

Conventionality control in national systems: foundations, judicial application, and contemporary challenges

Control de convencionalidad en sistemas nacionales: fundamentos, aplicación judicial y desafíos contemporáneos

Controlo da convencionalidade nos sistemas nacionais: fundamentos, aplicação judicial e desafios contemporâneos

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Cita sugerida (APA, séptima edición)

Saad, T. (2024). Conventionality control in national systems: foundations, judicial application, and contemporary challenges. *Tribunal de Justicia, Revista de Investigación jurídica*. 1(2), 97-108. DOI: <https://doi.org/10.51247/tj.v1i1.801>

Abstract

This study aimed to analyze the scope, judicial application, and contemporary challenges of conventionality control in national systems, within the framework of international human rights law. The research employed a qualitative approach, using a systematic review with narrative elements, based on academic sources indexed in Scopus, Web of Science, and SciELO, as well as relevant jurisprudence from the Inter-American Court of Human Rights. The methodology consisted of doctrinal, jurisprudential, and comparative analysis, allowing for the examination of both the theoretical foundations and their implementation in diverse legal contexts. The results showed that conventionality control has become a key mechanism for the protection of human rights, although its application presents inequalities in national systems, stemming from factors such as a lack of judicial training, normative conflicts, and institutional resistance. Furthermore, a complementary relationship with constitutional review was identified, which strengthens the coherence of the legal system. It was concluded that the effectiveness of the principle of conventionality control depends on state commitment, the training of legal professionals, and the consolidation of a legal culture oriented toward the effective protection of human rights.

Keywords: Conventionality control, Inter-American Court, Human rights, Domestic law, Constitutional justice

Resumen

El presente estudio tuvo como objetivo analizar el alcance, la aplicación judicial y los desafíos contemporáneos del control de convencionalidad en los sistemas nacionales, en el marco del derecho internacional de los derechos humanos. La investigación se desarrolló bajo un enfoque cualitativo, mediante una revisión sistemática con elementos narrativos, basada en fuentes

académicas indexadas en Scopus, Web of Science y SciELO, así como en jurisprudencia relevante de la Corte Interamericana de Derechos Humanos. El método empleado consistió en un análisis doctrinal, jurisprudencial y comparado, lo que permitió examinar tanto los fundamentos teóricos como su implementación en diversos contextos jurídicos. Los resultados evidenciaron que el control de convencionalidad se ha consolidado como un mecanismo clave para la protección de los derechos humanos, aunque su aplicación presenta desigualdades en los sistemas nacionales, derivadas de factores como la falta de capacitación judicial, los conflictos normativos y la resistencia institucional. Asimismo, se identificó una relación de complementariedad con el control de constitucionalidad, que fortalece la coherencia del sistema jurídico. Se concluyó que la efectividad del control de convencionalidad depende del compromiso estatal, la formación de los operadores jurídicos y la consolidación de una cultura jurídica orientada a la tutela efectiva de los derechos humanos.

Palabras clave: Control de convencionalidad, Corte Interamericana, Derechos humanos, Derecho interno, Justicia constitucional

Resumo

Este estudo teve como objetivo analisar o alcance, a aplicação judicial e os desafios contemporâneos do controle da convencionalidade nos sistemas nacionais, no âmbito do direito internacional dos direitos humanos. A pesquisa empregou uma abordagem qualitativa, recorrendo a uma revisão sistemática com elementos narrativos, baseada em fontes acadêmicas indexadas na Scopus, Web of Science e SciELO, bem como em jurisprudência relevante da Corte Interamericana de Direitos Humanos. A metodologia consistiu em análises doutrinárias, jurisprudenciais e comparativas, permitindo o exame quer dos fundamentos teóricos, quer da sua implementação em diversos contextos jurídicos. Os resultados mostraram que o controle da convencionalidade se tornou um mecanismo fundamental para a proteção dos direitos humanos, embora a sua aplicação apresente desigualdades nos sistemas nacionais, resultantes de fatores como a falta de formação judicial, os conflitos normativos e a resistência institucional. Além disso, identificou-se uma relação complementar com o controle constitucional, que fortalece a coerência do sistema jurídico. Concluiu-se que a eficácia do princípio do controle da convencionalidade depende do empenho do Estado, da formação dos profissionais do direito e da consolidação de uma cultura jurídica orientada para a proteção efetiva dos direitos humanos.

