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Challenges of Harmonization: Critically Assessing Systemic Integration in Human Rights Law

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Abstract

International legal experts and courts have increasingly turned to systemic integration as a potential panacea for the challenges stemming from the fragmentation of public international law. This article undertakes a comprehensive and critical examination of the efficacy of systemic integration specifically within the realm of human rights treaties. It posits that while systemic integration holds promise as a remedy for legal fragmentation, its implementation poses significant challenges, particularly concerning interpretation and jurisdictional issues.

The core argument of this article revolves around the contention that systemic integration often gives rise to complex and contentious matters related to the interpretation of human rights treaties. This complexity arises from the need to reconcile potentially conflicting provisions across various treaties, leading to ambiguity and uncertainty in legal outcomes. Moreover, the jurisdictional implications of systemic integration further complicate matters, as determining which legal frameworks and institutions should take precedence becomes a contentious and intricate task. A central concern raised by this article is the potential impact of systemic integration on the diversity and richness of the international legal landscape, particularly in the context of human rights.

Therefore, while acknowledging the potential benefits of systemic integration in addressing legal fragmentation, this article advocates for a cautious and nuanced approach to its implementation. By critically examining the complexities and potential pitfalls of systemic integration, this article contributes to a more informed and nuanced discourse on the evolution of human rights law within the broader framework of public international law.

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1.1 Introduction

Systemic integration is a well-established solution proposed by legal experts to address the issue of fragmented public international law effectively. With this approach, international attorneys and judges aim to tackle the root causes of the problem. However, how this interpretive premise applies to legal reasoning remains to be seen. This article argues two points: Systematic integration needs more critical thought to ensure interpretation and jurisdiction. It may lead to unwarranted jurisdictional power among international tribunals and a reduction in the diversity of international law. This article examines systemic treaty integration in human rights. Applying systemic integration to human rights has received less attention than trade and investment law. This analysis delves deep into the integration of systemic issues in the case law of the European Court of Human Rights (ECtHR), the Inter-American Court of Human Rights (IACtHR), and the African Court on Human and Peoples' Rights (ACtHPR). The exploration is thorough, leaving no stone unturned in the pursuit of a clearer understanding of the legal landscape.

Human rights treaties are similar to others, except that the open-ended language allows for interpretation. International human rights courts frequently address international law challenges, especially interpretation issues, necessitating more methodical study and refinement than other tribunals (Webb, 2013). These courts' case law can provide light on systemic integration concerns while also conveying broader ideas. Human rights regimes frequently represent international legal goals in unique ways. International courts justify interpretations by systemic integration. This essay looks at the unnoticed impacts on international law.

Over the last decade, international law fragmentation has been an explosive subject. Growing international law and judicial bodies have resulted in varying interpretations of similar norms (United Nations. International Law Commission. Study Group & Koskenniemi, 2007). Interpretation is critical to avoiding problems (Kamminga & Scheinin, 2009), and treaties should be read by public international law. The Vienna Convention on the Law of Treaties (hereinafter VCLT) mandates that a treaty be interpreted in light of relevant international law principles that apply to the parties' relations (McLachlan, 2005). International law fragmentation extends beyond competing viewpoints on a given issue. Due to jurisdictional limits, international courts need help to deal with global legal issues. International courts 'piecemeal' resolve cases to suit their jurisdictional requirements (Berman, 2004; Jennings, 1994). International courts can only decide cases within their treaty jurisdiction (Caflisch, 2008) because they can only determine problems within their authority and follow relevant law; they cannot hear all of a case's major legal issues (Webb, 2013). Disparities have emerged as public international law and international organizations have expanded. Different treaties can have similar or equal rights and duties regardless of context, intentions, or subsequent behavior (Shany, 2004). Thus, international courts must decide cases within their jurisdiction. Systemic integration may assist international courts in avoiding contradictory interpretations and decisions while improving their 'piecemeal' functioning. The International Law Commission (ILC) encourages systemic integration, which involves interpreting international treaty obligations concerning their normative environment to develop cohesive and relevant treaties. Systemic integration extends beyond treaty interpretation under international law. The article emphasizes interpreting one treaty via another to relate specific provisions to state rights

and obligations (d'Aspremont, 2012; McLachlan, 2005). This could be the most confusing feature of systemic integration. Considering previous treaties improves international law consistency, but a sense of coherence and meaningfulness remains ambiguous. Scholars believe Article 31(3)(c) of the VCLT demonstrates systemic integration, which supports the ILC's approach.

