

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF 25 MAY 1999**

**PROVISIONAL MEASURES ORDERED BY THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
IN THE MATTER OF THE REPUBLIC OF
TRINIDAD AND TOBAGO**

JAMES *ET AL.* CASES

HAVING SEEN:

1. *With respect to the Provisional Measures adopted by the Inter-American Court of Human Rights (hereinafter "the Court") on 29 August 1998 in favour of eight persons sentenced to death in the Republic of Trinidad and Tobago (hereinafter "the State" or "Trinidad and Tobago,") on whose behalf petitions were submitted to the Inter-American Commission on Human Rights (hereinafter "the Commission:")*
 - a. The Order of the Court of 29 August 1998, in which it decided:
 1. To ratify the Orders of the President of the Inter-American Court of Human Rights of June 29, July 13 and July 22, 1998.
 2. To order Trinidad and Tobago to take all measures necessary to preserve the life and physical integrity of Wenceslaus James, Anthony Briggs, Anderson Noel, Anthony Garcia, Christopher Bethel, Darrin Roger Thomas, Haniff Hilaire, and Denny Baptiste so as not to hinder the processing of their cases before the Inter-American system.
 3. To require the State of Trinidad and Tobago to report every fifteen days, beginning on September 1, 1998, on the status of the appeals and scheduled executions of Wenceslaus James, Anthony Briggs, Anderson Noel, Anthony Garcia, Christopher Bethel, Darrin Roger Thomas, Haniff Hilaire, and Denny Baptiste, and to require the Inter-American Commission on Human Rights to send its observations on these reports to the Inter-American Court of Human Rights within two days of their receipt.
 4. To require the State of Trinidad and Tobago and the Inter-American Commission on Human Rights to inform the Inter-American Court of Human Rights immediately of any significant developments concerning the circumstances of Wenceslaus James, Anthony Briggs, Anderson Noel, Anthony Garcia, Christopher Bethel, Darrin Roger Thomas, Haniff Hilaire, and Denny Baptiste.
 - b. The note of Trinidad and Tobago of 1 September 1998, in which the State asserted that "the Court does not have jurisdiction [...] to take any steps or decide upon any measures that will frustrate the implementation of a lawfully imposed sentence of death in Trinidad and Tobago" and further declared that it would not "be consulting with the Commission or the Court any further in these matters."
 - c. The Annual Report of the Court to the General Assembly of the Organisation of American States for the year 1998, in which, pursuant to its obligations under Article 65 of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention,") it indicated that Trinidad and Tobago had not complied with its Orders in the instant matter, and requested that the General Assembly urge the State to comply with the said Orders.

