

**Order of the
Inter-American Court of Human Rights
of September 4, 2004
Provisional Measures regarding Venezuela
Matter of "Globovisión" Television Station**

HAVING SEEN:

1. The July 16, 2004 brief and its attachments, in which the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") filed before the Inter-American Court of Human Rights (hereinafter "the Court") a request for provisional measures, pursuant to Articles 63(2) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention"), 25 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure") and 74 of the Rules of Procedure of the Commission, "for their urgent adoption," to ensure that the State of Venezuela (Bolivarian Republic of Venezuela) (hereinafter "the State" or "Venezuela") "protect[s] the lives, safety, and freedom of expression of the journalists, management, and other employees of [Venezuelan television station] Globovisión [(hereinafter "Globovisión")]" who are at the facilities [of said] social communications broadcaster [...] or who are associated with the journalistic operation of said broadcaster". The Commission also asked the Court to order the State to take such steps as may be necessary to protect the perimeter of the head office of Globovisión channel.

2. The grounds stated by the Commission in its request for provisional measures (*supra* Having Seen 1), summarized as follows:

a) on January 20, 2002 Mayela León Rodríguez, Jorge Manuel Paz and María Fernanda Flores, employees of Globovisión, and other employees of Radio Caracas Televisión (hereinafter "RCTV"), were attacked by a group of approximately 50 persons while they were covering transmission of the "Aló Presidente" program;

b) on January 30, 2002 the Commission adopted precautionary measures in favor of the aforementioned employees of Globovisión and other employees of RCTV. In said measures, the Commission asked the State to abstain from "all [...] intimidating actions regarding the practice of their profession by the journalists and other employees of the [aforementioned] broadcaster;"

c) during 2002 the Commission asked the State to adopt precautionary measures and extended them in 2003 and 2004 with the aim of protecting the lives, safety, and freedom of expression of "cameramen, management, photographers, and facilities of the media attacked", including Globovisión;

d) on July 9, 2002 a low-power device exploded in Globovisión's facilities in la Florida, to the northeast of Caracas;

- e) on November 17, 2002 an explosive device was thrown in front of Globovisión's facilities, causing a fire that destroyed three vehicles;
- f) on January 3, 2003, Carla Angola, a journalist for Globovisión, was attacked by government supporters while she was covering an opposition demonstration. An administrative proceeding also commenced against said station, which may lead to Globovisión's being fined, to temporary suspension of its broadcasts, and even to annulment of the television concession;
- g) on November 12, 2003 Douglas Godoy, a cameraman for Globovisión, and his assistant, were attacked by a group of government supporters while they were covering an event held by the wife of the mayor of the Municipality of Sucre in the State of Miranda;
- h) on December 3, 2003 Dona José Umbría and Martha Palma Tronconis, journalists for Globovisión, were attacked while they were covering a demonstration of employees of the Instituto Venezolano de los Seguros Sociales. That same day a team of reporters, composed of journalist Beatriz Adrián, cameraman Angel Millán and Oscar Núñez, was attacked while they were covering disturbances in downtown Caracas. Though present there, the National Guard did not intervene.
- i) on January 18, 2004, a team of journalists of Globovisión that was traveling in a vehicle belonging to the channel, composed of cameraman Joshua Torres and his assistant Zullivan Peña, was attacked with pipes, blows, and firearm shots, while they were filming an aggression by government supporters against a supporter of the Movimiento al Socialismo (MAS);
- j) on February 19, 2004, three vehicles with roughly ten heavily-armed men broke into the facilities of Glovovisión and took away a radio transmitter that belonged to the channel. That same day a team of reporters, composed of journalist Jesús Rivero Bertorelli, cameraman Efraín Hernández and assistant Carlos Tovar, was attacked while it covered a demonstration at the Labor Ministry;
- k) on February 20, 2004 the facilities of Globovisión were attacked by a group of approximately 10 armed persons, dressed in black and with their faces covered, who searched the place and took away a radio transmitter that belonged to the channel;
- l) on February 27, 2004 Miguel Angel Calzadilla, a journalist for Globovisión, was wounded while he was covering a march summoned by the Coordinadora Democrática in Caracas, during which the National Guard blocked the demonstrators' way with tear gas and pellets;
- m) on February 27, 2004 the Commission adopted admissibility report No. 7 of 2004 regarding the alleged violations of the rights protected by Articles 1(1), 2, 5(1), 8, 13 and 25 of the Convention, to the detriment of several employees, shareholders and managers of Globovisión;
- n) on March 1, 2004 Janeth Carrasquilla, a journalist for Globovisión, suffered a head wound due to the impact caused by a tear gas bomb thrown

by the National Guard while she was covering a demonstration by the opposition to the Government in Valencia. That same day, during a demonstration by opponents of the government in Caracas, a military policeman shot a tear gas bomb at Johnny Ficarella, a journalist for Globovisión;

o) on May 9, 2004, during transmission of the "Aló Presidente" program, the President of Venezuela stated that "the owners of the private media [...] Venevisión, Globovisión, Radio Caracas Televisión[,...]El Nacional [and...]el Universal [...] [we]re involved with terrorism and destabilization, and [were] enemies of the people of Venezuela." In this regard, he stated that said media had declared war on the "Venezuelan people, on the Constitution, [...] on the government, [...] on the [a]rmed [f]orces, [...] on the Venezuelan people [and] on the institutions;"

p) on May 19, 2004 a tear gas bomb was shot against the team in charge of Globovisión's program "Primera Página", during its broadcast, which led to interruption of the broadcast. The smoke affected the director of the program and the audio operator, and even affected children and patients who were at a clinic in the area; and

q) on May 29, 2004 two teams of Globovisión journalists were attacked by government supporters while they were covering, in various parts of Caracas, a "process of gathering signatures for the request for a Presidential recall referendum" in the Republic.

