalists.

The real challenge is to make these instruments effective and functioning in practice. In this session we will focus on good practices, guiding principles and successful action and litigation in preventing or combating attacks and intimidation against journalists and other media workers in three regions in the world represented by three important players, regional organisations being involved in ensuring the rights of journalists and media workers.

The key words of this session are inter-regional dialogue, how to improve more effective and concrete instrument for the protection of journalists and other media actors.

I think five paradoxes can be briefly highlighted from what we learned until now today from the several presentations in the other panels today.

The first paradox, violence against journalists occurs most often in countries where the rule of law is not functioning, while the international community and action plans and guidelines are mostly focusing on legal instruments that are not effective in such circumstances where the judiciary and the rule of law is not functioning.

Judgements come most often too late for the persons concerned, as in Dink and Gongadze in Europe, but it has also been argued that it is very necessary to bring his cases to court in order to demand for investigation and to stop impunity in the future.

The second paradox, we expect that the police is protecting the safety in society and help to prevent crime, while the Commissioner [for Human Rights] of the Council of Europe this morning was very clear in stating that about in half of the cases it is the police itself which is the problem. In many cases the violence and intimidation comes from the police.

The third paradox: it is most often public authorities and governments that are involved or at least protecting the perpetrators of violence against journalists and other media actors, while we expect that the same authorities create and enable an environment for the protection of safety of journalists. We also heard from the example in Colombia by Maria-Teresa Ronderos that in some cases the protection offered by the government was abused for spying or surveilling journalists.

The fourth paradox that could be mentioned, James Stewart in his exposé also focused on the role of journalists helping to provide evidence against perpetrators or crimes against humanity and war crimes, eventually as eyewitnesses or testifying in court; while this is adding one more argument for targeting the journalist by these perpetrators, eliminating journalist and their material as future evidence against them at international courts.

Loick Berrou, and that is my fifth paradox.

Loick Berrou of France 24, explained that media companies in some areas as Syria and Libya have taken away their permanent correspondents and well-trained journalists, which has attracted often young freelancers filling the gap being more inexperienced with even more risks... when journalists leave the area the perpetrators realize a victory and even more gross violations of human rights take place against the population.

It is in this very complex and also ambiguous context that members of this panel will present their expertise and formulate concrete actions and plans and practical guidelines in order to improve the situation of impunity or violence against journalists and media workers.

Let me present briefly the members of this panel:

First Catalina Botero: until very recently Catalina was the Special Rapporteur for Freedom of Expression in the Organization of American States. From her watchtower she is the outspoken expert to draw up from her experience and to put forward some guiding principles and strategies for the protection of journalist.

Second will be Lawrence Early, Jurisconsult working at the Registry of the European Court of Human Rights. Lawrence has an experience of more than twenty five years working in the Strasbourg Human Rights Court and has always had a specific interest in freedom of expression, gross violations of human rights and interim measures and improving the impact of the Strasbourg court, case law in practice.

The third speaker in this session is Harry Roque of the University of the Philippines, Manila. Harry will refer to some recent cases demonstrating the urgent need for a more effective regional protection framework in Asia. You will notice that Harry Roque himself has been committed to some of these cases coming up for justice, the right to freedom of expression of journalists and media workers.

I am your moderator of this panel. I am teaching media law and journalistic ethics for lawyers and journalists in Ghent University and Copenhagen University. I published recently with Tarlach McGonagle, who will formulate the conclusions or be the Rapporteur in a moment, an e-book with the landmark decisions let's say on media and journalists in Europe... and just also to please [Professor] O'Flaherty, and where is he?..your very recent book for universities containing the General Comment number 34. although under the heading 'European media law'!. So we try to integrate more and more also at universities this very important instrument.

So for the presentation of the participants in this panel, I will be very strict, I warned my panellists, as a time keeper. Every speaker has eight to ten minutes. A signal will be given after eight minutes so that you can finish in a decent way your presentations.

Afterwards there will be a possibility that the panellist react on each other's presentation and then we will have twenty minutes more to have the dialogue also with the audience. The idea is

that we continue until twenty past five. That is five minutes overscheduled, but we started ten minutes late so we catch up five minutes by organizing it like this.

May I invite Catalina Botero to start?

Catalina Botero

Thank you Dirk and thank you William for having me in this great workshop.

I have eight to ten minutes and I have to be precise and clear. So I am going to switch to my native language, which is Spanish.

(Interpretation from Spanish)

I would like to begin by saying that there is an apparent paradox mentioned by Dirk, and that is that as all the presenters or most of them up till now have said: the more we raise the standards the more violence increases. So there is no reduction of violence in the fight against impunity in the last decade, despite the tremendous efforts developed by the international community to raise standards with regards to freedom. And this is an apparent paradox only, not a [real] paradox. And it's apparent one for two reasons:

Firstly, today there are more armed conflicts, there are more threats in the region - organized crime in the Americas today is far more aggressive today than it was ten years ago. In countries such as Colombia ten years ago there was war generating greater collateral damage as it is usually called. But this is a wrong description of the rest of the region: ten years ago the violence was not at the great as today, so violence has increased in other words.

The causes of violence have increased, but beyond that the existence of standards and the strengthening of this issue among civil society have generated a strong reaction. So today we have achieved an Inter-American system, or a European system or a universal system, with cases that we did not have before. We have seen realities today that were hidden in the past and we are seeing them thanks to the fact that we have heightened the standards.

So I think it is important not to lose hope therefore. We have raised standards. This has not meant that there has been a reduction in violence, but to raise standards has meant that we can see more violence, better see the violence, and we have better instruments to combat that violence. And in that context, this difficult context of an increasing violence at least in my region and the wars that have arisen.

In this workshop I would like to talk about two themes. Two subjects which I think are fundamental ones.

The first thing is how we have used strategies in order to increase standards and as to go beyond just increasing standards.

So what is strategic litigation'?

Well it is the selection of these cases, emblematic cases; and I am going to say something which may sound obvious to most of you, but it was not obvious in the Inter-American system ten years ago, including when we started strategic litigation using the basic guidelines I mentioned. We have not done this before, and we have made tremendous progress. Now I will say something about that.

That means selecting adequate cases which allows us to do two things:

- Firstly, to increase the will of states through different mechanisms, and then
- To improve standards with regards to freedom of expression.

Now why do we need strategic disputes in order to achieve these two objectives?

First of all because states then have the will -- and we have to say this quite frankly and clearly, [homogeneous, clear-cut] will which means staff, the means to combat impunity against journalists. And otherwise we would not be here, despite all the resolutions of the United Nations. We have not seen a definite clear will of most states to engage in this combat. And in most cases this is for external reasons [because of external pressures]. There is an internal political price for this [impunity] for example for a [state's] president of that time lets say there was an electoral cost not to act, but generally speaking there is no will. So we have to increase

this will which means more means, more awareness with more staff, more people involved, more engagement.

And then the standards are insufficient. Despite what we have achieved at universal level, at European level, at Inter-American level, we still have gaps with regards to standards. We all agree that we have to protect journalists, but “*How to?*” is the question.

And this is why it is important to have this seminar here today, so we can have an inter-institutional dialogue which allows us to improve these standards and strengthen these standards.

So how to proceed to strategic litigation? In the field of freedom of expression in my institution [OAS SR’s Office], that I have been heading, we do basically the following.

The first is to identify the standards already existing at the time. At the time when we started there is a baseline from which we start. What standards were obtaining at the time and what did we want to achieve from them.

We cannot achieve everything. We have to choose the standards we want to reach according to the region in which we are and the problems we have to face.

So once we have identified existing standards and those that we wanted to achieve, then we had to select the cases we had at hand to select those that would allow us to reach those standards.

I am going to say something which might not sound very nice, something difficult in fact, but the best way to achieve standards is with cases that are politically easy to cope with. The best way for achieving an advanced standard is not to frighten tribunals, not to pick up those cases which lead to an aggressive approach. We have to choose cases which sound less aggressive, and once the standard has been achieved, well behind that standard there is a precedent and then we are proceeding with all the tough cases. But we have to choose cases that generate fewer difficulties from a political point of view as a first case to raise standards. This is a strategy.

I know that this is not a nice thing to say. It is not popular to say. This has been very difficult in my region. There are states that tried to close my office for three years. But we did not take those cases.

What happens once we have standards: these cases could then easily come into the Inter-American system.

And secondly, to choose cases that have clear facts. Cases that do not present many difficulties when it comes to defining what the facts were and what the legal problem is [that needs to be addressed].

Thirdly, to involve other agencies. We work with the Rapporteur of the United Nations, with Frank la Rue directly, and we are working with the new Rapporteur of the United Nations. So we were doing joint work. I am sure that the Rapporteur is going to pursue on that line. But also we work directly with Michael [O'Flaherty], Rapporteur [of the General Comment on Freedom of Expression], but also [through the Argentinean commissioner?] said that General Comment number 34 should cover American standards.

And fourthly, we have to involve the media and we can involve the mass media; and our illustrious judge is going to speak later. The media can be interested, so they should be involved. We should work with them. Get them involved.

And fifthly, or sixthly, [the strategy is] rather to apply complete(?) law both at regional level or universal level and local level. On this note I conclude.

It is very important to have good local practices. How do you get to have good local practices?

I will say this very quickly because I do not have much time at hand.

Well there are states in which constitutions have open clauses which allow the entry of international law. Now through these clauses you can get courts to apply international human rights law.

We have five distinct strategies and we really do get extraordinary judgements in Brazil, Mexico, Peru, Colombia and in many other countries too, through different strategies of judicial involvement in those states that allow international law to come in.

But there are [others which?] decided to go back sixty years and talk about the principle of national sovereignty as if it was something new and that they were claiming vis a vis the regional systems.

So here you have more complex strategies. You have got to involve other agencies, and the strategies are more complex because there are states in which there is no independence of the judiciary and problems with the independence of the judiciary.

So - - can I have another minute, one minute please!?