- d. The communication of the State of 5 February 1999, concerning the situation of Anthony Briggs, requesting the Court to "confirm" that its Order of 29 August 1998 (*supra* 1.a) was "discharged insofar as it relates to [him]."
- e. The communication of the Commission of 11 February 1999, informing the Court of developments concerning the circumstances of Wencesalus James, Anthony Briggs, Anderson Noel, Anthony Garcia, Haniff Hilaire, Denny Baptiste and Darrin Roger Thomas.
- f. The communication of 3 May 1999, received in the Secretariat of the Court (hereinafter "the Secretariat") on 7 May 1999, in which the Commission presented information on the most recent decisions of the Judicial Committee of the Privy Council*, the State's final Court of Appeal, and on developments concerning the circumstances of the petitioners. In the said communication, the Commission informed that, in the Case of Anthony Briggs, pursuant to Article 51 of the Convention, it issued Report No. 44/99 on 9 March 1999, along with its conclusions and recommendations, and required the State to provide a response to the offer of friendly settlement of the matter within 30 days. The Commission also noted that the State had rejected its recommendations on the matter on 16 April 1999, declaring that "the law should take its course." Finally, the Commission indicated that it had decided to publish the said document No. 44/99 in its Annual Report for 1998.
- g. The communication of the State of 20 May 1999, in which it requested that the Court "confirm that [its] Order of August 29th, 1998, concerning the imposition of provisional measures is now discharged insofar as it relates to [Mr.] Briggs."
- h. The note of the Secretariat of 20 May 1999, in which it requested the Commission to submit, within the following 24 hours, an urgent report relating the situation of Anthony Briggs.
- i. The note of the Commission of 21 May 1999, in which it requested the Court to grant an extension until Tuesday, 25 May 1999 for the submission of its urgent report on the situation of Anthony Briggs.
- j. The note of the Secretariat of 21 May 1999, in which it informed the Commission that the President had granted the extension requested.
- k. The urgent report presented by the Commission on 25 May 1999, containing its observations on the request of the State for the lifting of the Provisional Measures adopted in favour of Anthony Briggs.
2. *With respect to the Commission's request for amplification of the Provisional Measures in favour of twenty persons, who have also been sentenced to death by the State, and on whose behalf petitions have been submitted to the Commission:*
- a. The aforementioned communication of the Commission of 3 May 1999, in which it submitted to the Court, pursuant to Article 63(2) of the American Convention and Article 25 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure,") a request for amplification of the Provisional Measures adopted by the Court in the James *et al.* Cases, to include Wilberforce Bernard (Case No. 12.140), Naresh Boodram and Joey Ramiah (Case No. 12.129), Clarence Charles (Case No. 11.851), Phillip Chotolal (Case No. 12.112), George Constantine (Case No. 11.787), Rodney Davis (Case No. 12.072), Natasha De Leon (Case No. 12.093), Mervyn Edmund (Case No. 12.042), Alfred Frederick (Case No. 12.082), Nigel Mark (Case No. 12.137), Wayne Matthews (Case No. 12.076), Steve Mungroo (Case No. 12.141), Vijay Mungroo (Case No. 12.111), Wilson Prince (Case No. 12.005), Martin Reid (Case No. 12.052), Noel Seepersad (Case No. 12.075), Gangaleen Tahaloo (Case No. 12.073), Keiron Thomas (Case No. 11.853) and Samuel Winchester

* In the said decision, the Judicial Committee of the Privy Council held that "[t]o carry out the death sentences imposed on the appellants before the final disposal of their respective applications to the Inter-American Commission and Court of Human Rights will be a breach of their constitutional rights," and ordered that the carrying out of the said death sentences be stayed accordingly.

(Case No. 12.043), whose Cases are currently pending before the Commission.

b. The aforesaid communication, in which the Commission requested the Court to order

the Republic of Trinidad and Tobago [to] take the measures necessary to stay the execution of the above named 19 (*rectius* 20) prisoners until such time as the Commission has had the opportunity to examine and decide their cases in accordance with the norms and procedures specified in the American Convention and its Regulations.

c. The arguments presented by the Commission, to the effect that:

- i. there are 19 petitions currently pending before the Commission involving 20 persons subject to "mandatory death sentences" under Trinidad and Tobago law, whose Cases have not been submitted for examination under any other procedure of international investigation or settlement to any other international organisation, and in respect of whom Provisional Measures have not been requested or ordered;
- ii. in each Case, the petition states facts that tend to establish a violation of the rights guaranteed under the Convention, and some of them challenge the compatibility of the mandatory nature of the death penalty in Trinidad and Tobago with the State's obligations under the Convention, as well as the adequacy of due process afforded to the persons who have been sentenced to death;
- iii. pursuant to Article 29(2) of its Regulations, the Commission requested precautionary measures in each of these Cases, with no response from the State;
- iv. the State's denunciation of the Convention, pursuant to Article 78 of the said instrument, becomes effective on or about 26 May 1999;
- v. the Commission has not had the opportunity to complete its examination of these complaints and to issue the relevant decisions, and that, given these circumstances, it considers that the execution of the 20 persons would render any eventual decision of the Commission moot, in terms of the efficacy of potential remedies, causing irreparable harm to the persons to whom the sentences and complaints relate.