This article compares systemic integration to VCLT Article 31(3)(c). Systemic integration, whether from VCLT Article 31(3)(c) or elsewhere, cannot solve international court fragmentation. Article 31(3)(c) VCLT requires interpretation to include applicable norms and provide interpretive guidance, not integrate treaties (Gardiner, 2015; Webb, 2013). Part II of the thesis claims systemic integration is often confusing and questions international tribunals. Consider the relevance and weight of prior treaties when interpreting a new one to justify systemic integration (Gardiner, 2015). Part III examines why treaty integration disappoints international lawyers. Institutional biases may prevent the theory from prioritizing essential issues. Systemic human rights law integration may hinder international law's diversity and development. Coherence may confine international law to human rights terminology and organization. Systemic integration may provide international courts with unwarranted interpretation of treaties outside their jurisdiction. Foreign courts may gain inappropriate informal jurisdictional powers. Despite its attraction, the report advises courts and international organizations to be cautious about systemic integration.

1.2 Navigating Interpretational and Jurisdictional Challenges

This section discusses systemic integration's constraints for treaty understanding. When analyzing a treaty, the translator must weigh past agreements. Three main issues can arise. Treaty integration can cause interpreters to break treaty textual boundaries. It also risks ignoring treaty contexts. Uncritical systemic integration can indirectly supervise other treaties through interpretation, eroding a court's credibility and power.

1.2.1 Ignoring Treaty textual bounds under interpretation

Like any other interpretive principle, systemic integration is constrained by the treaty's stated text (Sanderson, 2002). Interpreting a treaty based on provisions from other treaties should be within its text's plain meaning. In some situations, interpreting a human rights treaty based on previous accords can distort its text.

The Zolotukhin case is a landmark decision by the European Court of Human Rights (ECHR) on the right not to be tried or punished twice for the same offense, guaranteed by Article 4 of Protocol No. 7 to the European Convention on Human Rights. Sergey Zolotukhin, a Russian native, was initially convicted of minor disorderly conduct under the Code of Administrative Offenses and sentenced to three days in jail. He was then charged with criminal conduct and condemned to five years and six months in prison. The ECHR determined that the administrative and criminal proceedings included the same offense, and the petitioner should not have been tried again (Cameron, 2009).

The non-bis in idem principle protects the rule of law by providing legal certainty and limiting the duplication of criminal processes. The Zolotukhin case demonstrates the significance of this principle in preventing repeated criminal accusations and preserving legal clarity. The ECHR recognizes the non-bis in idem principle as a fundamental principle of Community law (Rosanò, 2017). The case also indicates the possibility of a disagreement between the European

Court of Human Rights and national courts, particularly on defining what constitutes criminal accusations and what must be regarded as "bis in idem" (Rosanò, 2017). The Zolotukhin case emphasizes the non-bis in idem principle in European human rights law, highlighting the need for legal certainty and preventing double jeopardy in criminal proceedings. The Zolotukhin judgment exemplifies effective interaction among international courts (Treves, 2005). The Grand Chamber ignored ECHR language restrictions to reverse Mamatkulov, Askarov, and Scoppola (Rachovitsa, 2017).