So what do we do? What do we get with these strategies? Selecting cases and that sort of things, there is sort of circle between influence upon the regional level and then at the same time influence of the regional level. What do we achieve?

We achieve the following thing: standards with regards to who is a journalist, standards with regards to the defence of sources -- otherwise you kill the source not a journalist -- and then standards with regards to journalists in armed conflicts, the protection of journalists in social protest, standards with regards to the total prohibition of criminal defamation, especially when you are dealing with public interest, and standards on prevention: concrete specific standards, not just weak wishy-washy ones. You have to prevent violence. Now specifically what does 'prevention' mean?

Prevention means that you cannot allow stigmatizing discourse[against journalists]. There have to be protocols so that the public authorities come to an agreement with the press in social demonstrations. You have to have protocols, you have to have statistics, you have to have standards with regards to protection.

And what does protection mean? Protection means special mechanisms of protection that have been negotiated with the journalists so that they can exercise their profession, do their job with the prospect and adequate protection mechanisms; and then combating impunity.

So combating impunity. What were we told in the region? [That] you cannot combat impunity because we have a ninety percent rate of impunity. So I said 'Yes you can! You have seen it. When states want to, they can find out who is responsible. It is wrong to say they cannot'.

So you look into the crime, where it took place and where organized crime dominates. So get them out of there [that region] and take the cases to central courts, to specialized courts, with for example special investigative protocols. There are countries where they just commonly assassinate journalists and people do not read about that. The journalists are investigating and we have organized crime. [It is said that] the journalist was assassinated because he or she had a lover, but you do not have the real reasons why these assassinations took place. For example, [the journalists may have been] seeking [evidence for the arrest of] a drug trafficker. Everything is here.

Thank you very much for the time that you gave me.

You are very generous.

Dirk Voorhoof ... [I am so sorry I had to stop you]

CB I am sorry!

DV Such a committed and passionate and expert report.

Thank you very much for this testimony. I would like to give the floor now to Lawrence Early on the European Human Rights system and Lawrence will also focus on interim measures if I understood well.

Lawrence Early (TEXT AS PROVIDED)

To conceive of the Convention solely in terms of the prohibition its articles impose in various contexts on State action directed at individuals and organisations, including media professionals and their employers, is to overlook a raft of jurisprudential developments which have in many respects transformed the scope of the protection guaranteed by the Convention.

The Convention is no longer to be construed in terms of "don'ts". Specifically, and of relevance to the theme of today's Conference, Article 10 of the Convention cannot be confined to the simple, albeit fundamental, proposition that it only enjoins States not to interfere arbitrarily with the exercise of the right to freedom of expression.

This injunction on a State not to interfere with the exercise of journalistic rights and freedoms is of course of continuing and crucial relevance, as illustrated by the very many cases in which the Court has to adjudicate on whether the acts of State authorities in a given set of circumstances pass muster under the second paragraph of Article 10.

Whether, for example, a legal obligation on a journalist to disclose his or her sources or whether the decision of a domestic court finding a journalist or his employer liable at the close of civil or criminal proceedings for things said or written, are Convention-compliant require the Strasbourg Court to inquire into:

- the existence of a lawful basis for the impugned measure and the presence of an underpinning legitimate aim for the adoption of that measure

- the proportionality of that measure in a given case before the Court

The Court's inquiry is back-lit by the need for the respondent State to provide relevant and sufficient reasons for the interference in question to a degree which is capable of establishing convincingly that the interference was justified in accordance with the State's own perception of the exigency of the situation which prompted recourse to the measure - in others words, the appeal to the doctrine of the margin of appreciation.

However, the Court had developed the scope of protection under Article 10 - and under various other provisions of the Convention - through the instrumentality of a progressive reading of the nature of the "don'ts" which initially shaped the relationship between public power and individuals and organisations. "Do's" are now a common feature of the case-law. Public authority is enjoined not only to refrain from encroaching on Convention rights and freedoms. In particular contexts public authority is required to take measures to protect those rights and freedoms and to act in a manner which secures the effective enjoyment of, say, the work of media professionals and their employers.

The positive obligations which devolve on States are perfectly in line with the terms of the very first Article of the Convention which commands States to secure to everyone within their jurisdiction the effective enjoyment of the rights and freedoms set out in the Convention. The construction of the doctrine of positive obligations through the case-law is also a reflection of the Court's wish to ensure, within all necessary limits, that the Convention remains at all times relevant and capable of responding to new challenges to the level of protection envisaged by its authors.

Reading positive obligations into the negative obligations defined in the Convention enables the Court to address a range of risks and dangers which, from a purely literal analysis of a given Article, could be said to fall outside the Court's competence *ratione materiae/personae*, for example acts of violence committed by private individuals or groups against journalists or the disappearance of a pluralistic media landscape as a result of media concentration strategies pursued by private operators.

It must of course be accepted that positive obligations were inherent to the scope of certain articles of the Convention long before this expression began to be used with confidence in the case-law. It was always open to a media professional to require the authorities to demonstrate that they had provided for an effective domestic remedy enabling him or her to vindicate his claim that his Convention rights have been violated. Of relevance to today's discussions, the issue may be framed as follows: does a journalist have a meaningful opportunity at the domestic level to resist an order to disclose his sources of information or to contest with the benefit of procedural fair-trial guarantees the threat of civil or criminal sanctions because of what he has written or broadcast or to complain about the intimidatory acts of officials in response to publications or broadcasts which displease them?

That basic statement of a positive obligation finds expression in Articles 6 and 13 of the Convention. However, the range of positive obligations has been expanded and the questions which a respondent State may be required to answer when called upon to respond to an allegation that it has failed to secure the enjoyment of a Convention right have been considerably enlarged.

Articles 2 and 3 of the Convention have been a fertile source of case-law in this connection. Before turning to the specific issue of journalistic rights and freedoms, allow me to summarise the "do" factors which emerge from the case-law, drawing in particular on the cases of [Osman v. the United Kingdom](#),

and [Kılıç v. Turkey](#). You will find many more authorities set out in the excellent compilation prepared for the Seminary by Sejal Parmar.

- The State must secure the right to life and the right to protection of one's physical integrity by putting in place effective criminal-law provisions to deter the commission of offences against individuals (read "journalists") backed up by law enforcement machinery for the prevention, suppression and breach of such provisions
- In certain well-defined circumstances the State is under a duty to take preventive operational measures to protect an individual (read "journalist") whose life is at risk from the criminal acts of a third party. For the Court such obligation will arise when "the authorities knew or ought to have known at the relevant time of a real and immediate risk to the life of an identified individual ("journalist") from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk."
- Where an individual (read "journalist") has died as a result of the use of lethal force by State Agents or where an individual ("journalist") had died in suspicious circumstances, irrespective of State involvement in the death, the State has a duty to conduct an effective, independent investigation capable both of elucidating the facts of the case and identifying and bringing the culprits to justice. This same obligation arises in respect of assaults and other forms of violence which, although not life-threatening, may be considered to amount to a form of ill-treatment within the meaning of Article 3 of the Convention.

These are complex principles, which can only be understood in their application to the specific facts of individual cases. The notion of what can be considered, for example, a Convention-compliant investigation must be seen in the light of the accumulated case-law under Articles 2 and 3 of the Convention. However, leaving aside the interpretation and application of these principles in concrete cases, it is plain that the Court's aim in teasing them out of the existing negative obligations was to ensure that the State has positive, procedural and operational duties to safeguard effectively the right to life and the right to physical and moral integrity and to avoid any appearance of official acquiescence in the commission or threat of crimes of violence against individuals.

The Court has transposed the above principles to the area of media freedom, thereby underscoring its firm attachment to the critical watchdog role played by independent media professionals and media organisations when it comes to securing the accountability of both public and private power for their acts and omissions and to promoting a plurality of different views and opinions.

To illustrate:

In the case of [Özgür Gündem v. Turkey](#), the applicants complained that the newspaper Özgür Gündem was forced to cease publication due to a campaign of attacks on journalists and others associated with it, and due to legal measures taken against the newspaper and its employees. The Court found a breach of Article 10 in relation to the attacks on the newspaper and its staff. The Court concluded that the authorities had failed to take effective steps to investigate and provide protection against acts of violence. They had failed to comply with their positive obligations to protect the newspaper in the exercise of its right to freedom of expression.

The case of [Gongadze v. Ukraine](#) was not pleaded under Article 10 of the Convention in terms of a failure to protect the rights and freedoms of a journalist found murdered. It was pleaded under Article 2, the allegation being that the authorities had failed to protect his life. The Court accepted that argument being persuaded that the authorities knew or ought to have known that the journalist's life was in danger but had failed to take the necessary steps to protect him. The Court also found on the facts that the authorities had failed to conduct an effective and independent investigation into the circumstances of his death.

In common with *Gongadze*, the case of [Dink v. Turkey](#), involved the murder of a media professional by an extreme nationalist group. The Court found that the security forces could reasonably be considered to have been informed of the intense hostility towards the journalist, who was of Armenian origin. Two police departments and one gendarmerie department would have appeared to have been alerted to the likelihood of an attempt on his life and even of the identity of those planning the assassination. However, no measures were taken to avert a real and immediate threat to the journalist's life. The Court found a breach of Article 2 on account of the authorities' failure to discharge their positive obligations.

Constraints of time do not make it possible to explore further examples of the Court's case-law in this area. I would refer you to Sejal Parmar's very helpful review of relevant international and regional human law, which is to be found in your dossiers. Suffice it to say that the case-law is clear on the requirement on the part of the State to take steps to ensure that media professionals can perform their vital watchdog function without fear of reprisals, whether from officialdom or from private actors, simply because media professionals dare to offer a different perspective on a country's social, political and economic structure. That requirement is first and foremost to provide for a media-freedom sensitive framework which guarantees journalistic rights and freedoms and safeguards the life and limb of the

media professional in the exercise of his profession, bearing in mind the dangers which may accompany the dissemination of news, views and information in particular contexts.