d. The Order of the President of the Court (hereinafter "the President") of 11 May 1999, in which he adopted urgent measures and required the State

to take all measures necessary to preserve the lives of Wilberforce Bernard, Naresh Boodram, Joey Ramiah, Clarence Charles, Phillip Chotalal, George Constantine, Rodney Davis, Natasha De Leon, Mervyn Edmund, Alfred Frederick, Nigel Mark, Wayne Matthews, Steve Mungroo, Vijay Mungroo, Wilson Prince, Martin Reid, Noel Seepersad, Gangaleen Tahaloo, Keiron Thomas and

Samuel Winchester, so that the Court may examine the pertinence of the request of the Inter-American Commission on Human Rights to amplify the provisional measures adopted in the *James et al.* Cases[;]

[...] to submit an urgent communication to the Inter-American Court of Human Rights by May 20, 1999, on the measures taken in compliance with [the President's] Order, as well as its observations on the measures requested by the Inter-American Commission on Human Rights, so that this information [could] be studied by the Court[;]

and decided

[t]o submit the request of the Inter-American Commission on Human Rights, [the President's] Order, and the urgent communication that [had to] be presented by the Republic of Trinidad and Tobago for the consideration of the Inter-American Court of Human Rights during its XLIV Regular Session.

e. The communication of Trinidad and Tobago of 19 May 1999, stating that by its Reservation made on ratifying the Convention it recognised "the compulsory jurisdiction of [the Court] only to such extent that recognition is consistent with the relevant sections of [its] Constitution; and provided that any judgement of the Court does not infringe, create or abolish any existing rights or duties of any private citizen," and claiming that the measures requested by the Commission "concern matters falling within the Reservation and accordingly, in the absence of any special agreement, [the State] does not recognise the jurisdiction of [the Court] and considers the Order of [its] President of May 11, 1999 *ultra vires* and void."

CONSIDERING:

1. *With respect to the Provisional Measures adopted by the Court on 29 August 1998:*

a. That Trinidad and Tobago has been a State Party to the American Convention since 28 May 1991, and that it accepted the jurisdiction of the Court on the same day.

b. That the State gave notice of its denunciation of the Convention to the Secretary General of the Organisation of American States on 26 May 1998, and that, pursuant to Article 78(1) of the said Convention, the denunciation becomes effective on 26 May 1999.

c. That, pursuant to Article 78(2) of the American Convention, the denunciation does not have the effect of releasing the State from its obligations with respect to acts occurring prior to the effective date of denunciation which may constitute a violation of the said Convention.

d. That the State has not complied with the obligation to submit periodic reports every fifteen days on the status of the appeals and scheduled executions of Wenceslaus James, Anthony Briggs, Anderson Noel, Anthony Garcia, Christopher Bethel, Darrin Roger Thomas, Haniff Hilaire and Denny Baptiste, as required by the Order of the Court of 29 August 1999. (*supra* 1.a, para.3)