Palavras-chave: Controle da convencionalidade, Tribunal Interamericano, Direitos humanos, Direito interno, Justiça constitucional

Introduction

The development of international human rights law has established a dynamic normative framework aimed at the comprehensive protection of human dignity in both domestic and international contexts. Within this framework, States have undertaken legal commitments that transcend their internal jurisdictions by incorporating international standards into their domestic legal systems. According to Pulecio Pulgarín (2011), instruments such as the Yogyakarta Principles demonstrate the progressive evolution of human rights recognition, particularly in areas that have historically been excluded. Likewise, Medellín Urquiaga (2019) argues that the *pro persona* principle has become an essential interpretative criterion aimed at maximizing the protection of human rights. This context reveals an increasingly close interaction between domestic and international law.

Within this framework of normative interaction, the doctrine of conventionality control has emerged as a legal mechanism designed to ensure the compatibility of domestic laws and

practices with international human rights treaties. Carnota (2011) argues that conventionality control differs from constitutional review because its primary focus is the conformity of domestic legal provisions with the international obligations assumed by States. In turn, González González (2020) explains that conventionality control is not exclusively exercised by international tribunals but must also be implemented by domestic judges within the scope of their jurisdiction. Consequently, it has become a mechanism that strengthens the effectiveness of international human rights law within national legal systems.

Despite its growing relevance, the implementation of conventionality control across domestic legal systems has been uneven and, in some cases, limited. Abregu and Courtis (1997) demonstrate that the incorporation of international treaties into domestic judicial practice encounters obstacles arising from legal traditions, institutional resistance, and interpretative limitations. Similarly, Vargas Meza (2018) warns that the absence or restrictive application of conventionality control may generate tensions with constitutional frameworks, thereby undermining the effective protection of human rights. This situation reflects a significant gap between the formal recognition of international standards and their effective implementation by domestic courts.

Addressing this issue is particularly important because it contributes to strengthening mechanisms for the effective protection of human rights at the national level. Figueroa García-Huidobro (2009) argues that courts play a fundamental role in ensuring the justiciability of rights, especially in contexts where economic, social, and cultural rights have historically received insufficient protection. Likewise, Forst (2005) contends that human rights are grounded in a fundamental right to justification, implying that every public authority must provide legitimate reasons for its decisions in accordance with universal standards. From this perspective, conventionality control represents a key instrument for reinforcing the legitimacy, coherence, and effectiveness of contemporary legal systems.

Accordingly, analyzing conventionality control within domestic legal systems is essential for understanding its scope, judicial application, and the contemporary challenges surrounding its implementation. This study therefore aims, first, to examine the conceptual and normative scope of conventionality control by identifying its theoretical foundations and its evolution within international human rights law. Second, it analyzes how this mechanism has been applied by domestic courts, considering both comparative experiences and practical limitations. Finally, it addresses the principal contemporary challenges, including the tension between State sovereignty and international obligations, judicial training, and the need for consistent judicial interpretation.

Based on these objectives, the study addresses the following research questions: What is the scope of conventionality control within the framework of international human rights law? and How is this mechanism applied in domestic legal systems, particularly in judicial practice? These questions guide the present research, which seeks to contribute to a critical understanding of conventionality control and to promote the consolidation of a legal culture committed to the effective protection of human rights.

Methodology

This study adopted a qualitative research approach through a systematic literature review with narrative components, aimed at analyzing conventionality control in domestic legal systems from both doctrinal and jurisprudential perspectives. This methodological approach enabled the organized and critical integration of relevant academic and legal sources, facilitating a comprehensive understanding of the phenomenon under investigation. According to Sánchez Zorrilla (2011), legal research possesses distinctive characteristics that require a flexible methodological approach, while Antar (2016) emphasizes that the systematic analysis of sources is essential for ensuring scientific rigor in legal scholarship.

