

# THE CHALLENGES OF CONVENTIONALITY CONTROL

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Uruguay's Rigid  
Dualistic  
Constitutional System  
and its Challenge to  
International Law and  
the American Human  
Rights System

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# THE ELEMENTS

Introduction

Methodology

Scope and  
Objectives

Structure of the  
Paper

The Doctrine of  
Conventionality  
Control

Conventionality  
Control and  
Constitutional  
Supremacy

Uruguay's  
Constitutional  
Framework

Uruguayan  
Nationality Policy

Collision with  
International  
Norms

Structural  
Weaknesses in the  
Inter-American  
System

Comparative  
Insights and  
Broader  
Implications

Conclusion

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# PRINCIPLE OF CONVENTIONALITY CONTROL

## Definition and Purpose

- Ensures domestic legal systems align with the American Convention on Human Rights (ACHR)
- Compels state authorities to subordinate domestic norms to international human rights standards

## Role of the Inter-American Court of Human Rights (IACtHR)

- Articulates the principle of conventionality control
- Acts as a dynamic and controversial doctrine in contemporary international law

## Impact on Accountability and Justice

- Bolsters accountability and justice across the Americas

## Tensions and Challenges

- Exposes significant tensions between international obligations and domestic constitutional frameworks

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# ERGA OMNES / PRECEDENT

- **Binding Nature of Jurisprudential Determinations**
  - Decisions bind all member states of the ACHR
  - States must modify laws and practices to conform to Court's interpretations
- **Barrios Altos v Peru Case**
  - Nullification of impunity laws for grave human rights abuses
  - Affirms no state may retain amnesty provisions for atrocities
- **Radilla Pacheco v Mexico Case**
  - Constitutional norms allowing military tribunals to shield violators contravene ACHR
  - Such norms must yield to civilian jurisdiction
- **Role of Inter-American Court**
  - Final arbiter of the Convention's meaning
  - Shapes state conduct on a regional scale