- e. That neither the State nor the Commission has informed the Court immediately and sufficiently, in the terms required by its Order of 29 August 1999, of "any significant developments concerning the circumstances of Wenceslaus James, Anthony Briggs, Anderson Noel, Anthony Garcia, Christopher Bethel, Darrin Roger Thomas." (*supra*, 1.a, para.4)
2. *With respect to the Commission's request for amplification of the Provisional Measures in favour of twenty persons:*
- a. That Article 63(2) of the Convention provides:
- [i]n cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court shall adopt such provisional measures as it deems pertinent in matters it has under consideration. With respect to a case not yet submitted to the Court, it may act at the request of the Commission.
- b. That pursuant to Article 25 (1) of the Rules of Procedure:
- [a]t any stage of the proceedings involving cases of extreme gravity and urgency and when necessary to avoid irreparable damage to persons, the Court may, at the request of a party or on its own motion, order whatever provisional measures it deems appropriate, pursuant to Article 63(2) of the Convention.
- c. That the aforementioned Order of the President of 11 May 1999 was issued in conformity with the provisions of the Convention and the Rules of Procedure and the information presented in the matter.
- d. That, even though the Commission has not completed its consideration of the Cases referred in the Commission's request, it has informed the Court that "in each of these cases, the petition states facts that tend to establish a violation of the rights guaranteed under the Convention."
- e. That the Cases included in the Request for amplification have not been submitted to the Court and the consideration of the issues at hand is, therefore, based upon the State's procedural obligations as a Party to the American Convention, rather than on the merits of each Case. Therefore, the Court will study the request of the Commission in the light of the elements to be taken into account in conformity with Article 63(2) of the Convention, that is, the existence of a situation of extreme gravity and urgency and the necessity to avoid irreparable damage to persons.
- f. 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.
- g. That the States Parties to the Convention should 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 Inter-American system; and, that 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.

h. That Article 29 of the American Convention provides that:

[n]o provision of this Convention shall be interpreted as:

a. permitting any State Party, group, or person to suppress the enjoyment or exercise of the rights and freedoms recognised in this Convention or to restrict them to a greater extent than is provided for herein.

i. That, should the State execute the alleged victims, it would create an irremediable situation incompatible with the object and purpose of the Convention, would amount to a disavowal of the authority of the Commission, and would adversely affect the very essence of the Inter-American system.

NOW THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

pursuant to the authority conferred by Article 63(2) of the American Convention on Human Rights and Article 25 of the Rules of Procedure,

DECIDES:

1. *With respect to the Provisional Measures adopted by the Court on 29 August 1998:*

a. To maintain the Provisional Measures ordered by the Inter-American Court of Human Rights on 29 August 1998, in favour of Wenceslaus James, Anthony Briggs, Anderson Noel, Anthony Garcia, Christopher Bethel, Darrin Roger Thomas, Haniff Hilaire and Denny Baptiste. With respect to Anthony Briggs, to maintain the Provisional Measures ordered in his favour until such time as the Court, having previously considered the reports concerning the present status of his Case, issues a decision on this matter.

b. To urge the State of Trinidad and Tobago to comply with the Order of the Court of 29 August 1998, and henceforth report every fifteen days on the status of the appeals and scheduled executions of Wenceslaus James, Anthony Briggs, Anderson Noel, Anthony Garcia, Christopher Bethel, Darrin Roger Thomas, Haniff Hilaire and Denny Baptiste, and to require the Inter-American Commission on Human Rights to send its observations on these reports to the Inter-American Court of Human Rights within two days of their receipt.

c. To urge the State of Trinidad and Tobago and the Inter-American Commission on Human Rights to inform the Inter-American Court of Human Rights immediately of any significant developments concerning the circumstances of Wenceslaus James, Anthony Briggs, Anderson Noel, Anthony Garcia, Christopher Bethel, Darrin Roger Thomas, Haniff Hilaire and Denny Baptiste.

2. *With respect to the Commission's request for amplification of the Provisional Measures in favour of 20 persons:*

a. To ratify the Order of the President of the Inter-American Court of Human Rights of 11 May 1999.

b. To order the Republic of Trinidad and Tobago to take all measures necessary to preserve the lives of Wilberforce Bernard, Naresh Boodram, Joey Ramiah, Clarence Charles, Phillip Chotalal, George Constantine, Rodney Davis, Natasha De Leon, Mervyn Edmund, Alfred Frederick, Nigel Mark, Wayne Matthews, Steve Mungroo, Vijay Mungroo, Wilson Prince, Martin Reid, Noel Seepersad, Gangaleen Tahaloo, Keiron Thomas and Samuel Winchester, so as not to hinder the processing of their Cases before the Inter-American system.