Regrettably, the Court's jurisprudence in this area has been established in the wake of incidents in which journalists have been killed or injured or the viability of independent media enterprises has foundered as a result of hostile acts, be they State orchestrated or the product of private malevolence. Is it possible for a journalist whose physical integrity is at risk - whether from State agents or from private actors, with or without the State's tacit blessing, to petition the Court in order to require the State to take positive steps to avert the risk? Can a media enterprise invoke the assistance of the Court in order to avert an imminent and serious threat to its continuing viability as a result of the intimidation of its staff, the sudden withdrawal of a broadcasting frequency or the forced closure of its operations.

The Court is empowered under Rule 39 of its Rules of Court to indicate to a Government, at the request of an individual, that it should refrain from pursuing a course of action which exposes him to the risk of imminent and irreparable damage to his life and welfare, or to indicate to a Government that it take positive measures to prevent that risk from materialising. It falls to the individual requesting the grant of an interim measure to make out a plausible case that he is at risk of imminent and irreparable harm. The most common situation in which interim measures are sought and granted is that of expulsion or deportation of individuals to non-Contracting States where, it is alleged, they will be exposed to the risk of death or torture or others forms of ill-treatment on account of their ethnicity, religion, political views, or because they run the risk of being sentenced to death for the crime forming the subject matter of an extradition request.

The Court quite frequently receives requests for interim measures from journalists who have fled their countries on account of alleged persecution by the regime in power and who are facing removal from a Contracting State to the Convention to their country of origin. Where the Court finds that a journalist has asserted on plausible grounds that his life or welfare would be at real risk if removed from the territory of the Contracting State, the Court may indicate to the State in question that it must not proceed with the removal until it has had an opportunity to consider further the reality of the risk in the light of the parties' observations. It may also require the Contracting State to seek assurances that the expulsion or the extradition of the individual will not expose him to, say, the imposition of the death penalty or ill-treatment in the receiving State.

If the request is not rejected the Court will initiate an adversarial procedure with a view to determining whether or not the risk is substantiated on the facts as alleged, having regard to the arguments and the materials which are submitted to it by the parties and, as appropriate, by intervening third parties - in particular, non-governmental organizations - as well as materials which it has obtained *proprio motu*, for example country specific reports on the repression of dissidence in the receiving country.

Contracting States are required to abide by the terms of an interim measure pending the Court's determination of the case. This is a conclusion which has emerged from the case-law, the rationale being that the Court should not be deprived of the opportunity to adjudicate on the merits of an applicant's complaint on account of his removal to a third country in defiance of the Court's injunction. The Convention enshrines the right of individual petition to the Court. That right assumes even greater importance when the subject matter of the petition concerns a threat of death or ill-treatment. Disrespect of an interim measure undermines the protection of the Convention's core rights, and undermines the authority of the Court and indeed the whole scheme of the Convention.

It is a matter of profound regret that certain Contracting States have on occasion chosen to disregard the interim measures which the Court has applied, with the result that they have been found to be in violation of the Convention.

Harry Roque (TEXT AS PROVIDED)

HARRY ROQUE

AICHR WHITE ELEPHANT: THE CASE FOR A REGIONAL PROTECTION FRAMEWORK IN ASIA

I. Brief Background of AICHR

A. 23 October 2009--- **Asean Intergovernmental Commission on Human Rights** (AICHR) established by ASEAN based on Article 14 of the ASEAN Charter, which states that:

1) In conformity with the purposes and the principles of the ASEAN Charter relating to the promotion and protection of human rights and fundamental freedom, ASEAN shall establish an ASEAN human rights body.

2) This ASEAN human rights body shall operate in accordance with the terms of reference to be determined by the ASEAN Foreign Ministers Meeting.

B. AICHR established by its Terms of Reference (TOR) and launched during the 15th ASEAN summit in Hua-hin, Thailand

C. Salient features of the AICHR TOR (Terms of reference)

1) The AICHR shall be guided by the following principles: xxx “a) respect for the independence, sovereignty, equality, territorial integrity and national identity of all ASEAN Member States; b) non-interference in the internal affairs of ASEAN Member States; c) respect for the right of every Member State to lead its national existence free from external interference, subversion and coercion;”

2) “3. CONSULTATIVE INTER-GOVERNMENTAL BODY

The AICHR is an inter-governmental body and an integral part of the ASEAN organisational structure. It is a consultative body.”

3) “5. COMPOSITION

Membership

5.1 The AICHR shall consist of the Member States of ASEAN.5.2 Each ASEAN Member State shall appoint a Representative to the AICHR who shall be accountable to the appointing Government.”

4) “Review

9.6. This TOR shall be initially reviewed five years after its entry into force. This review and subsequent reviews shall be undertaken by the ASEAN Foreign Ministers Meeting, with a view to further enhancing the promotion and protection of human rights within ASEAN.”

II. **Duhay vs. The Philippines:** AICHR ‘s disappointing performance in combating impunity

- A. 23 November 2009- 58 persons, including 32 journalists and media workers, were massacred in Sitio Masalay, Brgy. Salam, Ampatuan, Maguindanao, Philippines in the worst single attack on journalists (“Maguindanao massacre”)
- B. 197 Accused perpetrators of the Maguindanao massacre— then incumbent regional governor, a former provincial governor, an incumbent local mayor, other local government officials, police officers, policemen, and paramilitary personnel
- C. 3 February 2010- CenterLaw filed a communication, *Duhay, et al. vs. The Philippines*, before Asean Intergovernmental Commission on Human Rights (AICHR) entitled:

“PRELIMINARY REQUEST FOR AN URGENT PRONOUNCEMENT ON THE 23 NOVEMBER 2009 MASSACRE IN SITIO MASALAY, BARANGAY SALMAN, AMPATUAN TOWN, MAGUINDANAO PROVINCE, THE PHILIPPINES, CALLING ON THE PHILIPPINE STATE TO ENSURE THAT THE PERPETRATORS OF THE HEINOUS HUMAN RIGHTS VIOLATION –WHO ARE ALL AGENTS OF THE PHILIPPINE STATE –ARE BROUGHT TO JUSTICE AND THAT ADEQUATE REPARATIONS AND SATISFACTION ARE MADE TO THE HEIRS OF THE VICTIMS UNDER APPLICABLE RULES OF INTERNATIONAL LAW”

D. In *Duhay, et al. vs. The Philippines*, the victims of the Maguindanao massacre asked the AICHR to:

“4. Petitioners hereby make a preliminary request for an urgent declaration from the Commission calling on the Philippine State to ensure that the perpetrators of the heinous human rights violation – who are all agents of the Philippine State – are brought to justice and adequate reparations are made to the heirs of the victims under applicable rules of international law.”

E. Basis for the Communication:

1. Moreover, complicity by the Philippine State in the carnage is established by the following points:
2. *First*, the Republic of the Philippines could have disarmed the Ampatuans. Its top officials have pronounced that they are “violent people” but continued to supply them with high-powered firearms so that the clan could maintain a private army.
3. *Second*, the Republic of the Philippines could have sent police and military personnel to accompany Mangudadatu’s supporters to the capitol but it did not, despite intelligence reports received from personnel on the ground of the massing of armed men along the highway leading to Shariff Aguak.
4. This security provision could have prevented the massacre. Yet the Republic of the Philippines’ top Army officers in the region refused to heed requests by the Mangudadatus and their media companions, on the lame excuse that they did not have enough personnel for the purpose. Worse of all, they gave assurances that the highway leading to the capitol is safe and secure.
5. The avoidance by both the police and the military officials in the region of security duty on that ill-fated day is inexplicable, given that the violent tendencies of the Ampatuans are well-known to them and to the high civilian officials of the Republic of the Philippines and the abundant intelligence information passed on from the ground to the chain of command about the massing of armed men along the highway.
6. Too, this avoidance of duty by responsible officers and men of the Philippine national police and armed forces constitutes a failure to prevent impunity under international law.
7. It is clear from the above-discussion that the Philippine State is responsible under international law for the acts of its agents who were either complicit in the 23 November Massacre or were its direct perpetrators.

8. By reason of the above, there are well-founded fears that the Philippine State will be under very heavy pressure from the Ampatuans to whitewash the investigation or to cover up crucial evidence and witnesses. Thus, the need on the part of the Commission to issue an urgent declaration calling on the Philippine State to abide with its obligations under international law and ensure the prosecution and conviction of the perpetrators of the massacre as well as the provision of adequate reparations, including compensation and satisfaction, to the victims and their heirs.
- F. 29 March 2010- Petitioners in *Duhay vs. The Philippines* and their counsels visited the AICHR Secretariat in Jakarta, Indonesia to follow-up on their communication

G. Philippine response to *Duhay vs. The Philippines*

“During their meeting, Roque said he was informed by Dr. Termsakthat “the complaint was received and forwarded to the president of ASEAN [Vietnam]” as well as to the Philippine government “and that the Philippine government has already responded – and that the response was that it’s a purely domestic issue and that the ASEAN commission could not get involved in it.”⁴ - See more at: <http://verafiles.org/govt-tells-asean-body-maguindanao-massacre-a-domestic-legal-issue/#sthash.3FG9NkSu.dpuf>

- H. Oral response by some AICHR officers to *Duhay vs. The Philippines*
- 1) As of the filing of Duhay, there was no individual complaint mechanism for AICHR.
 - 2) AICHR’s main mandate is promotion of human rights.