In Artavia Murillo et al., the IACtHR contradicted itself by disputing in vitro fertilization and whether Article 4 IACHR protects embryos' right to life. The Court determined that embryos are not people under Article 4, even though Article 4(1) guarantees life from fertilization (Knox, 2014). According to the Court, current international law does not warrant treating embryos as individuals or giving them life. The IACHR interpreted the UDHR, CEDAW, CRC, ICCPR, and HRC. Systemic integration was misapplied since specific accords did not bind member states to the IACHR and did not protect fetal life. Article 4 of the IACHR implements the right to life in a unique way inconsistent with other general treaties and instruments. In Vo. v. France, the Court erred because the ECtHR recognized that Article 2 of the ECHR does not address time limitations on the right to life. However, Article 4 of the American Convention on Human Rights guarantees it from conception.

Most international human rights treaties include complex wording that evolves; thus, interpreters must be adaptable. Treaties cannot be created by interpreting their wording (Celorio, 2009). The examples above indicate that ECtHR and IACtHR crossed the line.

1.2.2 Recognition of Treaty Contextual Differences

The substantial case law of international courts and authorities identifies synergies and links between treaties within their jurisdiction and others. Synergies and connections are welcomed and aim to improve international legal consistency. When assessing regulations from related or identical treaties, they should be contextualized based on their purpose, function, and objectives (Shany, 2004). Interpreters must find parallels and differences between linked treaty sections to understand nuances. The question is whether international tribunals appropriately assess the conditions under which treaty clauses arise. To correctly interpret a treaty, the international court must determine and explain how the other treaty affects and informs its construction.

During their discussion, Van der Mussele and Siliadin confidently explored the complex topics of human rights laws, treaty circumstances, and systemic integration. While interpreting the ECHR, the ECtHR has looked at external treaties such as the ILO Conventions. Van der Mussele and Siliadin noted that the ECtHR must understand treaty-setting disparities. The Van der Mussele appellant contended that Article 4 ECHR prohibits forceful or coerced labor (FRANCE, 2005). The ECtHR analyzed the ILO Forced Labour Conventions of 1932 and 1959 (VAN DER MUSSELE, n.d.). This approach demonstrates the ECtHR's desire to engage with other accords while remaining unique. The Court must still fully adopt ILO Convention No. 29, highlighting treaty discrepancies. The case involving the National Union of Rail, Maritime, and Transport Workers, Opuz, and Lohe Issa Konate against Burkina Faso underscores the importance of interpreting treaties in good faith and establishing consistent terminology in private international law (FRANCE, 2005). When interpreting complex treaties, international tribunals are unwilling to evaluate previous accords.

The Van der Mussele and Siliadin instances demonstrate the ECtHR's awareness of the treaty's context. The Court emphasizes systemic integration in human rights legislation as it interacts with other treaties while maintaining the ECHR's originality. To correctly interpret PIL, foreign courts must consider treaty and context differences.

1.2.3 Applying and Supervising Treaties Indirectly

Using the notion of systemic integration (or Article 31(3)(c) VCLT) to accomplish this goal risks confounding the use of a treaty for interpretation with its actual application (Gardiner, 2015). Systemic integration can lead to adopting specific concepts from one convention into a human rights treaty, which are then indirectly applied and monitored through interpretation (Rachovitsa, 2017). In pertinent accords, the IACtHR and ECtHR find a common denominator and apply it to their respective nations.

The Taskin and Tătar verdicts broadened the ECtHR's interpretation of environmental agreements. This environmental standards review covers the Aarhus Convention's obligations for access to information, public participation in decision-making, and justice under Article 8 ECHR. The Court ranked member states and established indirect environmental procedural rights. Five international courts decided that member states violated treaties. Switzerland violated Hague Convention Article 11 in Carlson. According to Fornerón and Daughter, Argentina violates Article 35 [CRC] by not having a child sales law. This transgresses the Convention on the Rights of the Child's Optional Protocol against the sale, prosecution, and pornography of children. Because Cyprus did not sign the Mutual Legal Assistance Convention, the European Court of Human Rights acknowledged a procedural impairment of the right to life in Rantsev.

