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■ AQ FEATURE

Protecting Truth from Power: 15 Years of The Special Rapporteur For Freedom of Expression

BY [Santiago A. Canton](#)

The OAS Special Rapporteur for Freedom of Expression remains a target for autocratic governments.

Guarding freedom of expression serves as both a safeguard and a catalyst for all other human rights.

The Inter-American System enshrined the right to freedom of thought and expression in Article 13 of the American Convention on Human Rights and Article IV of the American Declaration of the Rights and Duties of Man. In 1998, to further protect this right, the Inter-American Commission on Human Rights (IACHR or the Commission) established the Office of the Special Rapporteur for Freedom of Expression. I served as the first head of the office.

The IACHR has consistently championed free expression throughout its 55-year existence. In 1988, the Commission denounced efforts to limit opposing views during the plebiscite campaign against General Augusto Pinochet in Chile. One year later, it spoke out publicly against the arbitrary arrests of independent journalists in Paraguay under the regime of Alfredo Stroessner.

The spark to create the Special Rapporteurship came after two decades of dramatic political change throughout the Americas, a shift from authoritarian regimes toward democratic governments and, with it, more transparent elections, democratic rights and the expectation of accountable governments.¹ But as these changes occurred, an increasing number of journalists were being killed, prosecuted or jailed.

These worrisome developments led to the creation of the Office of the Special Rapporteur for Freedom of Expression in the late 1990s. According to some accounts, the first step for the creation of the office was a meeting between U.S. President Bill Clinton and Argentine President Carlos Menem in October 1997 in Buenos Aires when, due to the increase in attacks against journalists in Argentina, Clinton recommended the creation of an independent institution to monitor freedom of expression in the Americas.²

At first, the structure and location of the new institution was not clear. However, considering its trajectory in the defense of freedom of expression and the pressing need to guarantee the independence of the new office, the IACHR moved quickly and announced, in October 1997, the creation of the region's first-ever office to defend freedom of expression.³

The creation of the initiative had the support of many civil society organizations that gathered for the Second Summit of the Americas in Santiago, Chile, in April 1998—including Freedom Forum, the Committee to Protect Journalists and the Argentine NGO *Periodistas*.⁴ The Summit itself enthusiastically embraced the innovation, declaring that “a free press plays a fundamental role in this area, and we reaffirm the importance of guaranteeing freedom of expression, information and opinion.”⁵

It was clear from the beginning that the intent of the Commission was to create an institution with a stronger mandate than the mandates of the other rapporteurs. Until the creation of the Special Rapporteur for Freedom of Expression, rapporteurs had primarily performed a promotional role in the Commission.⁶ (The Commission has rapporteurs for the rights of women, the rights of migrants, and the rights of children, among others.) Not only was the freedom of expression position the only Special Rapporteur, it was also the first and only rapporteurship led by an individual dedicated exclusively to the rapporteurship. All the other rapporteurs are commissioners and have other responsibilities on the Commission that force them to split their time and duties. In its first year, the annual report of the Commission reinforced the profile and authority of the new Special Rapporteur.⁷

As is unfortunately typical in the OAS, the new office was established without any budget, supplies or resources. When I was appointed to the post in 1998, there was no office space allotted, and we didn't even have a computer. Worse, the OAS had no plans to fund it. The only option was to look for outside funding.

Initial financial support came from the governments of Sweden and the United States. The office also received invaluable support from Jorge Taiana, then-executive secretary of the Commission, who eventually found us both the office space and the supplies we needed at IACHR headquarters in Washington, DC.

Despite these inauspicious beginnings, I am proud to say I had the honor of taking part in the creation of a new institution in the inter-American system that, 15 years later, is one of the most relevant bodies in the fight for democracy and the rule of law in the Americas. In 2001, I became executive secretary of the IACHR and served in that capacity until 2013.

The Early Years

The very formal, traditional and political organizational culture within the OAS, which tends toward consensus and not rocking the boat, would find in the new office a potential lightning rod.