The information sources included internationally recognized academic databases such as Scopus, Web of Science (WoS), and SciELO, as well as relevant case law from the Inter-American Court of Human Rights. These sources were selected based on their academic quality, scientific impact, and relevance to the field of international human rights law. In this regard, Espinoza Freire (2020a) highlights the importance of using indexed scientific databases to ensure the validity and reliability of the evidence collected. Landmark judgments issued by the Inter-American Court of Human Rights were also incorporated as fundamental materials for examining the practical application of conventionality control.

Regarding the selection criteria, priority was given to publications that met standards of thematic relevance, academic impact, methodological quality, and currency, with particular emphasis on studies published in recent years. Documents lacking a direct relationship with the research topic or sufficient theoretical support were excluded. This screening process made it possible to establish a coherent and representative body of literature. According to Espinoza Freire (2022), research ethics requires the responsible management of scientific sources, ensuring transparency throughout the selection and use of information.

The analytical strategy combined doctrinal, jurisprudential, and comparative legal analysis, enabling the examination of both the theoretical foundations of conventionality control and its implementation across different national legal systems. Von Savigny (2024) argues that legal methodology requires interpreting legal norms within their historical and systematic context, while the comparative approach facilitated the identification of similarities, differences, and emerging trends in the application of conventionality control. Furthermore, Espinoza Freire (2020b) emphasizes that qualitative research constitutes an essential methodological tool in legal studies because it enables an in-depth interpretative understanding of normative phenomena.

Development

Concept and Origin of Conventionality Control

Conventionality control is conceived as a legal mechanism aimed at ensuring the compatibility between domestic legal norms and international human rights treaties. In general terms, it requires national authorities, particularly judges, to verify that domestic legal provisions comply with the international standards assumed by the State. Contreras (2014) argues that conventionality control constitutes a mechanism for articulating the domestic legal order with the Inter-American human rights system, whereas González Domínguez (2017) emphasizes its relationship with the principle of subsidiarity, according to which States retain the primary responsibility for protecting human rights. In this regard, conventionality control does not replace the domestic legal order but rather complements it.

From a doctrinal perspective, the legitimacy of conventionality control has been the subject of considerable debate, particularly regarding its democratic foundation. Hernández Castaño (2015) warns that the intervention of international courts in domestic affairs may generate tensions with State sovereignty, although he acknowledges its importance in safeguarding fundamental rights. Likewise, Carbonell (2005) places this mechanism within the historical evolution of human rights, emphasizing that the progressive internationalization of these rights has given rise to new forms of legal oversight. Consequently, conventionality control forms part of a broader process of transformation in contemporary law.

The development of conventionality control has been driven primarily by the jurisprudence of the Inter-American Court of Human Rights, which has established binding standards for States Parties. Ríos-Tovar (2020) notes that the Court has consolidated standards concerning comprehensive reparation and the justiciability of fundamental rights, thereby strengthening

the protection of victims. Similarly, García Ramírez and Morales Sánchez (2020) highlight the transformative nature of Inter-American jurisprudence in promoting structural changes within national legal systems. This jurisprudential evolution has contributed significantly to consolidating conventionality control as a mandatory judicial practice.

The evolution of the concept of conventionality control is closely linked to the historical development of human rights. Rodríguez Moreno (2011) explains that the positivization of human rights has enabled their progressive incorporation into domestic legal systems, whereas Soberanes Fernández (2010) underscores the role of declarations of rights as essential historical antecedents. Within this context, conventionality control emerged as a response to the need to ensure the effective protection of human rights in an increasingly globalized environment. Its evolution reflects the transition toward a more integrated legal model centered on the protection of the individual.

Legal Foundations

The legal foundations of conventionality control are rooted in international human rights treaties, which constitute binding normative sources for States that have ratified them. Nogueira Alcalá (2003) argues that these instruments form part of the domestic legal system, either with constitutional or supra-legal status, depending on each country's legal framework. In this respect, León Bastos (2010) maintains that the interpretation of fundamental rights should be conducted in accordance with international standards, reinforcing the need to apply conventionality control within domestic jurisdictions.

State obligations in the field of human rights also constitute a fundamental pillar of conventionality control. Rivero Ortega (2025) explains that public duties involve not only refraining from violating rights but also adopting positive measures to ensure their effective protection. Likewise, Larenz (2023) argues that legal obligations must be interpreted in light of their underlying purpose, which, in the context of human rights, requires their effective realization. Consequently, conventionality control functions as a mechanism for assessing whether States have fulfilled these obligations.

