New Possibilities and Ongoing Limits to Protecting the Rights to Life and Freedom of Expression Under Inter-American Human Rights Law for Mexico’s At-risk Journalists

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This chapter is dedicated to the memory of Mike O’Connor, foreign correspondent and CPJ Representative in Mexico, 2009 – 2013.

Chapter Overview

The Inter-American System of Human Rights (IASHR) prides itself for having developed a “legal framework … for the protection of human rights [which] is probably the international framework that provides the greatest scope and the broadest guarantees of protection to the right to freedom of thought and expression.”¹ Most of this chapter examines the work of the judicial body that sits at the apex of the IASHR, the Inter-American Court on Human Rights (IACtHR). The Court has decided case law on violence against journalists. But, notwithstanding the acclaim for its protection of freedom of expression, its jurisprudence is still at an early stage of its development: the IACtHR has never connected a murdered or disappeared journalist’s right to life to their right to exercise their freedom of expression. To wit: as of this chapter’s

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publication, the IACtHR has never found a state responsible for failing to protect the right to life of a practicing journalist.

In fact, the only international framework connecting the right to life to the freedom of expression for a murdered journalist is the European System of Human Rights. A landmark decision on the protection of an at-risk journalist’s right to life came from the European system’s judicial body, the European Court of Human Rights. The ECHR seems mostly to be known in terms of freedom of expression and the press, for the way it rationalizes how its state parties can limit freedom of expression rather than the focusing on protecting the lives and freedom of expression of at-risk journalists in its jurisdiction. Thus, the European Court of Human Rights’ judgment in *Dink v Turkey* makes it the only international human rights jurisprudence from a judicial -- rather than quasi-judicial body -- that specifically and explicitly connects how the Turkish state violated Dink’s freedom of expression and through that violation abused his right to life. The central question motivating this chapter concerns how the IASHR can move beyond the articulation of principles and norms to develop jurisprudence – assessing state responsibility for violations and applying court-mandated human rights protection including reparations – that links the rights to life and freedom of expression for murdered and disappeared journalists.

It is a commonplace to state these rights are fundamental; but in terms of jurisprudential commentary, it is unusual to hear of the need for their linkage. Thus jurisprudence concerning freedom of expression from the IACtHR is under development. The San José, Costa Rica-based court has not been silent on the issue of the protection of journalists who work in dangerous situations, but it has yet to decide a case of a murdered journalist in which it creates a nexus between the rights to life and freedom of expression. The absence of a rich, deep jurisprudence from the IACtHR means that a full discussion of the human rights legal protection for journalists requires observers look to the IASHR’s other human rights bodies for guidance about how to protect the life of an at-risk journalist, and what to do, in terms of human rights law, in pursuing state responsibility and reparations for these violations. Unfortunately, the problem with non-jurisprudential sources is that they are limited in terms of the full effect of the legal demands they can make on states.

To this end, the recent work of the Inter-American Commission on Human Rights in its ordering of precautionary measures to protect members of the Mexican news
magazine *Contralínea* must be acknowledged. In Summer 2014, the Commission ordered Mexico to protect against irreparable violation of the rights to life and personal integrity of named members of Contralínea, an investigative news outlet covering stores related to crime and corruption. “According to the request for precautionary measures, the proposed beneficiaries have been threatened and attacked because of their engagement as journalists and the exercise of their right to freedom of expression.” Crucially, in these precautionary measures, the IACHR linked the violations of the rights to life and freedom of expressions for journalists. This recent advance is not jurisprudence since it comes from the quasi-judicial Commission but it may – in light of the findings of stagnant international human rights jurisprudence described in this chapter that fails to create a nexus between fundamental human rights for journalists – represent a turning point in the legal protections for journalists in the Americas under the region’s human rights law. It is significant, given the ongoing human rights crisis that confronts Mexico’s journalists that the Commission ordered precautionary measures without first communicating with the Mexican state. A turning point, perhaps, but not a crucial step in the construction of a nexus between two fundamental human rights for journalists working in risky contexts; that crucial step will come only when the human rights Court finally receives a contentious case from the Commission in which the rights to life and freedom of expression are linked through abuses or omissions attributed to the state.

The sources consulted in the preparation of this chapter include the urgent measures in the Americas regional human rights system, and also the IACHR’s merits and/or admissibility reports on cases of journalists whose fundamental human rights have been violated. This chapter attempts to build a picture of the urgent cases, IACHR petitions, and IACtHR cases that establish or can advance the protection of journalists, through specific mechanisms, or investigation, prosecution, punishment and reparations as redress for impunity in the murder and disappearance of journalists. And the chapter does so with specific reference to Mexico, a country that consistently ranks as one of the world’s most dangerous to exercise freedom of expression as a journalist.

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This chapter broadly divides into two sections. The first section reviews the urgent measures provided by the IACHR and the IACtHR in serious situations of grave, irreparable threat to human rights for the closely related groups of human rights defenders and journalists. The purpose of the comparison is to show journalists and their legal defenders what they can do to strengthen their appeal to the regional human rights bodies in cases of immediate, irreparable violations to fundamental human rights. On application from the IACtHR, the OAS’s judicial body provides provisional measures (similar to the interim measures available for individuals under the ICCPR). The IACHR can also grant precautionary measures under Article 25(1) of its rules of procedure.

The purpose of each of the two urgent measures mechanisms is to protect the fundamental values of the ACHR from “irreparable damage” or harm. International standards identify that journalists further the fundamental value of freedom of expression when at work in risky situations, so members of the media in Mexico who have been threatened can use these mechanisms. The problem is that Mexican journalists have successfully sought recourse to the regional mechanisms only on a handful of occasions in the late twentieth century; Mexico only accepted the contentious jurisdiction of the Court in 1998 meaning that cases of murdered and or disappeared journalists in Mexico could only be dealt with by the Commission if and when victims presented it with petitions.

Journalists and human rights defenders serve cognate functions under the ACHR since they both embody and practice its ideals, advancing human rights protection. Freedom of expression is considered an important tool to fight corruption

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4 For the reforms prior to those authorized in 2013, ibid, paras 9.06 – 9.09. The IACHR has reformed this article on several occasions: IACHR, Decisions. Precautionary Measures: https://www.oas.org/en/iachr/decisions/precautionary.asp.
and further democratic accountability, both objectives of human rights defenders and journalists. But further investigation reveals that the Commission issues more precautionary measures for human rights defenders than journalists in Mexico. A review of past cases reveals that for Mexico the IACHR has granted precautionary measures to threatened journalists only on four occasions between 1997 and the present; by contrast, human rights defenders from Mexico have received precautionary measures on twenty-five occasions since 1995.  

The comparison between human rights defenders and journalists in Mexico reveals differential levels of activity by the Commission; if there were statistics available for the number of applications for precautionary measures for journalists and human rights defenders one might be able to plumb questions about whether Mexico’s human rights defenders are more privileged than journalists in the system. For instance, human rights defenders might be connected to groups, unlike journalists, that are better versed in using regional human rights law, meaning that human rights defenders submit more skillful applications for precautionary measures and in greater number. Even so, it bears repeating that the Commission and the Court consider both groups fundamental to the protection and promotion of the region’s human rights norms.