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# TENSIONS IN URUGUAY



Uruguay's Democratic Traditions

Celebrated for its strong democratic values



Constitutional Rigidity

Rigid constitution that resists change



Dualist Legal System

International treaties are subordinate to the Constitution



Paradox of International Commitments

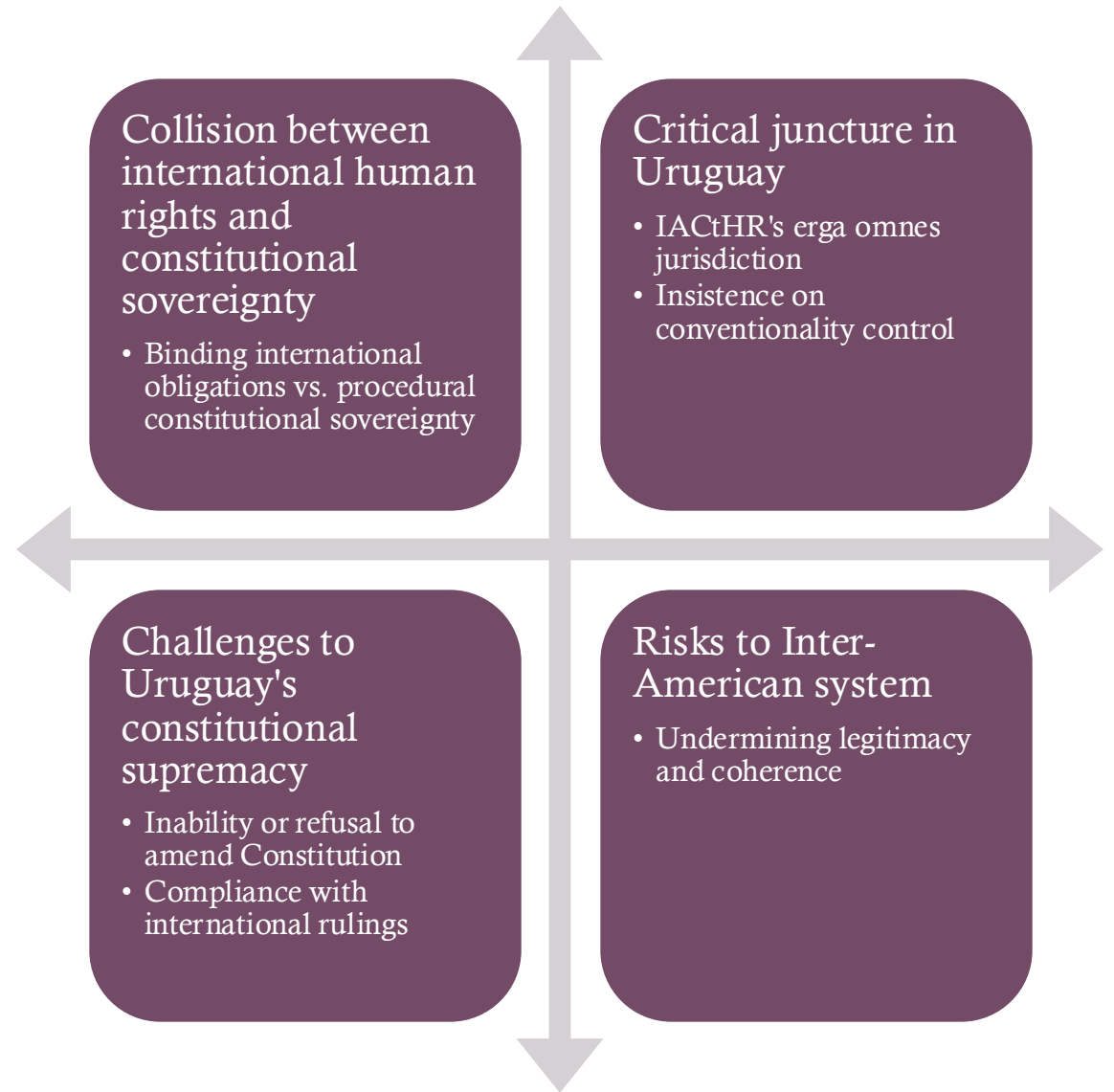
Bound by ACHR but constrained by domestic framework



Amendment Process

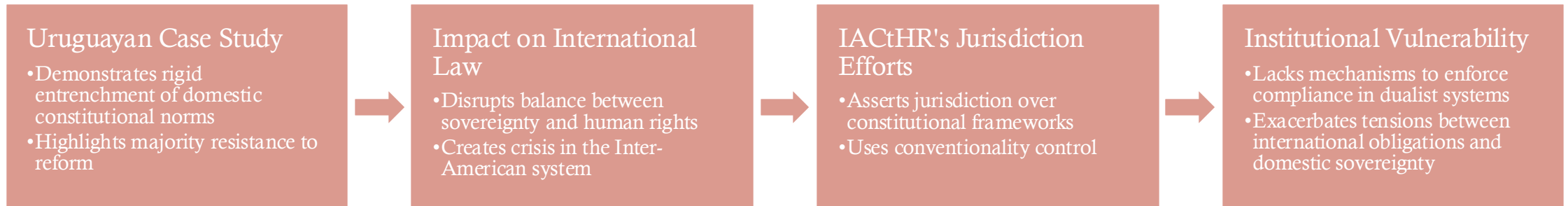
Requires plebiscites for constitutional amendments  
Empowers majorities to entrench rights violations

# STRUCTURAL WEAKNESS IN INTERNATIONAL LAW



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# ARGUMENT OR ANALYSIS OF THE PAPER



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# THEORETICAL FRAMEWORK

## Grounding in Legal Pluralism

- Explores interactions between domestic and international legal orders
- Examines balance between constitutional supremacy and international obligations

## Constitutional Theory

- Analyzes mechanisms for safeguarding human rights in fragmented legal systems

## International Human Rights Law

- Focuses on norm hierarchy and conflict resolution
- Studies relationship between national and international law