III. Udin murder case in Indonesia: 17-year struggle for justice for a murdered journalist

- A) In 1996- Udin began writing a series of articles that focused on the regent selection process in Bantul, a suburb of Yogyakarta. This included an article on a Rp. 1 million bribe paid by Bantul’s regent Sri Rosso Sudarmo to the Dharma Foundation, a foundation run by President Suharto, to secure his reappointment for a second term.⁵

4 <http://verafiles.org/govt-tells-asean-body-maguindanao-massacre-a-domestic-legal-issue/>

5 Udin communication before AICHR.

- B) Following these publications, Udin suffered threats of legal action for defamation, offers of bribes to stop his reporting as well as threats of violence. He filed several reports concerning this harassment with the Legal Aid Institute in Yogyakarta.⁶
- C)
- D) 13 August 1996- 2 men came to Udin’s house and subsequently beat Udin in the head and stomach with a metal rod and left him on the floor covered in blood and bleeding from his ears.
 - E) 16 August 1996- Udin dies
 - F) 21 October 1996-- police arrested taxi driver Dwi Sumaji for the murder. However, the case did not add up.
 - G) The office of the Public Prosecutor refused to follow through on the case four times due to the lack of evidence, and when the case was eventually brought to trial in July 1997, the prosecution withdrew the case before the trial had come to a conclusion.⁷
 - H) November 1997---Sumaji was acquitted.⁸
 - I) Following the acquittal, no further efforts were made to investigate Udin’s murder.⁹
 - J) July 2013- CSO filed a communication before AICHR for the Udin murder. The communication is denoted as:

“REQUEST FOR AN URGENT PRONOUNCEMENT CONCERNING THE AUGUST 1996 MURDER OF FUAD MUHAMMAD SYAFRUDDIN (ALSO KNOWN AS “UDIN”) IN DUSUN GELANGAN SAMALO, PARANGTRITIS ROAD KM 13 YOGYAKARTA, INDONESIA CALLING ON THE STATE OF INDONESIA TO ENSURE THAT THE PERPETRATORS OF THIS HEINOUS HUMAN RIGHTS VIOLATION ARE BROUGHT TO JUSTICE– TO STOP THE CYCLE OF IMPUNITY AGAINST INDONESIAN JOURNALISTS – AND THAT ADEQUATE REPARATIONS AND SATISFACTION BE MADE TO THE HEIRS OF UDIN UNDER APPLICABLE RULES OF INTERNATIONAL LAW”

6 Id.

7 Id.

8 Id.

9 Id.

K) Reliefs asked in Udin communication

Petitioners hereby urgently request the Commission:

(a) To make an urgent declaration calling on the State of Indonesia to ensure that the perpetrators of the August 1996 murder of Fuad Muhammad Syafruddin (also known as “Udin”)– are brought to justice; and

(b) To make an urgent declaration calling on the State of Indonesia to make adequate reparations to the Petitioners as heirs of Udin.

L) As of date, AICHR has not made any pronouncements on the individual communications filed before it.

Vietnam

- 52 Vietnamese bloggers imprisoned for alleged violations of tax and national security laws.
- Repressive state security laws
 - Vietnam Penal Code – Article 79 (“activities aimed at overthrowing the people’s administration”), Article 88 (“conducting propaganda”), Article 258 (“abusing democratic freedoms to infringe upon the interests of the State”).

Decree No. 72 – Decree on management, provision, and use of internet services requires internet companies to have at least one server in Vietnam.

Singapore

- Highly regulated media environment
 - Interlocking laws designed to curb FOE – “Internal Security Act, Sedition act, Defamation act, Newspaper and Printing Presses Act, Telecommunications Act, Undesirable

Publications Act, Public Order Act, and contempt of court laws.”

- License for online news sites – “Under the licensing framework, online news sites will be individually licensed if they report an average of at least one article per week on Singapore’s news and current affairs over a period of two months, and are visited by at least 50,000 unique IP addresses from Singapore each month over a period of two months.”
- Self-censorship

Thailand

- Strict *lesè majeste* laws – Chiranuch Premchaiporn, editor of the Prachatai website, was sentenced to an 8-month suspended prison term and to pay a fine of 20,000 baht for comments deemed insulting the Thai Monarch which were posted by visitors on her online forum.
- Defamation suits

CAMBODIA

- Limited right to freedom of speech and of assembly
- Lack of media (TV, radio, etc.) system for opposition party.
- Lack of access to real and trustworthy information for the people

DV Thank you Harry for also taking us not only to the Philippines, but also to some other parts in the region. I realize now that the notion good practices in not totally applicable on every of the testimonies here, but I think there was or there is a good practice at least in the example that you gave in bringing up this under the attention by studying these cases. It

becomes a long list of negative views about your country, but still you continue and one day there will be a case and we are sure that will be successful.

Ok, maybe first very briefly would the panellists like to comment on one of the reports of the other panellist and try to indicate the relevance for their region of some of the things that we heard by the others.

Catalina, you would still say something.

CB Yes. Briefly to thank, first of all -- good luck and we are here to help and we need to help. We know that.

And then we do have precautionary measures. I did not mention that because of the time I was in a hurry...

But we do have precautionary measures.

DV I know that my role as moderator would be a very difficult one.

CB And you told us.

We do have precautionary measures. It is a very successful mechanism within our region. Not just the commission, but the court also has.

So within the questions we can [explain]- - to prevent damage to life, I mean threats against life or [physical] integrity or even liberty or the exercise of the profession of the journalist. We do have precautionary measures for all those cases.

DV Thank you.

LE In fact the only comment I wanted to make was that the Costa Rica court does does have the possibility of injuncting -- of giving interim measures to prevent serious or irreparable harm to life and limb.

What matter which may be of interest to the audience, which we can explore later, is the extent to which the Strasbourg court has borrowed on the case law and the principles which have been developed by the Inter-American Court in the area of media freedom for example.

There is a very interesting degree of cross-fertilisation which might be worth exploring later. Maybe in the context of the next panel when we have judge Robles who is - - who will be presenter.

HR I actually asked this from David. Unfortunately he is no longer here. But coming from a jurisdiction that has had filled many communications and has received favourable views, my question to him was if you have like fifty to a hundred journalists being killed as we have in the Philippines, and only one of who killed them has been prosecuted; and where you have the national prosecution record having a measly one percent conviction rate for the killings, could you already file a case for crimes against humanity?

Seems to me that some governments are really oblivious to be shamed before the UN Human Rights mechanisms, and perhaps something more than shaming them is necessary. And if it is necessary for a prosecutor to begin investigation on the killings of journalists as a crime against humanity. Maybe we should do so, of course [there] was non-committal because it will involve his office. But from here I go to Berlin and I will work with other lawyers with more experience in the filing of these complaints, and we will test jurisprudence in the ICC and argue that the case of the Philippines already amounts to a crime against humanity, and that the Philippines president at least on the basis of superior possibility should be held as responsible for failing to investigate and prosecute the killers of these journalists.

PANEL IV DISCUSSION AND INTERVENTIONS

Participants: Gregory Thuan, Peter Noorlander, Carmen Draghici, Melike Yilmaz

DV ... time for opening the floor. We have eight minutes left. I see many fingers, I will take three. There is one, two, three and because there are only four. Ok.

Keep it short.

Gregory Thuan Gregory Thuan, advocate.

(interpretation from French)

I have a question I would like to put to Madame Botero and a question I want to put on Lawrence Early, and a further question for professor Roque.

About these provisional or precautionary measures or interim measures.

I consider that the European Court of Human Rights now has a real opportunity or potentially a useful tool at its disposal if it were to relax the criteria when applying rule 39 of the rules of court.

That would actually make for an enhanced efficiency in its judicial rulings in the Dink vs. Turkey case. That was mistaken when the application was launched with the court, while the applicant was still alive. The application was based solely on an Article 10 complaint.

If his counsel had launched an application based on rule 39 perhaps could have explored that issue and ended up handing down an indication to the Turkish government to protect the life of that journalist. That is no longer possible according to the rule 39 case law.

DV ... possibility to still raise one. OK. Thank you. One question.

Peter Noorlander One question. My name is Peter Noorlander, Media Legal Defence Initiative.

My question is for Lawrence Early and it is whether there is scope for a more creative and direct use of interim orders to release - - to order the release of people who are blatantly unjustly in prison? I am thinking in particular role of the situation in Azerbaijan, where human rights defenders and journalists have been imprisoned over the last couple of months almost clearly without any basis in law; and whether there is scope for the Court to order the release of these people pending their deliberation on the matter. So as to minimize any danger to the liberty of the people involved.

DV Thank you. Third question was over there and then the last one here.

In the meantime Lawrence you have some time to prepare.

Carmen Draghici Hi. My name is Carmen Draghici, City University London.

I would like to start with a question for Mr Early. While of course the contribution of the European Court to the protection of journalists cannot be underestimated, there is trend that I do find problematic and I would be very interested in your views on that.

In cases such as [Kilic] (Tekin) (?) vs. Turkey the Court found that since a violation has been ascertained under Article 2 right to life, it was not necessary to proceed to examine the case also under Article 10.

The Inter-American Court on the other hand under similar circumstances has asserting that dual violation both of freedom of expression both in its passive and active dimensions -- the right to impart, and right to receive information. So I was wondering does this not in a way undermine the public dimension by reducing the case when individual killing disconnecting from the

functional, the professional capacity of the individual. Is this not a missed opportunity for the Court? ...

DV Thank you. Clear question! That's it. Now the last one.

Melike Yilmaz Yes, thank you very much. Indeed my question or rather...

DV and you are?

MY It is Melike Yilmaz from the Turkish representation. Surprise! So many references to Turkey, but I am not going to the Court cases details. But rather my question or comment was related to the morning session about the legal framework. And because I remember attending a seminar again under the auspices of the, yes, Council of Europe and University of Amsterdam or Free University of Amsterdam, I am not sure, but the freedom of expression and the fight against terrorism, so the limitations there between. In the case of our seminar similar questions comes to my mind: that because except accepting the honourable members of media, there are also some people attending or somehow being part of illegal acts; and this distinction might be an issue in order to encourage states to identify and also correct the falls [failures] in implementation. Because otherwise putting them all together might be a bit confusing. Thank you very much.

DV ok. Thank you. Lawrence there is quite something on your plate. Could you answer that in a very few minutes?

LE Yes. Gregory's question regarding the need for further flexibility in the application of Rule 39 measures.

I think it is important to stress that Rule 39 measures are interim measures, are only applied in very exceptional circumstances. There must be imminent risk of irreparable harm to life or limb. So that explains why for example when we had a request for Rule 39 from a political party in Turkey which was dissolved or about to be dissolved Rule 39 was refused. The Court took the decision that this did not fall within the very narrow range of circumstances which will allow the Rule 39 measure to be applied.

