THE USE OF PROVISIONAL/INTERIM MEASURES BY INTERNATIONAL COURTS IN CASES OF MASS HUMAN RIGHTS VIOLATIONS: COMPARATIVE ANALYSES OF ICJ, UNHRC, IACTHR AND ECTHR PRACTICE

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As you pour yourself a scotch,
crush a roach, or check your watch,
as your hand adjusts your tie,
people die.
In the towns with funny names,
hit by bullets, caught in flames,
by and large not knowing why,
people die.
In small places you don't know
of, yet big for having no
chance to scream or say good-bye,
people die.
People die as you elect
new apostles of neglect,
self-restraint, etc. – whereby
people die…

Joseph Brodsky, "Bosnia Tune".

ABSTRACT

In situations of mass human rights violations, one of the most powerful tools available to international courts is the use of interim (also termed provisional or precautionary) measures. Such measures are designed to prevent irreparable harm from occurring in the interim period before a final judgment on the merits of a case can be rendered. This paper compares the practice of four of the key international human rights bodies and draws attention to fundamental commonalities in their application of interim measures.

Keywords

Interim/Provisional measures; mass human rights violations; international courts; urgency; risk of irreparable harm; comparative analysis.

1. INTRODUCTION

The purpose of interim measures, as an instrument of the international (human rights) judiciary in cases of mass human rights violations, is to ensure that certain fundamental rights are protected in urgent situations where there is an imminent risk of irreparable harm. In particular, they are necessary to maintain the status quo "by preventing particularly harmful human rights violations that would not be reparable by a decision on the merits".[1]

In international law, the terms "interim measures" and "provisional measures" are used interchangeably. Additionally, the Inter-American Commission on Human Rights uses the term "precautionary measures".[2] In this paper, the term "interim measures" will be used.

In contemporary International Public Law, the use of interim measures may differ depending

on the nature of the body, which issues them and the conditions for the indication of interim measures (jurisdiction, competence, admissibility, urgency, irreparable damage, request of the parties and/or indication by the court *proprio motu*). The most debatable issue is the degree to which such measures are regarded as binding, and the available means of enforcement. With reference to all of these factors, this article will provide a comparative analysis of how interim measures are exercised by four of the major international human rights bodies: the International Court of Justice (ICJ), the Inter-American Court of Human Rights (IACtHR), the United Nations Human Rights Committee (UNHRC) and the European Court of Human Rights (ECtHR).

The best explanation, in my view, of the meaning and importance of interim measures was very recently provided by Judge Antonio Cançado Trindade in his separate opinion to the the ICJ order of 19 April 2017 in the case of Application of the international convention for the suppression of the financing of terrorism and the international convention on the elimination of all forms of racial discrimination (Ukraine v. Russian Federation):

As from the times of the transposition of provisional measures into the international legal order, in the era of the old Permanent Court of International Justice (PCIJ), their relevance to the progressive development of international law itself was detected. Provisional measures of protection have indeed evolved historically, in my perception, from precautionary legal measures in domestic procedural law into jurisdictional guarantees of a preventive character in international procedural law, endowed with a truly tutelary character".[3]

It remains to be seen if this optimistic view corresponds to the reality of application of these measures.

2. CONDITIONS FOR THE INDICATION OF INTERIM MEASURES

Conditions such as prima facie jurisdiction, competence, admissibility, urgency, necessity, irreparable damage, request of the parties and/or indication by the court *proprio motu* create the bounds for electing, clarifying and indicating interim measures. Some of these conditions are common and should be met equally according to the ICJ, UNHRC, IACtHR and ECtHR's practice. As argued by Anne Peters, the question arises "whose rights must be made plausible by the plaintiff and which degree of showing this requires"[4].

Prima facie jurisdiction

Given that interim measures are designed to prevent irreparable damage in urgent situations, it is unsurprising that, in the practice of all four adjudicatory bodies studied, the standard of proof for indicating interim measures is significantly lower than that required for a full determination of the merits of a case. The practice of all four bodies is that jurisdiction need only be established on a *prima facie* basis and appears to be, at the first sight, similar.

Thus, the ICJ held in the case of *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)* that:

> …when dealing with a request for the indication of provisional measures, it is not required, before deciding whether or not to indicate such measures, to satisfy itself in a definitive manner that it has jurisdiction as regards the merits of the case; it is sufficient for it to ascertain that the provisions relied on by the Applicant appear, prima facie, to afford a basis on which its jurisdiction could be founded.[5]

The Court's practice is to reject requests for interim measures where there is no *prima facie* basis of jurisdiction, without carrying out a full assessment of the merits.[6]

The IACtHR requires *prima facie* proof that the requirements of extreme gravity and urgency and risk of irreparable harm are satisfied.[7]

For example, in the case of *Torres Millacura et al. with regard to Argentina*, the IACtHR denied a request for interim measures relating to alleged "permanent harassment and psychological torture by the Argentine State" because it was not possible to determine *prima facie* that the applicants were in a situation of "extreme gravity and urgency" where they risked suffering "irreparable harm".[8]

The European Commission on Human Rights established the principle that interim measures will only be indicated where the application discloses a *prima facie* breach of the Convention and the interim measures are to enjoin a state party from taking action that will do irreparable harm.[9]

The UNHRC also requires *prima facie* proof of irreparable harm often using the terms "likely" or "reasonably likely". For example in General Comment 33 "Measures may be requested by an author, or decided by the Committee on its own initiative, when an action taken or threatened by the State party would appear likely to cause irreparable harm to the author or the victim unless withdrawn or suspended pending full consideration of the communication by the Committee."[10]

Risk of irreparable damage (harm) and urgency

According to consistent jurisprudence of the ICJ, the UNHRC, the IACtHR and the ECtHR, the criterion of "irreparable damage (harm)" is essential to deciding whether the indication of interim measures is justified in a given case. In the case of *Mamatkulov and Askarov v. Turkey* [GC], the ECtHR observed that:

> the ICJ, the Inter-American Court of Human Rights, the Human Rights Committee and the Committee against Torture of the United Nations, although operating under different treaty provisions to those of the Court, have confirmed in their reasoning in recent decisions that the preservation of the asserted rights of the parties in the face of the risk of irreparable damage represents an essential objective of interim measures in international law. Indeed, it can be said that, whatever the legal system in question, the proper administration of justice requires that no irreparable action be taken while proceedings are pending …[11]

Both the ECtHR and the UNHRC determine on a case-by-case basis whether or not there is a risk of irreparable damage. However, Helen Keller and Cedric Marti have noted that a general definition of irreparability can be found in the case of *Charles E. Stewart v. Canada*:

The essential criterion is indeed the irreversibility of the consequences, in the sense of the inability of the author to secure his rights, should there later be a finding of a violation of the Covenant on the merits. The Committee may decide, in any given case, not to issue a request under rule 86 [now rule 92] where it believes that compensation would be an adequate remedy.[12]

It is also instructive to recall that in the Mamatkulov case, the ECtHR stated that:

> Interim measures have been indicated only in limited spheres. Although it does receive a number of requests for interim measures, in practice the Court applies Rule 39 only if there is an imminent risk of irreparable damage. While there is no specific provision in the Convention concerning the domains in which Rule 39 will apply, requests for its application usually concern the right to life (Article 2), the right not to be subjected to torture, inhuman or degrading treatment or punishment (Article 3) and, exceptionally, the right to respect for private and family life (Article 8) or other rights guaranteed by the Convention. The vast majority of cases in which interim measures have been indicated concern deportation and extradition proceedings.[13]

Thus, it can be stated that the Court has adopted a rather restrictive approach, largely limiting its interim measures orders to cases involving an imminent risk to the right to life or physical integrity.