c. To require the State of Trinidad and Tobago to include in the fortnightly Reports to which reference is made in operative paragraph 1.b of this Order, information on the status of the appeals and scheduled executions of Wilberforce Bernard, Naresh Boodram, Joey Ramiah, Clarence Charles, Phillip Chotalal, George Constantine, Rodney Davis, Natasha De Leon, Mervyn Edmund, Alfred Frederick, Nigel Mark, Wayne Matthews, Steve Mungroo, Vijay Mungroo, Wilson Prince, Martin Reid, Noel Seepersad, Gangaleen Tahaloo, Keiron Thomas and Samuel Winchester, and to require the Inter-American Commission on Human Rights to include its remarks on this information in its observations.

d. To require the State of Trinidad and Tobago and the Inter-American Commission on Human Rights to inform the Inter-American Court of Human Rights immediately of any significant developments concerning the circumstances of Wilberforce Bernard, Naresh Boodram, Joey Ramiah, Clarence Charles, Phillip Chotalal, George Constantine, Rodney Davis, Natasha De Leon, Mervyn Edmund, Alfred Frederick, Nigel Mark, Wayne Matthews, Steve Mungroo, Vijay Mungroo, Wilson Prince, Martin Reid, Noel Seepersad, Gangaleen Tahaloo, Keiron Thomas and Samuel Winchester.

Judges Caçado Trindade and de Roux-Rengifo informed the Court of their Concurrent Opinions, which shall be attached to this Order.

Hernán Salgado-Pesantes
President

Antônio A. Caçado Trindade

Máximo Pacheco-Gómez

Oliver Jackman

Alirio Abreu-Burelli

Sergio García-Ramírez

Carlos Vicente de Roux-Rengifo

Manuel E. Ventura-Robles
Secretary

So ordered,

Hernán Salgado-Pesantes
President

Manuel E. Ventura-Robles
Secretary

CONCURRING OPINION OF JUDGE A.A. CANÇADO TRINDADE

1. I vote in favour of the present Resolution of the Inter-American Court of Human Rights on Provisional Measures in respect of the Republic of Trinidad and Tobago. In the few hours that the Court disposed of, in order to decide on the subject, having examined all the documents submitted so far to its consideration, it has reached a decision which, in my understanding, contributes to the fulfilment of the object and purpose of the American Convention on Human Rights in the context of the present matter, which preserves the integrity of the mechanism of supervision of the American Convention, and which reflects the juridical nature of the provisional measures of protection, complying with the basic and indispensable requisite of juridical security. Under the merciless pressure of time, I proceed to indicate the juridical foundations of my position on the matter, in respect of the jurisdictional as well as the substantive levels of the subject under examination.

1. Jurisdictional Level.

2. Article 63(2) of the American Convention determines that

"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".

Article 25(1) of the Rules of Procedure of the Court sets forth the elements provided for in Article 63(2) of the Convention, namely, the extreme gravity and urgency, and the prevention of irreparable damage to persons.

3. The present matter (*James and Others* case) fits into the second category of cases contemplated in Article 63(2) of the American Convention: at the moment of being submitted to the Court by the Commission, the subject was under consideration of this latter, and not of the Court. As from the moment in which it received the Commission's request for provisional measures, the subject fell under the jurisdiction of the Court. The fact that, subsequent to its request, the Commission came to adopt, in the specific case pertaining to Mr. Anthony Briggs, the Reports under Articles 50 and 51, respectively, of the American Convention, does not mean that the examination of the case is already concluded under the inter-American system of protection of human rights.