Mr Dink filed his application with the Court arguing the violation of Article 10 and then the case materialized into an Article 2 case after he was found to be murdered and on the basis that the state knew or ought to have known that his life was at risk.

Had mister Dink's lawyers filed an application for Rule 39 measures I suspect that the Court would not have granted the Rule 39 measure? Why? Because it is a fundamental principle of the convention that applicants are required to exhaust their domestic remedies, so possibly the Courts response would be 'no we do not impose a Rule 39 measure to secure enhanced protection for mister Dink' and the unwritten reason for refusing that is that the applicant should go to the domestic authorities and complain about that his life is - - has been targeted.

Gregory encourages further flexibility in the application of Rule 39. Maybe that will come with practice, but for the time being it is a measure which is applied sparingly and only in very exceptional circumstances. It there scope for ordering the release of a journalist who are being held in arbitrary detention? Once again it is my understanding of the practice and procedure regarding the application of interim measures that in that sort of situation the Court would not apply a Rule 39 measure unless it was plausibly asserted that the detained journalist was suffering from health problems which posed a serious and imminent risk to his life. In those circumstances the Court could conceivably require the contracting party to ensure that the journalist is removed from detention into, let us say, hospital. Civilian hospital where he can be given the required therapeutic treatment. But requiring the journalist to be released because

the detention of itself is arbitrary without further elements I think would not lead to the application of the Rule 39 measure. If the ...

DV ... the final judgement that the Court order underlines.

LE If the Court then looks at the admissibility and the merits of the case brought by the detained journalist and does find that there has been a breach of Article 5 of the Convention then it may direct in the operative part of its judgement or at least in the reasoning that the state must as a matter of urgency order the release of the detainees. A bit like the Del Rio Prada case against Spain, which was litigated under Article 7 of the Convention, but it was - - the Court required the Spanish authorities to secure the release of the applicants because they were in unlawful detention.

And then the final question concerned I think. Was it Kilic against Turkey? I do not know. It is really a question of court policy whether or not to find a double breach or a triple breach, or whether in the particular circumstances of the case the Court is happy to find that everything has been said under Article 2 of the convention and that it is really redundant to look at the same facts from the angle of Article 10. Maybe one can say that the Court's practice is inconsistent. You do find lots of examples where we find breaches, like Kilic breach of 2, breach of 10 and other cases where the court confines itself to finding of breach of Article 2 and the conclusion is: well, having regard to the arguments and to the court response under Article 2 you find that although the complaint is admissible under 10, it is not considered necessary to address it specifically. It is really a question of policy, practice which possibly is not applied in consistent and uniform manner.

DV one last question. 30 seconds!

HR Well, obviously ECHR is (?) that the Philippines supreme court quoted heavily from the views expressed by the Human Rights Commission and the European Court of Human Rights, and the meaning of the right to security in relation to right to life and this is in connection with the (Ampatuan massacre?)

And they quoted extensively from decisions of this court as well as the Human Rights Committee to construe the right to life as to include freedom from fear that there is in fact a threat to one's life. Unfortunately this ruling came very late because I had a client, the one and only journalist who survived (?) the Ampatuan Maguindanao massacre was represented by us. Unfortunately when it was time to have the protection order for a longer period of time it was remanded to the court of appeals. The court of appeals denied this plea, dismissed the petition and this year he was killed. But at least because of the judicial dialogue we feel that other journalists who will ask for (?) will be given because now the standard is much lower, it is freedom from fear.

DV I see there are still a lot of material. We will go to the next panel and I am sure some of the issues can be taken. The moderator has a privilege to have the last word. Maybe there is still a possibility of creativity here because the reference to Azerbaijan in the case of *Fatullayev* which was an Article 10 case. The Court ordered immediate release of the journalist being held in prison. Maybe there are other possibilities that can be more creativity by the Court also at the final judgement, not just to stop at the compensation and damages and costs, but maybe in cases of where there is blatant violation of Article 10 regarding journalists, to go one step further and to take additional measures and to order the states indeed effectively to take action.

We will clear the floor and give immediately opportunity to the next panel for continuing the dialogue on this issue.

We do not run away. People stay here. We just clear the floor.

Thank you.

INTER-REGIONAL DIALOGUE: NECESSITIES, GOALS AND EXPECTATIONS

Participants: David Kaye (moderator), Manuel Ventura Robles, Lawrence Early

David Kaye

As we are getting settled maybe I should encourage everyone to stand up and stretch. This is sort of our home stretch. You just stand up, stretch. That is not very diplomatic. You just stretch. Just in your seat.

...

Ok. Thank you. You can continue stretching or not. It is up to you, but we have limited time. We have a half hour. I think we are very lucky to follow our previous panel because all three panellists and the moderator were very lively and I think it kept us in our toes, kept us awake. So thank you very much for that.

I actually I am going to make a very, very brief introduction.

First on the topic. Obviously we have spent the entire day moving from sort of one set of constituencies and audiences, right. Of course we have spoken about journalists, we have spoken about civil society, we have spoken about mechanisms at the international level, whether the treaty bodies or the UN itself. We have spoken about regional institutions, whether the commissions or the court, talked quite a bit how they interrelate with one another. So in a way we have headed to this point where I hesitate to say it, it is the moment you have all been waiting for. But I think it is the moment where we can bring some of the things we have discussed today together. Again we have very limited time. We will only have till six o'clock and I will invite our wrap-up moderators to wrap up for us.

But we have come to the point where we can now talk about jurisprudence and about the courts at both the Inter-American and the European levels. One thing I do want to pose, which I

think it is important to pose when I think about with the Inter-American and the European systems -- and this is something in a sense that comes from Harry Roque's presentation -- which is when we are talking about the Inter-American and European systems we are talking about I think I would not say highly specialized, but relatively mature of course mature systems that I think one of our goals should be to on the one hand to emulate. And that means not just emulating the jurisprudence that we find today, but looking at the history of how they have developed, and I think it is also an important reminder for us that these institutions did not just appear sort of drawn out of thin air and suddenly we have these amazing institutions of law. But they were really hard fought, hard won institutions. We see that developing in the African system; we see the effort perhaps an effort that hopefully we will see it realized in the Asian system not too distant future. We can all have some hope. But all of these things require serious effort and struggle, and so as I turn it over to two experts really who know the judicial as well as anybody - - truly. I think we should bear that in mind.

So as I said I won't spend any real time on introductions except to say that to my right is and who will be our first speaker is judge Manuel Ventura Robles on the Inter-American Court of Human Rights. He has been with the Inter-American Court for over thirty-five years, if I am correct in Costa Rica. And so brings to us I think not only a wealth of experience and expertise, but also has seen the development of this system. And then of course we have Lawrence Early who we get twice, which I think we are very lucky, and we will have this opportunity to have a dialogue between the Inter-American and the European system.

So with that I will turn it over to judge [Ventura]-Robles.

Thank you

Manuel Ventura Robles (TEXT AS PROVIDED)

**Protection for Journalists:
Toward an Effective Framework of Protection for the Work of
Journalists and an End to Impunity**

By: Manuel E. Ventura Robles*

The Right to Freedom of Thought and Expression

The right to freedom of thought and expression is enshrined in Article 13 of the American Convention on Human Rights (hereinafter “the Convention” or the “ACHR”), which stipulates that:

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.

2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:
 - a) respect for the rights or reputations of others; or

 - b) the protection of national security, public order, or public health or morals

**Judge and former Vice-President of the Inter-American Court of Human Rights; Member of the Governing Board of the Inter-American Institute of Human Rights; Member of the International Law Association; Member of the American Society of International Law; Governing Member of the “Hispano-Luso-American and Filipino Institute of International Law”; Honorary Member of the “Costa Rican Association of International Law”; Corresponding Member of the Argentinean Association of International Law; Member of the Editorial Board of the *Revista do Instituto Brasileiro de Direitos Humanos*, Member of the Editorial Board of the Newsletter of the Brazilian International Law Society; awarded the “2014 Human Rights Prize” and the “Antônio Augusto Cançado Trindade Medal” by the Brazilian Institute of Human Rights. Email: manuelventura@cortheidh.or.cr

3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.

4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.

5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.

The issue of the right to freedom of thought and expression has been addressed over time in the jurisprudence of the Inter-American Court of Human Rights (hereinafter “the Court” or “the Inter-American Court”), in exercise of its jurisdictional role. In recent years, this matter has acquired increasing importance in the Court’s rulings despite the fact that it was the subject of an advisory opinion issued when the Court began its work in 1985, *Advisory Opinion OC-5/85 on Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*.¹⁰

In this Advisory Opinion, the Inter-American Court considered the conceptual relationship between democracy and freedom of expression, anticipating by more than fifteen years the provisions related to this matter contained in the Inter-American Democratic Charter of 1991.¹¹ In this regard, the Court described in a clear and precise manner the relationship between democracy and freedom and considered that “the same concept of public order in a democratic society requires

¹⁰ Compulsory Membership of Journalists (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5.