It can be said, however, that there is some tendency to look beyond this limited scope. In particular, quite recently for the first time (!) the Court decided to apply Rule 39 in a case concerning complaints under Article 10 (freedom of expression) of the European Convention on Human Rights in the case of *Rustavi 2 v. Georgia*. In this case, the Supreme Court of Georgia had ruled that Rustavi 2, the country's largest independent television station, should be put back under the control of its former majority shareholder, perceived as a close ally of the government. The ECtHR issued an interim measures order suspending enforcement of the transfer of ownership and specifically instructing the government authorities not to interfere with Rustavi 2's editorial policy in any manner.[14]

As concerns the ICJ, this judicial body "is more inclined to interpret the "irreparability" as "impossibility of full execution of the final judgment". Even if the infringement could be alleviated by appropriate means, the Court could grant the provisional measures if otherwise it would prejudice the full execution of the final judgment".[15] The ICJ has also considered the urgency of a situation in light of the final judgment. Urgency stems from the fact that "action prejudicial to the rights of either party is likely to be taken before such final decision is given."[16]

In the Inter-American system "[w]hen examining a request seeking precautionary measures, the Commission looks for three factors: i) the gravity; ii) the "urgency", and iii) whether the measure is intended to 'prevent irreparable harm to persons.' Even though the facts which motivated a request for protective measures do not have to be fully proven, a minimum degree of detail and information is necessary to assess *prima facie* a situation of gravity and urgency."[17]

Therefore, the risk of irreparable damage firstly and predominantly must be understood as harm to life and health (physical and mental). That being said, the IACtHR has adopted interim measures to protect rights other than the rights to life and personal integrity. In *Haitians and Haitian-Origin Dominicans in the Dominican Republic*, the Court ordered the Dominican Republic to stop deporting persons of Haitian origin and to allow those already deported to return. In his concurring opinion, Judge Cançado Trindade stated that "the extreme gravity of the problem of uprootedness brings about the extension of the application of provisional measures not only to the rights to life and to personal integrity … but also to the rights to personal liberty, to the special protection of the children in the family, and to circulation and residence".[18]

In a state of emergency, urgency is often a given, considering among other things the increased risk of irreparable harm to the life, health and property of the civilian population during armed hostilities. "The element of urgency in such cases is usually self-evident… Regrettably, it is exactly in these same areas that provisional measures are the most difficult to apply and enforce." [19]

Plausibility

In the case of *Belgium v Senegal*, the ICJ stated that: "*the power of the Court to indicate provisional measures should be exercised only if the Court is satisfied that the rights asserted by a party are at least plausible*".[20]

Although this requirement of plausibility has been repeated in subsequent cases, "[i]t remains to be seen whether this requirement of plausibility will withstand further judicial scrutiny, though a strong argument remains as expressed by Judge Koroma that a clear standard to *prima facie* evaluate parties' rights would ensure the provisional measures process is not abused, thus more clearly defining the authority of the ICJ".[21]

As follows from the judicial discussion in the ICJ on the recent interim measures order in the case of the *Application of the international convention for the suppression of the financing of terrorism and the international convention on the elimination of all forms of racial discrimination (Ukraine v. Russian Federation)*, there is a strong voice raised for replacing the "plausibility" test with one of "vulnerability". For Judge Cançado Trindade, "human vulnerability is a test even more compelling than "plausibility" of rights for the indication or ordering of provisional measures of protection. In so acknowledging and sustaining, one is contributing to the ongoing historical process of humanization of contemporary international law".

Two more judges – Pocar and Owada – concluded that the standard of plausibility for interim measures by definition should be fairly low and thus was achieved in the discussed case. Therefore, it might be argued that some development in this direction can be observed, and replacement of "plausibility" by "vulnerability" will inevitably mean that interim measures will be indicated on a more routine and generous basis.

Judge Helen Keller notes that "a request for interim measures must make plausible the existence of an imminent risk of irreversible harm. In this context, both the UNHRC and the ECtHR seem to rely on the plausibility and credibility of the applicant's assertions. In order to meet this level of proof, a request must include relevant supporting documents such as, for example, domestic court decisions, medical reports, or specific country information compiled by NGOs or UN bodies such as the UNHCR or the OHCHR".[22]

The credibility requirement can be seen in the UNHRC's practice of granting interim measures on a provisional basis. As specified in the UNHRC's Mandate of the Special Rapporteur on new communications and interim measures: "[w]hen there are doubts regarding the imminence, credibility or irreparability of harm, the Special Rapporteur may decide to grant "provisional" interim measures. In these situations, the State party is informed that the decision of the Special Rapporteur to grant in-

terim measures may be revised in the light of information provided by the State party at any stage of the proceedings."[23]

Request of the parties and/or indication by the court proprio motu

According to Rule 75(1) of its Rules of Procedure, the ICJ "*may at any time decide to examine proprio motu whether the circumstances of the case require the indication of provisional measures which ought to be taken or complied with by any or all of the parties*".[24]

The Court issued interim measures *proprio motu* in the *LaGrand* case in which the Court recalled that it had the power under Article 75(1), that such a power had been included in the Rules of Court since 1936 and was well established, and that "it is for the Court to decide in each case if, in the light of the particular circumstances of the case, it should make use of the said power."[25]

Professor G. Zyberi concludes that "[s]o far the Court has used its powers under Rule 75(1) only once. As expected, the Court has used its *proprio motu* powers under Rule 75(1) very sparingly, so as to afford both parties the opportunity of being heard".[26] It should also be noted that in the *LaGrand* case, the applicants had requested interim measures but the Court had to act *proprio motu* and indicate measures immediately, without hearing from both parties, due to the urgency of the situation. Therefore, it can in fact be said that the ICJ "has never – without the request of a party to the dispute – proceeded to indicate measures on its own motion."[27]

The ECtHR may exceptionally apply Rule 39 *ex officio* (*proprio motu)*. Although, as Judge Helen Keller notes, "this is rarely the case in practice". In fact, the Court has only applied interim measures *proprio motu* on three occasions. Rule 39 also allows for the indication of interim measures at the request of "any other person concerned" but this has never occurred in practice.[28]

What the ECtHR is more prepared to do *proprio motu* is to seek additional information relating to a request for interim measures and to amend the terms of a request. In particular, the Court might seek additional information and then reach the conclusion that it can order less restrictive interim measures to avoid irreparable harm.[29] The Court can also "double-check or complete the applicants' submission". [30]

Under Rule 92 of the UNHRC's Rules of Procedure, "The Committee may, prior to forwarding its Views on the communication to the State party concerned, inform that State of its Views as to whether interim measures may be desirable to avoid irreparable damage to the victim of the alleged violation."

