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Between Consistency and Flexibility: A Critical Evaluation of Precedent in International Human Rights Courts

Mohammad Anower Hossain Bhuiyan

PhD Researcher

Mangalayatan University, Aligarh, India

ABSTRACT

The doctrine of precedent occupies an ambiguous position within international human rights adjudication. Unlike domestic common law systems, international human rights courts such as the European Court of Human Rights (ECtHR) and the Inter-American Court of Human Rights (IACtHR) do not formally adhere to *stare decisis*, yet they rely extensively on prior case law to ensure consistency, legitimacy, and predictability. This paper critically evaluates the tension between consistency and flexibility in the use of precedent by international human rights courts. It argues that while consistency promotes legal certainty and the rule of law, excessive rigidity risks undermining the dynamic and evolving nature of human rights protection. Conversely, flexibility through doctrines such as the margin of appreciation and evolving interpretation allows responsiveness to diverse socio-political contexts but may lead to unpredictability and judicial discretion. Through doctrinal analysis and comparative examination, the paper demonstrates that international human rights courts operate within a hybrid model of precedent, balancing persuasive authority with interpretive adaptability. The study concludes that a principled and transparent approach to precedent is essential to reconcile these competing imperatives and enhance the legitimacy of international human rights adjudication.

Keywords: precedent, international human rights courts, consistency, flexibility, margin of appreciation, judicial interpretation

1. Introduction

The doctrine of precedent constitutes a foundational element of legal reasoning in many domestic legal systems, particularly those shaped by common law traditions. By requiring courts to follow previously decided cases, precedent promotes consistency, predictability, and equality before the law, thereby reinforcing the rule of law and institutional legitimacy (Raz, 2019). In such systems, the principle of *stare decisis* ensures that similar cases are treated alike, minimizing arbitrariness and fostering public confidence in judicial decision-making. However, the transplantation of this doctrine into the realm of international law and more specifically into international human rights adjudication remains deeply contested and conceptually complex.

Unlike domestic courts, international human rights courts are not formally bound by a strict doctrine of precedent. Article 38(1)(d) of the Statute of the International Court of Justice (ICJ) classifies judicial decisions as “subsidiary means” for the determination of rules of law, thereby rejecting the notion of binding precedent in its orthodox sense (Statute of the International Court of Justice, 1945). Nevertheless, in practice, international human rights tribunals such as the European Court of Human Rights and the Inter-American Court of Human Rights rely extensively on their prior jurisprudence. This reliance reflects a functional

necessity rather than a formal obligation, as consistency in adjudication enhances both the legitimacy and authority of these institutions (Alter, 2008).

This apparent paradox where precedent is formally non-binding yet practically influential raises a fundamental jurisprudential question: **how do international human rights courts balance the need for consistency with the demand for flexibility?** This question is particularly significant given the unique institutional and normative context in which these courts operate. Unlike domestic courts functioning within relatively homogeneous legal systems, international human rights courts must interpret broadly framed treaty provisions across diverse cultural, political, and legal environments. Moreover, they must maintain legitimacy among sovereign states while simultaneously advancing universal human rights standards (Benvenisti, 1999).

The tension between consistency and flexibility is further intensified by the dynamic nature of human rights law. Human rights treaties are often drafted in general and open-ended terms, requiring courts to engage in evolutionary interpretation. The ECtHR, for instance, has famously characterized the European Convention on Human Rights as a “living instrument,” emphasizing that its provisions must be interpreted in light of present-day conditions (Letsas, 2007). Such an approach necessarily demands a degree of flexibility, allowing courts to adapt legal principles to changing societal values and emerging challenges. However, excessive flexibility may undermine legal certainty and lead to unpredictability in judicial outcomes, thereby weakening the rule of law.

Conversely, a rigid adherence to precedent may constrain the progressive development of human rights law and limit the ability of courts to respond to new and complex issues. As international human rights courts increasingly address matters such as digital privacy, environmental rights, and socio-economic inequalities, the need for interpretive adaptability becomes even more pronounced. This creates an inherent tension: while consistency promotes stability and legitimacy, flexibility enables responsiveness and normative evolution (Stone Sweet & Brunell, 2013).