¹¹ Approved by the First Plenary at the twenty-eighth special session of the OAS General Assembly, held in Lima, Peru, on September 11, 2001.

the guarantee of the widest possible circulation of news, ideas and opinions, as well as the widest access to information by society as a whole. Freedom of expression constitutes the primary and basic element of the public order of a democratic society, which is not conceivable without free debate and the possibility that dissenting voices be fully heard."¹²

The Court added that "freedom of expression is a cornerstone upon which the very existence of a democratic society rests. It is indispensable for the formation of public opinion. It is also a *conditio sine qua non* for the development of political parties, trade unions, scientific and cultural societies and, in general, those who wish to influence the public. It represents, in short, the means that enable the community, when exercising its options, to be sufficiently informed. Consequently, it can be said that a society that is not well informed is not a society that is truly free."¹³

In relation to journalistic activities, the Court has stressed that "journalism is the primary and principal manifestation of the freedom of expression of thought. For that reason, because it is linked with freedom of expression, which is an inherent right of each individual, journalism cannot be equated to a profession that is merely granting a service to the public through the application of some knowledge or training acquired in a university, or through those who are enrolled in a certain professional association."¹⁴

Since issuing that opinion, the Court has also developed two concepts that have appeared repeatedly in its jurisprudence on the subject: the individual and social dimensions of freedom of expression. On this matter the Court has stated that "when an individual's freedom of expression is unlawfully restricted, it is not only

12 Compulsory Membership of Journalists (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 69.

13 Compulsory Membership of Journalists (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 70.

14 Compulsory Membership of Journalists (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 71.

the right of that individual that is being violated, but also the right of all others to “receive” information and ideas. Consequently, the right protected by Article 13 has a special scope and nature, as evidenced by the dual aspect of freedom of expression. It requires, on the one hand, that no one be arbitrarily limited or impeded in expressing his own thoughts. In that sense, it is a right that belongs to each individual. Its second aspect, on the other hand, implies a collective right to receive any information whatsoever and to have access to the thoughts expressed by others.”¹⁵

In the course of its history, the Inter-American Court has ruled on fourteen cases concerning violations of the right to freedom of thought and expression and has addressed different aspects of this right, including: prior censorship and subsequent liability;¹⁶ contempt of authority, the exercise of journalism and its role in the dissemination of information;¹⁷ limitation of political rights;¹⁸ access to information;¹⁹ limits on freedom of expression *vis à vis* the protection of the right to honor and dignity;²⁰ the freedom to seek, receive and disseminate information;²¹ criminal convictions for making public accusations,²² as well as cases in which the right to freedom of thought and expression has been violated as a consequence of other violations of rights enshrined in the American Convention.²³

15 Compulsory Membership of Journalists (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 30.

16 Case “The Last Temptation of Christ” (Olmedo Bustos et al.). Merits, Reparations and Costs. Judgment of February 5, 2001. Series C No. 73; Case of Palamara Iribarne v. Chile. Merits, Reparations and Costs. Judgment of November 22, 2005. Series C No. 135.

17 Case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 2, 2004. Series C No. 107.

18 Case of Ivcher Bronstein v. Peru. Reparations and Costs. Judgment of February 6, 2001. Series C No. 74; Case Ricardo Canese v. Paraguay. Merits, Reparations and Costs. Judgment of August 31, 2004. Series C No. 111.

19 Case of Claude Reyes et al. v. Chile, Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151; Case Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2010. Series C No. 219.

Throughout its comprehensive case law the Court has reiterated that freedom of thought and expression is the cornerstone of a democratic society. This right has an individual dimension and a social dimension and both must be protected equally. In this context, the media and journalists are essential instruments of the freedom of expression. Furthermore, although freedom of expression is not an absolute right and can be restricted, such restriction must be lawful and proportional to the end pursued. Similarly, freedom of expression also covers the right to have access to public information and to disseminate that expression through the various media available for that purpose.

Protection of Journalists

According to the human rights standards of the Inter-American System, States have an obligation to protect those who are exposed to a special risk with regard to their fundamental rights. The obligation to adopt specific measures of protection is conditioned by the awareness that a situation of real and imminent danger exists

20 Case of Kimel v. Argentina. Merits, Reparations and Costs. Judgment of May 2, 2008. Series C No. 177; Case of Tristán Donoso v. Panama. Preliminary Objection, Merits, Reparations and Costs. Judgment of January 27, 2009. Series C No. 193; Case of Usón Ramírez v. Venezuela. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2009. Series C No. 207; Case of Valle Jaramillo et al. v. Colombia. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192, para. 196; Case of Fontevecchia and D'Amico v. Argentina. Merits, Reparations and Costs. Judgment of November 29, 2011. Series C No. 238.

21 Case of Perozo et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 195; Case of Ríos et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 194; Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 26, 2010. Series C No. 213.

22 [Case of Mémoli v. Argentina. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 22, 2013. Series C No. 265.](#)

23 Case of Yatama v. Nicaragua. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 23, 2005. Series C No. 127; Case of López Álvarez v. Honduras. Merits, Reparations and Costs. Judgment of February 1, 2006. Series C No. 141.

for a specific individual or group of individuals and by the reasonable possibilities of preventing or avoiding that danger.²⁴ In this sense, the obligation to protect a journalist at risk may be satisfied through the individual application of the measure necessary to guarantee, *inter alia*, the beneficiary's right to life, personal integrity and freedom of expression. However, when a situation of structural, systematic and grave violence exists against journalists and media workers in a particular country, the States must establish special programs for the protection of these groups. In all cases, the measures implemented must be adapted to the individual circumstances of the person at risk, taking into account their gender, their need or desire to continue carrying out the same professional activities and their social and economic circumstances.

The Inter-American Court established the scope of the State's positive obligation to protect individuals who are exposed to a special risk in the case of the *Massacre of Pueblo Bello v. Colombia*²⁵, when it stated that "[f]or that positive obligation to arise, it must be established that the authorities knew, or ought to have known at the time, of the existence of a real and immediate danger to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that danger."²⁶

24 ICHR. Case of the Massacre of Pueblo Bello v. Colombia. Judgment of January 31, 2006, Series C No. 140. Para. 123; ICHR. Case of the Sawhoyamaya Indigenous Community v. Paraguay. Merits, Reparations and Costs. Judgment of March 29, 2006. Series C No. 146. Para. 155; ICHR. Case of Valle Jaramillo et al. v. Colombia. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192. para. 78; ICHR. Case of González et al. ("Cotton Field") v. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205. Para. 280.

25 ICHR. Case of the Massacre of Pueblo Bello v. Colombia. Judgment of January 31, 2006. Series C No. 140. Para. 119-141.

26 ICHR. Case of the Massacre of Pueblo Bello v. Colombia. Judgment of January 31, 2006. Series C No. 140. para. 124, citing the European Court of Human Rights. Case of Kılıç v. Turkey. Application no. 22492/93. Judgment of March 28, 2000. Para. 63.

In the judgment delivered in the case of *Vélez Restrepo and Family v. Colombia*,²⁷ the Court emphasized that “journalism can only be exercised freely when those who carry out this work are not victims of threats or of physical, mental or moral attacks or other acts of harassment.” Therefore, States “have the obligation to provide measures to protect the life and integrity of journalists who face [a] special risk.” According to the Court, this special risk to journalists must be assessed in light of the existing context in the country and may arise “owing to factors such as the type of facts they cover, the public interest of the information they disseminate or the area they must go to in order to do their work, as well as to those who are the target of threats in relation to the dissemination of that information or for denouncing or promoting the investigation of violations that they suffered or of those they became aware of in the course of their work.” In the specific case of the journalist Richard Vélez, the Court concluded that “he clearly faced a real and immediate threat to his personal integrity” and that the State had knowledge of this situation, but did not act diligently to adopt timely and necessary measures of protection for the journalist and his family. The Court emphasized that “it is up to the State authorities to get to know the situation of special risk in order to determine or assess whether the person who is the target of threats and harassment requires measures of protection or to refer the case to the competent authority to do this, and also to offer to the person at risk timely information on the measures available.”

The Court has also addressed this matter when ordering urgent and provisional measures in exercise of its preventive powers. In this regard, the Court itself has noted that provisional measures are of a twofold nature: precautionary, to safeguard proceedings, their subject matter and the persons involved; and protective, to preserve fundamental rights, such as the right to life and integrity of journalists.²⁸

In carrying out this task, the Court has taken into account the gravity and urgency of specific facts or situations, established *prima facie*, as well as the possibility of

27 ICHR. Case of Vélez Restrepo and Family v. Colombia. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 3, 2012 Series C No. 248, paras. 194, 195, 201, 203 and 209.

28 Cf. Orders for provisional measures in: the Case of the Daily La Nación, the Case of Marta Colomina and Liliana Velásquez, the Matter of “El Nacional” and “Así es la Noticia” Newspapers, the Matter of the “Globovisión” Television Station and the Matter of Luisiana Ríos et al. (Radio Caracas Television-ECTV)

irreparable damage being caused to persons, the assumptions upon which the adoption of provisional measures is based.

In some cases, the measure of protection has included a group of people linked to media organizations, a situation in which the Court has extended the subjective scope of the provisional measure in order to provide guarantees. This ensures that the benefits reach people who are not individually named at the time when the measure is issued, but who are identifiable, according to objective appraisal criteria, because they belong to a group that faces grave risks or because of their link with such a group, for example, as an employee of a media organization.

On other occasions, the Court has ordered States to suspend the execution of a conviction that could cause irreparable damage to the beneficiary of the measure, while awaiting the Court's delivery of a judgment on the merits of a case. Similarly, it has ordered States to guarantee the right to freedom of thought and expression by preventing attacks on the part of any individuals, namely, agents of the State and private third parties. For example, the Court has ordered States to provide measures of protection around the perimeter of the offices of media organizations, where the beneficiaries of the provisional measures work.

In one specific case, upon ratifying the provisional measures ordered in response to acts of violence against employees of the Globovisión television channel of Venezuela, the Inter-American Court underscored the importance of providing measures of protection that facilitate, rather than hinder, the professional activities of those who work in media organizations.

The Court ordered the State "to continue to adopt the appropriate and necessary measures to safeguard and protect the life, personal integrity and freedom of expression of the beneficiaries of these provisional measures, especially when they carry out journalistic activities outside the station's offices [...] The means and coverage of this protection must respond to the requirements of the circumstances."²⁹

29 ICHR. Matter of the "Globovisión" Television Station regarding Venezuela. Order of the Inter-American Court of Human Rights of November 21, 2007. Considering para. No. 11.

Likewise, upon ratifying the provisional measures ordered for the protection of workers of Radio Caracas Television (RCTV), in Venezuela, the Inter-American Court ordered the State to allow the beneficiaries of the measures or their representatives to participate in the “planning and implementation of [the] measures [of protection].”³⁰ The Inter-American Commission on Human rights has also ruled in similar terms with respect to the measures of protection directed at human rights defenders.