The IACtHR stated that nations' incapacity to implement extradition treaties undermined fair trials and legal protection for grave human rights violations. The IACtHR discussed Gonzales Lluy’s health. Although the IACHR does not recognize the right to health, the Court has connected it to personal integrity and life.IACHR Article 26 ensures progressive, not socioeconomic, rights. The Court balanced personal integrity with governmental regulation of private healthcare institutions..1993 Citing CRC principles, Article 19 IACHR united civil, political, economic, social, and cultural rights through international treaties and documents, including the Additional Bases for the IACHR. The judgment outlines CRC responsibilities despite the Court's conclusion that the CRC illuminates Article 19 of the IACHR.

The examples demonstrate that the ECtHR and IACtHR could interpret other treaties and papers while incorporating foreign principles into their constitutive instruments. Systemic integration has an indirect impact on other accords. Different states may protect international treaty rights, resulting in intentional confrontations (Ranganathan, 2014). Even international judges cannot arbitrate or align treaties. Some courts properly monitor transactions (Neuman, 2008). They go outside their jurisdiction and violate consent by imposing responsibilities that non-ratified nations have refused to accept. Some or all Member States have adopted these treaties without judicial review. Including external limits and rights in ECHR/IACHR rights complicates interpretation and modification (Ruiz-Chiriboga, 2013).

1.2.4 Systems Integration: Failed Expectations

It shows foreign tribunals' interpretation tendencies. Systemic integration may favor non-treaty issues, affecting the treaty's purpose. It contradicts the concept that integrating treaties reduces fragmentation (McInerney-Lankford, 2012). Research implies international courts may have

informal jurisdictional authorities over other accords due to disproportionate interpretation authority. Systemic integration under the human rights framework may hinder other international law goals and limit our imagination.

1.2.5 Influence of Institutions on Systemic Integration

Systemic integration in human rights law has been advocated as a remedy to the problems caused by the fragmentation of public international law. However, applying this principle poses interpretive and jurisdictional issues, as detailed in the essay "The Principle of Systemic Integration in Human Rights Law - A Critical Appraisal." The paper contends that systemic integration may establish new hegemonies among international tribunals, resulting in a less diversified and weaker international law in the future (Rachovitsa, 2017).

The case law of the European Court of Human Rights (ECtHR) and the Inter-American Court of Human Rights (IACtHR) highlights the challenges inherent in achieving systemic integration in the field of human rights. However, the IACtHR has demonstrated a promising approach by broadening the scope of Article 21 IACHR to include a collective understanding of the right to property, as outlined in Article 13 of ILO Convention No. 169. This technique aims to integrate indigenous worldviews into human rights, as States have an obligation to respect the unique relationship that indigenous populations have with the lands they occupy or use. On the other hand, the ECtHR's neglect of the impact of indigenous peoples' rights and related treaties on the interpretation of the European Convention on Human Rights (ECHR), as evidenced in the Handölsdalen Sami Village ruling, exposes the Court's lack of concern for the rights of indigenous peoples. This demonstrates the courts' varying approaches and their tendency to favor systemic integration in certain cases. (Rodiles, 2016).

In conclusion, systemic integration in international human rights legislation is beneficial for international judges and attorneys, but its use is constrained by functional biases and preferences in international tribunals. The literature debates whether adding relevant treaties in interpretation could promote a holistic construction across numerous legal domains (De Wet & Vidmar, 2013). The IACtHR and ECtHR show that international tribunals in the same field of law are bound by their subject areas' mandates and judicial policies and preferences (Neuman, 2008). Public international law, let alone international law, may not always be coherent or free from these preferences and prejudices despite the use of systemic integration as an interpretive tool and policy objective (De Wet & Vidmar, 2013).