This paper critically evaluates the role of precedent in international human rights courts by examining this tension between consistency and flexibility. It adopts a doctrinal and comparative approach, focusing primarily on the jurisprudence of the ECtHR and the IACtHR, while also drawing insights from broader international legal practice. The central argument advanced in this paper is that precedent in international human rights adjudication operates within a **hybrid framework**, where prior decisions serve as persuasive authority rather than binding rules. This hybrid model allows courts to maintain coherence and predictability while preserving the flexibility necessary for the progressive development of human rights norms.

In doing so, the paper seeks to contribute to ongoing scholarly debates regarding the legitimacy, coherence, and effectiveness of international human rights adjudication. It ultimately argues that a **principled and transparent approach to precedent** one that clearly articulates the reasons for both adherence to and departure from prior decisions is essential to reconciling the competing demands of consistency and flexibility. Such an approach not only strengthens the normative authority of international human rights courts but also enhances their capacity to fulfill their fundamental mandate: the protection and promotion of human rights in an ever-evolving global context.

2. The Nature of Precedent in International Law

2.1 Absence of Formal *Stare Decisis*

International law does not recognize a strict doctrine of binding precedent comparable to that found in common law systems. Article 38(1)(d) of the *Statute of the International Court of Justice* (ICJ) explicitly categorizes judicial decisions as “subsidiary means for the determination of rules of law,” thereby denying them the status of primary sources of law (Statute of the International Court of Justice, 1945). This provision reflects the consensual and decentralized nature of the international legal order, in which sovereign states remain the principal law-makers and are not formally bound by prior judicial determinations beyond the specific disputes to which they are parties.

The absence of a formal doctrine of *stare decisis* is further reinforced by Article 59 of the ICJ Statute, which provides that decisions of the Court have binding force only between the parties and in respect of that particular case. Consequently, international adjudicatory bodies lack the hierarchical judicial structure that characterizes domestic legal systems, where higher courts impose binding precedents on lower courts. Instead, international courts operate within a fragmented legal landscape, where multiple tribunals coexist without a unified system of binding authority (Shaw, 2017).

Despite this formal position, the practical operation of international law reveals a more nuanced reality. International courts and tribunals frequently cite and rely upon their prior decisions, as well as those of other international bodies, in order to ensure coherence, consistency, and legitimacy in legal reasoning. This practice has led scholars to observe the emergence of a **de facto system of precedent**, even in the absence of formal rules mandating its application (Alter, 2008). Such reliance is not merely incidental; rather, it reflects a functional necessity in a legal system that lacks centralized legislative and enforcement mechanisms.

In the context of international human rights adjudication, this tendency is particularly pronounced. Courts such as the European Court of Human Rights (ECtHR) and the Inter-American Court of Human Rights (IACtHR) have developed extensive bodies of case law that guide subsequent decisions. For instance, the ECtHR has consistently emphasized the importance of legal certainty and coherence in its jurisprudence, often reaffirming established principles while incrementally refining their application (Letsas, 2007). Similarly, the IACtHR frequently builds upon its earlier rulings to develop progressive interpretations of human rights obligations (Pasqualucci, 2013).

This practice demonstrates that, although international courts are not formally bound by precedent, prior decisions carry significant **persuasive and normative weight**. As a result, deviation from established jurisprudence is relatively rare and typically requires explicit justification. In this sense, precedent functions as a stabilizing force within the international legal system, promoting consistency while preserving judicial discretion.

2.2 Precedent as Persuasive Authority

Within international human rights law, precedent operates primarily as a form of **persuasive authority** rather than binding obligation. This distinction is crucial to understanding the unique character of international adjudication. Unlike domestic courts, which are often compelled to follow earlier decisions under the doctrine of *stare decisis*, international human rights courts retain the discretion to depart from precedent when justified by compelling legal or contextual considerations.

The persuasive nature of precedent allows international courts to strike a balance between continuity and change. On the one hand, reliance on prior decisions fosters consistency, predictability, and equality before the law values that are essential to the legitimacy of judicial institutions (Raz, 2019). On the other hand, the non-binding character of precedent enables courts to adapt their jurisprudence in response to evolving social norms, emerging human rights challenges, and shifting political contexts.

This flexible approach is particularly evident in the jurisprudence of the ECtHR, which has developed the doctrine of the Convention as a “living instrument.” Under this doctrine, the Court interprets the European Convention on Human Rights in light of present-day conditions, allowing for the progressive development of legal standards (Letsas, 2007). While the Court frequently relies on its prior case law, it does not hesitate to depart from earlier interpretations when necessary to reflect contemporary values. For example, in cases involving issues such as privacy, discrimination, and freedom of expression, the Court has demonstrated a willingness to refine or reinterpret established principles.