## Normative Approach

- Emphasizes logical coherence and specificity



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# TEMPORAL AND JURISDICTIONAL SCOPE



## **Temporal Scope**

Focuses on developments since Uruguay's ratification of the American Convention on Human Rights in 1985

Provides historical context from Uruguay's 1830 Constitution to the present



## **Jurisdictional Focus**

Primarily on Uruguay  
Comparative references to the Inter-American and European human rights systems

Selected Latin American jurisdictions



## **Substantive Analysis**

Emphasizes constitutional and legal dimensions  
Limited consideration of broader political or economic factors



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# CHALLENGES AND CRITIQUES



## Judicial Overreach Concerns

Critiques of conventionality control for straining subsidiarity  
Concerns over overriding constitutional norms



## National Authority Tensions

Erga omnes pronouncements seen as infringing on sovereignty  
Discounting unique domestic legal features



## State Concerns

Warnings of backlash against the Court's jurisdiction  
Concerns over the Court's expanding role



## Robust Judicial Mechanisms

ACHR demands mechanisms to override local rules



## High Stakes of Conventionality Control

# CONSTITUCION

DE LA

## REPÚBLICA

### ORIENTAL DEL URUGUAY,

SANCIONADA

POR LA

### ASAMBLEA

### GENERAL CONSTITUYENTE Y LEGISLATIVA

EL 10 DE SEPTIEMBRE DE 1829.



MONTEVIDEO:

IMPRESA REPUBLICANA, CALLE DE SAN LUIS, NO. 31.

1829.

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## URUGUAY'S CONSTITUTIONAL PROVISIONS

- Article 6: *The Republic shall seek the integration of international systems that ensure peace and justice among nations, observing the principles of International Law.*
- Article 332: *In cases of incompatibility between this Constitution and any provision contained in laws, decrees, or other norms of any kind, the constitutional provisions shall prevail.*
- Article 72: *The enumeration of rights, duties, and guarantees made by the Constitution does not exclude others that are inherent to human personality or derived from the republican form of government.*



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# RIGID AMENDMENT PROCESS

- **Article 331 of the Uruguayan Constitution**
  - Prescribes a complex procedure for constitutional reform
  - Emphasizes that ultimate sovereignty lies with the people
- **Five Pathways to Amendment**
  - Popular initiative
  - Legislative initiative
  - Constituent assembly mechanism
- **Requirement of a Plebiscite**
  - Ensures direct democratic endorsement of changes
  - Empowers electorate to approve or reject reforms
- **Challenges in Revising Contentious Provisions**
  - Gathering political or popular momentum can be difficult

# SENTENCE NO. 20/2013



## Supreme Court's Position on IACtHR Rulings

Refusal to apply IACtHR rulings  
automatically  
International obligations cannot override  
Uruguayan Constitution without  
amendment



## Supra-Legislative Rank of Treaty-Based Rules

Subordinate to constitutional norms  
unless reformed  
Dualist premise: international law enters  
domestic law under constitutional  
conditions



## Criticism of Court's Position

Hampers conventionality control  
Shields entrenched constitutional rules  
from reinterpretation



## Constitutional Supremacy Affirmed

Reluctance to adopt ACHR's ultimate  
priority



## Requirement for Formal Amendment

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# CONSTITUTIONAL AND LEGISLATIVE FOUNDATIONS

## Nationality Acquisition

- Jus soli: Nationality for individuals born in Uruguay
- Jus sanguinis: Nationality for children born abroad to Uruguayan parents
- Strict conditions for Uruguayans born abroad to access nationality

## Citizenship Requirements

- Natural citizens: Born in Uruguay or children of Uruguayan parents meeting residency requirements
- Legal citizens: Naturalized individuals fulfilling residency conditions
- Exclusionary implications for descendants of Uruguayans born abroad

## Legislative Developments

- Law No. 16.021 (1989): Criteria for nationality and citizenship
  - Avecindamiento requirement: Evidence of residency and integration
  - Law No. 19,362 (2015): Extending natural citizenship to grandchildren of natural-born Uruguayan citizens born abroad
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# RIGHT TO NATIONALITY UNDER INTERNATIONAL LAW