1.2.6 Concerns beyond treaty conflicts

Norm or treaty disputes necessitate systemic integration. Many observers feel that VCLT Article 31(3)(c) cannot settle treaty issues (Milanovic, 2009). ILC refers to this as systemic integration. Some believe that system integration can balance values and interests without favoring one (McLachlan, 2005). Interpreters prioritize significant challenges over minor ones (United Nations. International Law Commission. Study Group & Koskenniemi, 2007). The claims are private, but the legal process is concerning. Prioritizing ideals or interests does not achieve balance. Reading treaties might need to be clarified for one's aspirations and interests (Gardiner, 2015). Prioritizing issues is subjective. IACHR prioritizes accords that have comparable goals and objectives. Bilateral investment agreements between Paraguay and Germany did not violate Sawhoyamaxa IACHR's property rights (Rachovitsa, 2017). Wong Ho Wing v Peru interpreted the Peru-China bilateral extradition agreement as state law on life rather than international law. International extradition cooperation had a minor influence.

The Court will consider El Salvador's amnesty law's IACHR, 1992 Peace Accord, and AP II conformity. The Court determined that all amnesty legislation violates the IACHR, which contradicts AP II's purpose of comprehensive amnesties and negotiated peace (Pasqualucci, 2012). The Court reiterated that El Salvador's amnesty act breaches the IACHR without comment (Mallinder, 2016).

ECHR foreign interest guarantees are another option. The ECHR prioritizes treaties above norms. International accords may supersede the ECHR. Rights protection has weakened. The Grand Chamber held in Carson that the States' Article 14 ECHR entitlement to equal social security arrangements was limited by the lack of bilateral reciprocal treaties. To maintain transnational corporations and collaboration, the Plenary curtailed judicial access in Waite and Kennedy (Reinisch & Weber, 2017). In the Bosphorus case, pacta sunt servanda and Ireland's membership in international organizations led to the assumption of identical protection under EU law and the ECHR (ERGE, 2021).

A cluster of Hague Convention on the Civil Aspects of International Child Abduction cases demonstrates that emphasizing other treaties' aims may undermine the ECHR's structure and efficiency. The applicants argued that returning the child under the Hague Convention would breach Article 8 ECHR's family life and best interests. The Court did not decide whether the child's repatriation violated Article 8 ECHR unless state personnel acted arbitrarily (Celorio, 2009). The Hague Convention's Article 13(b) exception to removing a child due to a high danger of physical or psychological harm or an unpleasant environment was in question. Reassessing the Hague Convention's responsibilities, which the Court established through the ECHR, was required to expedite child repatriation (Rietiker, 2012). Article 13(b) of the Hague Convention includes an "escape clause" for child repatriation, whereas Article 8 of the ECHR protects the child's best interests and rights, which may be limited. The ECtHR warned that assessing the Hague Convention's application in light of Article 8 ECHR safeguards could imperil its implementation. To reconcile Neulinger and Shuruk, the Grand Chamber ordered stringent enforcement of Article 8 ECHR child return (Rietiker, 2012).

In conclusion, the IACtHR and ECtHR adopted earlier treaties differently. The IACtHR promotes values and interests that align with the IACHR's purposes, which may lead to rigidity in amnesty laws. Several ECtHR cases show that systemic integration favors vital interests over ECHR safeguards. This method may significantly reduce human rights protections.

1.2.7 Systematic Integration in Human Rights: Limiting International laws potential

Understanding the roles of international courts is essential for advancing international law. In spite of the richness and diversity of decentralised legislative and judicial systems, Georges Abi-Saab called international law a parasitic plant. In recent years, international law has gotten increasingly complex. It continues to develop abnormally. Their logical interpretation of international law united everything. Foreign courts should avoid surprises and not contemplate systemic ideas. Integration may limit international human rights law by restricting concerns and interests to the paradigm.