This current contribution is submitted to this volume in the hope that awareness of the limits of protection from the violent abuse of freedom of expression in the Inter-American System of Human Rights might help journalists, their families, their supporters and legal defenders to bring cases about the international responsibility for violations of human rights treaties by the Mexican state to the attention of the regional system of human rights. In regards Mexico, this review of precautionary measures from the Commission will suggest that the regional human rights system paid close attention to human rights defenders during the country’s lengthy transition from one-party dictatorship to multi-party democracy.

The contrast in precautionary measures between both groups may also suggest that Mexico’s journalists and their legal defenders did little to explore how to bring freedom of expression cases to the Inter-American System’s human rights bodies. One hastens to add that while Mexico’s example is the most severe in the Americas, it is not a unique case in the region. Nonetheless, the absence of human rights cases

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about violence against journalists in Mexico is worthy of ongoing reflection and investigation given that journalists continue to be harassed, threatened, attacked, disappeared, and murdered in Mexico. Journalist groups and their defenders in non-governmental organizations report that all of these violations fail to receive adequate response from the Mexican state. Which is another way of saying that in the more than 100 murders and about twenty disappearance cases of journalists and media workers in Mexico since the early 1990s, no case has been satisfactorily resolved.

Ultimately, the regional human rights system must confront the question of how its mechanisms can be used to assess the responsibility of the Mexican state for failed investigations, prosecutions, punishment and reparations for the murder and disappearances of the country’s journalists. Without litigated human rights cases and some external legal supervision of Mexico’s dysfunctional justice system, impunity will continue.

What does legal supervision look like in cases where freedom of expression and right to life have been violated? The second section of the chapter reviews individual cases at the IACHR and the IACtHR. The IACtHR’s jurisprudence – the superior body comprised of judges – illuminates its understanding of the State’s role in protecting the freedom of expression of at-risk journalists and providing reparations for when violations have occurred. The IACHR has issued a decision on the Peruvian case of a murdered journalist killed during a situation of conflict: it wrote that “journalists who are risking their lives to bring the public an independent and professional view of what is really happening in areas of conflict.”6 The protections for human rights defenders are not so context dependent: as the following discussion of Valle Jaramillo et al. v Colombia demonstrates, the IACtHR has ruled on protecting the right to life when the State failed to protect a human rights defender working in a known at-risk situation. These rulings – currently limited in application to human rights defenders – demonstrate that the human rights case system subtly but significantly recognizes the danger confronted by journalists and human rights defenders in different ways: for human rights defenders the Court’s understanding of risk is more flexible and open than for journalists. It follows that journalists require

6 IACHR, Bustíos Saavedra v Peru. Report No. 38/97; Case 10.548 (16 October 1997) para 73, emphasis added.
greater protection only in conflict situations, whereas human rights defenders receive greater protection if exposed to risk.

The section on litigation reviews the IACtHR’s ruling in Vélez Restrepo et al. v Colombia because it concerns a violent incident, a death threat, an arbitrary detention, and violation of personal integrity, among other violations experienced by a journalist and his family. The IACtHR found the State failed in its obligations to protect human rights victims from a known threat, an insight it has also developed with human rights defenders. The section examines the case of murdered Colombian human rights defender Jesús María Valle Jaramillo. The IACtHR recognized the importance of special protection for at-risk human rights defenders. The way the IACtHR discusses Valle Jaramillo’s protection, or lack thereof, could be used in the cases of threatened journalists.

The chapter then moves to discuss the landmark ECtHR judgment in the case of Firat (Hrank) Dink, a journalist murdered by ultranationalist groups after his conviction for defamation in Turkey. Dink v Turkey must become widely cited in the jurisprudence of the international protection of journalists. As one journalists’ group has noted, Dink v Turkey speaks directly to the issue of reparations for impunity in the state’s failure to protect a known at-risk journalist from murder: the ECtHR advances the State’s responsibility to protect members of the media through effective investigation and prosecution of the violations of a journalist’s rights to life and freedom of expression. The IASHR’s petition and case systems must learn from Dink v Turkey, though currently no Spanish or English exists of the EctHR judgment in Dink.

Two conclusions arise: 1) to overcome the protection gap between human rights defenders and journalists, the functional similarities under the ACHR between journalists and human rights defenders must be emphasized. Journalists, like human rights defenders, are fundamental to the protection and promotion of human rights in the region. Emphasizing their similarities under regional human rights law means that communicators should benefit from the IACtHR’s jurisprudence concerning murdered human rights defenders, and particularly any abuse of their freedom of expression; and, 2) that the IACtHR can use international standards and legal

mechanisms to expand its jurisprudence (inter alia using the ECHR’s ruling in *Dink v Turkey*) to link violations of the right to life to freedom of expression. Eventually, jurisprudential cross-fertilization and innovation could have an effect on impunity.

**Urgent Measures in the IASHR to Protect At-Risk Journalists**

- The IACHR’s Precautionary Measures

The above section refers to the scant number of precautionary measures from the IACHR for threatened Mexican journalists. However, for Mexico’s human rights defenders the IACHR has been active. Since 1995 it has granted twenty-five precautionary measures to protect the lives and personal integrity of Mexican human rights defenders. The salient point to note from the digest of precautionary measures provided in the Annex to this chapter is that the Commission grants precautionary measures to a variety of human rights defenders in Mexico whereas in freedom of expression cases its work is restrictive: two orders for protection concern radio journalists, another instruction concerns all 116 workers at a Oaxacan newspaper, one case covers the members of an anti-torture group, and one order for measures explicitly protects a journalist.\(^8\)

Using human rights defenders by way of contrast, a review of the digest provided in the Annex reveals that the IACHR has granted precautionary measures to “members” of human rights organizations, “members” of trade unions, or to attorneys defending social movements. In each case, and as it does with a violent threat to freedom of expression, the IACHR instructs the state to adopt measures to protect the life and personal integrity of those covered by the measures. In measures granted to human rights defenders, it sometimes extends coverage to the threatened person’s next of kin. On various occasions, the IACHR also instructs Mexico to conduct an effective investigation.

The Commission’s protection of human rights defenders through precautionary measures has historically outweighed its attention for journalists. The precautionary measures awarded Lydia Cacho in 2009 illustrate this point. Cacho is a well-known human rights defender and journalist.\(^9\) In the orders to protect Cacho, her

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\(^8\) *Infra*, Annex 1.2.

family, and “employees of the Integral Center for Women” (CIAM), the IACHR implicitly recognized CIAM as a human rights organization. The IACHR even noted that the death threats, harassment, and surveillance forced Cacho to cease writing for her blog. But the IACHR never referred to Cacho as a journalist, and IACHRSR for Freedom of Expression does not list Cacho’s precautionary measures; instead the entry for Cacho’s precautionary measures appears under the rapporteur for human rights defenders. The inference is that Cacho received the orders as a human rights defender, not a journalist and the implication is that the IACHR moves more readily to protect human rights defenders in Mexico, even though both groups are fundamental to protecting human rights and strengthening democracy, which, specifically in Cacho’s case involves exercising her right to freedom of speech.

The IACtHR’s Provisional Measures

Unlike the precautionary measures developed by the IACHR under its rules of procedure, the IACtHR’s judicial nature means that it can act to grant precautionary measures only under Article 63(2) of the ACHR: in “cases of extreme gravity and urgency, and where 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.” The IACHR plays a crucial role in applying for provisional measures from the IACtHR and admitting cases to its contentious jurisdiction.