A short welcome: Former President of Venezuela Hugo Chávez greets the IACHR in Caracas in May 2002. Photo: Courtesy of IACHR

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In addition, a number of governments had reservations about the scope and role of the office. Add to that the uncertainty of the Special Rapporteur's mandate and its unsupported status on the Commission, and it was clear that the first years of the rapporteurship were crucial to its future survival and independence.

To this end, we focused on a series of strategic initiatives and activities that would elevate our profile while establishing a firm foundation for future work.

Visits

It didn't take long before conflicts between governments and the Special Rapporteur flared. Only a few weeks after it was created, we conducted our first visit to a country, traveling to Peru in November 1998.⁸ The Commission invited the Special Rapporteur to join the IACHR delegation tasked with examining the situation of human rights in Peru as a signal of its support for the theme and its concern about the topic in Peru. On the trip, we were given specific authority to investigate press freedoms and threats to journalists. During the visit, I met with President Alberto Fujimori and questioned his record on freedom of expression, particularly the persecution, threats and attacks against journalists critical of the government who had reported on the violations of human rights by the military and police forces under the control of Fujimori's right-hand operative, Vladimiro Montesinos. Fujimori vehemently denied the accusations, opposed the Special Rapporteur's authority to question him, and defended his record on freedom of expression, blaming the accusations on a number of opposition tabloids.

The press release that followed included a separate analysis from the Special Rapporteur that highlighted violations of the right to freedom of expression, such as death threats, persecution of journalists and proposed legislation to limit freedom of expression. Such a separate report had never been done before by the other thematic rapporteurs.⁹ The visit and the report provoked the first formal criticism of the new office by the Peruvian representative to the OAS, Ambassador Beatriz Ramacciotti, who denounced the independence of the inter-American advocate for freedom of expression.

Direct Communication with Governments

To promote a thorough analysis of the situation of freedom of expression throughout the Americas, the Special Rapporteur established a practice of communicating directly with governments without going through the executive secretary of the IACHR, as had been the practice with the other rapporteurs.

Initially, this direct communication did not sit well with many governments, and they either did not respond or responded to the executive secretary instead. The issue was even raised at the Permanent Council as a violation of the Rules of Procedure of the Commission. Yet, despite the opposition, today this is a well-established practice of the Special Rapporteur and now has even become standard practice for other rapporteurs.

Annual Report

In the initial stages, there was a discussion about the type of annual report our office should issue. It was decided that to maintain our integrity and independence, we would produce a separate volume of the Commission's Annual Report to cover issues of freedom of expression in the region.

However, it was also important to ensure that the report would reach the highest authorities of the OAS countries. Due to the Rules of Procedure of the OAS, only the IACHR Annual Report reaches the annual meeting of the foreign ministers of the 34 member states. For that reason, the Commission decided to include the specific report on freedom of expression in the larger Annual Report of the IACHR¹⁰ while keeping it as a distinct section to clearly establish the independence of the office.

Today, as was the case 15 years ago, this is one of the practices that has been challenged by various countries, particularly Ecuador.

Substantive Interpretation of Legal Norms

One of the most lasting legacies of the office was the Declaration of Principles on Freedom of Expression—which we developed and the Commission approved¹¹ following extensive debate with civil society at our 108th regular session in October 2000.¹²

In the absence of specific norms and laws, the Declaration of Principles helped give added substance to article 13 of the Convention. The declaration was adopted as non-binding “soft law” under the inter-American human rights system and is widely used by governments and civil society throughout the region, such as in the August 2009 case in Chile of *Bordachar Sotomayor, Gerard Philippe and Pontífica Universidad Católica de Chile versus Canal 13*, which cited the Declaration of Principles regarding limits on defamation laws as they apply to public figures, and in a 2005 case in the Dominican Republic.¹³

Precautionary Measures

The Commission has the authority to grant urgent or “precautionary measures” to prevent irreparable harm to individuals or groups of persons in imminent danger. Before the establishment of the Special Rapporteur, precautionary measures were limited mainly to cases of threats to life or personal integrity.

The Special Rapporteur for Freedom of Expression formalized the process of supporting the granting of precautionary measures by the Commission and extended it, issuing approximately 80 precautionary measures to journalists, media and NGOs to protect freedom of expression. As a result of our efforts, the Commission has extended the authority to issue precautionary measures to the other thematic rapporteurs in areas such as women’s and Indigenous rights.