The UNHRC, however, cannot solicit information from the State party prior to the registration of a communication. The Mandate of the Special Rapporteur on new communications and interim measures of the UNHRC envisages that most of the requests "are made together with the submission of a new communication and therefore the Special Rapporteur takes the decision to grant or refuse them when he or she decides on registration of the communication. Interim measures are not granted on non-registered cases".[31]

However, once a communication has been submitted, the UNHRC does consider itself empowered to consider whether the facts might raise issues under other articles of the ICCPR and, in this respect, the UNHRC can effectively complete an applicant's claim. For example, in the case of *Lubicon Lake Band v. Canada*, the applicant complained about a violation of his Article 1 right to self-determination. The UNHRC held that this complaint was inadmissible as self-determination is a group right not an individual right. However, rather than reject the application, the UNHRC introduced Article 27 (the right of "persons belonging to minorities … to enjoy their own culture") *proprio motu*, found the communication admissible on this ground, and then took the further step of granting interim measures on the basis of this right.[32]

The power to issue interim measures *proprio motu* is also contained in the Rules of Court of the IACtHR. Article 26(1) states that the IACtHR may order provisional measures "at the request of a party or on its own motion". The Court adopted interim measures *proprio motu* in its very first case and has shown itself more willing to exercise this power than the other bodies surveyed in this article.[33]

In addition, "The Inter-American Commission can request provisional measures at any time, even if the case has not yet been submitted to the jurisdiction of the Court, and the representatives of the alleged victims can do so, provided the measures relate to a case that the Court is examining."[34]

Thus, like the ICJ, the UNHRC and the ECtHR, the authority of the IACtHR to issue provisional measures *proprio motu* is codified in its Rules of Procedure and its exercise of this authority is similar to these other adjudicatory bodies.

We can thus conclude, albeit roughly, that while all four bodies indicate interim measures *proprio motu* sparingly, in practice the IACtHR has been the most willing to use this power.

3.. WHETHER THE INTERIM MEASURES ARE BINDING?

In the judgment of 27 June 2001 in the *LaGrand* case, the ICJ highlighted the fact that the purpose of Article 41 of the Statute of the ICJ is to enable the court "to safeguard, and to avoid prejudice to, the rights of the parties" and that to fulfil this purpose the interim measures indicated by the Court must be legally binding. The Court also reflected on a longstanding principle elaborated upon by the Permanent Court of Justice in the case of *Electricity Company of Sofia and Bulgaria, Order of 5 December 1939*:

> the principle universally accepted by international tribunals and likewise laid down in many conventions ... to the effect that the parties to a case must abstain from any measure capable of exercising a prejudicial effect in regard to the execution of the decision to be given, and, in general, not allow any step of any kind to be taken which might aggravate or extend the dispute' (...).[35]

Thus, the *LaGrand* case confirmed that the ICJ's interim measures orders are legally binding. Since *LaGrand*, the Court has included findings of violations of its interim measures orders in a number of judgments.[36] This case, according to Anne Peters, "is also a sad illustration of the rationale and relevance of provisional measures. The purpose of provisional measures is to prevent the nullification of the legal positions at issue in the case by prohibiting the defendant from creating a *fait accompli* before the Court has decided on the merits of the claim. In the *LaGrand* case, the United States had disregarded the ICJ order of provisional measures to stay the execution of the brothers *LaGrand* and had moved on to execute them. A more drastic instance of producing an irreversible harm can hardly be imagined."[37]

In General Comment 31 [80],[38] the UNHRC made clear that States Parties are bound by the ICCPR and are under an obligation to "respect the Covenant rights and to ensure them to all individuals in their territory and subject to their jurisdiction". The UNHRC also stated that "the right to an effective remedy may in certain circumstances require States Parties to provide for and implement provisional or interim measures to avoid continuing violations and to endeavour to repair at the earliest possible opportunity any harm that may have been caused by such violations."

In General Comment 33, the UNHRC reminded States Parties that "[f]ailure to implement such interim or provisional measures is incompatible with the obligation to respect in good faith the procedure of individual communication established under the Optional Protocol."[39]

The UNHRC has made it clear through a series of decisions[40] originating with the case of *Piandiong et al v. The Philippines*[41] that interim measures decisions are binding:

> Interim measures pursuant to rule 86 of the Committee's rules adopted in conformity with article 39 of the Covenant, are essential to the Committee's role under the Protocol. Flouting of the Rule, especially by irreversible measures such as the execution of the alleged victim or his/her deportation from the country, undermines the protection of Covenant rights through the Optional Protocol.[42]

The IACtHR has held that its interim measures are binding in a number of cases.[43] In particular, the Court issued interim measures orders in the case of *James et al. v. Trinidad and Tobago* which expressly stipulated that:

> the information presented by the Commission provides grounds for the Court to conclude that a situation of "extreme gravity and urgency" exists, making it imperative to order the State to adopt, without delay, the Provisional Measures necessary to preserve the life and physical integrity of the alleged victims. … States Parties must fully comply in good faith (*pacta sunt servanda*) with all of the provisions of the Convention, including those relative to the operation of the two supervisory organs of the American Convention; and … in view of the Convention's fundamental objective

> of guaranteeing the effective protection of human rights (Articles 1 § 1, 2, 51 and 63 § 2), States Parties must refrain from taking actions that may frustrate the *restitutio in integrum* of the rights of the alleged victims[44]

The European Court of Human Rights has held that its indications of interim measures under Rule 39 are in practice legally binding due to the fact that "A failure by a Contracting State to comply with interim measures is to be regarded as preventing the Court from effectively examining the applicant's complaint and as hindering the effective exercise of his or her right [of individual petition] and, accordingly, as a violation of Article 34."[45] Only in exceptional circumstances "where the respondent State has demonstrated that an objective impediment prevented compliance and that it took all reasonable steps to remove the impediment and to keep the Court informed about the situation" will the Court not find a violation of Article 34.[46]

In *Mamatkulov and Askarov v. Turkey* the Court found a violation for the first time because of a State's failure to comply with an interim measure. In this case, the ECtHR had indicated an interim measure suspending the extradition of the applicants to Uzbekistan but Turkey proceeded to extradite the applicants anyway. The extradition prevented the Court from properly examining the application. Under Article 34 "[t]he High Contracting Parties undertake not to hinder in any way the effective exercise of this right [of individual application]". The Court considered that the "failure to comply with interim measures had to be regarded as preventing the Court from effectively examining the applicant's complaint and as hindering the effective exercise of his or her right and, accordingly, as a violation of Article 34."[47]