The IACHRSR for Freedom of Expression lists ten awards of provisional measures to protect irreparable damage to freedom of expression between 1992 and 2010. Of these ten awards of protection from irreparable harm, the IACtHR has tried to protect journalists from violent threats on four occasions.10 Each of these cases concerns broadcast and print journalists in Venezuela threatened during the political turbulence associated with President Chávez’s terms in office.11 The Court’s focus on

10 IACtHR, Provisional Measures: Luisiana Ríos et al. v Venezuela (2002); Marta Colomina and Liliana Vásquez v Venezuela (2003); Globovisión v Venezuela (2004); El Nacional and Así es la Noticia v Venezuela (2004):
one country, at a specific historical moment, makes it difficult to extend these rulings in the IACtHR’s jurisprudence to provisional measures to journalists who confront violence in other countries that have accepted its contentious jurisdiction.

This overrepresentation of one state in the IACtHR’s provisional measures’ jurisprudence, and the IACHR’s requests for the region’s highest human rights body to supervise Venezuelan cases, has meant that States hostile to the mandate of the IACHR have proposed its reform. 12 Backed by other countries in the ALBA region, Venezuela has sought reform of the IACHR for Freedom of Expression, and the rules governing precautionary measures. 13 To insulate Venezuela from the contentious jurisdiction of the IACtHR, the late President Hugo Chávez denounced the ACHR. Venezuela’s denunciation became final on 6 September 2013, thereby denying Venezuelan human rights victims access to its contentious jurisdiction. 14

**IASHR Individual Petitions and Cases**

- Petitions Decided by the IACHR

The IASHR has ruled on the freedom of expression of murdered journalists, but not through the contentious jurisdiction of the IACtHR (instead, as is demonstrated below, the judicial organ of the OAS has ruled on a journalist who survived a death threat). In 1999, the IACHR ruled on two cases of murdered Mexican journalists:

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Hector Félix Miranda, associate director of Tijuana’s *Zeta* magazine, murdered in 1988, and Victor Manuel Oropeza of *Diario de Juárez*, who was assassinated in 1991. These Mexican cases from the IACHR continue to be relevant to discussions about the State’s role in protecting journalists from violence through effective investigation of violations of their freedom of expression. On those specific issues, the IACHR cited these cases in 2010 in its *Legal Framework for Freedom of Expression* (*Legal Framework*) and they are cases that also underpin the Principle 9 of the Inter-American Declaration on Principles of Expression.

**Hector Félix Miranda v Mexico**

In the past at the Inter-American Commission, cases of Mexican murdered journalists have shaped important principles to protect freedom of expression and the right to life for journalists. The IACHR’s 2010 *Legal Framework* noted “it has been recognized that attacks against journalists – because their purpose is to silence them – are also violations of society’s right to access information freely.” The IACHR drew its conclusion about the violation of the collective dimension to freedom of expression from information presented in its 1998 *Report on the Situation of Human Rights in Mexico*. The IACHR’s country report referred to Miranda’s case and provided statistical information about the number of violations of freedom of expression in Mexico since 1994, including eleven journalists’ murders. In *Miranda v Mexico*, the IACHR referred to the statistical summary in its 1998 report and concluded with the


18 Ibid, para 655.
observation that Mexico’s authorities classified the violations as common crimes, a categorization known to impede effective investigations in Mexico.\textsuperscript{19}

The case provides an insight into how the IACHR found the State in violation of Miranda’s right to freedom of expression.\textsuperscript{20} Although the petitioners asked the IACHR to consider Mexico’s failure to protect Miranda, it did not find the State responsible for violating its obligation to protect Miranda’s life because it was “not clear … that the authorities knew about the threats Mr. Félix Miranda had received, since they had not been apprised thereof by the competent bodies in order for the State to take the necessary steps for safeguarding [his] security and … life.”\textsuperscript{21} In other words, the IACHR implicitly refused to recognize that Miranda worked in a context of risk so did not instruct the Mexican state on the amelioration of that risk. Instead focusing on the state’s response to his murder, the IACHR concluded “the State has – to the detriment of Hector Félix Miranda and that of every citizen – violated the right to freedom of expression.”\textsuperscript{22} The IACHR narrowed its ruling to the lack of effectiveness in the investigation of the mastermind behind Miranda’s murder, a failure which denied society the right to know the truth about Miranda’s death, and had implications for the recurrence of human rights violations:

“… the impunity of any of the parties responsible for an act of aggression against a reporter – the most serious of which is assuredly deprivation of the right to life – or against any person engaged in the activity of public expression of information or ideas, constitutes an incentive for all violators of human rights. At the same time, the murder of a journalist clearly has a ‘chilling effect’, most notably on other journalists but also on ordinary

\textsuperscript{19} Ibid, para 651.


\textsuperscript{21} IACHR, \textit{Hector Félix Miranda v Mexico}, para 15.

\textsuperscript{22} Ibid, para 66.
citizens, as it instills the fear of denouncing any and all kinds of offenses, abuses or illegal acts.”  

“Swift action” on the part of the State by punishing all perpetrators “as is its duty under international and domestic law” would “send a strong message to society that there would be no tolerance for those who engage in such a grave violation of the right to freedom of expression.” The case of Miranda v Mexico established a precedent: the State must investigate violations of freedom of expression for a journalist because impunity in a communicator’s murder violated the right’s social dimension.

Miranda’s case is important for its reparative elements. The IACHR ordered the state “to conduct a serious, exhaustive and impartial investigation to determine the punitive responsibility of all the perpetrators of Hector Félix Miranda’s assassination.” The IACHR also required that the State “conduct a serious, exhaustive and impartial investigation to determine whether there have been instances of concealment and crimes against the administration of justice which have impeded a complete investigation of the incidents … and, if so, that it apply such pertinent penal, administrative and/or disciplinary measures which may be pertinent.” It is important to note that the IACHR did not require special protection for at-risk journalists because it did not find the State in violation of Miranda’s right to life. The question raised by Miranda being an at-risk journalist, vulnerable because of his freedom of expression was not connected to the state’s obligations to protect him.

Victor Manuel Oropeza v Mexico

23 Ibid, para 52.

24 Ibid, para 52.

25 Ibid, para 67(1).

26 Ibid, para 67(2).

As in *Miranda v Mexico*, the IACHR confirmed the social dimension, and the international obligation to investigate and punish the perpetrators of a journalist’s murder.\(^{28}\) In *Oropeza* the IACHR explicitly found the State failed “to investigate and criminally sanction the material and intellectual perpetrators of the assassination … [and] represents a violation of the right to public and free expression and information.” The quasi-judicial IACHR found that “the homicide of the journalist constitutes an aggression against all citizens inclined to denounce arbitrary acts and abuses to society, aggravated by the impunity of one or more intellectual perpetrators.” Immediately following Miranda, the Commission reaffirmed how ineffective investigations of a journalist’s murder could violate the social dimension of freedom of expression.