The principle of good faith also plays a central role in the legal foundations of conventionality control. Neme Villarreal (2006) argues that this principle requires parties to act consistently and loyally in fulfilling their legal commitments. Within the international legal order, this obligation entails that States must respect and effectively implement human rights treaties. Sequeira Pérez and Guerrero-Vega (2025) emphasize that good faith constitutes a key interpretative principle, particularly in conflict resolution contexts. Accordingly, conventionality control relies on this principle to ensure the coherence and integrity of the legal system.

Types of Conventionality Control

Conventionality control may take different forms depending on the authorities responsible for its application and the manner in which it is exercised. One such form is centralized conventionality control, exercised by constitutional courts or supreme courts vested with the authority to interpret the Constitution and international treaties. Villacis Londoño (2018) argues that this form of review promotes the uniform application of international standards, while Añazco Aguilar and Añazco Aguilar (2022) emphasize its importance in harmonizing domestic legal systems with international law.

A second modality is diffuse conventionality control, which grants all judges the authority to apply international human rights treaties directly when deciding specific cases. Bolaños Salazar (2016) contends that this form of review provides an effective means of protecting human rights, particularly in legal systems where centralized constitutional review is limited. Similarly, Acuña (2024) argues that diffuse conventionality control offers greater flexibility

and allows judicial responses to be tailored to the particular circumstances of each case, although it may also give rise to interpretative inconsistencies.

A third modality is *ex officio* conventionality control, under which judges apply international human rights standards on their own initiative, without requiring a request from the parties. Carlos (2017) argues that this form of review is especially relevant in transitional contexts, where the protection of rights in situations of vulnerability is of particular importance. Likewise, Acuña (2023) maintains that the development of *ex officio* conventionality control reflects an evolution toward a more proactive judiciary. In this sense, this modality reinforces the role of judges as guarantors of human rights.

Application in Domestic Law

The application of conventionality control within domestic legal systems largely depends on the role of national judges, who serve as the primary guarantors of human rights. Carrillo Santarelli and Espósito (2011) argue that judges have the responsibility to safeguard fundamental legal interests, even in situations involving normative conflicts. In this regard, Mayor Menéndez (1994) maintains that judges should resolve tensions between domestic and international law through a harmonious and systematic interpretation. Accordingly, conventionality control has become an essential judicial instrument for ensuring the effective protection of human rights.

The incorporation of international law into domestic legal systems represents another key aspect of the application of conventionality control. Pereznieta Castro (2015) explains that the mechanisms of incorporation differ across legal systems, ranging from direct incorporation to legislative transformation. Likewise, González González (1996) argues that integrating international human rights standards into domestic law requires both normative and institutional adaptation. Consequently, the effective implementation of conventionality control depends on a legal framework capable of facilitating the direct application and interpretation of international human rights treaties.

In Latin America, the implementation of conventionality control has achieved significant progress, although important challenges remain. Brewer-Carías (2007) observes that several countries have incorporated international human rights treaties into their constitutional frameworks, thereby strengthening their domestic enforceability. Nevertheless, Laporta (2015) warns that persistent problems related to the effectiveness and coherence of legal systems continue to hinder their practical application throughout the region. These challenges underscore the need to strengthen institutional capacity and enhance legal education in order to ensure the effective implementation of conventionality control.

Relationship with Constitutional Review

Conventionality control shares several characteristics with constitutional review, as both mechanisms seek to uphold the supremacy of fundamental norms within the legal system. Haro (2004) argues that both forms of review pursue the common objective of protecting fundamental rights and preserving the coherence of the legal order. However, whereas constitutional review is primarily concerned with the Constitution as the supreme domestic norm, conventionality control focuses on ensuring compliance with international human rights treaties.

Regarding their differences, Lopera Mesa (2011) emphasizes that conventionality control operates within a broader normative framework by incorporating international standards that may complement—or, in certain circumstances, provide more extensive protection than—constitutional provisions. This broader scope may generate practical tensions, particularly where inconsistencies arise between domestic legislation and international obligations.