3. In view of all the above, the Commission asked the Court to order the State of Venezuela to:

a. Adopt such measures as may be necessary to protect the lives, safety, and freedom of expression of the journalists, management, and other employees of Globovisión who are in the facilities of the Globovisión broadcasting firm or who are associated with the journalistic operation of said broadcaster.

b. Adopt such measures as may be necessary to protect the perimeter of the main office of Globovisión channel.

c. Arrange participation of the beneficiaries of the measures of protection or their representatives in the planning and implementation of the measures of protection so as to ensure their effectiveness and pertinence.

d. [...]investigate the facts that gave rise to the instant request, with the aim of investigating and punishing those responsible.

4. The July 21, 2004 note by the Secretariat of the Inter-American Court of Human Rights (hereinafter "the Secretariat") in which, under instructions by the President of the Court (hereinafter "the President"), it granted up to July 28, 2004 for the State to send its observations on the request for provisional measures filed by the Commission in the instant case (*supra* Having Seen 1). The State sent no observations on the matter.

5. The August 3, 2004 order of the President of the Court in which, in consultation with all the judges of the Court, he decided:

1. To order the State to adopt, forthwith, such measures as [might] be necessary to safeguard and protect the lives, safety, and freedom of expression of the journalists,

management, and employees of Globovisión, and of the other persons who are in the facilities of said broadcaster or who are directly linked to the journalistic operation of this broadcaster.

2. To order the State to adopt, forthwith, such measures as [might] be necessary to protect the perimeter of the head offices of the Globovisión social communications broadcaster.

3. To order the State to investigate the facts that g[a]ve rise to adoption of the [...] measures, with the aim of identifying those responsible and punishing them as appropriate.

4. To order the State to allow the representatives of the beneficiaries of these measures to participate in their planning and implementation and, in general, to inform them of progress regarding the measures ordered by the President of the Inter-American Court of Human Rights.

5. To order the State to report to the Inter-American Court of Human Rights within ten days of notification of the [...] Order, regarding the steps it ha[d] taken to comply with it.

6. To ask the representatives of the beneficiaries of these measures to submit before the Inter-American Court of Human Rights, within five days after notification of the report by the State, such observations as they deem[ed] pertinent.

7. To ask the Inter-American Commission on Human Rights to submit to the Inter-American Court of Human Rights, within seven days after notification of the State's report, such observations as it deem[ed] pertinent.

8. To order the State to inform the Inter-American Court of Human Rights, every two months, regarding compliance with the measures adopted, and to ask the representatives of the beneficiaries of these measures to submit their observations on the bi-monthly reports by the State, within one month after they receive them, and the Inter-American Commission on Human Rights to submit its observations on said reports by the State within six weeks, of when they receive them.

[...]

6. The August 30, 2004 brief by the State, in which if forwarded "the literal transcript of the reply by the Public Prosecutor's Office of the Bolivarian Republic of Venezuela in the case of the Provisional Measure adopted in the Matter of 'Globovisión' Television Station." In said reply, by the Public Prosecutor's Office, the State expressed that:

a) on March 5, 2004 the Fourth Court with oversight functions in the criminal court circuit of the State de Carabobo "adopted Measures of Protection" in favor of [Janeth Carrasquilla], instructing the Police of the State of Carabobo to carry them out." The protection ordered by said Court is in force, but Mrs. Carrasquilla "has not appeared before the Public Prosecutor's Office to express that it is not being carried out;"

b) regarding "the other events mentioned in the document issued by the Inter-American Court of Human Rights, with respect to which it is necessary to specify that these events took place in the Metropolitan Area of Caracas, in response to a request by the Public Prosecutor's Office, the Thirteenth and Thirty-third Courts with oversight functions in the Criminal Court Circuit of the Metropolitan Area of Caracas on February 26 and March 15, 2002, respectively ordered Measures of Protection to safeguard the lives and safety of the workers, journalists, and technicians of the Globovisión [...] television channel, instructing various security bodies of the State to carry them out,

including [...] especially the Metropolitan Police, the Caracas Police and the National Guard, among others. [...] S]aid protection was expanded by the aforementioned courts on April 11 and October 20, 2002, thus including both the facilities where said broadcaster operates, and the microwave retransmission antennae that it uses;"

c) on May 4, 2004, the Sixty-eighth Prosecutor of the Public Prosecutor's Office of the Judicial Circumscription of the Metropolitan Area of Caracas was appointed to "process the extension" of the precautionary measures ordered by the Inter-American Commission in favor of the employees, property and facilities of the Globovisión television channel. On May 6, 2004, in response to a request by the Public Prosecutor's Office, the Thirty-third Court with oversight functions in the Criminal Court Circuit of the Metropolitan Area of Caracas, "ratified the measures adopted before"; and

d) The Third Prosecutor of the Public Prosecutor's Office of the Judicial Circumscription of the State of Carabobo was entrusted with investigating the facts that took place on March 1, 2004 with respect to Janeth Carrasquilla. The process is in a "state of investigation" and "several witnesses of the facts and the aforementioned victim have been interviewed, and a Medical Forensic Examination of the latter was ordered."

7. The two communications submitted by the State on September 3, 2004, in which it reported on the measures adopted in the *Matter of the "Globovisión" Television Station*. The State indicated that it submitted the "information supplied by Public Prosecutor's Office of the Bolivarian Republic of Venezuela, complementing that already provided [...] regarding actions by the Public Prosecutor's Office in view of the alleged aggressions to journalists and workers of the 'Globovisión' [...] television channel, all the above based on Admissibility Report N° 7/04, issued on February 27, 2004 by the Inter-American Commission on Human Rights". In addition to what was already reported in the August 30, 2004 brief (*supra* Having Seen 6), the State pointed out that on January 31, 2002 the Second and Seventy-fourth Prosecutors of the Public Prosecutor's Office of the Judicial Circumscription of the Metropolitan Area of Caracas were commissioned, and they began the respective investigation. The State also indicated that "the investigation regarding the instant case is in the investigative phase, during which various useful and necessary steps have been taken to extend elucidation of the facts and determine responsibilities [...], including the interviews with the complainants and approximately forty (forty) citizens [...], forensic medical examinations of the victims, technical expert assessment of objects gathered, photographic records, and ocular inspections." Finally, the State indicated that on May 21, 2004, the Sixty-eighth Prosecutor asked Globovisión "to forward the list of the transport units serving said company that suffered material damage in the events reported to the Second and Seventy-fourth Prosecutors of the Public Prosecutor's Office of the Judicial Circumscription of the Metropolitan Area of Caracas."