4. Its examination is concluded by the Commission, but it continues under the jurisdiction of the Court, as the supreme organ of interpretation and application of the American Convention. This understanding finds support in the Court's Resolution on Provisional Measures of 29.08.1998 in the *James and Others* case, whereby the Court decided to order Trinidad and Tobago to take "all measures necessary to preserve the life and physical integrity" of, *inter alii*, Anthony Briggs, so as "not to hinder the processing of their cases before the inter-American system" (resolatory point n. 2). The Court did not have in mind only the procedure before the Commission; in referring to the procedure before the inter-American system, it could not fail to take into account the consideration of the subject also by the Court itself. In sum, although concluded the examination of the case of Mr. Anthony Briggs by the Commission, the subject remains pending before the Court.

5. The provision of Article 63(2) *in fine* of the American Convention (*cit. supra*) pertains to the moment of the submission to the Court of the request for provisional measures: the Court "may act at the request of the Commission". At this moment of the Commission's request, the case ought to be pending before the Commission itself, so that it can lodge that request with the Court. But once set in motion the Court's jurisdiction, this latter becomes intangible: it is not - it cannot be - affected in any way by the subsequent conduct or action by the parties (in contentious matter), or of the requesting State or organ (in advisory matter), or of the Commission as the organ requesting provisional measures of protection.

6. Nothing in Article 63(2) of the American Convention authorizes to condition the consideration of the subject by the Court to the proceedings (*trámite*) of the same case before the Commission. An interpretation to the contrary would lead to the juridically unsustainable situation of conditioning the competence (power to continue considering a given matter) already established of the Court to determine and supervise provisional measures of protection to the subsequent conduct or action of the organ requesting such measures. Of that action one cannot extract juridical consequences to the detriment of the intangibility of the jurisdiction of the Court.

7. In sum, as from the moment that the matter is submitted to the consideration of the Court, it falls under its jurisdiction, and it remains thereunder, irrespectively of the course of proceedings of the case under the Commission. The fact that the proceedings before this latter reach the end, in no way affects the jurisdiction of the Court. As I have pointed out in my Concurring Opinion in the Advisory Opinion of the Court on the *Reports of the Inter-American Commission on Human Rights* (OC-15, of 14.11.1997), the Court is, in any circumstances, *master of its jurisdiction*; the Court, as every organ endowed with jurisdictional competences, has the *inherent power* to determine the extent of its own competence (*Kompetenz-Kompetenz / compétence de la compétence*) (paragraphs 5 and 7), - either in advisory matter, or in contentious matter, or else in relation to provisional measures of protection.

8. The Court cannot abdicate from this prerogative, which moreover is a duty which the American Convention imposes upon it, to exercise its functions under Articles 62(3) and 64 of the Convention. Its jurisdiction cannot be at the mercy of facts other than its own actions. It is initially as guardian and master of its own jurisdiction (*jurisdictio, jus dicere*, the power to declare the Law) that on the Court, as the supreme organ of supervision of the American Convention, is conferred the role of establishing the juridical bases for the construction of an inter-American *ordre public* of observance and safeguard of human rights.

2. Substantive Level.

9. At this point, I move from the jurisdictional to the substantive level of the subject under examination. The fact that the State has requested the lifting of the order of the Court in relation to Mr. Anthony Briggs (in view of the end of the proceedings of the case before the Commission), and the fact that, until now, it has not executed any of the condemned persons, seems to disclose a recognition of the binding character of the provisional measures ordered by the Court. A basic feature, characteristic of such

measures, of an increasingly greater use in the case-law of the Inter-American Court, lies precisely on its eminently preventive dimension.

10. Its constitutive elements of the "extreme gravity and urgency", and the prevention of "irreparable damage to persons" - present and persistent to date in the present matter (*James and Others* case) - transform the provisional measures of protection into a true *jurisdictional guarantee of preventive character*. The attention to such elements, and to the juridical nature of those measures of protection, leads me to dissent from the doctrinal trend which beholds in the provisional measures ordered by the Inter-American Court at the request of the Commission measures of an exceptional order, to be restrictively interpreted by virtue of their innovating character.