As in *Miranda v Mexico*, *Oropeza* is useful only in that the IACHR understands that a journalist’s murder violates the social dimension of freedom of expression. It was the State’s failure to investigate the murder of a journalist that made “the Mexican State internationally responsible for violation of the right to freedom of expression of … Oropeza and citizens in general to receive information freely and to learn the truth about acts that have occurred.”\(^{29}\) As in *Miranda v Mexico*, the IACHR concluded that the State did not violate Oropeza’s right to life or humane treatment, among other alleged violations. Its reparations orders followed those it ordered in *Miranda*: investigations to determine those criminally responsible for his murder; and, further investigations to see if criminal justice officials impeded the investigation.\(^{30}\)

Each of these cases has helped shape IACHR norms regarding effective investigations into the murder of journalists, but these precedents have not deepened the scope and content of the State’s obligations in cases of murdered journalists further than requirements for effective investigations, prosecution and punishment. The IACHR decided these cases before Mexico’s acceptance of the IACtHR’s contentious jurisdiction in 1998. The Mexican State’s non-compliance in each case


\(^{29}\) IACHR, *Oropeza v Mexico*, para 61.

\(^{30}\) Ibid, para 77(1 - 2).
led to the publication of both reports under ACHR Article 51(2). In neither case did the Commission find that the State violated the journalists’ right to life, so it did not instruct the State on the special protection of journalists under human rights law.31

IACtHR Decisions on Freedom of Expression and the Right to Life

Unlike the ECtHR in the case of Dink v Turkey, the IACtHR has never decided a case of a murdered journalist. That is, it has decided cases of people who were murdered, such as the Colombian politician and commentator Manuel Cepeda Vargas – a case that implied violations of his rights to life and freedom of expression – but it has never decided the case of a murdered journalist. The IACtHR has considered death threats against a journalist (Vélez Restrepo v Colombia), and even the death of Guatemalan journalist and politician Jorge Carpio Nicolle32 -- but he was killed while campaigning not reporting. In Carpio Nicolle et al. v Guatemala the IACtHR noted his thirty year career in journalism and Guatemala’s public life,33 and even recognized the IACHR’s statement that the IACtHR had “a historic opportunity to send a clear and decisive message to the whole region on the importance of strengthening democracy and freedom of expression as central elements for the promotion and protection of human rights.”34 The IACtHR did send only a message with its ruling in Carpio Nicolle et al. v Guatemala because the case did not make a case for special protection of journalists risking their lives to exercise their right to freedom of expression.


32 The IACHRSR on Freedom of Expression does not list Carpio Nicolle as a freedom of expression case, perhaps because Guatemala accepted its international responsibility for most of the violations. The IACtHR does not order Guatemala to provide protection to journalists, though regarding the extrajudicial executions it does order effective investigation, removal of obstacles to impunity, and strengthening of the State’s investigative capacity: Jorge Carpio Nicolle et al. v Guatemala, Merits, Reparations, and Costs (22 November 2004) orders paras 1 – 3.

33 Ibid, para 76(15).

34 Ibid, para 122(a).
The IACtHR ruling that actually comes closest to advancing the protection of journalists’ freedom of expression and their right to life concerns a slain human rights defender, the Colombian Jesús María Valle Jaramillo. To ascertain the IACtHR’s understanding of how to protect a group advancing human rights from fatal violence, and whose work is fundamental to democracy and the protection of human rights, it is necessary to consider in tandem the cases of threatened Colombian journalist Vélez Restrepo and slain Colombian human rights defender Jesús María Valle Jaramillo. The purpose is to demonstrate that in future cases of murdered journalists presented to the IACtHR, the IACHR and the victim’s representatives must learn from each case, and make arguments using Valle Jaramillo et al. v Colombia about why those protections it affords human rights defenders should also be applied to murdered journalists.

**Vélez Restrepo et al. v Colombia**

This case concerns cameraman Luis González Vélez Restrepo who “covered … assignments relating to public order” and was attacked by the Colombian National Army for filming a march of coca growers protesting the destruction of their crop in August 1996. As Vélez Restrepo filmed the military’s violent assault on the marchers, soldiers surrounded and attacked him, destroyed his camera, and shouted “‘take out the f[...]ing cassette.’” The videotape survived, and the IACtHR later determined he never relinquished the videotape or the camera. In the attack’s legal aftermath, Colombian authorities conducted ineffective judicial and disciplinary investigations, Vélez Restrepo and his family suffered threats, and on 6 October 1997 the cameraman suffered an attempted kidnap, which the IACtHR later considered as


36 Ibid, para 83.

37 IACtHR, Vélez Restrepo and Family v Colombia. Preliminary Objections, Merits, Reparations, and Costs (3 September 2012) para 142.

38 Ibid, paras 89 – 90.
an attempted forced disappearance, a human rights violation that included abusing his right to life.

The attack, threats, and harassment of Vélez Restrepo and his family indicated various ACHR violations. These concerned the state’s failure to protect and guarantee Vélez Restrepo’s rights (article 1(1)), including those of personal integrity (article 5), freedom of expression (article 13), freedom of movement (article 22), judicial guarantees (article 8), and judicial protection (article 25). The IACtHR also found violations of the rights of his wife and two children.

In Vélez Restrepo, the IACtHR advanced its jurisprudence on freedom of expression when it found that state agents ordered the attack on the journalist.\textsuperscript{39} The IACtHR demonstrated that the soldiers’ attack during Vélez Restrepo’s filming of the march violated the dual dimensions of freedom of expression: the journalist’s combined right to express and disseminate information, and the “collective right to receive information and to know the expression of the thought of others.”\textsuperscript{40} The IACtHR used society’s right to know to reinforce its objectives of transparency and accountability, necessary for informed, democratic civic participation: “The dissemination of that information enabled those who saw it to observe and verify whether, during the demonstration, the members of the armed forces were performing their duties correctly, with an appropriate use of force.”\textsuperscript{41}

These abuses of Vélez Restrepo’s rights had an “intimidating-effect on the free flow of information” for all citizens.\textsuperscript{42} The Army stopped coverage of the march, creating fear among other journalists, intimidation compounded by impunity for the soldiers’ attack: “other journalists could reasonably fear that this type of human rights violation might be repeated, and this could lead to self-censorship of their work; for example, as regards the type of news covered, the way the information is obtained, and the decision to disseminate it.”\textsuperscript{43} The IACtHR found Colombia violated Vélez

\textsuperscript{39} The IACtHR recognized a sergeant’s command to a subordinate soldier to stop Vélez Restrepo recording and to seize the videotape: Ibid, paras 142, 149.

\textsuperscript{40} Ibid, para 139.

\textsuperscript{41} Ibid, para 145.

Restrepo’s freedom of expression, and society’s right to know. These findings rested on the fact that the soldiers had been caught in the act of violation meaning that the IACtHR specifically recognized the soldiers’ violence targeted the journalist’s camera to prevent him from disseminating information.

However, although the death threat forced Vélez Restrepo to seek asylum in the U.S., the IACtHR only considered the threat to his life through his right to personal integrity (article 5),44 rather than explicitly linking the violence to his right to life (article 4). The Court restricted consideration of the State’s alleged violation of his right to life to the “attempted forced disappearance,” which occurred in October 1997. The IACtHR found that “the State must abstain from acting in a way that encourages, promotes, favors, or intensifies … vulnerability… It must adopt … the necessary and reasonable measures to prevent or protect the rights of those who are in that situation, as well as, when appropriate, to investigate acts that harm them” but did not specify the necessary protective measures.45

The IACtHR found a violation of right to personal integrity rather than to life. The State disputed the existence of the forced disappearance: the “supposed generalized context of violence against journalists cannot per se give rise to a violation of the right to life.”46 The IACtHR agreed because its judges dismissed the representatives’ submission about forced disappearances in Colombia.47 The IACtHR concluded that “exceptional circumstances” did not exist that would have threatened the journalist’s life at the time of the attempt to kidnap him.48 The IACHRSR for

43 IACtHR, Vélez Restrepo and Family v Colombia. Preliminary Objections, Merits, Reparations, and Costs (3 September 2012) paras 148, 212.