WHEREAS:

1. The State ratified the American Convention on August 9, 1977, and pursuant to Article 62 of that Convention, it recognized the contentious jurisdiction of the Court on June 24, 1981.
2. Article 63(2) of the American Convention provides that:

[i]n cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court shall adopt such provisional measures as it deems pertinent in matters it has under consideration. With respect to a case not yet submitted to the Court, it may act at the request of the Commission.

3. With respect to this matter, Article 25(1) and 25(2) of the Rules of Procedure of the Court sets forth that,

[a]t any stage of the proceedings involving cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court may, at the request of a party or on its own motion, order such provisional measures as it deems pertinent, pursuant to Article 63(2) of the Convention.

[w]ith respect to matters not yet submitted to it, the Court may act at the request of the Commission.

[...]

4. Article 1(1) of the Convention states the obligation of the States Parties to respect the rights and freedoms recognized in that treaty and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms.

5. In International Human Rights Law, in addition to their essentially preventive or precautionary purpose, urgent and provisional measures are protective because they effectively protect fundamental rights, inasmuch as they seek to avoid irreparable damage to persons. Thus, provisional measures become a true preventive judicial guarantee.¹

6. It is a responsibility of the State to adopt security measures to protect all persons under its jurisdiction, and this duty is even more evident in connection with persons involved in proceedings before the bodies that oversee protection under the American Convention.

7. The precautionary measures adopted by the Inter-American Commission with the aim of protecting the lives, safety, and freedom of expression of journalists, cameramen, management, and photographers, as well as to provide protection of the facilities of Globovisión, have not had the desired effects and, instead, the facts that took place thereafter make it reasonable to presume that the journalists, management and employees of Globovisión, as well as other persons who are in the facilities of the Globovisión broadcasting firm or who are associated with the journalistic operation of that broadcaster, are at grave risk.

8. Freedom of expression, enshrined in Article 13 of the Convention, is a cornerstone of the very existence of a democratic society and is indispensable for the development of public opinion. It is also a *conditio sine qua non* for the political parties, the labor unions, scientific and cultural societies, and in general those who want to influence collective life, to fully develop. It is, ultimately, a condition for the

¹ See *Case of the Urso Branco Prison*. Provisional Measures. July 7, 2004 Order of the Inter-American Court of Human Rights, Whereas four; *Matters of: Liliana Ortega et al., Luisiana Rios et al., Luis Uzcátegui, Marta Colomina and Liliana Velásquez*. Provisional Measures. May 4, 2004 Order of the Inter-American Court of Human Rights, Whereas five; and *Case of the Urso Branco Prison*. Provisional Measures. April 22, 2004 Order of the Inter-American Court of Human Rights, Whereas four.

community to be sufficiently informed when it exercises its options. Therefore, it is possible to state that a society that is not well informed is not fully free.²

9. The social communication media contribute to realization of freedom of expression, so the conditions under which they function must be in accordance with the requirements of that freedom.³

10. It is crucial for journalists who work for the media to enjoy the necessary independence and protection to fully perform their functions, since it is they who keep society informed, and this is an indispensable requirement for society to enjoy full liberty and to strengthen public debate.⁴

11. The Court has ordered protection of a plurality of persons who have not been named previously, but who are identifiable and can be determined, and who are in a situation of grave danger.⁵ To effectively ensure the rights set forth in the American Convention, the State Party has the obligation to protect all persons under its jurisdiction, both with respect to actions by its own agents and regarding actions by private third parties.⁶

12. Before adopting urgent measures, the President granted the State a period to send its observations on the request for provisional measures filed by the Commission (*supra* Having Seen 4), and the State made no observations on the matter.

13. After examining the facts and circumstances that gave rise to the President's August 3, 2004 Order (*supra* Having Seen 5), the Court deems that there continues to be, *prima facie*, a threat to the lives, safety, and freedom of expression of all the journalists, management, and workers of Radio Caracas Televisión, as well as those of other persons in the facilities of said broadcaster or who are associated with the journalistic operation of this broadcaster. The *prima facie* standard of assessment in

² See *Case of Herrera Ulloa*. July 2, 2004 Judgment. Series C No. 107, para. 112; *Matter of Luisiana Ríos et al. (Radio Caracas Televisión-RCTV-)*. Urgent Measures. July 27, 2004 Order of the President of the Inter-American Court of Human Rights, Whereas nine; *Matter of "El Nacional" and "Así es la Noticia" Newspapers*. Provisional Measures. July 6, 2004 Order of the Inter-American Court of Human Rights, Whereas nine; and *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No.5, para. 70.

³ See *Matter of Luisiana Ríos et al. (Radio Caracas Televisión-RCTV-)*, *supra* note 2, Whereas ten; *Matter of "El Nacional" and "Así es la Noticia" Newspapers*, *supra* note 2, Whereas ten; and *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, *supra* note 2, para. 34.

⁴ See *Case of Herrera-Ulloa*, *supra* note 2, para. 119; and *Case of Ivcher-Bronstein*. February 6, 2001 Judgment. Series C No. 74, para. 150.

⁵ See *Matter of "El Nacional" and "Así es la Noticia" Newspapers*, *supra* note 2, Whereas eleven; *Matter of the Pueblo indígena de Sarayaku*. Provisional Measures. July 6, 2004 Order of the Inter-American Court of Human Rights, Whereas nine; and *Matter of the Pueblo indígena de Kankuamo*. Provisional Measures. July 5, 2004 Order of the Inter-American Court of Human Rights, Whereas nine.

⁶ See *Matter of Carlos Nieto et al.*. Provisional Measures. July 9, 2004 Order of the Inter-American Court of Human Rights, Whereas nine; *Case of Carpio-Nicolle et al.*. July 8, 2004 Order of the Inter-American Court of Human Rights, Whereas seven; and *Matter of "El Nacional" and "Así es la Noticia" Newspapers*, *supra* note 2, Whereas twelve.

a case and application of presumptions regarding the need for protection have led the Court several times to order provisional measures.⁷

14. In view of the above, the Court deems that the measures adopted by the President in his August 3, 2004 Order (*supra* Having Seen 5) must remain in force, for which reason it ratifies that Order to its full extent.