Similarly, the IACtHR employs precedent in a dynamic and evolutionary manner. It often engages in what has been described as **jurisprudential expansion**, building upon earlier decisions to extend the scope of human rights protections. This approach is facilitated by the persuasive nature of precedent, which allows the Court to innovate while maintaining a degree of continuity with its past jurisprudence (Pasqualucci, 2013).

However, the reliance on persuasive precedent is not without challenges. The absence of binding authority may lead to inconsistencies in judicial reasoning, particularly when courts depart from established case law without clear or convincing justification. Such departures can undermine legal certainty and raise concerns judicial activism or arbitrariness. Moreover, the multiplicity of international tribunals and the lack of a unified appellate structure may result in divergent interpretations of similar legal principles, further complicating the landscape of international human rights law (Shaw, 2017).

Notwithstanding these challenges, the persuasive model of precedent remains a defining feature of international human rights adjudication. It reflects the need to balance **respect for established jurisprudence** with the **imperative of legal evolution**. In this hybrid framework, precedent serves not as a rigid constraint but as a guiding principle one that informs judicial reasoning while allowing for adaptability and innovation.

Ultimately, the use of precedent as persuasive authority underscores the distinctive character of international human rights courts. It enables them to maintain coherence and legitimacy in their decisions while remaining responsive to the dynamic and pluralistic context in which they operate. This balance between continuity and flexibility lies at the heart of the broader tension explored in this paper and sets the stage for a deeper examination of the competing values of consistency and adaptability in international human rights jurisprudence.

3. The Case for Consistency

3.1 Legal Certainty and Predictability

Consistency in judicial decision-making constitutes a fundamental component of the rule of law. It ensures that similar cases are treated alike and provides both individuals and states with a degree of predictability regarding legal outcomes. This predictability is essential in guiding state behavior, structuring expectations, and reducing arbitrariness in the application

of legal norms (Raz, 2019). In the absence of consistent jurisprudence, legal systems risk devolving into uncertainty, thereby undermining confidence in judicial institutions.

International human rights courts play a critical role in reinforcing legal certainty by developing coherent and stable bodies of jurisprudence. Through repeated reliance on established principles, these courts articulate clear standards for the interpretation and application of human rights norms. As noted in scholarly literature, consistent judicial reasoning contributes to the broader project of strengthening the international rule of law by constraining discretionary state action and promoting normative clarity (Voigt & Foster, 2024).

The jurisprudence of the European Court of Human Rights (ECtHR) illustrates this function effectively. In *The Sunday Times v. United Kingdom* (1979), the Court emphasized that laws must be sufficiently precise and foreseeable in their application to meet the requirements of legal certainty. This principle has been reiterated in subsequent cases, demonstrating the Court's commitment to maintaining a stable and predictable interpretive framework. Similarly, in *Kruslin v. France* (1990), the ECtHR underscored that legal norms must be formulated with sufficient clarity to enable individuals to regulate their conduct accordingly.

By consistently reaffirming such principles, international human rights courts contribute to the development of a predictable legal environment in which states can anticipate the consequences of their actions. This predictability not only enhances compliance but also strengthens the normative authority of international human rights law.

3.2 Legitimacy and Authority

Consistency also plays a vital role in enhancing the legitimacy and authority of international human rights courts. Judicial legitimacy is closely tied to perceptions of fairness, neutrality, and adherence to established legal principles. When courts demonstrate consistency in their reasoning and outcomes, they reinforce the perception that decisions are grounded in law rather than in subjective or arbitrary considerations (Alter, 2008).

For international courts, whose authority ultimately depends on state consent and voluntary compliance, legitimacy is of paramount importance. Unlike domestic courts, international tribunals lack direct enforcement mechanisms and must rely on the willingness of states to implement their judgments. Consistent jurisprudence helps to build trust among states by signaling that decisions are predictable, principled, and anchored in prior case law.