44 The IACtHR stated that, “creating a threatening situation or threatening an individual with taking his or her life may, at least in some circumstances, be considered inhuman treatment.” In a footnote, the IACtHR cited its own jurisprudence to support its position: Villagrán Morales et al. v Guatemala, Barrios Family v Venezuela, and Valle Jaramillo v Colombia, with the latter case specifically relevant to threatened journalists because it concerned a threatened, and subsequently killed, human rights defender: ibid, para 176, n. 183.


46 Ibid, note 190.

47 Ibid, para 182.

48 Ibid, para 182.
Freedom of Expression characterizes the attempted kidnap/forced disappearance as an “attempted deprivation of liberty.”\textsuperscript{49} This dispute over the gravity and severity of the threat to Vélez Restrepo’s life means that the IACtHR has yet to consider a case with a nexus between the violations of the right to life (rather than a death threat that violates personal integrity), and freedom of expression, such as in the ECtHR’s \textit{Dink v Turkey}.

The IACtHR considers Vélez Restrepo in its severe dimensions as a case of Colombia’s failure to protect him as he reported on the march, followed by a death threat, harassment and threats to his family, and the failure to investigate\textsuperscript{50} the alleged violations of his and his family’s rights, eventually forcing them into exile. The IACtHR ordered various reparative measures but did not require specific methods of protection for journalists, other than the instruction of human rights education for the Armed Forces, “a specific module on the protection of the right to freedom of thought and expression and on the role of journalists and social communicators.”\textsuperscript{51} In its freedom of expression dimensions the IACHR addressed the soldiers’ attack because it demonstrated clear state interference.

Before the IACtHR ordered reparation, it considered the abuse of the journalist and society’s right to freedom of expression. The IACtHR stated its consideration “that journalism can only be exercised freely when those who carry out this work are not victims of threats or physical, mental or moral attacks or other acts of harassment.”\textsuperscript{52} The IACtHR reached this conclusion by comparing Vélez Restrepo’s situation to its ruling in the case of \textit{Fleury et al. v Haiti}, which concerned a human rights defender. The State had a “special obligation to protect journalists at risk… [and] … obligations to investigate, prosecute and, as appropriate, punish, as

\textsuperscript{49} The IACHRSR on Freedom of Expression repeats the IACtHR’s finding: ibid, para 167; IACHRSR on Freedom of Expression, \textit{Decisions and Judgments of the Inter-American Court} \url{http://www.oas.org/en/iachr/express/jurisprudence/si_decisions_court.asp}.

\textsuperscript{50} IACtHR, \textit{Vélez Restrepo and Family v Colombia}. Preliminary Objections, Merits, Reparations, and Costs (3 September 2012) para 186.

\textsuperscript{51} Ibid, para 277.

\textsuperscript{52} Ibid, para 209.
well as to adopt measures of protection, which were not complied with.”\textsuperscript{53} The
IACtHR wrote that the violence and threats “constitute serious obstacles to the full
exercise of freedom of expression,” and it supported this conclusion by citing
paragraph 102 of the 2005 report on Colombia prepared by the IACHR\textsuperscript{SR} for
Freedom of Expression.\textsuperscript{54} The IACtHR continued, saying “compliance with the said
obligations is particularly relevant in cases such as this, in which the violations
against the victim were related to the exercise of his right to freedom of expression
when he was working as a cameraman covering a news item of public interest.”\textsuperscript{55} In
the subsequent paragraph the IACtHR considered that Vélez Restrepo’s asylum
abridged his freedom of expression because he could not report in the United States in
the same way as he had in Colombia.\textsuperscript{56} The IACtHR focused on the State’s specific
acts, and not the general threats to journalists working in a violent context, to
determine the scope and content of the violations of freedom of expression in this
case.

The IACtHR’s ruling was slightly broader in regards the risks faced by
Colombia’s journalists when it considered the State’s obligation to investigate the
violations of the rights to personal integrity and freedom of expression. The IACtHR
stated the “context of risk for journalists in Colombia should have been taken into
account,”\textsuperscript{57} and “that States have the obligation to adopt special measures of
prevention and protection for journalists subject to special risk owing to the existence
of their profession.”\textsuperscript{58} The “special risk” arose from:

“… factors such as the type of events they cover, the public interest of the
information they disseminate, or the area they must go 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

\textsuperscript{53} Ibid, para 81.

\textsuperscript{54} Ibid, para 209.

\textsuperscript{55} Ibid, para 210.

\textsuperscript{56} Ibid, para 211.

\textsuperscript{57} Ibid, para 193.

\textsuperscript{58} Ibid, para 194.
investigation of violations that they suffered or of those they became aware of in the course of their work. The States must adopt the necessary measures of protection to avoid threats to the life and integrity of journalists under those conditions.\textsuperscript{59}

The IACtHR anchored this analysis in a footnote, confirming that the “obligation to implement measures of protection for journalists who are not working in a context of armed conflict or serious disruption to public order” may be found in \textit{The Legal Framework} (paras 195 – 196).\textsuperscript{60} In the same footnote, the IACtHR also made links to two Brazilian cases concerning human rights defenders, implicitly suggesting that journalists could benefit from the same special protective measures.\textsuperscript{61}

The IACtHR noted the existence of programs of special protection for journalists in Colombia, and that the IACHR and the victims’ representative wanted these programs strengthened. But since Colombia had “taken certain action to implement the measure of reparation requested and, taking into consideration its ‘absolute commitment’ to comply” the IACtHR did “not consider it appropriate to order the requested measure [of protection].” The IACtHR found “it extremely important to urge Colombia to comply with the said commitment to continue taking all necessary measures to adopt and strengthen the special programs designed to protect journalists at risk and to investigate the crimes committed against them.”\textsuperscript{62}

The significance of \textit{Vélez Restrepo} to strengthening the protection of journalists can be understood in various ways. At the level of the IACHR, the gatekeeper to the IACtHR’s contentious jurisdiction used \textit{Vélez Restrepo} to restate its position concerning “acts of aggression towards journalists with the aim of silencing them.”\textsuperscript{63} In \textit{Vélez Restrepo} the IACHR’s position on aggression towards journalists

\textsuperscript{59} Ibid.

\textsuperscript{60} Ibid, note 200.

\textsuperscript{61} IACtHR, \textit{Nogueira de Carvalho et al. v Brazil}, Preliminary Objections and Merits (28 November 2006) para 77; IACtHR, \textit{Escher et al. v Brazil}, Preliminary Objections, Merits, Reparations, and Costs (6 July 2009) para 172.

\textsuperscript{62} IACtHR, \textit{Vélez Restrepo and Family v Colombia}, Preliminary Objections, Merits, Reparations, and Costs (3 September 2012) para 290.
and their right to freedom of expression derived from its 1998 *Report on the Human Rights Situation in Mexico* (para 649, p. 142) and its 1999 merits report on the petition of Hector Félix Miranda. The IACtHR did not use these petitions, however, instead relying on the specific facts when considering the violation of freedom of expression, and situating the case within its jurisprudence for threatened human rights defenders when it found the death threat violated Vélez Restrepo’s right to personal integrity.