15. The case that the Commission's request refers to is not being heard by the Court regarding the merits, and therefore adoption of provisional measures does not involve a decision on the merits of the dispute between the petitioners and the State. By adopting provisional measures, the Court is merely ensuring that it can fully exercise its mandate pursuant to the Convention in cases of extreme gravity and urgency that require measures of protection to avoid irreparable damages to persons.⁸

16. On August 30, 2004 the State filed a brief in which it forwarded information regarding the measures ordered by the President. According to the State, the information supplied consists of "the literal transcript of the reply sent by the Public Prosecutor's Office of the Bolivarian Republic of Venezuela [regarding] the Provisional Measures adopted in the *Matter of 'Globovisión' Television Station.*"

17. On September 3, 2004 the State filed two briefs in which it reported on the measures adopted in the *Matter of "Globovisión" Television Station* (*supra* Having Seen 7).

18. With respect to the measures to protect the lives, safety, and freedom of expression, as well as to protect the head offices of Globovisión, the State pointed out in said briefs (*supra* Having Seen 6 and 7) that in 2002 "[m]easures of protection were ordered" to protect the lives and safety "of the workers, journalists, and technicians" of said channel, as well as "the facilities where the head offices of said broadcaster operate, and the microwave retransmission antennae that it uses. Security bodies such as the Metropolitan Police, the Caracas Police and the National Guard were designated to carry out said measures of protection." The State also pointed out that on March 5, 2004 the Fourth Court with oversight functions in the Criminal Court Circuit of the State of Carabobo "ordered Protective Measures" in favor of [Janeth Carrasquilla], instructing the Police of the [S]tate of Carabobo to carry out said measures." According to the State, said measure of protection is in force, even though Mrs. Carrasquilla "has not appeared before the Public Prosecutor's Office to state that it is not being fulfilled." The State also indicated that on May 4, 2004 the Sixty-eighth Prosecutor of the Public Prosecutor's Office of the Judicial Circumscription of the Metropolitan Area of Caracas was appointed to "process the extension" of the precautionary measures ordered by the Inter-American Commission in favor of the employees, property and facilities of the Globovisión television channel, and that, on May 6, 2004 the Thirty-third Court with oversight functions in the Criminal Court Circuit of the Metropolitan Area of Caracas, "ratified the measures adopted before."

⁷ See *Case of Raxcacó-Reyes*. Provisional Measures. August 30, 2004 Order of the Inter-American Court of Human Rights, Whereas ten; *Matter of Carlos Nieto*, *supra* note 6, Whereas seven; and *Matter of "El Nacional" and "Así es la Noticia" Newspapers*, *supra* note 2, Whereas seven.

⁸ See *Case of Raxcacó-Reyes*, *supra* note 7, Whereas eleven; *Matter of Carlos Nieto et al.*, *supra* note 6, Whereas ten; and *Matter of "El Nacional" and "Así es la Noticia" Newspapers*, *supra* note 2, Whereas thirteen.

19. With respect to the investigation of the facts that gave rise to adoption of the urgent measures, in said briefs (*supra* Having Seen 6 and 7) the State referred to the investigation regarding what happened on March 1, 2004 to Janeth Carrasquilla, a journalist for Globovisión. According to the State, the process is in a “state of investigation” by the Third Prosecutor of the Public Prosecutor’s Office of the Judicial Circumscription of the State of Carabobo and “several witnesses of the facts and the aforementioned victim have been interviewed, and a forensic medical examination of the latter was ordered.” In one of its communications on September 3, 2004 (*supra* Having Seen 7) the State indicated that “the investigation with respect to the instant case is in the investigative phase, in the course of which various useful and necessary steps have been taken to extend elucidation of the facts and to establish liabilities[...] especially the interviews with the complainants and approximately forty (forty) citizens[...] forensic medical examinations of the victims, technical expert assessment of objects gathered, photographic records, and ocular inspections.” Finally, the State indicated that on May 21, 2004, the Sixty-eighth Prosecutor asked Globovisión to forward a “list of the transport units serving said company that suffered material damage in the events reported to the Second and Seventy-fourth Prosecutors of the Public Prosecutor’s Office of the Judicial Circumscription of the Metropolitan Area of Caracas.”

20. The Court has appraised and taken into account the information submitted by the State in its August 30, 2004 brief and in the report submitted in the two briefs sent on September 3, 2004. The three aforementioned briefs were also forwarded to the Commission and to the representatives, who may make whatever comments they deem pertinent, and the Court will assess them at the appropriate time. However, the Court has noted that in said briefs (*supra* Having Seen 6 and 7) the State did not refer to the development of implementation of the aforementioned measures to protect the lives, safety, and freedom of expression, and to protect the head offices of Globovisión, and did not state whether they have been effective to protect said rights, or whether the representatives have been allowed to participate in the implementation of those measures.

21. The provision set forth in Article 63(2) of the Convention makes it mandatory for the State to adopt the provisional measures ordered by this Court, since according to the basic legal principle of the international responsibility of the State, backed by international jurisprudence, the States must comply in good faith with their treaty obligations (*pacta sunt servanda*).

22. The State has the obligation to investigate the facts that gave rise to these provisional measures, with the aim of identifying those responsible and punishing them as appropriate.