The ECtHR has repeatedly acknowledged the importance of maintaining consistency in its jurisprudence to safeguard its institutional credibility. While the Court retains the authority to depart from precedent, it has emphasized that such departures must be justified by compelling reasons in order to preserve legal certainty and public confidence (*Chapman v. United Kingdom*, 2001). This approach reflects an awareness that abrupt or unexplained shifts in jurisprudence may undermine the Court's authority and weaken compliance.

Furthermore, consistent jurisprudence facilitates the incorporation of international human rights norms into domestic legal systems. National courts often rely on the case law of international human rights bodies when interpreting constitutional and statutory provisions. A stable and coherent body of jurisprudence enhances the usability and persuasive force of international decisions at the domestic level, thereby strengthening the overall effectiveness of human rights protection (Stone Sweet & Brunell, 2013).

In this sense, consistency operates not only as a legal principle but also as a mechanism for institutional consolidation, enabling international human rights courts to function as authoritative interpreters of human rights norms.

3.3 Equality before the Law

The principle of equality before the law requires that similar cases be treated in a similar manner. This principle is closely linked to the doctrine of precedent, as consistent reliance on prior decisions ensures that judicial outcomes are not influenced by irrelevant or arbitrary factors. Inconsistent application of precedent, by contrast, risks undermining equality and may give rise to perceptions of bias, unpredictability, or selective justice.

International human rights courts, tasked with adjudicating claims involving fundamental rights, bear a particular responsibility to uphold this principle. Inconsistent jurisprudence may not only weaken the credibility of these courts but also compromise the protection of rights by producing divergent outcomes in comparable cases.

The ECtHR has explicitly recognized the importance of consistency in ensuring equality and fairness in its decision-making. In *Beian v. Romania (No. 1)* (2007), the Court held that profound and long-standing inconsistencies in judicial practice may violate the right to a fair trial under Article 6 of the European Convention on Human Rights. This case highlights the Court's acknowledgment that inconsistency can itself constitute a form of injustice, particularly when it leads to unequal treatment of similarly situated individuals.

Moreover, consistency contributes to transparency in judicial reasoning. When courts adhere to established precedents, they provide a clear and accessible framework for understanding how decisions are reached. This transparency enhances accountability and enables both litigants and observers to assess the fairness and coherence of judicial outcomes.

At the same time, the principle of equality does not require absolute uniformity. Differences in factual circumstances or evolving social contexts may justify departures from prior decisions. However, such departures must be carefully reasoned and explicitly justified to ensure that they do not undermine the broader commitment to equal treatment.

In the context of international human rights adjudication, maintaining consistency in the application of precedent is therefore essential to safeguarding both the **formal equality of litigants** and the **substantive integrity of human rights protection**.

4. The Case for Flexibility

4.1 The Evolving Nature of Human Rights

Human rights are inherently dynamic and must be interpreted in light of changing social, political, and cultural conditions. Unlike rigid statutory frameworks, human rights treaties are typically drafted in broad and open-ended terms, enabling their provisions to adapt to new realities over time. This interpretive openness necessitates a flexible judicial approach, particularly within international human rights courts tasked with applying these norms across diverse jurisdictions (Letsas, 2007).

The European Court of Human Rights (ECtHR) has been at the forefront of developing this dynamic interpretive methodology through its well-established “living instrument” doctrine. In *Tyrer v. United Kingdom* (1978), the Court held that the European Convention on Human Rights “is a living instrument which... must be interpreted in the light of present-day

conditions.” This principle has since become a cornerstone of the Court’s jurisprudence, enabling it to progressively expand the scope of rights in response to evolving societal standards.

A rigid adherence to precedent would significantly constrain this evolutionary function. If courts were strictly bound by earlier interpretations, they would be unable to respond effectively to emerging human rights challenges such as digital surveillance, environmental degradation, gender identity rights, and artificial intelligence governance. Flexibility, therefore, is not merely desirable but essential for ensuring that human rights law remains relevant and effective in a rapidly changing global context (Stone Sweet & Brunell, 2013).

At the same time, this evolutionary approach must be exercised with caution. While flexibility allows for normative development, it also raises concerns about judicial overreach and the potential erosion of legal certainty. The challenge lies in ensuring that doctrinal evolution is grounded in principled reasoning rather than unfettered judicial discretion.

4.2 The Margin of Appreciation Doctrine

One of the most significant mechanisms through which flexibility is operationalized in international human rights adjudication is the **margin of appreciation** doctrine. Developed primarily by the ECtHR, this doctrine grants states a degree of discretion in fulfilling their human rights obligations, particularly in areas involving moral, cultural, or social diversity.