*Valle Jaramillo et al. v Colombia*

The differences between human rights defenders and journalists seem to register in their respective names, and in the weight of protection for the former, rather than the latter. Different parts of the international community have called for special protections for human rights defenders and journalists. The common standards for the related groups have followed parallel, not interlocking tracks, and it will be necessary in contentious cases for human rights litigators to make them mutually reinforcing. In the IASHR, the work of both groups is considered fundamental to the protection of human rights and the protection of Convention rights from abuse. The IASHR recognizes that these groups require special protection, especially if they exercise

63 Ibid, para 126.

64 Ibid, n. 102.

65 For the “work [of human rights defenders] … fundamental for the universal implementation of human rights, and for the full existence of democracy and the rule of law,” see IACHR, *Second Report on the Situation of Human Rights Defenders*. OEA/Ser.1/V/II.Doc. 66 (December 2011) paras 12 – 13; and for a previous iteration concerned with the international protection of human rights defenders, see IACHR, *Report on the Situation of Human Rights Defenders in the Americas*. OEA/Ser.L/V/II.124.Doc. 5 (March 2006) paras 13 – 17, 20. On journalists, see: IACHR, SR for Freedom of Expression, *The Inter-American Legal Framework regarding the Right to Freedom of Expression*, CIDH/RELE/INF.2/09 (30 December 2009) para 165: “Journalism, in the context of a democratic society, is one of the most important manifestations of freedom of expression and information. The work of journalists and the activities of the press are fundamental elements for the functioning of democracies, as journalists and the communications media keep society informed of events and their varied interpretations – a necessary condition for public debate to be robust, informed and vigorous. It is also clear that an independent and critical press is a fundamental element for the effectiveness of other freedoms in a democratic system.”
their rights in the context of a known threat or risk. The jurisprudential lines also run parallel, but as Vélez Restrepo v Colombia demonstrated, the IACtHR has used its jurisprudence on human rights defenders to illuminate its considerations of special protection for journalists under threat. The IACtHR judgment in Valle Jaramillo illuminates the scope and content of the right to life protections of a “well-known human rights defender.”

A review of the IACtHR’s decision in a human rights defender’s murder permits examination of the special protection it requires a State to provide for members of a vulnerable group. The ruling in Valle Jaramillo v Colombia is significant because of the way the IACtHR elaborates the State’s violation of Valle Jaramillo’s right to life, especially in regards the positive measures it must take to protect human-rights defenders in a “situation of special vulnerability.” The IACtHR’s reasoning also connects with its jurisprudence on its obligations to create the conditions for the successful enjoyment of rights, and it links the case to its provisional measures for human rights defenders who might experience “irreparable damage” and who must be protected because “their work makes a positive contribution to the efforts of the State in its capacity as guarantor of the right of all persons under its jurisdiction.”

66 Ibid.
67 IACtHR, Valle Jaramillo et al. v Colombia, Merits, Reparations, and Costs (27 November 2008) para 73.
68 Ibid, para 72.
69 See the IACtHR’s 2003 Rules of Procedure: article 25(1) “At any stage of the proceedings involving cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the IACtHR 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.”
70 ACHR, Article 63(2): “In 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.”
71 IACtHR, Matter of the Guatemalan Forensic Anthropology Foundation v Guatemala, Provisional Measures (July 2006) para 12; mutatis mutandis IACtHR, Matter of the Persons Deprived of their Liberty in the “Dr. Sebastiaõ Martins
As with journalists whose threats or murders provoke a “chilling effect” a murderous attack on a human rights defender silences others who promote human rights. An attack against “a human rights defender of the caliber of Jesús María Valle Jaramillo can have an intimidating effect on other human rights defenders.” The IACtHR wrote human rights defenders “act as guarantors against impunity … [they] complement the role, not only of the State, but of the inter-American System for the protection and prevention of human rights.” The IACtHR cited its case law concerning threats to human rights defenders (a Peruvian trade unionist and a Brazilian human rights defender). In the case of Brazilian human rights defender Nogueira de Carvalho, the IACtHR cited standards concerning the protection of human rights defenders drawn from the UN, the IACHR, and the European Union.

The ruling is especially useful because of the actions the IACtHR says the state must take if it knows of a serious threat to a human rights defender. The IACtHR understood Valle Jaramillo’s “declarations, which were intended to alert society to the links between paramilitary groups and some State agents, put his life, liberty, and personal integrity in great danger. [But] … the State, although aware of this danger, did not adopt the reasonable measures to prevent the violation of these rights.” The State must “adopt all reasonable measures required to guarantee the rights to life, to personal liberty, and to personal integrity of those defenders who denounced human

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72 IACtHR, Valle Jaramillo et al. v Colombia, Merits, Reparations, and Costs (27 November 2008) para 96.

73 Ibid, para 88.

74 IACtHR, Valle Jaramillo et al. v Colombia, Merits, Reparations, and Costs (27 November 2008) para 96, note 55: the 2005 IACtHR case of Pedro Hulica Tecse v Peru, and the 2006 decision in Nogueira de Carvalho, a human rights defender from Brazil.

75 IACtHR, Nogueira de Carvalho et al. v Brazil, Preliminary Objections and Merits, (28 September 2006), note 54.

76 IACtHR, Valle Jaramillo et al. v Colombia, Merits, Reparations, and Costs (27 November 2008) para 95.
rights violations and who are in a situation of special vulnerability such as the internal armed conflict in Colombia.” The IACtHR restated the State’s obligation to investigate with diligence the violations of the right to life, personal integrity, and personal liberty: “[I]mpunity encourages the repetition of human rights violations,” and it stressed the State’s role in the effective guarantee of rights.

The ruling in Valle Jaramillo is useful for the way it uses a variety of sources to build understanding of the risks human rights defenders face in Colombia. Unlike the case of threatened journalist Vélez Restrepo, in which the IACtHR seemed to dismiss the explanatory context of violence in Colombia, for Valle Jaramillo it recognized national and international authorities’ conclusions about the dangers confronting Colombia’s human rights defenders. The IACtHR quoted Colombia’s Constitutional Court, the UNSR on Torture, the UNCHR Report on Colombia produced by the Special Representative on Human Rights Defenders to the UNSG, and the explicit comments about Valle Jaramillo’s murder made by the chairman of the UNCHR.

The ruling is less useful for its reparations orders. This part of the ruling does not address the State’s special mechanisms to protect human rights defenders from lethal harm. Instead the IACtHR required investigation of the facts, publication of the judgment, acknowledgement of its international responsibility, commemoration of the memory of the murdered human rights defender, and provision of free psychological and psychiatric care to the next of kin, including an educational grant for his children. It also ordered guaranteeing of the safety on the return to Colombia of the one victim who fled abroad.