NOW THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

exercising the authority granted by Article 63(2) of the American Convention on Human Rights and Article 25 of its Rules of Procedure,

DECIDES:

1. To ratify to its full extent the August 3, 2004 Order of the President of the Inter-American Court of Human Rights (*supra* Having Seen 5) and, therefore, to order the State to maintain the measures it has adopted and to adopt, forthwith, such measures as may be necessary to comply with said Order.
2. To order the State to continue investigating the facts that gave rise to adoption of the instant measures, with the aim of identifying those responsible and punishing them as appropriate.
3. To order the State to allow the representatives of the beneficiaries to participate in planning and implementation of those measures, and in general to inform them of progress regarding the measures ordered by the Inter-American Court of Human Rights.
4. To order the State to continue reporting to the Inter-American Court of Human Rights, every two months, on compliance with the measures adopted.
5. To call upon the representatives of the beneficiaries of these measures to submit their comments on the bi-monthly reports by the State, within one month of when they receive them, and on the Inter-American Commission on Human Rights to submit its observations on said reports by the State within six weeks from when it receives them.
6. To notify the instant Order to the Inter-American Commission on Human Rights, to the representatives of the beneficiaries of these measures, and to the State.

Judges García-Ramírez and Cançado-Trindade informed the Court of their Concurring Opinions, attached to this Order.

Sergio García-Ramírez
President

Alirio Abreu-Burelli

Oliver Jackman

Antônio A. Cançado-Trindade

Cecilia Medina-Quiroga

Manuel E. Ventura-Robles

Diego García-Sayán

Pablo Saavedra-Alessandri
Secretary

So ordered,

Sergio García-Ramírez
President

Pablo Saavedra-Alessandri
Secretary

**SEPARATE CONCURRING OPINION OF JUDGE SERGIO GARCIA-RAMIREZ IN
THE SEPTEMBER 4, 2004 ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
ON PROVISIONAL MEASURES IN THE MATTER OF "GLOBOVISIÓN"
TELEVISION STATION**

In the instant *Opinion*, I reiterate the considerations that I set forth in my *separate concurring opinions* attached to the Orders issued by the Inter-American Court of Human Rights with respect to the provisional measures in the *Matter of Pueblo indígena de Kankuamo* (July 5, 2004 Order), in the *Matter of "El Nacional" and "Así es la Noticia" Newspapers* (July 6, 2004 Order) and in the *Matter of Pueblo indígena de Sarayaku* (July 6, 2004 Order), and I will now reiterate said considerations.

1. In recent years, the jurisprudence of the Inter-American Court of Human Rights, heir to and beneficiary of the tradition of previous stages, has innovated with respect to various significant topics. The new criteria of the Court broaden the horizon of protection of human rights in a manner that is consistent with the values protected by International Law regarding this matter, set within the framework of the American Convention. Provisional measures are among the subjects addressed by the jurisprudence of the Court.

2. In this sphere, provisional measures address the general needs of judicial procedure and the objectives and requirements that pertain specifically to the system for protection of human rights. Therefore, they serve a dual purpose: a) the generic one, pertaining to any judicial procedure –as well as the preparatory proceedings for the judicial procedure- based on maintaining its subject matter, securing the evidence, presence of the participants, and so forth; and b) the specific one, resulting from the needs of the system for protection of human rights itself, pursuant to Article 63(2) of the American Convention.

3. Under the latter concept, provisional measures are geared toward protecting juridical rights against immediate threats. They are put into effect in cases of extreme gravity and urgency, when necessary to avoid irreparable damage. The Court has addressed these crucial references of protective measures before: gravity, urgency, imminence of irreparable damage. There are various matters to be addressed in this regard, in addition to those requirements for such measures, i.e.: the evidence required, the beneficiaries of the measures, their entity, the binding nature of the Court's protective measures, their duration, execution, and oversight, for example. I have analyzed these matters, addressed by jurisprudence, on several occasions.

4. Clearly, one of the salient points in the provisional measures system of the Inter-American Court, on which I will focus this *Concurring opinion* regarding several Orders issued during the same regular session, is that of the beneficiaries of the measures. Traditionally, the Court has maintained that said beneficiaries must be individually identified, to enable issuing the measure and ensuring compliance with it. However, it has been noted that under various circumstances there is, in fact, a situation of extreme gravity and urgency, associated with the possibility –more than that: a probability- of irreparable damage to the rights compromised, and it is not feasible to immediately establish –given the circumstances of urgency that explain

and justify the measures- the exact identity of the beneficiaries. In these cases, a number of persons face the same, grave danger.

5. If we were to wait until it is possible to individually identify those facing this danger of grave and irreparable detriment to legally protected interests –reflected in the respective rights-, there would be a risk of the injury occurring without the Court having intervened to avoid it, even though it was aware that it was not only possible but probable and imminent that it would occur. Thus, a technicality that could be overcome would keep the Court from acting promptly to carry out its true function: to use its jurisdictional authority to protect the rights that are at risk. It would be difficult to argue that abstaining from doing so is consistent with the protective mission entrusted to the Inter-American Court.

6. Hence the noteworthy shift in the jurisprudence of the Court beginning with the Order on provisional measures issued in the *Matter of the Peace Community of San José de Apartadó v. Colombia*, on November 24, 2000. For the first time, this Order extended the benefit of said measures to the members of a group of persons facing the same risk who were not listed individually but were identifiable in light of certain objective data that make it possible to establish their identity. With this, the jurisprudence of the Court took a great step forward in terms of true protection of human rights, which is not satisfied by reparation of the injury that already occurred, but rather requires, foremost, to act in a timely, sufficient, and diligent manner to avoid said injury.

7. In this case, mi colleague Judge Alirio Abreu-Burelli and I stated, in a *Separate Concurring Opinion*, the background, intent, and characteristics of the new subjective scope of the provisional measures, which certainly does not contravene the provisions of the Convention, but rather interprets its aims and adjusts judicial decisions to them. In this *opinion* we referred to the existing similarity, *mutatis mutandi*, between the diffuse interests subject to juridical protection and the breachable rights of individuals who are part of a more or less numerous group of persons, as well as the connection that might exist, also in relative terms, between a popular interest action to protect rights of members of a collectivity and urgent steps regarding those rights through a petition for provisional measures.