Finally, upon analyzing the violation of Article 13 of the American Convention in the Case of *Ivcher Bronstein v. Peru*, the judgment delivered by the Court stated that “it is essential that journalists who work in the media should enjoy the necessary protection and independence to exercise their functions comprehensively, because it is they who keep society informed, and this is an indispensable requirement to enable society to enjoy full freedom.”³¹

Lawrence Early (TEXT AS PROVIDED)

**Towards an effective framework of protection for the work of journalists and an end to impunity
(Strasbourg 3 November 2014)**

30 ICHR. Matter of Luisiana Ríos et al. regarding Venezuela. Order of the Inter-American Court of Human Rights of September 12, 2005. Fifth Operative Paragraph.

31 Case *Ivcher Bronstein v. Peru*. Reparations and Costs. Judgment of February 6, 2001. Series C No. 74, para 150.

Panel on Inter-regional dialogue to strengthen protection and eradicate impunity

Speaking notes

Lawrence Early, Jurisconsult, European Court of Human Rights

Unfortunately Judges Karakaş and Spano have been prevented from attending this panel session on account of unforeseen Court work which requires their presence in the Plenary Court this afternoon.

They expressed their best wishes for the success of the Panel discussions. I am happy to replace them.

I would like to formulate my contribution in the form of a number of, hopefully relevant, statements and propositions.

1. Discussion and dialogue of the type we have witnessed today are of crucial importance for sharpening our understanding of the real problems and dangers which beset the work of media professionals and how to address them. It is a matter of profound regret that many speakers have highlighted the occurrence of incidents of violence against media professionals covering events on the territories of certain of the Member States of the Council of Europe, States which have pledged themselves to respect fundamental rights and freedoms, to uphold the rule of law and to defend and promote the values of democracy and pluralism.

2. The sharing of information, the raising of awareness, the identification of best practices, the formulation of remedial strategies in terms of policy measures and practical mechanisms, the stress on the value of collaborative action involving all interested parties, are to be applauded.

3. From the perspective of the European Court of Human Rights, factual information on the situation regarding the extent to which media professionals are exposed to the risk of violence or arbitrary arrest and detention in different countries is of crucial importance. As I noted at an earlier working session, country-specific reports are a critical factor in the Court's assessment of whether to apply an interim measure and whether to find on the merits of a particular case that a Contracting State would be in breach of Article 2 or Article 3 of the Convention if it were to deport or extradite, for example a journalist, to his country of origin.

4. The development of the Court's case-law in the area of media freedom does not unfold in a vacuum. The Court readily acknowledges that there is a world beyond the four walls of the court house.

5. If one analyses the relevant jurisprudence of the Court on Article 10 issues, or studies the judgments of the Court dealing with interim measures and the risk factors which are invoked to, for example, prevent the deportation or extradition of a media professional, it is striking to behold the number of occasions on which the Court draws on sources of information supplied by non-governmental organisations of the type represented here today.

6. Nor can one fail to notice the extent to which the Court draws on the factual and other information supplied by non-governmental organisations which are invited to take part in contentious proceedings on, for example, the scope of positive obligations under Article 10 of the Convention.

7. The Court also has due regard to relevant standards elaborated within the framework of intergovernmental organisations, be they regional or international in their geographic reach. The Court has in particular found the recommendations and declarations of the Committee of Ministers and the Parliamentary Assembly of the Council of Europe of particular relevance when it comes to the resolution of Article 10 litigation. Although such texts are non-binding on the Contracting States, they are nonetheless of great significance for the Court when it is required to assess what should be the expected European response to infringements of human rights including in the media sector. Standard setting instruments provide an extremely important basis for the Court's inquiry. It is for that reason that the recent Declaration of the Committee of Ministers on the protection of journalism and safety of journalists and other media actors may be of great assistance to the Court in a relevant case.

8. The Court has also had recourse to the case-law of other international courts when examining issues of relevance to today's Conference. For example in finding for the first time that an interim measure was binding in nature, the Court referred extensively to the case-law of the International Court of Justice and to that of the Inter-American Court of Human Rights in this area. The case-law of the Inter-American Court on the phenomenon of enforced disappearances – an issue which is of great concern to journalists in different parts of the world – was also a point of reference for the Strasbourg Court when it first had to deal with this grave breach of human rights from the standpoint of a Contracting State's positive and procedural obligations.

9. Accordingly the Court would welcome the development of further legal instruments, policies and practical mechanisms, such as the platform for information exchange on the protection and safety

elaborated within the framework of the Council of Europe. Such initiatives can enrich the Court's approach to this crucial issue.

10. As for the Court's own contribution, we must bear in mind that the Convention is application-driven. The Court cannot work as a standard setting body/policy-making body in the abstract. Its mission is to examine the admissibility and merits of concrete cases, such those brought by the family of Mr Dink. That said, the Court's case-law does set the pan-European standard expected of public authorities in the area of media freedom in terms of obligations of a positive and procedural nature.

11. In this connection the Research and Library Division of the Court will continue to monitor for the benefit of the Court developments at the international level including the reports of the UN Special Rapporteur on freedom of expression/the case-law of the Inter American Court/the policy documents and reports of the OSCE/the legal and policy instruments elaborated within the framework of the Council of Europe/and so on.

12. I should also like to highlight the fact that, as a result of the translations programme which the Court launched in 2012, over 12,000 case-law translations in nearly thirty languages (other than English and French) have now been made available in the HUDOC database. Some of the cases which are now available in translated form contain important Court reasoning on media freedom and the protection of journalists. The cases can be searched in HUDOC using the appropriate keywords. I would suggest that this initiative is of immense importance for the training of a media-freedom sensitive judiciary since it makes the essential Convention principles readily accessible in the language of the country concerned.

DISCUSSION

Participants: Jane Connors, Carmen Draghici, Sejal Parmar.

DK Thank you very much. That actually gives us maybe a couple of extra moments for some final questions here. I was interested to hear you mention the margin of appreciation. It is good to be in the European Court and to hear mention of that. So because it is sort of counter (visual?) nature and also because of - - because I am not exactly sure how it applies in

the context of protection of journalism. But maybe you could address that and we could take three questions and then everyone may respond.

So Jane Connors first.

Jane Connors Thank you very much. I found this very interesting this afternoon. I was just wondering: I know that the European Court of Human Rights and also the Inter-American Court has picked up on General Comments and the jurisprudence of the human right treaty bodies.

What I would like to know is there any reflection on the work of special Rapporteurs of the Human Right Council and indeed ... there is no European special rapporteur as far as I know, but is there any pick-up on those and also has.. is the information from the Universal Periodic Review in any way put to the courts, because although it looks like an intergovernmental process, it is indeed a bilateral process as well and I think that is interesting to know, because a culture of what is developing and what states feel about what is inappropriate is made clear on a bilateral basis. Thank you.

DK Thank you Jane. We have two other questions and a question here.

Carmen Draghici I had a question for judge Robles. You mentioned that one of the main challenges to the effectiveness of the Inter-American system is the lack or the limited ratification of the convention. Now a problem that we had in Europe even with states ratifying the European Convention was that they did not follow that by the adoption of instruments, domestic instruments incorporating the convention [into domestic law], with the result that domestic litigants could not plead convention rights directly before domestic tribunals. This was indeed the situation of the UK until 2000. So based on your experience with preliminary

objections to the jurisdiction have you noticed, have you encountered similar problem in the Inter-American system. Is the lack of incorporation an issue? Thank you.

DK I think we have time for one other question. If we have? Ok. Yes, sure Sejal.

Sejal Parmar I have a question for Lawrence Early. To what extent can the European Court of Human Rights learn from the Inter-American Court of Human Rights when it comes to remedies? Because it is in this area that the Inter-American Court really excels. Just going back to the background paper I remember that in *Velez Restrepo* there are all kind of interesting and innovative and far reaching remedies decided, such as the provision of health care, education programs. And in another Colombian case the Court ordered the state to organize a public activate acknowledgment of international responsibility for example, and also provide medical and psychological treatment that victims require. Given ECHR's approach to remedies, can they really adopt those kind of approaches in terms of dealing with protection of journalists here in Europe?

DK Great. Thank you. I think what I will do is I will turn to judge Ventura first and then to Lawrence Early.

MVR Let me first say that we do not utilize margin of appreciation in our deliberations and in our judgements. We have talked about this in many occasions, but it had not been approved by the court. While one of the (?) with the scholar with the judges of the European Court two weeks ago when we were here.

Regarding the other point, yes, not only the Inter-American Court, but the Inter-American Commission utilizes the documents approved by other organs of human rights in the universal level or regional level in order to decide our judgments. And the commission hand their written papers to the court. Yes, that is used. And they are very important in order to establish the

situation, the real political situation in which the facts took place and where the violation occurred.

Now regarding your question. Yes. In many cases the commission ask the court to declare violation of Article 2 of the Convention -- that is, order the State to amend their legislation because the regulation that they have ... or because they do not have any legislation regarding the matter of the case. So in not only one or ten, many many many cases we have had that kind of problem. For me the most important jurisprudence in this matter -- we were talking some time about this case -- is the last ((intentional crisis)) a case or an old case against Chile in which the court ordered the government of Chile to amend the constitution, to eliminate censorship; and the state did it, amend the constitution, the law and the bye-laws in order to allow the (?) of this field. Thank you.

LE First as regards the margin of appreciation I think I should clarify: when it comes to threats to the life or the health of journalists then there is no scope for the state being able to appeal to margin of appreciation. A margin of appreciation really kicks in when a state for example considers that the nature of the article which is being published by the journalist is in effect capable of incitement to hatred. Whether that is or is not the case is something which falls to the appreciation of the authorities, but they must give relevant and sufficient reasons as to why they come to that conclusion. So when it comes to restrictions on the exercise of free speech rights, when it comes to the exercise of journalistic freedoms the state does have a margin of appreciation, discretion as to how to assess the situation, but assessment of course is ultimately subject to the supervision of the court in Strasbourg. But it does exist, but when it comes to attacks on journalists then there is absolutely no scope for being able to justify either a failure to investigate or a failure to protect with reference to a margin of appreciation doctrine.