The case of *Al-Saadoon and Mufdhi v. the United Kingdom*[48] is another notable example where the Court found a violation of Article 34. In this case, the applicants were being detained by British military forces in Iraq and the Court indicated an interim measure to prevent the UK from transferring the applicants to Iraqi custody due to the risk of unfair trial and execution.[49]

An important consideration, however, is what happens in an inter-state case? Under Article 33 of the ECHR, States Parties can complain to the Court if another State Party is violating the Convention. In such a scenario, the Court's reasoning, that interim measures are binding as non-compliance violates the Article 34 right of individual petition, does not apply. Nonetheless, the Court can still argue that interim measures are binding based on the principle of *pacta sunt servanda* i.e. that parties to the Convention are obliged to act in good faith to protect Convention rights. Furthermore, final decisions by the ECtHR are binding and therefore, logically, states must also be legally bound to comply with interim measures aimed at safeguarding the rights of the parties pending that final decision.[50]

The approach, which has been recognized by all four adjudicators, is that states must comply with their obligations under the basic principle *pacta sunt servanda* in conformity with Article 27 of the Vienna Convention on the Law of Treaties (1969). "Thus, states cannot excuse non-compliance on the basis of their domestic law. When states fail to adhere to international human rights law by ignoring orders issued by an international body exercising its statutory or conventional authority, the state runs counter to the object and purpose of the human rights regime, therefore violating the international instruments…"[51]

In any case, the Court will have to examine this issue when it deals with the case of Georgia v. Russia (II). In this case, interim measures were granted by the ECtHR calling upon both parties to abide by the Convention, particularly Articles 2 and 3. Georgia complains that "despite the indication of interim measures the Russian Federation continued to violate their obligations under the Convention and, in particular, were in continuous breach of Articles 2 and 3 of the Convention."[52]

As a way of conclusion, according to the ICJ its interim measures are binding on the basis that a) the power to indicate such measures is provided for under Article 41 of its Statute; and b) although the wording of Article 41 does not make clear the binding nature of interim measures, the overall object and purpose of the ICJ and its Statute is to settle international disputes by legally binding decisions. Its powers to indicate provisional measures are intended to facilitate this purpose and logically must be binding. The IACtHR considers that its power to adopt binding interim measures is directly provided for in Article 63(2) of the Inter-American Convention and contracting parties

must comply *pacta sunt servanda*. The situation with the ECtHR and the UNHRC is somewhat more complex as these bodies do not derive their power to issue interim measures from their founding conventions. Rather they grant themselves this power in their respective rules of procedure. To overcome the fact that the states parties have not ratified this power, these two bodies rely on the right to individual petition. States have agreed to a right to individual petition in the conventions and a failure to comply with an interim measures order would violate this right. The problem with this line of reasoning is that it is not applicable to inter-state cases.

4. THE CONTEXT OF MASS HUMAN RIGHTS VIOLATIONS

The article will now consider some prominent examples of how interim measures have been used in situations of mass human rights violations, in particular, armed conflict situations.

Cases submitted to the ICJ involve a "wide variety of subject matters, including: territorial and maritime disputes; unlawful use of force; interference in the domestic affairs of States; violation of territorial integrity and sovereignty, economic rights; international humanitarian and human rights law; genocide; environmental damage and conservation of living resources; immunities of States and their representatives; and interpretation and application of international treaties and conventions".[53]

Often, in situations of inter-state disputes, the risk of mass human rights violations is not the primary concern of the parties. Nonetheless, the ICJ has shown itself willing to indicate interim measures in order to protect civilians.[54] Eva Rieter draws particular attention to border disputes: "in the older cases *Frontier Dispute (Burkina Faso/Mali)* (1986); and *Cameroon v. Nigeria* (1996) part of the rationale for the use of provisional measures was to prevent loss of life in the disputed area. The ICJ was concerned about the lives of civilians living in the conflict zone and of course about preservation of the evidence".[55] To this list of older cases, the *Case concerning the Temple of Preah Vihear* (Cambodia v. Thailand) (Cambodia v. Thailand) (2011) may be added. To quote Rosalyn Higgins "Disputes about frontiers are not just about lines on the ground but are about the safety and protection of peoples who live there."[56]

In the *Temple of Preah* case, there had been armed clashes between two states in the area around the Temple. The Court issued an interim measures order imposing a provisional demilitarised zone in order "to ensure … that no irreparable damage is caused to persons or property in that area pending the delivery of its Judgment".[57] The Order requested, inter alia, that both parties "immediately withdraw their military personnel currently present in the provisional demilitarized zone … [and] refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve".[58] In this case, both Thailand and Cambodia reacted positively to the Order and a long pattern of deadly clashes drew to a close. The Cambodian Foreign Minister Hor Namhong said that the Order establishing a demilitarised zone would result in "a permanent cease-fire".[59]

In his Separate Opinion appended to the Judgment of 11 November 2013, Judge Cançado Trindade recalled that, in his Separate Opinion appended to the interim measures order of 2011, he had endorsed the unprecedented creation of the "provisional demilitarized zone" to protect "not only the territory at issue, but also the populations that live thereon, as well as the set of monuments found therein, conforming the Temple of Preah Vihear", which had been designated as a UNESCO World Heritage Site constituting part of the cultural and spiritual heritage of humankind (para. 30). Judge Cançado Trindade adds that:

> [b]eyond the classic territorialist outlook (...) lies the human factor, calling for the protection, by the measures indicated or ordered by the ICJ, of the rights to life and personal integrity of the members of the local population, as well as the cultural and spiritual heritage of human kind (...). Underlying this jurisprudential construction, (...) is the principle of humanity, orienting the search for improvement of the conditions of living of the population and the realization of the common good (...), in the ambit of the new jus gentium of our times (...). In situations of the kind, one cannot consider the territory making abstraction of the local populations (and their cultural and spiritual heritage), who, in my view, constitute the most precious component of statehood. In its aforementioned Provisional Measures of Protection, the ICJ took into due account

> not only the territory at issue, but, jointly, the people on territory, i.e., the protection of the population on territory (paras. 31-32).[60]

In addition to cases concerning border disputes, the ICJ has also indicated provisional measures in such cases as the *Hostages* case[61], the *Genocide Convention* case[62] and *Armed activities on the territory of the Congo* (*Congo* v. *Uganda*)[63], which were directly relevant to human rights law against the background of the armed conflict. This is despite the fact that the ICJ has no specific human rights competence.