8. The criterion adopted in the *Matter of the Peace Community of San José de Apartadó* has been applied by the Court in other cases. This has asserted its relevance and has enabled this protective institution to evolve in a manner that is appropriate to the intent that inspires it. The *San José de Apartadó* case dealt with a peace community, whose members –several hundred individuals- were linked by a certain geographical settlement, which could vary, and certain joint decisions, which generated the individual and collective risk. In subsequent cases, other data for analysis of the group whose members benefit from provisional measures have appeared: it may be, as has in fact occurred, an indigenous community, a population of adult inmates or of juvenile offenders, a set of workers carrying out their activities in a specific center, and so forth. All these situations constitute spheres for application of the provisional measures, for exactly the same motives and reasons that were the grounds for the decision of the Inter-American Court in the *Matter of the Peace Community of San José de Apartadó*.

9. In the three cases that the Orders to which I attached this *Opinion* refer, as well as in that of the *Matter of "Globovisión" Television Station*, one can see the conditions that enable ordering provisional measures under the criterion adopted in

Matter of the Peace Community of San José de Apartadó. In all these cases there is, in the opinion of the Court, a common grave danger to the members of the group and it is necessary to order provisional measures to avoid irreparable damage to the persons who constitute that group, who are not specified individually, but who can be identified based on the data –the situation of commonality that involves, in this matter- commonality of danger- that are available and are stated in the Order. Two situations (*Matter of Pueblo indígena de Kankuamo* and *Matter of Pueblo indígena de Sarayaku*) involved ethnic groups, and both the *Matter of “El Nacional” and “Así es la Noticia” Newspapers* and the instant *Matter of “Globovisión” Television Station*, involve employees of various media, and other persons who are in their facilities or who are directly involved in the journalistic operation of those media. This variety of beneficiaries, nevertheless characterized by elements that give them coherence and unity, make evident the pertinence of the path taken for the first time in the *Matter of the Peace Community of San José de Apartadó*, four years ago.

Sergio García-Ramírez
Judge

Pablo Saavedra-Alessandri
Secretary

CONCURRING OPINION OF JUDGE A.A. CANÇADO-TRINDADE

1. I vote in favor of adoption of the instant Provisional Measures of Protection, in which the Inter-American Court of Human Rights orders that protection be extended to all persons working at the 'Globovisión' Television Station in Venezuela, or who are associated with it, or who are in its facilities. The Court also asserts the general obligation of the State to protect all persons who are under its jurisdiction, "both with respect to actions by its own agents and regarding actions by private third parties" (Whereas n. 11); clearly, this is a true *erga omnes* obligation to provide protection.

2. In this regard, I find myself under the obligation to take up once again the conceptual construction that I have been pursuing, within the Inter-American Court, precisely regarding the *erga omnes* obligations to provide protection under the American Convention. I do not intend to reiterate here, in detail, the points that I have previously developed regarding this matter, specifically in my Concurring Opinions in other Orders regarding Provisional Measures of Protection adopted by the Court,⁹ but rather to briefly highlight the key points of my reflections on this matter, with the aim of ensuring the effective protection of human rights in a complex situation such as that of the instant *Matter of "Globovisión" Television Station*.

3. Actually, well before said Orders were issued by the Court, I had already pointed out the urgent need to foster the development of doctrine and jurisprudence of the juridical system regarding the *erga omnes* obligations to provide protection of the rights of the human person (e.g., in my Separate Opinions in the Judgments on the merits, 24.01.1998, para. 28, and on reparations, 22.01.1999, para. 40, in the *Case of Blake v. Guatemala*). And in my Separate Opinion in the *Las Palmeras* case (Judgment on preliminary objections, 04.02.2000), with respect to Colombia, I argued that the appropriate understanding of the broad scope of the general obligation to *ensure* the rights enshrined in the American Convention, set forth in its Article 1(1), can contribute to realization of the aim of development of the *erga omnes* obligations to provide protection (paras. 2 and 6-7).

4. Said general obligation to ensure respect –I added in my aforementioned Opinion in the *Case of Las Palmeras*– applies to each State Party individually and to all of them together (*erga omnes partes* obligation - paras. 11-12). Thus,

"there could hardly be better examples of mechanisms for application of the obligations *erga omnes* of protection (...) than the methods of supervision foreseen *in the human rights treaties themselves*, for the exercise of the collective guarantee of the protected rights. [...] the mechanisms for application of the obligations *erga omnes partes* of protection already exist, and what is urgently needed is to develop their legal regime, with special attention to the *positive obligations* and the *juridical consequences* of the violations of such obligations" (para. 14).

⁹. In the *Matters of the Peace Community of San José de Apartadó* (18.06.2002), of *The Communities of Jiguamiandó and Curbaradó* (06.03.2003), of *the Pueblo indígena de Kankuamo* (05.07.2004), of *the Pueblo indígena de Sarayaku* (06.07.2004), and of *the Urso Branco Prison* (07.07.2004).

5. The general obligation to ensure respect comprises application of provisional measures of protection under the American Convention. In my Concurring Opinion in the *Case of the Haitians and Dominicans of Haitian Origin in the Dominican Republic* (Order 18.08.2000), I emphasized the change that took place both in the *rationale* itself and in the object of the provisional measures of protection (originally transferred, in the course of their history, from civil procedural law to international public law), with the impact of their application in the framework of International Human Rights Law (paras. 17 and 23): in the latter's conceptual universe, the aforementioned measures safeguard -rather than the effectiveness of the jurisdictional function- the fundamental rights of the human person, thus taking on a truly *protective* rather than *precautionary* role.

6. The jurisprudence of the Inter-American Court of Human Rights on the matter has contributed decisively to this, more than that of any international court to date. In my Concurring Opinion in the *Matter of the Peace Community of San José de Apartadó* (Order 18.06.2002), I pointed out that the State's obligation to protect is not restricted to its relations with persons under its jurisdiction but also comprises, under certain circumstances, relations among private parties; this involves a true *erga omnes* obligation of protection, in the instant case in favor of all persons who work for the '*Globovisión*' Television Station in Venezuela, or who are associated with it, or are in its facilities.

7. As I argued in that Opinion –and I do so in the instant case too-, we are ultimately in the presence of an *erga omnes* obligation of protection by the State regarding all persons under its jurisdiction, an obligation whose importance is enhanced by a situation of constant insecurity and threats, as in the instant case of the '*Globovisión*' Television Station, and which

"[...] requires clearly the recognition of the effects of the American Convention *vis-à-vis* third parties (the *Drittwirkung*), without which the treaty obligations of protection would be reduced to little more than dead letter.