As regards the information, the material which is by Special Rapporteur's within the UN system, yes the court does have regard to the reports. I should stress that within the registry we have a research division which is composed of very skilled lawyers, skilled in obtaining and packaging

information concerning comparative law, comparative practice, case law of regional courts, international courts, the materials which is by the UN Special Rapporteurs; and the court quite often when discussing Article 10 matters does request the research division to compile comparative law report on the issue, or to bring to its attention what has been done within the OSCE, within the UN, within the Geneva UN Committee, within the Inter-American Court of Human Rights. We of course follow closely the General Comments which are prepared for the UN Human Rights Committee. We try to operate in as broad a canvas as possible so as to ensure that our court is as informed as much as possible so that its final product, its judgement, its solution on a particular case is sufficiently enriched by all relevant materials.

The Inter-American court, yes I think it is true that the range of remedies within the Inter-American system is not on a par with that in Strasbourg. Our judgements are essentially declaratory of the breach and it falls to the Committee of the Ministers under Article 46 of the Convention to ensure that the respondent state takes the necessary measure at the domestic level with a view to giving effect to the judgement. That being said there have been developments in recent years in which the court has in its judgments been particularly injunctive and particularly proactive when it comes to describing the sort of remedy which the respondent state should introduce, and that is particularly true of cases where applicants are in arbitrary detention, the court will have no concerns about stipulating within the operative part of its judgment that the state must as a matter of urgency secure the release of the applicant -- be he or she a journalist or an ordinary individual. And then when it comes to structural problems within the respondent state, endemic systemic problems where the legal order is incapable of providing redress for the violation of the convention right in question the Court very often adopts what is called a pilot judgement in which it sets out in relative detail the type of remedies which must be introduced in the domestic legal order with a view to addressing the problems, the system or the structural problems which have been identified in its judgement. So there has been very significant development in the court's ability to indicate in its judgement the type of remedial measures which must be taken by the state. As I understand it this court has not yet done so in the context of a case involving the protection of journalists, but well the ((Manoli .vs. Moldova)) case is a very interesting example. In that case the court found that in

fact there was a systematic problem of censorship of the public broadcasting media, and the court did draw attention to the sort of steps which Moldova must take with a view to ensuring the convention-compliant audiovisual landscape. Thank you.

DK Thank you. We are about to wrap up. I know judge Ventura wanted to say one point on remedies and then we will close.

MVR Just a word. Thank you. Very important what Lawrence said about the Council of Ministers in the Council of Europe because we do not have that institution in the Inter-American system. And that is a gap, a very important gap that sooner or later will have to be considered by the political areas. The only thing that the court can do when a state does not want to comply with the judgement is established in Article 65 on the convention, that says that in its annual report to the General Assembly of the OAS [the court] can inform for the appropriate measures the General Assembly of this situation. The General Assembly is composed by the ministry of foreign affairs of all the member states but has only one meeting during the year that lasts two days. So a solution had been established by the court and is in its rules of year 2000; [it] established a new regulation that says that the court can ask for information [from] to the state, to the commission and to the victims regarding the fulfilment of their obligations in a particular case and then immediate resolution regarding that matter or very important cases or serious cases it calls for a public hearing regarding their noncompliance on the judgment. And this works. This works. And this is the way the court has been working during the last ten years.

DK Thank you judge Ventura. Thank you Lawrence Early. We will conclude here. If it were up to me we would order pizza and go for another three hours, but we are unable to do that. Just to conclude I wanted thank the organizers for having us this last panel late when people are not falling asleep. Thank you very much. It has been a really terrific day and also since I know we will be leaving in a few minutes to thank the interpreters for terrific service over the course of the day.

Thank you everybody.

RAPPORTEUR'S CONCLUSIONS [FULLER WRITTEN VERSION TO BE PUBLISHED LATER ONLINE]

Tarlach McGonagle

Good afternoon. I am very grateful and very honoured to be given this somewhat the task of being Rapporteur for the whole day. I have mixed feelings about that. Time does not permit me to go into them!

Let me try and just very briefly essentialise what I have identified as a number of key themes that have been recurrent throughout the day. I will be writing this up so I will keep it very, very short and then hopefully you would not notice the fact that some sentences are not finished or that their tails are in the wrong places... I think the first thing that was very interesting to observe this morning was on the one hand the ambition that has been the driving force of this whole event, but also more broadly the international movement to ensure greater protection for journalists and also to combat impunity, and the sense of we have to go further and push this as far as we can. And then there was a very prudent call for expectation management. And after that I think for the rest of the day we moved into a space where we engaged with potential possibilities and I think that was very rewarding.

My overarching conclusion is that the urgency of the situation we are addressing needs to be matched by an urgency of engagement. And that engagement needs to be comprehensive and differentiated. It needs to be strategic and creative and it needs a greater number of actors to engage wholeheartedly and in both general and targeted ways.

As for the comprehensive and differentiated nature of the engagement, as we were reminded by the Deputy-Secretary General this morning we need a systematic approach. It needs to be normative. It needs to be political and it also needs to have a cooperative dimension. You could add to that by pleading for informational and educational and awareness-raising measures to take its part in a broader well-functioning whole; and this whole process should be dialogue driven, certainly when reaching out to other actors and getting them involved in a more effective way...

You have got a very useful exploration of relevant legal and jurisprudential standards in the background paper that has been provided by Dr Parmar. What I think is crucial is that we drill down into the existing international human rights standards, identify the precise obligations on states, positive and negative, under the international human rights law regime with a view to their further development.

First of all by international and regional courts, and then by national law makers, we need to enumerate the different types of obligations, explain them, demystify them so that there is a

heightened chance that they will in fact -- here I use Mr Kaye's words "that we will be able to embed international standards in national processes". We need to tease out the concrete implications of these obligations for the range of state authorities ultimately responsible for their implementation: police officers, military, prison guards and so on. And then we also need to tease out their implications for specific situations which give rights to very different contextual considerations: states of emergency, conflict zones, public protest, crisis situations, the court -- courts in general, as we have heard, can engage with the facts before them, but then and this is important for the systematic approach, other bodies need to step in and take these standards further.

And then when we drill down as I say into these standards we can categorize the different state obligations into, for example measures of preventions, protection, prosecution and also the promotion of best practices. There has been such a wealth of insights and detail today I would not have been able to do it justice with the allocated time, but what it is important is that we really engage with that and take it forward, spell it out, see how it can become more effective in practice, make sure that the plethora of standards that we have are not just theoretical and illusory -- to use the parlance of the European Court of Human Rights, or 'a waste of ink and paper' to use the words of Professor O'Flaherty, but they become really and truly practical and effective.

And when it comes then to how we fill this space of possibility that we have opened up, we can look at a range of strategic measures. Rule 39 interim measures with the European Court of Human Rights: one of the mechanisms that could be used to [expedite?] the slow moving nature of international mechanisms. The optimisation of intra-institutional synergies: we have heard examples today of how the UN Rapporteur can work with regional equivalents and so on and so forth. There is a richness of potential there. And also amongst regional bodies, such as the OSCE RFoM [Representative on Freedom of the Media] and the Commissioner [for Human Rights] at the Council of Europe. And then the creative thinking.

And my closing sentence:-

We saw in the panel moderated by Professor Voorhoof that there are certain inconsistencies in case law which may provide fertile ground for creative thinking. It might have not worked in on one occasion, it might work in another. Mr Noorlander had a probing question about the potential of Rule 39 for the release of journalists. It is only through the use of strategic litigation and advocacy and trying things out that we will be able to test the full potential of these mechanisms, which we do not intuitively always think of. And of course the relevance of external sources for other bodies. That is what this is all about. A former professor of mine, Kevin Boyle, once talked about the global village of precedent in which we live; and it is not just about precedent that we share with each other, it is also about principles, best practices and when there are not best practices, best practices for troubleshooting.

Thank you very much.

Closing Remarks

Jan Kleijssen

Thank you very much Tarlach. You had an impossible task to summarize the [drift?] of today's discussions. I can assure you I will be extremely brief. Just a few sentences on follow-up that ought to be given to today's deliberation.

First of all, as you said Tarlach, your conclusions will be available in written on our site and I think they will provide a lot of material for participants here as well as for the competent Council of Europe committee, whose chair is also here today, to see what we can do as Council of Europe to follow up. What in any case we are already doing is to set up a web- based platform for the safety of journalists. It received a strong support from a large number of member states. This very month the Committee of Ministers will decide on its setting up and I think that initiative of the Secretary General could go some way in meeting number of concerns that were raised here today.

Secondly, the idea of a compendium which compiles international and regional human rights remedies and legal resources I think that has come up several times and we will certainly look into that as well.

Thirdly, as regards cooperation programs which we carry out at the Council of Europe -- the necessity to address perhaps more specifically the police institutions, police academies. We do train these people to be more aware of the rights of journalists, given the Commissioner's rather shocking statement that half of the journalists injured are injured by police ,and of course also the judiciary and the prosecution, authorities whom we cooperate and to whom we provide training.

Finally the fourth issues which we are already working on are the new media actors that came up throughout the discussions as well. Of course traditional journalists, but also new media actors and whatever name we give them bloggers, citizen, web citizen all these sort of thing, we all know whom we are talking about, and their concerns and their safety also should be at the centre of our attention.

And finally as is the privilege of the person who can actually close the event I would of course like to say thanks to UNESCO, to the Centre for Freedom of the Media of the University of Sheffield, to the European Lawyers Union, to the Open Society Foundation, to my own colleagues at the Council of Europe for having put a lot of energy into this organization, to our Rapporteur of course, to all the speakers, to all of you participants and to the Court for have generously hosted us and last but not least for the interpreters for having been so patient since we are badly running out of time.

Many thanks indeed. Have a good evening. See you soon again.

(ENDS)

NOTE: Brackets [] are used to indicate that wording was indistinct or has been edited for clarity of meaning only