On 12 August 2008, Georgia instituted proceedings against Russia at the ICJ under the International Convention on the Elimination of All Forms of Racial Discrimination. On 14 August 2008, Georgia requested interim measures under Article 41 and on 15 October 2008 the ICJ indicated measures against both parties to refrain from acts of racial discrimination. No information on compliance is available, and the Court did not have a possibility to rule on it – ultimately, the ICJ concluded that the case was inadmissible. Under Article 22 of the CERD, parties must attempt to negotiate a settlement before a dispute can be adjudicated upon by the ICJ and the ICJ found that no such attempt had been made in the present case.[64]

On 16 January 2017, Ukraine submitted a request for the indication of provisional measures with regard to alleged violations of the International Convention for the Suppression of the Financing of Terrorism (ICSFT) and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD). The Court went through the procedural and substantive requirements and found that it did have prima facie jurisdiction in relation to both complaints. However, with regards to the ICSFT, the ICJ held that it could not indicate interim measures as Ukraine had not provided sufficient evidence of plausibility. With regards to the CERD, the ICJ held that: some of the alleged acts were plausible; that there existed "a link between the measures which are requested and the rights which are claimed to be at risk of irreparable prejudice"; and, based on the information available at the time, that there was an "imminent risk" of "irreparable prejudice". The Court requested Russia to "Refrain from maintaining or imposing limitations on the ability of the Crimean Tatar community to conserve its representative institutions"; and to "Ensure the availability of education in the Ukrainian language". The Court also requested that both parties "refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve".[65]

In particular, the Court ordered that Russia should refrain from maintaining or imposing limitations on the ability of the Crimean Tatar community to conserve its representative institutions, including the Mejlis and ensure the availability of education in the Ukrainian language. Given that the Mejlis is declared an extremist organization by the Supreme Court of Russia, compliance with the said interim measure would inevitably mean revocation of this decision. As of August 2017, the relevant Mejlis's request is pending before the Supreme Court.

When it comes to the UNHCR, Professor Sandy Ghandhi has classified the situations within its practice in which interim measures requests have been issued: 1) health and well-being of an individual; 2) life or lives in jeopardy; 3) deportation and extradition cases; 4) threats to the way of life of a community; 5) preservation of evidence; 6) death penalty cases.[66]

The Mandate of the Special Rapporteur on new communications and interim measures of the UNHRC envisages that: "[t]ypical interim measures relate to potential violations of article 6, on the right to life, and article 7, on the prohibition of torture or cruel, inhuman or degrading treatment. The Special Rapporteur has, nevertheless, requested interim measures to stop imminent violations of other rights, such as those under articles 17, 18, 19 and 27".[67]

The number of granted interim measures is increasing year by year. In the period covered by the Annual Report (2014), the Special Rapporteur on new communications and interim measures issued requests for interim measures in 41 cases under rule 92 of the UNHRC's rules of procedure.[68] According to the Annual Report (2015) of the Human Rights Committee, the Special Rapporteur issued 66 decisions requesting interim measures under rule 92.[69]

In a number of cases, the UNHRC has used interim measures to protect indigenous peoples. In the landmark case of *Lubicon Lakeband v. Canada*, the author alleged that his indigenous community "was on the verge of extinction" due to the Canadian government allowing oil and gas companies to expropriate their ancestral lands. The UNHRC requested the

State "to take interim measures of protection to avoid irreparable damage to [the author of the communication] and other members of the Lubicon Lake Band".[70]

The IACtHR has not only indicated provisional measures to protect the rights to life and personal integrity,[71] but has also gone as far as indicating such measures in order to protect the right to freedom of expression,[72] the right to property of indigenous peoples,[73] and the rights of the child.[74] During 2015, the IACtHR issued twenty-two orders on provisional measures. These orders had different purposes, such as: (i) continuation or, as appropriate, expansion or partial lifting of provisional measures; (ii) complete lifting of provisional measures, and (iii) denial of provisional measures. [75]

Researching "War" in the Jurisprudence of the Inter-American Court of Human Rights, Laurence Burgorgue-Larsen and Amaya Úbeda de Torres have concluded that the Inter-American system was the first system providing for the collective guarantee of rights, to have been faced with massive violations of human rights. "Both the doctrine of the Commission and the Court's case law have developed in a landscape characterized by dictatorships. Their contribution to both international human rights law and international humanitarian law is essential".[76]

The IACtHR has held that provisional measures in situations of internal armed conflict are applicable under the American Convention on Human Rights and international humanitarian law. In the Order of the provisional measures regarding Colombia, the Court noted that "…in order to make the rights enshrined in the American Convention effective, the State Party has the obligation, *erga omnes*, to protect all persons under its jurisdiction, not only in relation to the power of the State but also with respect to the actions of private individuals, including any kind of irregular armed groups. The Court notes that, given the special circumstances of the instant case, and the general situation of the armed conflict in the State, it is necessary to ensure the protection, by means of provisional measures, of all members of the Communities, in accordance with the provisions of the American Convention and of International Humanitarian Law".[77]

Rule 39 of the Rules of Procedure of the ECtHR does not specify that interim measures may only be indicated in cases concerning certain articles. Nonetheless, as already noted above, the Court has mostly limited its use of provisional measures to cases concerning Article 2 (right to life) and Article 3 (the prohibition of torture or inhuman or degrading treatment), [78] although in the recent times it enlarged this circle with some cases related to Article 8 (respect to family and private life – see, for example, the cases of *Neulinger and Shuruk v. Switzerland* where the Court ordered not to return the applicant child to his father pending the outcome of the proceedings[79] and *Evans v. the United Kingdom*, where the Court ordered the respondent Government to take appropriate measures to ensure that the applicant's embryos were preserved until the Court had completed its examination of the case[80]), and even Article 10 (freedom of expression, see the case of *Rustavi 2 v. Georgia* mentioned above).

The situations within the practice of the ECtHR in which interim measures requests have been issued mainly concern expulsion or extradition cases. In particular, expulsion cases with a health/medical element; a risk of a flagrant denial of justice; or a risk to private and family life. Interim measures have also been issued in situations concerning: health and conditions of detention; preventing the destruction of an element essential for the examination of an application; stay of execution of a decision authorising to discontinue nutrition and hydration allowing patient in state of total dependence to be kept alive artificially; stay of removal order.[81] Certainly, this list proposed in the factsheet on interim measures does not bind the Court and is not exhaustive. It just demonstrates the wide variety of situations, which the Court estimates as posing "a risk of irreparable damage" within the meaning of Rule 39 and its consistent jurisprudence.

In 2016, the total number of decisions on interim measures (2,286) increased by 56% compared with 2015 (1,470). The Court granted requests for interim measures in 129 cases (a decrease of 20% compared with 161 in 2015) and dismissed them in 1,103 cases (75% more than the 629 in 2015). The remainder fell outside the scope of Rule 39 of the Rules of Court. [82] 13 of the requests granted involved Ukraine and Russia.