The margin of appreciation recognizes that national authorities are often better positioned to assess local needs, values, and conditions. As such, it reflects a pragmatic acknowledgment of the diversity inherent in the international legal order. In *Handyside v. United Kingdom* (1976), the ECtHR emphasized that national authorities are in principle better placed than an international judge to evaluate the necessity of restrictions in sensitive areas such as public morals. This case laid the foundation for the doctrine’s subsequent development.

The doctrine serves multiple functions. First, it allows the Court to accommodate variations in national practices without imposing a rigid uniform standard. Second, it helps to maintain the legitimacy of the Court by respecting state sovereignty and reducing resistance to its judgments. Third, it facilitates a more context-sensitive approach to human rights adjudication, enabling the Court to tailor its analysis to specific circumstances (Benvenisti, 1999).

However, the margin of appreciation has been subject to extensive criticism. Scholars argue that its application is often inconsistent and lacks clear doctrinal boundaries, leading to unpredictability in judicial outcomes (Kratochvíl, 2011). The breadth of the margin granted to states may vary depending on factors such as the existence of a European consensus, the nature of the right at issue, and the proportionality of the interference. This variability can create uncertainty and may undermine the uniform protection of human rights.

Moreover, critics contend that the doctrine may enable states to justify restrictive measures under the guise of cultural or moral differences, thereby weakening the universality of human rights norms. Despite these concerns, the margin of appreciation remains a central tool for balancing the competing demands of **universalism and pluralism** within international human rights law.

4.3 Judicial Dialogue and Contextual Adaptation

Another important dimension of flexibility in international human rights adjudication is the practice of **judicial dialogue** between international and domestic courts. This dialogic process involves the mutual exchange of legal reasoning, where international courts draw upon national jurisprudence and, in turn, influence domestic legal systems.

The Inter-American Court of Human Rights (IACtHR) provides a notable example of this approach. The Court frequently engages with domestic legal frameworks and constitutional principles, citing national court decisions to support its interpretations and to enhance the legitimacy of its rulings (Pasqualucci, 2013). This practice fosters a sense of shared ownership over human rights norms and encourages greater compliance with international judgments.

Judicial dialogue also enables international courts to incorporate diverse legal perspectives and contextual considerations into their decision-making. By engaging with domestic jurisprudence, courts can better understand the social, cultural, and political environments in which human rights issues arise. This, in turn, allows for more nuanced and context-sensitive interpretations of legal norms.

Furthermore, judicial dialogue contributes to the development of a **transnational legal discourse**, in which human rights standards are shaped through continuous interaction between different legal systems (Stone Sweet & Brunell, 2013). This iterative process enhances the adaptability of international human rights law and promotes convergence around shared principles.

However, the dialogic approach is not without its challenges. Differences in legal traditions, institutional capacities, and political contexts may limit the effectiveness of judicial dialogue. Additionally, excessive reliance on domestic jurisprudence may risk diluting international standards or introducing inconsistencies into the broader legal framework.

Despite these limitations, judicial dialogue remains a vital mechanism for achieving flexibility in international human rights adjudication. It allows courts to balance universal principles with local realities, thereby enhancing both the legitimacy and effectiveness of their decisions.

5. The Tension between Consistency and Flexibility

5.1 The Risk of Over-Consistency

While consistency is a foundational value in judicial decision-making, excessive reliance on precedent may result in doctrinal rigidity, thereby constraining the progressive development of international human rights law. In a legal domain characterized by rapidly evolving norms and complex socio-political realities, strict adherence to past decisions may prevent courts from responding effectively to emerging challenges.

International human rights courts must frequently address novel issues such as digital privacy, environmental protection, and bioethics that were not contemplated at the time earlier precedents were established. In such contexts, an overly rigid approach to precedent may ossify legal doctrine and hinder the evolution of rights protections. As Stone Sweet and Brunell (2013) observe, international courts function as “trustees” of legal regimes, and their legitimacy partly depends on their capacity to develop the law in light of changing circumstances.