- **Nationality as a Cornerstone of Human Rights**
  - Legal bond between a person and a state
  - Basis for civil and political rights
- **Article 20 of the ACHR**
  - Prohibits arbitrary deprivation of nationality
  - Ensures individuals do not become stateless
- **IACtHR's Emphasis on Nationality**
  - Defines individual's relationship with a state
  - Serves as basis for exercising rights
- **Resolution No. 2/23 by IACHR**
  - Adopted on 4 December 2023
- **Importance of Nationality**

No. 30517  
8685

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(To be given to the person making  
the Declaration)

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**UNITED STATES OF AMERICA**

DECLARATION OF INTENTION

Invalid for all purposes seven years after the date hereof

United States of America  
Western District of Washington } ss. In the United States District  
Western District of Washington } Court

of \_\_\_\_\_

I, Gustaf Yngve Johnsson, also known as Gustav, aged 26 years,  
occupation Laborer, do declare on oath that my personal  
description is: Color white, complexion fair, height 5 feet 9 inches,  
weight 170 pounds, color of hair blonde, color of eyes blue-gray  
other visible distinctive marks none  
I was born in Mulseryd, Sweden  
on the 18th day of July, anno Domini 1901; I now reside  
at 1718 Minor Avenue, Seattle, Washington  
(Give number, street, city or town, and State)  
I emigrated to the United States of America from Gothenburg, Sweden  
on the vessel "Drottningholm"; my last  
(If the alien arrived otherwise than by vessel, the character of conveyance or name of transportation company should be given)  
foreign residence was Bottnaryd, Sweden; I am not married; the name  
of my { wife } is \_\_\_\_\_; { she } was born at \_\_\_\_\_  
{ husband } is \_\_\_\_\_; { he } was born at \_\_\_\_\_  
and now resides at \_\_\_\_\_  
It is my bona fide intention to renounce forever all allegiance and fidelity to any foreign  
prince, potentate, state, or sovereignty, and particularly to Gustavus V, King of  
Sweden  
of whom I am now a subject; I arrived at the port of New York  
in the State of New York, on or about the 20th day  
of September, anno Domini 1926; I am not an anarchist; I am not a  
polygamist nor a believer in the practice of polygamy; and it is my intention in good faith  
to become a citizen of the United States of America and to permanently reside therein:  
SO HELP ME GOD.

Gustaf Yngve Johnsson  
(Original signature of declarant)

Subscribed and sworn to before me in the office of the Clerk of the  
said Court this 17th day of March, anno Domini 1928

[SEAL]

By C. Mostue, Clerk of the Court.  
Clerk.

GOVERNMENT PRINTING OFFICE 14-56

# NATIONALITY AS A NON- DEROGABLE RIGHT

## Non-Derogable Nature of Nationality

- Cannot be suspended in war, public danger, or emergencies
- Core element of legal identity and dignity

## Uruguay's Current Practices

- Administrative categorization of legal citizens as non-nationals
- Violates principle of inalienability
- Undermines broader framework of rights attached to nationality

## IACtHR Clarifications

- Cases such as Yean and Bosico v Dominican Republic
- State actions affecting nationality must meet highest standards of procedural fairness and substantive equality
- Arbitrary or discriminatory restrictions on nationality violate Articles 20 and 24 of the ACHR



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# INSTITUTIONAL FRAGILITY



## **Absence of Robust Enforcement Tools**

IACtHR relies on member states' good faith for implementation  
Judgments can only monitor compliance and publicize noncompliance



## **Fragmentation of Authority**

International legal system's decentralized design  
States retain substantial discretion over reforms



## **Principle of Conventionality Control**

Mandates alignment with international standards  
Inability to impose financial or punitive consequences



## **Overreliance on Moral and Political Leverage**

Relies on diplomatic pressure and civil society activism



## **Resistance to Reform**

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# BACKLASH AGAINST INTERNATIONAL COURTS