Dink v Turkey: The ECHR’s Landmark Case

77 Ibid, para 90.
78 Ibid, para 100.
79 Ibid, para 104.
80 Ibid, para 83.
81 Ibid, operative paras 14 – 18.
82 Ibid, operative para 20.
A Turkish nationalist murdered the Turkish-Armenian journalist Hrant Dink in 2007. The State actively put Dink at risk, because authorities prosecuted the journalist for eight articles he wrote in 2003 and 2004 that drew attention to the Armenian genocide and criticized Turkish national identity. This prosecution “had infringed his freedom of expression and made him a target for nationalist extremists.”\textsuperscript{83} The ECtHR found a violation of Dink’s right to freedom of expression because the prosecution interfered with his right to expression on a matter of public interest and that State had not created the conditions for public debate free from fear.\textsuperscript{84} The ECtHR recognized that the State’s interference did not serve a legitimate public interest.\textsuperscript{85} The State’s prosecution violated Dink’s right to freedom of expression and made him vulnerable. The State’s international responsibility deepened because though it knew of nationalists’ death threats after Dink’s prosecution it neither provided protection nor conducted an effective investigation into the journalist’s murder.\textsuperscript{86}

In the case of \textit{Vélez Restrepo v Colombia}, Article 19, an international NGO dedicated to a “global campaign for freedom of expression”, submitted an amicus brief to the IACtHR about \textit{Dink v Turkey}.\textsuperscript{87} The State argued that the IACtHR must not consider A19’s friend of the court brief because it arrived four days after the deadline for receiving such documents; the IACtHR upheld the State’s objection.\textsuperscript{88}


\textsuperscript{84} ECtHR, \textit{Affaire Dink c Turquie}, Definitif (14 December 2010) para 137.

\textsuperscript{85} Ibid, para 138.

\textsuperscript{86} Michael Becker, ‘European Court of Human Rights Upholds Turkish Journalist’s Right to Freedom of Expression’ \textit{The Human Rights Brief, Center for Human Rights and Humanitarian Law} (13 October 2010) \url{http://hrbrief.org/2010/10/echr-upholds-journalist-right-to-freedom-of-expression/}.


\textsuperscript{88}
However, even though the IACtHR judges did not consider the amicus, it should not be overlooked because the organization’s arguments encourages the IACtHR to acknowledge and learn from the jurisprudence of the ECHR in *Dink v Turkey* concerning the protection of journalists. The submission’s lateness missed an opportunity for cross-fertilization of jurisprudence.

A19 argued that the ECHR had deliberated upon the right to life of journalists in three cases concerning two murdered reporters and one disappeared journalist: *Kiliç v Turkey* (murdered), *Gongadze v Ukraine* (disappeared), and *Dink v Turkey* (murdered).\(^\text{89}\) The cases of *Kiliç* and *Gongadze* allowed the ECHR to confirm violations of the state’s obligation to protect the right to life (ECHR article 2) by taking preventive measures when it knew of a threat, and conducting an effective investigation to investigate the violence against the journalists.\(^\text{90}\) But in *Kiliç* and *Gongadze* the ECtHR did not relate the deaths of the journalists to the exercise of their freedom of expression, rather it focused on the state’s failure to protect a journalist from a known threat, and its failure to investigate. *Dink v Turkey* is the only case decided by the ECtHR in which it links the violation of a journalist’s right to life to freedom of expression.

The ECtHR extended jurisprudence on the positive obligations of States to protect freedom of expression. The ECtHR’s registrar summarized the ruling: it “stressed that States were required to create a favorable environment for participation in public debate by all the persons concerned, enabling them to express their opinions and ideas without fear.” This requirement entailed the State’s “‘positive obligation’ to protect his or her right to freedom of expression against attack, including by private individuals.”\(^\text{91}\)

\(^{88}\) IACtHR, *Vélez Restrepo v Colombia*. Preliminary Objections, Merits, Reparations, and Costs (3 September 2012) paras 67 – 68.


A19’s amicus brief to the IACtHR in Vélez Restrepo stated the importance of Dink: “the authorities were found to have failed to take the requisite steps to protect Hrant Dink’s life even though he had not requested police protection.” According to A19, Dink’s implication for Vélez Restrepo arose because after the Colombian soldiers attacked the cameraman in August 1996, authorities knew of the threats and harassment towards the journalist and his family. As in Dink, the State had failed to provide the conditions necessary for a journalist’s exercise of their right to freedom of expression.

Towards Cross-Fertilization

Applying this jurisprudence to cases of murdered journalists from Mexico will require clarification of the violent context of human rights violations: the Colombian cases occurred during the country’s armed conflict, and the events of the Venezuelan cases transpired during an uncertain political period. In Bustíos Saavedra v Peru, the IACHR reviewed the murder of a journalist in a conflict situation. Mexico’s confrontation with organized crime has not been classified as a conflict situation even though the numbers of dead from 2006 through the present suggests a serious, grave context: the national homicide rate doubled, including significant increases in violence against journalists and human rights defenders. But the IACtHR will have to determine Mexico’s context. Even then the IACtHR’s jurisprudence would need to

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emphasize the importance it places on the relationship between a general context of violence, threat, and danger, and the way in which it decides the individual experience of human rights violations, especially for journalists. This is why the jurisprudence on the protection of human rights defenders becomes important: it offers important insight on the protection of at-risk individuals who are fundamental to the prevention and protection of human rights.

This review of the IASHR urgent measures, petitions, and cases suggests that non-governmental organizations dedicated to the protection of freedom of expression must be encouraged to initiate procedures at the IACHR for the ultimate goal of litigating a case at the IACtHR. If and when the IACtHR considers the murder of journalists, its decisions will strengthen domestic implementation of international norms for journalists’ protection. Successfully litigated regional human rights cases can be brought into the domestic sphere, meaning that Mexican journalists might start to receive special protection under the IACtHR’s nascent jurisprudence linking the right to life and freedom of expression.
Conclusion: The Protection Gap for Journalists -- Is a New International Treaty Needed to Create the Nexus between Rights to Life and Freedom of Expression for Journalists?

In a 2012 report to the UN Council on Human Rights (UNCHR), the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Christof Heyns, disputed the existence of a protection gap for journalists to argue the sufficiency of existing human rights and humanitarian law: “the challenge lies rather with the implementation of the existing normative framework at the international (including regional) levels.”94 The UNSR disagrees that a gap in the protection of journalists exists under human rights law: “At this point there does not appear to be a need for a new global treaty dealing specifically with the safety of journalists.”95 The UNSR does not think that a global treaty would help protect journalists’ right to life. In lieu of a treaty, and the extent and depth of the problem of lack of protection and impunity in Mexico demands individual petitions regarding murdered journalists should be submitted to the IASHR.

None of the special mandate holders on freedom of expression – in international or regional human rights systems – have explained whether or not litigated cases make a difference to protecting journalists. The IASHR lacks judicial decisions to relate freedom of expression to the right to life in cases of murdered journalists. In lieu of an international treaty for the protection of journalists outside of armed conflict, the regional human rights system must issue rulings that bind states to presume that when a journalist (defined in the broad terms acceptable to the international community) has been killed, the violation of their freedom of expression rights must be presumed until evidence proves otherwise. This development will be part of the challenge of future litigation.

In lieu of specific jurisprudence linking the right to life and freedom of expression through cases concerning murdered journalists, regional human rights courts have emphasized the state’s duty to protect the rights of journalists while they work. In 2010, in Dink v Turkey the ECtHR found the state in violation of the

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95 Ibid.
journalist’s rights to life and freedom of expression because local police failed to protect him from murderous attack by a non-state actor. In 2012, the IACtHR considered if death threats against a journalist violated rights to personal integrity and freedom of expression to issue a judgment in *Vélez Restrepo v Colombia* that found the state in violation: to evade the threat the journalist and his family fled Colombia, and even this action restricted the journalist’s freedom of expression.