Moreover, excessive deference to precedent may perpetuate flawed or outdated reasoning. The absence of a formal doctrine of *stare decisis* in international law provides courts with the opportunity to revisit and correct earlier decisions. However, if courts become overly cautious in departing from precedent, they risk entrenching interpretive errors and limiting doctrinal innovation. This concern is particularly salient in human rights adjudication, where evolving societal values often demand a reassessment of previously accepted norms (Letsas, 2007).

Thus, while consistency promotes stability, an overemphasis on precedent may undermine the adaptive and progressive character of international human rights law.

5.2 The Risk of Over-Flexibility

Conversely, excessive flexibility in the application of precedent poses significant risks to legal certainty, predictability, and the rule of law. When courts depart from established jurisprudence without clear and principled justification, they may create an environment of uncertainty that undermines both state compliance and public confidence in judicial institutions (Raz, 2019).

Critics of the European Court of Human Rights (ECtHR) have frequently pointed to the inconsistent application of doctrines such as the margin of appreciation as evidence of excessive flexibility. The scope of the margin granted to states often varies depending on contextual factors, including the existence of a European consensus and the nature of the right at issue. While such contextualization may be justified, its inconsistent application can lead to unpredictability and perceptions of arbitrariness (Kratochvíl, 2011).

For instance, similar cases involving freedom of expression or religious rights have sometimes yielded divergent outcomes, raising concerns about coherence in the Court's jurisprudence. This variability may weaken the normative authority of the Court and complicate the task of domestic courts seeking to apply international standards.

Furthermore, excessive flexibility may blur the distinction between judicial interpretation and judicial law-making. While interpretive evolution is an inherent feature of human rights adjudication, unrestrained discretion risks undermining the legitimacy of international courts by exposing them to accusations of activism or politicization (Alter, 2008).

Accordingly, while flexibility is necessary for the development of human rights law, it must be exercised within a framework of principled reasoning to avoid eroding the very foundations of legal certainty and legitimacy.

5.3 A Hybrid Model of Precedent

In response to these competing risks, international human rights courts have developed a **hybrid model of precedent** that seeks to balance consistency with flexibility. This model reflects the unique institutional and normative context of international adjudication, where neither rigid adherence to precedent nor unfettered discretion is tenable.

This hybrid approach is characterized by several key features:

- **Reliance on prior decisions as persuasive authority:** Courts regularly refer to their earlier judgments to ensure coherence and continuity in legal reasoning. While not formally binding, such decisions carry significant normative weight and guide subsequent jurisprudence (Shaw, 2017).

- **Willingness to depart from precedent when justified:** International courts retain the discretion to revisit and revise their prior interpretations in light of new developments, provided that such departures are supported by clear and reasoned justification. The ECtHR, for example, has acknowledged that it is not bound by its previous judgments but will depart from them only for compelling reasons (*Chapman v. United Kingdom*, 2001).
- **Use of doctrines that enable contextual adaptation:** Mechanisms such as the margin of appreciation, the “living instrument” doctrine, and proportionality analysis allow courts to tailor their decisions to specific circumstances while maintaining a degree of consistency across cases (Letsas, 2007).

This hybrid model reflects an effort to reconcile the competing imperatives of stability and adaptability. It allows international human rights courts to maintain a coherent body of jurisprudence while preserving the flexibility necessary to respond to evolving legal and social realities.

6. Comparative Perspectives

6.1 European Court of Human Rights

The European Court of Human Rights (ECtHR) exemplifies a nuanced and balanced approach to precedent. While the Court places significant emphasis on consistency and legal certainty, it simultaneously embraces interpretive flexibility through doctrines such as the “living instrument” principle and the margin of appreciation.

The Court’s jurisprudence demonstrates a strong commitment to coherence, as evidenced by its frequent reliance on established case law and its efforts to harmonize decisions across different chambers and sections. At the same time, the ECtHR has shown a willingness to evolve its interpretations in response to changing societal conditions. In *Demir and Baykara v. Turkey* (2008), for example, the Court explicitly departed from earlier case law to recognize broader labor rights, illustrating its capacity for doctrinal development.

This dual commitment to consistency and flexibility enables the ECtHR to maintain its legitimacy while adapting to new challenges. However, the Court continues to face criticism for occasional inconsistencies, particularly in the application of the margin of appreciation, highlighting the ongoing tension between these competing values.

6.2 Inter-American Court of Human Rights

The Inter-American Court of Human Rights (IACtHR) adopts a more openly progressive and dynamic approach to precedent. Compared to the ECtHR, the IACtHR demonstrates a greater willingness to expand the scope of human rights protections and to engage in normative innovation.