11. Such doctrinal trend, static and conservative, shifts the attention from the very essence and the *rationale* of the provisional measures of protection, from its juridical nature, into considerations of a purely juridico-formal order, with an instinctive attachment to the *travaux préparatoires* of Article 63(2) of the American Convention. The Vienna Conventions on the Law of Treaties (of 1969 and 1986) themselves see it fit to warn, in Article 32, that only when the interpretation of a treaty in accordance with the general rule of Article 31 (*infra*) leaves the meaning "ambiguous or obscure", or leads to a manifestly unreasonable result, would it be fit to resort to the use of supplementary means of interpretation, such as the recourse to the preparatory work of the treaty at issue. It so occurs that the *travaux préparatoires* themselves of Article 63(2) of the American Convention are obscure and very little clarifying (cf. OEA, *Conferencia Especializada Interamericana sobre Derechos Humanos - Actas y Documentos* [07-22.11.1969], doc. OEA/Ser.K/XVI/1.2, of 1978, pp. 361, 457 and 497), in no way justifying an unduly restrictive interpretation of the provisional measures of protection ordered by the Inter-American Court.

12. In fact, the constitutive elements of the general rule of interpretation of treaties (formulated in Article 31(1) of the two Vienna Conventions on the Law of Treaties, of 1969 and 1986), - namely, the good faith, the text, the context, and the object and purpose of the treaty, - are jointly set forth in a same formulation, precisely to indicate the unity of the process of interpretation. Underlying that general rule of interpretation is found the principle *ut res magis valeat quam pereat*, widely supported by the international case-law, and which corresponds to the so-called *effet utile* (sometimes referred to as principle of effectiveness), by virtue of which one is to secure to the conventional provisions their proper effects in the domestic law of the States Parties.

13. In the inter-State *contentieux*, the power of a tribunal like the International Court of Justice to indicate provisional measures of protection in a pending case aims at *preserving the respective rights of the parties*, avoiding an irreparable damage to the rights under litigation in a judicial process. This has been pointed out by the Hague Court, for example, in the *Fisheries Jurisdiction* case (United Kingdom versus Iceland, *ICJ Reports* [1972] p. 16, par. 21, and p. 34, par. 22), in the case of *Hostages (U.S. Diplomatic and Consular Staff) in Tehran* (United States versus Iran, *ICJ Reports* [1979] p. 19, par. 36), and, more recently, in the case of the *Application of the Convention against Genocide* (Bosnia Herzegovina versus Yugoslavia [Serbia and Montenegro], *ICJ Reports* [1993] p. 19, par. 34, and p. 342, par. 35). Underlying this reasoning one finds the search for balance between the interests of the litigant parties (complainant and respondent States), as a reflection of the importance traditionally attributed to the role of reciprocity in international law in general.

14. Distinctly, in the international *contentieux* of human rights, the power of a tribunal such as the Inter-American Court of Human Rights to order provisional measures of protection aims basically at *safeguarding the human rights* set forth in the American Convention, in a situation of *extreme gravity and urgency* and in face of the *probability or imminence of an irreparable damage to persons*. Underlying the application of provisional measures of protection by the Inter-American Court are superior considerations of international *ordre public*, finding concrete expression in the protection of the human being.

15. Besides the preventive dimension of this protection, such measures disclose the specificity of the International Law of Human Rights. In so far as the Inter-American Court is concerned, such considerations of *ordre public* extend themselves to the exercise of the advisory and contentious functions of the Tribunal in general, as well as to the provisional measures of protection in particular, which - ordered as they are by an international tribunal like the Inter-American Court - have a mandatory character.

16. It is precisely by virtue of the principle *ut res magis valeat quam pereat* that the correct application of the American Convention contributes to turn into reality the rights protected thereunder, which, in turn, serve a concrete purpose (*effet utile*, principle of effectiveness), that of the effective protection of human rights. Any interpretation to the contrary would undermine the fulfilment of the object and purpose of the American Convention. The provisional measures cannot be restrictively interpreted, and impose themselves by their own *raison d'être*, as *true jurisdictional guarantees of a preventive character* that they are.