International Collaboration

As part of the vision of strengthening freedom of expression in and beyond the region, we began collaborating with similar organizations across the globe. On November 26, 1999, I met in London with the United Nations Special Rapporteur on the Right to Freedom of Opinion and Expression, Abid Hussain, and with the Representative on Freedom of the Media for the Organization for Security and Co-operation in Europe (OSCE), Freimut Duve.¹⁴ We issued a joint declaration on the right to freedom of expression¹⁵ that consolidated the view of this fundamental right as a global responsibility.

As a result of that meeting, the African Commission on Human and Peoples’ Rights established its own rapporteur for freedom of expression. These international networks gave credibility and strength to our efforts, and helped us learn from others about challenges and best practices.

Jurisprudence in the Inter-American Court Of Human Rights

In the 15 years since its creation, the Special Rapporteur has advanced jurisprudence on freedom of expression in the inter-American system. The Inter-American Court of Human Rights has issued approximately 50 decisions addressing freedom of expression, in large part a reflection of the Special Rapporteur’s advocacy and public symbolism. A brief summary of some decisions highlights the groundbreaking role the Special Rapporteur has played in advancing freedom of expression in the Americas.

The first time the Special Rapporteur participated in a case before the Inter-American Court was as an advisor in the case of *Ivcher-Bronstein v. Peru*. The case set a precedent in defining both the independent role of the office in the jurisprudence of the Court¹⁶ and also the role of any rapporteur in the Court's proceedings.

Petitioner Baruch Ivcher Bronstein was a naturalized Peruvian citizen and the majority shareholder in the company that operated Peru's television station *Frecuencia Latina-Canal 2*.¹⁷ In 1997, Ivcher was subjected to threats and intimidation as a result of a series of investigative reports that were critical of the Fujimori government.

In a move to silence the critical reports on his station, the government issued a decree that revoked Ivcher's Peruvian citizenship and assumed control over his 54 percent share in the company. The Court ruled in favor of Ivcher, deciding that the seizure violated his rights and ordered the 54 percent stake in the channel returned to him. At the end of 2000—after Fujimori had left the government—Peru restored Ivcher's citizenship and returned to him control of Canal 2 as ordered by the Court.¹⁸

The case of *Mauricio Herrera-Ulloa v. Costa Rica* was one of the first in Latin America to treat the Internet as a news medium equivalent to magazines and newspapers, subjecting it to the same protections.¹⁹

In 1995, Herrera-Ulloa wrote and published several articles in Costa Rica's *La Nación* about Felix Przedborski, Costa Rica's former honorary ambassador to the International Organization of Atomic Energy, alleging that Przedborski was involved in illegal activities. A year later, Herrera-Ulloa was ordered by the Costa Rican criminal court to pay damages, a fine and Przedborski's attorney fees, and *La Nación* was required to eliminate all links to the articles from its website.²⁰ The case reached the Inter-American Court, which voided Herrera-Ulloa's sentence and ordered the Costa Rican government to remove his name from the Registry of Criminal Offenders and pay \$20,000 in reparations.²¹

Costa Rica complied with the orders,²² and even amended its Code of Criminal Procedure by reforming the procedural component of case review and adding the right to appeal criminal judgments.²³ In 1998, members of the Chilean NGO Terram Foundation, including founder Marcel Claude-Reyes, filed a request seeking information from the Chilean Foreign Investment Committee on the forestry company Trillium and the Río Condor Project.

When the Chilean government refused to disclose all of the information sought without explanation, Claude-Reyes and others brought a claim before the Commission for violating their right of access to information.²⁴

The Inter-American Court upheld their demands and was the first international tribunal to establish the right to freedom of information as a fundamental component of the right to freedom of expression.²⁵ In 2008, Chilean President Michelle Bachelet signed Law No. 20.285 on access to information, and in 2009 the law entered into force.

These early cases and opinions served not just to protect the rights of journalists but to carve out a proactive right to gain access to confidential government documents under freedom of information provisions in various countries.