The Court frequently builds upon its prior decisions to develop expansive interpretations of rights, particularly in areas such as indigenous rights, gender equality, and transitional justice. In *Velásquez Rodríguez v. Honduras* (1988), the IACtHR established foundational principles regarding state responsibility for human rights violations, which have since been elaborated and extended in subsequent cases.

Moreover, the IACtHR actively engages in judicial dialogue with domestic courts, incorporating national jurisprudence into its reasoning and encouraging the internalization of international norms (Pasqualucci, 2013). This approach enhances both flexibility and legitimacy, as it allows the Court to ground its decisions in regional legal and cultural contexts.

While this dynamic approach facilitates the progressive development of human rights law, it also raises concerns about consistency and predictability, particularly when the Court adopts expansive interpretations that depart significantly from earlier jurisprudence.

6.3 Other Human Rights Bodies

Other international human rights bodies, such as the United Nations Human Rights Committee (HRC), further illustrate the flexible nature of precedent in international law. As a quasi-judicial body, the HRC does not issue binding judgments but rather adopts “views” on individual communications under the Optional Protocol to the International Covenant on Civil and Political Rights. These views are not formally binding, yet they carry considerable persuasive authority and are frequently cited by both international and domestic courts. The HRC often relies on its prior decisions to ensure consistency, but it retains the flexibility to adapt its interpretations over time. This practice underscores the broader pattern within international human rights law, where precedent operates as a guiding rather than binding force. It also highlights the diversity of institutional approaches to precedent, reflecting variations in mandate, structure, and legal authority.

7. Normative Evaluation

7.1 The Need for Principled Flexibility

The preceding analysis demonstrates that the central challenge for international human rights courts is not to choose between consistency and flexibility, but rather to integrate both within a coherent and principled framework. Flexibility must not be equated with arbitrariness, nor should consistency be understood as rigidity.

Courts should adopt a **principled approach to flexibility**, whereby departures from precedent are justified by compelling legal, factual, or normative considerations. Such justifications should be explicitly articulated in judicial reasoning, ensuring that changes in jurisprudence are transparent, rational, and grounded in established legal principles (Letsas, 2007). This approach enables courts to maintain continuity while allowing for the progressive development of human rights law.

7.2 Enhancing Transparency and Accountability

Transparency in judicial reasoning is essential for mitigating the risks associated with flexibility. When courts clearly explain the basis for their decisions particularly when departing from established precedent that they enhance both predictability and legitimacy.

Transparent reasoning allows states, domestic courts, and individuals to understand how legal principles are applied and why particular outcomes are reached. This, in turn, facilitates compliance and strengthens the authority of international human rights institutions (Alter, 2008).

Moreover, greater transparency promotes accountability by subjecting judicial reasoning to scrutiny from scholars, practitioners, and the broader international community.

7.3 Strengthening Doctrinal Coherence

Finally, the effectiveness of the hybrid model of precedent depends on the development of **clear and coherent doctrinal frameworks**. Doctrines such as the margin of appreciation and proportionality analysis should be applied according to consistent and well-defined criteria.

For example, the ECtHR’s use of the margin of appreciation could be enhanced by more clearly articulating the factors that determine its scope, such as the presence of a European

consensus or the importance of the right at stake. Similarly, international courts should strive to harmonize their jurisprudence across different cases and chambers to avoid fragmentation. Strengthening doctrinal coherence not only enhances consistency but also reinforces the legitimacy and authority of international human rights courts. It ensures that flexibility is exercised within a structured and predictable framework, thereby reconciling the competing demands identified throughout this paper.

8. Conclusion

The role of precedent in international human rights courts is characterized by a delicate balance between consistency and flexibility. While consistency promotes legal certainty, legitimacy, and equality, flexibility allows courts to adapt to evolving human rights norms and diverse contexts.

This paper has argued that international human rights courts operate within a hybrid model of precedent that combines persuasive authority with interpretive adaptability. This model reflects the unique challenges of international adjudication and the need to reconcile competing values.

Ultimately, the legitimacy and effectiveness of international human rights courts depend on their ability to maintain this balance. A principled and transparent approach to precedent is essential to ensure that these courts continue to uphold the rule of law while advancing the protection of human rights.

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