Nevertheless, such tensions may also provide opportunities to strengthen the protection of human rights through harmonized legal interpretation.

The complementary relationship between constitutional review and conventionality control constitutes a significant feature of contemporary legal development. Nahabetián Brunet (2016) argues that human rights norms should be interpreted in a coherent and harmonious manner so as to avoid unnecessary normative conflicts. From this perspective, constitutional review and conventionality control are not competing mechanisms but complementary forms of judicial oversight that reinforce one another, thereby contributing to a more coherent and rights-oriented legal system.

Problems and Challenges in Its Application

Despite its significant development, conventionality control continues to face a number of practical challenges. One of the most important is the insufficient training of judges and other legal professionals in international human rights law. Cárdenas Merizalde et al. (2024) point out that many legal practitioners lack specialized knowledge, which limits the effective application of international human rights standards in domestic adjudication. This situation highlights the need to strengthen legal education and promote continuous professional training in the field of human rights.

Another major challenge concerns normative conflicts between domestic law and international law. Fariñas Dulce (2024) explains that contemporary global transformations have generated new paradigms in human rights law, making their implementation within traditional legal systems increasingly complex. Addressing these conflicts requires a flexible and purposive interpretative approach, consistent with the *pro persona* principle, which favors the interpretation that provides the greatest protection for individuals.

Finally, institutional resistance remains a significant obstacle to the effective implementation of conventionality control. López Ruiz et al. (2025) observe that some States continue to show reluctance to comply fully with the judgments of the Inter-American Court of Human Rights, thereby undermining the effectiveness of the regional human rights system. Such resistance may stem from political, legal, or cultural factors and highlights the need to strengthen State commitment to the effective protection and promotion of human rights.

Discussion

The analysis of conventionality control demonstrates its consolidation as a key mechanism for articulating the relationship between international human rights law and domestic legal systems. Nevertheless, its practical implementation reveals tensions that call for a critical assessment of its scope and effectiveness. In this regard, Contreras (2014) argues that conventionality control should not be understood as an external imposition but rather as a mechanism for judicial dialogue between domestic and international jurisdictions. However, González Domínguez (2017) warns that its progressive development has, in some instances, generated uncertainty regarding the limits of judicial discretion within domestic legal systems.

With respect to its legal foundations, the incorporation of international treaties into domestic legal orders has undoubtedly strengthened the protection of human rights, although not in a uniform manner. Nogueira Alcalá (2003) emphasizes that the normative hierarchy of international treaties differs across legal systems, directly influencing the intensity and scope of conventionality control. Likewise, León Bastos (2010) argues that interpreting domestic law in accordance with international human rights standards requires a transformation of legal culture toward a more open, integrated, and rights-oriented approach. This situation highlights the challenge of reconciling domestic legal principles with the international obligations undertaken by States.

From the perspective of its different modalities, conventionality control presents both strengths and limitations. Centralized conventionality control, as discussed by Villacis Londoño (2018) and Añazco Aguilar and Añazco Aguilar (2022), promotes interpretative consistency and legal certainty but may have a more limited practical reach. Conversely, diffuse conventionality control, examined by Bolaños Salazar (2016) and Acuña (2024), allows for broader judicial application but may lead to inconsistencies in case law. Ex officio conventionality control, analyzed by Carlos (2017) and Acuña (2023), further strengthens the protection of human rights by enabling judges to apply international standards on their own initiative; however, its effectiveness depends on a high level of judicial expertise, independence, and institutional commitment. These differences demonstrate the need to strike an appropriate balance between legal coherence and judicial flexibility.

Regarding its application within domestic legal systems, the role of national judges is decisive for the effectiveness of conventionality control. Carrillo Santarelli and Espósito (2011) emphasize that judges serve as the primary guarantors of human rights, assuming a significant responsibility in the interpretation and application of legal norms. Nevertheless, as Mayor Menéndez (1994) observes, the coexistence of domestic and international legal norms may generate conflicts that require clear interpretative criteria and well-defined mechanisms for resolution. In this context, the Latin American experience reflects substantial progress while also revealing significant disparities in implementation, as noted by Brewer-Carías (2007) and Laporta (2015).