Similar international legal difficulties exist. Even after new and integrated IACtHR decisions, human rights treaties may need to reflect indigenous ownership understandings (Koskenniemi, 1999) adequately. The IACtHR considers indigenous people as community members rather than IACHR groupings. The promise of the United Nations Declaration on the Rights of Indigenous Peoples is diminished by integrated IACtHR. The IACtHR was unable to switch

between the UN Declaration and the ILO Conventions. UN Declaration requirements are harsher than the IACHR's (Charters et al., 2011). Discussing socioeconomic rights with civil and political rights concerns me. We may wonder if the ECHR or IACHR can and should address labor power disparities and social rights complexities. Corruption's impact on socioeconomic rights (Rose, 2016) and systematic discrimination and stigmatization may need to be better addressed using human rights terminology (McInerney-Lankford, 2012). Human rights laws only protect against private crimes, even though courts and government consider domestic abuse as a human rights violation (McQuigg, 2015)—some question whether international human rights law can aid refugees. Protecting internet rights is another concern. IHL aims to legitimize digital concerns (Chander & Land, 2014). How can human rights address the complicated link between network, state, individual security, and online privacy? Internet privacy may benefit or harm security and free expression (Θεολόγου, n.d.). Human rights legislation struggles to protect privacy and free expression. One limits the other legally. Can this growing relationship improve legal reasoning and proportionality?

These opinions do not jeopardize other human rights. Systemic human rights integration has the potential to strengthen international law. It could contribute to human rights conversations and introduce new themes. The best arguments are typically straightforward to prove. We oppose acceptance.

Human rights both cause and resolve conflicts. Their extensive doctrinal and rhetorical lexicon hampers international legal evaluation (Reinisch & Weber, 2017). Systemic integration may speed up the process as the human rights paradigm "squeezes" additional sectors into its terminology, goals, structure, and scope. New laws and interests unrelated to human rights could be lost (Knox, 2014). Terminology and concepts related to international law are becoming less prevalent (Allott, 2001). The boundary between growth and stagnation is thin. International law should strive for dramatic and innovative reforms, even if they make tales less accessible.

This is standard in international law and practice. Some countries may pose similar treaty and event questions. Human rights legislation is influenced by other laws and rules (Kamminga & Scheinin, 2009; Pronto, 2007). The researcher needs to discuss the interactions between renowned regimes or international law this time. Many international legal issues may benefit or suffer from a human rights standpoint. Systemic unification may have varying effects on human rights for various reasons. Human rights tribunals collaborate more than other international organizations. We investigated how human rights discourse captures attention. Finally, noteworthy human rights court decisions ensure enforcement, particularly for standards and treaties that do not require monitoring (Rajamani, 2010).

Lastly, while it's essential to consider and possibly integrate other interests into human rights under international law, we must refrain from complacency. Human rights organisations should interact with other issues and take them into consideration when interpreting the law, but in cases when the current framework is insufficient, we should look at international legal options (Aust et al., 2014). This might involve creating new norm interactions, establishing different international forums, or enhancing monitoring mechanisms and international judicialization. However, even with State consent, more than international supervision is needed to guarantee effective responses to emerging issues.

1.3 Conclusion

In conclusion, this paper has shown the limitations and constraints of depending primarily on systemic integration to address the fragmentation of international law. While legal interpretation can help with some issues, it only partially addresses the need for international courts to move beyond their fragmented approaches. Even within functional regimes such as human rights, implementing systemic integration presents substantial hurdles, notably in detecting contextual variations within treaties while keeping their distinctive goals.

Furthermore, systemic integration should be interpreted as something other than a blanket method for aligning treaty contents across multiple regimes. Consistency and cross-fertilization require a sophisticated grasp of treaty contextual distinctions. Some international courts, like the ECtHR and the IACtHR, currently expand their jurisdictional boundaries by indirectly applying and supervising other treaties under the pretense of systemic integration. This critical analysis advocates for a mix of originality and methodological rigor in legal reasoning. While systemic integration can be an effective interpretive tool, courts must exercise caution to avoid excess and unforeseen effects, particularly regarding undue interpretive authority over contentious or obscure treaty clauses. Furthermore, there is a risk that a heavy emphasis on human rights law would eclipse other critical issues in international law. Consequently, judges have to be aware of the larger field of international law and refrain from confining their concerns to the standards and terminology of the human rights framework.

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