In total, across the years 2014 to 2016, 183 interim measures requests were granted in respect of Ukraine and Russia, which is

approximately 36% of all measures granted across these three years.[83]

For the purposes of the present article, it might be interesting to look into the Court's approach to interim measures that arose out of a state of emergency in Ukraine in November-December 2013, when "the *EuroMaidan* protests" started. The ECtHR had received several Rule 39 applications. The applicants claimed that in the circumstances there was a real and imminent risk to their lives and health, emanating from the possible use of excessive force by the police to disperse the protesters. According to reports of various international and domestic observers, notably Amnesty International, Human Rights Watch and others visiting Kyiv, the police used excessive force against the protesters, which mainly included beatings with truncheons, spraying teargas, throwing stun grenades into protesters, shooting at protesters with rubber bullets, pushing protesters with shields. There were reports that the police also used live ammunition. As a result, hundreds were seriously injured (some losing limbs or eyesight) and by the time we received the first Rule 39 request at least four protesters had died. Moreover, at that time the Government introduced changes to the anti-riot regulations in order to allow the police to use water cannons to disperse protesters irrespective of the weather conditions (previously there was a ban on using it if air temperatures were below 0°C; at the time of events temperatures in Kyiv fell to about -20°C) and also to use additional types of non-lethal explosive devices (stun grenades). Furthermore, the Government issued statements saying that the police might use live ammunition to disperse the protesters.

The applicants requested the Court to indicate to the Government that they must not have recourse to violence or other measures capable of threatening the life or health of the protesters.

Although the Court ultimately decided not to apply Rule 39, when considering the application, it asked the parties the following question: "Having regard to the applicant's submissions and his request under Rule 39 of the Rules of Court, does the applicant currently run a real and imminent risk to his life and physical well-being? In particular, does he risk to be subjected to the treatment prohibited by Articles 2 and/or 3 of the Convention, given his allegations of risk to his life and health? If so, what measures are being taken by the Government to avoid the risk of such treatment?"[84]

This appears to be another strategy in dealing with urgent situations where the Court perhaps does not see a scope for application of Rule 39.

In addition to individual complaints, the ECtHR has applied interim measures in situations of "state of emergency" in inter-state cases in order to prevent mass human rights violations.

In March 2014, during the provocations in Crimea, the Government of Ukraine applied to the Court with a Rule 39 request. The President of the Third Section granted the request and "called upon both Contracting Parties concerned to refrain from taking any measures, in particular military actions, which might entail breaches of the Convention rights of the civilian population, including putting their life and health at risk, and to comply with their engagements under the Convention, notably in respect of Articles 2 and 3".

According to Philip Leach, "the interim measures indication made in the Ukrainian case mirrors a similar decision in *Georgia v Russia* (II) which was issued in August 2008 and was extended by the Court several times, and was still in force when the Court held a hearing in September 2011. However, the Court declined to accede to a Georgian request for a more specific measure 'to allow the Georgian emergency forces to carry out all the necessary measures in order to provide assistance to the remaining injured civilian population and soldiers via humanitarian corridor"[85].

On 16 November 2009, Georgia informed the ECtHR of the arrest of 4 minors in South Ossetia. Georgia requested interim measures to ensure the detainees prompt and unconditional release. The Court adjourned the decision several times and eventually the detainees were released and the Court decided there was no need to rule on the request[86]. While it is certainly very unconventional to indicate interim measures based on Article 5, it is submitted that the Court could have stepped beyond its traditional approach and considered a rapid application of Rule 39.

In this respect, another inter-state case worthy of note – the request for interim measures

brought by Ukraine against Russia in respect of Mr Hayser Dzhemilov (a Crimean Tartar and the son of a Member of Ukrainian Parliament and leader of Crimean-Tatar Mejlis) who had been detained by Russia and accused of murder. The Court indicated measures against both governments that they should "ensure respect for the Convention rights of Mr H. Dzhemilov including, in particular, respect for security of his person and his right to legal assistance."[87]

Another situation of mass human rights violations, which led to the application of Rule 39 against the background of the Russian-Ukrainian conflict, arose on 12 June 2014 when sixteen Ukrainian children were kidnapped by a pro-separatist armed group and illegally taken to Russia. Ukrainian authorities received no reply to their inquiries addressed to the Russian authorities about the situation of the children and applied to the Court with a Rule 39 Request. On 13 June 2014, the President of Section III applied Rule 39 asking the Russian Government to submit factual information on the circumstances surrounding the entry and stay of the children in Russia and indicated to the Russian Government that they should ensure their *immediate return to Ukraine* (also a non-conventional measure)[88]. In the evening of the same day the plane with these children left Russia for Ukraine, so the same evening the children were safely back home. It might be assumed that the authorities realised that kidnapping of children is going a bit too far if they still want to rely on international law and seek support for their position and thus the children were returned so quickly.

Coming back to the above analyses of the provisional/interim measures' binding nature, it is necessary to underline, that the Court, as any other international tribunal, can only be effective if the Contracting Parties value law.

5. HOW EFFECTIVE ARE INTERIM MEASURES AS A MEANS OF PREVENTING MASS HUMAN RIGHTS VIOLATIONS IN SITUATIONS OF ARMED CONFLICT?

Whilst the original purpose of any interim measure is to preserve a right from irreparable damage, in the inter-state case, like the Georgian and Ukrainian ones, the measures indicated were not limited to safeguarding the right in classical logic. By requesting both parties to comply with their engagements under the Convention, the Court contributed to confirmation of basic principles upon which the whole Convention is built as stated in its Preamble – "those fundamental freedoms which are the foundation of justice and peace in the world and are best maintained …by a common understanding and observance of the human rights upon which they depend".[89] Thus, the ECtHR faces new realities within the inter-state cases and needs to review the appropriate Rules of Procedure.

In an armed conflict situation, the requirements for indicating interim measures will almost certainly be met. It is in the very nature of a conflict situation that individuals will be at imminent risk of serious and irreparable harm. As held by the IACtHR in the *Chunimá* case, the fact that the state had acknowledged the existence of an armed conflict situation was sufficient to "lead to the presumption that a situation exists which could bring about irreparable damage to persons."[90] Therefore, interim measures are, at least theoretically, very well suited to protecting human rights in armed conflict situations. It has already been demonstrated that interim measures are legally binding. This article now turns to consideration of how effective interim measures are in practice. In particular, are interim measures orders enforceable?

One of the most prevalent "states of emergency" which can cause mass human rights violations is a risk of armed conflict. The general question, which arises in this context – could such a tool as interim measures effectively prevent the war and estimated mass human rights violations?

With respect to the ECtHR, Kanstantsin Dzehtsiarou considers that "[u]nfortunately, the Court is unable to prevent war. Moreover, major attempts to do so can lead to disappointment and despair on the part of the stakeholders… Granting interim measures in a pre-war situation in an inter-state complaint might have very little impact. It is unlikely that a government will change its mind to occupy a particular territory because the ECtHR has ordered it not to do so". [91]

Undoubtedly, the ECtHR is poorly designed to deal with inter-State cases, and the ICJ is much better placed for this task. But the reality of international law today is that this Court is the only international tribunal whose jurisdiction the Member State cannot, in general, decline. This very fact creates a certain moral burden that

requires this Court not to abstain from serious matters involving potential gross human rights violations, even if they have a clear political context, which this Court should not be involved with. The Convention has the role to guarantee very basic human rights, and the Court was created, according to Article 19, to ensure the observance of the engagements undertaken by the High Contracting Parties to the Convention. If in order to ensure the observance it should request parties to refrain from military actions or not to use excessive force during demonstrations or to return immediately someone back home – it should do so without long theoretical and political hesitations. Obviously, any military aggression is by definition a negation of human rights. At least a clear guidance (including judicial) should regulate the limits for military operations to minimize human rights violations of the civilian population.