In Mexico, shortly after the election of President Vicente Fox, the federal government passed far-reaching

freedom of information laws. Other countries followed, but many failed to achieve their promises. The Special Rapporteur's office, under the leadership of both myself and my successor, Eduardo Bertoni, made this a major goal. We believed that getting citizens—and in particular, journalists—access to opaque and often secret government documents was the key to opening up past abuses and rolling back decades of authoritarianism and secrecy.

One of the most significant impacts of the Commission has been the campaign to repeal *desacato* laws. *Desacato*, or criminal defamation, laws criminalize some forms of expression aimed at public figures. *Desacato* has largely been used to send journalists to jail or to burden them with defending themselves in court instead of denouncing corruption by their governments. In 1992, Argentine journalist Horacio Verbitsky filed a petition with the IACHR after he was convicted of the crime of *desacato* for “defaming” a member of the Argentine Supreme Court. The Commission concluded that the *desacato* laws were not compatible with the American Convention on Human Rights “because they suppress the freedom of expression necessary for the proper functioning of a democratic society,” and Argentina repealed the *desacato* laws.

Although this case took place before our office was created, the Special Rapporteurship has made the repeal of *desacato* laws one of its primary priorities. Brazil, Chile, Costa Rica, El Salvador, Mexico (at the federal level), Nicaragua, Paraguay, and Peru have all either taken significant steps toward decriminalizing defamation, or have repealed the laws completely.²⁶

The Risks of Speaking Truth to Power

Since its formation, the Special Rapporteurship has been the favorite target of many governments. A few cases from a large list of examples can help clarify the environment in which the Special Rapporteur has to operate.

As would be expected for an office that deals with contentious issues of freedom of expression, the complaints come from all political sides.

In April 1999, after a press release from our office criticized the lack of freedom of expression in Guatemala, the Guatemalan foreign minister sent a letter to the OAS asking the secretary general to terminate the contract of the Special Rapporteur for Freedom of Expression.

In 2000, in response to the Annual Report of the Commission, in which Venezuela's track record on freedom of expression was heavily criticized, Venezuela launched an attack on the Special Rapporteurship that included prohibiting it from visiting the country and making formal and informal requests to the Commission and the secretary general of the OAS to eliminate the office.

In response to a press release issued by the Special Rapporteur criticizing the 1999 ruling against Argentine journalist Eduardo Kimel, the Argentine ambassador requested (unsuccessfully) that the office withdraw the press release and halt criticism of the government.

However, threats do not only come from states. The Special Rapporteur has also been under attack by the Office of the Secretary General of the OAS. In 2004, Secretary General Miguel Ángel Rodríguez decided unilaterally to terminate the contract of the Special Rapporteur and consequently the office e-mail and phones were disconnected. This was done under the premise that it was necessary to streamline the OAS. More likely, however, is that the decision was related to promises Rodríguez made to governments unhappy with the work of the Special Rapporteur during his campaign to be elected secretary general.

Then-Special Rapporteur Eduardo Bertoni was later rehired and the office re-established after the IACHR pressured the OAS and the secretary general, who soon after returned to Costa Rica to face multiple corruption charges stemming from his time as president.

As we have seen with the recent discussions over “strengthening” the inter-American system, the attacks against the Special Rapporteurship continue. While the current Special Rapporteur, Catalina Botero, has very professionally and diplomatically criticized Ecuador on its freedom of expression record, Ecuador has proposed administrative changes that would drastically reduce the Special Rapporteurship’s capacity to operate.

Is Freedom of Expression Out of the Woods? No

The successes are clear.

Over the past 15 years, the Office of the Special Rapporteur for Freedom of Expression has been a leading voice in the hemisphere advancing and protecting freedom of expression. The practices initiated by the Rapporteur have not only advanced freedom of expression in the Americas, but have also shaped and strengthened the work of the Commission and its other rapporteurs.

Two aspects have been critical to its success: independence and support from the Commission. In the face of current attempts to weaken the Special Rapporteurship, the Commission should continue its historic support of an institution that is fundamental to democracy and the rule of law in the Americas.²⁷ Together with the Commission and its special rapporteurships, it represents the most important component of an otherwise increasingly irrelevant OAS.

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