The relationship between conventionality control and constitutional review constitutes another important area of scholarly debate. Haro (2004) argues that both mechanisms pursue common objectives, namely the protection of fundamental rights and the preservation of legal coherence, although they differ in their normative sources and institutional scope. Lopera Mesa (2011) notes that these differences may create tensions, particularly when international human rights standards provide broader protection than domestic constitutional provisions. Nevertheless, Nahabetián Brunet (2016) advocates a complementary approach, whereby constitutional review and conventionality control operate in a coordinated manner to reinforce the protection of human rights. This perspective suggests that constructive judicial dialogue between domestic and international jurisdictions is essential for preventing normative conflicts and enhancing the coherence of the legal system.

Finally, the challenges associated with the implementation of conventionality control underscore the need to strengthen institutional capacities. Cárdenas Merizalde et al. (2024) identify insufficient judicial training in international human rights law as a major obstacle to the effective application of international standards. Likewise, Fariñas Dulce (2024) argues that ongoing global transformations have generated new human rights challenges, requiring the continuous updating of legal knowledge and interpretative methodologies. In addition, López Ruiz et al. (2025) highlight the persistence of institutional resistance that hinders compliance with the decisions of international human rights bodies. These findings indicate that the effectiveness of conventionality control depends not only on its normative recognition but also on its consistent and effective implementation through well-trained judicial institutions, strong institutional commitment, and a legal culture firmly grounded in the protection of human rights.

Conclusions

Conventionality control has become an essential mechanism for ensuring the effective protection of human rights within domestic legal systems by establishing a dynamic interaction between national law and international human rights standards. Its development, driven primarily by the jurisprudence of the Inter-American Court of Human Rights, has significantly strengthened the protection of human dignity. Nevertheless, its practical implementation

continues to face important challenges related to consistency, uniformity, and legal coherence across different jurisdictions.

The findings also demonstrate that the legal foundations of conventionality control rest upon the binding nature of international human rights treaties, as well as fundamental principles such as good faith and the fulfillment of States' international obligations. However, its effectiveness depends largely on the proactive role of domestic judges, who are expected to adopt a rights-oriented interpretative approach guided by the **pro persona** principle and sustained judicial dialogue between domestic and international jurisdictions.

Furthermore, the different modalities of conventionality control—centralized, diffuse, and **ex officio**—illustrate both the complexity of its implementation and the need to reconcile legal certainty with the effective protection of human rights. In this respect, the relationship between conventionality control and constitutional review should not be understood as one of competition or conflict but rather as a complementary relationship that contributes to a more coherent, integrated, and rights-based legal system.

Finally, contemporary challenges—including insufficient judicial training, normative conflicts between domestic and international law, and institutional resistance to the implementation of international human rights standards—demonstrate that strengthening conventionality control requires not only legislative and jurisprudential advances but also structural changes in legal culture and institutional practice. Consequently, its full consolidation demands a sustained commitment by States to ensuring effective judicial protection and the genuine realization of human rights.

Study Limitations

This study is subject to the limitations inherent in qualitative and documentary research, as it relied on the availability and accessibility of relevant academic literature, legal doctrine, and jurisprudential sources. In addition, the heterogeneous implementation of conventionality control across different legal systems limited the generalizability of the findings. Finally, although rigorous methodological procedures were followed, the doctrinal and comparative legal analysis may have been influenced by interpretative biases inherent in legal scholarship.

Future Research

Future studies should undertake empirical analyses of the implementation of conventionality control within specific national legal systems in order to assess its actual impact on the protection of human rights. Further research should also examine the role of judicial education and public policy in promoting the effective application of this mechanism, as well as develop comparative studies capable of identifying best practices and transferable models that may contribute to strengthening conventionality control at the regional and international levels.

Acknowledgments

The author expresses sincere gratitude to the scholars and legal experts whose academic research and doctrinal contributions have substantially informed and enriched the development of this study. Special recognition is extended to the scientific literature in the field of international human rights law, which provided the essential theoretical and conceptual foundation for this research.

Conflict of Interest Statement

The author declares that there are no personal, professional, financial, or institutional conflicts of interest that could have influenced the design, conduct, interpretation, or presentation of the findings reported in this study.

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