However, fundamentally, where a state fails to comply, the indicating body is limited in the steps it can take to enforce its order. The international courts do not have direct enforcement mechanisms. Unlike domestic proceedings against individuals where the court has the tools of the state at its disposal to ensure its orders are executed, on the international level, in proceedings against states, the primary means of enforcement is political pressure from other states and international organizations. Unfortunately, relying on states, each with their own political agenda, is not the most effective and reliable means of enforcing a court order.

If we take the example of the ICJ, Article 94 of the UN Charter provides as following:

1. Each Member of the United Nations undertakes to comply with the decision of the International Court of Justice in any case to which it is a party.

2. If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment.[92]

Alexandra Traviss points to two key problems with relying on the Security Council to enforce interim measures orders. First, any decision to impose coercive measures on a state is always going to be 'subject to council power and political dynamics' and potential deadlock. In particular, what can be done to enforce an interim measures order against a non-compliant member of the Permanent Five? The answer would seem to be 'not much'. Even if a Security Council Resolution imposing sanctions for non-compliance were proposed, a member of the P-5 could always exercise its power of veto. Second, Article 94(2) authorises the Security Council to take measures 'to give effect to the *judgment*', it does not refer to *orders* made by the ICJ. Consequently, whether the Security Council is empowered to enforce interim measures orders is open to question.[93] It is noteworthy that when Bosnia had recourse to the Security Council in relation to Srebrenica and requested that the Council enforce the interim measures order of the ICJ[94], the subsequent Resolution 819 (1993) took note of the order of the ICJ but the Council did not purport to take enforcement measures pursuant to Article 94(2). The Council did take action but based on its Chapter VII powers.[95] Traviss concludes that "enforcement [of interim measures orders] rests largely on states' willingness to comply and to exercise domestic executive powers".[96]

The situation is similar with regards to the ECtHR which relies on the political pressure of the Committee of Ministers to ensure compliance. The ECtHR has, at least, been able to award financial damages in situations of non-compliance (see the above mentioned *Mamatkulov* case). However, the purpose of interim measures is to prevent irreparable harm, that is, to prevent harm that cannot be compensated adequately in damages. In an armed conflict situation, the court might well be awarding compensation to the relatives of a victim long since murdered (a widely discussed judgment on just satisfaction in the case of *Cyprus v. Turkey* provides some guidance in this respect[97]).

As has been highlighted by Frédéric Bostedt, 'often … the court is far away from where the victim lives, the proscribed acts take place anyway, and the civilian population suffers. The implementation of a provisional measure depends on the State concerned, and political pressure by the supervisory bodies is the only way available of compelling the state to comply'.[98] It is hard to argue with this conclusion. However, this is not to say that international courts should resign themselves to failure and abstain from indicating interim measures in armed conflict

situations. Although, the court's enforcement powers may be limited, interim measures orders throw light on urgent situations and the political bodies, such as the Council of Europe or the UN Security Council, may then take such steps as are practicable to induce the state to comply. In the absence of direct enforcement mechanisms for international courts, improving compliance with interim measures orders will most likely depend on the political pressure exerted by the international community upon the supervisory bodies and upon the non-complaint state concerned. In this regard, any court order that draws attention to a situation is to be welcomed.

6. CONCLUSION

I cannot agree more with Judge Cançado Trindade when he singles out "the importance and time dimension of provisional measures of protection, particularly in face of the briefness and vulnerability of human life"[99].

Interim measures by definition mean that judges must react (or at least try to) in an urgent manner; their very understandable reluctance to engage into immediate legal conceptualization of political issues might turn out to be crucially wrong. Giving, at least some, consideration to "vulnerability" marks a positive trend in the practice of the ICJ that should be taken on board by other judicial bodies. The UNHCR has demonstrated that some generosity in granting interim measures without a sufficient evidentiary basis can be perfectly compensated by the temporary character of these measures and the possibility to lift them as soon as plausible counter-information is submitted. This method is also used sometimes by the ECtHR, but in situations of urgency in the context of mass human rights violations it should be applied in a more routine way.

In some situations, interim measures might be the only instrument available to the international judicial bodies to prevent atrocities. It is true, as mentioned above, that in a war context where provisional measures are most necessary, they are also most difficult to enforce. If a State or group inflame the war it is highly unlikely that they value law, and thus any binding directive from an international judicial body can hardly be expected to have much impact. Still, concern that an interim measure will be ineffective and that non-compliance will harm a court's reputation is not a sufficient basis for judicial self-restraint.

Even if in the majority of war situations interim measures do not fully reach their purpose, some successful examples like the *Temple of Preah* case, where many human lives were saved due to effective intervention by the ICJ, should serve as a source of inspiration.

In the above epigraph the Nobel Prize winner Joseph Brodsky severely attacked those world leaders who demonstrated apathy toward the Bosnian situation:

> Time, whose sharp blood-thirsty quill parts the killed from those who kill, will pronounce the latter tribe as your type.

Unlike politicians and diplomats, judges have interim measures as a tool for reaction. Their moral burden is thus higher, and practice shows that the international judicial bodies discussed in the present article are willing to react.

Unfortunately, time presents a great challenge. Sometimes potential victims are in so desperate a situation that a practice, such as that of the IACtHR, of granting interim measures *proprio motu* in critical situations is the only plausible way of response. This obviously should also be implemented by the courts when dealing with mass grave human rights violations.

NOTES

1. Helen Keller, Cedric Marti Interim Relief Compared: Use of Interim Measures by the UN Human Rights Committee and the European Court of Human Rights, 2013, Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht, p. 327 Available at: http://www.zaoerv.de/73_2013/73_2013_3_a_325_372.pdf.
2. The "precautionary measures" taken by the Commission "are simply provisional measures by another name. They do not refer to the 'precautionary principle'." Eva Rieter, Preventing Irreparable Harm. Provisional Measures in International Human Rights Adjudication, Antwerp: Intersentia 2010, p. xxix footnote 4.
3. Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine *V.* Russian Federation) (Order for Provisional Measures) 19 April 2017. Separate opinion of Judge Cançado Trindade, Available at http://www.icj-cij.org/files/case-related/166/19400.pdf.
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5. Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), Provisional Measures, Order of 28 May 2009, I.C.J. Reports 2009, p. 147, para. 40.
6. Bernhard Kempen and Zan He, The Practice of the International Court of Justice on Provisional Measures: The Recent Development, 69 Heidelbergj Intl L 919, 922-923 (2009).
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9. R. St. J. Macdonald*, Interim Measures in International Law, with Special Reference to the European System for the Protection of Human Rights,* 1992, Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht, p. 709. Available at: http://www.zaoerv.de/52_1992/52_1992_3_4_a_703_740.pdf.
10. UN Human Rights Committee (HRC), *General comment Nº. 33, The Obligations of States Parties under the Optional Protocol to the International Covenant on Civil and Political Rights* (Nov. 5, 2008) UN Doc. CCPR/C/GC/33 at para. 19.
11. Ibid, § 124.
12. *Charles E. Stewart v. Canada,* Nº. 538/1993 [7.7]. Cited by Helen Keller, Cedric Marti, Interim Relief Compared: Use of Interim Measures by the UN Human Rights Committee and the European Court of Human Rights, 2013, Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht, p. 339-340. Available at: http://www.zaoerv.de/73_2013/73_2013_3_a_325_372.pdf.
13. *Mamatkulov and Askarov v. Turkey*, App. Nº. 46827/99, Grand Chamber judgment of 4 February 2005 Para 104.
14. M Antidze, 'Georgia suspends ownership change for broadcaster after euro court ruling' (Reuters, 3 March 2017), available at <http://www.reuters.com/article/us-georgia-media-idUSKBN16A2I9>.
15. Bernhard Kempen and Zan He, The Practice of the International Court of Justice on Provisional Measures: The Recent Development, 69 Heidelbergj Intl L 919, 922 (2009).
16. *Passage through the Great Belt (Finland v Denmark)* 1991 ICJ Rep 12 [23].
17. Inter-American Commission on Human Rights, Second Report on the Situation of Human Rights Defenders in the Americas