17. In the present case *James and Others*, the provisional measures of protection ordered by the Court impose themselves, even more so when the situation of *extreme gravity and urgency*, as well as the *probability or imminence of an irreparable damage to persons* persist, as has been pointed out both by the Court, in its Resolution on Provisional Measures of 29.08.1998 (paragraph 12), and by the Commission, in its written document of today, 25.05.1999, submitted to the Court a couple of hours ago.

18. With these foundations, I vote in favour of the present decision of the Court to *maintain* the provisional measures of protection ordered in its Resolution of 29.08.1998, to the benefit of the persons mentioned in the resolutory point 2 of the present Resolution, amongst whom is Mr. Anthony Briggs, as well as to *expand* the provisional measures of protection ordered in its Resolution of 29.08.1998, to the benefit also of the persons mentioned in the resolutory point 2 of the present Resolution.

Antônio Augusto Cançado Trindade
Judge

Manuel E. Ventura Robles
Secretary

CONCURRING OPINION OF JUDGE DE ROUX RENGIFO

I believe I might have other arguments to add to those given under the *consideranda* of the order in this case, in support of the Court's decision to maintain, for at least a reasonable length of time, the provisional measures ordered on behalf of Anthony Briggs.

The circumstances of the instant case are unique. The Court has ordered provisional measures to prevent irreparable harm to a person sentenced to death, while his case is in process with the inter-American human rights system. In order to take this case to a higher level, the Inter-American Commission has already submitted the reports to which articles 50 and 51 of the American Convention on Human Rights refer.

However, as neither the Commission nor the State has as yet formally submitted the instant case to the Court, one would have thought that provisional measures would have become superfluous once the reports in question were issued, particularly the report provided for under Article 51 of the Convention. But matters are not so simple. Were the Court to call for the measures to be lifted immediately, it would be disregarding the absolutes that follow from a full and balanced interpretation of the provisions of chapters VI, VII and VIII of the Pact of San José, which define the structure of the inter-American system for the protection of human rights and legislate the membership and functions of the organs of that system, which must work in tandem to accomplish the system's purposes. Had it not prolonged the life of the provisional measures, the Court would have been disregarding the combined scope of articles 50, 51 and 63(2) of the Convention.

The Court has held that "in accordance with the principle of good faith, embodied in [...] Article 31(1) of the Vienna Convention [on the Law of Treaties], if a State signs and ratifies an international treaty, especially one concerning human rights, such as the American Convention, it has the obligation to make every effort to apply the recommendations of a protection organ such as the Inter-American Commission, which is, indeed, one of the principal organs of the Organization of American States, whose function is "to promote the observance and defense of human rights" (Loayza Tamayo Case, Judgement of September 17, 1997. Series C No. 33, para. 80).

The "obligation to make every effort to apply the recommendations" of the Inter-American Commission has multiple ramifications. Clearly the State must take a constructive attitude toward those recommendations, carefully and deliberately study the steps and measures it must take to comply with them, find ways to sort out any obstacles that might prevent it from taking the measures in question, and apply the measures to the fullest should the obstacles prove not to be insurmountable.

Given the foregoing, the Court could hardly deny the protection of its provisional measures to anyone whose rights had been protected by express recommendations of the Inter-American Commission, right from the time those recommendations became final. When articles 50, 51 and 63.2 are read in combination, it becomes clear that the proper course of action is to prolong those measures for a reasonable period, so as to ensure that a time frame can be established during which the State truly makes "every effort to apply the recommendations [...] of the Inter-American Commission" before any irreparable harm is done (which in the instant case means before Anthony Briggs is executed).

Judge Carlos Vicente de Roux-Rengifo

Manuel E. Ventura-Robles
Secretary