The reasoning as from the thesis of the *objective* responsibility of the State is, in my view, ineluctable, particularly in a case of provisional measures of protection such as the instant one. It is here intended to avoid irreparable harm to the members of a community [...] in a situation of extreme gravity and urgency, which encompasses actions [...] of organs and agents of the public forces" (paras. 14-15).

8. Subsequently, in another case that has both individual and collective dimensions, in my Concurring Opinion in the *Matter of The Communities of Jiguamiandó and Curbaradó* (Order 06.03.2003), also with respect to Colombia, I insisted on the need for "recognition of the effects of the American Convention *vis-à-vis* third parties (the *Drittwirkung*)", -distinctive of the *erga omnes* obligations,- "without which the treaty obligations of protection would be reduced to little more than dead letter" (paras. 2-3). And I added that, from the circumstances of that case, -as from those of the instant case- it clearly follows that

"protection of human rights determined by the American Convention, to be effective, comprises not only the relations between individuals and public authority, but also their relations with third parties[...]. This reveals the new dimensions of the international protection of human rights, as well as the great potential of the existing mechanisms of protection, - such as that of the American Convention, - set in motion in order to collectively protect the members of a whole community¹⁰, even though the basis for action is the breach - or the probability or imminence of breach - of individual rights" (para. 4).

¹⁰. Suggesting an affinity with the *class actions*.

9. *Erga omnes* protection of the rights protected by human rights treaties inevitably raises the issue of applicability of treaty provisions (the *Drittwirkung*) to third parties –whether mere individuals, groups of individuals, clandestine groups, armed militia or of any other nature-. In this regard, we should note that the obligation to respect and to ensure respect for all the protected rights, enshrined in some treaties for protection of the rights of the human person,¹¹ may be interpreted to entail the duty of *due diligence* of the States Parties to prevent denial or abridgement, by others, of the recognized rights of the human person.¹²

10. In the sphere of International Human Rights Law, there are in fact rights that applicable to “third parties,” with respect to private persons (the *Drittwirkung*). Thus, Article 2(1)(d) of the Convention on the Elimination of All Forms of Racial Discrimination forbids racial discrimination “by any persons, group or organization.” And the right to privacy (Article 17 of the Covenant on Civil and Political Rights) requires protection of the individual against interference both by the public authorities and by private organizations or groups or individuals. The European Convention (Article 17) and the American Convention (Article 29) on Human Rights, in turn, set forth that nothing in either Convention may be interpreted as implying, for any State Party, “group or person,” an undue restriction or suppression of the enjoyment and exercise of the rights protected.

11. To sum up, even if the *Drittwirkung* was not considered at the time of drafting and adoption of the European and American Conventions on Human Rights, today it is evolving in the jurisprudence under both Conventions.¹³ The supreme values that underlie fundamental human rights are such that they merit and require due diligence by the State and their effective protection *erga omnes*, against any interference by public bodies or private groups or individuals. In my opinion, the *Drittwirkung* is also clearly relevant to International Humanitarian Law.¹⁴

¹¹. American Convention on Human Rights, Article 1(1); Covenant on Civil and Political Rights, Article 2(1), Convention on the Rights of the Child, Article 2(1); European Convention on Human Rights, Article 1; four Geneva Conventions on International Humanitarian Law, Article 1 common; Additional Protocol I to said Geneva Conventions, Article 1(1).

¹². Article 29 of the 1948 Universal Declaration of Human Rights brings to mind, in this connection, the duties of every person with respect to the community.

¹³. Cf. A.A. Cançado Trindade, *Tratado de Direito Internacional dos Direitos Humanos*, Vol. I, 2nd Ed., Porto Alegre/Brasil, S.A. Fabris Ed., 2003, pp. 371-376; A.Z. Drzemczewski, *European Human Rights Convention in Domestic Law - A Comparative Study*, Oxford, Clarendon Press, 1983, pp. 199-228; J. Rivero, “La protection des droits de l’homme dans les rapports entre personnes privées”, in *René Cassin Amicorum Discipulorumque Liber*, vol. III, Paris, Pédone, 1971, pp. 311 ff.

¹⁴. Thus, e.g., Article 3 common of the four Geneva Conventions of 1949, applicable in non-international armed conflicts, must be interpreted as addressed both to governments and to their opposition. It is desirable for said Article 3 – which refers, perhaps inadequately, to the “partes em conflito”, - to be interpreted and understood as establishing direct obligations for all forces in conflict, both those of the government and those of the opposition. The fundamental guarantees of the human person, enshrined for example in Article 75 of Additional Protocol I and in Article 4 of Additional Protocol II to the aforementioned Geneva Conventions, entail, for their implementation, *erga omnes* obligations. Article 5(2) of Additional Protocol II, e.g. on the rights of detainees or persons deprived of their liberty (due to armed conflicts) addresses all those “responsible for internment or detention” (of the persons referred to in Article 5(1)): this expression refers to those “*de facto* responsible” for prisons or any other detention centers, “independently of any recognized legal authority;” see, on the latter point, S. Junod, “Protocol II - Article 5”, in *Commentary on the Additional Protocols of 1977 to the Geneva Conventions of 1949* (by J. Pictet *et alii*), Geneva/The Hague, ICRC/Nijhoff, 1987, p. 1389.