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18. *Haitians and Dominicans of Haitian Origin in the Dominican Republic (Dominican Republic)*, Order of the Inter-American Court (Provisional Measures), 18 August 2000: Concurring Opinion of Judge Cançado Trindade.
19. G. Zyberi *Provisional Measures of the International Court of Justice in Armed Conflict Situations*. Leiden Journal of International Law. Volume 23. Issue 03. September 2010, pp. 571-584 (p. 572).
20. Questions relating to the Obligation to Prosecute or Extradite (Belgium v Senegal), Provisional Measures, Order of 28 May 2009 (2009) ICJ Rep 139, 151.
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22. Helen Keller, Cedric Marti, Interim Relief Compared: Use of Interim Measures by the UN Human Rights Committee and the European Court of Human Rights, 2013, Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht, p. 334 Available at: http://www.zaoerv.de/73_2013/73_2013_3_a_325_372.pdf.
23. CCPR/C/110/3 Human Rights Committee. Mandate of the Special Rapporteur on new communications and interim measures, p. 3, Available at: http://www.un.org/ga/search/view_doc.asp?symbol=CCPR/C/110/3.
24. ICJ Rules of Court (Adopted on 14 April 1978 and entered into force on 1 July 1978), Art 75(1).
25. *La Grand Case (Ger v US)*, (Provisional Measures Order) 1999 ICJ Rep 3 [21].
26. G. Zyberi *Provisional Measures of the International Court of Justice in Armed Conflict Situations*. Leiden Journal of International Law. Volume 23. Issue 03. September 2010, pp 571-584 (p. 582).
27. I Uchkunova, 'Provisional Measures before the Intemational Court of Justice' in *The Law and Practice of International Courts and Tribunals* (2013) 391, 425.
28. Helen Keller, Cedric Marti *Interim Relief Compared: Use of Interim Measures by the UN Human Rights Committee and the European Court of Human Rights*, 2013, Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht, p. 331 Available at: http://www.zaoerv.de/73_2013/73_2013_3_a_325_372.pdf.
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30. Helen Keller, Cedric Marti *Interim Relief Compared: Use of Interim Measures by the UN Human Rights Committee and the European Court of Human Rights*, 2013, Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht, p. 334 Available at: http://www.zaoerv.de/73_2013/73_2013_3_a_325_372.pdf.
31. CCPR/C/110/3 Human Rights Committee. Mandate of the Special Rapporteur on new communications and interim measures, p. 2, Available at: http://www.un.org/ga/search/view_doc.asp?symbol=CCPR/C/110/3.
32. Eva Rieter, *Preventing Irreparable Harm. Provisional Measures in International Human Rights Adjudication*, 2010 Intersentia, Antwerp, 1200 pp. (p. 121).
33. Bostedt F, 'The African Court and Provisional Measures' in Ambach P, Bostedt F, Dawson G and Kostas S (eds) *The Protection of Non-Combatants During Armed Conflict and Safeguarding the Rights of Victims in Post-Conflict Society* (Martinus Nijhoff Publishers 2015) 351.
34. Inter-American Court of Human Rights, 'Annual Report 2014' (2005) Available at: http://www.corteidh.or.cr/sitios/informes/docs/ENG/eng_2014.pdf.
35. LaGrand (Ger v US), Judgment, 2001 ICJ 466 June 27, 2001.
36. See for example, *Request for Interpretation of the Avena Judgment* (Mexico v US); the *Armed Activities* case (DRC v Uganda); and the *Bosnia Genocide* case (Bosnia and Herzegovina v Serbia and Montenegro), cited by Dapo Akande. Provisional Measures and Joinder of Cases at the International Court of Justice – The Answers. EJIL; talk! Published on January 18, 2016. Available at: http://www.ejiltalk.org/provisional-measures-and-joinder-of-cases-at-the-international-court-of-justice-the-answers/.
37. Anne Peters, "Vulnerability" versus "Plausibility": Righting or Wronging the Regime of Provisional Measures? Reflections on ICJ, Ukraine v. Russian Federation, Order of 19 April 2017. Available at https://www.ejiltalk.

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38. UN Human Rights Committee (HRC), *General comment Nº. 31 [80], The nature of the general legal obligation imposed on States Parties to the Covenant*, 26 May 2004, CCPR/C/21/Rev.1/Add.13, available at: http://www.refworld.org/docid/478b26ae2.html.

39. UN Human Rights Committee (HRC), *General comment Nº. 33, The Obligations of States Parties under the Optional Protocol to the International Covenant on Civil and Political Rights* (Nov. 5, 2008) UN Doc. CCPR/C/GC/33 at para. 19.

40. See, for instance, the case of *Mansaraj v Sierra Leone* and the case of *Saidov v Tajikistan.*

41. The applicants in the case, who had been sentenced to death, claimed violations of arts 6 and 14 of the Covenant in a communication, dated 15 June 1999. A request for Presidential clemency was denied on 6 April, but a 3-month reprieve of execution was granted. Despite the Committee's request under Rule 92 (then Rule 86) delivered on 23 June not to execute them while their case was under consideration by the Committee, the State party issued a warrant on 7 July for their execution on 8 July. After making contact with the State party's representatives to the UN Office at Geneva, the Committee was informed that the executions would go ahead as scheduled since the State party considered that the applicants had received a fair trial. On the afternoon of 8 July, the applicants were executed by lethal injection. At the consideration of the merits of this case on 19 October 2000, the Committee delivered a blistering attack on the State party's failure to respect the Committee's request for interim measures.

42. Human Rights Committee. *Piandiong et al v. The Philippines Communication* Nº. 869/1999 19 October 2000 CCPR/C/70/D/869/1999.

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