## State Perception of IACtHR Intrusion

- Ordering legal reforms
- Invalidating constitutional provisions
- Mandating politically risky measures

## Examples of Withdrawal

- Venezuela and Trinidad and Tobago withdrew from IACtHR
- Protest against rulings interfering with domestic policies

## Implications of Retrenchment Efforts

- Highlight structural tension in international human rights enforcement
  - Backlash may embolden other governments
  - Erode IACtHR's ability to foster region-wide legal harmonization
  - Weaken the Court's normative influence
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# CONVENTIONALITY CONTROL IN OTHER JURISDICTIONS

## European Court of Human Rights (ECtHR)

- Margin of appreciation doctrine
- Balances universal human rights with local traditions and policies
- Allows states discretion in interpreting the European Convention on Human Rights

## Inter-American Court of Human Rights (IACtHR)

- Critics suggest adopting a margin of appreciation mechanism
- Potential conflicts with national constitutions
- Latin America's history may require stronger judicial oversight

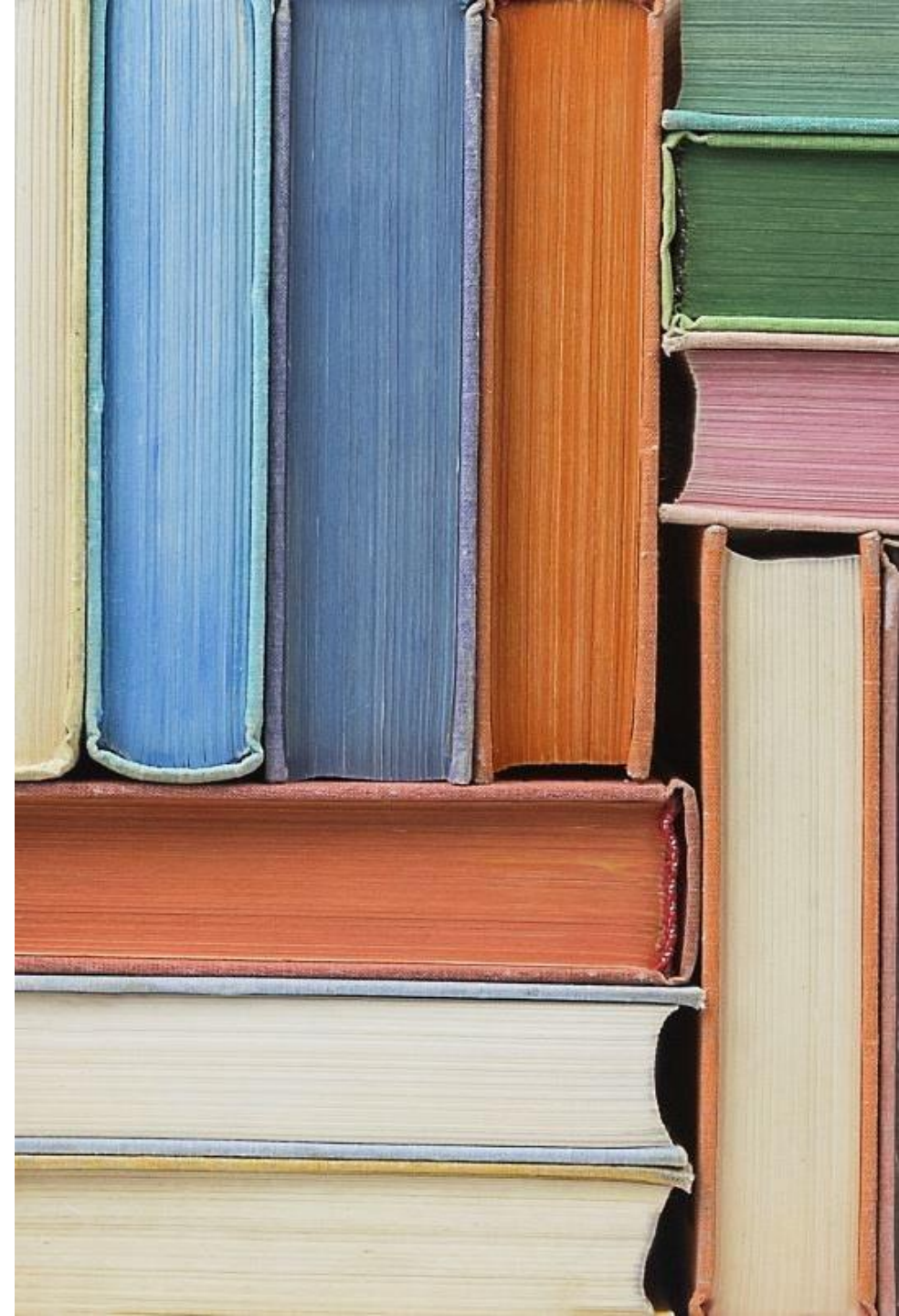
## Colombia's Constitutional Court

- Vigorous engagement with international human rights obligations
  - Invalidates laws and constitutional amendments conflicting with the American Convention
  - Incorporates ACHR and IACtHR rulings as fundamental constitutional norms
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# LESSONS FROM HISTORICAL AND HYPOTHETICAL CASES

- **Landmark Rulings in the Mid-Twentieth Century**
  - Brown v. Board of Education reinterpreted the Equal Protection Clause
  - Invalidated longstanding segregationist laws
- **Judicial Pressure and Constitutional Interpretations**
  - Persistent judicial pressure can change entrenched interpretations
- **High Court's Role in Dismantling Discriminatory Practices**
  - Civil rights era as a paradigmatic instance
  - Compelled states to dismantle discriminatory practices on constitutional grounds
- **Overcoming Majoritarian Inertia**
  - Sustained judicial reinterpretation can overcome resistance





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# ACHR AND ITS HYBRID APPROACH

- IACtHR integrates civil and common law traditions for a hybrid legal model.
  - Established within the inter-American human rights system, showcasing diverse influences.
  - Civil law systems increasingly recognize the importance of judicial precedent.