12. The European Court of Human Rights has asserted that the right to freedom of peaceful assembly (Article 11 of the European Convention) cannot be reduced to "a mere duty" of the State not to interfere, as it requires that positive steps be taken, "even in the sphere of relations among individuals, if necessary."¹⁵ There is, for example, recognition that protection of the right to privacy (Article 8 of the Convention) also comprises relations among individuals,¹⁶ against undue interference not only of public authorities but also of individuals, associations, or groups of individuals (*erga omnes* protection). The *jurisprudence constante* under the European Convention has favored the thesis that the obligations of the State Party comprise the *positive measures* that must be taken to prevent and punish any and every act that abridges an article of the Convention, including private acts in the sphere of relations among individuals, to ensure effective protection of the rights set forth.¹⁷

13. As regards the scope of the *erga omnes* obligations to provide protection, in my Concurring Opinion in Advisory Opinion n. 18 of the Inter-American Court on *The Legal Status and Rights of Migrants without Documents* (17.09.2003), I recalled that said *erga omnes* obligations, characterized by the *jus cogens* (from which they derive)¹⁸ as having a necessarily objective nature, therefore encompass all those addressed by the legal provisions (*omnes*), including both the members of bodies of State power and private persons (para. 76). And I added:

"[...] In a *vertical dimension*, the obligations *erga omnes* of protection bind both the organs and agents of (State) public power, and the individuals themselves (in the inter-individual relations).

[...] as to the vertical dimension, the general obligation, set forth in Article 1(1) of the American Convention, to respect and to ensure respect for the free exercise of the rights protected by it, generates effects *erga omnes*, encompassing the relations of the individual both with the public (State) power as well as with other individuals (*particuliers*)."¹⁹ (paras. 77-78)

14. The State has the inescapable duty of protection *erga omnes*, including relations among individuals. The Inter-American Court has also asserted that the power of the State to enforce public order "is not unlimited," as "it has the duty, at all times, to apply procedures that are in accordance with the Law and that respect the fundamental rights of all individuals under its jurisdiction (...)."²⁰ The European Court of Human Rights has expressed a similar line of thought, stating in the *Case of*

¹⁵. European Court of Human Rights, *Case of the Plattform 'Arzte für das Leben' versus Austria*, Judgment of 21.06.1988, p. 8, para. 32.

¹⁶. E.g., harassments, clandestine recording of a conversation by a private person with help from the police, custody of a child, among other situations.

¹⁷. G. Cohen-Jonathan, *La Convention européenne des droits de l'homme*, Aix-en-Provence/Paris, Pr. Univ. d'Aix-Marseille/Economica, 1989, pp. 78-81 and 284-285; and for a general study see A. Clapham, *Human Rights in the Private Sphere*, Oxford, Clarendon Press, 1993 (reprint 1996), pp. 1-356.

¹⁸. In that same Opinion, I stated specifically that "by definition, all the norms of *jus cogens* generate necessarily obligations *erga omnes*. While *jus cogens* is a concept of material law, the obligations *erga omnes* refer to the structure of their performance on the part of all the entities and all the individuals bound by them. In their turn, not all the obligations *erga omnes* necessarily refer to norms of *jus cogens*" (para. 80).

¹⁹ See, in this respect, in general, the resolution adopted by the *Institut de Droit International* (I.D.I.) at the 1989 session of Santiago de Compostela (Article 1) in: I.D.I., 63 *Annuaire de l'Institut de Droit International* (1989)-II, pp. 286 and 288-289.

²⁰. IACtHR, *Case of Juan Humberto Sánchez v. Honduras*, Judgment of 07.06.2003, Series C, n. 99, para. 111.

Osman versus the United Kingdom (1998), that in certain circumstances it is necessary to consider the

"positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual".²¹

15. In brief, as shown by the aforementioned international jurisprudence, in each and every circumstance the State has an obligation of *due diligence*, to avoid irreparable damage to persons under its jurisdiction, including relations among individuals –all the more so when these lead to a pattern of systematic violence. The provisional measures adopted by the Inter-American Court in recent cases²² reveal that it is possible and feasible to act, in situations of recurring violence, with respect to the members of a human collectivity, *strictly within the framework of the Law*, reaffirming the primacy of the latter over indiscriminate use of force. And they attest to the current process of *humanization* of international law (toward a new *jus gentium*) also regarding application of provisional measures of protection. All this reveals that human awareness (the ultimate source of all Law) has awoken to the need to protect the human person against violations of the rights of the human person by the State and also by private third parties.

16. At the *Institut de Droit International*, I have argued that exercise of the emerging right to humanitarian assistance must emphasize the persons who are the beneficiaries of said assistance, rather than the potential for action of the agents that are materially able to provide it. The ultimate basis for exercise of said right lies in the inherent dignity of the human person; human beings are truly *entitled* to the rights protected, as well as to the very right to humanitarian assistance, and the vulnerable situations in which they find themselves –especially in face of harassment and threats of chronic violence- highlight the need for compliance with the *erga omnes* obligations to provide protection of the rights inherent to them.

17. In my opinion, the development of and due compliance with said *erga omnes* obligations are indispensable to end systematic violence and impunity. Furthermore, those entitled to the rights protected (or their legal representatives) are most able to identify the basic needs for humanitarian assistance, which is a response, based on the Law, to the new needs for protection of the human person. Insofar as international legal capacity and personality are definitively reinforced, beyond any doubt, the right to humanitarian assistance may gradually become actionable.²³

18. The current phenomenon of expansion of said international legal personality and capacity,²⁴ in turn, is a response -as shown by recent cases before this Court pertaining to members of human collectivities- to a pressing need of the international community in our times. Finally, the doctrinal and case-law development of the *erga omnes* obligations to provide protection to the human person, in each and every

^{21.} ECtHR, *Case of Osman versus the United Kingdom*, Judgment of 28.10.1998, Series A, n. 1050, para. 115.

^{22.} See, e.g., note (1), *supra*.

^{23.} See A.A. Cançado Trindade, "Reply [- Assistance Humanitaire]", *70 Annuaire de l'Institut de Droit International* - Session de Bruges (2002-2003) n. 1, pp. 536-540.

^{24.} See A.A. Cançado Trindade, *El Acceso Directo del Individuo a los Tribunales Internacionales de Derechos Humanos*, Bilbao, University of Deusto, 2001, pp. 9-104.

situation or circumstance, will undoubtedly contribute to the development of a true international *ordre public* based on respect for and observance of human rights, one that is able to ensure greater cohesion of the organized international community (the *civitas maxima gentium*), focused on the human person as the subject of international law.

Antônio Augusto Cançado-Trindade
Judge

Pablo Saavedra-Alessandri
Secretary