But though explicitly concerned with the protection of journalists, these cases hardly amount to legal innovations. Rather, *Dink v Turkey* and *Velez Restrepo v Colombia* pursue conventional lines of argument about the state’s acts and omissions, particularly in regards failed investigations that lead to impunity, to protect fundamental human rights: the rulings do not create much weight in an argument about the nexus between the rights to life and freedom of expression through the case of a murdered journalist who is the victim of serious human rights violations.

If the UNSR’s argument about not needing a treaty has value, it must serve to guide the IASHR to confront the reign of impunity in Mexico for murdered journalists. Mexico is a significant legal battleground for overcoming the impediments to presume *prima facie* human rights violations when a journalist is murdered. As with *Velásquez Rodríguez v Honduras*, a human rights case that set the standard for a state’s continuing obligation to investigate, identify, prosecute, and punish human rights violations, so too with the possibility of jurisprudence concerning murdered Mexican journalists. In spite of calls to the contrary from the international community, Mexico’s state and federal prosecutors continue to aver that crimes against journalists are not human rights crimes, and that they can be pursued in state, rather than federal, jurisdiction.

Given the glacial pace of change in Mexico in regards jurisdiction for human rights violations – notwithstanding the domestication of international human rights treaties under Mexico’s Constitution – it remains to be seen whether IASHR decisions will break the impasse. Changing this situation will take time. There are no pending

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96 ECtHR, *Dink and others v Turkey*, Judgment (14 September 2010).

97 IACtHR, *Vélez Restrepo v Colombia*, Judgment: Preliminary Objection, Merits, Reparations, and Costs (3 September 2012).

98 IACtHR, *Velásquez Rodríguez v Honduras* para 181.
IASHR cases about murdered Mexican journalists. This deficit – in spite of the 85 journalists murdered since 1990 – means that the IACtHR may be many years from contemplating a contentious case brought by representatives of a murdered Mexican journalist.

This chapter has demonstrated that journalists’ safety is of perennial concern to the international community. For Mexico’s journalists the organs and mechanisms of the IASHR have documented the protection problems and widespread impunity. Mexico has been a party to the relevant international and regional human rights individual complaints mechanisms for at least a decade, so initiative must now pass to non-governmental organizations to petition the human rights organs on behalf of murdered Mexican journalists. Since 1998, the Inter-American Court of Human Rights has the jurisdiction, under its rules of procedure and the American Convention on Human Rights, to hear cases from Mexico. But if the allies of murdered or disappeared journalists refuse to engage the IASHR’s machinery the chances of jurisprudence that creates a nexus between the rights to life and freedom of expression will never develop.

Mexico’s acceptance of international and regional human rights treaties means the time is right for individual petitions to be brought before the IACHR and pursued to contentious cases at the IACtHR. Without such human rights litigation in the regional system, violations of freedom of expression in Mexico have the potential to destabilize its transition to democracy,\(^99\) result in widespread impunity, and leave family members, friends, and colleagues of slain and disappeared journalists in a twilight world of uncertainty about redress for serious violations of fundamental human rights, those to life and freedom of expression. A treaty might not be needed to enhance the protection of journalists, just improved implementation of existing legal standards complemented by specific jurisprudence. But without human rights cases concerning Mexico, impunity for its murdered journalists will likely continue (the state’s domestic advances are piecemeal), and the IASHR will fail to consider the specific problems of policy and law in Mexico which are the source of ongoing international concern regarding violence against its journalists.

precautionary measures granted by the IACHR

1. journalists threatened in Mexico

2014 Members of the Contralínea Magazine Regarding Mexico
Reporters for web-based news magazine Contralínea.

2007 Esteban Abel Sánchez Campos and Others
Radio Journalists, Radio Calenda, Oaxaca.
Case notes mention attempted shooting of journalist by public official.

2006 Arabella del Carmen Jiménez Sánchez and Others
Radio Journalists from La Voladora

2005 Ericel Gómez Nucamendi and Workers
Measures extend to 116 workers at Noticias, Voz e Imagen, Oaxaca.

2003 Samuel Alfonso Castellanos Piñón and Others
Members of a Christian Anti-Torture Organization.
Case notes do not explain relationship to freedom of expression.

1999 Jesús Barraza Zaval
Identified as a “journalist.”

2. human rights defenders threatened in Mexico

2012 Estela Ángeles Mondragón
Human rights defender in indigenous communities.

2011 Family of Javier Torres Cruz
Identified as a “human rights defender.”
Family threatened after his killing.

2011 Patricia Galarza Gándara and Others
Identified as the “legal representatives” of disappeared people.

2011 Nazareth Migrants House and Human Rights Center, Nuevo Laredo
Precautionary measures cover the “members” of the named organization.

2010 Blanca Mesina Nevárez, Silvia Vásquez Camacho
Threatened after “reporting alleged abuses of authority” in Baja California law enforcement.

2010 José Alejandro Solalinde Guerra and Members of The Hermanos en el Camino Migrant Shelter
The measures covered five people, including Solalinde Guerra, “who work or can be found at” the shelter.

2010  
**Father Pedro Pantoja Arreola and His Team of Collaborators at the Belén Migrant Shelter**  
Note the use of “team of collaborators” to denote those covered by the measures.

2010  
**Agustín Humberto Estrada Negrete, Leticia Estrada Negrete, and Guadalupe Negrete Silva**  
The “member” of an LGBT NGO and his family.

2009  
**Lydia Cacho**  
Measures cover Cacho, “her family,” and employees of the Integral Center for Women (CIAM) in Cancún. The Commission noted that Cacho and CIAM employees experienced death threats that led Cacho to cease publication of her blog.

2009  
**Marcelino Coache Verano y Familia**  
A social movement and trade union leader from Oaxaca.

2009  
**Luz Estela Castro Rodríguez et al.**  
Measures cover “members” of two human rights organizations.

2007  
**Castulo Benavides and Other Members of the FLOC**  
Measures cover “members” of a labour rights organization.

2006  
**Alejandro Cerezo Contreras and Other Members of the Cerezo Committee**  
Measures cover three “members” of the Committee.

2006  
**Martín Amaru Barrios Hernández et al.**  
Measures cover the “members” of a labour rights organization.

2005  
**Obtilia Eugenio Manuel and Others**  
Identified as a “member” of an indigenous community, as an advocate for the community’s rights as indigenous people.

2004  
**Kichán Kichanob Organization**  
Measures cover a “witness” and his family members, threatened by paramilitaries in Chiapas they had denounced.

2004  
**Raul Javier Gatica Bautista**  
Measures cover him as a “member” of an indigenous rights council.

2003  
**Members of the Organization Acción de los Cristianos para la Abolición de la Tortura**

2002  
**Esther Chávez Cano**
Measures cover her as someone who “investigated” the murdered women of Ciudad Juárez.

2001  Abel Barrera Hernández
Measures cover the director of the human rights organization Tlachinollan.

2001  Members of the Todos los Derechos para Todos, National Network of Human Rights Bodies (REDTDT)
Measures cover “members” of the REDTDT’s secretariat.

1999  Digna Ochoa
Measures cover Ochoa and Edgar Cortéz Morales, both human rights defenders at the PRODH.

1996  Graciela Zavaleta
Measures cover her as a “member” of a group of human rights defenders, an advocate for prisoners’ rights.

1995  David Hernández Davalos
A human rights attorney and director of a human rights organization.