  - IACtHR adapts its jurisprudence to enhance consistency and persuasiveness.
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# ENSURING CONSISTENCY AND BROADER IMPACT

- Uniform human rights standards promote global accountability.
  - IACtHR rulings extend beyond individual cases, shaping jurisprudence.
  - Integration of rulings into domestic systems reflects global trends.
  - Judicial decisions hold significant normative power in law.
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# COMPARISON TO ECHR

- ECtHR relies on previous judgments to establish legal precedent.
  - The principle of *res interpretata* grants authority beyond specific cases.
  - Member states must consider ECtHR interpretations of the ECHR.
  - Judgments hold significant legal and political weight despite no direct enforcement.
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# BALANCING AUTHORITY AND SOVEREIGNTY IN THE ECHR

- The ECtHR allows states greater discretion in applying Convention rights.
  - National authorities can better assess local needs and conditions.
  - ECtHR judgments do not automatically invalidate national laws.
  - Implementation of judgments relies on state decisions for compliance.
  - Judicial dialogue leads to harmonization of human rights standards.
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# FUTURE DIRECTIONS FOR THE IACTHR

## Refinement of Conventionality Control

- Emphasis on contextualized and incremental approaches
- Enhanced mechanisms of enforcement
- Capacity-building initiatives for member states

## Balancing Protective Ambitions with Political Realities

- Ensuring rulings are seen as collaborative efforts
- Advancing human dignity and justice

## Fragility and Promise of the Inter-American System

- Structural weaknesses of international law
- Capacity for meaningful legal transformations

## Addressing Systemic Challenges

- Reconciling universal human rights aspirations with domestic constitutional complexities



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# BALANCING SOVEREIGNTY AND INTERNATIONAL LAW

International law struggles to balance state sovereignty and judicial authority.

Court rulings lack direct enforcement mechanisms.

State distrust of international norms complicates compliance.

Case studies highlight the challenges in harmonizing laws.

Judicial decisions can conflict with domestic constitutional principles.

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